

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

)	
In re:)	Chapter 11
)	
AFFIRMATIVE INSURANCE)	Case No. 15-12136 (CSS)
HOLDINGS, INC., <i>et al.</i> , ¹)	
)	(Jointly Administered)
Debtors.)	
)	

**DEBTORS' COMBINED DISCLOSURE STATEMENT
AND CHAPTER 11 PLAN OF LIQUIDATION**

Dated: March 8, 2016

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¹ The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Affirmative Insurance Holdings, Inc. (0432); Affirmative Management Services, Inc. (7252); Affirmative Services, Inc. (7255); Affirmative Underwriting Services, Inc. (7250); Affirmative Insurance Services, Inc. (8823); Affirmative General Agency, Inc. (2345); Affirmative Insurance Group, Inc. (7246); and Affirmative, L.L.C. (2347). The location of the Debtors' corporate headquarters and the service address for all Debtors is 150 Harvester Drive, Suite 250, Burr Ridge, Illinois 60527.

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NOTICE

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS PLAN EXCEPT AS EXPRESSLY INDICATED HEREIN. THIS PLAN WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED, OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR EQUITY INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS PLAN SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.

HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS PLAN AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.

ARTICLE I. INTRODUCTION

The Debtors in these Chapter 11 Cases hereby propose their Plan pursuant to Bankruptcy Code sections 1125 and 1129. The Debtors are the proponents of the Plan within the meaning of Bankruptcy Code section 1129.

The Plan constitutes a liquidating chapter 11 plan for the Debtors. The Plan provides for the proceeds from the Debtors' assets already liquidated or to be liquidated over time to be distributed to holders of Allowed Claims in accordance with the terms of the Plan and the priority of claims provisions of the Bankruptcy Code. Except as otherwise provided herein or by Order of the Bankruptcy Court, Distributions will occur on the Effective Date or as soon thereafter as is reasonably practicable and at various intervals thereafter. All of the Debtors will be dissolved as soon as reasonably practicable after the Effective Date.

Subject to the restrictions on modifications set forth in Bankruptcy Code section 1127, Bankruptcy Rule 3019, and ARTICLE XIV, the Debtors and the Litigation Trustee, as applicable, expressly reserve the right to alter, amend, or modify the Plan, one or more times, before its substantial consummation.

ARTICLE II. DEFINITIONS AND CONSTRUCTION OF TERMS

A. Definitions

Capitalized terms used herein have the meanings set forth below.

1. “**2004 Subordinated Securities**” means the junior subordinated debt securities due March 15, 2035 issued by HoldCo pursuant to the 2004 Subordinated Securities Indenture.
2. “**2004 Subordinated Securities Claim**” means any Claim derived from or based upon the 2004 Securities Indenture, except any Claim pursuant to Bankruptcy Code section 510(b).
3. “**2004 Subordinated Securities Indenture**” means that certain Indenture, dated December 21, 2004, between HoldCo and The Bank of New York Mellon Trust Company, National Association, as successor trustee to JPMorgan Chase Bank, N.A.
4. “**2005 Subordinated Securities**” means the junior subordinated debt securities due June 15, 2035 issued by HoldCo pursuant to the 2005 Subordinated Securities Indenture.
5. “**2005 Subordinated Securities Claim**” means any Claim derived from or based upon the 2005 Subordinated Securities Indenture, except any Claim pursuant to Bankruptcy Code section 510(b).

6. “**2005 Subordinated Securities Indenture**” means that certain Indenture, dated June 1, 2005, between HoldCo and The Bank of New York Mellon Trust Company, National Association, as successor trustee to JPMorgan Chase Bank, National Association.

7. “**Administrative Expense Bar Date**” means March 1, 2016 for an Administrative Expense Claim arising from the Petition Date through and including February 23, 2016, and for an Administrative Expense Claim arising after February 23, 2016, the Business Day that is thirty (30) days after the Effective Date.

8. “**Administrative Expense Claim**” means any right to payment constituting actual and necessary costs and expenses of preserving the applicable Estate under Bankruptcy Code sections 503(b) and 507(a)(2), except Professional Claims.

9. “**AGAI**” means Affirmative General Agency, Inc.

10. “**AIC**” means Affirmative Insurance Company.

11. “**AIGI**” means Affirmative Insurance Group, Inc.

12. “**AISI**” means Affirmative Insurance Services, Inc.

13. “**ALLC**” means Affirmative, L.L.C.

14. “**Allowed**” means, with respect to any Claim, proof of which was timely and properly filed or, if no proof of Claim was filed, which has been or hereafter is listed in the Schedules, as liquidated in amount and not disputed or contingent and, in each case, as to which: (A) no objection to allowance has been interposed within the applicable period fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or the Bankruptcy Court, or (B) an objection has been interposed and such Claim has been allowed, in whole or in part, by a Final Order.

15. “**AMSI**” means Affirmative Management Services, Inc.

16. “**ASI**” means Affirmative Services, Inc.

17. “**AUSU**” means Affirmative Underwriting Services, Inc.

18. “**Bankruptcy Code**” means title 11 of the United States Code.

19. “**Bankruptcy Court**” or “**Court**” means the United States Bankruptcy Court for the District of Delaware or, if such court ceases to exercise jurisdiction over the Chapter 11 Cases, the court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases.

20. “**Bankruptcy Exceptions**” means the exception to the recognition of COD income under section 108(a)(1)(A) of the Tax Code when a taxpayer discharging indebtedness is

under the jurisdiction of a court in a case under the Bankruptcy Code and when the discharge is granted, or is effected pursuant to a plan approved, by a United States Bankruptcy Court.²

21. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code.

22. “**Bar Date**” means March 1, 2016, except as to Claims held by Governmental Units, for which the Bar Date is April 11, 2016.

23. “**Business Day**” means any day other than a Saturday, Sunday, or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order.

24. “**Cash**” means legal tender of the United States of America and equivalents thereof.

25. “**Causes of Action**” means any Claim, cause of action (including avoidance actions), controversy, right of setoff, cross claim, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, or franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law, which was the applicable Debtor’s property or in which the applicable Debtor held rights as of the Effective Date.

26. “**Chapter 11 Cases**” means the procedurally consolidated cases under chapter 11 of the Bankruptcy Code commenced by the Debtors, styled as Affirmative Insurance Holdings, Inc., *et al.*, under Case No. 15-12136 (CSS), currently pending in the Bankruptcy Court.

27. “**Charity**” means any non-profit organization that is unrelated to the Litigation Trustee and its professionals, the Committee and its members, and the Debtors, whose primary purpose is the pursuit of philanthropic endeavors.

28. “**Claim**” has the meaning set forth in Bankruptcy Code section 101(5).

29. “**Claims and Balloting Agent**” means Rust Consulting/Omni Bankruptcy.

30. “**Claims Objection Deadline**” means one hundred and eighty (180) days after the Effective Date or such later date as may be approved by the Bankruptcy Court.

² NTD: This term is used in ARTICLE III.F.1

31. “**Class**” means any group of substantially similar Claims or Equity Interests classified by the Plan pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).
32. “**Clerk**” means the clerk of the Bankruptcy Court.
33. “**COD**” means cancellation of indebtedness.
34. “**Committee**” means the Official Committee of Unsecured Creditors appointed by the UST in the Chapter 11 Cases.
35. “**Confirmation Date**” means the date on which the Confirmation Order is entered by the Court.
36. “**Confirmation Hearing**” means the hearing held by the Bankruptcy Court to consider (i) approval of the Plan as providing adequate information pursuant to Bankruptcy Code section 1125 and (ii) confirmation of the Plan pursuant to Bankruptcy Code section 1129.
37. “**Confirmation Order**” means the Order of the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code section 1129.
38. “**Creditor**” means any Person that is the Holder of a Claim against the applicable Debtor.
39. “**D&O Policy**” means any liability insurance covering any Debtor’s directors or officers for claims made against them while serving on any Debtor’s board of directors and/or as an officer.
40. “**DACA 1 Account**” means that certain Debtor bank account held at UMB Bank, n.a., with an account number ending in 8646.
41. “**DACA 2 Account**” means that certain Debtor bank account held at UMB Bank, n.a., with an account number ending in 8654.
42. “**Debtor**” means each of HoldCo; AGAI; AIGI; AISI; ALLC; AMSI; ASI; and AUSU.
43. “**Disputed**” means, when referring to a Claim or Equity Interest, or any portion thereof: (i) listed on the Schedules as unliquidated, disputed, and/or contingent for which no proof of claim in a liquidated and non-contingent amount has been filed; or (ii) the subject of an objection or request for estimation filed by the applicable Debtor or the Litigation Trustee or any other party in interest in accordance with applicable law and which objection has not been withdrawn, resolved, or overruled by a Final Order.
44. “**Disclosure Statement Order**” means the Order [Docket No. ____] entered by the Bankruptcy Court on _____, 2016 that approved the Plan as containing “adequate

information” within the meaning of Bankruptcy Code section 1125(a) and authorized the Debtors to solicit acceptances of the Plan.

45. “**Distribution**” means any distribution to the Holders of Allowed Claims.
46. “**Effective Date**” means the date on which the conditions specified in ARTICLE XII have been satisfied or waived.
47. “**Entity**” has the meaning set forth in Bankruptcy Code section 101(15).
48. “**Equity Interests**” means all equity interests in HoldCo, including, but not limited to, all issued, unissued, authorized, or outstanding shares or membership interests, together with any warrants, options, or contract rights to purchase or acquire such interests at any time.
49. “**Estate**” means the estate of the applicable Debtor created upon the commencement of the Chapter 11 Cases pursuant to Bankruptcy Code section 541.
50. “**Exculpated Parties**” means, collectively and individually, (i) the Committee and its members, attorneys, accountants, agents, and other professionals, solely in their capacities as such; and (ii) the Debtors and their respective members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers, agents, or other professionals, solely in their capacities as such.
51. “**Executory Contract**” means any executory contract or unexpired lease as of the Petition Date between any Debtor and any other Person, specifically excluding contracts and agreements entered into pursuant to this Plan.
52. “**Final Order**” means an order of the Bankruptcy Court or a court of competent jurisdiction to hear appeals from the Bankruptcy Court, which has not been reversed, stayed, modified or amended and as to which the time to appeal, to petition for certiorari, or to move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending.
53. “**Florida Adversary Proceeding**” means the adversary proceeding in the Chapter 11 Cases styled as *Florida Department of Financial Services v. Affirmative Insurance Holdings, Inc. et al.*, Adversary Proceeding No. 15-51894, pending in the Bankruptcy Court.
54. “**Florida Settlement**” means the settlement of the Florida Adversary Proceeding embodied in ARTICLE IX.F.
55. “**General Unsecured Claim**” means any Claim against the applicable Debtor that arose or is deemed by the Bankruptcy Code or Bankruptcy Court, as the case may be, to have arisen before the Petition Date and that is not an Administrative Expense Claim, Professional Claim, Priority Tax Claim, Other Priority Claim, Other Secured Claim, JCF Secured Claim, or Equity Interest.

56. “**Governmental Unit**” has the meaning set forth in Bankruptcy Code section 101(27).

57. “**Hallberg Litigation**” means the cases styled as (i) *InsureOne Independent Insurance Agency, LLC, Affirmative Insurance Services, Inc., and Affirmative Insurance Holdings Inc. v. James P. Hallberg, J. and P. Holdings, Inc., Preferred Risk Services, Inc., United Security Life and Health Insurance Company, 6640 LLC, Patrick M. Hincks as Trustee of the James P. Hallberg 1994 Gift Trust, Patrick M. Hincks as Trustee of the Patricia L. Hallberg 1994 Gift Trust, and Patrick M. Hincks*, Case No. 10 CH 51165, pending in the Circuit Court of Cook County, Illinois, Chancery Division, and (ii) *InsureOne Independent Insurance Agency, LLC, et al., v. Hallberg, et al.*, Case No. 03 CH 20974, pending in the Circuit Court of Cook County, Illinois, County Department, Chancery Division.

58. “**Hallberg Settlement Agreement**” means that certain [Settlement Agreement].

59. “**HoldCo**” means Affirmative Insurance Holdings, Inc.

60. “**Holder**” means the beneficial holder of any Claim or Equity Interest.

61. “**Initial Distribution Sources**” means all Other Cash held by the applicable Debtor as of the Effective Date; *provided, however*, that, with respect to HoldCo, “Initial Distribution Sources” also includes proceeds from the DACA 1 Account, Hallberg Settlement Agreement, and JCF Distribution Cash.

62. “**Intercompany Claim**” means any Claim by a direct or indirect Debtor-affiliate against any other Debtor.

63. “**Investment Entities**” means Affirmative Real Estate Investment, LLC and 1500 Main, L.L.C.

64. “**IRS**” means the Internal Revenue Service.

65. “**JCF Deficiency Claim**” means any Claim against the applicable Debtor that is derived from or based upon the JCF Prepetition Credit Agreement and is not Secured.

66. “**JCF Distribution Cash**” means an amount equal to no more than fifty percent (50%) of the JCF Exit Financing.

67. “**JCF Exit Financing**” means the loan extended to the Litigation Trust pursuant to the JCF Exit Financing Agreement.

68. “**JCF Exit Financing Agreement**” means that certain Senior Secured Promissory Note, dated [●], 2016, between the Litigation Trust, as borrower, and JCF Lender, as lender, in a form substantially similar to Exhibit A.

69. “**JCF Lender**” means JCF AFFM Debt Holdings L.P.

70. “**JCF Trust Cash**” means an amount equal to the JCF Exit Financing minus the amount of JCF Distribution Cash used to pay Allowed Administrative Expenses and Professional Claims, but in any event no less than \$175,000.

71. “**JCF Prepetition Credit Agreement**” means that certain Second Lien Credit Agreement, dated September 30, 2013, between HoldCo, as borrower, certain lenders party thereto, and JCF, as administrative agent and collateral agent.

72. “**JCF Prepetition Loan**” means the loan extended by JCF pursuant to the JCF Prepetition Credit Agreement.

73. “**JCF Secured Claim**” means any Claim against the applicable Debtor that is derived from or based upon the JCF Prepetition Credit Agreement and is Secured.

74. “**Lien**” has the meaning set forth in Bankruptcy Code section 101(37).

75. “**Litigation Trust Agreement**” means that certain [Litigation Trust Agreement], in a form substantially similar to Exhibit B.

76. “**Litigation Trustee**” means the Person appointed pursuant to ARTICLE VII.

77. “**Local Rules**” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

78. “**MGA Sale**” means the series of transactions that closed on June 30, 2015, pursuant to which the Debtors sold their internal underwriting agencies.

79. “**Non-United States Person**” means a Holder of a Claim that is not subject to either federal or state income taxation unless such Holder is (i) engaged in a trade or business in the United States to which income, gain, or loss from the exchange is “effectively connected” for United States federal income tax purposes, or (ii) is an individual, such Holder is present in the United States for 183 days or more during the taxable year of the exchange, and certain other requirements are met.

80. “**NSPAI**” means non-standard personal automobile insurance.

81. “**Other Cash**” means all Cash held in the applicable Debtor’s bank accounts as of the Effective Date, except for Cash held in the Premium Accounts, DACA 1 Account, and DACA 2 Account.

82. “**Other Priority Claim**” means any Claim against the applicable Debtor that is entitled to priority in payment under Bankruptcy Code section 507(a), except for Priority Tax Claims, Administrative Expense Claims, and Professional Claims.

83. “**Other Secured Claim**” means any Claim, other than a JCF Secured Claim, against the applicable Debtor that is Secured.

84. “**Order**” means an order or judgment of the Bankruptcy Court.

85. “**Oversight Committee**” means the committee established pursuant to ARTICLE VII.C.

86. “**Permitted Investment**” means (a) any investment in (i) direct obligations to the United States of America or obligations of any agency or instrumentality thereof that are guaranteed by the full faith and credit of the United States of America, or (ii) money market deposit accounts, checking accounts, savings accounts or certificates of deposit, or other time deposit accounts that are issued by a commercial bank or savings institution organized under the laws of the United States of America or any state thereof, or (b) any other investment that may be permissible under Bankruptcy Code section 345 or pursuant to an Order.

87. “**Person**” has the meaning set forth in Bankruptcy Code section 101(41).

88. “**Petition Date**” means October 14, 2015.

89. “**Plan**” means this combined disclosure statement and chapter 11 plan of liquidation.

90. “**Plan Supplement**” means the appendix of schedules and exhibits to be filed with the Bankruptcy Court at least ten (10) calendar days prior to the Voting Deadline, as may be modified and/or supplemented. The Plan Supplement shall include the identities of the members of the Oversight Committee, the Hallberg Settlement Agreement, the liquidation analysis, identification of potential Causes of Action, and such other documents as the Debtors deem appropriate.

91. “**Premium Accounts**” means those certain Debtor bank accounts held at UMB Bank, n.a., with account numbers ending in 8352 and 8387, and Capital One Financial Corporation, with account number ending in 3594.

92. “**Priority Tax Claim**” means any Claim against the applicable Debtor that is entitled to priority in payment under Bankruptcy Code section 507(a)(8).

93. “**Professional**” means any professional Person employed in the Chapter 11 Cases pursuant to an Order under Bankruptcy Code section 327, 328, 363, or 1103 and to be compensated for services rendered pursuant to Bankruptcy Code section 327, 328, 329, 330, 331, or 363.

94. “**Professional Claim**” means any Claim against the Debtors for compensation and reimbursement of expenses by Professionals.

95. “**Pro Rata**” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in the same Class.

96. “**Regulated Entities**” means Affirmative Insurance Company; Affirmative Casualty Insurance Company; Affirmative Direct Insurance Company; and Affirmative Insurance Company of Michigan.

97. “**Schedules**” means the schedules of assets and liabilities, the lists of Holders of Equity Interests and the statements of financial affairs filed by the Debtors under Bankruptcy Code section 521 and Bankruptcy Rule 1007, and all amendments and modifications thereto.

98. “**Secondary Distribution Sources**” means all amounts and proceeds from the applicable Debtor’s assets and Causes of Action (excluding the Initial Distribution Sources and the JCF Litigation Cash); *provided, however*, that “Secondary Distribution Sources” also includes all amounts and proceeds remaining from the Initial Distribution Sources after the Distributions set forth in ARTICLE VI.A.3 (Statutory Fees); *provided further, however*, that “Secondary Distribution Sources” does not include the Premium Accounts unless and until (and only to the extent that) an Order is entered by the Bankruptcy Court finding that the Premium Accounts, or any portion thereof, are property of the applicable Estate under Bankruptcy Code section 541, or otherwise.

99. “**Secured**” means, when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of an Order, or that is subject to setoff pursuant to Bankruptcy Code section 553, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Bankruptcy Code section 506(a); or (b) otherwise Allowed pursuant to this Plan as a Secured Claim.

100. “**Servicers**” means AMSI and ASI.

101. “**Statutory Fees**” means all amounts due and payable by the Debtors or Litigation Trustee, as applicable, pursuant to section 1930 of title 28 of the United States Code, plus any interest under section 3717 of title 37 of the United States Code.

102. “**Subordinated Claim**” means any 2004 Subordinated Securities Claim, 2005 Subordinated Securities Claim, or Subordinated Notes Claim.

103. “**Subordinated Debt Agreements**” means, collectively, the 2004 Subordinated Securities Indenture, the 2005 Subordinated Securities Indenture, and the Subordinated Notes Indenture.

104. “**Subordinated Notes**” means the Floating Rate Subordinated Notes due 2035 issued by Affirmative, L.L.C. pursuant to the Subordinated Notes Indenture.

105. “**Subordinated Notes Claim**” means any Claim derived from or based upon the Subordinated Notes Indenture, except any Claim pursuant to Bankruptcy Code section 510(b).

106. “**Subordinated Notes Indenture**” means that certain Indenture, dated March 29, 2005, between Affirmative, L.L.C. and The Bank of New York Mellon Trust Company, National Association, as successor trustee to JP Morgan Chase Bank, National Association.

107. “**Tax Attributes**” means the collective attributes of the taxpayer, including net operating losses, general business and minimum tax credit carry forwards, capital loss carry forwards, the basis of the taxpayer’s assets, and foreign tax credit carry forwards.

108. “**Tax Code**” means the Internal Revenue Code of 1986.

