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Eric B. Fisher
Neil S. Binder
Lindsay A. Bush
Lauren K. Handelsman
BINDER & SCHWARTZ LLP
366 Madison Avenue, 6th Floor
New York, New York 10017
Telephone: (212) 510-7008

*Attorneys for the Motors Liquidation Company
Avoidance Action Trust*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

MOTORS LIQUIDATION COMPANY, f/k/a
GENERAL MOTORS CORPORATION, *et al.*,

Chapter 11

Case No. 09-50026 (MG)
(Jointly Administered)

Debtors.
-----X

**MOTION OF MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION
TRUST FOR ENTRY OF ORDER PURSUANT TO SECTIONS 105 AND 1142
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3020(d)
APPROVING LITIGATION FUNDING AGREEMENT**

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**TO: THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE**

Wilmington Trust Company, solely in its capacity as trust administrator and trustee (the “**Avoidance Action Trust Administrator**”) of the Motors Liquidation Company Avoidance Action Trust (the “**Avoidance Action Trust**”), as established under the Debtors’ Second Amended Joint Chapter 11 Plan dated as of March 18, 2011 [Bankr. Dkt. No. 9836] (as confirmed, the “**Plan**”) of the above-captioned post-effective date debtors (the “**Debtors**”), submits this motion (the “**Motion**”), pursuant to sections 105 and 1142 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 3020(d) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking entry of an order, substantially in the form attached hereto as Exhibit A (the “**Approval Order**”), (i) approving the litigation funding agreement attached hereto as Exhibit B (the “**Litigation Funding Agreement**”), (ii) authorizing the Avoidance Action Trust to take all actions necessary or appropriate to effectuate the Litigation Funding Agreement, including the granting of a lien on the Term Loan Avoidance Action (as defined below) and other specified property of the Avoidance Action Trust; and (iii) granting such other and further relief as may be necessary. In support of the foregoing, the Avoidance Action Trust Administrator respectfully states as follows:

JURISDICTION AND VENUE

1. The Bankruptcy Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334, paragraph II of the order of the Bankruptcy Court dated as of March 29, 2011, confirming the Plan [Bankr. Dkt. No. 9941], Article XI of the Plan, and Sections 6.1(b), 8.1 and 13.13 of the Amended and Restated Motors Liquidation Company Avoidance Action Trust Agreement, dated as of May 11, 2012, attached hereto as Exhibit C (the “**Avoidance Action Trust Agreement**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before

this Court pursuant to 28 U.S.C. § 1409. The statutory predicates for the relief requested are sections 105 and 1142 of the Bankruptcy Code and Bankruptcy Rule 3020.

PRELIMINARY STATEMENT

2. The Litigation Funding Agreement resolves the funding needs of the Avoidance Action Trust to continue prosecuting the Avoidance Action Trust's \$1.5 billion action against JPMorgan Bank, N.A. ("**JPMorgan**"), and hundreds of other defendants (collectively, the "**Term Loan Defendants**"). Since its formation, the Avoidance Action Trust has been prosecuting the action with the goal of maximizing its value and distributing that value to the Avoidance Action Trust's beneficiaries. Absent a substantial infusion of funds, the Avoidance Action Trust will run out of money to prosecute the \$1.5 billion Term Loan Avoidance Action against the Term Loan Defendants. Under the current litigation schedule, the earliest possible adjudicated resolution of the action by this Court would not be until 2017 with possible appeals and follow-on collection litigation in different jurisdictions well beyond 2017, perhaps even several years beyond 2017.

3. The Avoidance Action Trust explored resolution of its funding needs through an agreement with the Motors Liquidation Company GUC Trust (the "**GUC Trust**"), but such negotiations ultimately proved unsuccessful. The Avoidance Action Trust then undertook a competitive bidding process with private funders that resulted in the current Litigation Funding Agreement with U.S. Bank National Association, as administrative agent and collateral agent, and the Investors as defined in the Litigation Funding Agreement ("**Funder**"). This Litigation Funding Agreement should be approved because it provides the Avoidance Action Trust with the financial means to prosecute the Term Loan Avoidance Action (as defined below) and maximize the value of the Avoidance Action Trust's assets for its beneficiaries.

BACKGROUND

A. **Old GM Files for Bankruptcy, the Term Loan Is Paid Off, and the Committee Commences the Term Loan Avoidance Action**

4. General Motors Corporation (“**Old GM**”) obtained a syndicated secured term loan (the “**Term Loan**”) of approximately \$1.5 billion pursuant to a term loan agreement, dated as of November 29, 2006, as amended on March 4, 2009 (the “**Term Loan Agreement**”). *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, 777 F.3d 100, 101 (2d Cir. 2015) (“**Second Circuit 2015 Decision**”).¹ To secure repayment of the Term Loan, the Term Loan Lenders took security interests in a large number of Old GM’s assets, including all of the equipment and fixtures at Old GM’s facilities throughout the United States (the “**Collateral**”). *Id.* JPMorgan, as administrative agent of the Term Loan, caused the filing of twenty-eight UCC-1 financing statements throughout the United States to perfect the Term Loan Lenders’ security interests in the Collateral. *Id.* One of the twenty-eight UCC-1 financing statements covered all the equipment and fixtures at the forty-two Old GM facilities and was filed with the Delaware Secretary of State and designated as file number 64168084 (the “**Main Lien**”). *Id.*

5. In connection with its bankruptcy filing, Old GM sought the authority from the Court to use a portion of the \$33 billion in post-petition financing (the “**DIP Financing**”) from the United States Department of the Treasury (“**Treasury**”) and Export Development Canada (“**EDC**”) (Treasury and EDC collectively referred to as the “**DIP Lenders**”) to repay the Term Loan in full. Bankr. Dkt. No. 64 ¶¶ 75-78. Old GM repaid the Term Loan Lenders in full, ahead

¹ All references to the Bankruptcy Docket are to *In re: Motors Liquidation Company f/k/a General Motors Corporation*, Case No. 09-50026. All references to the Adversary Docket are to *Motors Liquidation Company Avoidance Action Trust v. JPMorgan Chase Bank, N.A.*, Adv. Pro. No. 09-00504.

of other creditors of Old GM, on the assumption that their claims arising under the Term Loan Agreement were fully secured. Bankr. Dkt. No. 2529 ¶ 19.

6. However, days before entry of the *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Pre-Petition Secured Parties* (the “**DIP Order**”) [Bankr. Dkt. No. 2529], which provided for the final approval of the DIP Financing, the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the “**Committee**”) learned that the Term Loan Lenders’ security interests, in fact, may not all have been perfected as of the date that Old GM filed for bankruptcy on June 1, 2009 (the “**Petition Date**”) due to the filing of a termination statement relating to the Main Lien (the “**2008 Termination Statement**”) months before the Petition Date. *Second Circuit 2015 Decision*, 777 F.3d at 102. Therefore, the DIP Order, while conditionally approving Old GM’s repayment of the Term Loan, expressly preserved the right of the Committee to investigate and bring actions based upon the purported perfection of the security interests related to the Term Loan. Bankr. Dkt. No. 2529 ¶ 19(d).

7. Following its investigation, the Committee determined that JPMorgan had authorized the filing of the 2008 Termination Statement, and that, as a result, the Term Loan Lenders’ security interest with respect to the collateral secured by the Main Lien was not perfected as of the Petition Date; and, therefore, according to the Committee, the claims of the Term Loan Lenders arising under the Term Loan Agreement were substantially undersecured. *Second Circuit 2015 Decision*, 777 F.3d at 102-3. In order to recover amounts alleged to have been improperly

paid by Old GM to the Term Loan Lenders after the Petition Date (and during the ninety-day prepetition preference period) (the “**Transfers**”), based on the erroneous assumption that the Term Loan Lenders’ security interests were perfected, and their claims fully secured, the Committee filed the adversary proceeding captioned *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, Adv. Pro. No. 09-00504 (Bankr. S.D.N.Y. July 31, 2009) (the “**Term Loan Avoidance Action**”). Adv. Pro. Dkt. No. 1.

B. The Plan Is Confirmed, and the Committee Transfers Prosecution of the Term Loan Avoidance Action to the Avoidance Action Trust

8. As explained above, the Term Loan Avoidance Action was commenced by the Committee on July 31, 2009. Adv. Pro. Dkt. No. 1. JPMorgan, as Administrative Agent for the Term Loan Lenders, and the Committee, agreed to litigate the issue of whether the 2008 Termination Statement terminated the security interest in the Collateral covered by the Main Lien (“**Phase I**”), before litigating any other issues in the case. The Bankruptcy Court approved this bifurcation of the case and entered three orders, extending the time of the Avoidance Action Trust Administrator to serve the summons and complaint on the non-JPMorgan defendants until after the conclusion of the Term Loan Avoidance Action Phase I. *See, e.g.*, Adv. Pro. Dkt. Nos. 10, 17 and 82. Notwithstanding the Bankruptcy Court’s approval of the bifurcation and extension of time to serve the summons and complaint, several Term Loan Defendants have filed pending motions to dismiss the Amended Complaint (as defined below), and for judgment on the pleadings, asserting, *inter alia*, that the Bankruptcy Court orders were not based upon sound exercises of discretion and/or violated the Term Loan Defendants’ due process rights. *See* Adv. Pro. Dkt. Nos. 226, 262, 309, 392, 377. The Term Loan Defendants’ motions are still pending.

9. By August 2010, approximately one year after commencement of the Term Loan Avoidance Action, the Avoidance Action Trust and JPMorgan had completed discovery, and fully briefed cross-motions for summary judgment, in connection with Phase I of the Avoidance Action. *See Adv. Pro. Dkt. Nos. 17, 20, 23.*

10. On March 29, 2011, the Bankruptcy Court entered an order (the “**Confirmation Order**”) confirming the Plan. Bankr. Dkt. No. 9941. The effective date of the Plan (the “**Effective Date**”) was March 31, 2011. The Plan provided for, among other things, the creation of the Avoidance Action Trust, which was established to liquidate and distribute its non-administrative assets, which consist entirely of the proceeds, if any, of the Term Loan Avoidance Action. Bankr. Dkt. No. 9836 § 6.5 (Plan).² Thereafter the Committee was dissolved, and on December 15, 2011, while the cross-motions for summary judgment relating to Phase I were pending, prosecution of the Term Loan Avoidance Action was transferred to the Avoidance Action Trust. *See id.* § 6.5 (Plan); Ex. C (Avoidance Action Trust Agreement).

² The proper beneficiaries of the proceeds of the Term Loan Avoidance Action, if any, is a matter that is currently in dispute, with both the DIP Lenders and the Committee, on behalf of the holders of Allowed General Unsecured Claims, claiming sole rights to such proceeds. On June 6, 2011, the Committee commenced a separate adversary proceeding seeking a declaratory judgment that: (i) the DIP Lenders are not entitled to any proceeds of the Term Loan Avoidance Action and have no interests in the Avoidance Action Trust, and (ii) the holders of Allowed General Unsecured Claims have the exclusive right to receive any and all proceeds of the Term Loan Avoidance Action, and are the exclusive beneficiaries of the Avoidance Action Trust. *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. U.S. Dep’t of Treasury (In re Motors Liquidation Co.)*, Adv. Pro. No. 11-09406, Dkt. No. 1 (Bankr. S.D.N.Y. June 6, 2011). On December 2, 2011, the Bankruptcy Court entered an order in favor of the Committee, denying DIP Lenders’ motion to dismiss and for summary judgment. *Id.* ¶¶ 28-29. On December 16, 2011, the DIP Lenders appealed this and other related rulings and decisions of the Bankruptcy Court. *Id.* ¶ 31. On July 3, 2012, the district court for the Southern District of New York vacated the Bankruptcy Court’s judgment and remanded the case to the Bankruptcy Court, with instructions for the Bankruptcy Court judge to dismiss the Committee’s complaint without prejudice for want of subject matter jurisdiction because the dispute was not yet ripe. *U.S. Dep’t of Treasury v. Official Comm. of Unsecured Creditors of Motors Liquidation Co.*, 475 B.R. 347, 367 (S.D.N.Y. 2012).

C. The Term Loan Avoidance Action May Not Be Fully and Finally Resolved For Years, and the Avoidance Action Trust Does Not Have Sufficient Funds to Prosecute the Litigation to Completion

11. The initial administrative assets of the Avoidance Action Trust consisted of approximately \$1.6 million in cash to be held and maintained by the Avoidance Action Trust Administrator for fees and expenses in connection with trust administration and prosecution of the Term Loan Avoidance Action (the “**Avoidance Action Trust Administrative Cash**”). Bankr. Dkt No. 11330 ¶ 18.³

12. The \$1.6 million of Avoidance Action Trust Administrative Cash set aside under the Plan proved to be insufficient to fund litigation costs related to the Term Loan Avoidance Action and to satisfy the Avoidance Action Trust’s general administrative costs. *Id.* ¶¶ 18-21. Accordingly, on January 20, 2012, the GUC Trust filed a motion seeking, *inter alia*, to liquidate securities to fund additional Avoidance Action Trust fees, costs and expenses primarily related to the prosecution of the Term Loan Avoidance Action. *See generally id.* The Court granted the GUC Trust’s motion and entered an Order, which, among other things, allocated an additional \$13,714,000 to the Avoidance Action Trust to satisfy the Avoidance Action Trust’s estimated fees, costs and expenses for 2012, 2013, and 2014 (the “**GUC Trust Supplemental Cash**”). Bankr. Dkt. No. 11507.

13. On March 1, 2013, the Bankruptcy Court denied the Committee’s motion for partial summary judgment and granted summary judgment in favor of JPMorgan, ruling that the filing of

³ The Avoidance Action Trust also received \$500,000 of Avoidance Action Trust SEC Reporting Cash to be used solely for SEC Reporting Costs to the extent there is no other available source of funds to pay such costs. Bankr. Dkt. No. 11330 ¶ 18. Any unused portion of the Avoidance Action Trust SEC Reporting Cash will be returned to the GUC Trust. Ex. C § 2.3(e) (Avoidance Action Trust Agreement).

the 2008 Termination Statement was not effective and that the security interest covered by the Main Lien was therefore perfected as of the Petition Date. Adv. Pro. Dkt. No. 71.

14. The Avoidance Action Trust filed a motion seeking a direct, expedited appeal to the Second Circuit, which was granted. The Avoidance Action Trust then timely appealed to the Second Circuit. Adv. Pro. Dkt. 74. A little less than two years later, on January 21, 2015, after receiving an answer to a Delaware UCC question that it certified to the Delaware Supreme Court, *see Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, 755 F.3d 78, 86 (2d Cir. 2014) and *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.*, 103 A.3d 1010 (Del. 2014), the Second Circuit reversed the Bankruptcy Court's grant of summary judgment and remanded the matter to the Bankruptcy Court with instructions to enter partial summary judgment in favor of plaintiff, the Avoidance Action Trust. *Second Circuit 2015 Decision*, 777 F.3d at 101. On February 4, 2015, JPMorgan filed a petition for rehearing en banc (2d Cir. Docket No. 149), which the Second Circuit subsequently denied on April 13, 2015 (2d Cir. Docket No. 179).

15. On June 12, 2015, following issuance of the Second Circuit's mandate, the Bankruptcy Court entered partial summary judgment in favor of the Avoidance Action Trust as to the termination of the Main Lien. Adv. Pro. Dkt. No. 96. Thereafter, the Avoidance Action Trust filed an amended complaint (the "**Amended Complaint**") and served it upon all the Term Loan Lenders (with the exception of two foreign defendants as to which the Avoidance Action Trust continues to pursue service abroad). Adv. Pro. Dkt. Nos. 91, 94, 95, 163, 164. At the heart of the current phase of the Term Loan Avoidance Action is the Avoidance Action Trust's contention that, because the perfected security interest with respect to the Main Lien was terminated, the Term Loan Lenders should not have been paid as fully secured creditors, and the value of the Transfers

in excess of the value of any surviving collateral should be avoided and recovered for the benefit of the estate under Bankruptcy Code sections 547, 549 and 550.

16. The second phase of the litigation will primarily involve classification and valuation of the remaining collateral related to the Term Loan that was secured and perfected by filings other than the Main Lien (the “**Surviving Collateral**”).⁴ The overall discovery schedule in place for the Term Loan Avoidance Action contemplates: July 31, 2016, as the deadline for fact discovery (including depositions and plant inspections); October 31, 2016, as the deadline for the completion of expert discovery; and November 15, 2016, as the deadline for the filing of summary judgment motions (or letter requests for dispositive motions, if required). Adv. Pro. Dkt. No. 153.

17. In addition, on May 4, 2016, the Court entered an *Order Amending the August 17, 2015 ‘Order Regarding Discovery and Scheduling’ to Provide for Proceedings Concerning Characterization and Valuation of Representative Assets* (the “**May 4, 2016 Order**”), which provides for a schedule to streamline proceedings regarding fixture classification and valuation issues with regard to a total of forty representative assets to be selected by the parties. Adv. Pro. Dkt. No. 547. The May 4, 2016 Order culminates in the submission of pre-trial briefs to the Court on November 18, 2016, with a trial on the representative assets to take place thereafter on a date to be set by the Court. *Id.*

18. The Avoidance Action Trust projects that as of June 30, 2016, the Avoidance Action Trust will have less than \$700,000 to fund the fees and costs associated with prosecution

⁴ In addition to their contention that, even after termination of the Main Lien, the Term Loan remains secured by valuable collateral, the Term Loan Defendants have asserted other defenses. Further, various Term Loan Defendants have filed cross-claims against JPMorgan based upon the filing of the Termination Statement. Such cross-claims are governed by a separate discovery schedule, which culminates in the submission of summary judgment motions on March 15, 2017. *See* Adv. Pro. Dkt. No. 442. Further, the Court recently entered an order extending the deadlines for discovery concerning the circumstances of the filing of the Termination Statement to be consistent with the discovery schedule for the cross-claims. Adv. Pro. Dkt. No. 634.

of the Term Loan Avoidance Action, the administrative expenses of the Avoidance Action Trust, and the fees of the Trust Administrator and trust monitor (the “**Avoidance Action Trust Monitor**”). Declaration of Arthur J. Gonzalez, dated June 24, 2016 (the “**Gonzalez Declaration**”)

¶ 4. This amount is insufficient to fund the Term Loan Avoidance Action to its conclusion. In addition to litigating to final resolution the Term Loan Avoidance Action against the hundreds of Term Loan Defendants, including any appeals, the Avoidance Action Trust has also commenced two proceedings in Delaware seeking to nullify certificates of cancellation of two entities named as Defendants in the Term Loan Avoidance Action based on their failure to wind up and distribute their assets in accordance with Delaware law so that the Avoidance Action Trust can prosecute the Term Loan Avoidance Action against the reconstituted entities.

19. Accordingly, the final resolution of the Term Loan Avoidance Action could take years, and the Avoidance Action Trust does not have sufficient funds to prosecute the Term Loan Avoidance Action to completion absent additional funding.

D. The Avoidance Action Trust Undertook a Competitive Bidding Process to Obtain Required Funding

20. Pursuant to the Avoidance Action Trust Agreement, the Avoidance Action Trust Administrator “shall at all times, to the extent practicable, retain . . . sufficient Avoidance Action Trust Administrative Cash and Supplemental Avoidance Action Trust Cash as the Trust Administrator shall determine, with the approval of the Trust Monitor and subject to the Budget, is necessary (x) to pay the reasonable incurred or anticipated fees and expenses of the Trust . . . and (y) to satisfy other liabilities incurred or anticipated by the Trust in accordance with the Plan, the Confirmation Order and this Trust Agreement.” Ex. C § 5.5(b) (Avoidance Action Trust Agreement).

21. The Avoidance Action Trust Agreement specifically sets forth a mechanism for the Avoidance Action Trust to seek additional funding in the event that the Avoidance Action Trust Administrative Cash and the GUC Trust Supplemental Cash “is not reasonably likely to be adequate to satisfy the current and projected future fees, costs and expenses” of the Avoidance Action Trust. *Id.* § 6.1(d).

22. Specifically, the Avoidance Action Trust Agreement permits, upon approval of the Bankruptcy Court, the granting of a lien on the Term Loan Avoidance Action or other property of the Avoidance Action Trust in exchange for proceeds that may be used to satisfy the fees, costs and expenses of the Avoidance Action Trust (the “**Other Supplemental Cash**”). *Id.*

23. In accordance with its obligations under the Avoidance Action Trust Agreement, the Avoidance Action Trust Administrator, in consultation with the Avoidance Action Trust Monitor, made a determination that the cash available to the Avoidance Action Trust was not sufficient to meet its projected fees and expenses. *See* Gonzalez Decl. ¶ 4. After initially exploring a potential transaction with the GUC Trust as a path to addressing the Trust’s need for supplemental cash, the Avoidance Action Trust Administrator, through counsel, commenced a competitive bidding process by soliciting litigation funding proposals from four potential third-party funders in order to obtain Other Supplemental Cash for the Avoidance Action Trust. *See id.* ¶¶ 4-5.

24. After receipt of the litigation funding proposals, the Avoidance Action Trust, through counsel and with the active participation of the Avoidance Action Trust Administrator and the Avoidance Action Trust Monitor, engaged in negotiations with each of the potential funders in order to obtain an agreement on terms that would ensure adequate litigation funding for the Avoidance Action Trust on the best economic terms. *Id.*

25. Ultimately, after approximately three months of negotiations, the parties arrived at the Litigation Funding Agreement that is the subject of this motion.⁵

E. The Litigation Funding Agreement

26. The Litigation Funding Agreement provides that the Funder will commit up to \$15 million to the Avoidance Action Trust to cover all Trust Expenses, which include the costs of litigation as well as the costs and expenses of the Avoidance Action Trust. The Avoidance Action Trust is required to draw \$5 million of that committed funding and may draw the remaining \$10 million at its discretion. The full terms of the Litigation Funding Agreement are set out in Exhibit B.

27. Critically, the Litigation Funding Agreement provides that the Funder has no rights with respect to oversight of the Avoidance Action Trust's prosecution of the Term Loan Avoidance or any other action, nor does the Funder have any rights with respect to any decision whether or not to settle any action. Ex. B § 2.7(a) (Litigation Funding Agreement).

28. The key terms of the Litigation Funding Agreement, all of which are consistent with Section 6.1(d) of the Avoidance Action Trust Agreement, are as follows:

- On the Effective Date, following, *inter alia*, this Court's approval of the Litigation Funding Agreement, the Funder shall deposit \$15 million into an investment account (*id.* § 2.1(a));
- Thereafter, the Avoidance Action Trust must transfer a minimum of \$5 million from the investment account to an operating account to fund the payment of Trust Expenses; any advancement of additional funds from the investment account beyond the \$5 million is in the discretion of the Avoidance Action Trust (all funds advanced from the investment account to the Avoidance Action Trust's operating account are collectively referred to as the "**Investments**") (*id.* § 2.1);
- "Trust Expenses" means the costs and expenses of the Term Loan Avoidance Action, the Oaktree Action (as defined in the Litigation Funding Agreement), any

⁵ To the extent there is any conflict between this summary and the Litigation Funding Agreement, the Litigation Funding Agreement will govern in all respects.

other action commenced by the Avoidance Action Trust, and other costs and expenses of the Avoidance Action Trust (including, but not limited to, administrative expenses and any tax liabilities, but expressly excluding distributions to beneficiaries or repayment of amounts owed to DIP Lenders), all as determined by the Avoidance Action Trust Administrator in its sole discretion (*id.* § 6.6; § 1.1 at 8 (Definitions));

- In exchange for the \$15 million financial commitment, the Avoidance Action Trust agrees to grant a security interest and lien to the Funder on all tangible and intangible property and assets of the Avoidance Action Trust (with the exception of: (i) the Avoidance Action Trust SEC Reporting Cash; (ii) the GUC Trust Supplemental Cash; (iii) Distributable Other Debtor Residual Trust Cash; (iv) Avoidance Action Trust Administrative Cash and Other Debtor Residual Trust Administrative Cash; and (v) any deposit account into which solely any of the foregoing is deposited and maintained) (*id.* § 3.1); and
- The Funder shall be entitled to a return calculated as the greater of (i) 4.75% of the aggregate Proceeds of the Term Loan Avoidance Action or (ii) a multiple of invested capital equal to two and one-quarter times (2.25:1) the aggregate amount of all Investments; such fee shall be payable from the Proceeds of the Avoidance Action Trust ahead of all other obligations and beneficiaries of, or investors in, the Avoidance Action Trust (*id.* § 1.1 at 5, 6 (Definitions)).

29. In addition to the key terms summarized above, the Litigation Funding Agreement contains other provisions, including but not limited to, those concerning conditions to consummating the Agreement; and termination events, rights, and procedures. The Litigation Funding Agreement also acknowledges that though the Avoidance Action Trust must use cash in the operating account for all Trust Expenses, it will enter into a contingency fee arrangement with Lead Counsel in the Term Loan Avoidance Action whereby Lead Counsel's fees to be paid by the Avoidance Action Trust are reduced by 30% and Lead Counsel will receive a contingency fee of 1% of the Proceeds of the Term Loan Avoidance Action. Ex. B § 1.1 at 10-11 (Definitions) (Litigation Funding Agreement).

30. In order to thoroughly explore all potential sources of additional funds for the Avoidance Action Trust, the Avoidance Action Trust kept the DIP Lenders apprised of the negotiations with potential funders throughout this competitive bidding process. On April 4, 2016,

the date the Avoidance Action Trust reached an agreement in principle with the Funder, it shared a copy of the initial term sheet with the DIP Lenders and, on May 19, 2016, provided the DIP Lenders a copy of the executed Litigation Funding Agreement. Finally, the Avoidance Action Trust negotiated the following provision in the Litigation Funding Agreement that permits the Avoidance Action Trust to terminate the Litigation Funding Agreement within a certain period of time in the event that the DIP Lenders agreed to provide funding to the Avoidance Action Trust:

“Permitted Alternative Funding Event” means the occurrence, on or before the earlier of (x) July 20, 2016; and (y) the originally-scheduled hearing date established by the Bankruptcy Court to consider the motion required pursuant to Section 5.1(f) (without regard to any adjournment thereof), of either: (i) any submission to the Bankruptcy Court of a motion seeking the approval of any agreement or arrangement, including, without limitation, the approval of any stipulation, with one or more DIP Lenders to provide funding for the Trust’s prosecution of the Term Loan Avoidance Action, the Oaktree Action, and any other action brought by the Trust; or (ii) the Trust’s entry into an agreement or arrangement with one or more DIP Lenders pursuant to which such DIP Lenders will provide funding for the Trust’s prosecution of the Term Loan Avoidance Action, the Oaktree Action, and any other action brought by the Trust, in any such case on terms materially more favorable to the Trust than those provided by the Investors under this Agreement.

Ex. B § 1.1 at 6 (Litigation Funding Agreement).

31. As required by Section 6.1(d)(ii) of the Avoidance Action Trust Agreement, the Avoidance Action Trust Monitor has submitted a Declaration herewith setting forth his approval the Litigation Funding Agreement. *See* Gonzalez Decl. ¶ 6.

BASIS FOR REQUESTED RELIEF

32. This Court has the authority to enter the proposed order approving the Litigation Funding Agreement, attached hereto as Exhibit B, under the terms of the Plan and under section 1142(b) of the Bankruptcy Code.

33. The Plan specifies that the Bankruptcy Court retains exclusive jurisdiction “of all matters arising under, arising out of, or related to the Chapter 11 Cases and the Plan pursuant to,

and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code” and for, *inter alia*, the following purposes: (1) “ensure that distributions to holders of Allowed Claims are accomplished as provided herein”; (2) “hear and determine disputes arising in connection with or related to the interpretation, implementation, or enforcement of the Plan, . . . the Avoidance Action Trust, . . . and the Avoidance Action Trust Agreement”; and (3) “take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan to maintain the integrity of the Plan following consummation.” Bankr. Dkt. No. 9836 §§ 11.1(c), (i), (j) (Plan).

34. Further, section 1142(b) of the Bankruptcy Code authorizes the Court to “direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act . . . that is necessary for the consummation of the plan.” 11 U.S.C. § 1142(b); *see also Hosp. & Univ. Prop. Damage Claimants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 7 F.3d 32, 34 (2d Cir. 1993) (finding that bankruptcy courts retain postconfirmation jurisdiction in chapter 11 proceedings to the extent provided by the plan); *Penthouse Media Grp. v. Guccione (In re Gen. Media, Inc.)*, 335 B.R. 66, 73 (Bankr. S.D.N.Y. 2005) (finding that bankruptcy courts retain post-confirmation jurisdiction to matters related to the implementation of a plan); *In re Petition of Bd. of Dirs. of Hopewell Int’l Ins., Ltd.*, 272 B.R. 396, 407 n.11 (Bankr. S.D.N.Y. 2002) (“[T]he Court may direct parties to perform any act necessary to consummate the plan.”) (citing 11 U.S.C. § 1142(b)); *LTV Corp. v. Back (In re Chateaugay Corp.)*, 201 B.R. 48, 66 (Bankr. S.D.N.Y. 1996), *aff’d in part*, 213 B.R. 633 (S.D.N.Y. 1997) (“The clear intent of Section 1142(b) of the Bankruptcy Code is to assure that the terms and provisions of a confirmed chapter 11 plan are carried out until the plan is completed and the final decree is entered closing

the case.”). In addition, Bankruptcy Rule 3020(d) provides that “[n]otwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.” Fed. R. Bankr. P. 3020(d).

35. Here, the Litigation Funding Agreement allows the Avoidance Action Trust to fulfill its basic purpose under the Plan. The Plan specifies that the “sole purpose” of the Avoidance Action Trust is to liquidate and distribute its assets, which consist of the Term Loan Avoidance Action. Bankr. Dkt. No. 9836 §§ 1.23, 6.5 (Plan). The Litigation Funding Agreement promotes this goal.

36. Approval of the Litigation Funding Agreement will provide necessary funding to the Avoidance Action Trust to prosecute the Term Loan Avoidance Action, in order to maximize its value for the Avoidance Action Trust’s beneficiaries.

37. In sum, the Litigation Funding Agreement, which was the result of a competitive bidding process and good faith, arm’s-length negotiations between the parties, resolves significant funding issues of the Avoidance Action Trust, fulfills the goals of the Plan, and benefits all affected parties. Accordingly, it should be approved.