109. “**Transferred Assets**” means the assets transferred to the Litigation Trust pursuant to ARTICLE IX.B; *provided, however*, that “Transferred Assets” does not include the assets of any Debtor whose Chapter 11 Case has been dismissed pursuant to ARTICLE III.H.

110. “**Treasury Regulations**” means the regulations, including temporary regulations or any successor regulations, promulgated under the Tax Code.

111. “**Trust I**” means Affirmative Insurance Holdings Statutory Trust I.

112. “**Trust I TruPS**” means the trust preferred securities issued by Trust I in a private placement pursuant to the Trust I TruPS Purchase Agreement.

113. “**Trust I TruPS Purchase Agreement**” means that certain Capital Securities Purchase Agreement, dated December 17, 2004, between Trust I, HoldCo, and Alesco Preferred Funding VI, Ltd.

114. “**Trust II**” means Affirmative Insurance Holdings Statutory Trust II.

115. “**Trust II TruPS**” means the trust preferred securities issued by Trust II in a private placement pursuant to the Trust II TruPS Purchase Agreement.

116. “**Trust II TruPS Purchase Agreement**” means that certain Capital Securities Purchase Agreement, dated May 26, 2005, between Trust II, HoldCo, and Merrill Lynch International.

117. “**Trusts**” means Trust I and Trust II.

118. “**Unclaimed Distribution**” means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

119. “**Unclaimed Distribution Deadline**” means ninety (90) days after the date on which the Litigation Trustee makes a Distribution under the Plan to a Holder of an Allowed Claim.

120. “**Underwriting Entities**” means Affirmative Insurance Services, Inc. and Affirmative General Agency, Inc.

121. “**Unpaid Professional Claim**” means the portion of any Holder’s Allowed Professional Claim that remains unpaid after Distributions are made from the Debtors’ Initial Distribution Sources.

122. “**UST**” means the Office of the United States Trustee for the District of Delaware.

123. “**Voting Deadline**” means [May 13], 2016 at 4:00 p.m. (ET).

B. Interpretation; Application of Definitions and Rules of Construction

Wherever from the context it appears appropriate, each term stated in either the singular or the plural includes both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender include the masculine, feminine, and neuter. Unless otherwise specified, all section, article, schedule, or exhibit references in the Plan are to the respective section in, article of, schedule to, or exhibit to the Plan. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause in the Plan. The rules of construction contained in Bankruptcy Code section 102 apply to the construction of the Plan. Any term used but not defined herein, but that is used in the Bankruptcy Code, has the meaning ascribed to that term in the Bankruptcy Code. The headings in the Plan are for convenience of reference only and do not limit or otherwise affect the provisions of the Plan.

**ARTICLE III.
BACKGROUND AND DISCLOSURES**

On the Petition Date, the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code commencing the Chapter 11 Cases. After the Petition Date, the Debtors have remained in possession of their assets and management of their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

A. Debtors’ Organizational Structure

HoldCo is a holding company with no business operations. As of the Petition Date, HoldCo had 75,000,000 shares of authorized common stock, of which 18,802,220 were issued and 16,008,357 were outstanding. In addition, as of the Petition Date, HoldCo had 25,000,000 shares of authorized preferred stock, none of which were issued or outstanding.

HoldCo’s common stock was traded on the NASDAQ Global Select Market until it was delisted in 2012. Since its delisting, HoldCo’s common stock has been traded exclusively in the over-the-counter market.

As of April 15, 2015, New Affirmative LLC, an affiliate of JCF, beneficially owned 48.7% of HoldCo’s common stock. Other significant HoldCo common stock owners as of April 15, 2015 included Long Meadow Investors, LLC, Michael J. Moss, Long Meadow Holdings, L.P., and Jonathan W. Old, III, which collectively beneficially owned 18.5%, and Red Mountain Capital Partners LLC, which beneficially owned 5.3%.

HoldCo's direct and indirect subsidiaries include:

- (a) the Regulated Entities, which possess the certificates of authority necessary to transact insurance business and issue insurance policies;
- (b) Affirmative Insurance Group, Inc., which is a shell holding company for the Regulated Entities;
- (c) the Servicers, which provided services to the Regulated Entities prior to the Petition Date;
- (d) the Investment Entities, which held commercial real property for two of the Regulated Entities;
- (e) the Underwriting Entities, which served as the managing general agency operations;
- (f) Affirmative Underwriting Services, Inc., which is a shell holding company for the Underwriting Entities;
- (g) Affirmative, L.L.C., which is a shell holding company for certain of the Debtors' business operations; and
- (h) the Trusts, which issued the 2004 Subordinated Securities and 2005 Subordinated Securities.

B. Description of the Debtors' Business as of the Petition Date

Founded in June 1998, the Debtors provided NSPAI policies for individual consumers in targeted geographic markets, which policies were written by the Regulated Entities. Prior to and after the Petition Date, the Regulated Entities were placed into rehabilitation by the various domiciliary states exercising regulatory authority over them. The Regulated Entities relied on the Debtors for the services necessary to conduct business operations, including, but not limited to, services related to personnel, accounting, tax and auditing, legal services, risk management, human resources, treasury functions, and investment services.

C. The Debtors' Pre-Petition Indebtedness

1. Overview. As of the Petition Date, the Debtors had approximately \$100 million of long term debt outstanding, which consisted of the following:

- (a) approximately \$15 million of the JCF Prepetition Loan;
- (b) approximately \$36 million of 2004 Subordinated Securities;
- (c) approximately \$30 million of 2005 Subordinated Securities; and
- (d) approximately \$20 million of Subordinated Notes.

2. JCF Prepetition Loan. The JCF Prepetition Loan is secured by a lien on substantially all of the Debtors' assets and guaranteed by all of the Debtors (except HoldCo, which was the borrower). As of the Petition Date, the principal balance of the JCF Prepetition Loan was \$15,513,847 and accrued interest was \$124,434. In addition, the JCF Lender had accrued fees and expenses under the JCF Prepetition Credit Agreement in the amount of \$313,473.94.

3. 2004 Subordinated Securities. Trust I used the proceeds from the sale of the Trust I TruPS, together with HoldCo's initial capital contribution to Trust I, to purchase approximately \$30.9 million of the 2004 Subordinated Securities. HoldCo guaranteed payment on the Trust I TruPS pursuant to that certain Guarantee Agreement, dated December 21, 2004. As of September 30, 2015, the aggregate amount of principal and interest outstanding under the 2004 Subordinated Securities was \$35,783,100.87.

4. 2005 Subordinated Securities. Trust II used the proceeds from the sale of the Trust II TruPS, together with HoldCo's initial capital contribution to Trust II, to purchase approximately \$25.8 million of the 2005 Securities. HoldCo guaranteed payment on the Trust II TruPS pursuant to that certain Guarantee Agreement, dated June 1, 2005. As of September 30, 2015, the aggregate amount of principal and interest outstanding under the 2005 Subordinated Securities was \$29,764,598.86.

5. Subordinated Notes. On September 30, 2013, in connection with HoldCo's sale of its retail distribution business, HoldCo executed that certain Supplemental Indenture, dated September 30, 2013, between HoldCo and The Bank of New York Mellon Trust Company, National Association, as successor trustee to JPMorgan Chase Bank, National Association, pursuant to which HoldCo assumed all of Affirmative, L.L.C.'s obligations under the Subordinated Notes. As of September 30, 2015, the aggregate amount of principal and interest outstanding under the Subordinated Notes was \$20,357,915.00.

D. Events Precipitating the Chapter 11 Filings

The NSPAI business is highly competitive and, except for regulatory considerations, there are relatively few barriers to entry. The Debtors competed based on factors including price, coverages offered, availability of flexible down payment arrangements and billing plans, customer service, claims handling, and agent commission.

The Debtors competed with other companies that sell NSPAI policies through independent agencies as well as with insurance companies that sell such policies directly to their customers. The independent agencies that sold the Debtors' insurance products competed both with these direct writers and with other independent agencies. Thus, the Debtors' competitors were not only large national insurance companies, but also smaller regional insurance companies and independent agencies that operated in a specific region or single state in which the Debtors operated.

The NSPAI industry historically has been cyclical in nature, characterized by periods of severe price competition and excess underwriting capacity followed by periods of high premium rates and shortages of underwriting capacity.

The Debtors incurred losses from operations over the six years ended December 31, 2014, including an operating loss of \$31 million for the year ended December 31, 2014. Losses over this period of time were primarily due to underwriting losses, significant revenue declines, expenses declining less than the amount of revenue declines, and goodwill impairments. The losses from operations were the result of significant new business written in 2012 and 2013, prior pricing issues in some states in which the Debtors have taken significant pricing and underwriting actions to address profitability, losses from states that the Debtors exited prior to the Petition Date, including Florida and Michigan, and goodwill impairment charges as a result of such losses.

The Debtors' losses from operations continued during 2015, notwithstanding the actions taken to address the liquidity and capital issues in the Regulated Entities. For the quarter ended June 30, 2015, AIC took adverse development for losses and loss reserves in an approximate amount of \$35 million, which left AIC with approximately \$2.49 million in surplus and an RBC ratio far less than the required regulatory minimum.

E. The Chapter 11 Cases

The following is a brief description of certain major events that occurred during the Chapter 11 Cases.

1. First Day Motions and Orders. On the Petition Date, in addition to the voluntary petitions for relief filed by the Debtors under chapter 11 of the Bankruptcy Code, the Debtors also filed a number of motions and applications seeking certain "first day" relief, including the following:

- (a) *Debtors' Motion for Entry of an Order Directing Joint Administration of Related Chapter 11 Cases*. The Debtors sought entry of an Order directing the joint administration of the Chapter 11 Cases and the consolidation thereof for procedural purposes only. On October 19, 2015, the Bankruptcy Court entered an Order granting the motion [Docket No. 38].
- (b) *Debtors' Motion for Order (I) Authorizing the Debtors to Prepare a Consolidated List of the Debtors' Top Thirty Unsecured Creditors, (II) Implementing Certain Email Notice Procedures, and (III) Approving the Form and Manner of the Notice of Commencement*. The Debtors sought an Order (i) authorizing the Debtors to prepare a consolidated list of the Debtors' thirty largest unsecured creditors, (ii) implementing certain email notice procedures, and (iii) approving the form and manner of notice of the commencement of these Chapter 11 Cases. On October 19, 2015, the Bankruptcy Court entered an Order granting the motion in part, authorizing the Debtors to prepare a consolidated list of the Debtors' top thirty unsecured creditors [Docket No. 39].
- (c) *Debtor's Motion for Interim and Final Orders (I) Prohibiting Utility Companies from Discontinuing, Altering, or Refusing Service, (II)*

Deeming Utility Companies to Have Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests for Additional Assurance. The Debtors sought entry of an Order ensuring that utility companies would not discontinue utility services to the Debtors. On October 19, 2015, the Bankruptcy Court entered an Order granting the motion on an interim basis [Docket No. 40], and on November 18, 2015, the Bankruptcy Court entered an Order granting the motion on a final basis [Docket No. 118].

- (d) *Debtors' Motion for an Order Authorizing the Debtors to Continue Using Debtors' Bank Accounts, Business Forms, and Cash Management System.* The Debtors requested the authority to, among other things, (i) continue to use their existing bank accounts with the same account numbers, styles, and business forms as the Debtors used prepetition, (ii) deposit and withdraw funds to and from the bank accounts by all usual means, and (iii) open new accounts whenever needed. On October 19, 2015, the Bankruptcy Court entered an Order granting the motion [Docket No. 41].
- (e) *Debtors' Motion for Authority to Pay Prepetition Employee Wages, Benefits, and Related Items.* The Debtors sought entry of an Order (i) authorizing, but not directing, the Debtors to pay: (a) prepetition wages, salaries, overtime pay, sick pay, vacation pay, and other accrued compensation, (b) unreimbursed or unpaid prepetition business expenses, (c) prepetition deductions, (d) prepetition contributions to, and benefits under, employee benefit programs, I all costs and expenses relating to the foregoing payments and contributions, including payments to third-party administrators or other administrative service providers, and (ii) authorizing the Debtors' banks and other financial institutions to process and honor checks and transfers related to such obligations. On October 19, 2015, the Bankruptcy Court entered an Order granting the motion [Docket No. 42].

- (f) *Debtors' Motion for Entry of Interim and Final Orders (I) Establishing Notice and Objection Procedures for Transfers of Equity Securities, (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors' Estates, and (III) Granting Related Relief.* The Debtors sought entry of an Order (a) establishing notice and objection procedures regarding certain transfers of beneficial interests in equity securities in Affirmative Insurance Holdings, Inc., (b) establishing a record date for notice and potential sell-down procedures for trading in claims against the Debtors, and (c) granting related relief. On October 19, 2015, the Bankruptcy Court entered an Order granting the motion on an interim basis [Docket No. 43], and on November 18, 2015, the Bankruptcy Court entered an Order granting the motion on a final basis [Docket No. 117].

2. Employment and Compensation of Debtors' Professionals and Advisors. On November 16, 2015, the Bankruptcy Court entered Orders authorizing the Debtors to retain McDermott Will & Emery LLP as general bankruptcy counsel [Docket No. 106], Polsinelli PC as Delaware bankruptcy counsel [Docket No. 105], and Faegre Baker Daniels LLP as special regulatory counsel [Docket No. 104] *nunc pro tunc* to the Petition Date. On November 18, 2015, the Bankruptcy Court entered an Order authorizing the Debtors to retain BDO USA, LLP as financial advisor to the Debtors *nunc pro tunc* to the Petition Date [Docket No. 114].

3. Appointment of Committee. On October 30, 2015, the UST appointed the Committee [Docket No. 78]. The Committee consists of the following members: Alesco Preferred Funding X, Ltd., c/o ATP Management LLC; Alesco Preferred Funding VI, Ltd., c/o Mead Park Advisors LLC; Trapeza CDO IX, Ltd.; Trapeza Edge CDO, Ltd.; and The Bank of New York Mellon Trust Co., N.A., as Indenture Trustee for junior subordinated debt securities due March 15, 2035. To assist the Committee in carrying out its duties, the Committee selected Kilpatrick Townsend & Stockton LLP as its counsel, Potter Anderson & Corroon LLP as co-counsel, and FTI Consulting, Inc. as its financial advisor. On December 10, 2015, the Bankruptcy Court entered Orders authorizing the Committee to employ Kilpatrick Townsend & Stockton LLP as counsel to the Committee [Docket No. 152], Potter Anderson & Corroon LLP as co-counsel to the Committee [Docket No. 154], and FTI Consulting, Inc. as financial advisor to the Committee [Docket No. 153].

4. Claims Process and Bar Date

- (a) Section 341(a) Meeting of Creditors. On November 18, 2015, the UST presided over the Section 341(a) meeting of creditors in the Chapter 11 Cases, and continued the meeting to December 14, 2015. On December 14, 2015, the UST again continued the meeting to December 28, 2015. On December 28, 2015, the meeting was held and concluded.
- (b) Schedules and Statements. The Debtors filed their Schedules with the Bankruptcy Court on December 18, 2015.

- (c) Bar Date(s). On October 14, 2015, the Debtors sought entry of an Order establishing a claims bar date. On November 18, 2015, the Bankruptcy Court entered an Order granting the motion, and establishing a claims bar date of December 31, 2015 at 5:00 p.m. Eastern Time, and a governmental bar date of April 11, 2016 at 5:00 p.m. Eastern Time [Docket No. 116]. On December 9, 2015, the Bankruptcy Court entered an Order vacating the bar date order [Docket No. 141]. Thereafter, on December 28, 2015, the Debtors filed *Debtors' Amended Motion for Entry of an Order (I) Establishing New Deadlines for Filing Proofs of Claim, (II) Approving Procedures for Filing Proofs of Claim, and (III) Approving the Form, Manner, and Sufficiency of Providing Notice Thereof*. On January 14, 2016, the Bankruptcy Court entered an Order granting the amended motion, establishing a new claims bar date of March 1, 2016 at 5:00 p.m. Eastern Time, and maintaining the governmental bar date of April 11, 2016 at 5:00 p.m. Eastern Time [Docket No. 215].

F. *Certain Federal Income Tax Consequences*

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to the Debtors and to Holders of Claims and Equity Interests. This discussion is based on the Tax Code, Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the IRS, all as in effect on the date hereof.

Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims, and each Holder's status and method of accounting and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are uncertain. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan, and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Further, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtors and the Holders of Claims and Equity Interests.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or the Holders of Claims or Equity Interests in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, for example, insurance companies, financial institutions, real estate investment trusts, tax-exempt organizations, small business investment companies, regulated investment companies, foreign taxpayers, persons whose functional currency is not the U.S. dollar, persons subject to the alternative minimum tax, and persons holding Claims or Equity Interests as part of a "straddle," "hedge," "constructive sale" or "conversion transaction" with other investments). This discussion does not address the tax consequences to Holders of Claims who did not acquire such

Claims at the issue price on original issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE PLAN.

1. Tax Consequences to the Debtors. Pursuant to the Tax Code and subject to certain exceptions, a taxpayer generally must recognize income from COD Income to the extent that such taxpayer's indebtedness is discharged for an amount less than the indebtedness' adjusted issue price determined in the manner described below. Generally, the amount of COD Income, subject to certain statutory and judicial exceptions, is the excess of (i) the adjusted issue price of the discharged indebtedness less (ii) the sum of the fair market value (determined at the date of the exchange) of the consideration, if any, given in exchange for such discharged indebtedness.

The recognition of COD Income may be treated differently in the context of a confirmed chapter 11 plan. For example, under the Bankruptcy Exception, instead of recognizing COD Income, the taxpayer is required, pursuant to section 108(b) of the Tax Code to reduce certain of that taxpayer's tax attributes to the extent of the amount of COD Income. The Tax Attributes of the taxpayer generally are reduced in the following order: net operating losses, general business and minimum tax credit carry forwards, capital loss carry forwards, the basis of the taxpayer's assets and, finally, foreign tax credit carry forwards. If the amount of COD Income exceeds the amount of Tax Attributes available to be reduced, the excess still is excluded from income. Pursuant to section 108(b)(4)(A) of the Tax Code, the reduction of Tax Attributes does not occur until the end of the taxable year after such Tax Attributes have been applied to determine the tax in the year of discharge or, in the case of asset basis reduction, the first day of the taxable year following the taxable year in which the COD Income is realized. Section 1081(2) of the Tax Code provides a further exception to the recognition of COD Income upon the discharge of debt, providing that a taxpayer will not recognize COD Income to the extent that the taxpayer's satisfaction of the debt would have given rise to a deduction for United States federal income tax purposes.

2. Tax Consequences to Creditors

(a) Holders of Claims

Generally, a Holder of a Claim should in most, but not all, circumstances recognize gain or loss equal to the difference between the "amount realized" by such Holder in exchange for its Claim, and such Holder's adjusted tax basis in the Claim. The "amount realized" is equal to the sum of the cash and the fair market value of any other consideration received under a plan of reorganization in respect of a Holder's Claim. The tax basis of a Holder in a Claim will generally be equal to the Holder's cost. To the extent applicable, the character of any recognized gain or loss (e.g., ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the Holder, the nature of the Claim in the Holder's hands, the purpose and circumstances of its acquisition, the Holder's holding period of the Claim, and the extent to

which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the Holder's hands, any gain or loss realized generally will be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the Holder has held such Claim for more than one year.

A Holder who received Cash (or potentially other consideration) in satisfaction of its Claims may recognize ordinary income or loss to the extent that any portion of such consideration is characterized as accrued interest. A Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a distribution on account of its Claim pursuant to the Plan, will be treated as having received interest income to the extent that any consideration received is characterized for United States federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain or loss as a result of the distribution it may receive under the Plan on account of its Claim.

(b) Non-United States Persons

A Non-United States Person generally will not be subject to United States federal income tax with respect to property (including money) received in exchange for such Claim pursuant to the Plan.

3. Importance of Obtaining Professional Tax Assistance. THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIM HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

G. *Certain Risk Factors To Be Considered*

Prior to voting on the Plan, each Holder of a Claim entitled to vote should consider carefully the risk factors described below, as well as all of the information contained in this Plan, including the exhibits hereto. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

1. Risk of Non-Confirmation of Plan. Although the Debtors believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for confirmation or that such modifications would not necessitate a re-solicitation of votes.

2. Delays of Confirmation and/or Effective Date. Any delay in confirmation and effectiveness of the Plan could result in, among other things, increased Administrative Expense Claims and Professional Claims. These or any other negative effects of delays in confirmation or effectiveness of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court.

3. Alternative Plan. If the Plan is not confirmed, the Debtors, the Committee, or any other party in interest could attempt to formulate a different plan. However, the additional costs, all of which would constitute Administrative Expense Claims and Professional Claims, may be so significant that one or more parties in interest could request that the Chapter 11 Cases be converted to chapter 7. Accordingly, the Debtors believe that the Plan enables creditors to realize the best return under the circumstances.

H. Potential Dismissal of Certain Debtors

The Plan is a joint plan of liquidation for each Debtor. Prior to confirmation of the Plan, any Debtor may determine that it is in the best interests of such Debtor, its creditors, and other parties to dismiss such Debtor's Chapter 11 Case instead of seeking confirmation of the Plan, as applicable to such Debtor. Notwithstanding anything to the contrary in the Plan, if any Debtor's Chapter 11 Case is dismissed, the Plan will not apply to such Debtor, and such Debtor's creditors will not be entitled to receive Distributions under the Plan on account of any Allowed Claims against such Debtor. The dismissed Debtor's corporate existence and management shall continue to be governed by applicable non-bankruptcy law. In no event will the Litigation Trustee be deemed an officer or director of a dismissed Debtor.

**ARTICLE IV.
SUMMARY OF DEBTORS' ASSETS AND TREATMENT OF CLAIMS**

The following chart provides a summary of the Debtors' assets and the estimated value of such assets that may be available to Creditors:

Debtor	Asset	Estimated Value
HoldCo	DACA 1 Account	\$260,000
HoldCo	DACA 2 Account	\$8,572,000
HoldCo	JCF Distribution Cash	\$175,000
HoldCo	Hallberg Settlement Agreement	\$480,000
HoldCo	Debtors' Professional Retainers	\$400,000
ASI	Other Cash	\$500
AISI	Premium Accounts	\$580,000
Unknown	Causes of Action	Unknown

The following chart provides a summary of treatment of each Class of Claims (other than Administrative Expense Claims, Professional Claims, Priority Tax Claims and Intercompany Claims) and an estimate of the recoveries for each Class. The treatment provided in the chart below is for information purposes only and is qualified in its entirety by ARTICLE VI.

Class	Claim	Estimated Allowed Claims³	Treatment	Estimated Recovery⁴
1	Other Priority Claims	\$10,000	Paid in Full	100%
2	Other Secured Claims	\$16,500	Retention of All Rights Unaltered	100%
3	JCF Secured Claims	\$9,312,000	Retention of All Rights in DACA 2 Account Unaltered, Including, Without Limitation, Any Lien on DACA 2 Account Release of All Rights in DACA 1 Account and Hallberg Litigation	92%
4	General Unsecured Claims Against HoldCo	\$95,000,000	Pro Rata Share of Distributions from HoldCo's Secondary Distribution Sources	2%
5	General Unsecured Claims Against AMSI	\$2,750,000	Pro Rata Share of Distributions from AMSI's Secondary Distribution Sources	0%
6	General Unsecured Claims Against ASI	\$2,500,000	Pro Rata Share of Distributions from ASI's Secondary Distribution Sources	0%

³ These amounts represent estimated Allowed Claims, and do not represent amounts actually asserted by creditors in proofs of claim or otherwise. The Debtors have not completed their analysis of Claims in the Chapter 11 Cases, and objections to such Claims have not been fully litigated and may continue following the Effective Date and the Consummation Date. Moreover, as of the date hereof, the Bar Date applicable to Governmental Units has not passed and, as a result, additional Claims may be asserted against the Debtors. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

⁴ The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims in the Chapter 11 Cases. As set forth in footnote 3, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are actually Allowed by the Bankruptcy Court.

7	General Unsecured Claims Against AUSI	\$0	Pro Rata Share of Distributions from AUSI's Secondary Distribution Sources	0%
8	General Unsecured Claims against AISI	\$4,500,000	Pro Rata Share of Distributions from AISI's Secondary Distribution Sources	0%
9	General Unsecured Claims Against AGAI	\$40,000	Pro Rata Share of Distributions from AGAI's Secondary Distribution Sources	0%
10	General Unsecured Claims Against AIGI	\$0	Pro Rata Share of Distributions from AIGI's Secondary Distribution Sources	0%
11	General Unsecured Claims Against ALLC	\$20,000,000	Pro Rata Share of Distributions from ALLC's Secondary Distribution Sources	0%
12	Equity Interests	\$1,000,000	No Distribution	0%

**ARTICLE V.
CONFIRMATION AND VOTING PROCEDURES**

A. Disclosure Statement Hearing

On _____, 2016, the Bankruptcy Court entered the Disclosure Statement Order. The Disclosure Statement Order approved the Plan as providing adequate information pursuant to Bankruptcy Code section 1125 and authorized the Debtors to solicit acceptances of the Plan.

B. Confirmation Hearing

A hearing before the Bankruptcy Court has been scheduled for [May 20], 2016 at [●]:00 a.m. (ET) at 824 North Market Street, 5th Floor, Courtroom #6, Wilmington, DE 19801 to consider confirmation of the Plan pursuant to Bankruptcy Code section 1129. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or in any notice of agenda of matters scheduled for hearing filed with the Bankruptcy Court.

C. Procedure for Objections

Any objection to approval or confirmation of the Plan must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the

amount of the Claim held by the objector. Any such objection must be filed with the Bankruptcy Court and served on the Debtors' counsel, Committee's counsel, the JCF Lender's counsel, the UST, and all parties who have filed a notice of appearance in the Chapter 11 Cases no later than 4:00 p.m., prevailing Eastern Time, on [May 13], 2016. Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court.

D. Requirements for Confirmation

The Bankruptcy Court will confirm the Plan only if it meets all of the applicable requirements of Bankruptcy Code section 1129. Among the requirements for confirmation are that the Plan be (i) accepted by all impaired Classes of Claims and Equity Interests or, if rejected by an impaired Class, that the Plan "does not discriminate unfairly" against and is "fair and equitable" with respect to such Class, and (ii) feasible.

If the Plan is rejected by an impaired Class, as part of the Bankruptcy Court's analysis of whether the Plan is "fair and equitable" with respect to such Class, the Bankruptcy Court will consider whether the Plan is in the "best interests" of impaired Creditors. The "best interests" of impaired creditors test requires that each Holder of a Claim that has not voted to accept the Plan and belongs to an impaired Class receive or retain under the Plan property of a value that is not less than the value such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. To determine what members of each impaired Class of Claims would receive if the Debtors were liquidated, the Bankruptcy Court must determine the dollar amount that a liquidation of the Debtors' assets would generate in the context of a chapter 7 liquidation. The amount available for satisfaction of Claims would consist of the proceeds resulting from the liquidation, reduced by the Claims of secured creditors to the extent of the value of their collateral, and the costs and expenses of the liquidation.

Because the Plan is a plan of orderly liquidation, each Class of Creditors will receive substantially the same treatment it would receive if the Debtors' assets were liquidated pursuant to chapter 7 of the Bankruptcy Code, except that the Estates will neither be taxed with the additional expenses and commissions of a chapter 7 trustee nor delayed by such a trustee's appointment and need to become familiar with these complex Chapter 11 Cases. The Debtors will include in the Plan Supplement a liquidation analysis, prepared by the Debtors' financial advisors, reflecting a greater distribution to Creditors pursuant to the Plan than Creditors would receive in a hypothetical chapter 7 liquidation. Accordingly, the Debtors believe the Plan satisfies the "best interests" of impaired creditors test.

In addition, to confirm the Plan the Bankruptcy Court must also find that the Plan:

- (a) classifies claims and interests in a permissible manner;
- (b) complies with the technical requirements of the Bankruptcy Code; and
- (c) was proposed in good faith.

E. Classification of Claims and Equity Interests

Bankruptcy Code section 1122 requires the Plan to place a claim or equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Plan creates separate Classes to deal respectively with secured Claims, unsecured Claims, and Equity Interests. The Debtors believe that the Plan's classifications place substantially similar Claims or Equity Interests in the same Class and thus, meet the requirements of Bankruptcy Code section 1122.

F. Impaired Claims and Equity Interests

Pursuant to Bankruptcy Code section 1126, only the Holders of Claims in Classes "impaired" by the Plan that may receive a payment or Distribution under the Plan may vote on the Plan. Pursuant to Bankruptcy Code section 1124, a Class of Claims may be "impaired" if the Plan alters the legal, equitable, or contractual rights of the Holders of such Claims treated in such Class. The Holders of Claims not impaired by the Plan are deemed to accept the Plan and do not have the right to vote on the Plan. The Holders of Claims in any Class that will not receive any payment or Distribution or retain any property pursuant to the Plan are deemed to reject the Plan and do not have the right to vote.

G. Eligibility to Vote on the Plan

Unless otherwise ordered by the Bankruptcy Court, only Holders of Allowed Claims in Classes 3, 4, 5, 6, 7, 8, 9, 10, and 11 may vote on the Plan. In order to vote on the Plan, you must hold a Claim in Class 3, 4, 5, 6, 7, 8, 9, 10, or 11 and have timely filed a proof of Claim or have a Claim that is identified on the Schedules that is not listed as disputed, unliquidated, or contingent, or hold a Claim that has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a).

H. Solicitation Notice

All parties in interest have received a notice containing (a) notice of the Confirmation Hearing; (b) the email address, Ibonito@mwe.com, from which parties in interest may request copies of the Plan, ballot, and related documents; and (c) a telephone number, (212) 547-5622, through which parties in interest can request to obtain paper copies of the Plan, ballot, and related documents. Holders of Claims in Classes 3, 4, 5, 6, 7, 8, 9, 10, and 11 which are the only Classes entitled to vote to accept or reject the Plan, have been provided a notice and a ballot. Each Holder of a Claim in Class 3, 4, 5, 6, 7, 8, 9, 10, or 11 should complete its respective ballot by (i) indicating such Holder's decision to either accept or reject the Plan in the boxes provided on the ballot, and (ii) signing and returning the ballot to the address set forth on the ballot (please note that envelopes and prepaid postage have not been included with the ballot). **BALLOTS SENT BY FACSIMILE TRANSMISSION ARE NOT ALLOWED AND WILL NOT BE COUNTED.**

I. Procedure/Voting Deadlines

In order for your ballot to count, you must complete, date, sign and properly mail a paper ballot (please note that envelopes are not included with the ballot) to the Claims and Balloting Agent at the following address:

Affirmative Insurance Holdings, Inc., et al. Ballot Processing
c/o Rust Consulting/Omni Bankruptcy
5955 De Soto Avenue, Suite 100
Woodland Hills, CA 91367

The Claims and Balloting Agent must RECEIVE original ballots by mail or overnight delivery on or before **[May 13], 2016 at 4:00 p.m. (ET)**.

Subject to the terms of the Disclosure Statement Order, any ballot that is timely received, contains sufficient information to permit the identification of the claimant, and is cast as an acceptance or rejection of the Plan will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan.

Subject to the terms of the Disclosure Statement Order, the following ballots will not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

1. any ballot received after the Voting Deadline, unless the Debtors grant an extension of the Voting Deadline in writing (including e-mail) with respect to such ballot;
2. any ballot that is illegible or contains insufficient information to permit the identification of the claimant;
3. any ballot cast by a person or entity that does not hold a Claim in a class that is entitled to vote to accept or reject the Plan;
4. any ballot cast for a Claim designated as unliquidated, contingent or disputed or as zero or unknown in amount and for which no motion pursuant to Bankruptcy Rule 3018(a) has been filed prior to [April 29], 2016;
5. any ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of the Plan, or that indicates both acceptance and rejection of the Plan;
6. any unsigned ballot; or
7. any ballot that is submitted by fax or email.

J. Acceptance of the Plan

As a Creditor, your acceptance of the Plan is important. In order for the Plan to be accepted by an impaired Class of Claims, a majority in number (*i.e.*, more than half) and at least two-thirds in dollar amount of the Claims voting in such Class must vote to accept the Plan. At least one impaired Class of Creditors, excluding the votes of insiders, must actually vote to accept the Plan. The Debtors urge that you vote to accept the Plan. **YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY MAIL THE BALLOT ATTACHED TO THE NOTICE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.**

**ARTICLE VI.
TREATMENT OF CLAIMS AND INTERESTS**

A. Unclassified Claims

1. Administrative Expense Claims. Requests for payment of Administrative Expense Claims must be filed no later than the applicable Administrative Expense Bar Date. Holders of Administrative Expense Claims that do not file requests for the allowance and payment thereof on or before the applicable Administrative Expense Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtors or their Estates.

Except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Administrative Expense Claim, each Holder of such Allowed Administrative Expense Claim shall be paid Cash from the applicable Debtor's Initial Distribution Sources in an amount equal to 100% of such Allowed Administrative Expense Claim on the later of the Effective Date and the date on which such Claim becomes an Allowed Administrative Expense Claim, or as soon as reasonably practicable thereafter.

2. Priority Tax Claims. Except to the extent that the Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be paid Cash from the applicable Debtor's Initial Distribution Sources in an amount equal to 100% of such Allowed Priority Tax Claim on the later of the Effective Date and the date on which such Claim becomes an Allowed Priority Tax Claim, or as soon as reasonably practicable thereafter.

3. Statutory Fees

- (a) Prior to the Effective Date. On the Effective Date, or as soon as reasonably practicable thereafter, the Litigation Trustee shall pay from the applicable Debtor's Initial Distribution Sources all Statutory Fees that are due and payable prior to the Effective Date.
- (b) After the Effective Date. As soon as reasonably practicable, and continuing through the closing of the Chapter 11 Cases, the Litigation Trustee shall pay from the applicable Debtor's Secondary Distribution Sources all Statutory Fees that are due and payable after the Effective Date.

4. Professional Claims. The deadline for submission by Professionals for Bankruptcy Court approval of accrued compensation and reimbursement of expenses in the Chapter 11 Cases shall be thirty (30) days after the Effective Date. Upon the Effective Date, any requirement that Professionals comply with Bankruptcy Code sections 327 through 331 and 1103, or any Order seeking retention or compensation for services rendered after the Effective Date, shall terminate, and the Litigation Trustee may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

- (a) Initial Distributions to Professionals. Except to the extent that the Holder of an Allowed Professional Claim agrees to less favorable treatment, each Holder of such Allowed Professional Claim shall be paid its Pro Rata share of the Cash remaining from the Debtors' Initial Distribution Sources after the Distributions set forth in ARTICLE VI.A.1 (Administrative Expense Claims), ARTICLE VI.A.2 (Priority Tax Claims), ARTICLE VI.A.3(a) (Statutory Fees), and ARTICLE VI.B.1 (Other Priority Claims), on the later of the Effective Date and the date on which such Claim becomes an Allowed Professional Claim, or as soon as reasonably practicable thereafter. Notwithstanding the foregoing, any Professional holding a retainer must first seek satisfaction of its Allowed Professional Claim from its retainer until all holders of Allowed Professional Claims without retainers have received the same Pro Rata share of their Allowed Professional Claims.
- (b) Subsequent Distributions to Professionals. Except to the extent that the Holder of an Unpaid Professional Claim agrees to less favorable treatment, each Holder of an Unpaid Professional Claim shall be paid its Pro Rata share of the Cash remaining from the Debtors' Secondary Distribution Sources after the Distributions set forth in ARTICLE VII.B.3. (Litigation Trustee expenses) and ARTICLE IX.E (JCF Exit Financing), as soon as reasonably practicable.

5. Intercompany Claims. All Intercompany Claims shall be disallowed as of the Effective Date.

B. Classified Claims

Claims, other than Administrative Expense Claims, Priority Tax Claims, Professional Claims, and Intercompany Claims are classified for all purposes, including voting, confirmation and Distribution pursuant to the Plan, as follows:

Class	Claims	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	JCF Secured Claims	Impaired	Entitled to Vote
4	General Unsecured Claims Against HoldCo	Impaired	Entitled to Vote
5	General Unsecured Claims Against AMSI	Impaired	Entitled to Vote
6	General Unsecured Claims Against ASI	Impaired	Entitled to Vote
7	General Unsecured Claims Against AUSI	Impaired	Entitled to Vote
8	General Unsecured Claims against AISI	Impaired	Entitled to Vote
9	General Unsecured Claims Against AGAI	Impaired	Entitled to Vote
10	General Unsecured Claims Against AIGI	Impaired	Entitled to Vote
11	General Unsecured Claims Against ALLC	Impaired	Entitled to Vote
12	Equity Interests	Impaired	Deemed to Reject

1. Class 1 – Other Priority Claims

- (a) Classification. Class 1 consists of all Other Priority Claims.
- (b) Impairment and Voting. Class 1 is unimpaired by the Plan. Holders of Class 1 Other Priority Claims are conclusively presumed to have accepted

the Plan pursuant to Bankruptcy Code section 1126(f) and, therefore, are not entitled to vote to accept or reject the Plan.

- (c) Treatment. Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Other Priority Claim, each Holder of such Allowed Other Priority Claim shall be paid Cash from the applicable Debtor's Initial Distribution Sources in an amount equal to 100% of such Allowed Other Priority Claim on the later of the Effective Date and the date on which such Claim becomes an Allowed Other Priority Claim, or as soon as reasonably practicable thereafter.

2. Class 2 – Other Secured Claims

- (a) Classification. Class 2 consists of all Other Secured Claims.
- (b) Impairment and Voting. Class 2 is unimpaired by the Plan. Holders of Class 2 Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f) and, therefore, are not entitled to vote to accept or reject the Plan.
- (c) Treatment. Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Other Secured Claim, each Holder of such Allowed Other Secured Claim shall, at the option of the applicable Debtor (in consultation with the Committee before the Effective Date, or the Litigation Trustee after the Effective Date), either (i) receive the collateral securing any such Allowed Other Secured Claim; or (ii) receive other treatment rendering such Claim unimpaired in accordance with Bankruptcy Code section 1124, in each case on the later of the Effective Date and the date on which such Claim becomes an Allowed Other Secured Claim, or as soon as reasonably practicable thereafter.

3. Class 3 – JCF Secured Claims

- (a) Classification. Class 3 consists of all JCF Secured Claims.
- (b) Impairment and Voting. Class 3 is impaired by the Plan. Holders of Class 3 Claims are entitled to vote to accept or reject the Plan.
- (c) Treatment. Except to the extent that a Holder of an Allowed JCF Secured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed JCF Secured Claim, each Holder of such Allowed JCF Secured Claim shall

retain all of such Holder's rights in the DACA 2 Account, including, without limitation, any Lien on DACA 2 Account.

4. Class 4 – General Unsecured Claims Against HoldCo

- (a) Classification. Class 4 consists of all General Unsecured Claims Against HoldCo.
- (b) Impairment and Voting. Class 4 is impaired by the Plan. Holders of Class 4 Claims are entitled to vote to accept or reject the Plan.
- (c) Treatment. Except to the extent that a Holder of an Allowed Class 4 Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Class 4 Claim, each Holder of such Allowed Class 4 Claim shall be paid Cash in an amount equal to such Holder's Pro Rata share of HoldCo's Secondary Distribution Sources remaining after the Distributions set forth in ARTICLE VII.B.3 (Litigation Trustee expenses), ARTICLE IX.E (JCF Exit Financing), and ARTICLE VI.A.4(b) (Professional Claims).
- (d) Subordination of the Subordinated Claims. The Litigation Trustee shall enforce the terms of each Subordinated Debt Agreement in which Holders of Subordinated Claims agreed to subordinate their Subordinated Claims to all Senior Indebtedness (as defined in each Subordinated Debt Agreement), including, without limitation, the JCF Prepetition Loan. To effect such subordination, the Holders of JCF Deficiency Claims shall receive 100% of any Distribution that otherwise would have been made on account of the Subordinated Claims until and unless the JCF Deficiency Claims are repaid in full.

5. Class 5 – General Unsecured Claims Against AMSI

- (a) Classification. Class 5 consists of all General Unsecured Claims Against AMSI.
- (b) Impairment and Voting. Class 5 is impaired by the Plan. Holders of Class 5 Claims are entitled to vote to accept or reject the Plan.
- (c) Treatment. Except to the extent that a Holder of an Allowed Class 5 Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Class 5 Claim, each Holder of such Allowed Class 5 Claim shall be paid Cash in an amount equal to such Holder's Pro Rata share of AMSI's Secondary Distribution Sources remaining after the Distributions set forth in ARTICLE VII.B.3 (Litigation Trustee expenses), ARTICLE IX.E (JCF Exit Financing), and ARTICLE VI.A.4(b) (Professional Claims).