NOTICE

38. The Avoidance Action Trust has provided notice of this Motion to (a) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004; (b) the DIP Lenders; (c) the other parties in interest in accordance with the *Sixth Amended Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Establishing Notice and Case Management Procedures*, dated May 5, 2011 [Docket No. 10183]; (d) JPMorgan and each of the Term Loan Defendants, and (e) any other required notice

parties under Section 6.1(b)(ii) of the Avoidance Action Trust Agreement.⁶ The Avoidance Action Trust submits that such notice is sufficient and no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Avoidance Action Trust respectfully requests that the Court enter an Order: (i) approving the Litigation Funding Agreement attached hereto as Exhibit B; (ii) authorizing the Avoidance Action Trust to take all actions necessary or appropriate to effectuate the Litigation Funding Agreement, including the granting of a lien on the Term Loan Avoidance Action and other specified property of the Avoidance Action Trust; and (iii) granting such other and further relief as may be necessary.

⁶ The Avoidance Action Trust Agreement requires notice to “the Trust Monitor, the holders of Units and the holders of Disputed General Unsecured Claims.” Ex. C § 6.1(d)(ii) (Avoidance Action Trust Agreement). However, because of the dispute over who is entitled to the proceeds of the Term Loan Avoidance Action (*see supra* p. 6, n.2), no Units have been issued, and there are no holders of Units. Accordingly, notice has been provided to all potential Unit holders and/or beneficiaries of the Avoidance Action Trust and other interested parties, including the DIP Lenders; the Committee; the holders of Motors Liquidation Company (f/k/a General Motors Company) debentures and notes with the following CUSIP Nos.: 370ESCAN5; 370ESCAJ4; 370ESCAR6; 370ESCAG3; 370ESCAS7; 370ESCAT2; 370ESCAU9; 370ESCAV7; 370ESCAZ8; 370ESCBB0; 370ESCBQ7; 370ESCBT1; 370ESCBW4; 370ESCBS3; 370ESC816; 370ESC774; 370ESC766; 370ESC758; 370ESC741; 370ESC733; 370ESC725; 370ESC717; 370ESC121; 370ESC691; 616ESC AA2; 616ESC AB0; 349ESC AT1; 677ESC AU2; 677ESC BC2; 455ESC AB8; 594ESC AQ6; XS0171942757; XS0171943649; CH0008769264 (served through the Depository Trust Company (DTC)); the non-bondholder holders of Allowed General Unsecured Claims (as defined in the Avoidance Action Trust Agreement); and any holders of disputed General Unsecured Claims.

Dated: June 23, 2016
New York, New York

Respectfully submitted,

BINDER & SCHWARTZ LLP

/s/ Eric B. Fisher

Eric B. Fisher

Neil S. Binder

Lindsay A. Bush

Lauren K. Handelsman

366 Madison Avenue, 6th Floor

New York, New York 10017

Tel: (212) 510-7008

*Attorneys for the Motors Liquidation
Company Avoidance Action Trust*

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----x
In re:

MOTORS LIQUIDATION COMPANY, f/k/a
GENERAL MOTORS CORPORATION, *et al.*,

Chapter 11

Case No. 09-50026 (MG)
(Jointly Administered)

Debtors.
-----x

**ORDER GRANTING MOTION OF THE MOTORS LIQUIDATION
COMPANY AVOIDANCE ACTION TRUST PURSUANT TO
SECTIONS 105 AND 1142 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULE 3020(d) FOR APPROVAL OF
LITIGATION FUNDING AGREEMENT**

Upon the Motion, dated June 23, 2016 (the “**Motion**”), of the Motors Liquidation Company Avoidance Action Trust (the “**Avoidance Action Trust**”), by and through Wilmington Trust Company acting solely in its capacity as Avoidance Action Trust Administrator, seeking approval of a Litigation Funding Agreement, all as more fully set forth in the Motion, and due and proper notice of the Motion having been provided, and upon this Court having jurisdiction to consider the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(a) and 1334(b), Article XI of the Plan, and Section 11.2 of the May 11, 2012 Amended and Restated Motors Liquidation Company Avoidance Action Trust Agreement [Docket No. 11704-1], and venue of the Motion before this Court being proper pursuant to 28 U.S.C. §§ 1408 and 1409, and no objections or responses to the Motion having been filed, the Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is GRANTED as set forth herein; and it is further
ORDERED that the Litigation Funding Agreement is hereby approved.

Dated: New York, New York
June __, 2016

HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

FUNDING AGREEMENT

dated as of

May 19, 2016

among

MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST

("Trust")

THE INVESTORS PARTY HERETO FROM TIME TO TIME

("Investors")

and

U.S. BANK NATIONAL ASSOCIATION

as Administrative Agent and Collateral Agent

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FUNDING AGREEMENT

THIS FUNDING AGREEMENT dated as of May 19, 2016 (this “Agreement”) is by and among MOTORS LIQUIDATION TRUST AVOIDANCE ACTION TRUST, a Delaware statutory trust (“Trust”), THE INVESTORS PARTY HERETO FROM TIME TO TIME, and U.S. BANK NATIONAL ASSOCIATION, as Administrative Agent and Collateral Agent.

The parties hereto agree as follows:

Article 1 - Definitions

1.1 *Defined Terms.* As used in this Agreement, the following terms have the meanings specified below:

“Affiliate” means, with respect to a specified Person, another Person that Controls or is Controlled by or is under common Control with the Person specified.

“Agent” means U.S. Bank National Association, in its capacities as administrative agent and collateral agent for the Investors hereunder.

“Agent Fee” means an annual fee not to exceed \$15,000 payable to Agent for Agent’s services under this Agreement.

“Applicable Percentage” means when referenced with respect to any Investor, the percentage of the total Commitments represented by such Investor’s Commitment.

“Approved Fund” means, with respect to any Investor, a fund that invests in commercial litigation claims funding, securities, or commercial loans, and is managed or advised by the same investment advisor as such Investor or by an Affiliate of such investment advisor.

“Assignment and Acceptance” means an assignment and acceptance entered into by an existing Investor and an assignee (with the consent of any party whose consent is required by Section 10.3), and accepted by the Agent, in the form of Exhibit A annexed hereto or any other form approved by the Agent which complies with the provisions of Section 10.3.

“Availability Period” means the period from and including the Effective Time to but excluding the earlier of (a) the Maturity Date; and (b) the date of termination of Commitments, as terminated by the Agent pursuant to Section 8.1.

“Avoidance Action Trust Administrative Cash” shall have the meaning ascribed thereto in the Trust Agreement.

“Avoidance Action Trust Assets” has the meaning ascribed thereto in the Trust Agreement.

“Avoidance Action Trust SEC Reporting Cash” has the meaning ascribed thereto in the Trust Agreement.

“Award Account” means a deposit account that is subject to a DACA and maintained by the Trust into which the Trust will deposit Proceeds of the Term Loan Avoidance Action in accordance with the provisions of Section 6.7.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York, or any successor thereto with jurisdiction over the Term Loan Avoidance Action.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in Washington, D.C. or New York, New York are authorized or required by law to remain closed.

“Closing Date” means the date on which the Effective Time shall occur.

“Closing Expense Payment” means an amount equal to the lesser of (i) the aggregate amount of the reasonable and documented fees and out-of-pocket expenses incurred by the Agent, the Agent’s Affiliates, and the Investors, including the reasonable fees, charges, and disbursements of the their respective counsel, in connection with the preparation of this Agreement, the other Transaction Documents, any amendments, modifications, or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and the closing on the transactions under the Transaction Documents; and (ii) \$40,000.

“Collateral” means, collectively, all of the Property in which Liens are granted hereunder and under the other Transaction Documents as security for the Obligations of the Trust, as more particularly described in Article 3 hereof.

“Commitment” means, with respect to each Investor, the commitment of such Investor to fund its portion of the Investment hereunder, as such commitment may be reduced or increased from time to time pursuant to assignments by or to such Investor pursuant to Section 10.3. The initial maximum amount of the initial Investor’s Commitment is set forth on Schedule 2.1. The Commitment of any other Investor shall be as set forth in the Assignment and Acceptance pursuant to which such Investor shall have assumed its Commitment. The aggregate original maximum amount of the Commitments is equal to \$15,000,000.

“Contingency Fee” has the meaning assigned to such term in Section 2.1(h)(ii).

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto. A Person who owns or holds capital stock, beneficial interests or other securities representing fifty percent (50%) or more of the Total Voting Power of another Person shall be deemed, for purposes of this Agreement, to “control” such other Person.

“Current Payables” has the meaning assigned to such term in Section 4.4(b).

“DACA” means a deposit account control agreement in favor of the Agent, for the benefit of the Investors, in form and substance acceptable to the Agent in its sole discretion.

“Default” means any event or condition that would permit the Investors to terminate this Agreement pursuant to Section 8.1(a) or (b).

“DIP Lenders” has the meanings ascribed thereto in the Trust Agreement.

“Distributable Other Debtor Residual Trust Cash” shall have the meaning ascribed thereto in the Trust Agreement.

“Effective Time” means the time specified in a written notice from the Agent when the conditions specified in Section 5.1 are satisfied (or waived in accordance with Section 10.2).

“Excluded Assets” has the meaning assigned to such term in Section 3.1.

“Excluded Taxes” means, with respect to the Agent, any Investor, or any other recipient of any payment to be made by or on account of any Obligation hereunder, (a) income, net worth or franchise taxes imposed on (or measured by) its net income or net worth by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Investor, in which its office is located or in which it is taxable solely on account of some connection other than the execution, delivery or performance of this Agreement or the receipt of income hereunder, and (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Trust is located.

“Final Recovery Date” means the date of the final settlement or a final judgment in the Term Loan Avoidance Action.

“First Priority” means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the most senior Lien (other than Permitted Liens) to which such Collateral is subject.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including but not limited to the New York State Banking Department.

“Guarantee” means a guarantee, an endorsement, a contingent agreement to purchase or to furnish funds for the payment or maintenance of, or otherwise to be or become contingently liable under or with respect to, the Indebtedness, other obligations, net worth, working capital or earnings of any Person, or a guarantee of the payment of dividends or other distributions upon the stock or equity interests of any Person, or an agreement to purchase, sell or lease (as lessee or lessor) property, products, materials, supplies or services primarily for the purpose of enabling a debtor to make payment of such debtor’s obligations or an agreement to assure a creditor against loss, and including, without limitation, causing a bank or other financial institution to issue a letter of credit or other similar instrument for the benefit of another Person, but excluding endorsements for collection or deposit in the ordinary course of business. The terms “Guarantee” and “Guaranteed” used as a verb shall have a correlative meaning. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of

the primary obligations in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder).

“GUC Trust Supplemental Cash” has the meaning ascribed thereto in the Trust Agreement

“Hedging Agreement” means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“Holdback” shall mean, at any date of a proposed distribution from the Trust pursuant to Section 6.7, an amount to be held in the Award Account equal to the greater of (x) the resultant of (i) the product of the Percentage Return multiplied by the aggregate of all Proceeds of the Term Loan Avoidance Action received up to the date of the contemplated distribution minus (ii) the aggregate amounts actually paid to Investors to that date; and (y) the resultant of (i) 2.25 (or 3.25 in the event of Other Litigation Funding is obtained by the Trust) multiplied by \$15,000,000 minus (ii) the aggregate amounts paid to Investors to that date.

“Indebtedness” means, for any Person, without duplication: (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, advance, the issuance and sale of debt securities or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses and deferred taxes incurred and paid, in the ordinary course of business; (c) Capital Lease Obligations of such Person; (d) obligations of such Person in respect of Hedging Agreements; and (e) obligations of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of such Person. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means all Taxes other than (a) Excluded Taxes and Other Taxes and (b) amounts constituting penalties or interest imposed with respect to Excluded Taxes or Other Taxes.

“Investment” means any amount, other than a Tax Payment, funded from the Investment Account to the Operating Account at the Trust’s request pursuant to Section 2.1(b), the proceeds of which are applied in accordance with Section 6.6.

“Investment Account” shall be a deposit account maintained by the Agent in the name and control of the Trust in which the funded Commitments of the Investors will be held until requested by and funded to the Operating Account pursuant to Section 2.1(c).

“Investment Income” means income from the investment of funds held in the Investment Account.

“Investor Continuing Obligations” means the Investor’s obligations under Sections 2.7, 8.2(c), and 10.9.

“Investor Payment” means, with respect to the aggregate of all Investments drawn by and funded to the Trust hereunder, an amount equal to the greater of (i) the Percentage Return; and (ii) the MOIC.

“Investors” means the Persons listed on Schedule 2.1 and any other Person that shall have become a party hereto pursuant to an Assignment and Acceptance, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Acceptance.

“Lead Counsel” means Binder & Schwartz LLP, or any successor thereto or replacement thereof made by the Trust, in the Trust’s sole discretion.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing), other than an operating lease, relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Material Adverse Effect” means, any event, circumstance, happening or condition, which, in the Agent’s sole discretion, has resulted or could result in a material adverse effect on (a) the business, assets, financial condition or prospects of the Trust taken as a whole, (b) the ability of the Trust to pay or perform any of its obligations under this Agreement or the other Transaction Documents or (c) any of the rights of or benefits available to the Investors under this Agreement and the other Transaction Documents.

“Material Indebtedness” means Indebtedness (other than the Investments hereunder and Current Payables) in a principal amount (individually or in the aggregate) exceeding \$100,000.

“Maturity Date” means the earlier of: (i) the date three (3) years from the Closing Date; and (ii) the Final Recovery Date.

“MOIC” means the product of (A) 2.25 (or 3.25 in the event Other Litigation Funding is obtained by the Trust) multiplied by (B) the aggregate of all Investments drawn by and funded to the Trust hereunder.

“Oaktree Action” means the action commenced by the Trust in the Court of Chancery of the State of Delaware against Oaktree Loan Fund LP, including any related actions.

“Obligations” means (a) the aggregate Investor Payment owed with respect to the Investments hereunder, and (b) all fees, costs, charges, expenses and other obligations from time to time owing to the Investors or the Agent by the Trust hereunder or under any other Transaction Document.

“Operating Account” means a deposit account that is subject to a DACA and maintained by the Trust from which the Trust will apply proceeds of the Investments in accordance with the provisions of Section 6.6.

“Other Debtor Residual Trust Administrative Cash” shall have the meaning ascribed thereto in the Trust Agreement.

“Other Litigation Funding” has the meaning assigned to such term in Section 7.1(b).

“Other Supplemental Cash” shall have the meaning ascribed thereto in the Trust Agreement.

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement and the other Transaction Documents, *provided* that there shall be excluded from “Other Taxes” all Excluded Taxes.

“Percentage Return” means 4.75% of the aggregate Proceeds of the Term Loan Avoidance Action.

“Permissible Investments” has the meaning ascribed thereto in the Trust Agreement.

“Permitted Liens” has the meaning set forth in Section 7.2.

“Permitted Alternative Funding Event” means the occurrence, on or before the earlier of (x) July 20, 2016; and (y) the originally-scheduled hearing date established by the Bankruptcy Court to consider the motion required pursuant to Section 5.1(f) (without regard to any adjournment thereof), of either: (i) any submission to the Bankruptcy Court of a motion seeking the approval of any agreement or arrangement, including, without limitation, the approval of any stipulation, with one or more DIP Lenders to provide funding for the Trust’s prosecution of the Term Loan Avoidance Action, the Oaktree Action, and any other action brought by the Trust; or (ii) the Trust’s entry into an agreement or arrangement with one or more DIP Lenders pursuant to which such DIP Lenders will provide funding for the Trust’s prosecution of the Term Loan Avoidance Action, the Oaktree Action, and any other action brought by the Trust, in any such case on terms materially more favorable to the Trust than those provided by the Investors under this Agreement.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Proceeds of the Term Loan Avoidance Action” means any and all gross, pre-tax monetary awards, damages, monies, lump-sum payments, up-front payments, settlement amounts (whether from a one defendant or multiple defendants), distribution of property, cash value of equities, or other cash and non-cash amounts paid (which non-cash amounts shall be promptly converted by the Trust to cash), transferred, or inuring to the Trust at any time on or after the date of this Agreement in connection with the Term Loan Avoidance Action, the Oaktree Action, or any other action brought by the Trust, whether by awards or payments of attorney’s fees, costs

and expenses, settlement, judgment or other means, plus any interest awarded or later accruing in connection therewith.

“Property” means any interest of any kind in property or assets, whether real, personal or mixed, and whether tangible or intangible.

“Register” has the meaning assigned to such term in Section 10.3(d).

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents, and advisors (including, without limitation, legal counsel) of such Person and such Person’s Affiliates.

“Required Investors” means, at any time when there is more than one Investor, Investors having Commitments representing at least a seventy five percent (75%) of the sum of the aggregate Commitments of all Investors at such time, or at any time when there is only one Investor, such Investor.

“Settlement Date” has the meaning assigned to such term in Section 2.2.

“Subordinated Indebtedness” means Other Litigation Funding, which shall be made subordinate and junior in right of payment to the Investor Payment and to the other Obligations of the Trust by provisions in form and substance reasonably satisfactory to Required Investors.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Trust.

“Supplemental Avoidance Action Trust Cash” shall have the meaning ascribed thereto in the Trust Agreement.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

“Tax Payment” means an amount equal to (x) the aggregate amount of taxable Investment Income, if any, during any taxable year of the Trust multiplied by (y)(i) the highest federal income tax rate applicable to the taxable income of the Trust during such taxable year plus (ii) the highest state income tax rate applicable to taxable income of the Trust during such taxable year.

“Term Loan Avoidance Action” has the meaning ascribed thereto in the Trust Agreement.

“Third-Party Investment” means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership, limited liability company or other ownership interests or other securities of any other

Person or any agreement to make any such acquisition (including, without limitation, any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such short sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business provided that in no event shall the term of any such inventory or supply advance, loan or extension of credit exceed 180 days); or (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person. Notwithstanding the foregoing, Capital Expenditures shall not be deemed “Investments” for purposes hereof.

“Total Voting Power” means, with respect to any Person, the total number of votes which holders of securities having the ordinary power to vote, in the absence of contingencies, are entitled to cast in the election of directors of such Person.

“Transaction Documents” means this Agreement, the Investment Certificates, and any other instruments or documents delivered or to be delivered from time to time pursuant to this Agreement, as the same may be supplemented and amended from time to time in accordance with their respective terms.

“Trust” means Motors Liquidation Company Avoidance Action Trust, a Delaware statutory trust.

“Trust Administrator” means Wilmington Trust Company, in its capacity as trust administrator and trustee under the Trust Agreement, and any successor thereto appointed in accordance with the Trust Agreement and approved in accordance with this Agreement.

“Trust Agreement” means that certain Amended and Restated Motors Liquidation Company Avoidance Action Trust Agreement, dated as of May 11, 2012, by and among the Trust Administrator, for the benefit of the Trust Beneficiaries (as defined therein); and the Trust Monitor, as the same may be amended, restated or otherwise modified from time to time.

“Trust Expenses” means the costs and expenses of the Term Loan Avoidance Action, the Oaktree Action, any other action commenced by the Trust, and other costs and expenses of the Trust (including, but not limited to, administrative expenses and any tax liabilities, but expressly excluding distributions to beneficiaries or repayment of amounts owed to DIP Lenders), all as determined by the Trust Administrator in its sole discretion.

“Trust Monitor” means Arthur J. Gonzalez, in his capacity as Trust Monitor under the Trust Agreement, and any successor thereto appointed in accordance with the Trust Agreement and approved in accordance with this Agreement.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

“Undrawn Amount” means (i) any amount remaining in the Investment Account at any time that has not been drawn as an Investment; and (ii) any income accrued on amounts held in the Investment Account, which income shall be for the account of the Trust, to be treated as an Investment if drawn as an Investment pursuant to Section 2.1.

“U.S. Dollars” or “\$” refers to lawful money of the United States of America.

1.2 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

1.3 Designated Financial Officers. The Trust hereby authorizes each of the Designated Financial Officers listed in Schedule 1.3 hereto to act as agent for the Trust and to execute and deliver on behalf of the Trust such notices, requests, waivers, consents, certificates and other documents, and to take any and all actions required or permitted to be delivered or taken by the Trust hereunder. The Trust may replace any of the Designated Financial Officers listed in Schedule 1.3 hereto or add any additional Designated Financial Officers by delivering written notice to the Agent specifying the names of each new Designated Financial Officer and the offices held by each such Person. The Trust hereby agrees that any such notices, requests, waivers, consents, certificates and other documents executed, delivered or sent by any Designated Financial Officer and any such actions taken by any Designated Financial Officer shall bind the Trust.

Article 2 - The Investments

2.1 Investments.

(a) Funding the Investment Account. Subject to the terms and conditions set forth herein, on the Closing Date, the initial Investor shall fund to the Investment Account an amount of cash equal to its Commitment, by wire transfer of immediately available funds; *provided* that the amount deposited to the Investment Account by all Investors on the Closing Date shall not be less than \$15,000,000. Amounts in the Investment Account shall be deemed to be Other Supplemental Cash.

(b) Investments. Subject to the terms and conditions set forth herein, the Trust from time to time during the Availability Period, may request one or more Investments in an aggregate principal amount that will not exceed the total Commitments and any Investment Income (less any Tax Payments made). After the end of each month, the Agent will render to the Trust a statement of each Investment funded to the Trust to such date. Each statement shall be considered correct and to have been accepted by and be conclusively binding upon the Trust as an account stated, unless the Trust notifies the Agent in writing of any discrepancy within thirty (30) days from the date of any such statement.

(c) Funding of Investments. On any Business Day that the Trust is requesting the funding of an Investment, the Trust shall deliver to the Agent not later than 11:00 a.m., New York, New York time, by facsimile or electronic mail transmission, written request for such Investment. The Agent shall fund each Investment requested by the Trust by wire transfer from the Investment Account to the Operating Account of immediately available funds by 3:00 p.m., New York, New York time. By making any request for an Investment, the Trust shall be deemed to have represented that the conditions precedent to the funding of such Investment set forth in Section 5.2 have been satisfied and that the proceeds of the Investment will be used in accordance with Section 6.6 hereof. Amounts in the Operating Account shall be deemed to be Other Supplemental Cash.

(d) Effect of Requesting an Investment. Once an Investment is made through the Agent transferring the proceeds thereof from the Investment Account to the Operating Account, that Investment is irrevocable and the Investors shall be entitled to the Investor Payment arising therefrom. Any Undrawn Amounts remaining in the Investment Account on the Maturity Date will be returned by the Agent to the Investors directly from the Investment Account, pro rata in accordance with the Investors' respective Applicable Percentages.

(e) Required Minimum Investments. The Trust hereby agrees that within five (5) Business Days of the Closing Date, the Trust shall request Investments in an amount of not less than five million dollars (\$5,000,000).

(f) Return on Investments. The Trust unconditionally promises to pay, in accordance with the provisions of Section 6.7, promptly to the Agent for the account of each Investor the Investor Payment from the Proceeds of the Term Loan Avoidance Action or from other Collateral (or the proceeds thereof), as the same may be received from time-to-time. The Investors and the Agent acknowledge and agree that, except for the payment of the Investor Payment and any other Obligations, the Trust shall have no other obligations to the Investors or the Agent for the payment or return of the Investments.

(g) Nature of the Investor Payment. The Trust agrees that the Investor Payment shall be a preferred return on the assets of the Trust entitled to payment from the Proceeds of the Term Loan Avoidance Action ahead of all other obligations and beneficiaries of, or investors in, the Trust or the Term Loan Avoidance Action, except the Contingency Fee, which shall be pari passu with the Investor Payment.

(h) Contingency Fee. The Investors acknowledge that the Trust will retain Lead Counsel in the Term Loan Avoidance Action pursuant to an agreement whereby Lead

Counsel will be (i) paid 70% of Lead Counsel's regular hourly rates and 100% of Lead Counsel's expenses, and (ii) be entitled to receive a contingency fee of 1% of the Proceeds of the Term Loan Avoidance Action (the "Contingency Fee") or such other reasonable contingency or partial contingency terms as approved by the Required Investors, such approval not to be unreasonably withheld.

(i) Agent to Maintain Accounts. The Agent shall maintain a record of the amount of each Investment funded to the Trust hereunder, the amount of each such Investment allocable to each Investor hereunder and the amount of any sum received by the Agent hereunder for the account of the Investors and each Investor's share thereof. The entries in the record maintained by the Agent pursuant to this Section 2.1(i) shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Agent to maintain such account or any error therein shall not in any manner affect the obligation of the Trust to repay the Investor Payment in accordance with the terms of this Agreement.

(j) Tax Payments. Upon the Trust's delivery to the Agent of a request for a Tax Payment and the calculation of such Tax Payment, the Agent shall fund each Tax Payment requested by the Trust by wire transfer from the Investment Account to the Operating Account of immediately available funds by 3:00 p.m., New York, New York time. Any Tax Payment shall be payable solely from Investment Income. For the avoidance of doubt, (i) no Investor Payment shall be payable with respect to any amounts funded as Tax Payment; and (ii) if Investment Income is insufficient to fund any Tax Payment as a result of prior requests for Investments made by the Trust, the Agent shall only be obligated to fund such Tax Payment to the extent of Investment Income, if any, then available in the Investment Account.

2.2 Administration of Investments. In order to facilitate the administration of the Investments under this Agreement, the Agent and Investors agree (such agreement shall not be for the benefit of or enforceable by the Trust) that settlement among them with respect to the Investments may take place on a periodic basis (but not less than weekly to the extent that the Agent has received any funds with respect to the Investments) on dates determined from time to time by the Agent (each a "Settlement Date"), which may occur before or after the occurrence or during the continuance of any Default. On each Settlement Date, payment shall be made to each Investor, pro rata based on each Investor's Applicable Percentage of all outstanding Investments, and in accordance with the settlement report delivered by the Agent to the Investors with respect to such Settlement Date.

2.3 Expiration of Commitments. Unless previously terminated pursuant to Section 8.1, the Commitments shall expire at the close of business on the Maturity Date.

2.4 Payments Generally; Pro Rata Treatment; Sharing of Set-Offs; Collection.

(a) Payments Generally. The Trust shall be obligated to make each payment required to be made by the Trust hereunder (whether of the Investor Payment or otherwise) prior to 1:00 p.m. New York, New York time, on the date when due, in immediately available funds, in U.S. dollars, without set-off or counterclaim. All payments shall be made to the Agent at its offices in Minneapolis, MN, except that payments pursuant to Section 2.6 shall be made directly to the Persons entitled thereto. The Agent shall distribute any such payments received by the

Agent for the account of any other Person to the appropriate recipient promptly following receipt thereof, and the Trust shall have no liability in the event timely or correct distribution of such payments is not so made. If any payment shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(b) Application of Payments. If at any time insufficient funds are received by and available to the Agent to pay fully all amounts of the Investor Payment and any fees then due hereunder under any circumstances, including, without limitation during, or as a result of the exercise by the Agent or the Investors of remedies hereunder or under any other Transaction Document and applicable law, such funds shall be applied (i) first, to pay fees, costs and expenses then due hereunder ratably among the parties entitled thereto in accordance with the amounts of interest, fees, costs and expenses then due to such parties, (ii) second, to pay the Investor Payment ratably among the parties entitled thereto, and (iii) third, to any other Obligations then due from the Trust to the Agent or the Investors.

(c) Pro Rata Treatment. If any Investor shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any amount owed to it by the Trust hereunder (other than pursuant to Section 2.6), resulting in such Investor receiving payment of a greater proportion of the Investor Payment than the proportion of such amounts received by any other Investor, then the Investor receiving such greater proportion shall purchase (for cash at face value) participations in the Investments of the other Investors to the extent necessary so that the benefit of such payments shall be shared by all the Investors ratably in accordance with their respective Applicable Percentages; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest unless the Investor from which such payment is recovered is required to pay interest thereon, in which case each Investor returning funds to such Investor shall pay its pro rata share of such interest, and (ii) the provisions of this Section 2.4(c) shall not be construed to apply to any payment obtained by an Investor as consideration for the assignment of or sale of a participation in any of its Investments to any assignee or participant, other than to the Trust or Affiliate thereof (as to which the provisions of this paragraph shall apply).

2.5 Fees.

(a) At the Effective Time, or immediately upon the occurrence of a Permitted Alternative Funding Event (to the extent not previously paid), the Trust will pay the Closing Expense Payment to River Birch Capital, LLC for further payment to the parties entitled thereto.

(b) On the Closing Date and on each anniversary of the Closing Date, the Trust shall pay the Agent Fee to the Agent, for the Agent's own account.

(c) The Trust agrees to pay to the Agent, for its own account, such other fees payable in the amounts and at the times separately agreed in writing between the Trust and the Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds. Fees paid shall not be refundable under any circumstances, absent manifest error in the determination thereof.

2.6 Taxes.

(a) Any and all payments by or on account of any Obligations of the Trust hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes. Each party shall be solely responsible for payment of any Excluded Taxes and the Trust, solely to the extent required by applicable law, shall be entitled to withhold and pay over to the applicable Governmental Authority any Excluded Taxes from any payments to be made by the Trust on account of any Obligations.

(b) The Trust shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

2.7 Investor Acknowledgments and Agreements.

(a) Each Investor hereby acknowledges and agrees that it shall have no rights with respect to: (i) the amounts drawn as Investments under this Agreement (except that \$5 million must be drawn within 5 Business Days of the Closing Date) once the same have been funded to the Investment Account on the Closing Date, (ii) the manner in which the Trust utilizes the Investments, so long as utilized to pay the Trust's expenses in accordance with Section 6.6 of this Agreement, (iii) the conduct of the Term Loan Avoidance Action, the Oaktree Action, or any other action brought by the Trust, or (iv) any decision whether or not to settle the Term Loan Avoidance Action, the Oaktree Action or any other action brought by the Trust. Each Investor further agrees not to assert any claim or initiate any action against any one or more of the Trust, the Trust Administrator, the Trust Monitor, and their respective Related Parties for any reason related to the use of the Investments so long as such Investments are used for Trust Expenses in accordance with Section 6.6 and each Investor, jointly and severally, will indemnify each of the Trust, Trust Administrator, the Trust Monitor, and their respective Related Parties (including payment of reasonable attorneys' fees and expenses) for any claim brought by any Investor in violation of this Section 2.7.

(b) Notwithstanding any provisions of this Agreement to the contrary, in no event shall any Person that is a defendant in the Term Loan Avoidance Action, the Oaktree Action, or any other action brought by the Trust or any Affiliate of any Person that is a defendant in the Term Loan Avoidance Action, the Oaktree Action, or any other action brought by the Trust be permitted to be an Investor. Each Investor hereby represents and warrants to the Trust that such Investor is not, and no Affiliate of such Investor is, a defendant in the Term Loan Avoidance Action, the Oaktree Action, or any other action brought by the Trust.

Article 3 - The Collateral

3.1 Grant of Security Interest. As security for due and punctual payment and performance of the Obligations, as of the Effective Time, the Trust hereby grants to the Agent for the ratable benefit of the Investors a continuing security interest in and Lien on all tangible and intangible property and assets of the Trust, whether now owned or existing or hereafter

acquired or arising, together with any and all additions thereto and replacements therefor and proceeds and products thereof (collectively referred to for purposes of this Article 3 as "Collateral"), including without limitation the property described below:

(a) all accounts receivable, including without limitation, all amounts due under premium finance agreements and all accounts, accounts receivable, notes, bills, drafts, acceptances, instruments, documents, chattel paper and all other debts, obligations and liabilities in whatever form owing to the Trust from any Person for money borrowed, goods sold or for services rendered, or however otherwise established or created, all guaranties and security therefore; all deposit accounts including the Award Account, the Investment Account, and the Operating Account, and all sums in such accounts from time to time; all right, title and interest of Trust to premium refunds on cancellation of insurance policies or to the goods or services which gave rise thereto, including rights to reclamation and stoppage in transit and all rights of an unpaid seller of goods or services; all right, title and interest of Trust to all contracts and agreements with independent insurance agents; whether any of the foregoing be now existing or hereafter arising, now or hereafter received by or owing or belonging to the Trust;

(b) all rights under judgments, commercial tort claims, claims based on the provisions of the Bankruptcy Code, tort claims, contract claims, and other choses in action;

(c) all rights under all present and future authorizations, permits, licenses and franchises issued, granted or licensed to the Trust;

(d) the Term Loan Avoidance Action;

(e) the Oaktree Action;

(f) all rights, title and interest to the Proceeds of the Term Loan Avoidance Action, including without limitation, the Proceeds of the Term Loan Avoidance Action;

(g) the Avoidance Action Trust Assets; and

(h) all other personal property, including, without limitation, all present and future information stored on any medium, including electronic medium, related to any of the personal property of the Trust, all financial books and records and other books and records relating, in any manner, to the business of the Trust, all proposals and cost estimates and rights to performance, and all letters of credit and other supporting obligations.

Any of the foregoing terms that are defined in the UCC shall have the meaning provided in the UCC, as amended and in effect from time to time, as supplemented and expanded by the foregoing.

Notwithstanding the foregoing, the security interest granted by the Trust hereby shall specifically exclude and neither the Agent nor the Investors shall have any security interest in: (i) the Avoidance Action Trust SEC Reporting Cash; (ii) the GUC Trust Supplemental Cash; (iii) Distributable Other Debtor Residual Trust Cash; (iv) Avoidance Action Trust Administrative Cash and Other Debtor Residual Trust Administrative Cash; and (v) any deposit account into

which solely any of the foregoing is deposited and maintained (collectively, the “Excluded Assets”).

3.2 *Special Warranties and Covenants of the Trust.* The Trust hereby warrants and covenants to the Agent and the Investors that:

(a) The Trust’s (i) place of business or, if it has more than one, its chief executive office, (ii) exact organizational name, (iii) the jurisdiction of formation are as set forth on Schedule 3.2. The Trust will not change its jurisdiction of organization, principal or any other place of business, or the location of any Collateral from the locations set forth on Schedule 3.2, or make any change in its name or conduct its business operations under any fictitious business name or trade name, without, in any such case, at least thirty (30) days’ prior written notice to the Agent.

(b) The Trust will pay promptly when due all Taxes and assessments on the Collateral or for its use or operation, except for Taxes and assessments permitted to be contested as provided in Section 6.5. Following the occurrence and during the continuance of a Default, the Agent may at its option discharge any Taxes or Liens to which any Collateral is at any time subject (other than Permitted Liens).

(c) To the extent, if any, that the Trust’s signature is required therefor, the Trust will promptly execute and deliver to the Agent such financing statements and amendments thereto, certificates and other documents or instruments as may be necessary to enable the Agent to perfect or from time to time renew the security interest granted hereby, including, without limitation, such financing statements and amendments thereto, certificates and other documents as may be necessary to perfect a security interest in any additional Collateral hereafter acquired by the Trust or in any replacements or proceeds thereof. The Trust authorizes and appoints the Agent, in case of need, to execute such financing statements, certificates and other documents pertaining to the Agent’s security interest in the Collateral in its stead if the Trust’s signature is required therefor and the Trust fails to so execute such documents, with full power of substitution, as the Trust’s attorney in fact. The Trust further agrees that a photographic or other reproduction of a security agreement or financing statement is sufficient as a financing statement under this Agreement and the other Transaction Documents.

(d) The Trust hereby irrevocably authorizes the Agent, at any time and from time to time, to file in any jurisdiction financing statements and amendments thereto that (i) indicate the Collateral (x) as all assets of the Trust or words of similar effect, regardless of whether any particular asset falls within the scope of Article 9 of the UCC or (y) as being of an equal or lesser scope or with greater detail and (ii) that contain any other information required by Article 9 of the UCC (including Part 5 thereof) for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Trust is an organization, the type of organization and any organization identification number issued to the Trust.

3.3 *Remedies.* If the Trust fails to pay or perform any of the Obligations when due to be paid or performed, the failure shall constitute a default under this Agreement for purposes of Part 6 of Article 9 of the UCC and Agent shall have, in addition to all other rights and remedies

granted to it in this Agreement, all rights and remedies of a secured party under the UCC and other applicable law.

3.4 *Proceeds of Collateral.* After deducting all reasonable costs and expenses of collection, storage, custody, sale or other disposition and delivery (including reasonable legal costs and attorneys' fees) and all other charges against the Collateral, the Agent shall apply the residue of the proceeds of any such sale or disposition to the Obligations in accordance with the terms hereof and any surplus shall be returned to the Trust or to any Person or party lawfully entitled thereto. In the event the proceeds of any sale, lease or other disposition of the Collateral are insufficient to pay all of the Obligations in full, the Trust will be liable for the deficiency, and the cost and expenses of collection of such deficiency, including (to the extent permitted by law), without limitation, reasonable attorneys' fees, expenses and disbursements.

Article 4 - Representations and Warranties

The Trust represents and warrants to the Investors and the Agent that:

4.1 *Organization; Powers.* The Trust has been duly formed as a Delaware statutory trust and is validly existing and in good standing under the laws of Delaware. The Trust has all requisite trust power and authority to carry on its business as now conducted and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure to have such power or authority or to be so qualified or in good standing, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.2 *Authorization; Enforceability.* The receipt of the Investments, the incurrence of the Obligations, and the grant of security interests pursuant to the Transaction Documents are within the power and authority of the Trust and have been duly authorized by all necessary action on the part of the Trust. This Agreement and the other Transaction Documents have been duly authorized, executed and delivered by the Trust and constitute legal, valid and binding obligations of the Trust, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

4.3 *Governmental Approvals; No Conflicts.* The receipt of the Investments, the incurrence of the Obligations, and the grant of the security interests pursuant to the Transaction Documents (a) except for approval of the Bankruptcy Court, do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority that has not been obtained, (b) will not violate any applicable law, policy or regulation or the organizational documents of the Trust or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Trust, and (d) except for the Liens created by the Transaction Documents, will not result in the creation or imposition of any Lien on any asset of the Trust.

4.4 *Financial Condition; Current Payables.*

(a) The Trust has heretofore delivered to the Agent the following financial statements:

(i) the unaudited balance sheets and income statements of the Trust, as of and for the fiscal year-to-date periods ended September 30, 2015, December 31, 2015 and March 31, 2016; and

(ii) the Trust's 2016 Budget for usage of the Supplemental Avoidance Action Trust Cash.

Such financial statements (except for the budget) were prepared in a cash basis and present fairly, in all material respects, the financial position and results of operations of the Trust as of such respective dates and for such periods. The budget was prepared by the Trust in good faith and was based on assumptions that were reasonable when made.

(b) Schedule 4.4(b) sets forth a list of all of the Trust's payables and other expenses owing as of April 30, 2016 (the "Current Payables"). For the avoidance of doubt, Current Payables shall not include any deferred amounts, including any success fees, that are or may become payable to Dickstein Shapiro LLP or Blank Rome LLP by the Trust in connection with the Term Loan Avoidance Action, the Oaktree Action, or any other action brought by the Trust.

4.5 *Properties.* The Trust has good and marketable title to all its Property.

4.6 *Litigation Matters.* There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Trust, threatened against or affecting the Trust.

4.7 *Compliance with Laws and Agreements.* The Trust is in compliance with all laws, regulations, policies, and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.8 *Taxes.* Except as set forth on Schedule 4.8, the Trust has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Trust has set aside on its books adequate reserves with respect thereto, which reserves shall be acceptable to Agent, or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

4.9 *Material Indebtedness, Liens and Agreements.*

(a) As of the date of this Agreement, the Company has no Material Indebtedness or any extension of credit (or commitment for any extension of credit) to, or

guarantee by, the Trust the aggregate principal or face amount of which equals or exceeds (or may equal or exceed) \$25,000.

(b) As of the date of this Agreement, no Lien secures any Indebtedness of the Trust or covers any property of the Trust (other than the Liens in favor of the Agent and Permitted Liens).

4.10 Bank Accounts. Schedule 4.10 lists all banks and other financial institutions at which the Trust maintains deposits or other accounts as of the Closing Date, and such Schedule correctly identifies the name and address of each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number.

Article 5 - Conditions

5.1 Effective Time. Except with respect to the Trust's obligation to make the Closing Expense Payment pursuant to Section 2.5(a) which shall be effective upon the execution and delivery of this Agreement, this Agreement shall not become effective until the date on which each of the following conditions is satisfied (or, with the exception of the condition set forth in Section 5.1(f), waived in accordance with Section 10.2) in form and substance satisfactory to the Agent:

(a) Counterparts of Agreement. The Agent shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) Existence and Good Standing. The Agent shall have received such documents and certificates as the Agent may reasonably request relating to the formation, existence and good standing of the Trust, the authorization of the transactions contemplated hereby, the incumbency of its officers and any other legal matters relating to the Trust, this Agreement or the other Transaction Documents, all in form and substance reasonably satisfactory to the Agent.

(c) Security Interests in Personal and Mixed Property. The Agent shall have received evidence satisfactory to it that the Trust shall have taken or caused to be taken all such actions, executed and delivered or caused to be executed and delivered all such agreements, documents and instruments and made or caused to be made all such filings and recordings (other than filings or recordings to be made by the Agent on or after the Closing Date) that may be necessary or, in the opinion of the Agent, desirable in order to create in favor of the Agent, for the benefit of the Investors, valid and (upon such filing and recording) perfected First Priority security interests in the entire personal and mixed property Collateral, other than the Excluded Assets.

(d) Bank Accounts. The Agent shall have established the Investment Account at U.S. Bank National Association, in the name of the Trust, which shall be subject to a DACA. The Trust shall have established the Award Account at U.S. Bank National Association in the name of the Trust, which shall be subject to a DACA.

(e) Control Agreements. The Trust shall have delivered to the Agent a fully executed DACA for each of the Investment Account, the Award Account, and the Operating Account.

(f) Approval of the Bankruptcy Court. (i) a motion seeking (A) the approval of the Trust's execution, delivery, and consummation of the transactions contemplated by the Transaction Documents shall have been filed with the Bankruptcy Court by the Trust; and (B) that a hearing on such motion be held in the Bankruptcy Court within sixty (60) days of the date of this Agreement or as soon thereafter as the Bankruptcy Court shall be able to schedule such hearing; and (ii) the Trust shall have obtained an Order of the Bankruptcy Court approving the Trust's execution, delivery, and consummation of the transactions contemplated by the Transaction Documents, and such Order shall be in full force and effect.

(g) Necessary Governmental Permits, Licenses and Authorizations and Consents. The Trust shall have obtained all other permits, licenses, authorizations and consents from all other Governmental Authorities, in each case that are necessary in connection with the transactions contemplated by the Transaction Documents, and each of the foregoing shall be in full force and effect, in each case other than those the failure to obtain or maintain which, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No action, request for stay, petition for review or rehearing, reconsideration or appeal with respect to any of the foregoing shall be pending, and the time for any applicable Governmental Authority to take action to set aside its consent on its own motion shall have expired.

(h) Financial Officer Certificate. The Agent shall have received a certificate, dated as of the Closing Date and signed by a Designated Financial Officer, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 5.2 at the Effective Time;

(i) Satisfaction of Current Payables. The Agent shall have received evidence satisfactory to it, in its reasonable discretion, that all of the Current Payables have been paid in full on or prior to the Closing Date.

(j) Other Documents. The Agent shall have received all material contracts, instruments, opinions, certificates, assurances and other documents as the Agent or any Investor shall have reasonably requested and the same shall be reasonably satisfactory to each of them.

5.2 Each Investment. The obligation of the Investors to fund the Investment Account, and the obligation of the Agent to fund each Investment from the Investment Account, are each subject to the satisfaction of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Trust set forth in this Agreement and the other Transaction Documents shall be true and correct in all material respects on and as of the date of such Investment, both before and after giving effect thereto and to the use of the proceeds thereof (or, if any such representation or warranty is expressly stated to have been made as of a specific date, such representation or warranty shall be or have been true and correct as of such specific date and provided that, to the extent any change

in circumstances expressly permitted by this Agreement causes any representation and warranty set forth herein to no longer be true, such representation and warranty shall be deemed modified to reflect such change in circumstances).

(b) No Defaults. At the time of, and immediately after giving effect to, such Investment, no Default shall have occurred and be continuing.

5.3 *Satisfaction of Conditions.* Each of the Trust and the Investors will use their commercially reasonable efforts, and proceed diligently and in good faith, to satisfy each condition set forth in Section 5.1 hereof. Upon receipt of the approval of the Bankruptcy Court described in Section 5.1(f) hereof, the Trust and the Investors will proceed expeditiously to consummate the transactions contemplated by this Agreement.

Article 6 - Trust Obligations

Until the Commitments have expired or been terminated and the Investor Payment and any other Obligations payable hereunder shall have been paid in full, the Trust promises and agrees with the Agent and the Investors that:

6.1 *Financial Statements and Other Reports.* The Trust will furnish to the Agent for distribution by the Agent to each Investor:

(a) to the extent, but only to the extent, that the Trust causes such financial statements to be prepared, as soon as available after the end of each fiscal year of the Trust, a true and complete copy of the Trust's balance sheet as at the end of such year and an income statement of the Trust for such year;

(b) to the extent, but only to the extent, that the Trust causes such financial statements to be prepared, as soon as available after the end of each fiscal quarter of the Trust, a true and complete copy of the Trust's balance sheet as at the end of such fiscal quarter and an income statement of the Trust for such quarter; and

(c) as soon as available and in any event within fifteen (15) days after the end of each calendar quarter with respect to such calendar quarter, (i) a copy of bank account statements for the Investment Account, the Operating Account, the Award Account and any other deposit account maintained by the Trust, and (ii) the Trust's comparison of budget to actual expenditures, which shall set forth a summary of amounts paid by the Trust during such calendar quarter (*e.g.*, the amounts paid to any counsel, experts, and vendors).

6.2 *Notices of Material Events.* The Trust will furnish to the Agent and each Investor prompt written notice of the following:

(a) the occurrence of any event set forth in Section 8.1(a) (without regard to any cure period set forth therein);

(b) the occurrence of any settlement or final judgment with respect to all or any portion of the Term Loan Avoidance Action, the Oaktree Action, or any other action

commenced by the Trust, including, without limitation, the occurrence of the Final Recovery Date;

(c) the imposition or creation of any Lien (other than Permitted Liens) against any asset of the Trust; and

(d) the institution by the Trust of any legal action after the date of this Agreement.

Each notice delivered under Section 6.2(a) or Section 6.2(c) shall be accompanied by a statement of a Designated Financial Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

6.3 Existence; Conduct of Operations. The Trust shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its operations.

6.4 Payment of Obligations. The Trust shall pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Trust has set aside on its books adequate reserves with respect thereto, and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

6.5 Compliance with Laws. The Trust shall comply with (i) all permits, licenses and authorizations issued by a Governmental Authority, (ii) all laws, rules, regulations, and orders of any Governmental Authority, and (iii) all contractual obligations, in each case applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

6.6 Use of Proceeds.

(a) The proceeds of the Investments will be used only for payment by the Trust of Trust Expenses from the Operating Account.

(b) Investments will be deemed to be Other Supplemental Cash and shall not be deemed to be (or otherwise used as) Avoidance Action Trust Administrative Cash or any other Excluded Asset.

6.7 The Award Account; Priority of Payments. Until payment in full of the Investor Payment:

(a) The Trust acknowledges and agrees that Proceeds of the Term Loan Avoidance Action shall be paid by the defendant(s) directly into the Award Account. The Award Account shall be maintained by the Agent in the name of the Trust and will not be moved or changed without the consent of the Agent, such consent not to be unreasonably withheld. The Award Account shall be subject to the lien and a DACA.

(b) The Trust shall promptly instruct the Agent to distribute any amounts in the Award Account directly therefrom to be applied in the following priority:

(i) First, *pari passu* (A) to the Investors for application to the Investor Payment, and (B) to Lead Counsel for payment of the Contingency Fee;

(ii) Second, to fund the Holdback; and

(iii) Third, after payment in full of the Investor Payment and the Contingency Fee, and the funding of the Holdback, the remainder to the Trust for distribution in accordance with the Trust Agreement.

(c) After applying the funds described in subsection (a) above in accordance with clauses (i) and (ii) of subsection (b) above, to the extent that the Trust is not required by the terms of the Trust Agreement to distribute any such remaining funds, the Trust shall hold such fund in a segregated account in trust for the applicable beneficiaries thereof under the Trust Agreement.

6.8 *Cash Deposits/Bank Accounts.* The Trust shall take all actions necessary to maintain, preserve, and protect the rights and interests of the Agent with respect to all cash deposits of the Trust and all other proceeds of Collateral and shall not, without the Agent's prior written consent, open any deposit or other bank account, or instruct any account debtor to make payment to any account other than to the Investment Account, the Award Account or the Operating Account, each of which shall remain subject to a DACA.

Article 7 - Prohibited Actions

Until the Investor Payment has been paid in full in accordance with the terms of this Agreement, the Trust promises and agrees with the Agent and the Investors that:

7.1 *Indebtedness; Exclusivity of Funding.*

(a) The Trust will not create, incur, assume or permit to exist any Indebtedness, except: (i) Indebtedness created hereunder; (ii) Subordinated Indebtedness described in Section 7.1(b) below; and (iii) Indebtedness that does not constitute Material Indebtedness.

(b) With the exception of funds currently available to the Trust, the amount of which has been disclosed to the initial Investor prior to the Closing Date, and provided no Permitted Alternative Funding Event has occurred, the Investments pursuant to this Agreement shall be the exclusive means by which the Trust pays Trust Expenses (all in accordance with Section 6.6 hereof), and, subject to Section 8.2(c), the Trust may not obtain other litigation funding until the earlier of (i) the date on which it has fully drawn all Investments under this facility and (ii) the Maturity Date. In the event that the Trust seeks other litigation funding ("Other Litigation Funding"), (x) the Investors will be provided a right of last refusal to provide such funding on terms equivalent to those then being offered to the Trust in a bona fide binding offer, which must be exercised by the Investors (acting individually or as a group of all or less than all of the Investors), if at all, in writing within three (3) Business Days after being provided

the opportunity to provide such funding (and any failure of the Investors to deliver notice of the Investors' exercise of such right within such three-Business Day period shall be deemed to be a rejection of the right to so exercise such right), (y) the multiple for purposes of computation of the MOIC will be increased from 2.25 to 3.25 for all Investments as of the Maturity Date, and (z) such Other Litigation Funding will be subordinated to the Obligations on terms reasonably satisfactory to the Required Investors. For the avoidance of doubt, the Trust shall not incur any funded Indebtedness (other than Other Litigation Funding) or use Proceeds of the Term Loan Avoidance Action to fund the Trust's expenses, except that, to the extent any tax liabilities arise and become due as the result of any litigation recoveries, such liabilities may be paid from those recoveries.

7.2 Liens. The Trust will not create, incur, assume or permit to exist any Lien on any Property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except (the following being called "Permitted Liens"):

(a) Liens created hereunder, under the other Transaction Documents, or subordinated Liens created in connection with any Other Litigation Funding;

(b) Liens imposed by any Governmental Authority for taxes, assessments or charges not yet delinquent or which are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Trust; and

(c) Liens of the DIP Lenders solely in respect of Distributable Other Debtor Residual Trust Cash, Avoidance Action Trust Administrative Cash, and Other Debtor Residual Trust Administrative Cash.

7.3 Contingent Liabilities. The Trust will not Guarantee the Indebtedness or other obligations of any Person, or Guarantee the payment of dividends or other distributions upon the stock of, or the earnings of, any Person, except for endorsements of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

7.4 Fundamental Changes. The Trust will not liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) or, without the prior written consent of the Agent, which consent shall not be unreasonably withheld, enter into any transaction of merger or consolidation or amalgamation. The Trust will not form or acquire any Subsidiary.

7.5 Third-Party Investments. The Trust will not make or permit to remain outstanding any Third-Party Investment, except:

- (i) Third-Party Investments consisting of Indebtedness permitted by Section 7.1;
- (ii) Permissible Investments; and
- (iii) Checking and deposit accounts with banks used in the ordinary course of business.

7.6 Restrictive Agreements. The Trust will not directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement (other than this Agreement) that prohibits, restricts or imposes any condition upon the ability of the Trust to create, incur or permit to exist any Lien upon any of its property or assets; *provided* that the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement.

Article 8 - Termination

8.1 Termination Rights.

(a) Investors shall have the right, but not the obligation to terminate their Commitments upon thirty (30) days' written notice by the Agent (immediately without notice in the case of Section 8.1(a)(iv) and five (5) days' written notice in the case of Section 8.1(a)(vi)) to the Trust from and after the occurrence of any of the following events if, after the expiration of the such thirty-day (or five-day, as applicable) period, such event is continuing or has not otherwise been cured by the Trust:

(i) Any breach of Sections 6.4, 6.6, 6.7, 6.8, 7.1, 7.2, or 7.4 of this Agreement by the Trust;

(ii) Lead Counsel withdraws from the prosecution of the Term Loan Avoidance Action prior to the Final Recovery Date and the Trust shall not have appointed a substitute Lead Counsel;

(iii) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Trust or its debts, or of a substantial part of its assets, under any federal, state, or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Trust or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(iv) The Trust shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 8.1(d), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Trust or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(v) The Trust shall become unable, admit in writing or fail generally to pay its debts as they become due;

(vi) The Trust shall fail to pay to the Agent or the Investor, the Investor Payment on any Investment or pay any other Obligation of the Trust to the Agent or the Investors when the same shall become due and payable, whether by demand, at the due date thereof or at a date fixed for prepayment thereof; by acceleration of such due or prepayment date, or otherwise; or

(vii) Any of the following shall occur: (i) the Liens created hereunder or under the other Transaction Documents shall at any time (other than by reason of the Agent relinquishing such Lien) cease in any material respect to constitute valid and perfected Liens on the Collateral intended to be covered thereby; (ii) except for expiration in accordance with its respective terms, any Transaction Document shall for whatever reason be terminated, or shall cease to be in full force and effect; or (iii) the enforceability of any Transaction Document shall be contested by the Trust.

(b) Investors shall have the right, but not the obligation, to terminate this Agreement immediately upon written notice by the Agent to the Trust if the Effective Time does not occur by October 31, 2016.

(c) The Trust shall have the right, but not the obligation, to terminate this Agreement:

(i) Upon one (1) day's written notice to the Agent from and after the occurrence of a Permitted Alternative Funding Event at any time prior to the funding of any Investments; or

(ii) Upon thirty (30) days' written notice to the Agent from and after a failure to fund any request for an Investment made by the Trust during the Availability Period that is not in excess of the aggregate Commitments and available Investment Income if there is no Default then existing and such Investment remains unfunded at the end of such thirty-day period.

8.2 *Default and Termination Rights.*

(a) After the occurrence of and during the continuance of any Default, the Trust shall not be permitted to cause any Investment to be funded until such time as such Default is cured or otherwise remedied to the Agent's reasonable satisfaction.

(b) In the event of a termination of the Agreement pursuant to Section 8.1(a) of the Agreement:

(i) All obligations of the Investors under the Agreement other than the Investor Continuing Obligations shall cease on the date that such termination is effective; and

(ii) The Agent shall return any Undrawn Amounts remaining in the Investment Account to the Investors directly from the Investment Account.

(c) In the event of a termination of the Agreement pursuant to Section 8.1(b) of the Agreement, all obligations of the Investors and the Trust under the Agreement shall cease on the date that such termination is effective, except for the Trust's obligation to pay the Closing Expense Payment pursuant to Section 2.5(a) in the event of the occurrence of a Permitted Alternative Funding Event.

(d) In the event of a termination of the Agreement pursuant to Section 8.1(c) of the Agreement:

(i) The Trust shall be obligated to pay or disburse amounts held in the Award Account in accordance with Section 6.7 with respect to any Investments funded prior to such termination;

(ii) All Investors shall continue to be subject to the Investor Continuing Obligations;

(iii) The Agent shall return any Undrawn Amounts remaining in the Investment Account to the Investors directly from the Investment Account;

(iv) The limitations on the Trust's ability to obtain Other Litigation Funding and the requirements for any Other Litigation Funding set forth in clauses (x), (y), and (z) of Section 7.1(b) shall not be applicable from and after the date of such termination; and

(v) The Trust shall not be entitled to any refund of the Closing Expense Payment or any previously paid Agent Fee

(e) Notwithstanding any termination of the Agreement pursuant to Section 8.1(a) of this Agreement, all Obligations of the Trust hereunder, including the Obligation to make the Investor Payment on any Investments funded prior to such termination, shall survive.

(f) Notwithstanding any provisions of the Agreement to the contrary, for so long as this Agreement remains in effect and for any period after the termination of the Agreement, neither Agent nor the Investors shall have any right to direct, in any manner whatsoever, the Trust in the prosecution of the Term Loan Avoidance Action, the Oaktree Action, or any other action brought by the Trust.

Article 9 - The Agent

9.1 *Appointment and Authorization.* Each of the Investors hereby irrevocably appoints the Agent as its agent and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms of the Agreement and the other Transaction Documents, together with such actions and powers as are reasonably incidental thereto.

9.2 Agent's Rights as Investor. Any Investor that is serving as the Agent hereunder shall have the same rights and powers in its capacity as an Investor hereunder as any other Investor and may exercise the same as though it were not the Agent, and such institution and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Trust or other Affiliates thereof as if it were not the Agent hereunder.

9.3 Duties As Expressly Stated. The Agent shall have no duties or obligations except those expressly set forth in this Agreement and the other Transaction Documents. Without limiting the generality of the foregoing, (a) the Agent shall not be subject to any fiduciary or other implied duties, (b) the Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by this Agreement and the other Transaction Documents that the Agent is required to exercise in writing by the Required Investors (or such other number or percentage of the Investors as is required hereunder with respect to such action), and (c) except as expressly set forth herein and in the other Transaction Documents, the Agent shall have no duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Trust that is communicated to or obtained by the financial institution serving as the Agent or any of its Affiliates in any capacity. The Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Investors (or such other number or percentage of the Investors as is required hereunder with respect to such action) or all of the Investors if expressly required, or in the absence of its own gross negligence or willful misconduct. The Agent shall not be deemed to have knowledge of any of the events specified in Section 8.1(a) unless and until written notice thereof is given to the Agent by the Trust or an Investor, and the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in, or in connection with, this Agreement or the other Transaction Documents, (ii) the contents of any certificate, report or other document delivered hereunder or under any of the other Transaction Documents or in connection herewith of therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Transaction Document, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, the other Transaction Documents or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent. The Agent shall not, except to the extent the Agent is expressly instructed by the Required Investors with respect to collateral security hereunder and under the other Transaction Documents, be required to initiate or conduct any litigation or collection proceedings hereunder or under any other Transaction Document; provided, however, that the Agent shall not be required to take any action which exposes the Agent to personal liability or which is contrary to the Transaction Documents or applicable law.

9.4 Reliance By Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Agent may consult with legal counsel (who may be counsel for any of the Investors), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel,

accountants or experts. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Transaction Document unless it shall first receive such advice or concurrence of the Required Investors (or, if so specified by this Agreement, all Investors) as it deems appropriate or it shall first be indemnified to its satisfaction by the Investors against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action (it being understood that this provision shall not release the Agent from performing any action with respect to the Trust expressly required to be performed by it pursuant to the terms hereof) under this Agreement. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Transaction Documents in accordance with a request of the Required Investors (or, if so specified by this Agreement, all Investors), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Investors and all future holders of the Investments and the Commitments.

9.5 *Action Through Sub-Agents.* The Agent may perform any and all of its duties, and exercise its rights and powers, by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through its Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to its activities in connection with all activities of the Agent hereunder.

9.6 *Resignation of Agent and Appointment of Successor Agent.* Subject to the appointment and acceptance of a successor Agent, as provided in this paragraph, the Agent may resign at any time by notifying the Investors and the Trust. Upon any such resignation, the Required Investors shall have the right, in consultation with the Trust, to appoint a successor Agent. If no successor shall have been so appointed and shall have accepted such appointment within 30 days after such retiring Agent gives notice of its resignation, then such retiring Agent may, on behalf of the Investors, appoint a successor Agent, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Agent hereunder, by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Transaction Documents. The fees payable by the Trust to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed among the Trust, the Required Investors and such successor. After an Agent's resignation hereunder, the provisions of this Article shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

9.7 *Investors' Independent Decisions.* Each Investor acknowledges that it has, independently and without reliance upon the Agent or any other Investor and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Investor also acknowledges that it will, independently and without reliance upon the Agent or any other Investor and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement and the other Transaction Documents, any related agreement or any document furnished hereunder or

thereunder. Except as explicitly provided herein, the Agent has no any duty or responsibility, either initially or on a continuing basis, to provide any Investor with any credit or other information with respect to such operations, business, property, condition or creditworthiness, whether such information comes into its possession on or before the occurrence of a Default or at any time thereafter. The Agent shall not be deemed a trustee or other fiduciary on behalf of any party.