6. Class 6 – General Unsecured Claims Against ASI
- (a) Classification. Class 6 consists of all General Unsecured Claims Against ASI.
 - (b) Impairment and Voting. Class 6 is impaired by the Plan. Holders of Class 6 Claims are entitled to vote to accept or reject the Plan.
 - (c) Treatment. Except to the extent that a Holder of an Allowed Class 6 Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Class 6 Claim, each Holder of such Allowed Class 6 Claim shall be paid Cash in an amount equal to such Holder's Pro Rata share of ASI's Secondary Distribution Sources remaining after the Distributions set forth in ARTICLE VII.B.3 (Litigation Trustee expenses), ARTICLE IX.E (JCF Exit Financing), and ARTICLE VI.A.4(b) (Professional Claims).
7. Class 7 – General Unsecured Claims Against AUSI
- (a) Classification. Class 4 consists of all General Unsecured Claims Against AUSI.
 - (b) Impairment and Voting. Class 7 is impaired by the Plan. Holders of Class 7 Claims are entitled to vote to accept or reject the Plan.
 - (c) Treatment. Except to the extent that a Holder of an Allowed Class 7 Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Class 7 Claim, each Holder of such Allowed Class 7 Claim shall be paid Cash in an amount equal to such Holder's Pro Rata share of AUSI's Secondary Distribution Sources remaining after the Distributions set forth in ARTICLE VII.B.3 (Litigation Trustee expenses), ARTICLE IX.E (JCF Exit Financing), and ARTICLE VI.A.4(b) (Professional Claims).
8. Class 8 – General Unsecured Claims Against AISI
- (a) Classification. Class 8 consists of all General Unsecured Claims Against AISI.
 - (b) Impairment and Voting. Class 8 is impaired by the Plan. Holders of Class 8 Claims are entitled to vote to accept or reject the Plan.
 - (c) Treatment. Except to the extent that a Holder of an Allowed Class 8 Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Class 8 Claim, each Holder of such Allowed Class 8 Claim shall be paid Cash in

an amount equal to such Holder's Pro Rata share of AISI's Secondary Distribution Sources remaining after the Distributions set forth in ARTICLE VII.B.3 (Litigation Trustee expenses), ARTICLE IX.E (JCF Exit Financing), and ARTICLE VI.A.4(b) (Professional Claims).

9. Class 9 – General Unsecured Claims Against AGAI

- (a) Classification. Class 9 consists of all General Unsecured Claims Against AGAI.
- (b) Impairment and Voting. Class 9 is impaired by the Plan. Holders of Class 9 Claims are entitled to vote to accept or reject the Plan.
- (c) Treatment. Except to the extent that a Holder of an Allowed Class 9 Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Class 9 Claim, each Holder of such Allowed Class 9 Claim shall be paid Cash in an amount equal to such Holder's Pro Rata share of AGAI's Secondary Distribution Sources remaining after the Distributions set forth in ARTICLE VII.B.3 (Litigation Trustee expenses), ARTICLE IX.E (JCF Exit Financing), and ARTICLE VI.A.4(b) (Professional Claims).

10. Class 10 – General Unsecured Claims Against AIGI

- (a) Classification. Class 10 consists of all General Unsecured Claims Against AIGI.
- (b) Impairment and Voting. Class 10 is impaired by the Plan. Holders of Class 10 Claims are entitled to vote to accept or reject the Plan.
- (c) Treatment. Except to the extent that a Holder of an Allowed Class 10 Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Class 10 Claim, each Holder of such Allowed Class 10 Claim shall be paid Cash in an amount equal to such Holder's Pro Rata share of AIGI's Secondary Distribution Sources remaining after the Distributions set forth in ARTICLE VII.B.3 (Litigation Trustee expenses), ARTICLE IX.E (JCF Exit Financing), and ARTICLE VI.A.4(b) (Professional Claims).

11. Class 11 – General Unsecured Claims Against ALLC

- (a) Classification. Class 11 consists of all General Unsecured Claims Against ALLC.
- (b) Impairment and Voting. Class 11 is impaired by the Plan. Holders of Class 11 Claims are entitled to vote to accept or reject the Plan.

- (c) Treatment. Except to the extent that a Holder of an Allowed Class 11 Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and compromise of each Allowed Class 11 Claim, each Holder of such Allowed Class 11 Claim shall be paid Cash in an amount equal to such Holder's Pro Rata share of ALLC's Secondary Distribution Sources remaining after the Distributions set forth in ARTICLE VII.B.3 (Litigation Trustee expenses), ARTICLE IX.E (JCF Exit Financing), and ARTICLE VI.A.4(b) (Professional Claims).

12. Class 12 – Equity Interests

- (a) Classification. Class 12 consists of all Equity Interests.
- (b) Impairment and Voting. Class 12 is impaired under the Plan. Holders of Class 5 Equity Interests are deemed to have rejected the Plan and, therefore, are not entitled to vote to accept or reject the Plan.
- (c) Treatment. Holders of Class 12 Equity Interests will receive no Distribution. On the Effective Date, all outstanding Equity Interests will be cancelled. Upon cancellation, no property will be distributed to, or retained by, Holders of Equity Interests. For the avoidance of any doubt, none of the equity interests in the Debtor's direct and indirect subsidiaries shall be cancelled pursuant to the Plan. Each Debtor retains its right to receive a Distribution on account of any equity interest it holds in another Debtor or affiliate, including in AIC.

C. *Modification of Treatment of Claims and Equity Interests*

The Litigation Trustee reserves the right to modify the treatment of any Allowed Claim in any manner adverse only to the Holder of such Claim at any time after the Effective Date upon the consent of the Holder of the Claim whose Allowed Claim is being adversely affected.

**ARTICLE VII.
LITIGATION TRUST AND OVERSIGHT COMMITTEE**

A. *The Litigation Trust*

1. Execution of the Litigation Trust Agreement. On the Effective Date, the Litigating Trust Agreement shall be executed by the applicable Debtors and the Litigation Trustee, and all other necessary steps shall be taken to establish the Litigation Trust and the beneficial interests therein, which shall be for the benefit of the Litigation Trust beneficiaries, whether their Claims are Allowed on or after the Effective Date.

2. Purpose of the Litigation Trust. The Litigation Trust shall be established for the purposes set forth in the Litigation Trust Agreement, with no objective to continue or engage in

the conduct of a trade or business. The Litigation Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d).

B. The Litigation Trustee

1. Appointment of the Litigation Trustee. A Litigation Trustee shall be selected by the Oversight Committee prior to the Confirmation Date, and upon and after the Effective Date shall serve in accordance with the Plan and the Litigation Trust Agreement.

2. Duties and Powers of the Litigation Trustee. The Litigation Trustee shall (i) be a representative of the Estates pursuant to Bankruptcy Code section 1123 and serve as the Estates' representative before the Bankruptcy Court or any other court as necessary, (ii) have the rights and powers set forth in the Plan and the Litigation Trust Agreement, and (iii) be governed in all things by the terms hereof and the Litigation Trust Agreement. Subject to the terms of the Plan and the Litigation Trust Agreement, and the limitations and/or obligations set forth in this ARTICLE VII, the Litigation Trustee shall be authorized, empowered, and directed to take all actions necessary to comply with the Plan and exercise and fulfill the duties and obligations arising hereunder, including, without limitation, the rights, powers, and duties of a trustee under Bankruptcy Code sections 704(a)(1), (2), (4), (5) and (7) and 1106(a)(6) and (7) and the rights and duties set forth in this Plan (i) to act as a trustee for and administer the Transferred Assets; (ii) to take any action necessary to effect the transfer of the Transferred Assets to the Litigation Trust; (iii) to employ and compensate the Professionals currently employed by the Debtors or the Committee or other professionals; (iv) to collect, administer, sell, liquidate, and dispose of all Transferred Assets and to otherwise administer the Estates as necessary; (v) to review, investigate and (if appropriate) object to or seek equitable subordination of Claims against the Estates and to assert any rights of setoff, or other legal or equitable defenses of the Debtors; (vi) to investigate, prosecute and/or settle all Causes of Action; (vii) to voluntarily engage in arbitration or mediation with respect to any Cause of Action; (viii) to invest the Debtors' Cash in any Permitted Investment;⁵ (ix) to open, maintain, and administer bank accounts as necessary and appropriate to carry out the powers and duties of the Litigation Trustee, including to establish, as necessary, disbursement accounts for the deposit and Distribution of all amounts distributed under the Plan; (x) to calculate and make all Distributions; (xi) to prepare and file tax returns for the Debtors; (xii) to seek estimation of contingent or unliquidated Claims under Bankruptcy Code section 502(c) or determinations of tax liabilities under Bankruptcy Code section 505; (xiii) to prepare and file quarterly financial reports after the Effective Date; (xiv) to comply with applicable Orders of the Bankruptcy Court over the matters set forth herein, and all applicable laws and regulations concerning the matters set forth herein; and (xv) take all other actions in furtherance of the implementation of the Plan, including executing all agreements, instruments, and other documents necessary to perform the Litigation Trustee's duties under the Plan and Litigation Trust Agreement. Except as otherwise set forth in the Plan or Litigation Trust Agreement, the Litigation Trustee may take any and all actions that it deems reasonably necessary or appropriate to defend against any Claim, including, without limitation, the right to: (a) exercise any and all judgment and discretion with respect to the manner in which to prosecute

⁵ The Litigation Trustee shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash, other property or proceeds

or settle a Cause of Action or defend against or settle any Claim, including, without limitation, the retention of professionals, experts and consultants; and (b) enter into any settlement agreement in good faith.

3. Litigation Trustee Compensation. The Litigation Trustee shall receive reasonable compensation from the Secondary Distribution Sources and the JCF Litigation Cash for services rendered pursuant to the Plan without further Court Order on such terms and conditions as shall be set forth in the Litigation Trust Agreement to be negotiated with the JCF Lender and filed with the Bankruptcy Court as part of the Plan Supplement.

C. Oversight Committee

1. Appointment. The Oversight Committee's initial membership shall consist of one Person appointed by the Committee and two Persons appointed by the JCF Lender no later than ten (10) calendar days prior to the Voting Deadline. No later than ten (10) calendar days prior to the Voting Deadline, the Debtors shall file in the Chapter 11 Cases a notice, which shall be included in the Plan Supplement, identifying the initial members of the Oversight Committee, and stating that any party may obtain a copy of such notice by contacting lbonito@mwe.com or (212) 547-5622.

D. Causes of Action

1. Preservation of Causes of Action. In accordance with Bankruptcy Code section 1123(b) or any corresponding provision of federal or state laws, and except as otherwise provided in the Plan or the Confirmation Order, on and after the Effective Date, all Transferred Assets shall be retained by the Litigation Trust, and the Litigation Trustee may, in accordance with this Plan, enforce, sue on, settle, or compromise (or decline to do any of the foregoing) any or all of the Transferred Assets.

2. No Waiver. There are a number of potential claims (including against the Debtors' current and former officers, directors, affiliated entities, parties to the MGA Sale, and legal and accounting firms that provided services to the Debtors prior to the Petition Date) that may be asserted by the Debtors or the Litigation Trust.

If the Litigation Trustee determines that state or federal criminal or securities laws may have been violated, the Litigation Trustee may refer these matters to the appropriate government authorities such as the United States Attorneys' Office and the Securities and Exchange Commission. If, in investigating potential claims, the Litigation Trustee discovers possible instances of tax or bank fraud, the Litigation Trustee may refer the matter to the appropriate federal and state authorities.

Upon completion of their investigations, the Debtors or the Litigation Trustee may conclude that Causes of Action exist against a number of Persons, including, without limitation, Causes of Action (i) against one or more officers, directors, insiders or related or affiliated entities for, among other things, claims to avoid and/or recover transfers (including, without

limitation, preferences and fraudulent transfers), diversion of corporate assets, breach of fiduciary duties, mismanagement and other tortious or wrongful conduct, (ii) against legal and accounting firms for pre-petition professional malpractice, (iii) against third parties for claims to avoid and/or recover transfers (including, without limitation, preferences and fraudulent transfers) and other actionable conduct, and (iv) against third parties for amounts owed for goods, loans, or services rendered.

The Debtors are continuing to identify and evaluate the basis for and the wisdom of pursuing any claims on behalf of any Debtor. Under the Plan, the Litigation Trustee will be authorized to decide whether to assert these claims and, if so, to initiate the proceedings to pursue these claims and to compromise or otherwise settle the claims in favor of the Litigation Trust or, if so, that the costs of pursuing those claims is greater than the benefit of obtaining a judgment.

Except as expressly provided in ARTICLE X.C, the Debtors retain all Causes of Action accruing to them and their respective Estates, all rights of setoff, and all other legal and equitable claims or defenses for the benefit of the beneficiaries under the Plan. Causes of Action may include avoidance and/or recovery of transfers against (a) Persons who were paid or received the benefit of payments or other transfers of an interest of a Debtor in property within the 90 days prior to the Petition Date for goods or services previously provided, or otherwise on account of an antecedent debt; (b) insiders of one or more of the Debtors who were paid or received the benefit of payments or other transfers of an interest of a Debtor in property within the one year prior to the Petition Date for goods or services previously provided, or otherwise on account of an antecedent debt; (c) Persons who were paid or received the benefit of payments or other transfers of an interest of a Debtor in property made by one or more of the Debtors within four years (or such longer reach back period as may be effective under applicable law) prior to the Petition Date who did not provide reasonably equivalent value for such payment or transfer; (d) Persons who were paid or received the benefit of payments or other transfers of an interest of a Debtor in property made by a Debtor with the intent to hinder, delay, or defraud creditors of one or more of the Debtors; and I Persons who were paid or received the benefit of payments or other transfers of value from one or more of the Debtors after the Petition Date without Bankruptcy Court authorization.

The Debtors intend to preserve, and expressly reserve, all Causes of Action, rights, and remedies, if any, the Debtors may have against any and all Persons for the benefit of their estates and creditors.

3. Authority to Act. Prior to, on, or after the Effective Date, as applicable, all matters expressly provided for under the Plan that would otherwise require approval of the stockholders, equity security holders, officers, directors, partners, managers, members, or other owners of one or more of the Debtors shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date, as applicable, pursuant to applicable laws, without any requirement of further vote, consent, approval, authorization or other action by such stockholders, equity security holders, officers, directors, partners, managers, members or other owners of such entities or notice to, order of or hearing before the Bankruptcy Court.

**ARTICLE VIII.
PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE PLAN**

A. Distributions

All Distributions under the Plan shall be made by the Litigation Trustee.

B. Method of Payment

Unless otherwise expressly agreed in writing, all Cash Distributions to be made pursuant to the Plan shall be made by check drawn on a domestic bank or an electronic wire.

C. Objections to and Resolution of Claims

The Litigation Trustee shall have the right to file objections to Claims after the Effective Date. All objections shall be litigated to entry of a Final Order; *provided, however*, that only the Litigation Trustee shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections as set forth in ARTICLE VII.B.2.

D. Claims Objection Deadline

The Litigation Trustee, and any other party in interest to the extent permitted pursuant to Bankruptcy Code section 502(a), shall file and serve any objection to any Claims no later than the Claims Objection Deadline; *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court for cause from time to time upon notice of motion by the Litigation Trustee.

E. No Distribution Pending Allowance

Notwithstanding any other provision of the Plan, no payment or Distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by this Plan.

F. Escrow of Cash Distributions

On any date that Distributions are to be made under the terms of the Plan, the Litigation Trustee shall deposit in one or more segregated accounts, Cash or property equal to 100% of the Cash or property that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto. The Litigation Trustee shall also segregate any interest, dividends, or proceeds of such Cash. Such Cash, together with any interest, dividends, or proceeds thereof, shall be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

G. Delivery of Distributions

Except as provided herein, Distributions to Holders of Allowed Claims shall be made: (1) at the addresses set forth on the respective proofs of Claim filed by such Holders; (2) at the addresses set forth in any written notices of address changes delivered to the Litigation Trustee after the date of any related proof of Claim; or (3) at the address reflected in the Schedules if no proof of Claim is filed and the Litigation Trustee has not received a written notice of a change of address.

If the Distribution to the Holder of any Claim is returned to the Litigation Trustee as undeliverable, no further distribution shall be made to such holder unless and until the Litigation Trustee is notified in writing of such Holder's then current address. Undeliverable Distributions shall remain in the possession of the Litigation Trustee until the earlier of (i) such time as a Distribution becomes deliverable or (ii) such undeliverable Distribution becomes an Unclaimed Distribution.

Until such time as an undeliverable Distribution becomes an Unclaimed Distribution, within thirty (30) days after the end of each calendar quarter following the Effective Date, or upon such other interval as the Bankruptcy Court may order, but in no event less frequently than annually, the Litigation Trustee shall make distributions of all Cash and property that has become deliverable during the preceding quarter. Each such Distribution shall include the net return yielded from the investment of any undeliverable Cash, from the date such Distribution would have been due had it then been deliverable to the date that such Distribution becomes deliverable.

The Litigation Trustee shall make reasonable efforts to update or correct contact information for recipients of undeliverable Distributions; *provided, however*, that nothing contained in the Plan shall require the Litigation Trustee to locate any Holder of an Allowed Claim.

H. Unclaimed Distributions

Any Cash or other property to be distributed under the Plan shall revert to the Litigation Trust if it is not claimed by the Entity on or before the Unclaimed Distribution Deadline. If such Cash or other property is not claimed on or before the Unclaimed Distribution Deadline, the Distribution made to such Entity shall be deemed to be reduced to zero. Any Unclaimed Distributions shall be donated to a Charity selected by the Litigation Trustee if the cost of effectuating another Distribution exceeds the amount of the Unclaimed Distribution.

I. Set-Off

The Debtors and the Litigation Trust retain the right to reduce any Claim by way of set-off in accordance with the Debtors' books and records and in accordance with the Bankruptcy Code.

J. Minimum Distributions

Notwithstanding anything herein to the contrary, the Litigation Trustee shall not be required to make Distributions or payments of less than \$25.00.

ARTICLE IX.
MEANS FOR IMPLEMENTATION OF THE PLAN

A. Cancellation of Liens

Except with respect to (i) Liens securing Allowed Other Secured Claims, and (ii) JCF's Lien on DACA 2 Account, on the Effective Date, any Lien securing any Secured Claim shall be deemed released, and the Person holding such Secured Claim shall be authorized and directed to release any collateral or other property of the applicable Debtor (including any cash collateral) held by such Person and to take such actions as may be requested by the Litigation Trustee to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases as may be requested by the Litigation Trustee.

B. Corporate Action

On the Effective Date, the Debtors shall, in accordance with the Plan, cause all of the Debtors' assets, including, without limitation, the Initial Distribution Sources, the Secondary Distribution Sources, the JCF Trust Cash, the Other Cash, the D&O Policies, the Causes of Action, and the Premium Accounts, to be transferred to the Litigation Trustee. The Debtors (under the authority of the Litigation Trustee) shall retain any remaining obligations of the Debtors' Estates in accordance with the Plan.

On the Effective Date, all matters and actions provided for under the Plan that would otherwise require approval of the member or managers of the Debtors shall be deemed to have been authorized and effective in all respects as provided herein, and shall be taken without any requirement for further action by the members and managers of the Debtors.

On the Effective Date, without the necessity for any other or further action to be taken by or on behalf of the Debtors, and upon the transfer of all of the Debtors' assets to the Litigation Trustee in accordance with the Plan, the members of the board of directors or managers, as the case may be, and the respective officers, of each Debtor shall be deemed to have been removed, and each such Debtor shall be deemed dissolved for all purposes.

C. Trading Order Vacated

On the Effective Date, the (a) *Interim Order (I) Establishing Notice and Objection Procedures for Transfers of Equity Securities, (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors' Estates, and (III) Scheduling a Final Hearing* [Docket No. 43], and (b) *Final Order (I) Establishing Notice and Objection Procedures for Transfers of Equity Securities, (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors' Estates, and (III) Granting Related Relief* [Docket No. 117] will be deemed vacated by the Court.