9.8 Indemnification. Each Investor agrees to indemnify and hold harmless the Agent, ratably in accordance with their respective Applicable Percentages, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, deficiencies, suits, costs, expenses (including reasonable attorney's fees) or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against the Agent (including by any Investor) arising out of or by reason of any investigation in or in any way relating to or arising out of any Transaction Document or any other documents contemplated by or referred to therein for any action taken or omitted to be taken by the Agent under or in respect of any of the Transaction Documents or other such documents or the transactions contemplated thereby or the enforcement of any of the terms hereof or thereof or of any such other documents; provided, however, that no Investor shall be liable for any of the foregoing to the extent they have resulted from the gross negligence or willful misconduct of the party to be indemnified. The agreements set forth in this Section 9.8 shall survive the payment of the Investor Payment and other Obligations hereunder and shall be in addition to and not in lieu of any other indemnification agreements contained in any other Transaction Document.

9.9 Consents Under Other Transaction Documents. Except as otherwise provided in this Agreement and the other Transaction Documents, the Agent may, with the prior consent of the Required Investors (but not otherwise), consent to any modification, supplement or waiver under any of the other Transaction Documents.

Article 10 - Miscellaneous

10.1 Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telephonic facsimile (fax), as follows:

- (i) if to the Trust, to:

Wilmington Trust Company
1100 N. Market Street
Wilmington, DE 19890
Attention: David A. Vanaskey, Jr.
E-mail: dvanaskey@wilmingtontrust.com
Phone: (302) 636-6019
Facsimile: (302) 636-4140

with copies (that will not constitute notice) to:

Arthur J. Gonzalez
c/o New York University School of Law
40 Washington Square South, 314A
New York, NY 10012
E-mail: arthur.gonzalez@nyu.edu
Phone: (212) 998-6231

and

Eric B. Fisher, Esq.
Binder & Schwartz LLP
366 Madison Avenue, 6th Floor
New York, NY 10017
E-mail: efisher@binderschwartz.com
Phone: (212) 510-7031
Facsimile: (212) 510-7299

(ii) if to the Agent:

U.S. Bank National Association
214 N. Tryon Street, 27th Floor
Charlotte, NC 28202
Attention: James A. Hanley
E-mail: Agency.services@usbank.com /
James.Hanley1@usbank.com
Phone: (302) 576-3714
Facsimile: (302) 576-3717

(iii) if to any Investor, to it at its address (or facsimile number) set forth on its signature page hereto.

(b) Electronic Communications. Notices and other communications to the Agent and the Investors hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to the Agent or any Investor that has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Trust may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. The Trust acknowledges that the Agent and the Investors shall be relying upon all notices and other communications sent to the Agent and any Investors via electronic mail notwithstanding the lack of a manual signature thereto. Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement);

provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Any party hereto may change its address or fax number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

10.2 *Waivers; Amendments.*

(a) No failure or delay by the Agent or the Investors in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent and the Investors hereunder and under the other Transaction Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Trust therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 10.2, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of an Investment shall not be construed as a waiver of any Default, regardless of whether the Agent, or any Investor may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Transaction Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Trust and the Required Investors or by the Trust and the Agent with the prior written consent of the Required Investors and the Agent; provided that no such agreement shall:

(i) increase the Commitment of any Investor without the written consent of each Investor and the Agent;

(ii) reduce or delay the payment of the Investor Payment without the written consent of each Investor affected thereby;

(iii) postpone the scheduled date of payment of the Investor Payment, or waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Investor affected thereby;

(iv) alter or waive the covenant of the Trust in the first clause of Section 1.3;

(v) change Section 6.7 in a manner that would alter the application of payments thereunder, or change Section 2.4(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without in each case the written consent of each Investor;

(vi) change any of the provisions of this Section 10.2 or the definition of “Required Investors” or any other provision hereof specifying the number or percentage of Investors required to waive, amend or modify any rights hereunder or under any other Transaction Document or make any determination or grant any consent hereunder or thereunder, without the written consent of each Investor;

(vii) waive any of the conditions precedent specified in Section 5.1 without the written consent of the Required Investors and the Agent; or

(viii) subordinate the Investments to any other Indebtedness,

without the written consent of each Investor; *provided further* that no such agreement shall amend, modify, or otherwise affect the rights or duties of the Agent hereunder without the prior written consent of the Agent.

10.3 *Successors and Assigns.*

(a) The provisions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Trust may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Investor and the Agent (and any attempted assignment or transfer without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of the Agent and the Investors) any legal or equitable right, remedy or claim under or by reason of the Agreement.

(b) Each Investor may at any time and from time to time assign to one or more assignees all or a portion of its rights and obligations under the Agreement (including all or a portion of the Commitment, any related funded Investments and the right to receive the Investor Payment attributable thereto); provided that for any assignment:

(i) except in the case of an assignment to an Investor or an Affiliate or Approved Fund of an Investor or an assignment of the entire remaining amount of the assigning Investor’s aggregate Commitments (and any related funded Investments and the right to receive the Investor Payment attributable thereto), the aggregate amount of the Commitments (and any related funded Investments and the right to receive the Investor Payment attributable thereto) of the assigning Investor subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Agent) shall not be less than \$1,000,000 unless the Trust and the Agent otherwise consent;

(ii) the parties to each assignment shall execute and deliver to the Agent an Assignment and Acceptance, and, unless such assignment is to an Investor or its Affiliate or Approved Fund, shall pay a processing and recordation fee of \$2,000; and

(iii) such assignment will not increase the cost to the Trust of maintaining any Investment as a result of the operation of Section 2.6 of this Agreement;

provided that any consent of the Trust otherwise required under this paragraph shall not be required if a Default has occurred and is continuing or in the event of an assignment to an existing Investor.

(c) Upon acceptance and recording pursuant to paragraph (e) of this Section 10.3, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of an Investor under this Agreement, and the assigning Investor thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Investor's rights and obligations under this Agreement, such Investor shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.6). Any assignment or transfer by an Investor of rights or obligations under this Agreement that does not comply with paragraph (b) of this Section 10.3 shall be treated for purposes of this Agreement as a sale by such Investor of a participation in such rights and obligations in accordance with paragraph (f) of this Section.

(d) The Agent, acting for this purpose as an agent of the Trust, shall maintain at one of its offices in Minneapolis, MN a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Investors, and the Commitment of, and the pro rata portion of each Investment and Investor Payment owing to, each Investor pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Trust, the Agent and the Investors may treat each Person whose name is recorded in the Register pursuant to the terms hereof as an Investor hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Trust and any Investor, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Investor and an assignee, the processing and recordation fee referred to in paragraph (b)(ii) of this Section 10.3 and any written consent to such assignment required by paragraph (b) of this Section 10.3, the Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(f) Any Investor may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Investor; *provided* that no such pledge or assignment of a security interest shall release an Investor from any of its obligations hereunder or substitute any such assignee for such Investor as a party hereto.

(g) Anything in this Section 10.3 to the contrary notwithstanding, no Investor may assign or participate any interest in any Investment held by it hereunder to the Trust or any of its Affiliates without the prior consent of each Investor and the Agent.

(h) An Investor may furnish any information concerning the Trust in the possession of such Investor from time to time to assignees and participants (including prospective assignees and participants) subject, however, to and so long as the recipient agrees in writing to be bound by, the provisions of Section 10.11. In addition, the Agent may furnish any information concerning the Trust, any Affiliate in the Agent's possession to any Affiliate of the Agent, subject, however, to the provisions of Section 10.11. The Trust shall assist any Investor in effectuating any assignment pursuant to this Section 10.3 in whatever manner such Investor reasonably deems necessary, including participation in meetings with prospective transferees.

10.4 *Survival.* All covenants, agreements, representations and warranties made by the Trust herein and in the other Transaction Documents, and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Transaction Documents, shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the other Transaction Documents and the making of any Investments, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent or any Investor may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect so long as the Investor Payment or any fee or any other Obligation payable under this Agreement or the other Transaction Documents is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 2.6 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Investor Payment, the expiration or termination of the Commitments or the termination of this Agreement or any other Transaction Document or any provision hereof or thereof.

10.5 *Counterparts; Integration; References to Agreement; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Agent or its counsel constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Whenever there is a reference in any Transaction Document or UCC Financing Statement to the "Investment Agreement" to which the Agent, the Investors and the Trust are parties, such reference shall be deemed to be made to this Agreement among the parties hereto. Except as provided in Section 5.1, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10.6 *Severability.* Any provision of the Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability

of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

10.7 *Governing Law; Jurisdiction; Consent to Service of Process.*

(a) **The Agreement shall be construed in accordance with and governed by the law of the State of New York without regard to any conflict of laws provisions thereunder.**

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court, and any appellate court thereto, in any action or proceeding arising out of or relating to this Agreement or the other Transaction Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in the Bankruptcy Court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Agent or any Investor may otherwise have to bring any action or proceeding relating to this Agreement against the Trust or its properties in the courts of any jurisdiction.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Transaction Documents in any court referred to in paragraph (b) of this Section 10.7. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

10.8 *WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.8.*

10.9 *[Reserved]*

10.10 *Headings.* Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of the Agreement and shall not affect the construction of, or be taken into consideration in interpreting, the Agreement.

10.11 *Confidentiality.* Each Investor agrees to keep confidential information obtained by it pursuant hereto and the other Transaction Documents confidential in accordance with such Investor's customary practices and agrees that it will only use such information in connection with the transactions contemplated by this Agreement and not disclose any of such information other than (a) to such Investor's employees, representatives, directors, attorneys, auditors, agents, professional advisors, trustees or Affiliates who are advised of the confidential nature of such information or to any direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.11), (b) to the extent such information presently is or hereafter becomes available to such Investor on a non-confidential basis from any source of such information that is in the public domain at the time of disclosure, (c) to the extent disclosure is required by law (including applicable securities law), regulation, subpoena or judicial order or process (provided that notice of such requirement or order shall be promptly furnished to the Trust unless such notice is legally prohibited) or requested or required by bank, securities, insurance or investment company regulators or auditors or any administrative body or commission to whose jurisdiction such Investor may be subject, (d) to any rating agency to the extent required in connection with any rating to be assigned to such Investor, (e) to assignees or participants or prospective assignees or participants who agree to be bound by the provisions of this Section 10.11, (f) to the extent required in connection with any litigation between the Trust and any Investor with respect to the Investments or this Agreement and the other Transaction Documents, or (g) with the Trust's prior written consent.

10.12 *Electronic Execution of Assignments and Certain Other Documents.* The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption, the Transaction Documents or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

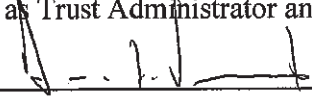
[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Funding Agreement to be
duly executed by their respective authorized officers as of the day and year first above written.

TRUST:

MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST

By: Wilmington Trust Company,
as Trust Administrator and Trustee

By: 
Name: David A. Vansky, Jr.
Title: Vice President

AGENT:

U.S. BANK, NATIONAL ASSOCIATION

as Administrative Agent and Collateral
Agent

By: _____
Name:
Title:

[Signature Page to Funding Agreement; Investor Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Funding Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

TRUST:

MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST

By: Wilmington Trust Company,
as Trust Administrator and Trustee

By: _____

Name: David A. Vanskey, Jr.

Title: Vice President

AGENT:

U.S. BANK NATIONAL ASSOCIATION

as Administrative Agent and Collateral
Agent

By: _____

Name: James A. Hanley

Title: Vice President

[Signature Page to Funding Agreement; Investor Signature Page Follows]

[Investor Signature Page to Funding Agreement Omitted]

SCHEDULES & EXHIBITS

Schedule 1.3	Designated Financial Officers
Schedule 2.1	Investors and Commitments
Schedule 4.4(d)	Current Payables
Schedule 4.10	Bank Accounts
Exhibit A	Assignment and Acceptance

SCHEDULE 1.4

DESIGNATED FINANCIAL OFFICERS

To be provided by Trust prior to the Effective Time

SCHEDULE 2.1

INVESTORS AND COMMITMENTS

Name	Commitment
RIVER BIRCH MASTER FUND, LP	\$15,000,000
Total:	\$15,000,000

SCHEDULE 4.4(d)

CURRENT PAYABLES

To be provided by Trust prior to the Effective Time

SCHEDULE 4.10

BANK ACCOUNTS

To be established by Agent and Trust prior to the Effective Time

EXHIBIT A

FORM OF ASSIGNMENT AND ACCEPTANCE

Attached

01:18702846.1

01344376

**FORM OF
ASSIGNMENT AND ACCEPTANCE**

Reference is made to the Funding Agreement, dated as of May __, 2016 (as modified and supplemented and in effect from time to time, the “Funding Agreement”), among Motors Liquidation Company Avoidance Action Trust, a Delaware statutory trust (the “Trust”), the Investors from time to time party thereto, and U.S. Bank, National Association, as Administrative Agent and Collateral Agent (the “Agent”). Terms defined in the Funding Agreement are used herein as defined therein.

_____ (the “Assignor”) and _____ (the “Assignee”) agree as follows:

1. The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Effective Date as set forth in Schedule I hereto (the “Effective Date”), an interest (the “Assigned Interest”) in and to the Assignor’s rights and obligations under the Funding Agreement with respect to the portion of the Commitment (as well as any related funded Investments and the right to receive the Investor Payment attributable thereto) described on Schedule I, in the amount and percentage as set forth on Schedule I.

2. The Assignor (i) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Funding Agreement, any other Transaction Document or any other instrument or document furnished pursuant thereto, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Funding Agreement, any other Transaction Document or any other instrument or document furnished pursuant thereto, other than that it has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Trust or any other obligation or the performance or observance by the Trust of its obligations under the Funding Agreement, any other Transaction Document or any other instrument or document furnished pursuant hereto or thereto; and (iii) requests that the Agent update the Register to reflect the assignment and acceptance set forth herein.

3. The Assignee (i) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (ii) confirms that it has received a copy of the Funding Agreement, together with such documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (iii) agrees that it will, independently and without reliance upon the Assignor, the Agent or any other Investor and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Funding Agreement, any other Transaction Document or any other instrument or document furnished pursuant hereto or thereto; (iv) appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Funding Agreement, or any other

instrument or document furnished pursuant hereto or thereto as are delegated to the Agent by the terms thereof, together with such powers as are incidental thereto; and (v) agrees that it will be bound by the provisions of the Funding Agreement and will perform in accordance with its terms all the obligations which by the terms of the Funding Agreement are required to be performed by it as an Investor.

4. Following the execution of this Assignment and Acceptance, it will be delivered to the Agent for acceptance and recording by the Agent pursuant to Section 10.3 of the Funding Agreement, effective as of the Effective Date (which date shall not, unless otherwise agreed to by the Agent, be earlier than five Business Days after the date of such acceptance and recording by the Agent and shall in no event be earlier than the date the information contained herein is recorded in the Register pursuant to Section 10.3 of the Funding Agreement).

5. Upon such acceptance and recording, from and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of Investor Payment, fees and other amounts) to the Assignee that accrue subsequent to the Effective Date.

6. From and after the Effective Date, (i) the Assignee shall be a party to the Funding Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of an Investor thereunder and shall be bound by the provisions thereof and (ii) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Funding Agreement except as provided in Section 10.3 of the Funding Agreement.

7. This Assignment and Acceptance shall be governed by and construed in accordance with the laws of the State of New York.

8. This Assignment and Acceptance may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Assignment and Acceptance by signing any such counterpart.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed as of the date first above written by their respective duly authorized officers on Schedule I annexed hereto.

[ASSIGNEE]

[ASSIGNOR]

By: _____
Name:
Title:

By: _____
Name:
Title:

Consented to and Accepted:

U.S. BANK, NATIONAL ASSOCIATION,
as Administrative Agent and Collateral Agent

By: _____
Name:
Title:

Schedule I to
Assignment and Acceptance

Name of Assignor:

Name of Assignee:

Effective Date of Assignment:

Amount of Commitment <u>Assigned</u>	Amount of Commitment <u>Retained</u>	Percentage of Commitments <u>Assigned</u>	Percentage of Commitments <u>Retained</u>
\$	\$	%	%

EXHIBIT C

EXECUTION VERSION

**AMENDED AND RESTATED MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST AGREEMENT**

This AMENDED AND RESTATED MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST AGREEMENT, dated as of May 11, 2012 (as it may be amended from time to time, this "Trust Agreement"), by and among Wilmington Trust Company, as trust administrator and trustee (together with any successor appointed under the terms hereof, the "Trust Administrator") of the Motors Liquidation Company Avoidance Action Trust (the "Trust") for the benefit of the Trust Beneficiaries (as defined below), and FTI Consulting, Inc., as trust monitor (together with any successor appointed under the terms hereof, the "Trust Monitor") of the Trust, amends and restates in its entirety the Original Trust Agreement (as defined below). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Debtors' Second Amended Joint Chapter 11 Plan of liquidation pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"), dated March 18, 2011, as confirmed (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the "Plan").

WITNESSETH:

WHEREAS, the Trust Administrator and the Trust Monitor are party to the Motors Liquidation Company Avoidance Action Trust Agreement, dated as of March 30, 2011, by and among Motors Liquidation Company ("MLC"), MLC of Harlem, Inc., MLCS, LLC, MLCS Distribution Corporation, Remediation and Liability Management Company, Inc., and Environmental Corporate Remediation Company, Inc. (collectively, the "Debtors"), as debtors and debtors-in-possession, Wilmington Trust Company, as Trust Administrator, and FTI Consulting, Inc., as Trust Monitor (the "Original Trust Agreement"); and

WHEREAS, each of the Debtors has, prior to the date hereof, ceased to operate and dissolved; and

WHEREAS, the Trust Administrator and the Trust Monitor believe that the Avoidance Action Trust Administrative Cash (as defined below) currently held by the Trust is insufficient to satisfy current and projected fees, costs and expenses of the Trust; and

WHEREAS, to remedy this insufficiency of the Avoidance Action Trust Administrative Cash, on January 20, 2012, the GUC Trust Administrator filed a motion with the Bankruptcy Court (the "Sale and Transfer Motion") seeking authority to, among other requests, liquidate certain New GM Securities and deliver the proceeds thereof to the Trust for the purposes of satisfying current and projected fees, costs and expenses of the Trust; and

WHEREAS, on March 8, 2012, the Bankruptcy Court entered an order approving the Sale and Transfer Motion in relevant part (the "Sale and Transfer Order"); and

WHEREAS, the Original Trust Agreement did not contemplate funding sources other than the Avoidance Action Trust Administrative Cash, and it is now necessary to amend the Trust Agreement to implement the Sale and Transfer Order and to provide the necessary procedures for the allocation, administration and utilization of such funding sources; and

WHEREAS, it is the intent of the parties hereto that this Trust Agreement amends and restates in its entirety the Original Trust Agreement; and

WHEREAS, pursuant section 13.13(b) of the Original Trust Agreement, the Trust Administrator has petitioned the Bankruptcy Court for approval of this amendment and restatement of the Original Trust Agreement; and

WHEREAS, this Trust Agreement, as it amends and restates the Original Trust Agreement, shall become effective upon a Final Order of the Bankruptcy Court and execution by the appropriate signatories to this amended and restated Trust Agreement.

NOW, THEREFORE, in accordance with Section 13.13 of the Original Trust Agreement, the Original Trust Agreement is hereby amended and restated as follows:

Background

A. Beginning on June 1, 2009, the Debtors filed in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases").

B. On or about August 31, 2010, the Debtors filed their Plan and Disclosure Statement in the Bankruptcy Court. The Debtors filed an amended Plan and Disclosure Statement on December 7, 2010. The Debtors filed a second amended Plan on March 18, 2011.

C. The Disclosure Statement was approved by the Bankruptcy Court on December 8, 2010.

D. On or about March 29, 2011, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Plan.

E. The Plan provides for the creation of the Trust as a post-confirmation successor to MLC within the meaning of Section 1145(a) of the Bankruptcy Code, to hold and administer the Avoidance Action Trust Assets for the benefit of the Trust Beneficiaries and, to the extent received by the Trust, to distribute the Distributable Trust Assets to the Trust Beneficiaries in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement.

F. The Plan also provides that the Trust Administrator may determine to hold and administer Other Debtor Residual Trust Assets, if any, for the benefit of the DIP Lenders.

G. The Trust is being created, with respect to the Avoidance Action Trust Assets, on behalf of, and for the benefit of, the Trust Beneficiaries, and, with respect to the Other Debtor Residual Trust Assets, if any, on behalf of, and for the benefit of, the DIP Lenders.

H. The Trust Administrator shall have all powers necessary to implement the provisions of this Trust Agreement and administer the Trust in respect of the Avoidance Action Trust Assets, including the power to: (i) prosecute for the benefit of the Trust Beneficiaries, through counsel and other professionals selected by the Trust Administrator, the Term Loan Avoidance Action and any other causes of action that may from time to time be held by the Trust in respect thereof; (ii) preserve and maintain the Avoidance Action Trust Assets; (iii) distribute the Distributable Trust Assets, if any, to the Trust Beneficiaries in accordance with the Plan, the Confirmation Order and this Trust Agreement; (iv) expend the Avoidance Action Trust Administrative Cash, the Avoidance Action Trust SEC Reporting Cash (if applicable), and the Supplemental Avoidance Action Trust Cash to cover fees and expenses of the Trust, including payment of taxes and the fees and expenses of the Trust Professionals (other than in respect thereof of the Other Debtor Residual Trust Assets); (v) enter into any contracts or agreements necessary or desirable to facilitate the implementation of the provisions of this Trust Agreement, including but not limited to loan agreements or sale agreements for the purposes of funding the fees and expenses of the Trust; and (vi) sell or grant liens on the Term Loan Avoidance Action or any other property of the Trust (other than the Other Debtor Residual Trust Assets) for the purposes of implementing the provisions of this Trust Agreement, including but not limited to funding the fees and expenses of the Trust.

I. The Trust Administrator shall also have all powers necessary to implement the provisions of this Trust Agreement and administer the Trust in respect of the Other Debtor Residual Trust Assets, if any, including the power to: (i) prosecute for the benefit of the DIP Lenders, through counsel and other professionals selected by the Trust Administrator, any causes of action that may from time to time be held by the Trust in respect thereof; (ii) preserve and maintain the Other Debtor Residual Trust Assets; (iii) distribute the Distributable Other Debtor Residual Trust Assets, if any, to the DIP Lenders in accordance with the Plan, the Confirmation Order and this Trust Agreement; and (iv) expend the Other Debtor Residual Trust Administrative Cash to cover fees and expenses of the Trust, including payment of the fees and expenses of the Trust Professionals, in respect thereof.

J. The Trust Administrator shall otherwise perform the functions and take the actions provided for in this Trust Agreement or permitted in the Plan and/or the Confirmation Order, or in any other agreement executed pursuant to the Plan, in each case subject to the provisions of Articles VI, VIII and XI hereof regarding the rights and powers of the Trust Monitor.

K. The Trust is subject to the continuing jurisdiction of the Bankruptcy Court, whose approval is required to pay or distribute money or property to, or on behalf of, a Trust Beneficiary, except as expressly provided in this Trust Agreement.

L. The Trust (other than the Avoidance Action Trust Claims Reserve) is intended to qualify as a liquidating trust under Treasury Regulation section 301.7701-4(d) that is treated as a "grantor trust" for federal and applicable state and local income tax purposes.

Agreement

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the Trust Administrator and the Trust Monitor agree as follows:

ARTICLE I **DEFINED TERMS**

1.1. Definitions. Whenever used in this Trust Agreement, unless the context otherwise requires, the following words and phrases shall have the respective meanings ascribed to them as follows:

(a) “Affiliates” means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person. For purposes of this definition “control” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities, by contract or otherwise.

(b) “Aggregate Maximum Amount” means the sum of the Maximum Amounts of all Disputed General Unsecured Claims, Unresolved Term Loan Avoidance Action Claims and Unresolved Other Avoidance Action Claims, as set forth in the applicable GUC Trust Report as the Aggregate Maximum Amount as of a given date.

(c) “Allowed General Unsecured Claims” means, collectively, (i) the Initial Allowed General Unsecured Claims and (ii) the Resolved Allowed General Unsecured Claims.

(d) “Avoidance Action Proceeds” means the proceeds of the Term Loan Avoidance Action.

(e) “Avoidance Action Trust Administrative Cash” means the Cash (other than the Supplemental Avoidance Action Trust Cash and the Avoidance Action Trust SEC Reporting Cash) held and maintained by the Trust Administrator for the purpose of paying the fees and expenses incurred by the Trust Administrator (including fees and expenses for Trust Professionals) in connection with the Trust and any obligations imposed on the Trust Administrator or the Trust, including fees and expenses relating to the performance of the Trust Administrator’s obligations under this Trust Agreement and the Plan, other than in respect of the Other Debtor Residual Trust Assets. The Debtors shall reserve \$1.6 million for the Avoidance Action Trust Administrative Cash, which shall be transferred to the Trust, less any amounts expended by MLC from and after the Effective Date in respect of the prosecution of the Term Loan Avoidance Action, on the Avoidance Action Trust Transfer Date.

(f) “Avoidance Action Trust Assets” means, collectively, (i) the Term Loan Avoidance Action transferred to the Trust, (ii) the Avoidance Action Proceeds, (iii) the Avoidance Action Trust Administrative Cash, (iv) the Avoidance Action Trust SEC Reporting Cash; and (v) the Supplemental Avoidance Action Trust Cash.

(g) “Avoidance Action Trust SEC Reporting Costs” means any costs, fees or expenses incurred by the Trust that are directly or indirectly related to reports that may be required to be filed by the Trust with the SEC pursuant to applicable rules, regulations and interpretations of the SEC (including, without limitation, any legal, accounting or registration fees, costs and expenses incurred by the Trust with respect thereto).

(h) “Avoidance Action Trust SEC Reporting Cash” has the meaning set forth in Section 2.3(e) of this Trust Agreement.

(i) “Avoidance Action Trust Transfer Date” means the date selected by the Debtors on which the Avoidance Action Trust Assets (other than the Supplemental Avoidance Action Trust Cash) are transferred to the Trust, which transfer shall occur on or before December 15, 2011.

(j) “Bankruptcy Code” has the meaning set forth in the preamble to this Trust Agreement.

(k) “Bankruptcy Court” has the meaning set forth in Background paragraph A.

(l) “Budget” has the meaning set forth in Section 6.3.

(m) “calendar quarter” means the relevant three-month period ending on the last day of March, June, September or December, as applicable, of each calendar year; *provided, however*, that the calendar quarter that contains the Avoidance Action Trust Transfer Date shall be the period commencing on the Avoidance Action Trust Transfer Date and concluding on the date on which the relevant calendar quarter would naturally end in accordance with the foregoing.

(n) “Certificate of Trust” means the certificate of trust of the Trust as required by Section 3810 of the Delaware Act.

(o) “Chapter 11 Cases” has the meaning set forth in Background paragraph A.

(p) “Claim Conflict Resolution” has the meaning set forth in Section 3.6.

(q) “Confidential Party” has the meaning set forth in Section 13.12.

(r) “Confirmation Order” has the meaning set forth in Background paragraph D.

(s) “Current Total Amount” means as of a given date, the sum of (A) the Total Allowed Amount as of such date and (B) the Aggregate Maximum Amount as of such date, as set forth in the applicable GUC Trust Report as the Current Total Amount as of a given date.

- Agreement.
- (t) “Debtors” has the meaning set forth in the preamble to this Trust Agreement.
 - (u) “Delaware Act” means the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq.
 - (v) “DIP Credit Agreement Claims” means all Claims arising under the DIP Credit Agreement and Orders approving the DIP Credit Agreement dated June 25, 2009 and July 5, 2009.
 - (w) “DIP Lender Advances” means the Distributable Trust Assets distributable to the DIP Lenders, in an amount equal to (i) the amounts of Cash advanced directly or indirectly by MLC to fund the costs and expenses associated with realizing the proceeds of the Term Loan Avoidance Action, including, without limitation, any such amounts expended to fund the costs and expenses of professionals retained by the defendants in the Term Loan Avoidance Action and (ii) without duplication, the amount of the Avoidance Action Trust Administrative Cash.
 - (x) “DIP Lender Distributable Trust Assets” means the Distributable Trust Assets distributable to the DIP Lenders, in an amount as determined either by (i) mutual agreement between the U.S. Treasury and the Creditor’s Committee or (ii) Final Order.
 - (y) “DIP Lenders” means the U.S. Treasury and EDC, as lenders under the DIP Credit Agreement.
 - (z) “Disputed General Unsecured Claims” means the General Unsecured Claims against the Debtors that are Disputed (as defined in the Plan) as of the Initial GUC Record Date, until a time when such claims become Resolved General Unsecured Claims or are otherwise resolved pursuant to the claims resolution procedures contained in the Plan.
 - (aa) “Distributable Other Debtor Residual Trust Assets” means the Other Debtor Residual Assets Proceeds, if any, together with any earnings (including interest) thereon.
 - (bb) “Distributable Other Debtor Residual Trust Cash” means any Cash or cash equivalents included in the Distributable Other Debtor Residual Trust Assets.
 - (cc) “Distributable Trust Assets” means the Avoidance Action Proceeds together with any earnings (including interest) thereon.
 - (dd) “Distributable Trust Cash” means any Cash or cash equivalents included in the Distributable Trust Assets.
 - (ee) “Distribution Date” means the date of any distribution made by the Trust Administrator to the Trust Beneficiaries pursuant to this Trust Agreement, whether to the DIP Lenders pursuant to Section 5.1(d) or on account of Allowed General Unsecured Claims and/or Units.

(ff) “Distribution Threshold” means \$10,000,000.

(gg) “Excess GUC Distributable Trust Assets Determination Date” has the meaning set forth in Section 5.4(a).

(hh) “Excess GUC Distributable Trust Assets” means (i) the amount of the GUC Distributable Trust Assets held by the Trust (after providing for all distributions then required to be made in respect of Resolved Allowed General Unsecured Claims), minus (ii) the amount of the GUC Distributable Trust Assets necessary for the satisfaction of Claims in the amount of the Aggregate Maximum Amount pursuant to Section 5.3.

(ii) “Final Recovery Date” has the meaning set forth in Section 5.1(a).

(jj) “GUC Beneficiaries” means the holders of Allowed General Unsecured Claims or Units received in respect of such claims.

(kk) “GUC Distributable Trust Assets” has the meaning set forth in Section 5.1(d).

(ll) “GUC Trust Advances” means the Distributable Trust Assets distributable to the holders of Allowed General Unsecured Claims, in an amount equal to the aggregate amount of GUC Trust Supplemental Cash received from the GUC Trust pursuant to Section 2.3(f)(i) hereof, together with any earnings (including interest) thereon, minus the aggregate amount of Cash held in the Segregated Account on the date of measurement.

(mm) “GUC Trust Reports” means the reports prepared by the GUC Trust Administrator each quarter as provided in the GUC Trust Agreement, which shall be delivered to the Trust Administrator pursuant to the terms of the GUC Trust Agreement.

(nn) “GUC Trust Supplemental Cash” has the meaning set forth in Section 2.3(f)(i).

(oo) “Holdback” has the meaning set forth in Section 6.1(b).

(pp) “Incompetency” means, with respect to any Person, the incompetency of such Person if such Person is a natural person.

(qq) “Initial Allowed General Unsecured Claims” has the meaning set forth in Section 5.2(b).

(rr) “Initial GUC Distribution Date” has the meaning set forth in Section 5.2(b).

(ss) “Initial GUC Record Date” has the meaning set forth in Section 5.2(b).

(tt) “IRS” means the Internal Revenue Service.

(uu) “Maximum Amount” means the maximum amount of any Disputed General Unsecured Claim, Unresolved Term Loan Avoidance Action Claim or Unresolved Other Avoidance Action Claim, calculated in accordance with the GUC Trust Agreement and as set forth in the applicable GUC Trust Report as the Maximum Amount of any Claim or group of Claims as of a given date.

(vv) “MLC” has the meaning set forth in the preamble to this Trust Agreement.

(ww) “Original Trust Agreement” has the meaning set forth in the preamble to this Trust Agreement.

(xx) “Other Avoidance Action Claims” means the additional General Unsecured Claims that have arisen as a result of recovery of proceeds of the Avoidance Actions other than the Term Loan Avoidance Action (and any related unsecured claims).

(yy) “Other Debtor Residual Assets” means any assets of MLC remaining at such time as the Debtors shall be liquidated, other than the Term Loan Avoidance Action and the Term Loan Avoidance Action Administrative Cash and any other assets of MLC whose disposition is specifically provided for under the Plan or the Confirmation Order.

(zz) “Other Debtor Residual Accepted Assets” means Other Debtor Residual Assets accepted by the Trust Administrator for transfer to the Trust pursuant to Section 2.3(b).

(aaa) “Other Debtor Residual Assets Proceeds” means any proceeds realized in respect of the Other Debtor Residual Accepted Assets.

(bbb) “Other Debtor Residual Trust Administrative Cash” means the Cash, if any, held and maintained by the Trust Administrator for the purpose of paying the fees and expenses incurred by the Trust Administrator (including fees and expenses for Trust Professionals) in connection with the Trust and any obligations imposed on the Trust Administrator or the Trust, including fees and expenses relating to the performance of the Trust Administrator’s obligations under this Trust Agreement and the Plan, but only in respect of the Other Debtor Residual Trust Assets, which Cash may be obtained by transfer to the Trust by the Debtors, from the DIP Lenders (in their sole discretion) or from the proceeds of the Other Debtor Residual Accepted Assets.

(ccc) “Other Debtor Residual Trust Assets” means, if any, collectively, (i) the Other Debtor Residual Accepted Assets transferred to the Trust, (ii) the Other Debtor Residual Assets Proceeds and (iii) the Other Debtor Residual Trust Administrative Cash.

(ddd) “Other Debtor Residual Assets Transfer Date” means the date selected by the Debtors on which the Other Debtor Residual Assets Transfer, if any, are transferred to the Trust, which transfer shall occur on or before December 15, 2011.

(eee) “Other Supplemental Cash” means any Cash received by the Trust pursuant to Section 6.1(d) hereof from the sale of, or granting of liens on, all or a portion of

the Term Loan Avoidance Action or any other property held by the Trust (other than the Other Debtor Residual Trust Assets), or from any source other than the GUC Trust.

(fff) “Permissible Investments” means investments in any of the following:

(i) Marketable securities issued by the U.S. Government and supported by the full faith and credit of the U.S. Treasury, either by statute or an opinion of the Attorney General of the United States;

(ii) Marketable debt securities, rated Aaa by Moody’s and/ or AAA by S&P, issued by U. S. Government-sponsored enterprises, U. S. Federal agencies, U. S. Federal financing banks, and international institutions whose capital stock has been subscribed for by the United States;

(iii) Certificates of deposit, time deposits, and bankers acceptances of any bank or trust company incorporated under the laws of the United States or any state, provided that, at the date of acquisition, such investment, and/or the commercial paper or other short term debt obligation of such bank or trust company has a short-term credit rating or ratings from Moody’s and/or S&P, each at least P-1 or A-1;

(iv) Commercial paper of any corporation incorporated under the laws of the United States or any state thereof which on the date of acquisition is rated by Moody’s and/or S&P, provided each such credit rating is least P-1 and/or A-1;

(v) Money market mutual funds that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, and operated in accordance with Rule 2a-7 and that at the time of such investment are rated Aaa by Moody’s and/or AAAM by S&P, including such funds for which the Trust Administrator or an Affiliate provides investment advice or other services;

(vi) Tax-exempt variable rate commercial paper, tax-exempt adjustable rate option tender bonds, and other tax-exempt bonds or notes issued by municipalities in the United States, having a short-term rating of “MIG-1” or “VMIG-1” or a long term rating of “AA” (Moody’s), or a short-term rating of “A-1” or a long term rating of “AA” (S&P); and

(vii) Repurchase obligations with a term of not more than thirty days, 102 percent collateralized, for underlying securities of the types described in clauses (i) and (ii) above, entered into with any bank or trust company or its respective affiliate meeting the requirements specified in clause (iii) above.

(ggg) “Plan” has the meaning set forth in the preamble to this Trust Agreement.

(hhh) “Resolved Allowed General Unsecured Claims” means, collectively, (I) the Disputed General Unsecured Claims that are allowed after the Initial GUC Record Date in accordance with the claims resolution procedures administered under the Plan (to the extent so resolved); (II) the Term Loan Avoidance Action Claims, to the extent and in the amount collected by the Trust against the respective defendants in the underlying litigation (including

by way of settlement); and (III) the Other Avoidance Action Claims, to the extent and in the amount collected against the respective defendants in the underlying litigations (including by way of settlement). For the avoidance of doubt, unless and until a Disputed General Unsecured Claim, Unresolved Term Loan Avoidance Action Claim or Unresolved Other Avoidance Action Claim becomes a Resolved Allowed General Unsecured Claim, the holders of such claim shall not receive any distribution from the Trust.

(iii) “Resolved Allowed General Unsecured Claims Determination Date” has the meaning set forth in Section 5.3(a).

(jjj) “Sale and Transfer Motion” has the meaning set forth in the preamble to this Trust Agreement.

(kkk) “Sale and Transfer Order” has the meaning set forth in the preamble to this Trust Agreement.

(lll) “SEC” means the Securities and Exchange Commission.

(mmm) “Secretary of State” means the Office of the Secretary of State of the State of Delaware.

(nnn) “Segregated Account” has the meaning set forth in Section 2.3(f)(i).

(ooo) “Segregated Account Assets” has the meaning set forth in Section 5.1(d).

(ppp) “Supplemental Avoidance Action Trust Cash” means the GUC Trust Supplemental Cash and the Other Supplemental Cash.

(qqq) “Tax Returns” means all tax returns, reports, certificates, forms or similar statements or documents.

(rrr) “Term Loan Avoidance Action” means the Avoidance Action commenced by the Creditors’ Committee against JPMorgan Chase Bank, N.A., individually and as Administrative Agent, and various lenders party to a term loan agreement, dated as of November 29, 2006, between General Motors Corporation, as borrower, JPMorgan Chase Bank, N.A., as agent, and various institutions as lenders and agents, styled *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. et al.*, Adv. Pro. No. 09-00504 (Bankr. S.D.N.Y. July 31, 2009).

(sss) “Term Loan Avoidance Action Claims” means the additional General Unsecured Claims that have arisen as a result of recovery of proceeds of the Term Loan Avoidance Action (or any related unsecured claims).

(ttt) “Total Allowed Amount” means the sum of the amount of all Initial Allowed General Unsecured Claims plus the amount of all Resolved Allowed General Unsecured Claims, as set forth in the applicable GUC Trust Report.

(uuu) “Treasury Regulations” means the income tax regulations promulgated under the Tax Code, including any amended or successor income tax regulations thereto.

(vvv) “Trust” has the meaning set forth in the preamble to this Trust Agreement.

(www) “Trust Administrator” has the meaning set forth in the preamble to this Trust Agreement.

(xxx) “Trust Administrator Parties” means the Trust Administrator and its principals, directors, officers, employees, agents, representatives, attorneys, accountants, advisors and other professionals (including the Trust Professionals).

(yyy) “Trust Agreement” has the meaning set forth in the preamble to this Trust Agreement.

(zzz) “Trust Beneficiaries” means the holders of the DIP Credit Agreement Claims and the holders of Allowed General Unsecured Claims (or Units received in respect of such claims).

(aaaa) “Trust Cash” means the Cash or cash equivalents included in the Avoidance Action Trust Assets or the Other Debtor Residual Trust Assets, if any.

(bbbb) “Trust Monitor” has the meaning set forth in the preamble to this Trust Agreement.

(cccc) “Trust Monitor Parties” means the Trust Monitor and its principals, directors, officers, employees, agents, representatives, attorneys, accountants, advisors and other professionals.

(dddd) “Trust Professionals” means, collectively, independent contractors, including attorneys, accountants, appraisers, disbursing agents or other parties deemed by the Trust Administrator to have the qualifications necessary or desirable to assist in the proper administration of the Trust and that are employed or retained by the Trust in such capacities.

(eeee) “Unit Issuance Ratio” means the ratio of one Unit for each \$1,000 in amount of Allowed General Unsecured Claims.

(ffff) “Units” means the units of beneficial interest issued by the Trust to holders of Allowed General Unsecured Claims.

(gggg) “Unresolved Other Avoidance Action Claim” means an Other Avoidance Action Claim that has not or has not yet arisen because no determination (including by way of settlement) has been made in the respective Avoidance Action against the respective defendant who would be entitled to such claim in the event of such determination (or if a determination has been made against the defendant, the proceeds related to such resolution have not been recovered in full).

(hhhh)“Unresolved Term Loan Avoidance Action Claim” means a Term Loan Avoidance Action Claim that has not or has not yet arisen because no determination (including by way of settlement) has been made in the Term Loan Avoidance Action against the respective defendant who would be entitled to such claim in the event of such determination (or if a determination has been made against the defendant, the proceeds related to such resolution have not been recovered in full).

(iii) “Wind-Down Facility” means the \$1.175 billion wind-down facility provided to the Debtors pursuant to the DIP Credit Agreement.

ARTICLE II **DECLARATION OF TRUST**

2.1. Creation of Trust. The Debtors and the Trust Administrator, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby constitute and create the Trust, in the form of a statutory trust under the Delaware Act, which shall bear the name “Moters Liquidation Company Avoidance Action Trust.” In connection with the exercise of the Trust Administrator’s power hereunder, the Trust Administrator may use this name or such variation thereof as the Trust Administrator sees fit. The Trust Administrator, as trustee of the Trust, is hereby authorized and directed to execute and file a Certificate of Trust for the Trust in the form attached hereto as Exhibit B.

2.2. Purpose of Trust. The sole purpose of the Trust is to liquidate and distribute its assets pursuant to the Plan in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

2.3. Transfer of Avoidance Action Trust Assets to the Trust.

(a) Effective upon the Avoidance Action Trust Transfer Date, the Debtors hereby transfer to the Trust, pursuant to Bankruptcy Code Sections 1123(a)(5)(B) and 1123(b)(3)(B), and in accordance with the Plan and the Confirmation Order, the Avoidance Action Trust Assets (other than the Avoidance Action Trust SEC Reporting Cash and the Supplemental Avoidance Action Trust Cash), as they exist on the Avoidance Action Trust Transfer Date, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons to the maximum extent contemplated by and permissible under Bankruptcy Code Section 1141(c); *provided, however* that notwithstanding anything to the contrary in the Plan, Disclosure Statement, Confirmation Order, this Trust Agreement or any other agreement, the DIP Lenders shall maintain their liens on the Avoidance Action Trust Administrative Cash, provided that for the avoidance of doubt, the DIP Lenders shall not demand acceleration of their liens on the Avoidance Action Trust Administrative Cash except in accordance with the provisions of section 7.2 of the DIP Credit Agreement. Such transfers shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax pursuant to Bankruptcy Code Section 1146. The Debtors and their successors and assigns shall be released from any and all liability with respect to the transfer of such Avoidance Action Trust Assets to the Trust as aforesaid.

Nothing in this Trust Agreement is intended to, or shall be construed to, effect a release, extinguishment or compromise of any claim or cause of action transferred to the Trust pursuant to this Trust Agreement. The Avoidance Action Trust Assets and all other property held from time to time by the Trust under this Trust Agreement (other than the Other Debtor Residual Trust Assets) and any earnings (including interest) thereon are to be managed, applied and disposed of by the Trust Administrator in accordance with the terms hereof, the Plan and the Confirmation Order for the benefit of the Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms hereinafter set forth, including the provisions of Section 2.6.

(b) To the extent any Avoidance Action Trust Assets (other than the Supplemental Avoidance Action Trust Cash) cannot be transferred to the Trust, because of a restriction on transferability under applicable non-bankruptcy law that is not superseded by Bankruptcy Code Section 1123 or any other provision of the Bankruptcy Code, such assets shall be retained by the Debtors or any successor thereto including, without limitation, the GUC Trust. The proceeds of the sale of any such assets retained by the Debtors (or any successor thereto) shall be allocated to the Trust pursuant to the Plan as if such transfer had not been restricted under applicable non-bankruptcy law. The Trust Administrator may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any assets retained by the Debtors (or any successor thereto) pursuant to the Plan and Confirmation Order.

(c) On the Avoidance Action Trust Transfer Date, the Debtors shall also deliver, or cause to be delivered, to the Trust a complete list of all General Unsecured Claims, both Allowed and Disputed, reflected on the claims registry as of the Avoidance Action Trust Transfer Date, including the names and addresses of all holders of such General Unsecured Claims, whether such claims have been Allowed or are Disputed, and the details of all objections in respect of Disputed General Unsecured Claims.

(d) Effective upon the Other Debtor Residual Assets Transfer Date, the Debtors hereby transfer to the Trust, pursuant to Bankruptcy Code Sections 1123(a)(5)(B) and 1123(b)(3)(B), and in accordance with the Plan and the Confirmation Order, such of the Other Debtor Residual Assets, as they exist on the Other Debtor Residual Assets Transfer Date, as the Trust Administrator, in its sole discretion but with the approval of the Trust Monitor, shall determine to accept, free and clear of any and all liens, claims, encumbrances and interests of all other persons to the maximum extent contemplated by and permissible under Bankruptcy Code Section 1141(c); provided that, for the avoidance of doubt, the Trust Administrator may determine not to accept the transfer to the Trust of any or all of the Other Debtor Residual Assets for any reason or for no reason. Any such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax pursuant to Bankruptcy Code Section 1146. The Debtors and their successors and assigns shall be released from any and all liability with respect to the transfer of the Other Debtor Residual Accepted Assets to the Trust as aforesaid. Nothing in this Trust Agreement is intended to, or shall be construed to, effect a release, extinguishment or compromise of any claim or cause of action transferred to the Trust pursuant to this Trust Agreement, and notwithstanding anything to the contrary in the Plan, Disclosure Statement, Confirmation Order, this Trust Agreement or any other agreement, the DIP Lenders shall maintain their liens on the Other Debtor Residual Accepted

Assets. The Other Debtor Residual Trust Assets and all other property held from time to time by the Trust under this Trust Agreement in respect thereof, and any earnings (including interest) thereon, are to be managed, applied and disposed of by the Trust Administrator in accordance with the terms hereof, the Plan and the Confirmation Order for the benefit of the DIP Lenders, and for no other party, subject to the further covenants, conditions and terms hereinafter set forth, including the provisions of Section 2.6.

(e) (i) On the Avoidance Action Trust Transfer Date, the Debtors shall, pursuant to Section 2.3(e) of the GUC Trust Agreement, transfer Cash to the Trust in an amount of \$500,000 (the "Avoidance Action Trust SEC Reporting Cash"). The Avoidance Action Trust SEC Reporting Cash shall be held by the Trust in a segregated account and shall be used solely for the satisfaction of Avoidance Action Trust SEC Reporting Costs. Any taxes imposed on the Trust in respect of the Avoidance Action Trust SEC Reporting Cash shall be satisfied from the income realized thereon.

(ii) The Trust Administrator shall only use Avoidance Action Trust SEC Reporting Cash to satisfy Avoidance Action Trust SEC Reporting Costs to extent there is no other available source of funds to satisfy such expenses (other than the Supplemental Avoidance Action Trust Cash), including, without limitation, any funds obtained through the reservation and application of all or a portion of the Holdback pursuant to Section 6.1(b) hereof.

(iii) If the Trust Administrator determines that (x) reports are not, and at no time will be, required to be filed by the Trust with the SEC pursuant to applicable rules, regulations and interpretations of the SEC or (y) the Trust has other available funds (as set forth in Section 2.3(e)(ii) hereof) which are sufficient to satisfy any current or future projected, fees, costs or expenses that are directly or indirectly related to reports that may be required to be filed by the Trust with the SEC pursuant to applicable rules, regulations and interpretations of the SEC (including, without limitation, any legal, accounting or registration fees, costs and expenses incurred by the Trust with respect thereto), then the Trust shall transfer to the GUC Trust any Avoidance Action Trust SEC Reporting Cash that has not been applied as provided in this Section 2.3(e).

(iv) Any income earned on the Avoidance Action Trust SEC Reporting Cash, net of taxes paid thereon, shall be Avoidance Action Trust Administrative Cash.

(f) (i) From time to time, in accordance with a Final Order of the Bankruptcy Court if so required, the GUC Trust may deliver Cash to the Trust to be used solely for the satisfaction of fees and expenses of the Trust (including for the payment of the fees and expenses of Trust Professionals) or the satisfaction of any federal, state or local taxes incurred by the Trust. Any Cash so delivered to the Trust shall be designated as "GUC Trust Supplemental Cash." GUC Trust Supplemental Cash shall be held by the Trust in a segregated account (the "Segregated Account"), and shall be used solely for the satisfaction of fees and expenses of the Trust (including for the payment of the fees and expenses of Trust Professionals), for the satisfaction of taxes incurred by the Trust or for distribution to holders of Allowed General Unsecured Claims pursuant to Section 5.1(d)(iv) hereof.

(ii) The Trust Administrator shall only use the GUC Trust Supplemental Cash to satisfy fees and expenses of the Trust and tax liabilities of the Trust to the extent that there is no other source of funds to satisfy such expenses (other than the Avoidance Action Trust SEC Reporting Cash, and other than through the sale or encumbrance of the Term Loan Avoidance Action or any other property of the Trust pursuant to Section 6.1(d) hereof), including, without limitation, Avoidance Action Trust Administrative Cash, and any funds obtained through the reservation and application of all or a portion of the Holdback pursuant to Section 6.1(b) hereof. Any income earned on the GUC Trust Supplemental Cash, net of taxes paid thereon, shall be GUC Trust Supplemental Cash.

2.4. Appointment and Acceptance of Trust Administrator. The Trust Administrator shall be deemed to be appointed pursuant to Bankruptcy Code Section 1123(b)(3)(B) and is hereby appointed trustee of the Trust under the Delaware Act. The Trust Administrator hereby accepts such appointments, including trusteeship of the Trust created by this Trust Agreement and the grant, assignment, transfer, conveyance and delivery by the Debtors to the Trust Administrator, (i) on behalf of the Trust, and for the benefit of the Trust Beneficiaries, of all of their respective right, title and interest in the Distributable Trust Assets, and (ii) on behalf of the Trust, and for the benefit of the DIP Lenders, of all of their respective right, title and interest in the Other Debtor Residual Trust Assets, upon and subject to the terms and conditions set forth in the Plan, the Confirmation Order and this Trust Agreement. The Trust Administrator's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Trust and not otherwise, and in accordance with applicable law, including the Delaware Act. The Trust Administrator shall have the authority to bind the Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity as Trust Administrator, and not individually.

2.5. Distribution of Distributable Trust Assets. The Trust Administrator shall, in an expeditious but orderly manner and subject to the provisions of the Plan, the Confirmation Order and this Trust Agreement, make timely distributions of the Distributable Trust Assets and the Distributable Other Debtor Residual Assets in accordance with the terms hereof and not unduly prolong the existence of the Trust. The Trust Administrator may incur and pay any reasonable and necessary expenses in connection with the administration of the Trust, including the fees and expenses of the Trust Professionals *provided, however*, that all such expenditures (other than in respect of the Other Debtor Residual Trust Assets) shall be made in accordance with the Budget.

2.6. No Reversion to Debtors.

(a) In no event shall any part of the Avoidance Action Trust Assets or the Other Debtor Residual Trust Assets revert to or be distributed to or for the benefit of any Debtor. All Distributable Trust Assets shall be applied as provided in Section 5.1(d), including to the satisfaction of Allowed General Unsecured Claims, including through distributions made in respect of the Units. All Distributable Other Debtor Residual Trust Assets shall be applied as provided in Article 5A.

(b) To the extent that after satisfaction in full of all of the costs and expenses of the administration of the Trust, after all Allowed General Unsecured Claims have been paid pursuant to the Plan, after satisfaction of all other obligations or liabilities of the Trust incurred or assumed in accordance with the Plan, Confirmation Order or this Trust Agreement (or to which the Avoidance Action Trust Assets are otherwise subject), and after the affairs of the Trust have been finally wound up and concluded in accordance with the provisions of Section 4.3 hereof and Section 3808 of the Delaware Act, there shall remain any Avoidance Action Trust Administrative Cash, the Trust Administrator is authorized to and shall distribute any such remaining Avoidance Action Trust Administrative Cash to the DIP Lenders in accordance with the terms of the DIP Credit Agreement and the Plan. To the extent any portion of such residue is not accepted by the respective DIP Lenders, the Trust Administrator shall (i) be authorized to distribute up to \$100,000 of such remaining Avoidance Action Trust Administrative Cash to an organization described in Section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Trust, any Trust Administrator Parties or any Trust Monitor Parties, or (ii) request an order from the Bankruptcy Court authorizing the Trust Administrator to distribute any such remaining Avoidance Action Trust Administrative Cash to such an organization, or authorizing such other disposition as recommended by the Trust Administrator and approved by the Bankruptcy Court.

(c) To the extent that after satisfaction in full of all of the costs and expenses of the administration of the Trust, after all Allowed General Unsecured Claims have been paid pursuant to the Plan, after satisfaction of all other obligations or liabilities of the Trust incurred or assumed in accordance with the Plan, Confirmation Order or this Trust Agreement (or to which the Avoidance Action Trust Assets are otherwise subject), and after the affairs of the Trust have been finally wound up and concluded in accordance with the provisions of Section 4.3 hereof and Section 3808 of the Delaware Act, there shall remain any GUC Trust Supplemental Cash, the Trust Administrator is authorized to and shall distribute any such remaining GUC Trust Supplemental Cash to the holders of Allowed General Unsecured Claims (as defined in the GUC Trust Agreement), regardless of whether such amount of GUC Trust Supplemental Cash is less than the Distribution Threshold, provided that, if the remaining GUC Trust Supplemental Cash is less than \$100,000, the Trust Administrator shall (i) be authorized to distribute such remaining GUC Trust Supplemental Cash to an organization described in Section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Trust, any Trust Administrator Parties or any Trust Monitor Parties, or (ii) request an order from the Bankruptcy Court authorizing the Trust Administrator to distribute any such remaining GUC Trust Supplemental Cash to such an organization, or authorizing such other disposition as recommended by the Trust Administrator and approved by the Bankruptcy Court.

ARTICLE III **TRUST BENEFICIARIES; UNITS**

3.1. Rights of Beneficiaries.

(a) Except as provided in Section 2.6 hereof, the Trust Beneficiaries shall be the sole beneficiaries of the Trust (to the extent of the Avoidance Action Trust Assets) and the

Distributable Trust Assets, and the Trust Administrator shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in the Plan, the Confirmation Order and this Trust Agreement, including those powers set forth in Articles VI and VIII hereof.

(b) The beneficial interest of a Trust Beneficiary in the Trust is hereby declared and shall be in all respects and for all purposes intangible personal property.

(c) Except as expressly provided herein, a Trust Beneficiary shall have no title or right to, or possession, management or control of, the Trust, or the Avoidance Action Trust Assets, or to any right to demand a partition or division of such assets or to require an accounting of the Trust Administrator or the Trust Monitor. The whole legal title to the Avoidance Action Trust Assets shall be vested in the Trust as a separate legal entity under the Delaware Act or, if necessary, in the Trust Administrator on behalf of the Trust and the sole beneficial interest of the Trust Beneficiaries shall be as set forth in this Trust Agreement.

3.2. Limited Liability. No provision of the Plan, the Confirmation Order or this Trust Agreement, and no mere enumeration herein of the rights or privileges of any Trust Beneficiary, shall give rise to any liability of such Trust Beneficiary solely in its capacity as such, whether such liability is asserted by any Debtor, by creditors or employees of any Debtor, or by any other Person. GUC Beneficiaries are deemed to receive the GUC Distributable Trust Assets in accordance with the provisions of the Plan, the Confirmation Order and this Trust Agreement in exchange for their Allowed General Unsecured Claims or on account of their Units, as applicable, without further obligation or liability of any kind, but subject to the provisions of this Trust Agreement.

3.3. No Control by Trust Beneficiaries. A Trust Beneficiary shall have no title to, or any right to possess, manage or control, the Avoidance Action Trust Assets, or any portion thereof or interest therein, except as expressly provided herein. No surviving spouse, heir or devisee of any deceased Trust Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Avoidance Action Trust Assets, but the whole title to all the Avoidance Action Trust Assets shall be vested in the Trust Administrator and the sole interest of the Trust Beneficiaries shall be the rights and benefits provided to such persons under this Trust Agreement.

3.4. Issuance of Units.

(a) The Trust shall issue Units to holders of Allowed General Unsecured Claims as provided in this Trust Agreement. On the Initial GUC Distribution Date, holders of Initial Allowed General Unsecured Claims shall receive the number of Units equal to the amount of such Initial Allowed General Unsecured Claims multiplied by the Unit Issuance Ratio, rounded up or down to the nearest whole Unit. Following the Initial GUC Distribution Date, holders of Resolved Allowed General Unsecured Claims shall receive the number of Units equal to the amount of such Resolved Allowed General Unsecured Claims multiplied by the Unit Issuance Ratio, rounded up or down to the nearest whole Unit. Units will represent the contingent right to receive, on a pro rata basis as provided in the Plan, the Confirmation

Order and this Trust Agreement, Excess GUC Distributable Trust Assets. The Units shall be issued subject to all the terms and conditions of the Plan, the Confirmation Order and this Trust Agreement. References in this Trust Agreement to holders of Units shall be to the record holders of such Units.

(b) As provided in Section 7.5 hereof, the Trust Administrator may retain Units otherwise issuable pursuant to this section with respect to Allowed General Unsecured Claims that are subject to withholding, and the Trust Administrator shall apply amounts distributed in respect of such retained Units to satisfy such withholding obligations.

(c) Notwithstanding the foregoing, if (i) as of the Initial GUC Distribution Date, the total amount of the Disputed General Unsecured Claims in the aggregate is less than 0.5% of the Current Total Amount, or (ii) the Initial GUC Distribution Date is determined by the Trust Administrator to also be the final Distribution Date, no Units shall be distributed and any GUC Distributable Trust Assets remaining after satisfaction of all Initial Allowed General Unsecured Claims and any other obligations of the Trust shall be disposed of as set forth in the last sentence of Section 2.6(c).

3.5. Ownership of Units; Transfers of Units.

(a) The interest of a Trust Beneficiary is in all respects personal property, and upon the death, insolvency or incapacity of an individual GUC Beneficiary, such GUC Beneficiary's Units shall pass to the legal representative of such GUC Beneficiary.

(b) The Units will be issued and evidenced by appropriate notation on the books and records of the Trust Administrator. The Units shall not be certificated and shall not be transferable, assignable, pledged or hypothecated in whole or in part, except by applicable laws of descent and distribution (in the case of a deceased individual GUC Beneficiary); by operation of law; in accordance with applicable Bankruptcy law; or as otherwise approved by the Bankruptcy Court. The Trust Administrator shall not be required to recognize any equitable or other claims to such interest by the transferee thereof, and the named GUC Beneficiary shall remain as such for all purposes hereunder.

3.6. Conflicting Claims to Units. If the Trust Administrator has actual knowledge of any conflicting claims or demands that have been made or asserted with respect to a Unit, or a beneficial interest therein, the Trust Administrator shall be entitled, at its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Trust Administrator may elect to make no payment or distribution with respect to the Unit subject to the claims or demands involved, or any part thereof, and the Trust Administrator shall be entitled to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive and continuing jurisdiction over resolution of such conflicting claims or demands. The Trust Administrator shall not be or become liable to any party for either (i) its election to continue making distributions pursuant to its books and records, without regard to the conflicting claims or demands; or (ii) its election to cease payments or distributions with respect to the subject Unit. In the event that the Trust Administrator elects to cease payments, it shall be entitled to refuse to act until either (x) the rights of the adverse claimants have been adjudicated by a Final Order of the

Bankruptcy Court (or such other court of proper jurisdiction) or (y) all differences have been resolved by a written agreement among all of such parties and the Trust Administrator, which agreement shall include a complete release of the Trust, the Trust Administrator Parties and the Trust Monitor Parties in form and substance reasonably satisfactory to the Trust Administrator and Trust Monitor (the occurrence of either (x) or (y), a "Claim Conflict Resolution"). Until a Claim Conflict Resolution is reached with respect to such conflicting claims or demands, the Trust Administrator shall hold in a segregated account any payments or distributions from the Trust to be made with respect to the Unit(s) at issue. Promptly after a Claim Conflict Resolution is reached, the Trust Administrator shall transfer the payments and distributions, if any, held in the segregated account, together with interest and income earned thereon, if any, in accordance with the terms of such Claim Conflict Resolution.

3.7. Distributions Relating to Note Claims and Eurobond Claims. The Trust shall distribute GUC Distributable Trust Assets and Units to the Indenture Trustees and Fiscal and Paying Agents, to the extent necessary to provide each beneficial holder of debt securities arising out of or relating to the Note Claims and Eurobond Claims with an amount of GUC Distributable Trust Assets and Units equal to the amount of GUC Distributable Trust Assets and Units such holder would receive had its claim been treated as an Initial Allowed General Unsecured Claim hereunder. For the avoidance of doubt, Units will be issued and evidenced by appropriate notation on the books and records of the Trust Administrator in the names of the Indenture Trustees and the Fiscal and Paying Agents, as applicable, and not in the individual names of the beneficial holders of debt securities arising out of or relating to the Note Claims and Eurobond Claims.