D. Sources of Cash for Distributions

Subject to the terms of ARTICLE VI, Distributions shall be made solely from the Initial Distribution Sources and the Secondary Distribution Sources.

E. JCF Exit Financing

Pursuant to the JCF Exit Financing Agreement, which will become effective upon the Effective Date of the Plan, JCF has agreed to extend a term loan from the Cash held in the DACA 2 Account to the Litigation Trust in the aggregate principal amount of \$350,000. Up to \$175,000 of proceeds from the JCF Exit Financing may be used to pay allowed Administrative Expenses and Professional Claims. The remaining amount of proceeds from the JCF Exit Financing shall be used to pay Litigation Trustee Expenses. After making the Distributions set forth in ARTICLE VII.B.3 (Litigation Trustee Expenses), the Litigation Trustee shall repay the JCF Exit Financing before making any additional Distributions to Creditors.

The JCF Exit Financing will be a loan extended to the Litigation Trust, with a first priority, validly perfected security interest in the Litigation Trust's assets, including, without limitation, all Causes of Action, and the Confirmation Order will provide for the perfection of such security interest notwithstanding the requirements of applicable law. If the security interest is, for any reason, determined to be invalid, the Plan shall be deemed a subordination agreement, pursuant to which the Claims of all other parties entitled to Distributions from the Litigation Trust's assets, other than the Claims set forth in ARTICLE VII.B.3 (Litigation Trustee Expenses), shall be deemed to be subordinated to the JCF Exit Financing.

F. Florida Settlement

In exchange for full and final satisfaction, settlement, release, and compromise of the Florida Adversary Proceeding, as soon as reasonably practicable after the Effective Date, the Litigation Trustee shall make a Distribution in Cash in the amount of \$3,955.94 to the Florida Department of Financial Services. As soon as reasonably practicable after the foregoing Distribution is made, the Florida Department of Financial Services shall voluntarily dismiss the Florida Adversary Proceeding with prejudice.

The Plan shall constitute a motion to approve the Florida Settlement pursuant to Bankruptcy Rule 9019, and the Florida Settlement shall be deemed approved and effective on the Effective Date.

G. Hallberg Settlement Agreement

In exchange for full and final satisfaction, settlement, release, and compromise of the Hallberg Litigation, the parties to the Hallberg Litigation are settling the claims asserted therein. Pursuant to the Hallberg Settlement Agreement, certain defendants in the Hallberg Litigation will (i) pay \$350,000 in Cash to HoldCo no later than ten (10) days prior to the Confirmation Hearing, and (ii) continue to be subject to certain wage garnishment orders, to be paid to HoldCo, previously entered against such defendants, which historically have amounted to approximately \$65,000 per year, for a period of two (2) years after the Effective Date.

The Plan shall constitute a motion to approve the Hallberg Settlement Agreement pursuant to Bankruptcy Rule 9019, and the Hallberg Settlement Agreement shall be deemed approved and effective on the Effective Date.

**ARTICLE X.
INJUNCTIONS, EXCULPATIONS AND RELEASES**

A. Injunctions

All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Except as otherwise provided in the Plan or to the extent necessary to enforce the terms and conditions of the Plan, the Confirmation Order or a separate Order of the Bankruptcy Court, all entities who have held, hold, or may hold Claims against or Equity Interests in the Debtors shall be permanently enjoined from taking any of the following actions against any property that is to be distributed under the Plan on account of any such Claims or Equity Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting, or enforcing any Lien or encumbrance; (d) asserting a setoff, right, or subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors; and I commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the Plan; *provided, however,* that such entities shall not be precluded from exercising their rights pursuant to and consistent with the Plan and the Confirmation Order; *provided further, however,* that the foregoing provisions of ARTICLE X.A shall not apply to any acts, omissions, claims, causes of action, or other obligations expressly set forth in and preserved by this Plan, or any defenses thereto.

B. Exculpations

Except as otherwise specifically provided in the Plan, the Exculpated Parties shall not have or incur any liability for any claim, action, proceeding, cause of action, avoidance action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment, or claim (as defined in Bankruptcy Code section 101(5)), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to one another or to any Claim holder or Equity Interest holder, or any other party in interest, or any of their respective agents, employees, representatives, advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Debtors, the Chapter 11 Cases, the negotiation and filing of the Plan, the filing of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan, or the property to be liquidated or distributed under the Plan, except for their willful misconduct or gross negligence as determined by a Final Order of a Court of

competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

C. Releases

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each Debtor, and any Person seeking to exercise the rights of a Debtor's Estate, including without limitation the Litigation Trustee, hereby irrevocably, absolutely, and permanently releases, waives, and discharges the JCF Lender, J.C. Flowers & Co. LLC, and each Person who was employed by the JCF Lender or J.C. Flowers & Co. LLC at any time prior to the Petition Date, including, without limitation, David Schamis and Erich Rahe, who served as directors of Holdco from 2006 through the Effective Date and 2014 through the Effective Date, respectively, and their respective property, from any and all Claims or Causes of Action that the Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Equity Interest or other Person, based in whole or in part upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date arising out of or in any way related to the Debtors, the Chapter 11 Cases, or the Plan; *provided, however*, that there shall be no release on account of any contractual obligation owed by such Person to a Debtor pursuant to the JCF Exit Financing.

**ARTICLE XI.
EXECUTORY CONTRACTS**

A. Rejection of Executory Contracts

On the Effective Date, all Executory Contracts not assumed prior to the Confirmation Date or subject to a pending motion to assume on the Confirmation Date will be deemed rejected. The Confirmation Order will constitute an order of the Bankruptcy Court approving such rejection pursuant to Bankruptcy Code sections 365 and 1123 as of the Effective Date. For the avoidance of doubt, nothing in this Plan shall be construed as a rejection by the Debtors of any D&O Policy.

B. Deadline for Filing Proofs of Claim Relating to Executory Contracts Rejected Pursuant to the Plan

If the rejection by the Debtors, pursuant to the Plan or otherwise, of an Executory Contract gives rise to a Claim, a Proof of Claim must be filed with the Claims Agent at:

Affirmative Insurance Holdings, Inc., et al. Claims Processing
c/o Rust Consulting/Omni Bankruptcy
5955 De Soto Avenue, Suite 100
Woodland Hills, CA 91367

by no later than twenty-four (24) days after service of the later of (i) notice of entry of the Confirmation Order, and (ii) other notice that such Executory Contract has been rejected. Any Person who fails to file and serve a proof of Claim within such time periods will be forever

barred from asserting such Claim against the Debtors and their Estates. For the avoidance of doubt, all Allowed Claims on account of the Debtors' rejection of any Executory Contract shall be treated as a General Unsecured Claim.

**ARTICLE XII.
CONDITIONS TO THE EFFECTIVE DATE**

A. Conditions Precedent to the Effective Date

The Plan shall not become effective unless and until (i) the Confirmation Order becomes a Final Order, the Litigation Trust Agreement is executed, and the Litigation Trustee is duly appointed; and (ii) the Court shall have determined that any Claim of AIC with respect to amounts allegedly owed to AIC under that certain Consolidated Tax Allocation Agreement by and among Holdco and each of the signatories thereto, effective as of January 1, 2004, as amended from time to time, does not exceed \$8.2 million.

B. Effect of Failure of Conditions

If each condition to the Effective Date has not been satisfied or duly waived within forty-five (45) days after the Confirmation Date, then upon motion by any party in interest, made before the time that each condition has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order may be vacated by the Bankruptcy Court; *provided, however*, that notwithstanding the filing of such motion, the Confirmation Order shall not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Debtors or, in the case of any condition related to the JCF Exit Financing, JCF Lender, before any Order granting such relief becomes a Final Order. If the Confirmation Order is vacated pursuant to this ARTICLE XII.B, the Plan shall be deemed null and void in all respects, and nothing contained herein shall (i) constitute a waiver or release of any Claims by or against the Debtors, or (ii) prejudice in any manner the Debtors' rights.

C. Waiver of Conditions for Effective Date

Each condition for the Effective Date may be waived, in whole or in part, by the Debtors, without notice or an Order of the Bankruptcy Court; *provided, however*, that the Debtors shall provide written notice to the Committee of any such waiver and an opportunity to consent, which consent shall not be unreasonably withheld. The failure to satisfy or to waive any condition may be asserted by the Debtors regardless of the circumstances giving rise to failure of such condition to be satisfied (including any action or inaction by the Debtors). The failure of the Debtors to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each such right will be deemed an ongoing right that may be asserted at any time.

**ARTICLE XIII.
RETENTION OF JURISDICTION**

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, Bankruptcy Code sections 105(a) and 1142, and for, among other things, the following purposes:

1. To hear and determine any objections to Claims and to address any issues relating to Disputed Claims;
2. To enter and implement such Orders as may be appropriate if the Confirmation Order is stayed, revoked, modified or vacated;
3. To issue such Orders in aid of execution and consummation of the Plan, to the extent authorized by Bankruptcy Code section 1142;
4. To consider any amendments to or modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
5. To hear and determine all requests for compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under Bankruptcy Code section 330 or 503;
6. To hear and determine any dispute concerning property of the Estate;
7. To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan;
8. To hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;
9. To hear any other matter not inconsistent with the Bankruptcy Code;
10. To enter a final decree closing the Chapter 11 Cases;
11. To ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the Plan;
12. To decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date;
13. To issue injunctions, enter and implement other Orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Plan, except as otherwise provided herein;

14. To determine any other matters that may arise in connection with or related to the Plan, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Plan;

15. To enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Cases (whether or not the Chapter 11 Cases have been closed);

16. To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and

17. To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Cases, the Bar Date, of the Confirmation Hearing for the purpose of determining whether a Claim or Equity Interest is discharged hereunder or for any other purpose.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

A. Amendment or Modification of the Plan

Alterations, amendments, or modifications of the Plan may be proposed in writing by the Debtors at any time before the Confirmation Date if the Plan, as altered, amended, or modified, satisfies Bankruptcy Code sections 1122 and 1123 and the Debtors have complied with Bankruptcy Code section 1125.

B. Severability

If the Bankruptcy Court determines prior to the Confirmation Date that any provision in the Plan is invalid, void, or unenforceable, such provision shall be invalid, void, or unenforceable with respect to the Holder of a Claim or Equity Interest as to which the provision is determined to be invalid, void, or unenforceable. The invalidity, voidability, or unenforceability of any such provision shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

C. Revocation or Withdrawal of the Plan

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan before the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Debtors, or to prejudice in any manner the Debtors' rights in any further proceedings involving the Debtors.

D. Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtors, the Holders of Claims, and the Holders of Equity Interests, and their respective successors and assigns.

E. Notices

All notices, requests, and demands to or upon the Litigation Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as set forth in the Confirmation Order.

F. Governing Law

Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

G. Withholding and Reporting Requirements

In connection with the consummation of the Plan, the Debtors and the Litigation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements.

H. Allocation of Distributions between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

I. Exhibits/Schedules

All exhibits and schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

J. Filing of Additional Documents

On or before substantial consummation of the Plan, the Litigation Trustee shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

K. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed as an admission by any Entity with respect to any matter set forth herein.

L. Successors and Assigns

The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Person or Entity.

M. Reservation of Rights

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained herein, or the taking of any action by the Debtors with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of the Debtors, Holders of Claims or Equity Interest before the Effective Date.

N. Implementation

The Debtors shall take all steps, and execute all documents, including appropriate releases, necessary to effectuate the provisions contained in this Plan.

O. Inconsistency

In the event of any inconsistency among the Plan or any other instrument or document created or executed pursuant to the Plan, the provisions of the Plan shall govern.

P. Closing of Chapter 11 Cases

Upon substantial consummation of a Chapter 11 Case, the Litigation Trustee may move for a final decree to close such Chapter 11 Case and to request such other Order as may be just. At such time and upon approval of the Bankruptcy Court, the Litigation Trustee may transfer any remaining Transferred Assets attributable to the Debtor whose Chapter 11 Case was closed to Charity.

Q. Dissolution of the Committee

Upon the occurrence of the Effective Date, the Committee shall dissolve automatically, whereupon its members, Professionals and agents shall be released from any duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code (except with respect to (i) obligations arising under confidentiality agreements, which shall remain in full force and effect, (ii) applications for payment of fees and reimbursement of expenses of Professionals, and (iii) any pending motions or motions for other actions seeking enforcement or implementation of the provisions of the Plan).

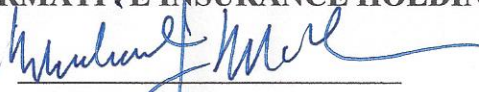
R. Compromise of Controversies

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Plan and in these Chapter 11 Cases. The entry of the Confirmation Order shall constitute the Bankruptcy

Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan and the Chapter 11 Cases, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, the Estate and all Holders of Claims and Equity Interests against the Debtors.

Dated: March 8, 2016

AFFIRMATIVE INSURANCE HOLDINGS, INC.

By: 

Name: Michael J. McClure

Title: Chief Executive Officer

Exhibit A

JCF Exit Financing Agreement

[LITIGATION TRUST]

SENIOR SECURED PROMISSORY NOTE

US\$350,000.00

[●], 2016

FOR VALUE RECEIVED, [LITIGATION TRUST], a Delaware statutory trust (the “**Obligor**”), hereby unconditionally promises to pay to JCF AFFM Debt Holdings L.P., a Cayman Islands partnership, or its assigns (“**Payee**”), the aggregate unpaid principal amount of \$350,000, together with interest thereon as provided in Section 2 hereof, on the Maturity Date (as defined below), on the terms and subject to the conditions provided herein. The Obligor and the Payee intend that this Senior Secured Promissory Note (this “**Note**”) constitutes indebtedness for all federal, state and local income tax purposes and agree not to take any positions contrary with the foregoing characterization of the Note.

1. **Definitions.** In this Note, the following terms shall have the following meanings:
 - (a) “**Advance**” shall have the meaning set forth in Section 3 hereof.
 - (b) “**Bankruptcy Code**” means title 11 of the United States Code.
 - (c) “**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware.
 - (d) “**Budget**” means the budget of fees and expenses to be incurred by the Litigation Trust in pursuing the Transferred Assets, administering Obligor, and managing the Transferred Assets for each calendar quarter that is subject in all respects to the prior approval of the Payee, which approval will not be unreasonably withheld.
 - (e) “**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City (New York) are authorized or required by law to close.
 - (f) “**Certificate of Trust**” means the Certificate of Trust of Obligor dated [_____].
 - (g) “**Chapter 11 Cases**” means the voluntary cases under chapter 11 of the Bankruptcy Code jointly administered in the Bankruptcy Court under the caption *In re Affirmative Insurance Holdings, Inc., et al.* and Case No. 15-12136.
 - (h) “**Collateral**” has the meaning set forth in Section 10 herein.
 - (i) “**Confirmation Order**” means the [Order Confirming the Debtors’ Joint Chapter 11 Liquidating Plan, Docket No. _____, entered on [●]].
 - (j) “**Default Rate**” has the meaning set forth in Section 2 hereof.
 - (k) “**Dollars**” and “**\$**” means the lawful currency of the United States of America.
 - (l) “**Effective Date**” has the meaning set forth in the Plan.

(m) “**Eligible Costs and Expenses**” means (i) Allowed Administrative Expenses and Professional Claims (as such terms are defined in the Plan) in the Chapter 11 Cases in an amount not to exceed \$175,000 in the aggregate and (ii) the reasonable and documented costs and expenses of the Obligor in connection with pursuing the Transferred Assets, administering Obligor, managing the Transferred Assets and distributing the Net Litigation Trust Proceeds in accordance with this Note and the Litigation Trust Agreement.

(n) “**Event of Default**” has the meaning set forth in Section 13 hereof.

(o) “**Excluded Property**” means (i) any assets to the extent the granting of a security interest in such asset would be prohibited by applicable law (other than proceeds and receivables thereof, the assignment of which are expressly deemed effective under the UCC notwithstanding such prohibition), (ii) any asset to the extent that the granting of a security interest therein would violate the terms of any contract relating thereto (after giving effect to applicable anti-assignment provisions of the UCC or other applicable law), (iii) equity interests in any captive insurance subsidiary, (iv) any property and assets the pledge of which would require the consent, approval, license or authorization of any governmental authority that has not been obtained (it being understood that the Obligor is not required to seek any such consent), and (v) assets in circumstances where the Payee and the Obligor reasonably determine that the cost, burden, difficulty or consequences of obtaining or perfecting a security interest in such assets is excessive in relation to the benefit afforded thereby.

(p) “**Intellectual Property**” means all intellectual and similar property of a person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases, all embodiments or fixations thereof and all related documentation, applications and registrations.

(q) “**Lien**” shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

(r) “**Litigation Trust Agreement**” means that certain Litigation Trust Agreement dated as of the Effective Date, among the Trustee and [Affirmative Insurance Holdings, Inc., Affirmative Management Services, Inc., Affirmative Services, Inc., Affirmative Underwriting Services, Inc., Affirmative Insurance Services, Inc., Affirmative General Agency, Inc., Affirmative Insurance Group, Inc., and Affirmative, L.L.C.], establishing the terms and conditions of the Litigation Trust.

(s) “**Litigation Trustee**” has the meaning set forth in the Litigation Trust Agreement.

(t) “**Maturity Date**” means the date of dissolution of the Obligor pursuant to the Litigation Trust Agreement.

(u) “**Net Litigation Trust Proceeds**” means the proceeds received by the Litigation Trust from the pursuit of any Transferred Assets less the amount of any fees and expenses incurred by the Litigation Trust in pursuing the Transferred Assets, administering Obligor, and managing the Transferred Assets, so long as the amount of such fees and expenses does not exceed the Budget within any calendar quarter.

(v) “**Obligations**” has the meaning set forth in Section 10 hereof.

(w) “**Obligor’s Collateral**” has the meaning set forth in Section 10 hereof.

(x) “**Permitted Liens**” means (i) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, (ii) non-consensual Liens arising by operation of law, arising in the ordinary course of business, and for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings and (ii) Liens created pursuant to this Note.

(y) “**Plan**” means the joint plan of liquidation pursuant to chapter 11 of the Bankruptcy Code of the Debtors (as defined in the Plan), as amended and supplemented and as confirmed by the Bankruptcy Court.

(z) “**Rate**” has the meaning set forth in Section 2 hereof.

(aa) “**Taxes**” has the meaning set forth in Section 12 hereof.

(bb) “**Transferred Assets**” has the meaning set forth in the Plan.

(cc) “**Trustee**” means the Litigation Trustee and any successor Litigation Trustee appointed pursuant to the Plan and the Litigation Trust Agreement.

(dd) Terms used herein without definition that are defined in the Uniform Commercial Code as in effect from time to time in the State of New York (the “**UCC**”) shall have the respective meanings set forth therein, including the following terms (which are capitalized herein): “Account”, “Chattel Paper”, “Commercial Tort Claim”, “Commodity Account”, “Deposit Account”, “Document”, “Entitlement Holder”, “Equipment”, “Financial Asset”, “General Intangible”, “Instrument”, “Inventory”, “Investment Property”, “Letter-of-Credit Rights”, “Proceeds”, “Securities Account”, “Security” and “Security Entitlement”.

2. Interest. From the date hereof until (but not including) the date this Note is paid in full, interest shall accrue on the outstanding principal amount of this Note at a rate *per annum* equal to 8.0% (the “**Rate**”). Interest payable pursuant hereto shall be calculated monthly at the end of each month on the basis of a 365/366-day year for the actual days elapsed. Accrued interest hereunder shall be payable at the end of each month in arrears or when the unpaid principal amount hereof is declared due and payable. At the Obligor’s option, payment of interest due in whole or in part on any such date on which interest is due may be capitalized, with such accrued interest being added to the principal amount of this Note. Upon the occurrence and during the continuance of an Event of Default (as defined below), the unpaid principal amount of this Note and, to the extent permitted by applicable law, any interest payments or any fees or other amounts owed hereunder, shall thereafter bear interest payable on demand at a rate that is 2% per annum in excess of the Rate otherwise applicable thereto pursuant to the first sentence of this Section 2 (the “**Default Rate**”). Notwithstanding any provision herein to the contrary, no interest shall accrue under this Note at a rate in excess of the highest applicable rate permitted by law, and the payment of any interest (including any charge or fee held by a court to be interest) in excess of such rate shall be refunded to the Obligor or shall constitute a payment of and be applied to principal owing hereunder.

3. Advance. On the terms and subject to the conditions contained in this Note, the principal amount of this Note shall be made available to the Obligor in a single drawing on the date hereof in the aggregate principal amount equal to \$350,000.00 (the “**Advance**”).

4. Conditions to Advance. The obligation of the Payee to make the Advance hereunder is subject to the satisfaction of the following conditions precedent:

(a) Confirmation of the Plan. The Plan shall have been confirmed by the Bankruptcy Court pursuant to the Confirmation Order, and the Effective Date shall have occurred on or prior to the date hereof.

(b) Note. The Payee shall have received this Note, duly executed and delivered by the Obligor.

(c) Litigation Trust Agreement. The Payee shall have received the fully executed Litigation Trust Agreement.

(d) Compliance. Both before and after giving effect to the Advance, (i) no Default or Event of Default shall have occurred and be continuing, and (ii) each of the representations and warranties made by the Obligor herein shall be true and correct in all material respects (to the extent not otherwise qualified by materiality) on and as of such date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date.

5. Representations and Warranties. To induce the Payee to make the Advance, the Obligor hereby represents and warrants to the Payee as follows:

(a) Corporate Existence; Compliance with Law. The Obligor (i) is a statutory trust validly existing and in good standing under the laws of the State of Delaware, (ii) is in material compliance with all requirements of law, and (iii) has all consents, licenses and authority necessary to execute this Note.

(b) Corporate Power; Authorization; Enforceable Obligations. The Obligor has the corporate power and authority, and the legal right, to make, deliver and perform under the Note and to borrow hereunder. The Obligor has taken all necessary corporate and other necessary actions to authorize the execution, delivery and performance of the Note and to authorize the borrowing on the terms and conditions of this Note. All consents or authorization of, filing with, notice to or other act by or in respect of, any governmental authority or any other person, to the extent required in connection with the borrowings hereunder or the execution, delivery, performance, validity or enforceability of this Note have been obtained or made, as applicable. This Note constitutes a legal, valid and binding obligation of the Obligor, enforceable against the Obligor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(c) No Legal Bar. The execution, delivery and performance of this Note, the borrowing hereunder and the use of the proceeds thereof will not violate any requirement of law.

(d) Confirmation Order. The Confirmation Order has been entered by the Bankruptcy Court, is not subject to any applicable stay, is in full force and effect and has not been stayed, reversed, rescinded, vacated, modified or amended.

(e) Use of Proceeds. The proceeds from the Advance will be used by the Obligor to pay the Eligible Costs and Expenses.

6. Payment at Maturity. The full outstanding principal amount of this Note, together with all accrued and unpaid interest hereunder, shall become due and payable on the Maturity Date. All monies due hereunder shall be paid in the currency in which this Note is denominated. If any payment on this Note shall be due on a Saturday, Sunday or public holiday, it shall be payable on the next succeeding

Business Day. Upon final payment of the full outstanding principal amount of this Note, together with all accrued and unpaid interest hereunder, this Note shall be surrendered to the Obligor for cancellation. Amounts borrowed and repaid hereunder may not be reborrowed. All payments hereunder shall be applied to accrued and unpaid interest and to outstanding principal in such order as determined by the Payee in its sole discretion.

7. Mandatory Prepayment From Net Litigation Trust Proceeds. The Obligor shall prepay this Note from time to time from Net Litigation Trust Proceeds. All Net Litigation Trust Proceeds received by the Obligor shall be held by the Obligor in a bank account established in the name of the Obligor and as to which the bank has executed a deposit account control agreement in favor of the Payee. On the last Business Day of each calendar quarter, all Net Litigation Trust Proceeds then held by the Obligor shall be applied by the Trustee, first, to reimburse costs and expenses due and owing to the Payee under Sections 13(b) or 17 hereof and, second, to repayment of outstanding principal and interest on the Note; provided, however, that there shall be no mandatory prepayment pursuant to this Section 7 prior to the last day of the second calendar quarter following the Effective Date and provided, further, that if at any time a mandatory prepayment would be due pursuant to this Section 7, there is a pending litigation that was commenced by the Trustee to pursue or recover a Transferred Asset, then the Trustee may maintain a reserve of funds in an amount equal to the lesser of (i) six months of expenses under the Budget and (ii) \$200,000.

8. Affirmative Covenants. Until all amounts outstanding under this Note have been paid in full, the Obligor shall:

(a) Maintenance of Existence. (i) Preserve, renew and maintain in full force and effect its existence and good standing as a statutory trust in the State of Delaware (ii) take all reasonable action to maintain all material rights, privileges and franchises necessary in the normal conduct of its business.

(b) Books and Records. Keep its books and records in accordance with sound business practices and, upon the reasonable request of the Payee, permit inspection of the books and records of the Obligor and make available to the Payee any responsible officers or agents of the Obligor or professionals retained by the Obligor to discuss the affairs, finances, and accounts of the Obligor.

(c) Budget; Reporting. Prepare and deliver in good faith to the Payee (i) one week before the end of each calendar quarter, a Budget for the following two calendar quarters, (ii) on the last Business Day of each calendar quarter, a report on the status of pending and contemplated litigation related to the Transferred Assets and, (iii) upon the Payee's request, any supplement to the Commercial Tort Claims set forth on Schedule I hereto.

(d) Notices of Events of Default. As soon as possible and in any event within two Business Days after it becomes aware that an Event of Default has occurred, notify the Payee in writing of the nature and extent of such Default or Event of Default and the action, if any, it has taken or proposes to take with respect to such Default or Event of Default.

(e) Further Assurances. Upon the request of the Payee, execute and deliver such further instruments and do or cause to be done such further acts as may be necessary or advisable to carry out the intent and purposes of this Note, including in order to (i) create, preserve, more fully evidence or perfect first priority Liens in the Collateral, (ii) cause the Payee to have "control" of the Collateral within the meanings set forth in Article 8 and Article 9 of the UCC, as applicable, or (iii) enable the Payee to exercise and enforce any of their rights, powers and remedies with respect to the Collateral.

9. Negative Covenants. Until all amounts outstanding under this Note have been paid in full, the Obligor shall not:

(a) Indebtedness. Incur, create or assume any indebtedness, except Obligations (as defined herein) under this Note.

(b) Liens. Incur, create, assume or suffer to exist any Lien on any of its property or assets, whether now owned or hereinafter acquired, except for Permitted Liens.

(c) Modification of Organizational Documents. Permit (i) Obligor's Certificate of Trust to be amended, modified or waived in a manner adverse to the Payee or (ii) the Litigation Trust Agreement to be amended, modified or waived, except in accordance with the provisions of [] thereof.

(d) Permitted Payments. Make any payments other than on account of Eligible Costs and Expenses or pursuant to Sections 6 and 7 hereof.

10. Security.

(a) Collateral. For the purposes of this Note, all of the following property now owned or at any time hereafter acquired by the Obligor or in which the Obligor now has or at any time in the future may acquire any right, title or interests is collectively referred to as the "**Obligor's Collateral**":

(i) all Accounts;

(ii) all Deposit Accounts;

(iii) all Documents;

(iv) all Equipment;

(v) all General Intangibles;

(vi) all Instruments;

(vii) all Inventory;

(viii) all Intellectual Property;

(ix) all Investment Property;

(x) the Commercial Tort Claims described on Schedule I (Commercial Tort Claims) attached hereto and on any supplement thereto received by the Payee;

(xi) all books and records pertaining to the other property described in this Section 10(a);

(xii) all other goods and personal property of the Obligor, whether tangible or intangible and wherever located;

(xiii) all property of the Obligor held by the Payee, including all property of every description, in the possession or custody of or in transit to the Payee for any purpose, including

safekeeping, collection or pledge, for the account of the Obligor or as to which the Obligor may have any right or power; and

(xiv) to the extent not otherwise included, all Proceeds.

(b) Grant of Security Interest. In order to secure the full and punctual observance and performance when due of the obligations of the Obligor under the Note, including, but not limited to, payments of principal and interest and all other obligations with respect to this Note (collectively, the “**Obligations**”), the Obligor hereby charges, assigns, pledges and grants to the Payee a continuing security interest in and to, and a lien upon and right of set-off against, and agrees to transfer to the Payee, as and by way of a security interest having priority over all other security interests, other than Permitted Liens, with power of sale, all right, title and interest in the Obligor’s Collateral; provided, however, that “**Obligor’s Collateral**” shall not include any Excluded Property; and provided, further, that if and when any property shall cease to be Excluded Property, such property shall be deemed at all times from and after the date hereof to constitute Obligor’s Collateral.

11. Authorization to File UCC Statements. The Obligor hereby authorizes the Payee, its counsel or designee to file, in the name of the Obligor any UCC or similar financing and continuation statements the Payee in its sole discretion may deem necessary or appropriate to further protect or maintain the perfection of the security interests.

12. Taxes. The Obligor shall make all payments, whether on account of principal, interest, fees or otherwise, free of and without deduction or withholding for any present or future taxes, duties or other charges (“**Taxes**”). If the Obligor is compelled by law to deduct or withhold any Taxes it shall promptly pay to the Payees such additional amount as is necessary to ensure that the net amount received by the Payees is equal to the amount payable by the Obligor had there been no deduction or withholding.

13. Events of Default.

(a) The occurrence of any one or more of the following events shall constitute an Event of Default (an “**Event of Default**”) under this Note: (i) the failure to pay principal of or interest on this Note when due; (ii) the failure to hold and apply any Net Litigation Trust Proceeds in accordance with Section 7 hereof; (iii) any representation or warranty made by the Obligor herein shall prove to not have been accurate in all material respects on or as of the date made or deemed made or furnished; (iv) the commencement of a proceeding against the Obligor for dissolution or liquidation, or the voluntary or involuntary termination or dissolution of the Obligor; (v) insolvency of, the appointment of a custodian, trustee, liquidator or receiver for any of the property of, an assignment for the benefit of creditors by, or for any readjustment of indebtedness, composition or extension by or against the Obligor; (vi) failure by the Obligor to comply in any material respect with the Litigation Trust Agreement or the Plan, and such failure shall continue unremedied for a period of 30 days after written notice from the Payee to the Obligor; or (vii) any failure by the Obligor to perform, or comply with, any other term or condition contained in this Note, and such failure shall continue unremedied for a period of 30 days after written notice from the Payee to the Obligor. The Obligor agrees that upon an Event of Default under this Note, the unpaid principal balance of and accrued but unpaid interest on this Note shall immediately become due and payable after written notice by the Payee to the Obligor; provided, however, that upon the occurrence of an Event of Default described in clauses (iv) and (v) above the unpaid balance and accrued but unpaid interest shall become due and payable without notice or demand.

(b) If an Event of Default occurs, the Obligor agrees to pay to the Payee all expenses incurred by the Payee, including attorneys’ fees, in enforcing and collecting this Note. The Obligor shall reimburse the Payee for any and all costs and expenses, including attorneys’ fees and expenses, incurred

by the Payee in taking any action to collect or otherwise enforce this Note against the Obligor or any other Person who is or may become liable thereunder. All such costs and expenses shall be repayable to the Payee on demand within a reasonable period of time but in any event not later than three (3) Business Days from the date of demand thereof, with interest at the Default Rate from the date incurred by the Payee to the date paid.

14. No Recourse. The Payee shall have no recourse to the Trustee or any beneficiary of the Obligor for repayment of the Note or any other Obligation, it being understood and agreed that the Payee's sole source of repayment of the Note and all other Obligations shall be the assets of the Obligor.

15. Assignment. Subject to compliance with requirements of law, including, without limitation, any applicable securities law, the Payee shall have the right at any time to sell, assign, transfer, negotiate or pledge, all or any part of its interest in this Note, and the Obligor hereby acknowledges and consents to any such sale, assignment, transfer, negotiation or pledge. From and after the date of any such sale, assignment, transfer or negotiation, the party holding this Note shall be deemed for all purposes to be the Payee hereunder and shall possess all rights as such, including the right to further, sell, assign, transfer, negotiate or pledge all or any part of its interest in this Note or any portion thereof held by such party. Neither the Obligor's rights nor obligations hereunder nor any interest therein may be assigned or delegated by the Obligor without the prior written consent of the Payee (and any attempted assignment or transfer by the Obligor without such consent shall be null and void).

16. No Waiver by Payee. No delay or omission by the Payee or any other holder hereof to exercise any power, right or remedy accruing to the Payee or any other holder hereof shall impair any such power, right or remedy or shall be construed to be a waiver of the right to exercise any such power, right or remedy. Payee's right to accelerate this Note for any late payment or the Obligor's failure to timely fulfill its other obligations hereunder shall not be waived or deemed waived by the Payee by Payee's having accepted a late payment or late payments in the past or the Payee otherwise not accelerating this Note or exercising other remedies for the Obligor's failure to timely perform its obligations hereunder. The Payee shall not be obligated or be deemed obligated to notify the Obligor that it is requiring the Obligor to strictly comply with the terms and provisions of this Note before accelerating this Note and exercising its other remedies hereunder because of the Obligor's failure to timely perform its obligations under this Note.

17. Obligor Waiver; Indemnity. The Obligor hereby forever waives presentment, presentment for payment, demand, protest, notice of protest, notice of dishonor of this Note and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note. The Obligor further agrees to indemnify and hold harmless the Payee from any and all damages, losses, reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) which the Payee may incur by reason of the Obligor's failure promptly to pay when due the indebtedness evidenced by this Note.

18. Section Headings. Section headings appearing in this Note are for convenient reference only and shall not be used to interpret or limit the meaning of any provision of this Note.

19. VENUE; CHOICE OF LAW. THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST THE OBLIGOR OR THE PAYEE ARISING OUT OF OR RELATING HERETO SHALL BE BROUGHT IN EITHER (i) THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, IF SUCH COURT HAS SUBJECT

MATTER JURISDICTION, OR OTHERWISE (ii) THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, THE OBLIGOR, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE JURISDICTION AND VENUE OF SUCH COURTS; (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESS PROVIDED NEXT TO ITS NAME ON SCHEDULE II; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE OBLIGOR IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT THE PAYEE RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST THE OBLIGOR IN THE COURTS OF ANY OTHER JURISDICTION TO THE EXTENT THAT THE COURTS SPECIFIED ABOVE DO NOT HAVE SUBJECT MATTER JURISDICTION.

20. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS NOTE OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS NOTE, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 20 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE ADVANCE MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS NOTE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

21. Successors and Assigns. This Note and all the covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the respective legal representatives, heirs, successors and assigns of the Obligor and the Payee.

22. Records of Payments. The records of the Payee shall be *prima facie* evidence of the amounts owing on this Note.

23. Amendments and Waivers. No term of this Note may be waived, modified or amended except by an instrument in writing signed by all parties hereto. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

24. Severability. In the event any one or more of the provisions contained in this Note should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions. Each waiver in this Note is subject to the overriding and controlling rule that it shall be effective only if and to the extent that (a) it is not prohibited by applicable law and (b) applicable law neither provides for nor allows any material sanctions to be imposed against the Payee for having bargained for and obtained it.

25. Notices. Any notice, request or other communication required or permitted to be given hereunder shall be given in writing by delivering it against receipt for it, by depositing it with an overnight delivery service or by depositing it in a receptacle maintained by the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the respective parties as reflected in Schedule II attached hereto. The Obligor's address for notices may be changed at any time and from time to time, but only after five (5) calendar days advance written notice to the Payee and shall be the most recent such address furnished in writing by the Obligor to the Payee. The Payee's address for notices may be changed at any time and from time to time, but only after five (5) calendar days advance written notice to the Obligor and shall be the most recent such address furnished in writing by the Payee to the Obligor. Actual notice, however and from whomever given or received, shall always be effective when received.

26. ENTIRE AGREEMENT. THIS NOTE EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PAYEE AND THE OBLIGOR WITH RESPECT TO THEIR SUBJECT MATTER AND SUPERSEDE ALL PRIOR CONFLICTING OR INCONSISTENT AGREEMENTS, CONSENTS AND UNDERSTANDINGS RELATING TO SUCH SUBJECT MATTER. THE OBLIGOR ACKNOWLEDGES AND AGREES THAT THERE IS NO ORAL AGREEMENT BETWEEN THE OBLIGOR AND THE PAYEE THAT HAS NOT BEEN INCORPORATED IN THIS NOTE.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Note as of the date first written above.

[LITIGATION TRUST],
as Obligor

By: _____
Name:
Title: Trustee

Acknowledged and Agreed:

JCF AFFM DEBT HOLDINGS L.P.,
as Payee

By: JCF AFFM DEBT HOLDINGS G.P. LTD.,
its General Partner

By: _____
Name: J. Christopher Flowers
Title: Director

SCHEDULE I

Commercial Tort Claims

[INSERT]

SCHEDULE II

Notices

If to the Obligor:

[INSERT]

with a copy (which shall not constitute notice) to:

[INSERT]

If to Payee:

JCF AFFM Debt Holdings L.P.

c/o J.C. Flowers & Co. LLC

767 Fifth Ave., 23rd Floor

New York, NY 10153

Attention: Sally Rocker

Fax: (646) 349-4890

Email: srocker@jcfco.com

with a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges

767 Fifth Avenue

New York, NY 10153

Attention: Debra A. Dandeneau

Fax: (212) 310-8007

Email: debra.dandeneau@weil.com

Exhibit B

Litigation Trust Agreement

AIH LITIGATION TRUST AGREEMENT

This liquidation trust agreement (the “Agreement”) is made this [] day of _____, 2016, by and among [Affirmative Insurance Holdings, Inc., Affirmative Management Services, Inc., Affirmative Services, Inc., Affirmative Underwriting Services, Inc., Affirmative Insurance Services, Inc., Affirmative General Agency, Inc., Affirmative Insurance Group, Inc., and Affirmative, L.L.C.] (collectively, the “Debtors”), and [NAME OF TRUSTEE], as trustee (the “Litigation Trustee”). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to them in the Plan (as defined below).

RECITALS

WHEREAS, on October 14, 2015, each of the Debtors filed a voluntary Chapter 11 petition with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

WHEREAS, on _____, 2016, the Bankruptcy Court entered an order [Docket No.] (the “Confirmation Order”) confirming the *Debtors’ Combined Disclosure Statement and Chapter 11 Plan of Liquidation* [Docket No.] (the “Plan”); and

WHEREAS, the Plan’s Effective Date occurred on _____, 2016; and

WHEREAS, the Plan contemplates, on the Effective Date, (a) the creation of a liquidation trust (the “Litigation Trust”) and the creation of the beneficial interests in the Litigation Trust for the benefit of the Litigation Trust’s beneficiaries under the Plan (the “Beneficiaries”), and (b) that the Litigation Trust will be vested, subject to the terms of the Plan, with all of the Debtors’ assets (collectively, the “Litigation Trust Assets”), including, without limitation, the Initial Distribution Sources, the Secondary Distribution Sources, the JCF Trust Cash, the Other Cash, the D&O Policies, the Premium Accounts and the right to prosecute and settle any Causes of Action belonging to the Estates (the “Estate Causes of Action”); and

WHEREAS, the Plan contemplates that, pursuant to Treasury Regulation Section 301.7701-4(d), the Litigation Trust shall be created for the primary purpose of liquidating the Litigation Trust Assets in an expeditious and orderly manner for the benefit of the Beneficiaries, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to and consistent with the liquidating purpose of the Litigation Trust and the Plan; and

WHEREAS, the Litigation Trust is intended to qualify as a “grantor trust” for U.S. federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the “IRC”), with the Beneficiaries to be treated as the grantors of the Litigation Trust and deemed to be the owners of the applicable Litigation Trust Assets (subject to the terms of the Plan and the rights of creditors of the Litigation Trust), and, consequently, the transfer of the Litigation Trust Assets to the Litigation Trust shall be treated as a deemed transfer of those assets from the Debtors and the Estates to the Beneficiaries followed by a deemed transfer by such Beneficiaries to the Litigation Trust for federal income tax purposes.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the mutual agreements of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereto hereby agree as follows:

ARTICLE I DECLARATION OF TRUST

1.1 Creation and Purpose of the Litigation Trust. The Debtors and the Litigation Trustee hereby create the Litigation Trust for the primary purpose of liquidating and distributing the Litigation Trust Assets to the Beneficiaries in accordance with their respective entitlements, if any, under the Plan, the Confirmation Order, and applicable tax statutes, rules, and regulations, and in an expeditious but orderly manner, with no objective to continue or engage in the conduct of a trade or business. In particular, the Litigation Trustee shall (a) make continuing efforts to collect and reduce the Litigation Trust Assets to Cash, and (b) make timely distributions and not unduly prolong the duration of the Litigation Trust.

1.2 Declaration of Trust. In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Debtors and the Litigation Trustee have executed this Agreement and, effective on the Plan's Effective Date, hereby irrevocably transfer to the Litigation Trust, all of the right, title, and interests of the Debtors in and to the Litigation Trust Assets, to have and to hold unto the Litigation Trust and its successors and assigns forever, under and subject to the terms of the Plan and the Confirmation Order, for the benefit of the Beneficiaries (to the extent of their respective legal entitlements) and their successors and assigns as provided for in this Agreement and in the Plan and Confirmation Order.

1.3 Vesting of Estate Assets. On the Effective Date, pursuant to the terms of the Plan, all assets of the Debtors and the Estates (that are not abandoned pursuant to the terms of the Plan, the Confirmation Order, or other Bankruptcy Court order) shall be vested in the Litigation Trust, which also shall be authorized to obtain, liquidate, and collect all of the assets of the Debtors and the Estate not in its possession and pursue all Estate Causes of Action (other than those released or exculpated pursuant to the Plan). In addition, on the Effective Date, the Litigation Trust shall: (i) take possession of all books, records, and files of the Debtors and their Estates and (ii) provide for the retention and storage of such books, records, and files until such time as the Litigation Trust determines, in accordance with this Agreement, that retention of same is no longer necessary or required. Subject to the provisions of the Plan, all Litigation Trust Assets shall be delivered to the Litigation Trust free and clear of liens, Claims, and interests of any kind. Moreover, on the Effective Date, all privileges with respect to any assets of the Estates and/or of the Debtors to which the Debtors are entitled, including the attorney-client privilege, shall be automatically vested in, and available for assertion or waiver by the Litigation Trustee on behalf of, the Litigation Trust. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Confirmation Order or this Agreement, the Debtors shall, on the Effective Date, execute such other and further documents as are reasonably necessary to effectuate all of the foregoing.

1.4 Acceptance by Litigation Trustee. The Litigation Trustee hereby accepts the trust imposed on it by this Agreement and agrees to observe and perform that trust on and subject

to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Litigation Trust, the Litigation Trustee hereby accepts the transfer of the Litigation Trust Assets.

1.5 Name of the Litigation Trust. The Litigation Trust established hereby shall be known as the “[AIH Litigation Trust].”

ARTICLE II THE LITIGATION TRUSTEE

2.1 Appointment. The Litigation Trustee has been selected pursuant to the provisions of the Plan and has been appointed as of the Effective Date. The Litigation Trustee’s appointment shall continue until the earlier of (a) the termination of the Litigation Trust or (b) the Litigation Trustee’s resignation, death, dissolution, or removal. To effectuate an orderly and efficient transition of the administration of the Litigation Trust Assets from the Debtors to the Litigation Trustee, the Litigation Trustee may perform certain services in connection with its duties and obligations under this Agreement prior to the Effective Date.

2.2 General Powers. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Litigation Trustee may control and exercise authority over the Litigation Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the business of the Litigation Trust. Nothing in this Agreement shall be deemed to prevent the Litigation Trustee from taking, or failing to take, any action that it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty that the Litigation Trustee owes to the Beneficiaries or any other Person. No person dealing with the Litigation Trust shall be obligated to inquire into the Litigation Trustee’s authority in connection with the acquisition, management, or disposition of Litigation Trust Assets. Without limiting the generality of the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Agreement, the Litigation Trustee shall be expressly authorized to, with respect to the Litigation Trust and the Litigation Trust Assets:

(a) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken with respect to the Litigation Trust Assets, by any officer, director, shareholder, or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party.

(b) Open and maintain bank accounts on behalf of or in the name of the Litigation Trust, calculate and make distributions, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves, in the name of the Litigation Trust.

(c) Receive, manage, invest, supervise, and protect the Litigation Trust Assets, subject to the limitations provided herein.

(d) Hold legal title to any and all Litigation Trust Assets.

(e) Subject to the applicable provisions of the Plan, collect and liquidate all Litigation Trust Assets.

(f) Review and, where appropriate, object to and/or move to estimate or recharacterize Claims and Equity Interests and supervise and administer the resolution, settlement and payment of all Claims and Equity Interests and the distribution to the Beneficiaries and creditors of the Litigation Trust, in accordance with this Agreement, the Plan, and the Confirmation Order.

(g) Subject to Section 4.2 of this Agreement, prosecute, compromise, and settle all Estate Causes of Action.

(h) (i) Seek a determination of tax liability under Bankruptcy Code section 505; (ii) file, if necessary, any and all tax and information returns required with respect to the Debtors and the Litigation Trust; (iii) make tax elections for and on behalf of the Debtors and the Litigation Trust; and (iv) pay taxes, if any, payable for and on behalf of the Debtors and the Litigation Trust.

(i) Pay all lawful, expenses, debts, charges, taxes, and liabilities of the Debtors (as required by the Plan) and the Litigation Trust.

(j) Take all other actions consistent with the provisions of the Plan that the Litigation Trustee deems reasonably necessary or desirable to administer the Plan.

(k) Make distributions or payments to Beneficiaries and to creditors of the Litigation Trust, as provided for or contemplated by the Plan, the Confirmation Order, and this Agreement.

(l) Withhold from the amount distributable to any person such amount as may be sufficient to pay any tax or other charge which the Litigation Trustee has determined, in its sole discretion, may be required to be withheld therefrom under the income tax laws of the United States, any foreign country, or of any state, local, or political subdivision of either.

(m) Enter into any agreement or execute any document required by or consistent with the Plan, the Confirmation Order, or this Agreement and perform all obligations thereunder.

(n) If any of the Litigation Trust Assets are situated in any state or other jurisdiction in which the Litigation Trustee is not qualified to act as trustee, nominate and appoint a person duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the Litigation Trustee in its discretion; confer on such trustee all the rights, powers, privileges, and duties of the Litigation Trustee hereunder, subject to the conditions and limitations of this Agreement, except as modified or limited by the Litigation Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such trustee to be answerable to the Litigation Trustee for all monies, assets, and other property that may be received in connection with the administration of all property; and, remove such

trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Litigation Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal.

(o) Purchase and carry all insurance policies and pay all insurance premiums and costs it deems reasonably necessary or advisable.

(p) Subject to Section 3.3 herein, retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals, and consultants to advise and assist in the administration, prosecution and distribution of the Litigation Trust Assets.

(q) Implement, enforce, or discharge all of the terms, conditions and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Agreement.

(r) Enter into agreements with any entity or with Holders of Claims or Interests for the prosecutions of Causes of Action, including Avoidance Actions.

(s) Undertake all administrative functions of the Bankruptcy Cases, including the ultimate dissolution of the Debtors and the closing of the Bankruptcy Cases.

(t) Take all other actions consistent with the provisions of the Plan that the Litigation Trustee deems reasonably necessary or desirable to administer the Plan.

2.3 Limitations on the Litigation Trustee. Notwithstanding anything under applicable law, this Agreement, or the Plan to the contrary, the Litigation Trustee shall not do or undertake any of the following:

(a) Take any action that would jeopardize treatment of the Litigation Trust as a “liquidating trust” for federal income tax purposes.

(b) Receive transfers of any listed stocks or securities, or any readily marketable securities, except as is absolutely necessary or required under the Plan and the Confirmation Order; provided, however, that in no event shall the Litigation Trustee receive any such investment that would jeopardize treatment of the Litigation Trust as a “liquidating trust” for federal income tax purposes.

(c) Receive or retain Cash or cash equivalents in excess of a reasonable amount necessary to make applicable distributions to Beneficiaries and satisfy any liabilities of the Litigation Trust and to establish and maintain the reserves contemplated by the Plan.

(d) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or other temporary liquid investments, such as short-term certificates of deposit or Treasury bills or other investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any Internal Revenue Service (“IRS”) guidelines,

whether set forth in IRS rulings, IRS revenue procedures, other IRS pronouncements, or otherwise.

(e) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation with operating assets, except as is absolutely necessary or required under the Plan and the Confirmation Order; provided, however, that in no event shall the Litigation Trustee receive or retain any such asset or interest that would jeopardize treatment of the Litigation Trust as a “liquidating trust” for federal income tax purposes.

(f) Commence any Cause of Action released pursuant to the Plan.

(g) Accept or take on, directly or indirectly, any obligation or other liability, monetary or otherwise, on behalf of the Litigation Trust.

2.4 Compensation of Litigation Trustee and Its Professionals. The initial Litigation Trustee shall be entitled to be paid from the Secondary Distribution Sources and the JCF Litigation Cash reasonable compensation in connection with the performance of its duties as set forth in Exhibit A hereto, plus the reimbursement of reasonable out-of-pocket expenses. Any successor to the Litigation Trustee shall also be entitled to reasonable compensation in connection with the performance of its duties, which compensation may be different from the terms provided in Exhibit A, plus the reimbursement of reasonable out-of-pocket expenses.

Subject to Section 3.3 herein, the Litigation Trustee may retain the services of employees, professionals, and consultants to advise and assist in the administration, prosecution and distribution of the Litigation Trust Assets. The Litigation Trustee shall also be entitled to pay from the Secondary Distribution Sources and the JCF Litigation Cash reasonable compensation, plus the reimbursement of out-of-pocket expenses, to each of its professionals.

The Litigation Trustee and any employees, professionals or consultants employed or retained by the Litigation Trustee that seek compensation or reimbursement of reasonable out-of-pocket expenses shall provide to the Oversight Committee monthly billing statements (the “Fee Statement”), by printed copy delivered by first-class mail or by portable document format (“PDF”) file delivered by electronic mail, at the option of each respective professional, which Fee Statement shall include the names and titles of each professional, the hourly rates for each such professional, the amount of hours spent by each professional and a statement of the reasonable and necessary expenses for which each such professional seeks reimbursement; provided, however, that solely for any ordinary course professionals employed by the trust, the Oversight Committee may, at its sole discretion, determine not to require copies of Fee Statements to be provided other than to the Litigation Trustee. Payment of the amounts requested in a Fee Statement shall be paid no later than seven (7) days from the date of the Fee Statement; provided, however, that the Oversight Committee may object to the compensation or reimbursement of out-of-pocket expenses contained in the Fee Statement by sending the Litigation Trustee or professional, as applicable, a written objection within seven (7) days of the date of the Fee Statement. If an objection to a portion of the compensation or reimbursement of out-of-pocket expenses is received, the Litigation Trustee shall promptly pay the undisputed

portion of such compensation or out-of-pocket expenses and reserve Cash in the amount of the disputed compensation or out-of-pocket expenses.

In the event that the parties are unable to reach an agreement to resolve the Oversight Committee's objection to the Fee Statement within five (5) days from the date on which such objection to the Fee Statement is received, the Litigation Trustee shall schedule a hearing with the Bankruptcy Court or other court of competent jurisdiction to take place within fourteen (14) days, or as soon as such court's calendar permits. The Oversight Committee shall file a written objection with the Bankruptcy Court or other court of competent jurisdiction, as applicable, no later than seven (7) days prior to the scheduled hearing. Any response to the Oversight Committee's objection must be submitted no later than three (3) days prior to the scheduled hearing. All objections to a Fee Statement shall be resolved either by (i) a written agreement between the party requesting payment of fees and expenses and the Oversight Committee, or (ii) by resolution of the disputed amount by the Bankruptcy Court or other court of competent jurisdiction. The Litigation Trustee shall promptly pay any amounts determined to be owing following the resolution described in the preceding sentence.

2.5 General Duties, Obligations, Rights and Benefits of the Litigation Trustee.

The Litigation Trustee shall have all duties, obligations, rights and benefits assumed by, assigned to or vested in the Litigation Trust under the Plan, the Confirmation Order, this Litigation Trust Agreement and any other agreement entered into pursuant to or in connection with the Plan. Such duties, obligations, rights and benefits include, without limitation, all duties, obligations, rights and benefits relating to the collection and liquidation of the Litigation Trust Assets, resolution of Claims and, if necessary, Equity Interests, satisfaction of claims of creditors of the Litigation Trust, the pursuit of Estate Causes of Action, distributions to Beneficiaries, administration of the Litigation Trust and any other duties, obligations, rights and benefits reasonably necessary to accomplish the purpose of the Litigation Trust under the Plan, the Confirmation Order, this Litigation Trust Agreement and any other agreement entered into pursuant to or in connection with the Plan. Without limiting the duties, obligations, rights and benefits of the Litigation Trustee under this Section or any other provision of this Litigation Trust Agreement, the Litigation Trustee shall have all duties, obligations, rights and benefits assigned to the Litigation Trustee under the Confirmation Order and the Plan.

2.6 Investments and Bonds. Subject to Section 2.3, the Litigation Trustee may invest the Litigation Trust Assets in prudent investments other than those described in Bankruptcy Code Section 345.

2.7 Replacement of the Litigation Trustee. The Litigation Trustee may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court and the members of the Oversight Committee, provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Litigation Trustee. The Oversight Committee may, by a unanimous vote, remove the Litigation Trustee with or without cause upon (30) days' written notice delivered to the Litigation Trustee. The Litigation Trustee may be removed by the Bankruptcy Court upon motion and after notice and a hearing, which motion may be brought by any party in interest (including any members of the Oversight Committee). In the event of the death, medical incapacity, dissolution, resignation or removal of the Litigation Trustee, the Oversight Committee may, by majority vote, designate a person to serve as

successor Litigation Trustee. If the Oversight Committee shall fail to appoint a successor within thirty (30) days, the successor Litigation Trustee shall be appointed by the Bankruptcy Court upon request and based upon submissions from interested parties (including the Oversight Committee, any Beneficiary or counsel to the Litigation Trust). Upon its appointment, the successor Litigation Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of its predecessor and all responsibilities of the predecessor Litigation Trustee relating to the Litigation Trust shall be terminated; provided, however, that the original Litigation Trustee's right to indemnification shall survive termination and is subject to Sections 5.2 and 5.3 hereof. In the event the Litigation Trustee's appointment terminates for any reason, such Litigation Trustee (or his estate or representatives) shall be promptly compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced. The provisions of Article V shall survive the resignation or removal of any Litigation Trustee.

2.8 Litigation Trust Continuance. The death, medical incapacity, dissolution, resignation, or removal of the Litigation Trustee shall not terminate the Litigation Trust or revoke any existing agency created by the Litigation Trustee pursuant to this Agreement or invalidate any action theretofore taken by the Litigation Trustee, and the successor Litigation Trustee agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Litigation Trustee and all its successors or assigns.

ARTICLE III OVERSIGHT COMMITTEE

3.1 Oversight Committee. As of the Effective Date, the Oversight Committee shall be comprised of the following three (3) initial members (each a "Member" and collectively, the "Members"): (i) [____]; (ii) [____]; and (iii) [____]. As noted in the Plan, two of the initial Members shall be appointed by the JCF Lender (each, a "JCF Lender Member") and one of the initial Members shall be appointed by the Committee (the "GUC Member"). If a JCF Lender Member resigns, the JCF Lender shall have the right to appoint a successor JCF Lender Member. If the GUC Member resigns, the Liquidating Trustee shall have the right to appoint a successor GUC Member. Any individual that is appointed as a successor Member must be a United States person as defined in Section 7701(a)(30) of the IRC. Except as otherwise expressly provided in the Plan and this Agreement, the Oversight Committee shall not have any power or authority as to the Litigation Trust Assets, Estate Causes of Action, or other assets or property belonging to the Debtors' Estate or Litigation Trust.

3.2 Reports to Oversight Committee. Notwithstanding any other provision of this Agreement, the Litigation Trustee shall report to the Oversight Committee on a regular basis, not less than two (2) times per year, which reports shall include such matters and information as reasonably requested by the Oversight Committee. The Oversight Committee shall keep all such information strictly confidential, except to the extent that the Oversight Committee deems it reasonably necessary to disclose such information to the Bankruptcy Court (in which case, a good faith effort shall be made to file such information under seal).

3.3 Actions Requiring Approval of the Oversight Committee. The Litigation Trustee shall obtain the approval of the Oversight Committee (by not less than a majority vote) prior to taking any action regarding any of the following matters:

(a) Subject to Section 4.2 of this Agreement, the commencement, settlement, compromise, dismissal, or prosecution of any Estate Cause of Action by the Litigation Trust where the disputed amount at issue equals or exceeds \$250,000;

(b) The abandonment of any non-Cash asset that has a valuation as reasonably determined by the Litigation Trustee (for any individual transaction or series of related transactions) of at least \$250,000;

(c) Subject to Section 4.4 of this Agreement, the prosecution of objections to Disputed Claims, or the settlement, compromise or other resolution of any Disputed Claims, wherein the disputed amount at issue equals or exceeds \$250,000;

(d) Retention of employees, professionals, and consultants to advise and assist in the administration, prosecution and distribution of the Litigation Trust Assets; *provided, however,* that the Litigation Trustee shall not be required to obtain the approval of the Oversight Committee prior to retaining any professionals that are used in the ordinary course of business;

(e) The borrowing of any funds by the Litigation Trust or pledge of any portion of the Litigation Trust Assets;

(f) Any matter which could reasonably be expected to have a material effect on the amount of distributions to be made by the Litigation Trust; and

(g) The decision whether to enter into an agreement with any Entity respecting the joint prosecution of Estate Causes of Action and causes of action belonging to holders of Claims or Equity Interests.

3.4 Approval of the Oversight Committee. Wherever the approval of the Oversight Committee is required prior to the Litigation Trustee taking any action hereunder (other than with respect to Section 12.1 hereof), such approval shall be deemed given if the Members of the Oversight Committee do not object in writing to any such action upon two (2) Business Days' prior written (including e-mail) notice or such shorter period as is necessary under the circumstances from the Litigation Trustee, and if any objection is received in writing, then any such action must be approved by a majority vote of the Oversight Committee.

3.5 Compensation of Oversight Committee. Members of the Oversight Committee shall not be entitled to receive compensation in connection with his or her duties; provided, however, each Member of the Oversight Committee may receive reimbursement of reasonable out-of-pocket expenses (which expense reimbursements shall not include payment of professional costs) incurred in connection with his or her duties. Members of the Oversight Committee shall be entitled to receive the benefit of any insurance as provided in Section 5.5 of this Litigation Trust Agreement.

**ARTICLE IV
PROSECUTION AND RESOLUTION OF DISPUTED CLAIMS AND ESTATE CAUSES
OF ACTION**

4.1 The Litigation Trust's Exclusive Authority To Pursue, Settle, or Abandon Estate Causes of Action. Subject to the provisions of the Plan, the Litigation Trust shall have exclusive rights, powers, and interests of the Estates to pursue, settle, or abandon all Estate Causes of Action not otherwise released pursuant to the Plan as the sole representative of the Estates pursuant to Bankruptcy Code Section 1123(b)(3).

4.2 Settlement of Estate Causes of Action. Notwithstanding Section 3.3 of this Agreement, settlement by the Litigation Trust of any Estate Causes of Action shall require: (i) approval only of the Litigation Trustee, if the amount claimed by the Litigation Trust against a defendant is less than \$250,000; and (ii) approval only of the Litigation Trustee and the Oversight Committee, if the amount claimed by the Litigation Trust against a defendant is equal to or exceeds \$250,000. The Litigation Trustee may, in its discretion, seek approval from the Bankruptcy Court or another court of competent jurisdiction, in connection with settling any Estate Causes of Action.

4.3 The Litigation Trust's Authority To Pursue, Settle, or Abandon Disputed Claims. Subject to the provisions of the Plan and Section 3.3(c) of this Agreement, the Litigation Trust shall have the exclusive rights, powers, and interests of the Estates to pursue, settle, or abandon all Disputed Claims not otherwise released pursuant to the Plan as the sole representative of the Estates pursuant to Bankruptcy Code Section 1123(b)(3).

4.4 Settlement of Disputed Claims. Notwithstanding Section 3.3 of this Agreement, settlement by the Litigation Trust of any Disputed Claim shall require: (i) approval only of the Litigation Trustee, if the disputed amount at issue is less than \$250,000; and (ii) approval only of the Litigation Trustee and the Oversight Committee, if the disputed amount at issue is equal to or exceeds \$250,000. The Litigation Trustee may, in its discretion, seek approval of the Bankruptcy Court or another court of competent jurisdiction of any settlement of a Disputed Claim.

**ARTICLE V
LIABILITY OF LITIGATION TRUSTEE
AND THE OVERSIGHT COMMITTEE**

5.1 Standard of Care; Exculpation. Neither the Litigation Trustee, the Members of the Oversight Committee, nor any director, officer, affiliate, employee, employer, professional, agent, or representative of the Litigation Trustee shall be liable for losses, claims, damages, liabilities, or expenses in connection with the affairs or property of the Litigation Trust to any Beneficiary of the Litigation Trust, or any other person, for the acts or omissions of the Litigation Trustee or the Oversight Committee; provided, however, that the foregoing limitation shall not apply as to any losses, claims, damages, liabilities or expenses suffered or incurred by any Beneficiary that are found by a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the fraud, gross negligence, or willful misconduct of such person or entity.

5.2 Indemnification.

(a) Except as otherwise set forth in the Plan or Confirmation Order, the Litigation Trustee, the Members of the Oversight Committee, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the Litigation Trustee (collectively, the “Indemnified Parties”) shall be defended, held harmless, and indemnified from time to time by the Litigation Trust against any and all losses, claims, damages, liabilities, penalties, obligations, and expenses, including the costs for counsel or others in investigating, preparing, or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Agreement (including these indemnity provisions), as and when incurred, caused by, relating to, based on, or arising out of (directly or indirectly) the Litigation Trustee’s or Oversight Committee’s acceptance of or the performance or nonperformance of its obligations under this Agreement, the Plan, or the Confirmation Order. Satisfaction of any obligation of the Litigation Trust arising pursuant to the terms of this Section shall be payable only from the Secondary Distribution Sources and the JCF Litigation Cash, and may be advanced, with the approval of the Oversight Committee, prior to the conclusion of such matter.

(b) Subject to the terms of the Plan, the Litigation Trust shall promptly pay expenses reasonably incurred by any Indemnified Party in defending, participating in, or settling any action, proceeding, or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in connection with the Agreement or the duties, acts, or omissions of the Litigation Trustee, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Indemnified Party hereby undertakes, and the Litigation Trust hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor under this Agreement.

5.3 No Liability for Acts of Successor/Predecessor Litigation Trustees. Upon the appointment of a successor Litigation Trustee and the delivery of the Litigation Trust Assets to the successor Litigation Trustee, the predecessor Litigation Trustee and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Litigation Trustee shall have no further liability or responsibility with respect thereto. A successor Litigation Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Litigation Trustee shall be in any way liable for the acts or omissions of any predecessor Litigation Trustee, unless a successor Litigation Trustee expressly assumes such responsibility. A predecessor Litigation Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Litigation Trustee for any events or occurrences subsequent to the cessation of its role as Litigation Trustee.

5.4 Reliance by Litigation Trustee and the Oversight Committee on Documents or Advice of Counsel. Except as otherwise provided in this Agreement, the Litigation Trustee, the Oversight Committee, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Litigation Trustee, and the Members of the Oversight Committee may rely, and shall be protected from liability for acting, on any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document

reasonably believed by the Litigation Trustee or the Oversight Committee to be genuine and to have been presented by an authorized party. Neither the Litigation Trustee nor the Oversight Committee shall be liable for any action taken or suffered by the Litigation Trustee or the Oversight Committee, as applicable, in reasonable reliance upon the advice of counsel or other professionals engaged by the Litigation Trustee or the Oversight Committee, as applicable, in accordance with this Agreement.

5.5 Insurance. The Litigation Trust may purchase, using Secondary Distribution Sources and the JCF Litigation Cash, and carry all insurance policies and pay all insurance premiums and costs that the Oversight Committee or the Litigation Trustee deem reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any liabilities, losses, damages, claims, costs, and expenses it may incur, including but not limited to attorneys' fees, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of its fraud or willful misconduct, with respect to the implementation and administration of the Plan or this Agreement.

ARTICLE VI GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE LITIGATION TRUST

6.1 Register of Beneficiaries. The Litigation Trust shall maintain at all times a register of the names, mailing addresses, amounts of Allowed Claims, and the Pro Rata interests in the Litigation Trust of the Beneficiaries (the "Register"). The Litigation Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Litigation Trustee from time to time.

6.2 Books and Records. The Litigation Trust also shall maintain in respect of the Litigation Trust and the Beneficiaries books and records relating to the Litigation Trust Assets and income realized therefrom and the payment of expenses of and claims against or assumed by the Litigation Trust in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law (including securities law), nothing in this Agreement is intended to require the Litigation Trust to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust, or as a condition for making any payment or distribution out of the Litigation Trust Assets. The Oversight Committee shall have the right to inspect the books and records of the Litigation Trust at any time upon reasonable notice to the Litigation Trustee. Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Litigation Trustee to inspect the Litigation Trust's books and records, including the Register, provided such Beneficiary shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Litigation Trustee. Satisfaction of the foregoing condition notwithstanding, if (a) the Litigation Trustee and the Oversight Committee determine in good faith that the inspection of the Litigation Trust's books and records, including the Register, by any Beneficiary would be detrimental to the Litigation Trust or (b) such Beneficiary is a defendant (or potential defendant) in a pending (or potential) action brought by the Litigation Trust, the Litigation Trust may deny

such request for inspection. The Bankruptcy Court shall resolve any dispute between any Beneficiary and the Litigation Trustee under this Section 6.2.

6.3 Periodic Reporting Obligations to Bankruptcy Court. The Litigation Trustee may file with the Bankruptcy Court on a periodic basis a report setting forth the amounts and dates of all distributions made by the Litigation Trustee under the Plan through each applicable reporting period.

6.4 Final Accounting of Litigation Trustee. The Litigation Trustee (or any such successor Litigation Trustee) shall within ninety (90) days after the termination of the Litigation Trust or the death, dissolution, resignation, or removal of the Litigation Trustee, render an accounting containing at least the following information:

- (a) A description of the Litigation Trust Assets;
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements, and other transactions in connection with the Litigation Trust and the Litigation Trust Assets during the Litigation Trustee's term of service, including their source and nature;
- (c) Separate entries for all receipts of principal and income;
- (d) The ending balance of all Litigation Trust Assets as of the date of the accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept;
- (e) All known liabilities of the Litigation Trust; and
- (f) All pending actions.

6.5 Filing of Accounting. The accounting shall be filed with the Bankruptcy Court and all Beneficiaries shall have notice that the final accounting has been filed and an opportunity to have a hearing on the approval of the accounting and, to the extent applicable, the discharge of the Litigation Trustee.

6.6 Filing of Tax Returns. The Litigation Trust shall be responsible for filing all federal, state, local, and foreign tax returns for the Debtors and the Litigation Trust.

ARTICLE VII BENEFICIAL INTERESTS AND BENEFICIARIES

7.1 Trust Beneficial Interests. Beneficiaries shall be entitled to receive distributions as set forth in the Plan.

7.2 Interest Beneficial Only. Except as set forth in the Plan, the ownership of a beneficial interest in the Litigation Trust shall not entitle any Beneficiary to any title in or to the Litigation Trust Assets or to any right to call for a partition or division of the Litigation Trust Assets or to require an accounting.

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

7.4 Transfers of Beneficial Interests. Beneficial interests in the Litigation Trust shall be nontransferable except upon death of the interest Holder or by operation of law.

7.5 Absolute Owners. The Litigation Trustee may deem and treat the Beneficiary reflected as the owner of a beneficial interest on the Register as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever.

7.6 Change of Address. A Beneficiary may, after the Effective Date, select an alternative mailing address by notifying the Litigation Trust in writing of such alternative address. Absent such notice, the Litigation Trustee shall not recognize any such change of address. Such notification shall be effective only upon receipt by the Litigation Trustee.

7.7 Effect of Death, Dissolution, Incapacity or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Litigation Trust shall not operate to terminate the Litigation Trust during the term of the Litigation Trust nor shall it entitle the representative or creditors of the deceased, dissolved, incapacitated, or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Litigation Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Litigation Trust.

7.8 Standing. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Litigation Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party (other than against the Litigation Trustee to the extent provided in this Agreement) with respect to the Litigation Trust Assets.

ARTICLE VIII DISPUTED CLAIMS RESERVE

8.1 As of the Effective Date, the Litigation Trust shall assume responsibility for all Claims matters established by the Plan. In accordance with the Plan, on any date that distributions are to be made under the terms of the Plan, the Litigation Trustee shall deposit in one or more segregated accounts (the “Disputed Claims Reserve”) Cash or property equal to 100% of the Cash or property that would be Distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto. The Litigation Trustee shall also segregate any interest, dividends, or proceeds of such Cash. Such Cash, together with any interest, dividends, or proceeds thereof, shall be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

ARTICLE IX DISTRIBUTIONS

9.1 Distributions to Beneficiaries from Litigation Trust Assets. All payments to be made by the Litigation Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement. Notwithstanding anything in this Agreement to the contrary, after making the distributions set forth in Article VII.B.6 of the Plan (Litigation Trustee Expenses) and Section 2.4 hereof, the Litigation Trustee shall repay the JCF Exit Financing before making any additional distributions to Beneficiaries.

9.2 Distributions; Withholding. All distributions under the Plan shall be made by the Litigation Trustee. Notwithstanding anything to the contrary in this Agreement, the Litigation Trust shall distribute at least annually to the Beneficiaries its net income plus all net proceeds from the sale of Litigation Trust Assets, except that the Litigation Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of its Litigation Trust Assets or to meet claims and contingent liabilities (including Disputed Claims). Additionally, the Litigation Trustee may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Litigation Trustee's sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. Prior to the making of any distributions contemplated hereunder to any Class of Beneficiaries, the Litigation Trustee shall provide the Oversight Committee with three (3) business days' written notice of any such distribution, which notice shall include a summary of the aggregate amounts to be distributed to each Class of Beneficiaries. Within two (2) business days of receipt of the notice of distribution, any Member of the Oversight Committee may request additional information regarding the calculation of the aggregate distribution amounts for such Class of Beneficiaries.

9.3 No Distribution Pending Allowance. No payment or distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim, except for distributions into the Disputed Claims Reserve in accordance with the Plan, Confirmation Order, and this Agreement.

9.4 Distributions After Allowance. Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such Holder of a Claim belongs.

9.5 Withholding Taxes. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. All Beneficiaries shall be required to provide the Litigation Trustee with any information necessary in connection with the withholding of such taxes.

9.6 Distributions on Non-Business Days. Any distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

9.7 No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary in the Plan, no Beneficiary shall receive in respect of such Claims held by the Beneficiary any distribution in excess of the Allowed amount of such Claim, plus

postpetition interest thereon to the extent allowed by the Plan. Upon a Beneficiary's recovering the full amount of its Allowed Claim from another source, it thereafter shall no longer have any entitlement to receive distributions under the Plan.

ARTICLE X TAXES

10.1 Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-28 I.R.B. 124, the Litigation Trust shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to IRC Sections 671-677. Accordingly, the Beneficiaries shall be treated for federal income tax purposes (i) as direct recipients of an undivided interest in the Litigation Trust Assets (other than to the extent such Litigation Trust Assets are allocable to Disputed Claims or as is otherwise set forth in the Plan) and as having immediately contributed such Litigation Trust Assets to the Litigation Trust, and (ii) thereafter, as both the grantors and the deemed owners of the Litigation Trust (other than the Litigation Trust Assets as are allocable to Disputed Claims or as is otherwise set forth in the Plan). Any items of income, deduction, credit and loss of the Litigation Trust shall be allocated for federal income tax purposes to the Beneficiaries.

10.2 Tax Returns. In accordance with IRC Section 6012 and Treasury Regulation Section 1.671-4(a), the Litigation Trust shall file with the IRS annual tax returns on Form 1041. In addition, the Litigation Trust shall file in a timely manner such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon. Within a reasonable time following the end of the taxable year, the Litigation Trust shall send to each Beneficiary a separate statement setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct each such Beneficiary to report such items on their federal income tax returns. The Litigation Trust may provide each Beneficiary with a copy of the Form 1041 for the Litigation Trust (without attaching any other Beneficiary's Schedule K-1 or other applicable information form) along with such Beneficiary's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement. The Litigation Trust shall allocate the taxable income, gain, loss, deduction or credit of the Litigation Trust with respect to each Beneficiary.

10.3 Withholding of Taxes and Reporting Related to Litigation Trust Operations. In connection with the Plan and all distributions thereunder, the Litigation Trustee shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all distributions thereunder shall be subject to any such withholding and reporting requirements. The Litigation Trustee is authorized by the Plan to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each holder of an Allowed Claim that is to receive a distribution pursuant to the Plan has sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Litigation Trustee for the payment and satisfaction of such withholding tax obligations. Any property to be distributed pursuant to the Plan, pending the implementation of such

arrangements, shall be treated as an undeliverable distribution to be held by the Litigation Trustee until such time as the Litigation Trustee is satisfied with the holder's arrangements for any withholding tax obligations. The Litigation Trustee may require any Beneficiary to furnish to the Litigation Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the Litigation Trustee may condition any distribution to any Beneficiary upon the receipt of such identification number(s).

10.4 Valuations. As soon as possible after the Effective Date, the Litigation Trustee, in consultation with any financial advisors it deems appropriate, shall make a good faith valuation of the Litigation Trust Assets, and such valuation shall be used consistently by all parties (including, without limitation, the Litigation Trust and the Beneficiaries) for all federal income tax purposes. The Litigation Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Litigation Trust that are required by any governmental unit.

10.5 Treatment of Disputed Claims Reserve. Notwithstanding any other provision of this Litigation Trust Agreement to the contrary, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Litigation Trustee may (i) treat any Litigation Trust Assets allocable to, or retained on account of, the Disputed Claims as held by one or more discrete trusts for federal income tax purposes, consisting of separate and independent shares to be established in respect of each Disputed Claim, in accordance with the trust provisions of the IRC (sections 641 et seq.) or (ii) elect to treat such Litigation Trust Assets as a "disputed ownership fund" governed by Treasury Regulation Section 1.468B-9. All parties shall report, for income tax purposes, consistent with the foregoing. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Litigation Trustee as a result of the resolutions of such Disputed Claims.

10.6 Expedited Determination of Taxes. The Litigation Trust may request an expedited determination of taxes of the Debtors and of the Litigation Trust, including the Disputed Claims Reserve, under Bankruptcy Code section 505 for all returns filed for, or on behalf of, the Debtors and the Litigation Trust for all taxable periods through the termination of the Litigation Trust.

ARTICLE XI TERMINATION OF LITIGATION TRUST

11.1 Termination of Litigation Trust. The Litigation Trustee shall be discharged and the Litigation Trust shall be terminated, at such time as (i) all Disputed Claims have been resolved, (ii) all of the Litigation Trust Assets have been liquidated, (iii) all duties and obligations of the Litigation Trustee hereunder have been fulfilled, (iv) all distributions required to be made by the Litigation Trustee under the Plan and this Agreement have been made, and (v) the Chapter 11 Cases of the Debtors have been closed; provided, however, that in no event

shall the Litigation Trust be terminated later than the term of the Litigation Trust under Section 11.2 of this Agreement, as such term may be extended pursuant to Section 11.2.

11.2 Maximum Term. The term of the Litigation Trust shall end no later than the fifth (5th) anniversary of the Effective Date (the “Initial Litigation Trust Term”); provided, however, that the Litigation Trustee may extend the term of the Litigation Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Litigation Trust Assets by filing with the Bankruptcy Court within the six (6) month period prior to the termination of the Initial Litigation Trust Term a notice of intent to extend the term of the Litigation Trust. The Litigation Trust may file one or more such extension notices, each notice to be filed within the six (6) month period prior to the termination of the extended term of the Litigation Trust.

11.3 Events Upon End of Term Termination. At the conclusion of the term of the Litigation Trust, the Litigation Trustee shall distribute the remaining Litigation Trust Assets, if any, to the Beneficiaries, in accordance with the Plan, the Confirmation Order, and this Agreement; provided, however, that the Litigation Trustee shall not be obligated to make distributions to a Class of Claims if the amount of the available Cash is *de minimis* and is not sufficient to warrant the incurrence of the cost of making such distribution.

11.4 Winding Up and Discharge of the Litigation Trustee. For the purposes of winding up the affairs of the Litigation Trust at the conclusion of its term, the Litigation Trustee shall continue to act as Litigation Trustee until its duties under this Agreement have been fully discharged or its role as Litigation Trustee is otherwise terminated under this Agreement and the Plan. Upon a motion by the Litigation Trustee, the Bankruptcy Court may enter an order relieving the Litigation Trustee, its agents, and employees of any further duties, discharging the Litigation Trustee and releasing its bond, if any.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Amendments. The Litigation Trustee may, with the approval of a majority of the Members of the Oversight Committee, modify, supplement, or amend this Agreement but only to clarify any ambiguity or inconsistency, or render the Agreement in compliance with its stated tax purposes, and only if such amendment does not materially and adversely affect the interests, rights, treatment, or distributions of any Beneficiaries. The Litigation Trustee may, with the approval of a majority of the Members of the Oversight Committee, modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. In the event that a majority of the Members of the Oversight Committee are unable to reach a consensus regarding a proposed modification, supplement, or amendment, the Litigation Trustee may seek Bankruptcy Court approval of any such modification, supplement, or amendment.

12.2 Waiver. No failure by the Litigation Trust, the Litigation Trustee, or the Oversight Committee to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power or privilege.

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

12.4 No Bond Required. Notwithstanding any state law to the contrary, the Litigation Trustee (including any successor Litigation Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

12.5 Irrevocability. This Agreement and the Litigation Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Agreement.

12.6 Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control. Notwithstanding anything to the contrary in this Agreement, the Litigation Trust, the Oversight Committee, and the Members shall be bound by the terms of the Plan and, accordingly, shall not commence any proceeding with respect to any Cause of Action released, enjoined, and/or exculpated pursuant to the Plan.

12.7 Division of Litigation Trust. Under no circumstances shall the Litigation Trustee have the right or power to divide the Litigation Trust unless authorized to do so by the Oversight Committee and the Bankruptcy Court.

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

12.9 Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest extent permitted by law and as set forth in Article XIII of the Plan, the Bankruptcy Court shall retain exclusive jurisdiction over the Litigation Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits, and issues that may arise in

connection therewith, including, without limitation, this Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Litigation Trustee or any Member of the Oversight Committee or any professional retained by the Litigation Trustee or the Oversight Committee, in each case in its capacity as such. Each party to this Agreement and each beneficiary of the Litigation Trust hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret, or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum *non conveniens*, or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Agreement. Notwithstanding the preceding, nothing herein shall be interpreted as requiring the commencement or prosecution of any Causes of Action in the Bankruptcy Court, and all determinations regarding the proper forum for initiating any Cause of Action shall be at the discretion of the Litigation Trust, consistent with applicable law.

12.10 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

12.11 Limitation of Benefits. Except as otherwise specifically provided in this Agreement, the Plan, or the Confirmation Order, nothing herein is intended or shall be construed to confer on or to give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

12.12 Notices. All notices, requests, demands, consents, and other communication hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered in person or if sent by overnight mail, registered mail, certified mail or regular mail, with postage prepaid, to the following addresses:

If to the Litigation Trustee:

[_____]

with a copy to:

[_____]

If to a Beneficiary:

To the name and mailing address set forth in the Register with respect to such Beneficiary.

The parties may designate in writing from time to time other and additional places to which notices may be sent.

12.13 Further Assurances. From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Agreement, and to consummate the transactions contemplated hereby.

12.14 Integration. This Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by, and among the parties thereto, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this Agreement, the Plan, or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement. To the extent there is an inconsistency between the Plan and this Agreement, the Plan shall control.

12.15 Interpretation. The enumeration and Section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise. Any reference to the "Litigation Trustee" shall be deemed to include a reference to the "Litigation Trust" and any reference to the "Litigation Trust" shall be deemed to include a reference to the "Litigation Trustee" except for the references in Sections 5.1, 5.2, and such other provisions in which the context otherwise requires.

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

[Signature Page(s) Follow(s)]

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

DEBTORS

By: _____

Name: _____

Title: _____

THE LITIGATION TRUSTEE

By: _____

Exhibit A

Litigation Trustee Compensation