ARTICLE IV **DURATION AND TERMINATION OF THE TRUST**

4.1. Duration. The Trust shall become effective upon (x) the earlier to occur of (i) the Avoidance Action Trust Transfer Date and (ii) the Other Debtor Residual Assets Transfer Date, if any, and (y) the execution of this Trust Agreement and the filing of the Certificate of Trust with the Secretary of State and shall remain and continue in full force and effect until (a) all of the Distributable Trust Assets and all Distributable Other Debtor Residual Trust Assets, if any, have been distributed pursuant to the Plan and this Trust Agreement, (b) the Trust Administrator determines, in its discretion and with the approval of the Trust Monitor, that the administration of the Avoidance Action Trust Assets is not likely to yield sufficient additional Distributable Trust Assets or Distributable Other Debtor Residual Trust Assets to justify further pursuit, and (c) all other distributions required to be made by the Trust Administrator under the Plan and this Trust Agreement have been made, but in no event shall the Trust be dissolved later than three (3) years from the earlier of (i) the Avoidance Action Trust Transfer Date and (ii) the Other Debtor Residual Assets Transfer Date, unless the Bankruptcy Court, upon motion within the six (6) month period prior to the third (3rd) anniversary of the earlier of (i) the Avoidance Action Trust Transfer Date and (ii) the Other Debtor Residual Assets Transfer Date (or at least six (6) months prior to the end of an extension period), determines that a fixed period extension (such that, together with any prior extensions, the dissolution of the Trust shall occur no later than five (5) years from the date on which the Trust became effective,

without a favorable private letter ruling from the IRS that any further extension would not adversely affect the status of the Trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Avoidance Action Trust Assets or the Other Debtor Residual Trust Assets, as the case may be. If at any time the Trust Administrator determines, in reliance upon such professionals as the Trust Administrator may retain and with the approval of the Trust Monitor, that (x) the expense of administering the Trust so as to make a final distribution to the Trust Beneficiaries is likely to exceed the value of the Avoidance Action Trust Assets remaining in the Trust and (y) the expense of administering the Trust so as to make a final distribution to the DIP Lenders is likely to exceed the value of the Other Debtor Residual Trust Assets, if any, remaining in the Trust, the Trust Administrator may apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to dissolve the Trust, (ii) transfer the balance to the DIP Lenders and/or the holders of Allowed General Unsecured Claims (as defined in the GUC Trust Agreement) as determined either by (A) mutual agreement between the U.S. Treasury and the Creditors' Committee or, if the Creditors' Committee shall have been disbanded, the Trust Monitor or (B) Final Order, or donate any balance to a charitable organization described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Trust, any Trust Administrator Parties or any Trust Monitor Parties, and (iii) dissolve the Trust.

4.2. Dissolution of the Trust. Notwithstanding anything to the contrary in this Trust Agreement, in no event shall the Trust Administrator unduly prolong the duration of the Trust, and the Trust Administrator shall, in the exercise of its reasonable business judgment and in the interests of all Trust Beneficiaries, at all times endeavor to terminate the Trust as soon as practicable in accordance with the purposes and provisions of this Trust Agreement and the Plan. Upon final dissolution and wind-up of the Trust, the Trust Administrator shall file a certificate of cancellation for the Trust with the Secretary of State.

4.3. Continuance of Trust for Purposes of Winding Up. After the dissolution of the Trust and solely for the purpose of liquidating and winding up its affairs, the Trust Administrator shall continue to act in such capacity until its duties hereunder have been fully performed. The Trust Administrator shall retain the books, records and files that shall have been delivered to or created by the Trust Administrator until distribution or resolution of all the Avoidance Action Trust Assets and Other Debtor Residual Trust Assets, if any. At the Trust Administrator's discretion, all of such books, records and files may be destroyed at any time following the later of (x) final distribution of the Avoidance Action Trust Assets and Other Debtor Residual Trust Assets, if any, unless such books, records and files are necessary to fulfill the Trust Administrator's obligations pursuant to Articles VI and VIII hereof and subject to any joint prosecution and common interests agreement(s) to which the Trust Administrator may be party, and (y) the date until which the Trust Administrator is required by applicable law to retain such books, records and files.

ARTICLE V
DISTRIBUTIONS TO TRUST BENEFICIARIES

5.1. General.

(a) Until such date as the Term Loan Avoidance Action shall have been completely and finally resolved in full against all defendants (including by way of settlement) and the Trust Administrator determines that all Avoidance Action Proceeds have been collected in respect thereof (such date, the "Final Recovery Date"), the Trust Administrator shall establish Distribution Dates no less frequently than once each calendar year and no more frequently than once a calendar quarter for the distribution of Distributable Trust Assets as provided in this Article V; provided that distributions need not be made in any calendar year to the extent (A) there are no Distributable Trust Assets held by the Trust or (B) the Trust Administrator, with the approval of the Trust Monitor, determines (i) that it is reasonably necessary to retain the Distributable Trust Assets to meet contingent liabilities and maintain the value of the Avoidance Action Trust Assets (such as, for example, in the event that the Trust Administrator determines that the Distributable Trust Assets are so small in amount as not to justify making a distribution, taking into account the costs that would be incurred in making the distribution, the anticipated total amount of Distributable Trust Assets expected to be available for distribution over time and the timing of the distribution or distributions thereof), or (ii) that it is necessary to retain the Distributable Trust Assets to pay reasonable incurred and anticipated expenses (including any taxes imposed on the Trust or in respect of the Avoidance Action Trust Assets) or to satisfy liabilities incurred and anticipated by the Trust in accordance with the Plan, the Confirmation Order and this Trust Agreement. Following the Final Recovery Date, distributions shall be made on a quarterly basis, as provided in this Article V.

(b) Except as otherwise set forth herein, no distributions shall be made with respect to any portion of a Disputed General Unsecured Claim, Unresolved Term Loan Avoidance Action Claim or Unresolved Other Avoidance Action Claim unless and until such Disputed General Unsecured Claim, Unresolved Term Loan Avoidance Action Claim or Unresolved Other Avoidance Action Claim has become an Allowed General Unsecured Claim.

(c) To the extent that a Disputed General Unsecured Claim, Unresolved Term Loan Avoidance Action Claim or Unresolved Other Avoidance Action Claim has become an Allowed General Unsecured Claim, distributions (if any) shall be made to the holder of such Allowed General Unsecured Claim in accordance with the provisions of the Plan, the Confirmation Order and this Trust Agreement.

(d) The Distributable Trust Assets shall be distributed

(i) first, to the DIP Lenders, each in their relative proportion pursuant to the terms of the DIP Credit Agreement, in the amount of the DIP Lender Advances;

(ii) second, to the Segregated Account in the amount of the GUC Trust Advances;

(iii) third, to the DIP Lenders, each in their relative proportion pursuant to the terms of the DIP Credit Agreement, in the amount of the DIP Lender Distributable Trust Assets; and

(iv) fourth, the remainder (if any), plus the Cash held in the Segregated Account (the "Segregated Account Assets"), to the holders of Allowed General Unsecured Claims (the "GUC Distributable Trust Assets").

(e) On any Distribution Date following the Final Recovery Date on which the Trust does not hold sufficient GUC Distributable Trust Assets, after taking into account any amounts necessary to satisfy the current and projected future fees and expenses of the Trust (including those of any Trust Professionals) pursuant to Section 6.1(b), to satisfy all Disputed General Unsecured Claims or other Claims that became Resolved Allowed General Unsecured Claims since the next preceding Resolved Allowed General Unsecured Claims Determination Date following which there was a distribution pursuant to Section 5.3(c), the Trust Administrator shall distribute all GUC Distributable Trust Assets that remain in the Trust to the holders of such Resolved Allowed General Unsecured Claims pro rata by Claim amount. Following such distribution, any remaining unsatisfied portion of such Resolved Allowed General Unsecured Claims, together with all remaining Disputed General Unsecured Claims and other Claims (including any Term Loan Avoidance Action Claims and any Other Avoidance Action Claims) shall be forever barred from assertion against the Trust.

(f) Anything to the contrary herein notwithstanding but subject to Section 5.1(a), the Trust Administrator shall not make a distribution of GUC Distributable Trust Assets on any Distribution Date pursuant to Sections 5.2 or 5.4, if the amount to be distributed pursuant thereto does not exceed the Distribution Threshold. In such case, any GUC Distributable Trust Assets then available for distribution shall be held by the Trust and distributed on a subsequent Distribution Date when the amount of the GUC Distributable Trust Assets to be distributed shall exceed the Distribution Threshold; *provided* that if on the date determined by the Trust Administrator to be the final Distribution Date the GUC Distributable Trust Assets do not exceed the Distribution Threshold, then such GUC Distributable Trust Assets shall be disposed of as provided in the final sentence of Section 2.6(c).

(g) For the avoidance of doubt, if the Trust fails to recover any Avoidance Action Proceeds or if the Avoidance Action Proceeds recovered by the Trust through the Final Recovery Date do not exceed the amount of DIP Lender Advances then no distributions shall be made hereunder in respect of any Allowed General Unsecured Claims.

(h) For the avoidance of doubt, if the Avoidance Action Proceeds recovered by the Trust through the Final Recovery Date exceed the amount of DIP Lender Advances but do not exceed the amount of DIP Lender Distributable Trust Assets, the Segregated Account Assets shall be distributed as GUC Distributable Trust Assets pursuant to Section 5.2(b) hereof.

5.2. Distribution to the DIP Lenders and to Holders of Initial Allowed General Unsecured Claims.

(a) Once the DIP Lender Advances and the GUC Trust Advances have been satisfied in full, the Trust Administrator shall make distributions to the DIP Lenders, from time to time in accordance with Section 5.1(a), of the DIP Lender Distributable Trust Assets until the DIP Lender Distributable Trust Assets shall have been distributed in full.

(b) Once the DIP Lender Distributable Trust Assets have been distributed in full, the Trust Administrator shall make distributions of the GUC Distributable Trust Assets, from time to time in accordance with Section 5.1(a). The Trust Administrator shall establish a record date (the "Initial GUC Record Date") for the holders of the General Unsecured Claims that are allowed as of the Initial GUC Record Date (the "Initial Allowed General Unsecured Claims") who shall be entitled to participate in the first distribution of GUC Distributable Trust Assets, which date shall be the last day of the calendar quarter next preceding the date of such distribution (such Distribution Date, the "Initial GUC Distribution Date"). On the Initial GUC Distribution Date, the Trust Administrator shall distribute to each holder of an Initial Allowed General Unsecured Claim a distribution consisting of:

(i) an amount of GUC Distributable Trust Assets at the time available for distribution, in proportion to the amount of such Initial Allowed General Unsecured Claim as prescribed in subsection (d) below; and

(ii) a number of Units as provided in Section 3.4.

(c) During the period, if any, following the Initial GUC Distribution Date and prior to the Final Recovery Date, and as promptly as practicable following the Final Recovery Date, as and to the extent that additional GUC Distributable Trust Assets become available for distribution from time to time as a result of additional recoveries by the Trust in the Term Loan Avoidance Action, the Trust Administrator shall, from time to time in accordance with Section 5.1(a), make additional distributions to the holders of Initial Allowed General Unsecured Claims, on a Distribution Date or Dates designated by the Trust Administrator for such purpose, in the amount prescribed in subsection (d) below. Subject to the proviso in Section 5.1(a), the Trust Administrator shall make such distributions no less frequently than once each calendar year and no more frequently than once each calendar quarter.

(d) The amount of GUC Distributable Trust Assets that the holder of an Initial Allowed General Unsecured Claim shall be entitled to receive pursuant to Section 5.2 (or, in the case of a holder of a Resolved Allowed General Unsecured Claim being treated as if it were a holder of an Initial Allowed General Unsecured Claim in the amount of its Resolved Allowed General Unsecured Claim pursuant to Section 5.3(c)) on any Distribution Date (including the Initial Distribution Date) shall be determined in accordance with the following formula:

$$D = \left(\frac{A}{C} \right) \times G$$

Where—

- D is the distribution that the holder of an Initial Allowed General Unsecured Claim (or the holder of a Resolved Allowed General Unsecured Claim pursuant to Section 5.3(c)) will be entitled to receive;
- A is the amount of the Initial Allowed General Unsecured Claim (or the holder of a Resolved Allowed General Unsecured Claim pursuant to Section 5.3(c));
- C is the Current Total Amount as of the last day of the calendar quarter next preceding the respective Distribution Date; and
- G is the amount available for distribution determined as of the last day of the calendar quarter next preceding the respective Distribution Date, after taking account of any Holdback, or the application of such Holdback, pursuant to Section 6.1(b).

5.3. Distributions to Holders of Resolved Allowed General Unsecured Claims.

(a) Following the Initial GUC Distribution Date, the Trust Administrator, with the approval of the Trust Monitor, shall periodically make a determination (the date of any such determination, which shall in all cases be made as of the last day of a calendar quarter, being a “Resolved Allowed General Unsecured Claims Determination Date”) whether any holders of Disputed General Unsecured Claims or other Claims have become holders of Resolved Allowed General Unsecured Claims since the next preceding Resolved Allowed General Unsecured Claims Determination Date or, in the case of the first such determination, since the Initial GUC Record Date. During the period, if any, following the Initial GUC Distribution Date and prior to the Final Recovery Date, the Trust Administrator shall make such determination no less frequently than once each calendar year and no more frequently than once each calendar quarter, and following the Final Recovery Date such determination shall be made once each calendar quarter.

(b) On a Distribution Date scheduled as soon as practicable following each Resolved Allowed General Unsecured Claims Determination Date, the Trust Administrator shall, subject to the proviso in Section 5.1(a), distribute to each holder of a Resolved Allowed General Unsecured Claim identified on such Resolved Allowed General Unsecured Claims Determination Date, if any:

(i) the pro rata amount of GUC Distributable Assets that the holder of such Resolved Allowed General Unsecured Claim would have received had such Resolved Allowed General Unsecured Claim been an Initial Allowed General Unsecured Claim, including the aggregate amount of Excess GUC Distributable Trust Assets that the holder would have received had it been the holder of Units referred to in clause (ii) below on each Excess GUC Distributable Trust Assets Determination Date occurring on or prior to the date of such distribution; provided that a holder of a Resolved Allowed General Unsecured Claim shall not receive pursuant to this clause (i) an amount of Excess GUC Distributable Assets distributed in respect of any prior Excess GUC Distributable Trust Assets Determination Date to the extent that it will be receiving such Excess GUC Distributable Assets as a distribution on the Units to be received by such holder pursuant to clause (ii) below; and

(ii) a number of Units as provided in Section 3.4.

(c) Once a holder of a Resolved Allowed General Unsecured Claim has received the distribution prescribed in the preceding subsection (b), such holder shall be treated as if it were a holder of an Initial Allowed General Unsecured Claim in the amount of its Resolved Allowed General Unsecured Claim on all subsequent Distribution Dates established for purposes of Section 5.2(c).

(d) For the avoidance of doubt, it is intended that the distributions to be made to holders of Resolved Allowed General Unsecured Claims in accordance with this Section 5.3 shall provide such holders, as nearly as possible, with the exact same amount of distributions as if such holders had been holders of Initial Allowed General Unsecured Claims.

5.4. Distribution of Excess GUC Distributable Trust Assets.

(a) Following the Initial GUC Distribution Date, the Trust Administrator, with the approval of the Trust Monitor, shall periodically make a determination (the date of any such determination, which shall in all cases be as of the last day of a calendar quarter, being an “Excess GUC Distributable Trust Assets Determination Date”) of the Excess GUC Distributable Trust Assets as of such date, taking into account the extent to which Disputed General Unsecured Claims are disallowed or the Term Loan Avoidance Action or other Avoidance Actions are resolved in favor of the defendants therein. During the period, if any, following the Initial GUC Distribution Date and prior to the Final Recovery Date, the Trust Administrator shall make such determination no less frequently than once each calendar year and no more frequently than once each calendar quarter, and following the Final Recovery Date such determination shall be made once each calendar quarter.

(b) On a Distribution Date scheduled as soon as practicable following each Excess GUC Distributable Trust Assets Determination Date, the Trust Administrator shall, subject to the proviso of Section 5.1(a), distribute the Excess GUC Distributable Trust Assets, in each case determined as of the respective Excess GUC Distributable Trust Assets Determination Date, to the holders of Units outstanding on such Excess GUC Distributable Trust Assets Determination Date (including Units distributed or to be distributed to holders of Resolved Allowed General Unsecured Claims pursuant to Section 5.3(b)(ii) on such Distribution Date), pro rata according to the following formula:

$$D_U = \left(\frac{U_H}{U_O} \right) \times (\Sigma G - H) \times \left[\frac{T_U}{C_U} - \frac{T_U}{(C_U + L)} \right]$$

Where—

- D_U is the distribution of Excess GUC Distributable Trust Assets that a holder of Units will be entitled to receive;
- U_H is the number of Units held by the holder;
- U_O is the total number of Units outstanding (including Units distributed to holders of Resolved Allowed General Unsecured Claims pursuant to Section 5.3(b)(ii) on such Distribution Date);

- ΣG is the sum of the amounts that are or were available for distribution to holders of Initial Allowed General Unsecured Claims (and holders of Resolved Allowed General Unsecured Claims pursuant to Section 5.3(c)) on the relevant Distribution Date and each prior Distribution Date;
- T_U is the Total Allowed Amount as of the Excess GUC Distributable Trust Assets Determination Date;
- C_U is the Current Total Amount as of the Excess GUC Distributable Trust Assets Determination Date;
- L is the aggregate amount of all (i) Disputed General Unsecured Claims disallowed since the next preceding Excess GUC Distributable Trust Assets Determination Date (or, in the case of the first Excess GUC Distributable Trust Assets Determination Date, since the Initial GUC Record Date), (ii) Unresolved Term Loan Avoidance Action Claims to the extent resolved (including by way of settlement) in favor of the respective defendants since the next preceding Excess GUC Distributable Trust Assets Determination Date (or, in the case of the first Excess GUC Distributable Trust Assets Determination Date, since the Initial GUC Record Date); and (iii) all Unresolved Other Avoidance Action Claims to the extent resolved (including by way of settlement) in favor of the respective defendants since the next preceding Excess GUC Distributable Trust Assets Determination Date (or, in the case of the first Excess GUC Distributable Trust Assets Determination Date, since the Initial GUC Record Date); and
- H is the amount, if any, of any holdback pursuant to Section 6.1 that was not otherwise deducted from the amounts available for distribution on a Distribution Date.

(c) Notwithstanding the foregoing, if the Trust Administrator becomes aware of previously unknown potential Allowed General Unsecured Claims, the Trust Administrator may, with the approval of the Trust Monitor, withhold distribution of Excess GUC Distributable Trust Assets to the holders of Units in an amount that the Trust Administrator, with the approval of the Trust Monitor, estimates to be the maximum amount reasonably allowable in respect of such previously unknown claims.

5.5. Retention of Avoidance Action Trust Assets. Notwithstanding anything in this Trust Agreement to the contrary, the Trust Administrator shall at all times, to the extent practicable, retain

(a) sufficient GUC Distributable Trust Assets as the Trust Administrator shall determine, with the approval of the Trust Monitor, as would be distributable (I) to all holders of Disputed General Unsecured Claims at the time outstanding as if all Disputed General Unsecured Claims were allowed at the Maximum Amount, but only until such Disputed General Unsecured Claims are resolved, (II) to the holders of all Resolved Allowed General Unsecured Claims at the time outstanding, to the extent not previously distributed, (III) in respect of any Unresolved Term Loan Avoidance Action Claims at the Maximum Amount thereof but only until the Term Loan Avoidance Action is dismissed by Final Order or such claims become Resolved Allowed General Unsecured Claims, and (IV) in respect of any Unresolved Other Avoidance Action Claims at the Maximum Amount thereof but only until

such claims become Resolved Allowed General Unsecured Claims or the related other Avoidance Actions are dismissed by Final Order; and

(b) sufficient Avoidance Action Trust Administrative Cash and Supplemental Avoidance Action Trust Cash as the Trust Administrator shall determine, with the approval of the Trust Monitor and subject to the Budget, is necessary (x) to pay the reasonable incurred or anticipated fees and expenses of the Trust (including any taxes imposed on the Trust or in respect of the Avoidance Action Trust Assets) and (y) to satisfy other liabilities incurred or anticipated by the Trust in accordance with the Plan, the Confirmation Order and this Trust Agreement.

5.6. Minimum Distributions. Notwithstanding anything to the contrary contained herein, no Cash payment in an amount less than \$25 shall be made by the Trust Administrator to any holder of an Allowed General Unsecured Claim or Unit under any circumstance; *provided* that the Trust Administrator shall carry the entitlement of such holder of an Allowed General Unsecured Claim or Unit to such amount on its books and records, shall aggregate such amount with any subsequent amount to which such holder shall become entitled and shall make payment of such amount to such holder at such time as the amounts due such holder in the aggregate shall equal \$25 or more; *provided further* that if any such amount shall be owing to a holder of an Allowed General Unsecured Claim or Unit as of the date determined by the Trust Administrator to be the final Distribution Date, such amount shall be disposed of as provided in the final sentence of Section 2.6(c).

5.7. Distributions Not in Compliance with this Article. Subject to Section 5.3(d), in the event that the Trust Administrator determines in good faith that it is necessary or desirable in order to carry out the intent and purposes of the Plan, the Confirmation Order and this Trust Agreement to receive any assets or make any distribution in a manner that is not in technical compliance with this Trust Agreement, the Trust Administrator shall be permitted to receive assets or make, or cause to be made, distributions in such manner, but only with the approval of the Trust Monitor; *provided, however*, that no such distribution shall result in any holder of an Allowed General Unsecured Claim receiving a distribution in excess of the distribution that such holder would have received had such claim been an Initial Allowed General Unsecured Claim or shall discriminate among the holders of Units. Except as aforesaid, no payment or distribution of Avoidance Action Trust Assets shall be made to, or on behalf of, a Trust Beneficiary or any other person except in strict accordance with the terms of this Trust Agreement, the Plan, and the Confirmation Order, unless such payment or distribution shall have been approved by the Bankruptcy Court.

5.8. No Accounting. Except as otherwise provided in the Plan, the Confirmation Order or this Trust Agreement, nothing shall require the Trust Administrator to file any accounting or seek approval of any court with respect to the administration of the Trust or as a condition for making any payment or distribution out of the Avoidance Action Trust Assets.

ARTICLE VA
DISTRIBUTIONS TO DIP LENDERS

If any Other Debtor Residual Accepted Assets shall be transferred to the Trust, the Trust Administrator shall make distributions to the DIP Lenders of Distributable Other Debtor Residual Assets, if any, from time to time (but no less frequently than once each calendar year), pro rata as their interests appear, as the Trust Administrator shall determine with the approval of the Trust Monitor or as the Trust Administrator shall be directed by a majority in interest of the DIP Lenders; provided that distributions need not be made in any calendar year to the extent (A) there are no Distributable Other Debtor Residual Assets held by the Trust or (B) the Trust Administrator, with the approval of the Trust Monitor, determines that it is necessary to retain the Distributable Other Debtor Residual Assets to (i) meet any contingent liabilities of the Trust or maintain the value of the Other Debtor Residual Trust Assets (such as for example, in the event that the Trust Administrator determines that the Distributable Other Debtor Residual Assets are so small in amount as not to justify making a distribution, taking into account the costs that would be incurred in making the distribution, the anticipated total amount of Distributable Other Debtor Residual Assets expected to be available for distribution over time and the timing of the distribution or distributions thereof), or (ii) pay reasonable incurred and/or anticipated expenses of the Trust (including any taxes imposed on the Trust or in respect of the Other Debtor Residual Trust Assets) or to satisfy liabilities incurred and/or anticipated by the Trust in accordance with the Plan, the Confirmation Order and this Trust Agreement.

ARTICLE VI
ADMINISTRATION OF THE TRUST

6.1. Payment of Costs, Expenses and Liabilities (other than in respect of the Other Debtor Residual Accepted Assets).

(a) Subject to the Budget, the Trust Administrator shall use the Avoidance Action Trust Administrative Cash:

(i) to pay reasonable costs and expenses of the Trust that are incurred in connection with the administration thereof (including any taxes imposed on the Trust, actual reasonable fees and out-of-pocket expenses incurred by Trust Professionals retained by the Trust Administrator in connection with the administration of the Avoidance Action Trust Assets and preservation of books and records);

(ii) to satisfy other obligations or other liabilities incurred or assumed by the Trust (or to which the Avoidance Action Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order, or this Trust Agreement, including fees and expenses incurred and in connection with, the prosecution and resolution of the Term Loan Avoidance Action the protection, preservation and distribution of the Avoidance Action Trust Assets; and

(iii) to satisfy any other obligations of the Trust expressly set forth in the Plan, the Confirmation Order or this Trust Agreement to be satisfied out of the Avoidance Action Trust Administrative Cash.

(b) (i) If, at any time, the Trust Administrator determines that the Avoidance Action Trust Administrative Cash is not reasonably likely to be adequate to satisfy the current and projected future taxes, fees, costs and expenses (including, without limitation any Avoidance Action Trust SEC Reporting Costs) of the Trust (other than in respect of the Other Debtor Residual Trust Assets), the Trust Administrator may, with the approval of the Trust Monitor, reserve an amount, or increase the amount previously reserved, of Distributable Trust Assets to satisfy such taxes, fees, costs and expenses (the “Holdback”). If at any time, the Trust Administrator determines that the Holdback is materially greater than the amount of the current and projected future taxes, fees, costs and expenses as aforesaid, the Trust Administrator shall, with the approval of the Trust Monitor, release from the Holdback the amount of such excess.

(i) To the extent necessary to satisfy the taxes, fees, costs and expenses on account of which the Holdback may be reserved, the Trust Administrator may, in consultation with the Trust Monitor, and upon approval by the Bankruptcy Court in accordance with the provisions of Section 6.1(b)(iii), apply all or a portion of the Holdback to the satisfaction of such taxes, fees, costs and expenses.

(ii) The application of the Trust Administrator seeking Bankruptcy Court approval to utilize Distributable Trust Assets shall include the position of the Trust Monitor in respect thereof. The Trust Administrator shall provide at least twenty (20) days notice to the Trust Monitor, the holders of Units and the holders of Disputed General Unsecured Claims prior to a hearing on a motion to use any Distributable Trust Assets.

(c) If, at any time, the Trust Administrator determines that the Avoidance Action Trust Administrative Cash, together with the Holdback (if Distributable Trust Assets are, at such time, available for the purposes of creating a Holdback), is not reasonably likely to be adequate to satisfy the current and projected future taxes, fees, costs and expenses (including, without limitation any Avoidance Action Trust SEC Reporting Costs and the fees and expenses of Trust Professionals) of the Trust (other than in respect of the Other Debtor Residual Trust Assets), the Trust Administrator may utilize the GUC Trust Supplemental Cash, without the need to seek or obtain approval of the Bankruptcy Court, to satisfy such fees and expenses.

(d) (i) If, at any time, the Trust Administrator determines that the Avoidance Action Trust Administrative Cash, together with the Holdback (if Distributable Trust Assets are, at such time, available for the purposes of creating a Holdback) and the GUC Trust Supplemental Cash, if any, is not reasonably likely to be adequate to satisfy the current and projected future fees, costs and expenses (including, without limitation any Avoidance Action Trust SEC Reporting Costs, the fees and expenses of Trust Professionals, and any tax liabilities), the Trust Administrator may, in consultation with the Trust Monitor, and upon approval by the Bankruptcy Court in accordance with the provisions of Section 6.1(d)(ii), sell or grant liens on the Term Loan Avoidance Action or any other property of the Trust (other than the Other Debtor Residual Trust Assets) and apply all or a portion of the proceeds of such sale or grant to the satisfaction of such fees, costs and expenses. Upon any such sale or grant of liens pursuant to this Section 6.1(d), the resulting proceeds shall be designated as Other Supplemental Cash. Any income earned on the Other Supplemental Cash, net of taxes paid thereon, shall be Other Supplemental Cash.

(ii) The application of the Trust Administrator seeking Bankruptcy Court approval to sell or grant liens pursuant to Section 6.1(d)(i) hereof shall include the position of the Trust Monitor in respect thereof. The Trust Administrator shall provide at least twenty (20) days' notice to the Trust Monitor, the holders of Units and the holders of Disputed General Unsecured Claims prior to a hearing on a motion to sell or grant liens pursuant to Section 6.1(d)(i) hereof.

(e) Notwithstanding that as a result of the utilization of Distributable Trust Assets pursuant to Section 6.1(b) the amount of GUC Distributable Trust Assets shall be less than the assets required to satisfy Claims in the amount of the Current Total Amount then outstanding, the Trust Administrator shall continue to satisfy Disputed General Unsecured Claims, any Unresolved Term Loan Avoidance Action Claims and any Unresolved Other Avoidance Action Claims that become Allowed General Unsecured Claims in the order they are resolved as otherwise provided in this Trust Agreement.

6.2. Payment of Costs, Expenses and Liabilities in respect of the Other Debtor Residual Accepted Assets.

(a) The Trust Administrator shall not be required to undertake any activity in respect of the Other Debtor Residual Accepted Assets, including for purposes of realizing upon such assets in order to make distributions of Distributable Other Debtor Residual Trust Assets to the DIP Lenders, unless there shall be available to the Trust Administrator Other Debtor Residual Trust Administrative Cash sufficient for such purposes.

(b) If sufficient Other Debtor Residual Trust Administrative Cash shall be available to the Trust Administrator, then the Trust Administrator shall, as approved by the Trust Monitor or as directed by a majority in interest of the DIP Lenders:

(i) pay reasonable costs and expenses of the Trust that are incurred in connection with the Other Debtor Residual Accepted Assets (including any taxes imposed on the Trust, actual reasonable fees and out-of-pocket expenses incurred by Trust Professionals retained by the Trust Administrator in connection with the administration of the Other Debtor Residual Accepted Assets and preservation of books and records);

(ii) satisfy other obligations or other liabilities incurred or assumed by the Trust in respect of the Other Debtor Residual Accepted Assets (or to which the Other Debtor Residual Accepted Assets are otherwise subject) in accordance with the Plan, the Confirmation Order, or this Trust Agreement, including fees and expenses incurred and in connection with, the prosecution and resolution of any action to realize upon the Other Debtor Residual Accepted Assets and the protection, preservation and distribution of the Other Debtor Residual Accepted Assets; and

(iii) satisfy any other obligations of the Trust expressly set forth in the Plan, the Confirmation Order or this Trust Agreement to be satisfied out of the Other Debtor Residual Trust Administrative Cash.

6.3. Budget.

(a) The Trust Administrator shall prepare and submit to the Trust Monitor and the DIP Lenders for approval a reasonably detailed annual plan and budget (the “Budget”) at least thirty (30) days prior to the commencement of each calendar year; *provided, however*, that the first such Budget shall be agreed to as of the Avoidance Action Trust Transfer Date. Such annual plan and Budget shall set forth (on a quarterly basis) in reasonable detail: (A) the Trust Administrator’s anticipated actions to administer the Avoidance Action Trust Assets; and (B) the anticipated fees and expenses, including professional fees, associated with the administration of the Trust, a separate amount representing the anticipated fees and expenses of the Trust Monitor and detail as to how the Trust will budget and spend the Avoidance Action Trust Administrative Cash. Such Budget shall be updated and submitted to the Trust Monitor and the DIP Lenders for review on a quarterly basis, and each such quarterly update shall reflect the variances (with explanations) between (x) the Budget, (y) any updated Budget, and (z) the actual results for the same period. For the avoidance of doubt, the DIP Lenders may object in the Bankruptcy Court with respect to any quarterly update that materially changes the Budget and the Bankruptcy Court shall resolve such dispute. All actions by the Trust Administrator shall be consistent with the Budget (as updated). The Trust Administrator may obtain any required approval of the Budget on reasonable negative notice (which shall be not less than 15 days after receipt of the Budget) and approval of the Budget shall not be unreasonably withheld. In the event of any dispute concerning the Budget (or the taking of actions consistent with the Budget), the Trust Administrator or the Trust Monitor may petition the Bankruptcy Court to resolve such dispute.

(b) The Trust Administrator, with the approval of the Trust Monitor, and the DIP Lenders may agree on a budget for activities in respect of the Other Debtor Residual Accepted Assets.

(c) Notwithstanding any other provision of this Trust Agreement, the approval of the DIP Lenders shall not be required for any use of the Avoidance Action Trust SEC Reporting Cash, the GUC Trust Supplemental Cash or the Other Supplemental Cash.

6.4. [Intentionally omitted.]

6.5. Compliance with Laws. Any and all distributions of Avoidance Action Trust Assets shall be in compliance with applicable laws, including applicable federal and state tax and securities laws.

6.6. Fiscal Year. Except for the first and last years of the Trust, the fiscal year of the Trust shall be the calendar year. For the first and last years of the Trust, the fiscal year of the Trust shall be such portion of the calendar year that the Trust is in existence.

6.7. Books and Records.

(a) The Trust Administrator shall maintain and preserve the Debtors’ books, records and files that shall have been delivered to or created by the Trust Administrator.

(b) The Trust Administrator shall maintain books and records relating to the assets, liabilities, income and expense of the Trust, all distributions made by the Trust and the payment of fees and expenses of, and satisfaction of claims against or assumed by, the Trust

and the Trust Administrator, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof in accordance with the provisions of this Trust Agreement and otherwise to comply with applicable provisions of law, including tax law.

(c) The Trust Administrator shall maintain, or cause to be maintained, a register of holders of Units, from time to time outstanding, to the extent any Units are issued hereunder, in customary form.

6.8. Cash Payments. All distributions of Distributable Trust Cash required to be made by the Trust Administrator may be made in Cash denominated in U.S. dollars by checks drawn on a United States domestic bank selected by the Trust Administrator or, at the option of the Trust Administrator, by wire transfer from a United States domestic bank selected by the Trust Administrator or as otherwise required or provided in applicable agreements; *provided, however*, that cash payments to foreign persons may be made, at the option of the Trust Administrator, in such funds as and by such means as are necessary or customary in a particular foreign jurisdiction.

6.9. Insurance. The Trust shall maintain customary insurance coverage for the protection of the Trust Administrator Parties and the Trust Monitor Parties and any such other persons serving as administrators and overseers of the Trust, on and after the Avoidance Action Trust Transfer Date, in all cases in accordance with the Budget. The Trust Administrator may also obtain such insurance coverage as it deems necessary and appropriate with respect to real and personal property which may become Avoidance Action Trust Assets, if any, in accordance with such Budget. To the extent that there is any incremental cost for customary insurance coverage covering the activities of the Trust Administrator Parties and the Trust Monitor Parties in respect of the Other Debtor Residual Accepted Assets, the Trust Administrator and the Trust Monitor shall not be required to undertake any such activities unless there is available sufficient Other Debtor Residual Trust Administrative Cash to fund such incremental cost.

ARTICLE VII TAX MATTERS

7.1. Tax Treatment.

(a) For all U.S. federal and applicable state and local income tax purposes, all parties (including the Debtors, the Trust Administrator, the holders of the DIP Credit Agreement Claims, and the holders of Allowed General Unsecured Claims) shall treat the Trust and the transfer of the Avoidance Action Trust Assets and the Other Debtor Residual Assets to the Trust in a manner consistent with the remainder of this Section 7.1.

(b) If no Other Debtor Residual Assets are transferred to the Trust upon the dissolution of MLC and the DIP Lender Distributable Trust Assets have not been determined (either as a percentage or as a fixed amount of Distributable Trust Assets or on some other basis) on or prior to the Avoidance Action Trust Transfer Date, then (subject to clause (c) below) the Trust Administrator shall treat the Trust as (A) a “disputed ownership fund”

governed by Treasury Regulation section 1.468B-9 (including, if required, timely so electing), (B) if permitted under applicable law and at the election of the Trust Administrator, as a "complex trust," or (C) as otherwise permitted pursuant to a private letter ruling from the IRS.

(c) If Other Debtor Residual Assets are transferred to the Trust upon the dissolution of MLC or the DIP Lender Distributable Trust Assets have been determined (either as a percentage or as a fixed amount of Distributable Trust Assets or on some other basis) on or prior to the Avoidance Action Trust Transfer Date, or otherwise upon determination of the DIP Lender Distributable Trust Assets (either as a percentage or as a fixed amount of Distributable Trust Assets or on some other basis) after the Avoidance Action Trust Transfer Date, the Trust (other than the Avoidance Action Trust Claims Reserve) shall be treated as a liquidating trust that is treated as a grantor trust and the Avoidance Action Trust Assets (upon the determination of the DIP Lender Distributable Trust Assets) and Other Debtor Residual Trust Assets (upon the transfer of Other Debtor Residual Assets to the Trust) shall be treated as (i) being transferred directly to the Trust Beneficiaries; provided, however, that to the extent Avoidance Action Trust Assets are allocable to Disputed General Unsecured Claims, Unresolved Term Loan Avoidance Action Claims or Unresolved Other Avoidance Action Claims, such Avoidance Action Trust Assets shall be treated as being transferred to the Avoidance Action Trust Claims Reserve, followed by (ii) the transfer by such Trust Beneficiaries of the Avoidance Action Trust Assets (other than the Avoidance Action Trust Assets allocable to the Avoidance Action Trust Claims Reserve) and the Other Debtor Residual Trust Assets, as applicable, to the Trust in exchange for beneficial interests in the Trust. Accordingly, Trust Beneficiaries receiving beneficial interests in the Trust shall be treated as the grantors and owners of their respective share of the Avoidance Action Trust Assets (other than any Avoidance Action Trust Assets allocable to the Avoidance Action Trust Claims Reserve) and Other Debtor Residual Trust Assets, as applicable.

(d) Any determination made pursuant to this Section 7.1 shall be conclusive and binding on all parties (including the Debtors, the Trust Administrator, the holders of the DIP Credit Agreement Claims, and the holders of Allowed General Unsecured Claims) for U.S. federal, and (to the extent permitted by applicable law) state and local, income tax purposes. Accordingly, to the extent permitted by applicable law, all parties shall report consistently with the U.S. federal income tax treatment of the Trust by the Trust Administrator for state and local income tax purposes.

7.2. Valuation of Assets. As soon as practicable after the Avoidance Action Trust Transfer Date, the Trust Administrator shall make a good-faith valuation of the Avoidance Action Trust Assets and Other Debtor Residual Trust Assets, and such valuation shall be made available from time to time, to the extent relevant, and shall be used consistently by all parties (including the Debtors, the Trust Administrator, the holders of the DIP Credit Agreement Claims, and the holders of Allowed General Unsecured Claims) for all U.S. federal and applicable state and local income tax purposes.

7.3. Payment of Taxes. The Trust Administrator shall be responsible for payment, out of the Avoidance Action Trust Assets, of any taxes imposed on the Trust (other than in respect of the Other Debtor Residual Assets) or the Avoidance Action Trust Assets, including the Avoidance Action Trust Claims Reserve. The Trust Administrator

shall be responsible for payment, out of the Other Debtor Residual Assets of any taxes imposed on the Trust in respect of the Other Debtor Residual Assets or on the Other Debtor Residual Assets. In the event, and to the extent, any Cash retained on account of Disputed General Unsecured Claims, Unresolved Term Loan Avoidance Action Claims or Unresolved Other Avoidance Action Claims in the Avoidance Action Trust Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed General Unsecured Claims, Unresolved Term Loan Avoidance Action Claims or Unresolved Other Avoidance Action Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed General Unsecured Claims, Unresolved Term Loan Avoidance Action Claims or Unresolved Other Avoidance Action Claims, or (ii) to the extent such Disputed General Unsecured Claims, Unresolved Term Loan Avoidance Action Claims or Unresolved Other Avoidance Action Claims subsequently have been resolved, deducted from any amounts otherwise distributable by the Trust Administrator as a result of the resolution of such Disputed General Unsecured Claims, Unresolved Term Loan Avoidance Action Claims or Unresolved Other Avoidance Action Claims.

7.4. Tax Reporting.

(a) The Trust Administrator shall file (or cause to be filed) Tax Returns for the Trust treating the Trust (except the Avoidance Action Trust Claims Reserve or as otherwise provided in Section 7.1(b) above) as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the applicable provisions of this Section 7.4. The Trust Administrator also shall annually send to each Trust Beneficiary a separate statement setting forth such Trust Beneficiary's share of items of income, gain, loss, deduction, or credit of the Trust (including, for the avoidance of doubt, earnings on the Avoidance Action Trust Administrative Cash, the Avoidance Action Trust SEC Reporting Cash, the GUC Trust Supplemental Cash and the Other Supplemental Cash) and shall instruct all Trust Beneficiaries to report such items on their respective U.S. federal income Tax Returns or to forward the appropriate information to their respective beneficial holders with instructions to report such items on their U.S. federal income Tax Returns. The Trust Administrator also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Trust that are required by any governmental unit.

(b) Allocations of the Trust's taxable income among the 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 herein) if, immediately prior to such deemed distribution, the Trust had distributed all of its other assets (valued at their tax book value and other than assets attributable to the Avoidance Action Trust Claims Reserve) to the Trust Beneficiaries, in each case up to the tax book value of the assets treated as contributed by such Trust Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Trust. Similarly, taxable loss of the 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 Avoidance Action Trust Assets and Other Debtor Residual Trust Assets. The tax book value of the Avoidance Action Trust Assets and Other Debtor Residual Trust Assets for this purpose shall equal their fair market value on the Avoidance Action Trust Transfer Date

and Other Debtor Residual Trust Assets Transfer Date, as applicable, adjusted in accordance with tax accounting principles prescribed by the Tax Code, applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

(c) The Trust Administrator shall (x) treat the Avoidance Action Trust Claims Reserve for U.S. federal income tax purposes as either (i) a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9 by timely so electing or (ii) a “complex trust,” provided, however, that if the Trust is treated as a “disputed ownership fund” or as a “complex trust” pursuant to Section 7.1(b) above, then the Avoidance Action Trust Claims Reserve shall be treated in the same manner, and (y) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. Any determination made pursuant to this Section 7.4 shall be conclusive and binding on all parties (including the Debtors, the Trust Administrator, the holders of the DIP Credit Agreement Claims, and the holders of Allowed General Unsecured Claims) for U.S. federal, state, and local income tax purposes.

7.5. Tax Withholdings. The Trust Administrator shall withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Tax Code, Treasury Regulations or other applicable requirements, including any provision of any foreign, state or local tax law, with respect to any payment or distribution to the Trust Beneficiaries. All such amounts withheld, and paid to the appropriate taxing authority, shall be treated as amounts distributed to such Trust Beneficiaries for all purposes of this Trust Agreement. The Trust Administrator shall be authorized to collect such tax information from the Trust Beneficiaries (including social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan, the Confirmation Order and this Trust Agreement, or to comply with any applicable withholding or reporting requirement. The Trust Administrator may refuse to make a distribution to any Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is furnished; *provided, however*, that upon a Trust Beneficiary furnishing such information, the Trust Administrator shall make such distribution to which such Trust Beneficiary is entitled, without interest.

7.6. Expedited Determination of Taxes. The Trust Administrator may request an expedited determination of taxes of the Trust, including the Avoidance Action Trust Claims Reserve, under Section 505(b) of the Bankruptcy Code for any or all Tax Returns filed for, or on behalf of, the Trust for any or all taxable periods (or part thereof) through the dissolution of the Trust.

7.7. [Intentionally omitted.]

7.8. Delivery of Statement of Transfers. If the Trust Administrator elects to treat (i) the Trust, pursuant to and to the extent provided in Section 7.1 above and/or (ii) the Avoidance Action Trust Claims Reserve as a disputed ownership fund within the meaning of Treasury Regulation section 1.468B-9, then following the Avoidance Action Trust Transfer Date (but in no event later than February 15th of the calendar year following the Avoidance Action Trust Transfer Date), MLC shall provide a “§ 1.468B-9

Statement” to the Trust Administrator in accordance with Treasury Regulation section 1.468B-9(g).

7.9. Allocation of Distributions Between Principal and Interest. All deemed distributions (including deemed transfers pursuant to Section 7.1(b)(i)) in connection with the allowance of any Allowed General Unsecured Claim shall be allocated first to the principal amount of such Allowed General Unsecured Claim, as determined for federal income tax purposes, and thereafter, to the remaining portion of such Allowed General Unsecured Claim, if any.

ARTICLE VIII

POWERS OF AND LIMITATIONS ON THE TRUST ADMINISTRATOR

8.1. Powers of the Trust Administrator.

(I) Other Than in Respect of the Other Debtor Residual Accepted Assets

(a) Pursuant to the terms of the Plan and the Confirmation Order, the Trust Administrator shall have various powers, duties and responsibilities concerning the prosecution of and resolution of the Term Loan Avoidance Action, maximizing the property of the Trust, the disposition of the Avoidance Action Trust Assets and the administration of the Trust. In addition, the Trust Administrator shall coordinate with the GUC Trust Administrator to maximize efficiency in distributions to general unsecured creditors in any situation where such coordination would be beneficial.

(b) The Trust Administrator shall have only such rights, powers and privileges expressly set forth in the Plan, the Confirmation Order or this Trust Agreement and as otherwise provided by applicable law. Subject to the Plan, the Confirmation Order and other provisions herein, including the provisions relating to approvals of the Trust Monitor, the Trust Administrator shall be expressly authorized to undertake the following actions, in the Trust Administrator’s good faith judgment, in the best interests of the Trust Beneficiaries and in furtherance of the purpose of the Trust:

- (i) hold and manage the Avoidance Action Trust Assets;
- (ii) hold legal title to any and all rights of the Trust Beneficiaries in, to or arising from the Avoidance Action Trust Assets, for the benefit of the Trust Beneficiaries that are entitled to distributions therefrom under the Plan, whether, in the case of GUC Beneficiaries, their General Unsecured Claims are Allowed on or after the Avoidance Action Trust Transfer Date;
- (iii) prosecute and, if appropriate, sell, grant liens upon, settle and resolve, abandon and/or dismiss the Term Loan Avoidance Action;
- (iv) execute all agreements, instruments and other documents (including, without limitation, any loan agreements or sale agreements for the purposes of funding the fees and expenses of the Trust), and effect all other actions necessary or appropriate to dispose of the Avoidance Action Trust Assets;

(v) monitor and enforce the implementation of the Plan insofar as relating to this Trust Agreement, the Avoidance Action Trust Assets or the Trust;

(vi) calculate and implement distributions of the GUC Distributable Trust Assets obtained through the exercise of its power and authority as contemplated by the Plan, the Confirmation Order and this Trust Agreement and in accordance with the interests of the holders of Allowed General Unsecured Claims;

(vii) retain, pay, oversee and direct the services of, and terminate Trust Professionals in accordance with Section 8.3 hereof to carry out its duties and obligations hereunder, in all cases in accordance with the Budget;

(viii) pay the reasonable fees and expenses of the Trust Administrator and Trust Monitor, in all cases in accordance with the Budget;

(ix) incur and pay all reasonable expenses, satisfy ordinary course liabilities and make all other payments reasonable and necessary to administer and dispose of the Avoidance Action Trust Assets, in all cases in accordance with the Budget;

(x) invest monies received by the Trust, the Trust Administrator or otherwise held by the Trust or the Trust Administrator in accordance with Section 8.4 hereof;

(xi) protect and enforce the rights to the Avoidance Action Trust Assets vested in the Trust Administrator by this Trust Agreement by any method deemed reasonably appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(xii) vote any claim or interest held by the Trust in a case under the Bankruptcy Code and receive any distribution therefrom for the benefit of the Trust;

(xiii) make all necessary filings in accordance with any applicable law, statute or regulation;

(xiv) purchase customary insurance coverage in accordance with Section 6.9 hereof;

(xv) assert and/or waive any applicable privileges (legal or otherwise) on behalf of the Trust, or with respect to the Avoidance Action Trust Assets held by the Debtors at any time (prepetition or postpetition);

(xvi) maintain the books and records of the Trust;

(xvii) open, maintain and close any bank, securities or other accounts that are necessary and appropriate to manage the Avoidance Action Trust Assets, including but not limited to the accounts listed on Exhibit A hereto;

(xviii) receive from the Debtors and administer the Avoidance Action Trust SEC Reporting Cash in accordance with Section 2.3(e) hereof and file such reports as may be required pursuant to the applicable rules, regulations and interpretations of the SEC;

(xix) receive from the GUC Trust and administer and utilize the GUC Trust Supplemental Cash in accordance with Section 2.3(f) hereof; and

(xx) perform such functions and take such actions as are provided for or permitted in the Plan, the Confirmation Order, this Trust Agreement or any other agreement executed pursuant to the Plan and take any other actions as it may deem to be reasonably necessary or appropriate to realize, preserve and dispose of the Avoidance Action Trust Assets.

(c) [Intentionally omitted.]

(d) In all circumstances, the Trust Administrator shall act in the best interests of all Trust Beneficiaries and in furtherance of the purpose of the Trust, and in a manner not inconsistent with the best interests of the Trust Beneficiaries and consistent with the Budget. The Trust Administrator shall not take any action inconsistent with the purpose of the Trust, or take (or fail to take) any action that would cause the Trust (other than the Avoidance Action Trust Claims Reserve) to fail to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) that is treated as a grantor trust.

(e) Notwithstanding any provision herein to the contrary, the Trust Administrator shall not serve on the board of directors, management committee or any similar governing body of any non-Debtor subsidiary of MLC, where the charter, limited liability company agreement, partnership agreement or other similar constituent document of such subsidiary does not provide for a liquidating purpose for such subsidiary. Except as otherwise provided in this Trust Agreement, the Trust Administrator will not be required to obtain the order or approval of the Bankruptcy Court, or any other court of competent jurisdiction in, or account to the Bankruptcy Court or any other court of competent jurisdiction for, the exercise of any right, power or privilege conferred hereunder. Notwithstanding the foregoing, where the Trust Administrator determines, in its reasonable discretion, that it is necessary, appropriate or desirable, the Trust Administrator will have the right to submit to the Bankruptcy Court or any other court of competent jurisdiction any question or questions regarding any specific action proposed to be taken by the Trust Administrator with respect to this Trust Agreement, the Trust, or the Avoidance Action Trust Assets, including the administration and distribution of the Avoidance Action Trust Assets and the termination of the Trust. Pursuant to the Plan, the Bankruptcy Court has retained jurisdiction for such purposes and may approve or disapprove any such proposed action upon motion by the Trust Administrator.

(II) In Respect of the Other Debtor Residual Accepted Assets

The Trust Administrator shall have the rights, powers and privileges to act in respect of the Other Debtor Residual Accepted Assets, if any, in the manner set forth in Section 8.1(I), *mutatis mutandis*. In all such circumstances, the Trust Administrator shall act in the best interests of DIP Lenders and in furtherance of the purpose of the Trust, and in a manner not

inconsistent with the best interests of the DIP Lenders. For the avoidance of doubt, the Trust Administrator shall not be obligated to undertake any activities in respect of the Other Debtor Residual Trust Assets unless there shall be available sufficient Other Debtor Residual Trust Administrative Cash to pay in full its fees, costs and expenses in respect thereof.

8.2. Limitations on the Trust Administrator. The Trust Administrator shall not be authorized to engage, in its capacity as Trust Administrator, in any trade or business with respect to the Avoidance Action Trust Assets or to take (or fail to take) any action that would cause the Trust (other than the Avoidance Action Trust Claims Reserve) to fail to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) that is treated as a grantor trust. The Trust Administrator shall take such actions consistent with the prompt orderly disposition of the Avoidance Action Trust Assets and the Other Debtor Residual Accepted Assets, if any, as required by applicable law and consistent with the treatment of the Trust (other than the Avoidance Action Trust Claims Reserve) as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) that is treated as a grantor trust, to the extent such actions are permitted by this Trust Agreement. The Trust Administrator shall, in its capacity as Trust Administrator, be restricted to (x) the liquidation of the Trust on behalf, and for the benefit, of the Trust Beneficiaries and the distribution and application of Avoidance Action Trust Assets for the purposes set forth in, and the conservation and protection of the Avoidance Action Trust Assets and the administration thereof, and (y) the liquidation of the Trust on behalf, and for the benefit, of the DIP Lenders and the distribution and application of Other Debtor Residual Trust Assets for the purposes set forth in, and the conservation and protection of the Other Debtor Residual Trust Assets and the administration thereof, in each case in accordance with, the provisions of the Plan, the Confirmation Order and this Trust Agreement.

8.3. Agents and Professionals.

(a) The Trust Administrator on behalf of the Trust may, but shall not be required to, from time to time enter into contracts with, consult with and retain Trust Professionals, on such terms as the Trust Administrator deems appropriate in accordance with the terms hereof and (other than in respect of the Other Debtor Residual Accepted Assets) in accordance with the Budget. None of the professionals that represented parties-in-interest in the Chapter 11 Cases shall be precluded from being engaged by the Trust Administrator solely on account of their service as a professional for such parties-in-interest prior to the Avoidance Action Trust Transfer Date or the Other Debtor Residual Assets Transfer Date, as the case may be.

(b) After the Avoidance Action Trust Transfer Date, Trust Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Trust Administrator and the Trust Monitor, including in such invoices a description of the work performed, the individuals who performed such work, and, if billing on an hourly basis, the hourly rate of such person, plus an itemized statement of expenses. The Trust Administrator shall timely pay all such invoices that are not disputed by the Trust Administrator and as to which the Trust Monitor does not object within fifteen (15) days after their receipt thereof, and shall not require approval of the Bankruptcy Court in order to do so. In the event of any

dispute concerning the entitlement to, or the reasonableness of any compensation and/or expenses of any Trust Professionals, either the Trust Administrator or the affected Trust Professional may petition the Bankruptcy Court to resolve the dispute.

(c) Except as permitted by Section 6.1(b), (c), and (d), and Section 2.3(e) and (f), all payments to Trust Professionals (other than in respect of Other Debtor Residual Trust Assets) shall be paid out of the Avoidance Action Trust Administrative Cash. Payments to Trust Professionals for activities in respect of the Other Debtor Residual Trust Assets shall be paid out of the Other Debtor Residual Trust Administrative Cash.

8.4. Investment of Trust Cash.

(a) The Trust Administrator shall establish segregated accounts for the Trust Cash as follows: (i) Distributable Trust Cash which shall be held in trust for the benefit of the Trust Beneficiaries; (ii) Distributable Other Debtor Residual Cash, which shall be held in trust for the benefit of the DIP Lenders and on which the DIP Lenders shall have a lien; (iii) Avoidance Action Trust Administrative Cash and Other Debtor Residual Trust Administrative Cash which shall be used to pay the administrative expenses of the Trust, on which the DIP Lenders shall have a lien; (iv) Avoidance Action Trust SEC Reporting Cash which shall be used to satisfy Avoidance Action Trust SEC Reporting Costs in accordance with Section 2.3(e) hereof; (v) GUC Trust Supplemental Cash which shall be used to satisfy current and projected fees and expenses of the Trust (including for the payment of Trust Professionals and any tax liabilities) in accordance with Section 2.3(f) hereof; and (vi) Other Supplemental Cash, which shall be used to satisfy the current and projected future fees, costs and expenses (including, without limitation any Avoidance Action Trust SEC Reporting Costs, the fees and expenses of Trust Professionals, and any tax liabilities) in accordance with Section 6.1(d) hereof.

(b) The Trust Administrator shall invest the Trust Cash (including any earnings thereon or proceeds thereof) in the manner set forth in this Section 8.4, but shall otherwise be under no liability for interest or income on any monies received by the Trust hereunder and held for distribution or payment to the Trust Beneficiaries, except as such interest shall actually be received. Investment of any Trust Cash shall be administered in accordance with the general duties and obligations hereunder. The right and power of the Trust Administrator to invest the Trust Cash and the proceeds thereof, or any income earned by the Trust, shall be limited to investing such Trust Cash (pending distribution or disbursement in accordance with the Plan or this Trust Agreement) in Permissible Investments; *provided, however*, that such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

(c) For the avoidance of doubt, the Trust is not, and will not hold itself out as, an "investment company" as such term is understood under the Investment Company Act of 1940, and is prohibited from investing, reinvesting or trading in securities (other than making any Permissible Investments as contemplated by the Plan, the Confirmation Order and this

Trust Agreement) or conducting any trade or business other than implementing the Plan and distributing Distributable Trust Assets under the Plan and this Trust Agreement.

8.5. Communication with the GUC Trust Administrator. The Trust Administrator shall communicate with the GUC Trust Administrator to obtain such information regarding, as of a given date, (A) the holders and amounts of General Unsecured Claims, Disputed General Unsecured Claims, Unresolved Term Loan Avoidance Action Claims, Unresolved Other Avoidance Action Claims and Resolved Allowed General Unsecured Claims, (B) the respective Maximum Amounts of all Disputed General Unsecured Claims, Unresolved Term Loan Avoidance Action Claims and Unresolved Other Avoidance Action Claims, (C) the Current Total Amount, (D) the Aggregate Maximum Amount, (E) any components of the foregoing and (E) any other information within the custody or control of the GUC Trust Administrator which shall be necessary or desirable in order for the Trust Administrator to timely make any calculation or determination hereunder to identify and make distributions to the GUC Beneficiaries and to maintain any books and records required to be maintained, or necessary or desirable for the Trust Administrator or the Trust Monitor to fulfill their respective functions, hereunder; provided, however, that the provision of such information shall be under appropriate arrangements of confidentiality to the extent such information has at the time not been publicly disclosed.

8.6. Termination. The duties, responsibilities and powers of the Trust Administrator will terminate when the Trust is dissolved and terminated pursuant to Article IV hereof and the Trust Administrator has performed all of its obligations under Section 4.3, by an order of the Bankruptcy Court or by entry of a final decree closing the Debtors' cases before the Bankruptcy Court; *provided, however,* that Sections 9.4, 9.5 and 9.6 hereof shall survive such termination, dissolution and entry.

ARTICLE IX

ADDITIONAL MATTERS CONCERNING THE TRUST ADMINISTRATOR

9.1. Reliance by Trust Administrator. Except as otherwise provided in the Plan, the Confirmation Order or this Trust Agreement, the Trust Administrator may rely and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Trust Administrator to be genuine and to have been signed or presented by the proper party or parties.

9.2. Liability to Third Persons. To the fullest extent permitted by applicable law, the Trust Administrator Parties shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person (including, in the case of the Trust Administrator, to any Trust Professionals retained by the Trust Administrator in accordance with this Trust Agreement) in connection with the Avoidance Action Trust Assets, the Other Debtor Residual Trust Assets or the affairs of the Trust and shall not be liable with respect to any action taken or omitted to be taken in good faith, except for actions and omissions determined by a Final Order of the Bankruptcy Court to be due to their respective willful misconduct (including, but not limited to, conduct that results in a

personal profit at the expense of the Trust), gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), or *ultra vires* acts, and all such persons shall look solely to the Avoidance Action Trust Assets (other than in respect of the Other Debtor Residual Accepted Assets and activities related thereto) or the Other Debtor Residual Trust Assets (in respect of the Other Debtor Residual Accepted Assets and activities related thereto) for satisfaction of claims of any nature arising in connection with affairs of the Trust.

9.3. Non-liability of Trust Administrator for Acts of Others. Except as provided herein, nothing contained in the Plan, the Confirmation Order or this Trust Agreement shall be deemed to be an assumption by the Trust Administrator of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by the Trust Administrator to assume or accept any such liability, obligation or duty. Any successor Trust Administrator may accept and rely upon any accounting made by or on behalf of any predecessor Trust Administrator hereunder, and any statement or representation made as to the assets comprising the Avoidance Action Trust Assets or the Other Debtor Residual Trust Assets, or as to any other fact bearing upon the prior administration of the Trust, so long as it has a good faith basis to do so. The Trust Administrator shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. Neither the Trust Administrator nor any successor Trust Administrator shall be liable for any act or omission of any predecessor Trust Administrator, nor have a duty to enforce any claims against any predecessor Trust Administrator on account of any such act or omission, unless directed in good faith to do so by the Trust Monitor.

9.4. Exculpation. As of the earlier of the Avoidance Action Trust Transfer Date and the Other Debtor Residual Assets Transfer Date, to the fullest extent permitted by applicable law, the Trust Administrator Parties shall be and hereby are exculpated by all Persons, including holders of DIP Credit Agreement Claims, General Unsecured Claims and Units and other parties-in-interest, from any and all claims, causes of action and other assertions of liability arising out of the discharge of their respective powers and duties conferred by the Plan, the Confirmation Order, this Trust Agreement or any Order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law or otherwise, except for actions or omissions to act that are determined by Final Order of the Bankruptcy Court to have arisen out of each such Trust Administrator Party's own respective willful misconduct (including, but not limited to, conduct that results in a personal profit at the expense of the Trust), gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), or *ultra vires* acts. No holder of a DIP Credit Agreement Claim, General Unsecured Claim or other party-in-interest will have or be permitted to pursue any claim or cause of action against the Trust Administrator Parties or the Trust, for making payments and distributions in accordance with the Plan, the Confirmation Order or the this Trust Agreement or for implementing the provisions thereof. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court and, in the case of action taken in respect of the Other Debtor Residual

Accepted Assets, with the approval or at the direction of the DIP Lenders will conclusively be deemed not to constitute willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty, or *ultra vires* acts; provided, however, that notwithstanding any provision herein to the contrary, the Trust Administrator shall not be obligated to comply with a direction of the Trust Monitor, whether or not express, which would result in a change to the distribution provisions of the Plan, the Confirmation Order or this Trust Agreement.

9.5. Limitation of Liability. In no event shall the Trust Administrator Parties be liable for punitive, exemplary, consequential, special or other damages for a breach of, or otherwise in connection with, this Trust Agreement under any circumstances.

9.6. Indemnity.

(a) To the fullest extent permitted by applicable law, the Trust Administrator Parties shall be indemnified by the Trust from the Avoidance Action Trust Assets (other than in respect of the Other Debtor Residual Accepted Assets and activities related thereto) or the Other Debtor Residual Trust Assets (in respect of the Other Debtor Residual Accepted Assets and activities related thereto) for any losses, claims, damages, liabilities and expenses occurring after the earlier of the Avoidance Action Trust Transfer Date and the Other Debtor Residual Assets Transfer Date, including reasonable attorneys' fees, disbursements and related expenses which the Trust Administrator Parties may incur or to which the Trust Administrator Parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against one or more of the Trust Administrator Parties on account of the acts or omissions in their capacity as, or on behalf of, the Trust Administrator; provided, however, that the Trust shall not be liable to indemnify any Trust Administrator Party for any act or omission arising out of such Trust Administrator Party's respective actions that are determined by a Final Order of the Bankruptcy Court to be willful misconduct (including, but not limited to, conduct that results in a personal profit at the expense of the Trust), gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), or *ultra vires* acts. Notwithstanding any provision herein to the contrary, the Trust Administrator Parties shall be entitled to obtain advances from the Trust to cover their reasonable expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Trust Administrator Party in its capacity as such; provided, however, that the Trust Administrator Parties receiving such advances shall repay the amounts so advanced to the Trust immediately upon the entry of a final, non-appealable judgment or order finding that such Trust Administrator Parties were not entitled to any indemnity under the provisions of this Section 9.6. Any amounts payable to any Trust Administrator Party pursuant to this Section 9.6 (other than in respect of the Other Debtor Residual Accepted Assets and activities related thereto) shall be satisfied as follows: (i) first from the Avoidance Action Trust Administrative Cash, (ii) second from the Distributable Trust Cash, if any; provided, however, that the use of Distributable Trust Cash as contemplated in clause (ii) of the foregoing shall be subject to the prior approval by the Bankruptcy Court, as provided in Section 6.1(b); (iii) third from the GUC Trust Supplemental Cash, if any; and (iv) fourth from the Other Supplemental Cash, if any. Any amounts payable to any Trust Administrator Party pursuant to this Section

9.6 in respect of the Other Debtor Residual Accepted Assets and activities related thereto shall be satisfied as follows: (i) first from the Other Debtor Residual Trust Administrative Cash, and (ii) second from the Distributable Other Debtor Residual Trust Cash, if any.

(b) Anything to the contrary in this Trust Agreement or in any other agreement notwithstanding, to the extent that the Avoidance Action Trust Administrative Cash, Distributable Trust Cash, GUC Trust Supplemental Cash or Other Supplemental Cash, or the Other Debtor Residual Trust Administrative Cash or Distributable Other Debtor Residual Trust Cash, as the case may be, shall be insufficient to fully indemnify the Trust Administrator Parties or to provide advances to the Trust Administrator Parties in accordance with Section 9.6(a), the Trust Administrator Parties shall be indemnified and shall be entitled to obtain advances, first from the Other GUC Trust Administrative Cash (as defined in the GUC Trust Agreement), and second from the GUC Trust Distributable Assets (as defined in the GUC Trust Agreement), to the same extent as the GUC Trust Administrator Parties under Section 9.6 of the GUC Trust Agreement or any successor provision thereunder, as provided in Section 9.6 of the GUC Trust Agreement in effect on the date hereof.

(c) The foregoing indemnities in respect of any Trust Administrator Party shall survive the termination of such Trust Administrator Party from the capacity for which they are indemnified.

9.7. Compensation and Expenses.

(a) The Trust Administrator shall receive fair and reasonable compensation for its services (other than in respect of the Other Debtor Residual Accepted Assets and activities related thereto), to be paid out of the Avoidance Action Trust Administrative Cash in accordance with the approved Budget (or from the Avoidance Action Trust SEC Reporting Cash in accordance with Section 2.3(e) hereof, the GUC Trust Supplemental Cash in accordance with Section 2.3(f) hereof, or the Other Supplemental Cash in accordance with Section 6.1(d) hereof). The Trust Administrator shall be entitled, without the need for approval of the Bankruptcy Court, to reimburse itself on a monthly basis (i) from the Avoidance Action Trust Administrative Cash, the GUC Trust Supplemental Cash or the Other Supplemental Cash, as applicable, for such compensation and all reasonable out-of-pocket expenses actually incurred in the performance of duties in accordance with this Trust Agreement and the Budget and (ii) from the Avoidance Action Trust SEC Reporting Cash for such compensation and all reasonable out-of-pocket expenses actually incurred in the performance of duties in accordance with this Trust Agreement and with the approval of the Trust Monitor.

(b) The Trust Administrator shall receive compensation for its services in respect of the Other Debtor Residual Accepted Assets and activities related thereto, to be paid out of the Other Debtor Residual Trust Administrative Cash, as the Trust Administrator and a majority in interest of the DIP lenders shall agree; provided that the Trust Administrator shall not be obligated to undertake any activities in respect of the Other Debtor Residual Accepted Assets unless such compensation arrangements shall be acceptable to the Trust Administrator in its sole discretion.

9.8. No Personal Financial Liability. No provision of the Plan, Confirmation Order or this Trust Agreement shall be construed as requiring the Trust Administrator to expend or risk its own funds or otherwise to incur any personal financial liability (x) in the performance of any of its duties thereunder or hereunder, including any situation where the Avoidance Action Trust Assets are insufficient to permit the administration of the Trust or distributions as contemplated herein or the payment of fees and expenses of the Trust Professionals, or (y) in the exercise of any of its rights or powers afforded hereunder or thereunder.

ARTICLE X

SUCCESSOR TRUST ADMINISTRATORS

10.1. Resignation. The Trust Administrator may resign from the Trust by giving at least sixty (60) days' prior written notice thereof to the Trust Monitor. Such resignation shall become effective on the later to occur of (x) the date specified in such written notice and (y) the effective date of the appointment of a successor Trust Administrator in accordance with Section 10.4 hereof and such successor's acceptance of such appointment in accordance with Section 10.5 hereof.

10.2. Removal. The holders of a majority of the Units or the DIP Lenders may at any time petition the Bankruptcy Court for the removal of the Trust Administrator, but only for good cause shown. Such removal shall become effective on the date ordered by the Bankruptcy Court, provided that such removal shall not become effective until the appointment of a successor Trust Administrator in accordance with Section 10.4 hereof and such successor's acceptance of such appointment in accordance with Section 10.5 hereof. The services of the Trust Administrator shall also terminate upon its bankruptcy, provided that such termination shall not become effective until the appointment of a successor Trust Administrator in accordance with Section 10.4 hereof and such successor's acceptance of such appointment in accordance with Section 10.5 hereof.

10.3. Effect of Resignation or Removal. The resignation, removal or bankruptcy of the Trust Administrator shall not operate to terminate the Trust or to revoke any existing agency created pursuant to the terms of the Plan, the Confirmation Order or this Trust Agreement or invalidate any action theretofore taken by the Trust Administrator. The exculpation, indemnity and limitation of liability provisions of Article X of this Trust Agreement shall survive the resignation, removal or bankruptcy of the Trust Administrator. All fees and expenses properly incurred by the Trust Administrator prior to the resignation, Incompetency, removal or bankruptcy of the Trust Administrator shall be paid from the Avoidance Action Trust Administrative Cash, the GUC Trust Supplemental Cash or the Other Supplemental Cash (other than in respect of the Other Debtor Residual Accepted Assets and activities related thereto), from the Other Debtor Residual Trust Administrative Cash (in respect of the Other Debtor Residual Accepted Assets and activities related thereto) or from Avoidance Action Trust SEC Reporting Cash (in respect of Avoidance Action Trust SEC Reporting Costs in accordance with Section 2.3(e) hereof), unless such fees and expenses are disputed by (x) the Trust Monitor or (y) the successor Trust Administrator, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Trust Administrator that are

subsequently allowed by the Bankruptcy Court shall be paid from the Avoidance Action Trust Administrative Cash, the GUC Trust Supplemental Cash or the Other Supplemental Cash (other than in respect of the Other Debtor Residual Accepted Assets and activities related thereto), from the Other Debtor Residual Trust Administrative Cash (in respect of the Other Debtor Residual Accepted Assets and activities related thereto) or from Avoidance Action Trust SEC Reporting Cash (in respect of Avoidance Action Trust SEC Reporting Costs in accordance with Section 2.3(e) hereof). In the event of the resignation, removal or bankruptcy of the Trust Administrator, such Trust Administrator shall:

- (a) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Trust Administrator or directed by the Bankruptcy Court to effect the termination of such Trust Administrator's capacity under this Trust Agreement;
- (b) promptly deliver to the successor Trust Administrator all documents, instruments, records and other writings related to the Trust as may be in the possession of such Trust Administrator; and
- (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Trust Administrator.

10.4. Appointment of Successor. In the event of the resignation, removal, Incompetency or bankruptcy of the Trust Administrator, the Trust Monitor shall promptly appoint a successor Trust Administrator, *provided that* such appointment shall not take effect unless approved by the Bankruptcy Court upon the petition of the Trust Monitor and until the successor Trust Administrator shall have delivered written acceptance of its appointment as described Section 10.5 below. If a successor Trust Administrator does not take office within thirty (30) days after the resignation, removal, Incompetency or bankruptcy of the retiring Trust Administrator, the Bankruptcy Court, upon its own motion or the motion of the retiring Trust Administrator or any Trust Beneficiary, shall appoint a successor Trust Administrator.

10.5. Acceptance of Appointment by Successor Trust Administrator. Any successor Trust Administrator appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and to the Trust Monitor and, in case of the Trust Administrator's resignation, to the resigning Trust Administrator. Thereupon, such successor Trust Administrator shall, without any further act, become vested with all the duties, powers, rights, obligations, title, discretion and privileges of its predecessor in the Trust with like effect as if originally named Trust Administrator and shall be deemed appointed pursuant to Bankruptcy Code Section 1123(b)(3)(B); *provided, however*, such successor Trust Administrator shall file an amendment to the Certificate of Trust with the Secretary of State as required by the Delaware Act. The predecessor Trust Administrator shall duly assign, transfer and deliver to such successor Trust Administrator all Avoidance Action Trust Assets held by such predecessor Trust Administrator hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such successor Trust Administrator, execute and deliver an instrument or instruments conveying and transferring to such successor Trust

Administrator upon the trusts herein expressed, all the duties, powers, rights, obligations, title, discretion and privileges of the predecessor Trust Administrator.

10.6. Successor Entity to Trust Administrator. Any business entity into which the Trust Administrator may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trust Administrator shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trust Administrator, shall be the successor of the Trust Administrator hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided, however*, such successor Trust Administrator shall file an amendment to the Certificate of Trust with the Secretary of State as required by the Delaware Act.

ARTICLE XI **TRUST MONITOR**

11.1. General.

(a) The Trust Monitor shall oversee the activities of the Trust Administrator as set forth in this Trust Agreement. In all circumstances, the Trust Monitor shall act in the best interests of all Trust Beneficiaries, in furtherance of the purpose of the Trust, and in accordance with this Trust Agreement.

(b) In furtherance of its rights and responsibilities under this Trust Agreement, the Trust Monitor shall have access, on reasonable advance notice and during regular business hours, to all such books and records of the Trust and the Trust Administrator, shall have the right to consult with all such professionals engaged by the Trust Administrator and shall participate in all such meetings of the Trust Administrator and the Trust Professionals as the Trust Monitor deems reasonably necessary or appropriate. Any documents shared between the Trust Administrator and the Trust Monitor shall be subject to joint privilege, and such sharing shall not be deemed to waive any attorney-client or work product privilege in respect of such documents.

(c) [Intentionally omitted.]

(d) Notwithstanding anything in this Section 11.1 or Section 11.2 hereof, the Trust Monitor shall not take (or fail to take) any action which will cause the Trust (other than the Avoidance Action Trust Claims Reserve) to fail to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) that is treated as a grantor trust.

11.2. Appointment and Removal of the Trust Monitor.

(a) Subject to Section 11.2(d), the Trust Monitor shall serve until the earlier of (w) the final distribution of all Distributable Trust Assets and the Distributable Other Debtor Residual Trust Assets, if any, (x) its resignation pursuant to subsection (b) of this Section 11.2, (y) its removal pursuant to subsection (c) of this Section 11.2 or (z) its bankruptcy or insolvency.

(b) The Trust Monitor may resign at any time by written notice of resignation to the Trust Administrator, a copy of which shall also be filed by the Trust Monitor with the Bankruptcy Court. Such resignation shall be effective no earlier than sixty (60) days from the date of such notice or such earlier time as a successor is appointed in accordance with the provisions of subsection (d) of this Section 11.2.

(c) The holders of a majority of the Units or the DIP Lenders may at any time petition the Bankruptcy Court for the removal of the Trust Monitor, but only for good cause shown. Such removal shall become effective on the date ordered by the Bankruptcy Court.

(d) In the event of the resignation, removal, bankruptcy or insolvency of the Trust Monitor, the Trust Administrator shall promptly appoint a successor Trust Monitor, *provided that* such appointment shall not take effect unless approved by the Bankruptcy Court upon the petition of the Trust Administrator and until the successor Trust Monitor shall have delivered written acceptance of its appointment as described in clause (e) of this Section 11.2 below; and *provided further that* until a new Trust Monitor's appointment is effective, the resigning Trust Monitor's appointment shall remain in effect, and the resigning Trust Monitor shall fulfill all obligations and duties of the Trust Monitor. If a successor Trust Monitor does not take office within thirty (30) days after the resignation, removal, incompetency, bankruptcy or insolvency of the retiring Trust Monitor, the Bankruptcy Court, upon its own motion or the motion of the retiring Trust Monitor or any Trust Beneficiary, shall appoint a successor Trust Monitor.

(e) All fees and expenses properly incurred by the Trust Monitor prior to the resignation, Incompetency, removal or bankruptcy of the Trust Monitor shall be paid from the Avoidance Action Trust Administrative Cash, the GUC Trust Supplemental Cash or the Other Supplemental Cash (other than in respect of the Other Debtor Residual Accepted Assets and activities related thereto), from the Other Debtor Residual Trust Administrative Cash (in respect of the Other Debtor Residual Accepted Assets and activities related thereto) or from Avoidance Action Trust SEC Reporting Cash (in respect of Avoidance Action Trust SEC Reporting Costs in accordance with Section 2.3(e) hereof), unless such fees and expenses are disputed by (x) the Trust Administrator or (y) the successor Trust Monitor, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Trust Monitor that are subsequently allowed by the Bankruptcy Court shall be paid from the Avoidance Action Trust Administrative Cash, the GUC Trust Supplemental Cash or the Other Supplemental Cash (other than in respect of the Other Debtor Residual Accepted Assets and activities related thereto) from the Other Debtor Residual Trust Administrative Cash (in respect of the Other Debtor Residual Accepted Assets and activities related thereto) or from Avoidance Action Trust SEC Reporting Cash (in respect of Avoidance Action Trust SEC Reporting Costs in accordance with Section 2.3(e) hereof).

(f) Any successor Trust Monitor appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and to the Trust Administrator.

(g) Immediately upon effectiveness of the appointment of a successor Trust Monitor, all rights, powers, duties, authority, and privileges of the predecessor Trust Monitor

hereunder will be vested in and undertaken by the successor Trust Monitor without any further act. The successor Trust Monitor shall not be liable personally for any act or omission of the predecessor Trust Monitor.

11.3. Approval of and Consultation with the Trust Monitor.

(I) Other Than in Respect of the Other Debtor Residual Accepted Assets

(a) Notwithstanding anything in this Trust Agreement to the contrary, the Trust Administrator shall submit to the Trust Monitor for its review and prior approval the following matters, in addition to any other matters that expressly require the approval of the Trust Monitor pursuant to the terms of the Plan, the Confirmation Order or this Trust Agreement:

- (i) Any decision to settle or otherwise resolve the Term Loan Avoidance Action;
- (ii) Any decision to refrain from making any distributions to the holders of Allowed General Unsecured Claims or Units, as the case may be, in accordance with this Trust Agreement, except as expressly permitted herein;
- (iii) Any decision to retain and/or to terminate the retention of Trust Professionals (other than legal counsel retained to represent the Trust Administrator in connection with its role as Trust Administrator, which shall be in the Trust Administrator's sole discretion);
- (iv) The incurrence of any cost or expense of the Trust in excess of 10% of any individual line item therefor in the approved Budget, measured on a quarterly basis; *provided, however*, that approval of the Trust Monitor shall not be required in the case of any cost or expense authorized by further order of the Bankruptcy Court;
- (v) The Budget described in Section 6.3 hereof and any changes thereto;
- (vi) Any amendment of this Trust Agreement as provided in Section 13.13 hereof; and
- (vii) Any distribution that is not made in accordance with the provisions of Article V as contemplated by Section 5.7; *provided, however*, that any deviation from the provisions of Article V other than as contemplated by Section 5.7 shall also require approval of the Bankruptcy Court.

(b) In addition to any other matters that expressly require consultation with the Trust Monitor pursuant to the terms of the Plan, the Confirmation Order or this Trust Agreement, the Trust Administrator shall consult with the Trust Monitor in advance of an application to the Bankruptcy Court to use, or to sell or borrow against, the Term Loan Avoidance Action or the Distributable Trust Assets in order to satisfy expenses of the Trust, as contemplated by Section 6.1(b) and Section 6.1(d) hereof.

(c) In the event of any disagreement between the Trust Administrator and the Trust Monitor regarding any matter requiring the approval or direction of the Trust Monitor under this Trust Agreement, the Trust Administrator and the Trust Monitor shall consult and negotiate diligently and in good faith to resolve such disagreement. If despite their good faith efforts, the Trust Administrator and the Trust Monitor are unable to resolve any disagreement, or the Trust Administrator cannot otherwise obtain approval or direction from the Trust Monitor as required by this Trust Agreement, the Trust Administrator may petition the Bankruptcy Court, with a copy to the Trust Monitor, requesting such approval or direction.

(II) In Respect of the Other Debtor Residual Accepted Assets

The Trust Monitor shall have the rights, powers and privileges to act in respect of the Other Debtor Residual Accepted Assets, if any, in the manner set forth in Section 11.3 (I), *mutatis mutandis* and to the extent applicable. For the avoidance of doubt, the Trust Monitor shall not be obligated to undertake any activities in respect of the Other Debtor Residual Trust Assets unless there shall be available sufficient Other Debtor Residual Trust Administrative Cash to pay in full its fees, costs and expenses in respect thereof.

11.4. Exculpation and Indemnification; Limitation of Liability. To the fullest extent permitted by applicable law, the Trust Monitor Parties shall not be subject to personal liability, and shall be exculpated and indemnified, and shall have the right to obtain advances to cover reasonable expenses of defense, to the same extent as the Trust Administrator Parties pursuant to Section 9.2, Section 9.4, Section 9.5, Section 9.6 and Section 10.3. In no event will the Trust Monitor Parties be liable for punitive, exemplary, consequential, special or other damages for a breach of, or otherwise in connection with, this Trust Agreement under any circumstances.

11.5. Compensation and Expenses.

(a) The Trust Monitor shall receive fair and reasonable compensation for its services (other than in respect of the Other Debtor Residual Accepted Assets and activities related thereto), to be paid out of the Avoidance Action Trust Administrative Cash, in accordance with the approved Budget (or from the Avoidance Action Trust SEC Reporting Cash in accordance with Section 2.3(e) hereof, the GUC Trust Supplemental Cash in accordance with Section 2.3(f) hereof, or the Other Supplemental Cash in accordance with Section 6.1(d) hereof). The Trust Monitor shall be entitled on a monthly basis, without the need for approval of the Bankruptcy Court, to direct the Trust Administrator to reimburse the Trust Monitor (i) from the Avoidance Action Trust Administrative Cash, the GUC Trust Supplemental Cash or the Other Supplemental Cash, as applicable, for all reasonable out-of-pocket expenses actually incurred in the performance of duties in accordance with this Trust Agreement, consistent with the Budget prepared pursuant to Section 6.3 hereof and (ii) from the Avoidance Action Trust SEC Reporting Cash for such compensation and all reasonable out-of-pocket expenses actually incurred in the performance of duties in accordance with this Trust Agreement.

(b) The Trust Monitor shall receive compensation for its services than in respect of the Other Debtor Residual Accepted Assets and activities related thereto, to be paid

out of the Other Debtor Residual Trust Administrative Cash, as the Trust Monitor and a majority in interest of the DIP lenders shall agree; provided that the Trust Monitor shall not be obligated to undertake any activities in respect of the Other Debtor Residual Accepted Assets unless such compensation arrangements shall be acceptable to the Trust Monitor in its sole discretion.

ARTICLE XII
ACTION BY MAJORITY OF HOLDERS OF UNITS

Holders of a majority of the Units or the DIP Lenders from time to time outstanding may petition the Bankruptcy Court to remove the Trust Administrator in accordance with Section 10.2 or to remove the Trust Monitor in accordance with Section 11.1, but in each case only for good cause shown. In determining whether the holders of a majority of the Units have concurred in any such petition, Units held by the Trust Administrator or the Trust Monitor or any of their respective Affiliates shall be disregarded.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

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

13.2. Governing Law. This Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to rules governing conflicts of law.

13.3. Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive and continuing jurisdiction over the Trust and the Trust Administrator, including the administration and activities of the Trust and the Trust Administrator; *provided, however,* that notwithstanding the foregoing, the Trust Administrator shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any claims or Causes of Action assigned to the Trust, including the Delaware Chancery Court, the Delaware Superior Court and the Delaware Supreme Court.

13.4. Third Party Beneficiary. Trust Beneficiaries (including the DIP Lenders in their capacities as such) are third party beneficiaries of this Trust Agreement. The Trust Administrator Parties (other than the Trust Administrator) are third party beneficiaries of the provisions of Section 9.2, Section 9.4 and Section 9.6 of this Trust Agreement. The Trust Monitor Parties (other than the Trust Monitor) are third party beneficiaries of the provisions of Section 11.4 of this Trust Agreement, and, to the extent incorporated therein, Section 9.2, Section 9.4, Section 9.5 and Section 9.6 of this Trust Agreement. Except as aforesaid, there are no other third party beneficiaries of this Trust Agreement.

13.5. Severability. In the event any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Trust Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.6. Notices. Any notice or other communication required or permitted to be made under this Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, by email, facsimile, sent by nationally recognized overnight delivery service or mailed by first-class mail:

(A) if to the Trust Administrator, to:

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware, 19890-1615
Phone: (302) 636-6000
Fax: (302) 636-4140
Attn: Corporate Trust Administration

With a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193
Phone: (212) 351-3991
Fax: (212) 351-6391
Attn: Matthew Williams and Keith Martorana

(B) if to the Trust Monitor, to:

FTI Consulting, Inc.
1201 W. Peachtree St., Suite 600
Atlanta, GA 30309

(C) if to any Trust Beneficiary, to:

(1) in the case of a DIP Lender,

a. if to the U.S. Treasury, to:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Attn: Chief Counsel, Office of Financial Stability
Telecopier: (202) 927-9225

b. if to EDC, to:

Export Development Canada
151 O'Connor Street
Ottawa, Ontario
Canada K1A 1K3
Attention: Loans Services
Telecopy: 613-598-2514;

with a copy to:

Export Development Canada
151 O'Connor Street
Ottawa, Ontario
Canada K1A 1K3
Attention: Asset Management/Covenants Officer
Telecopy: 613-598-3186

- (2) in the case of a holder of an Allowed General Unsecured Claim, to the last known address of such holder according to the Debtors' Schedules and/or such holder's proof of claim; and
- (3) in the case of holder of Units, to such address as appears on the books and records of the Trust Administrator, or such other address as may be designated from time to time by notice given in accordance with the provisions of this Section 13.6.

13.7. Headings. The headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

13.8. Plan. The terms of this Trust Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order. To the extent that the terms of sections 5.6 and 6.5 of the Plan are inconsistent with the terms set forth in this Trust Agreement with respect to the Trust, then the terms of the Trust Agreement shall govern. All other provisions of the Plan shall supersede the provisions of this Trust Agreement, including section 6.15 of the Plan, which provides that the restrictions set forth in paragraph 20 of the Final Order approving the DIP Credit Agreement (ECF No. 2529) shall continue to apply.

13.9. Ambiguities and Construction.

(a) The Trust created by this Trust Agreement (other than the Avoidance Action Trust Claims Reserve) is intended to qualify as a liquidating trust under Treasury Regulation section 301.7701-4(d) for U.S. federal and applicable state and local 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 Trust Agreement may be amended to comply with such U.S. federal and applicable state and local income tax laws, which amendments may apply retroactively.

(b) Unless the context otherwise requires:

- (i) a term has the meaning assigned to it;
- (ii) “or” is not exclusive;
- (iii) words in the singular include the plural, and in the plural include the singular;
- (iv) all references herein to Articles, Sections and other subsections, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subsections of this Trust Agreement;
- (v) the words “hereof,” “herein,” “hereunder” and similar words refer to this Trust Agreement as a whole and not to any particular provision, Article, Section or subsection of this Trust Agreement unless otherwise specified;
- (vi) words importing persons shall include firms, associations, corporations and other entities;
- (vii) any pronoun shall include the corresponding masculine, feminine and neuter forms; and
- (viii) “including” means including without limitation.

13.10. Entire Trust Agreement. This Trust Agreement contains the entire agreement between the parties and supersedes all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof.

13.11. Cooperation. The Debtors shall turn over or otherwise make available to the Trust Administrator at no cost to the Trust or the Trust Administrator, all books and records reasonably required by the Trust Administrator to carry out its duties hereunder, and agree to otherwise reasonably cooperate with the Trust Administrator in carrying out its duties hereunder, subject to the obligation to preserve the confidential nature of the Debtors’ books and records, as provided in Section 13.12.

13.12. Confidentiality. The Trust Administrator and the Trust Monitor, and their respective employees, members, agents, professionals and advisors, including the Trust Professionals (each a “Confidential Party” and collectively the “Confidential Parties”)

shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party, of or pertaining to any Debtor to which any of the Avoidance Action Trust Assets relates or which is otherwise received from the Debtors by the Trust; provided, however, that such information may be disclosed if

(i) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties; or

(ii) such disclosure is required of the Confidential Parties pursuant to legal process, including subpoena or other court order or other applicable laws or regulations.

In the event that any Confidential Party is requested to divulge confidential information pursuant to clause (ii), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Trust Administrator (or the Trust Monitor in case the Trust Administrator is the disclosing party) to allow sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Trust Administrator (or the Trust Monitor, as applicable) in making any such objection, including appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

13.13. Amendment and Waiver.

(a) The Trust Administrator, with the approval of the Trust Monitor, may amend or supplement this Trust Agreement without notice to or consent of the Bankruptcy Court or any Trust Beneficiary for the purpose of (x) curing any ambiguity, omission, inconsistency or correcting or supplementing any defective provision; (y) evidencing and providing for the acceptance of the appointment of a successor Trust Administrator or Trust Monitor; or (z) making any other changes to this Trust Agreement that does not adversely affect the interests of the Trust Beneficiaries in any material respect.

(b) The Trust Administrator may amend or supplement this Trust Agreement for any other purpose, but only on petition to, and with the approval of, the Bankruptcy Court; provided that (x) no amendment or supplement to this Trust Agreement shall be inconsistent with the purpose and intent of the Trust to dispose of in an expeditious but orderly manner the Avoidance Action Trust Assets in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement, and (y) this Trust Agreement shall not be amended in a manner that is inconsistent with the Plan in the form confirmed by the Bankruptcy Court, subject to any post-confirmation modifications to the Plan pursuant to Section 1127 of the Bankruptcy Code.

(c) Any amendment to this Trust Agreement shall be filed with the Bankruptcy Court.

(d) No amendment shall be made to any provision of this Trust Agreement that materially and adversely affects the rights of the DIP Lenders without the written consent of the DIP Lenders.


(e) The Trust Administrator shall file any amendment to the Certificate of Trust with the Secretary of State as may be required or permitted by the Delaware Act.

13.14. Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

[Remainder of Page Blank — Signature Pages Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

**WILMINGTON TRUST COMPANY, as Trust
Administrator and trustee**

By: 
Name: _____
Title: **David A. Varaskey, Jr.
Vice President**

- and -

FTI CONSULTING, INC., as Trust Monitor

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

**WILMINGTON TRUST COMPANY, as Trust
Administrator and trustee**

By: _____
Name:
Title:

– and –

FTI CONSULTING, INC., as Trust Monitor

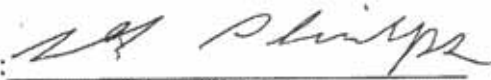
By: 
Name: Anna Phillips
Title: Senior Managing Director

Exhibit A

Cash Accounts:

Avoidance Action Budget Sub Account
Avoidance Action Assets Sub Account
Avoidance Action Trust SEC Reporting Costs Account
GUC Trust Supplemental Cash Account
Other Supplemental Cash Account

Exhibit B

FORM OF
CERTIFICATE OF TRUST
OF
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST

THIS Certificate of Trust of Motors Liquidation Company Avoidance Action Trust (the "Trust") is being duly executed and filed on behalf of the Trust by the undersigned, as trustee, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801 et seq.) (the "Act").

1. Name. The name of the statutory trust formed by this Certificate of Trust is Motors Liquidation Company Avoidance Action Trust.

2. Delaware Trustee. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19890, Attn: Corporate Trust Administration.

3. Effective Date. This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

WILMINGTON TRUST COMPANY, not in its individual capacity but solely as Trust administrator and trustee

By: _____

Name:

Title: