

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

**In re:**

**ASHINC CORPORATION, *et al.***<sup>1</sup>

### Debtors.

## Chapter 11

**Case No. 12-11564 (CSS)**

## Jointly Administered

**Re: Docket No. 3013**

## NOTICE OF FILING OF PLAN SUPPLEMENT

**PLEASE TAKE NOTICE** that on August 12, 2015, ASHINC Corporation and its affiliated debtors (the “Debtors”), together with the First Lien Agents and the Committee (collectively, the “Plan Proponents”) filed the documents attached hereto as Exhibits A through E, and the information set forth in Exhibits F and G (the “Plan Supplement”) in connection with the *Debtors’ Joint Chapter 11 Plan of Reorganization Proposed by the Debtors, the Committee and the First Lien Agents* [D.I. 3013] (as the same may be further amended, supplemented or modified from time to time, the “Plan”).<sup>2</sup> The documents contained in this Plan Supplement as Exhibits A through E are integral to and part of the Plan and, if the Plan is approved, such documents shall be approved by the Confirmation Order.

1 The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: ASHINC Corporation (f/k/a Allied Systems Holdings, Inc.) (58-0360550); AAINC Corporation (f/k/a Allied Automotive Group, Inc.) (58-2201081); AFBLLC LLC (f/k/a Allied Freight Broker LLC) (59-2876864); ASCCO (Canada) Company (f/k/a Allied Systems (Canada) Company) (90-0169283); ASLTD L.P. (f/k/a Allied Systems, Ltd. (L.P.)) (58-1710028); AXALLC LLC (f/k/a Axis Areta, LLC) (45-5215545); AXCCO Canada Company (f/k/a Axis Canada Company) (875688228); AXGINC Corporation (f/k/a Axis Group, Inc.) (58-2204628); Commercial Carriers, Inc. (38-0436930); CTSINC Corporation (f/k/a CT Services, Inc.) (38-2918187); CTLLC LLC (f/k/a Cordin Transport LLC) (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings given to them in the Plan.

**PLEASE TAKE FURTHER NOTICE** that the hearing to consider confirmation of the Plan (the “Confirmation Hearing”) is currently scheduled to occur on **September 10, 2015 at 9:30 a.m.** (prevailing Eastern Time), before the Honorable Christopher S. Sontchi, United States Bankruptcy Court, at 824 Market Street, 5th Floor, Courtroom 6, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtors in open court of the adjourned date(s) at the Confirmation Hearing or at any continued hearing.

**PLEASE TAKE FURTHER NOTICE** that the Plan Proponents reserve the right to alter, amend, modify or supplement any document in the Plan Supplement.

Dated: August 12, 2015

Respectfully Submitted,

**RICHARDS LAYTON & FINGER, P.A.**

/s/ Marisa A. Terranova

Mark D. Collins (No. 2981)

Marisa A. Terranova (No. 5396)

One Rodney Square

920 North King Street

Wilmington, Delaware 19801

Telephone No.: (302) 651-7700

Facsimile No.: (302) 651-7701

- and -

**TROUTMAN SANDERS LLP**

Jeffrey W. Kelley (GA Bar No. 412296)

Matthew R. Brooks (GA Bar No. 378018)

Bank of America Plaza

600 Peachtree Street, Suite 5200

Atlanta, Georgia 30308-2216

Telephone No.: (404) 885-3000

Facsimile No.: (404) 885-3900

*Counsel for the Debtors*

**Index to Exhibits**

<b>Exhibit A</b>	Form of Litigation Trust Agreement
<b>Exhibit B</b>	Form of Investment Funding Agreement
<b>Exhibit C</b>	Form of Investment Funding Backstop Agreement
<b>Exhibit D</b>	Form of Certificate of Incorporation for Reorganized Allied Holdings
<b>Exhibit E</b>	Form of Bylaws for Reorganized Allied Holdings
<b>Exhibit F</b>	List of Executory Contracts and Unexpired Leases to Be Assumed [To Come]
<b>Exhibit G</b>	Disclosure Concerning Identities of Individuals Associated with the Litigation Oversight Committee, Litigation Trust, and Reorganized Allied Holdings

# **EXHIBIT A**

## LITIGATION TRUST AGREEMENT

## TABLE OF CONTENTS

ARTICLE 1 ESTABLISHMENT OF THE LITIGATION TRUST.....	2
1.1 Establishment of Litigation Trust and Appointment of Litigation Trustee .....	2
1.2 Transfer of Assets and Rights to the Litigation Trust.....	2
1.3 Title to Preserved Causes of Action .....	3
1.4 Nature and Purpose of the Litigation Trust.....	3
1.5 Relationship to, and Incorporation of, the Plan and Confirmation Order .....	4
1.6 Funding of the Litigation Trust.....	4
1.7 Appointment as Representative .....	5
ARTICLE 2 LITIGATION TRUST INTERESTS .....	5
2.1 Allocation of Litigation Trust Interests .....	5
2.2 Interests Beneficial Only.....	5
2.3 Evidence of Beneficial Interests .....	5
2.4 Exemption from Registration.....	6
2.5 Transfer and Exchange.....	6
2.6 Access to the Trust Register by the Litigation Trust Beneficiaries.....	7
2.7 Issuance of Certificates Upon Transfer .....	7
2.8 Mutilated, Defaced, Lost, Stolen or Destroyed Certificates.....	7
2.9 Change of Address.....	8
2.10 Tax Identification Numbers.....	8
ARTICLE 3 THE LITIGATION TRUSTEE.....	9
3.1 Role of the Litigation Trustee .....	9
3.2 Authority of the Litigation Trustee .....	9
3.3 Limitation of the Litigation Trustee's Authority .....	12
3.4 Payment of Litigation Trust Expenses.....	12
3.5 Reimbursement of Reorganized Debtors.....	13
3.6 Distributions.....	13
3.7 Tenure, Removal, and Replacement of the Litigation Trustee .....	14
3.8 Books and Records .....	15
3.9 Inquiries into the Litigation Trustee's Authority .....	16
3.10 Compliance with Laws.....	16
3.11 Litigation Trustee Compensation and Reimbursement.....	16
3.12 Reliance by the Litigation Trustee.....	17
3.13 Standard of Care; Exculpation .....	17
ARTICLE 4 LITIGATION OVERSIGHT COMMITTEE.....	17
4.1 Litigation Oversight Committee .....	17
4.2 Authority of the Litigation Oversight Committee.....	18
4.3 Regular Meetings of the Litigation Oversight Committee .....	18
4.4 Special Meetings of the Litigation Oversight Committee .....	18
4.5 Manner of Acting .....	18
4.6 Litigation Oversight Committee's Action Without a Meeting .....	20

4.7	Tenure, Removal, and Replacement of the Members of the Litigation Oversight Committee.....	20
4.8	Compensation and Reimbursement of Expenses of the Litigation Oversight Committee.....	21
4.9	No Further Liability .....	21
ARTICLE 5 TAX MATTERS.....		22
5.1	Treatment of Litigation Trust Assets Transfer .....	22
5.2	Income Tax Status.....	22
5.3	Valuation of Litigation Trust Assets as of Effective Date.....	22
5.4	Tax Returns.....	23
5.5	Expedited Determination of Taxes .....	23
5.6	Withholding of Taxes; Litigation Trust Taxes.....	23
ARTICLE 6 DISTRIBUTIONS .....		24
6.1	Annual Distribution; Withholding.....	24
6.2	Manner of Payment or Distribution .....	24
6.3	Delivery of Litigation Trust Distributions .....	24
6.4	Cash Distributions.....	24
ARTICLE 7 INDEMNIFICATION.....		25
7.1	Indemnification of the Litigation Trustee and the Litigation Oversight Committee .....	25
ARTICLE 8 REPORTS TO LITIGATION TRUST BENEFICIARIES .....		26
8.1	Reports.....	26
ARTICLE 9 TERM; TERMINATION OF THE LITIGATION TRUST .....		26
9.1	Term; Termination of the Litigation Trust.....	26
9.2	Continuance of the Litigation Trustee for Winding Up .....	27
ARTICLE 10 AMENDMENT AND WAIVER .....		27
ARTICLE 11 MISCELLANEOUS PROVISIONS.....		28
11.1	Intention of Parties to Establish a Liquidating Trust,.....	28
11.2	Reimbursement of Trust Costs,.....	28
11.3	Laws as to Construction,.....	28
11.4	Jurisdiction,.....	29
11.5	Severability, .....	29
11.6	Notices, .....	29
11.7	Fiscal Year .....	30
11.8	Headings .....	30
11.9	Counterparts,.....	30
11.10	Confidentiality .....	31
11.11	Entire Agreement .....	31
11.12	Rules of Interpretation.....	31
11.13	Effectiveness.....	32
11.14	No Waiver .....	32





## LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement (this "Litigation Trust Agreement"), dated as of \_\_\_\_\_, 2015, by (a) the individual identified on Exhibit A attached hereto, as the trustee for the liquidating trust established pursuant to this Litigation Trust Agreement (such person and each successor trustee, the "Litigation Trustee"), (b) ASHINC Corporation, on behalf of itself and the other Debtors and Reorganized Debtors, and (c) Black Diamond Commercial Finance L.L.C. and Spectrum Commercial Finance LLC, each in its capacity as Co-Administrative Agent for the First Lien Lenders (the "First Lien Agents"), is executed pursuant to the Confirmation Order to facilitate the implementation of the Debtors' Joint Plan of Reorganization Proposed by the Debtors, the Committee and the First Lien Agents dated June 17, 2015 (as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, the "Plan") that provides for the establishment of the Litigation Trust created hereby. Each of the Debtors (or, after the Effective Date, the Reorganized Debtors), the Litigation Trustee and the First Lien Agents are sometimes referred to individually as a "Party" and collectively as the "Parties," Capitalized terms used in this Litigation Trust Agreement and not otherwise defined shall have the meanings assigned to such terms in the Plan.

## RECITALS

WHEREAS, on May 17, 2012, involuntary petitions under Chapter 11 of the Bankruptcy Code were filed against Allied Holdings and Allied Systems in the Bankruptcy Court. On June \_\_, 2012, Allied Systems and Allied Holdings consented to the entry of orders for relief, and the remaining Debtors filed voluntary petitions for relief under Chapter 11;

WHEREAS, on September \_\_, 2015, the Bankruptcy Court entered the Confirmation Order;

WHEREAS, the date of this Litigation Trust Agreement is the Effective Date;

WHEREAS, the Litigation Trust is established for the sole purpose of administering the Litigation Trust Assets and making all distributions on account of the Litigation Trust Interests as provided for under the Plan;

WHEREAS, the Litigation Trust shall be established for the benefit of the Litigation Trust Beneficiaries;

WHEREAS, the Litigation Trustee was duly appointed as a representative of each of the Estates pursuant to section 1123(a)(5), (a)(7), and (b)(3)(B) of the Bankruptcy Code;

WHEREAS, the Litigation Trust has 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;

WHEREAS, the Litigation Trust is intended to qualify as a liquidating trust within the meaning of United States Treasury Regulation section 301.7701-4(d), and this Litigation Trust Agreement, the Litigation Trust, the Confirmation Order, the Plan and the Disclosure Documents are intended to comply with the advance ruling guidelines contained in Rev. Proc. 94-45, 1994-2 C.B. 684; and

WHEREAS, this Litigation Trust Agreement is the "Litigation Trust Agreement" contemplated under the Plan and executed in order to facilitate the implementation of the Plan;

NOW, THEREFORE, pursuant to the Plan and Confirmation Order, in consideration of the premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged and affirmed, the Parties hereby agree as follows:

## ARTICLE 1

### ESTABLISHMENT OF THE LITIGATION TRUST

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

(a) A trust, which shall be known as the "Allied Litigation Trust," is hereby established on behalf of the Litigation Trust Beneficiaries.

(b) The Litigation Trustee is hereby appointed as trustee of the Litigation Trust effective as of the Effective Date and agrees to accept and hold the Litigation Trust Assets in trust for the Litigation Trust Beneficiaries subject to the terms of the Plan, the Confirmation Order, and this Litigation Trust Agreement. The Litigation Trustee and each successor Litigation Trustee serving from time to time hereunder shall have all the rights, powers and duties set forth herein.

(c) Subject to the terms of this Litigation Trust Agreement, any action by the Litigation Trustee and/or the Litigation Oversight Committee that affects the interests of more than one Litigation Trust Beneficiary shall be binding and conclusive on all Litigation Trust Beneficiaries even if such Litigation Trust Beneficiaries have different or conflicting interests.

(d) The Litigation Trustee and the members of the Litigation Oversight Committee may serve without bond.

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

(a) As of the Effective Date, and pursuant to and subject in all respects to the terms of the Confirmation Order in accordance with section 1141 of the

Bankruptcy Code, the Debtors, in their respective capacities as debtors-in-possession on behalf of the Estates, have transferred, assigned, and delivered to the Litigation Trust, without recourse, all of their respective rights, title, and interests in and to the Estate Claims free and clear of Claims and Interests (other than Claims in the nature of setoff or recoupment), encumbrances or interests of any kind in such property of any other Person.

(b) As of the Effective Date, and pursuant to and subject in all respects to the terms of the Confirmation Order, the First Lien Agents have transferred, assigned and delivered to the Litigation Trust, without recourse, all of their respective rights, title and interests in and to the Lender Direct Claims free and clear of all Claims and Interests (other than Claims in the nature of setoff or recoupment), encumbrances or interests of any kind in such property of any other Person.

(c) On the Effective Date, the Reorganized Debtors and the Litigation Trustee shall enter into a Confidentiality and Common Interest Agreement providing for reasonable access to, at the Litigation Trust's own expense, copies of the Debtors' and Reorganized Debtors' records and information relating to the Litigation Trust Assets, including electronic records or documents.

(d) All of the proceeds received by the Litigation Trust from the pursuit of any of the Litigation Claims (collectively, the "Litigation Trust Proceeds") shall be added to the Litigation Trust Assets and held as a part thereof (and title thereto shall be vested in the Litigation Trust).

(e) At any time and from time to time on and after the Effective Date, the Reorganized Debtors and the First Lien Agents agree (i) at the reasonable request of the Litigation Trustee to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) to take, or cause to be taken, all such further actions as the Litigation Trustee may reasonably request, in each case in order to evidence or effectuate the transfer of the Estate Claims and Lender Direct Claims to the Litigation Trust.

### 1.3 Title to Preserved Causes of Action.

The transfer of the Litigation Claims to the Litigation Trust is made by the Estates and the First Lien Agents for the sole benefit of the Litigation Trust Beneficiaries. Upon the transfer of the Litigation Claims and the Litigation Trust Assets to the Litigation Trust, the Litigation Trust shall succeed to all of the Estates' and First Lien Agents' rights, title and interests in and to the Litigation Claims and no other Person has any interest, legal, beneficial, or otherwise, in the Litigation Trust or the Litigation Claims as of their transfer and assignment to the Litigation Trust.

### 1.4 Nature and Purpose of the Litigation Trust.

(a) The Litigation Trust is organized and established as a trust solely for the purposes set forth in Sections 5.10 and 5.11 of the Plan pursuant to which the

Litigation Trustee, subject to the terms and conditions contained herein and in the Plan, is to (i) administer the Litigation Trust Assets and make all distributions on account of Litigation Trust Interests to the Litigation Trust Beneficiaries as provided for herein and under the Plan, and (ii) oversee and direct the expeditious but orderly liquidation of the Litigation Trust Assets. The Litigation Trust is intended to qualify as a liquidating trust pursuant to United States Treasury Regulation section 301.7701-4(d). The primary purpose of the Litigation Trust is to liquidate the Litigation Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the Litigation Trust Assets, and consistent with the liquidating purpose of the Litigation Trust.

(b) This Litigation Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Litigation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Litigation Trustee, the Litigation Oversight Committee (or any of its members), the Debtors or Reorganized Debtors, or the Litigation Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Litigation Trust Beneficiaries to the Litigation Trustee and the Litigation Oversight Committee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Litigation Trust Agreement.

#### 1.5 Relationship to, and Incorporation of, the Plan and Confirmation Order.

This Litigation Trust Agreement is to aid in the implementation of the Plan and the Confirmation Order, and therefore this Litigation Trust Agreement incorporates the provisions of the Plan and the Confirmation Order by this reference. To that end, the Litigation Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan and to seek any orders from the Bankruptcy Court in furtherance of implementation of the Plan, in each case solely to the extent such actions or orders are in furtherance of this Litigation Trust Agreement, but in each case subject in all respects to and solely to the extent not inconsistent with the terms of the Plan. To the extent that there is conflict between the provisions of this Litigation Trust Agreement, the provisions of the Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Litigation Trust Agreement.

#### 1.6 Funding of the Litigation Trust.

On the Effective Date, the Investors, as investors, and the Litigation Trust, as issuer, shall become parties to the Investor Funding Agreement. The Investor Funding Agreement shall provide for investments in the aggregate amount of \$15 million. Except as expressly provided in the Investor Funding Agreement, none of the

Debtors or the Reorganized Debtors shall have any liability for any cost or expense of the Litigation Trust. Any failure or inability of the Litigation Trust to obtain funding will not affect the enforceability of the Litigation Trust.

#### 1.7 Appointment as Representative.

Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Plan appointed the Litigation Trustee as the duly appointed representative of each of the Estates solely with respect to the Litigation Trust Assets and, as such, the Litigation Trustee is deemed to be acting in the capacity of a bankruptcy trustee, receiver, liquidator, conservator, rehabilitator, or creditors' committee or any similar official who has been appointed to take control of, supervise, manage or liquidate the Debtors solely with respect to prosecution of the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries. To the extent that any Estate Claim cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provisions of the Bankruptcy Code, such Estate Claim shall be deemed to have been retained by the applicable Estate and the Litigation Trustee shall be deemed to have been designated as a representative of the applicable Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Estate Claim on behalf of such Estate subject to the terms of this Litigation Trust Agreement, the Plan and the Confirmation Order. Notwithstanding the foregoing, all Litigation Trust Proceeds shall be paid over to the Litigation Trust and shall be applied in accordance with the Plan and the Litigation Proceeds Waterfall.

## ARTICLE 2

### LITIGATION TRUST INTERESTS

#### 2.1 Allocation of Litigation Trust Interests.

The allocation and distribution of the Litigation Trust Interests shall be accomplished as set forth in the Plan.

#### 2.2 Interests Beneficial Only.

The ownership of a Litigation Trust Interest shall not entitle any Litigation Trust Beneficiary to any title in or to the Litigation Trust Assets (which title shall be vested in the Litigation Trust) or to any right to call for a partition or division of the Litigation Trust Assets or to require an accounting.

#### 2.3 Evidence of Beneficial Interests.

(a) The Litigation Trust Interests may be represented either by book entries on the books and records of the Litigation Trust or by certificates, in either definitive or global form, as shall be determined by the Litigation Trustee upon consultation with and subject to the approval of the Litigation Oversight Committee. In the event certificates are created, the Litigation Trustee shall cause to be placed on such

certificate such legends as it deems are required or appropriate under tax laws or regulations in connection with tax withholding pursuant to Section 6.1 herein, under securities laws or regulations in connection with registration or reporting requirements, if any, or otherwise. Any Person to whom a certificate is issued or transferred, by virtue of the acceptance thereof, shall assent to and be bound by the terms and conditions of this Litigation Trust Agreement, the Plan and the Confirmation Order. In the event certificates are issued, the form of such certificates shall be determined by the Litigation Trustee subject to approval of the Litigation Oversight Committee.

(b) In the event certificates are issued, only whole numbers of certificates shall be issued. When any distribution of Litigation Trust Interests would otherwise result in the issuance of a number of certificates that is not a whole number, the actual distribution of such certificates shall be rounded to the next higher or lower whole number of certificates as follows: (i) fractions equal to or greater than  $\frac{1}{2}$  shall be rounded to the next higher whole number; and (ii) fractions less than  $\frac{1}{2}$  shall be rounded to the next lower number. No consideration shall be provided in lieu of fractional certificates that are rounded down.

#### 2.4 Exemption from Registration.

The Parties hereto intend that the rights of the Litigation Trust Beneficiaries arising under this Litigation Trust Agreement shall not be "securities" under applicable laws, but none of the Parties hereto represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the Parties hereto intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws to apply to their issuance under the Plan.

#### 2.5 Transfer and Exchange.

(a) No transfer, assignment, pledge, hypothecation or other disposition of a Litigation Trust Interest may be effected until (i) the Litigation Trustee and the Litigation Oversight Committee have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Litigation Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (ii) either (x) the Litigation Trustee and the Litigation Oversight Committee have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not require the Litigation Trust to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Trust Indenture Act of 1939, as amended (the "TIA"), or the Investment Company Act of 1940, as amended (the "Investment Company Act"), or (y) the Litigation Trustee and the Litigation Oversight Committee have determined, in their sole and absolute discretion, to register and/or make periodic reports in order to enable such disposition to be made. In the event that any such disposition is allowed, the Litigation Oversight Committee and the Litigation Trustee may add such restrictions upon transfer and other terms to this Litigation Trust

Agreement as are deemed necessary or appropriate by the Litigation Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws. Notwithstanding the foregoing, any Litigation Trust Beneficiary may transfer its Litigation Trust Interest to a wholly-owned subsidiary treated as a corporation for U.S. federal income tax purposes, which shall thereafter be the relevant Litigation Trust Beneficiary.

(b) The Litigation Trustee shall appoint a registrar, which may be the Litigation Trustee (the "Registrar"), for the purpose of recording ownership of the Litigation Trust Interests as herein provided. The Registrar, if other than the Litigation Trustee, shall be an institution acceptable to the Litigation Oversight Committee. For its services hereunder, the Registrar, unless it is the Litigation Trustee, shall be entitled to receive reasonable compensation from the Litigation Trust as a cost of administering the Litigation Trust.

(c) The Litigation Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Litigation Trust Beneficiaries (the "Trust Register"), which shall be maintained pursuant to such reasonable regulations as the Litigation Trustee and the Registrar may prescribe.

#### 2.6 Access to the Trust Register by the Litigation Trust Beneficiaries.

Each Litigation Trust Beneficiary and its duly authorized representatives shall have the right, upon reasonable prior written notice to the Registrar and the Litigation Trustee, and in accordance with the reasonable regulations prescribed by the Registrar and the Litigation Trustee, to inspect and, at the sole expense of the Litigation Trust Beneficiary seeking the same, make copies of the Trust Register reflecting such Litigation Trust Beneficiary's interest in the Litigation Trust, in each case for a purpose reasonably related to such Litigation Trust Beneficiary's interest in the Litigation Trust.

#### 2.7 Issuance of Certificates Upon Transfer.

In the event certificates representing Litigation Trust Interests are created, subject to the conditions of Section 2.5(a) herein, whenever any certificate shall be presented for transfer or exchange, the Litigation Trustee shall cause the Registrar to issue, authenticate and deliver in exchange therefor, a certificate of the same class for the Litigation Trust Interest(s) that the Person presenting such certificates shall be entitled to receive.

#### 2.8 Mutilated, Defaced, Lost, Stolen or Destroyed Certificates.

In the event certificates representing Litigation Trust Interests are created, if a Litigation Trust Beneficiary claims that its certificate (the "Original Certificate") has been mutilated, defaced, lost, stolen or destroyed, the Litigation Trustee shall issue, and the Registrar shall authenticate, a replacement certificate of the same class if such Litigation Trust Beneficiary submits a notarized affidavit certifying that (i) it is the true, lawful, present and sole owner of the Original Certificate; (ii) it has diligently searched



all of its financial and other records and the Original Certificate is nowhere to be found; (iii) the Original Certificate and any rights or interests therein were not endorsed, and have not been pledged, sold, delivered, transferred or assigned under any agreement, hypothecated or pledged for any loan or other obligation, or disposed of in any manner by the Litigation Trust Beneficiary or on its behalf; (iv) no other Person or other entity has any right, title, claim, equity or interest in, to, or respecting the Original Certificate; and (v) in the event of the recovery of the Original Certificate at any time after the issuance of a new certificate in exchange thereof, the Litigation Trust Beneficiary will cause the recovered Original Certificate to be returned to the Litigation Trustee, or the Litigation Trustee's successor, for cancellation. In addition, such Litigation Trust Beneficiary will indemnify the Litigation Trustee or the Registrar and, if required by the Litigation Trustee and/or the Registrar, provide a bond or other security sufficient in the reasonable judgment of the Litigation Trustee or the Registrar, with respect to any loss which either of them may suffer if the Original Certificate is replaced, including a loss resulting from the assertion by any Person of the right to payment under the Original Certificate. Such Litigation Trust Beneficiary shall pay reasonable charges established by the Litigation Trustee and the Registrar for the purpose of reimbursing the Litigation Trust and the Registrar for the expenses incident thereto, including any tax or other governmental charges. The Litigation Trustee shall incur no liability to anyone by reason of anything done or omitted to be done by it in good faith under the provisions of this Section 2.8. All Litigation Trust Interests shall be held and owned upon the express condition that the provisions of this Section 2.8 are exclusive in respect of the replacement or payment of mutilated, defaced, lost, stolen or destroyed certificates and shall, to the extent permitted by law, preclude any and all other rights or remedies respecting such replacement or the payment in respect thereto. Any duplicate certificate issued pursuant to this Section 2.8 shall constitute original interests in the Litigation Trust and shall be entitled in the manner provided herein to equal and proportionate benefits with all other Litigation Trust Interests issued hereunder in any monies or property at the time held by the Litigation Trustee for the benefit of the Litigation Trust Beneficiaries. The Litigation Trustee and the Registrar shall not treat the Original Certificate as outstanding following issuance of a duplicate certificate.

## 2.9 Change of Address.

A Litigation Trust Beneficiary may, after the Effective Date, select an alternative distribution address or provide wire transfer instructions for any distribution by providing notice to the Registrar including such address or instructions. Such notification will be effective only upon receipt by the Registrar. Absent receipt of such notice by the Registrar, the Litigation Trustee shall not recognize any such change of distribution address.

## 2.10 Tax Identification Numbers.

The Litigation Trustee may require any direct payee of distributions on account of Litigation Trust Interests to furnish to the Litigation Trustee its social security number or employer or taxpayer identification number as assigned by the Internal Revenue Service and complete any related documentation (including a Form



W-8 or Form W-9) and the Litigation Trustee may condition any distribution to any such payee upon the receipt of such information and the receipt of such other documents as the Litigation Trustee reasonably requests.

### ARTICLE 3

#### THE LITIGATION TRUSTEE

##### 3.1 Role of the Litigation Trustee.

In furtherance of and consistent with the purpose of the Litigation Trust and the Plan, the Litigation Trustee, subject to the terms and conditions contained herein, in the Plan and in the Confirmation Order, shall (i) hold the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries, and (ii) make distributions of Litigation Trust Proceeds in accordance with the Plan and the Litigation Proceeds Waterfall. Subject to the provisions of this Litigation Trust Agreement, the Litigation Trustee in consultation with, and subject to the management and direction of, the Litigation Oversight Committee shall be responsible for all decisions and duties with respect to the Litigation Trust and the Litigation Trust Assets. In all circumstances, the Litigation Trustee shall act in the best interests of all the Litigation Trust Beneficiaries of the Litigation Trust and in furtherance of the purpose of the Litigation Trust. The Litigation Trustee shall be subject to and bound by the terms of the Confidentiality and Common Interest Agreement.

##### 3.2 Authority of the Litigation Trustee.

In connection with the administration of the Litigation Trust, in addition to any and all of the powers enumerated elsewhere herein, the Litigation Trustee is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Litigation Trust Agreement and the provisions of the Plan solely relating to the Litigation Trust, within the bounds of the Plan and applicable law. The Litigation Trustee, upon direction of the Litigation Oversight Committee except as set forth herein, shall, in an expeditious but orderly manner, liquidate and convert to Cash the Litigation Trust Assets, make timely distributions and not unduly prolong the duration of the Litigation Trust. The liquidation of the Litigation Trust Assets may be accomplished either through the prosecution, compromise and settlement, abandonment or dismissal of any or all Litigation Claims, or otherwise.

The Litigation Trustee, subject to the approval of the Litigation Oversight Committee except as set forth herein, shall have the right to pursue, not pursue, release, abandon, and/or settle any and all Litigation Claims (but including any counterclaims asserted against the Litigation Trust) as the Litigation Trustee determines is in the best interests of the Litigation Trust Beneficiaries. To the extent that any action has been taken to prosecute or otherwise resolve any Litigation Claims prior to the Effective Date by the Debtors and/or the Committee, on the Effective Date the Litigation Trustee shall be substituted for the Debtors and/or the Committee in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable to the

litigation by Rule 7025 of the Federal Rules of Bankruptcy Procedure and the caption with respect to such pending litigation shall be changed to the following: "                    , as Litigation Trustee for the Allied Litigation Trust, et al. v. [Defendant]". Subject to any limitations contained herein (including Article 4 herein) or in the Plan, the Litigation Trustee shall have the following powers and authorities:

(a) hold legal title to any and all rights of the Holders of the Litigation Trust Interests in or arising from the Litigation Trust Assets, including collecting and receiving any and all money and other property belonging to the Litigation Trust and, subject to the approval of the Litigation Oversight Committee, the right to vote any claim or interest relating to the Litigation Trust Assets in a case under the Bankruptcy Code and receive any distribution with respect thereto;

(b) make distributions of Litigation Trust Proceeds in accordance with the provisions of the Plan and the Litigation Proceeds Waterfall;

(c) exercise and perform the rights, powers, and duties held by each Estate with respect to the Litigation Trust Assets, including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting in the capacity of a bankruptcy trustee, receiver, liquidator, conservator, rehabilitator, creditors' committee or any similar official who has been appointed to take control of, supervise, manage or liquidate the Debtors, to provide for the prosecution, settlement, adjustment, retention, and enforcement of the Litigation Trust Assets;

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

(e) in consultation with and subject to the approval of the Litigation Oversight Committee, obtain reasonable insurance coverage with respect to the liabilities and obligations of the Litigation Trustee and the Litigation Oversight Committee under this Litigation Trust Agreement (in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy or otherwise);

(f) upon the prior written consent of the Litigation Oversight Committee, without further order of the Bankruptcy Court, employ various professionals, including counsel, tax advisors, consultants, and financial advisors, as the Litigation Trustee deems necessary to aid it in fulfilling its obligations under this Litigation Trust Agreement and the Plan, and on whatever fee arrangement the Litigation Trustee deems appropriate, including contingency fee arrangements. Professionals engaged by the Litigation Trustee shall not be required to file applications in order to receive compensation for services rendered and reimbursement of actual out-of-pocket expenses incurred. All such compensation and reimbursement shall be paid by the Litigation Trust with Litigation Trust Proceeds or the proceeds of the Litigation Funding Investments;

(g) upon the prior written consent of the Litigation Oversight Committee, request Investments from the Investors under the Investor Funding Agreement;

(h) in consultation with and subject to the approval of the Litigation Oversight Committee, retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Litigation Trust as may be required by this Litigation Trust Agreement and applicable laws and as may be reasonable and appropriate in the Litigation Trustee's discretion and to prepare and file any tax returns, informational returns, or periodic or current reports as required by applicable laws, for the Litigation Trust as may be required. Subject to the foregoing, the Litigation Trustee may commit the Litigation Trust to and shall pay such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid from the Litigation Trust with Litigation Trust Proceeds or the proceeds of the Investments;

(i) subject to the Confidentiality and Common Interest Agreement to the extent applicable, in consultation with and subject to the approval of the Litigation Oversight Committee, assert, enforce, release, or waive any privilege or any defense on behalf of the Litigation Trust, the Litigation Trust Assets, or the Litigation Trust Beneficiaries, as applicable;

(j) upon the written consent of the Litigation Oversight Committee, the Litigation Trustee may invest all assets transferred to the Litigation Trust (other than Litigation Claims), the proceeds of the Investments, all Litigation Trust Proceeds, and all income earned by the Litigation Trust (pending periodic distributions in accordance with the provisions of the Plan and the Litigation Proceeds Waterfall) in short term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills, and withdraw funds of the Litigation Trust, make distributions, incur obligations for reasonable and necessary expenses in liquidating and converting the Litigation Trust Assets to Cash, and pay taxes and other obligations owed by the Litigation Trust from funds held by the Litigation Trustee; provided, however, that such actions are consistent with the Litigation Trust's status as a liquidating trust within the meaning of United States Treasury Regulation section 301.77014(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684;

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

(l) subject to applicable securities laws, if any, establish and maintain a website, to the extent the Litigation Trustee deems necessary, for the purpose of providing notice of Litigation Trust activities in lieu of sending written notice to Holders of Litigation Trust Interests, subject to providing notice of the establishment of such website to Holders;

(m) take or refrain from taking any and all actions the Litigation Trustee reasonably deems necessary for the continuation, protection, and maximization of the Litigation Trust Assets consistent with the purposes hereof, take all steps and execute all instruments and documents necessary to effectuate the Litigation Trust, and take all actions necessary to comply with the Confirmation Order, the Plan and this Litigation Trust Agreement and the obligations thereunder and hereunder;

(n) upon the written consent of the Litigation Oversight Committee, liquidate any remaining Litigation Trust Assets, and provide for the distributions therefrom in accordance with the provisions of the Plan, this Litigation Trust Agreement and the Litigation Proceeds Waterfall;

(o) upon the written consent of the Litigation Oversight Committee, exercise such other powers and authority as may be vested in or assumed by the Litigation Trustee by any Final Order, or as may be necessary and proper to carry out the provisions of the Plan relating to the Litigation Trust;

(p) upon the written consent of the Litigation Oversight Committee, evaluate and determine strategy with respect to the Litigation Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Litigation Trust Assets on behalf of the Litigation Trust; and

(q) in consultation with and subject to the approval of the Litigation Oversight Committee, perform all duties and functions of the Plan Administrator as set forth in the Plan.

### 3.3 Limitation of the Litigation Trustee's Authority.

(a) Notwithstanding anything herein to the contrary, the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the orderly liquidation of the Litigation Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan and this Litigation Trust Agreement, (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of United States Treasury Regulation section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684, (iv) take any action in contravention of this Litigation Trust Agreement, or (v) take any action that would jeopardize treatment of the Litigation Trust as a grantor trust for U.S. federal income tax purposes under sections 671-677 of the Internal Revenue Code of 1986, as amended (the "IRC"), or any successor provisions thereof.

(b) The Litigation Trustee, acting on behalf of the Litigation Trust, shall agree to comply with, and shall not take any actions inconsistent with or seek to modify or seek relief from, any provision of the Plan or the Confirmation Order.

### 3.4 Payment of Litigation Trust Expenses.

(a) The Litigation Trustee may incur any reasonable and necessary fees and expenses in pursuing the Litigation Trust Assets, administering the Litigation Trust, managing the Litigation Trust Assets and making distributions on account of Litigation Trust Interests. All fees, expenses, and costs of the Litigation Trust shall be paid by, and solely be the obligation of, the Litigation Trust.

(b) The Litigation Trustee shall maintain an expense fund (the "Expense Fund") as a reserve to pay fees and expenses anticipated to be incurred in the future for the purposes set forth in Sections 3.4(a) and 3.5 herein and expend the assets of the Expense Fund to pay such fees and expenses as and when they become due. The Expense Fund shall be funded from time to time with proceeds from the Investments.

(c) Notwithstanding any other provision of this Litigation Trust Agreement to the contrary, the Litigation Trustee shall not be required to take any action or enter into or maintain any claim, demand, action or proceeding relating to the Litigation Trust unless it shall have funds in the Expense Fund reasonably expected to be sufficient for that purpose.

### 3.5 Reimbursement of Reorganized Debtors.

The Litigation Trust shall reimburse the Reorganized Debtors and the Committee for all reasonable and documented out-of-pocket expenses incurred (including for reasonable legal fees, travel accommodations, electronic discovery and other forensic investigation and analysis and courier and mail service) solely in performing their obligations under this Litigation Trust Agreement, the Plan and the Confidentiality and Common Interest Agreement. The Litigation Trust shall provide reimbursement for all such reasonable out-of-pocket expenses incurred within thirty (30) days of receipt of an appropriately detailed written invoice. Reimbursement of the Committee under this Section 3.5 and Section 5.18(d) of the Plan shall be in accordance with the budget contemplated thereby. For the avoidance of doubt, nothing in this Litigation Trust Agreement or the Confidentiality and Common Interest Agreement shall be interpreted as imposing on the Litigation Trustee any obligation to reimburse any Person other than the Reorganized Debtors or the Committee for any legal fees or expenses incurred in connection with this Litigation Trust Agreement or the Confidentiality and Common Interest Agreement, or the production of documents or information generally.

### 3.6 Distributions.

(a) Upon the written consent of the Litigation Oversight Committee, the Litigation Trustee shall distribute the Litigation Trust Proceeds in accordance with the provisions of the Plan and the Litigation Proceeds Waterfall.

(b) The Litigation Trust may withhold from amounts distributable to any Person any and all amounts, determined in the Litigation Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive, or other governmental requirement (including tax withholding relating to wage claims). Any Litigation Trust

Assets which are not distributable in accordance with this Section 3.6(b) as of the termination of Litigation Trust shall be distributed in accordance with the Litigation Proceeds Waterfall.

(c) The Litigation Trustee may retain a distribution agent for the effective administration and distribution of amounts payable to the Litigation Trust Beneficiaries and all costs and expenses of such distribution agent shall be paid from the Expense Fund.

3.7 Tenure, Removal, and Replacement of the Litigation Trustee.

(a) The Litigation Trustee will serve until resignation and the appointment of a successor pursuant to subsection (b) below, removal pursuant to subsection (c) below, Disability (as defined below), or death (if applicable).

(b) The Litigation Trustee may resign by giving not less than thirty (30) days' prior written notice to the Litigation Oversight Committee and the Litigation Trust Beneficiaries and filing such notice with the Bankruptcy Court. Such resignation will become effective on the later to occur of (i) the day specified in such notice, and (ii) the appointment of a successor Litigation Trustee as provided herein and the acceptance by such successor Litigation Trustee of such appointment.

(c) The Litigation Trustee or any successor Litigation Trustee appointed pursuant to the Plan and this Litigation Trust Agreement may be removed as Litigation Trustee with or without Cause (as defined below) by the Litigation Oversight Committee.

(d) In the event that the Litigation Trustee is removed, resigns, or otherwise ceases to serve as Litigation Trustee, the Litigation Oversight Committee shall appoint a successor Litigation Trustee. The Litigation Oversight Committee shall give prompt written notice to the Reorganized Debtors of the death, resignation or removal of the Litigation Trustee and the appointment of any successor Litigation Trustee.

(e) Immediately upon the appointment of any successor Litigation Trustee, all rights, powers, duties, authority, and privileges of the predecessor Litigation Trustee hereunder will be vested in and undertaken by the successor Litigation Trustee without any further act; and the successor Litigation Trustee will not be liable personally for any act or omission of the predecessor Litigation Trustee. Any successor Litigation Trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Litigation Trustee hereunder, and such successor shall be subject to the same qualifications and shall have the same rights, powers, duties, and discretion, and otherwise be in the same position, as the originally named Litigation Trustee. References herein to the Litigation Trustee shall be deemed to refer to any successor Litigation Trustee acting hereunder.

(f) Upon the appointment of a successor Litigation Trustee, the predecessor Litigation Trustee (or the duly appointed legal representative of a deceased



Litigation Trustee or a Litigation Trustee suffering a Disability) shall, if applicable, when requested in writing by the successor Litigation Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Litigation Trustee upon the trust herein expressed, without recourse to the predecessor Litigation Trustee, all the estates, properties, rights, powers and trusts of such predecessor Litigation Trustee, and shall duly assign, transfer, and deliver to such successor Litigation Trustee all property and money held hereunder, and all other assets and documents relating to the Litigation Trust, the Litigation Trust Assets, or the Litigation Trust Interests then in such predecessor Litigation Trustee's possession and held hereunder.

(g) During any period in which there is a vacancy in the position of Litigation Trustee, the Litigation Oversight Committee shall appoint one of its members to serve as interim Litigation Trustee (the "Interim Trustee"). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the Litigation Oversight Committee merely by such Person's appointment as Interim Trustee.

(h) The Litigation Trustee shall, during the period that the Litigation Trustee serves as Litigation Trustee under this Litigation Trust Agreement and following the termination of this Litigation Trust Agreement or following its removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Litigation Trust Assets relates or of which the Litigation Trustee has become aware in the Litigation Trustee's capacity as Litigation Trustee, except as otherwise required by law.

(i) For purposes of this Section 3.7 and Section 4.7 herein, the following terms shall have the following meanings:

(i) "Cause" means fraud, self-dealing, intentional misrepresentation, gross negligence, or willful misconduct.

(ii) "Disability" of the Litigation Trustee or a member of the Litigation Oversight Committee shall have occurred if, as a result of such Person's incapacity due to physical or mental illness as determined by a physician selected by the Litigation Trustee or the member of the Litigation Oversight Committee, as applicable, and reasonably acceptable to the Litigation Oversight Committee, the Litigation Trustee or the member of the Litigation Oversight Committee shall have been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

### 3.8 Books and Records.

The Litigation Trustee shall maintain in respect of the Litigation Trust and the Holders of Litigation Trust Interests good and sufficient books and records relating

to the Litigation Trust Assets and income of the Litigation Trust and the payment of, expenses of, liabilities 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 accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Trust and the requirements of Article 8 herein. Nothing in this Litigation Trust Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust, or as a condition for managing any payment or distribution out of the Litigation Trust Assets. The books and records of the Litigation Trust shall be available for inspection by any member of the Litigation Oversight Committee upon reasonable notice.

### 3.9 Inquiries into the Litigation Trustee's Authority.

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

### 3.10 Compliance with Laws.

(a) The Litigation Trustee shall ensure that any and all distributions of Litigation Trust Proceeds shall be in compliance with applicable laws, including applicable federal and state securities laws.

(b) If the Litigation Trustee determines, with the advice of counsel, that the Litigation Trust is required to comply with registration and reporting requirements of the Exchange Act, the TIA, or the Investment Company Act, then the Litigation Trustee shall, after consultation with the Litigation Oversight Committee, take commercially reasonable efforts to comply with such registration and reporting requirements, if any, and file periodic reports with the U.S. Securities and Exchange Commission to the extent required by law.

### 3.11 Litigation Trustee Compensation and Reimbursement.

The Litigation Trustee shall receive compensation from the Litigation Trust as follows:

(a) The Litigation Trustee shall receive the compensation set, from time to time, by the Litigation Oversight Committee. The Litigation Oversight Committee, without application to or approval by the Bankruptcy Court, may reasonably modify the Litigation Trustee's compensation and other terms regarding the retention of the Litigation Trustee.

(b) In addition, the Litigation Trust will reimburse the Litigation Trustee (out of the Litigation Trust Proceeds or the proceeds of the Litigation Funding Investment) for all reasonable and documented out-of-pocket expenses incurred by the Litigation Trustee in connection with the performance of the Litigation Trustee's duties hereunder and under the Plan.



(c) The fees and expenses payable to the Litigation Trustee shall be paid to the Litigation Trustee upon approval of such fees by the Litigation Oversight Committee without necessity for review or approval by the Bankruptcy Court or any other Person. All such compensation and reimbursement shall be paid from the Litigation Trust with the Litigation Trust Proceeds or the proceeds of the Investments. The Bankruptcy Court shall retain jurisdiction to adjudicate any dispute between the Litigation Trustee and the Litigation Oversight Committee regarding the fees, compensation, and expenses of the Litigation Trustee.

### 3.12 Reliance by the Litigation Trustee.

Except as otherwise provided herein:

(a) The Litigation Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Litigation Trustee to be genuine and to have been signed or presented by the proper party or parties.

(b) Persons dealing with the Litigation Trustee shall look only to the Litigation Trust Assets to satisfy any liability incurred by the Litigation Trustee to such Person in carrying out the terms of this Litigation Trust Agreement, and neither the Litigation Trustee nor any member of the Litigation Oversight Committee nor the Reorganized Debtors shall have any personal obligation to satisfy any such liability.

### 3.13 Standard of Care; Exculpation.

Neither the Litigation Trustee nor any of the Litigation Trustee's duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the Litigation Trustee except in the event that there is a Final Order of a court of competent jurisdiction determining that the Litigation Trustee committed fraud, self-dealing, intentional misrepresentation, gross negligence, or willful misconduct. The Litigation Trustee may, in connection with the performance of the Litigation Trustee's functions, and in the Litigation Trustee's sole and absolute discretion, consult with the Litigation Trustee's attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, the Litigation Trustee shall be under no obligation to consult with the Litigation Trustee's attorneys, accountants, financial advisors or agents, and the Litigation Trustee's good faith determination not to do so shall not result in the imposition of liability on the Litigation Trustee, unless such determination is based on gross negligence, recklessness, willful misconduct, or knowing violation of law.

## ARTICLE 4

### LITIGATION OVERSIGHT COMMITTEE

#### 4.1 Litigation Oversight Committee.

The Litigation Oversight Committee, which shall have no more than three members consisting of (i) two members selected by the First Lien Requisite Lender and (ii) a member selected by the Committee, is hereby established as of the Effective Date pursuant to Section 5.12 of the Plan to advise, assist, supervise and direct the Litigation Trustee in the administration of the Litigation Trust pursuant to this Litigation Trust Agreement. The initial members of the Litigation Oversight Committee shall be the Persons set forth on Exhibit B, attached hereto. Members of the Litigation Oversight Committee shall have the right to direct and remove the Litigation Trustee, and shall have such other rights to operate and manage the Litigation Trust as are not inconsistent with the Confirmation Order, the Plan and the terms of this Litigation Trust Agreement. No other Litigation Trust Beneficiary shall have any consultation or approval rights whatsoever in respect of management and operation of the Litigation Trust.

#### 4.2 Authority of the Litigation Oversight Committee.

The Litigation Oversight Committee shall have the authority and responsibility to advise, assist, supervise and direct the Litigation Trustee in the administration of the Litigation Trust and shall have the authority to remove the Litigation Trustee in accordance with Section 3.7(c) herein. The Litigation Trustee shall consult with and provide information to the Litigation Oversight Committee in accordance with and pursuant to the terms of this Litigation Trust Agreement and the Plan. The Litigation Oversight Committee shall have the authority to select and engage such professional advisors, including any professional previously retained by the Litigation Trust, the First Lien Agents, the Committee, or the Debtors, as the Litigation Oversight Committee deems necessary and desirable to assist the Litigation Oversight Committee in fulfilling its obligations under this Litigation Trust Agreement and the Plan, and the Litigation Trust shall pay the reasonable and documented fees of such advisors (including on an hourly, contingency, or modified contingency basis) and reimburse such advisors for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Litigation Trust Agreement.

#### 4.3 Regular Meetings of the Litigation Oversight Committee.

Meetings of the Litigation Oversight Committee are to be held with such frequency and at such place as the Litigation Trustee and the members of the Litigation Oversight Committee may determine in their reasonable discretion, but in no event shall such meetings be held less frequently than quarterly.

#### 4.4 Special Meetings of the Litigation Oversight Committee.

Special meetings of the Litigation Oversight Committee may be held whenever and wherever called for by the Litigation Trustee or any member of the Litigation Oversight Committee, subject to reasonable notice.

#### 4.5 Manner of Acting.

(a) A majority of the total number of members of the Litigation Oversight Committee then in office shall constitute a quorum for the transaction of

business at any meeting of the Litigation Oversight Committee. The affirmative vote of a majority of the members of the Litigation Oversight Committee present and entitled to vote at a meeting at which a quorum is present shall be the act of the Litigation Oversight Committee except as otherwise required by law or as provided in this Litigation Trust Agreement or the Plan. Notwithstanding the foregoing, the affirmative vote of each member of the Litigation Oversight Committee appointed by the First Lien Requisite Lender shall be required with respect to (i) the removal the Litigation Trustee, (ii) the replacement of the Litigation Trustee, (iii) any request to draw funds under the Litigation Investment Agreement, (iv) the incurrence of additional indebtedness or issuance of additional investments to fund the prosecution of the Litigation Claims in excess of the Investments, (v) retain counsel or other professionals to assist in the prosecution of the Litigation Claims, (vi) settle all or any portion of the Litigation Claims, or (vii) the compensation arrangements for the Litigation Trustee. Any or all of the members of the Litigation Oversight Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the Litigation Oversight Committee participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may, if approved by the majority of the members at a meeting, be conducted by electronic mail or individual communications by the Litigation Trustee and each member of the Litigation Oversight Committee.

(b) Any member of the Litigation Oversight Committee who is present and entitled to vote at a meeting of the Litigation Oversight Committee when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Litigation Oversight Committee, unless: (i) such member of the Litigation Oversight Committee objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting business at the meeting; or (ii) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he or she delivers written notice (including by electronic or facsimile transmission) of his or her dissent or abstention to the Litigation Oversight Committee before its adjournment. The right of dissent or abstention is not available to any member of the Litigation Oversight Committee who votes in favor of the action taken.

(c) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each member of the Litigation Oversight Committee shall report to the Litigation Oversight Committee any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue, other than solely as a Litigation Trust Beneficiary). A member who has or who may have a conflict of interest shall be deemed to be a "conflicted member" who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to

such matter or issue shall be undertaken only by members of the Litigation Oversight Committee who are not "conflicted members." Notwithstanding anything to the contrary set forth herein, no member of the Litigation Oversight Committee shall be deemed to be a "conflicted member" solely as a result of (i) such member's affiliation with a Person that is a Litigation Trust Beneficiary or an Investor, or (ii) such member is, or is affiliated with any Person that is, adverse to any Person that is a defendant in any of the Litigation Claims in any other action or proceeding.

#### 4.6 Litigation Oversight Committee's Action Without a Meeting.

Any action required or permitted to be taken by the Litigation Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Litigation Oversight Committee as evidenced by one or more written consents describing the action taken, signed by all members of the Litigation Oversight Committee and recorded in the minutes or other transcript of proceedings of the Litigation Oversight Committee.

#### 4.7 Tenure, Removal, and Replacement of the Members of the Litigation Oversight Committee.

The authority of the members of the Litigation Oversight Committee will be effective as of the Effective Date and will remain and continue in full force and effect until the Litigation Trust is terminated in accordance with Section 9.1 herein. The service of the members of the Litigation Oversight Committee will be subject to the following:

(a) The members of the Litigation Oversight Committee will serve until Disability, death, resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below;

(b) A member of the Litigation Oversight Committee may resign at any time by providing a written notice of resignation to the remaining members of the Litigation Oversight Committee. Such resignation will be effective upon the date received by the Litigation Oversight Committee or such later date specified in the written notice;

(c) A member of the Litigation Oversight Committee may be removed by the majority vote of the other members of the Litigation Oversight Committee, a written resolution of which shall be delivered to the removed Litigation Oversight Committee member; provided, however, that such removal may only be made for Cause;

(d) In the event of a vacancy on the Litigation Oversight Committee (whether by removal, Disability, death or resignation), a new member shall be appointed to fill such position by the Person(s) who initially designated the member whose seat has become vacant.

(e) Immediately upon the appointment of any successor member of the Litigation Oversight Committee, all rights, powers, duties, authority, and privileges of the predecessor member of the Litigation Oversight Committee hereunder will be vested in and undertaken by the successor member of the Litigation Oversight Committee without any further act; and the successor member of the Litigation Oversight Committee will not be liable personally for any act or omission of the predecessor member of the Litigation Oversight Committee; and

(f) Every successor member of the Litigation Oversight Committee appointed hereunder shall execute, acknowledge and deliver to the Litigation Trustee and other members an instrument accepting the appointment under this Litigation Trust Agreement and agreeing to be bound thereto, and thereupon the successor member of the Litigation Oversight Committee without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring member.

4.8 Compensation and Reimbursement of Expenses of the Litigation Oversight Committee.

(a) The Litigation Trust will reimburse the members of the Litigation Oversight Committee for all reasonable and documented out-of-pocket expenses (other than the fees and disbursements of legal counsel retained by the members, which will be reimbursed as provided in Section 4.8(b)(ii) below) incurred by such members in connection with the performance of their respective services hereunder, without duplication, upon demand for payment thereof.

(b) All fees and expenses of the members of the Litigation Oversight Committee shall be paid solely from Litigation Trust Proceeds or the proceeds of the Investments.

4.9 No Further Liability.

(a) Each of the Litigation Trustee and the members of the Litigation Oversight Committee shall have no liability for any actions or omissions in accordance with this Litigation Trust Agreement unless arising out of their gross negligence or willful misconduct. In performing its duties under this Litigation Trust Agreement, the Litigation Trustee or the members of the Litigation Oversight Committee (as applicable) shall have no liability for any action taken by the Litigation Trustee and the members of the Litigation Oversight Committee in accordance with the advice of counsel, accountants, appraisers and other professionals retained by the members of the Litigation Oversight Committee or the Litigation Trust. Without limiting the generality of the foregoing, the Litigation Trustee and the members of the Litigation Oversight Committee may rely without independent investigation on copies of orders of the Bankruptcy Court reasonably believed by the Litigation Trustee or the members of the Litigation Oversight Committee (as applicable) to be genuine, and shall have no liability for actions taken in reliance thereon. None of the provisions of this Litigation Trust Agreement shall require the Litigation Trustee or the members of the Litigation Oversight Committee to expend or risk their own funds or otherwise incur personal

financial liability in the performance of any of their duties hereunder or in the exercise of any of their rights and powers. Each of the Litigation Trustee and the members of the Litigation Oversight Committee may rely without inquiry upon writings delivered to it under the Plan which the Litigation Trustee or the members of the Litigation Oversight Committee (as applicable) reasonably believes to be genuine and to have been given by a proper Person. Notwithstanding the foregoing, nothing in this Section 4.9 shall relieve the Litigation Trustee or the members of the Litigation Oversight Committee from any liability for any actions or omissions arising out of their gross negligence or willful misconduct. Any action taken or omitted to be taken in the case of the Litigation Trustee or the members of the Litigation Oversight Committee with the express approval of the Bankruptcy Court and, in the case of the Litigation Trustee, with the express approval of the members of the Litigation Oversight Committee will conclusively be deemed not to constitute gross negligence or willful misconduct.

(b) Neither the Litigation Trustee, the members of the Litigation Oversight Committee nor their professionals will be liable for punitive, exemplary, consequential, special or other damages for a breach of this Litigation Trust Agreement under any circumstances.

## ARTICLE 5

### TAX MATTERS

#### 5.1 Treatment of Litigation Trust Assets Transfer.

Notwithstanding Section 1.2(a) herein, all parties shall treat, for U.S. federal income tax purposes, the transfer of each of the Litigation Trust Assets to the Litigation Trust, including any amounts or other assets subsequently transferred to the Litigation Trust (but only at such time as actually transferred), as a transfer of the Litigation Trust Assets to the Litigation Trust Beneficiaries, followed by a transfer of such Litigation Trust Assets by the Litigation Trust Beneficiaries to the Litigation Trust in exchange for beneficial interests in the Litigation Trust.

#### 5.2 Income Tax Status.

For U.S. federal income tax purposes (and for purposes of all state, local and other jurisdictions to the extent applicable), the Litigation Trust shall be treated as a grantor trust pursuant to IRC sections 671-677, or any successor provisions thereof. To the extent consistent with Revenue Procedure 94-45 and not otherwise inconsistent with this Litigation Trust Agreement, this Litigation Trust Agreement shall be construed so as to satisfy the requirements for liquidating trust status. For all purposes of this Litigation Trust Agreement, (i) the Litigation Trust Beneficiaries will be treated as the grantors, deemed owners and beneficiaries of the Litigation Trust, and (ii) any items of income, gain, loss, deduction and credit of the Litigation Trust shall be allocated for U.S. federal income tax purposes to the Litigation Trust Beneficiaries. The Litigation Trust shall at all times be administered so as to constitute a domestic trust for U.S. federal income tax purposes.

#### 5.3 Valuation of Litigation Trust Assets as of Effective Date.



Promptly after the Effective Date, the Valuation Expert shall determine and file with the Bankruptcy Court the final fair market value as of the Effective Date of all Litigation Trust Assets transferred to the Litigation Trust, giving due regard to the initial estimated valuation of the Litigation Trust Assets determined in accordance with the Plan. Subject to any lawful objection thereto, the Litigation Trust Beneficiaries, the Litigation Trust and the Litigation Trustee will each be required to use such Valuation Expert's final valuation consistently and solely for all U.S. federal income tax purposes, including for determining tax basis and gain or loss. For the avoidance of doubt, the Valuation Expert's final valuation shall not be binding on the Litigation Trust Beneficiaries, the Litigation Trust or the Litigation Trustee for any purpose other than U.S. federal income tax purposes, and the valuation shall not impair or prejudice any rights, claims, powers, duties, authority, and privileges of the Litigation Trust Beneficiaries, the Litigation Trust or the Litigation Trustee except with respect to U.S. federal income tax purposes. The Litigation Trustee also shall file (or cause to be filed) any other statements, returns or disclosure relating to the Litigation Trust that are required by any governmental unit.

#### 5.4 Tax Returns.

The Litigation Trustee shall file U.S. federal income tax returns for the Litigation Trust as a grantor trust in accordance with United States Treasury Regulation section 1.671-4 and report, but not pay tax on, the Litigation Trust's tax items of income, gain, loss, deduction and credit ("LT Tax Items"), The Holders of Litigation Trust Interests shall report such LT Tax Items on their U.S. federal income tax returns and pay any resulting U.S. federal income tax liability. 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 Litigation Trust Beneficiary a separate statement setting forth the Litigation Trust Beneficiary's share of LT Tax Items and will instruct each such Litigation Trust Beneficiary to report such items on its applicable income tax return. The Litigation Trust may provide each Litigation Trust Beneficiary with a copy of the Form 1041 for the Litigation Trust (without attaching any other Litigation Trust Beneficiary's Schedule K-1 or other applicable information form) along with such Litigation Trust Beneficiary's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement.

#### 5.5 Expedited Determination of Taxes.

The Litigation Trustee may request an expedited determination of taxes of the Litigation Trust under applicable law for all returns filed for, or on behalf of, the Litigation Trust for all taxable periods through the dissolution of the Litigation Trust.

#### 5.6 Withholding of Taxes; Litigation Trust Taxes.

The Litigation Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions made by the Litigation Trust to the Litigation Trust Beneficiaries shall be subject to any such withholding and reporting requirements. To the extent that the operation of the Litigation Trust or the liquidation of the Litigation Trust Assets creates a tax liability imposed on the Litigation Trust, the Litigation Trust shall timely pay such tax liability and any such payment shall be considered a

cost and expense of the operation of the Litigation Trust. All Litigation Trust Beneficiaries shall be required to provide any information necessary to comply with all withholding and reporting requirements.

## ARTICLE 6

### DISTRIBUTIONS

#### 6.1 Distributions.

The Litigation Trustee shall distribute all Litigation Trust Proceeds in accordance with the Plan and the Litigation Proceeds Waterfall at such time or times as the Litigation Trustee, after consultation with the Litigation Oversight Committee, may determine, provided, however, that the Litigation Trust shall promptly distribute all Litigation Trust Proceeds recovered from and after the entry of a Final Order resolving all of the Litigation Claims.

#### 6.2 Manner of Payment or Distribution.

(a) All distributions made by the Litigation Trustee to Holders of Litigation Trust Interests shall be payable by the Litigation Trustee directly to the Holders of Litigation Trust Interests of record as of the twentieth (20<sup>th</sup>) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date for the distribution shall be the following Business Day.

(b) All Litigation Trust Proceeds shall be distributed in accordance with the Plan and the Litigation Proceeds Waterfall.

#### 6.3 Delivery of Litigation Trust Distributions.

All distributions under this Litigation Trust Agreement to any Holder of Litigation Trust Interests, shall be made at the address of such Holder as set forth in the Trust Register or at such other address or in such other manner as such Holder of Litigation Trust Interests shall have specified for payment purposes in a written notice to the Litigation Trustee and the Registrar at least twenty (20) days prior to such distribution date. If any distribution to any Litigation Trust Beneficiary is returned as undeliverable, and after reasonable efforts the Litigation Trustee has not been able to determine the current address of the Litigation Trust Beneficiary, such undeliverable or unclaimed distribution shall be deemed unclaimed property 120 days after the date of such distribution and shall be reallocated to the remaining Litigation Trust Beneficiaries and shall be distributed in accordance with the Plan and the Litigation Proceeds Waterfall. Such undeliverable or unclaimed distributions shall not be subject to (i) any claims by such Litigation Trust Beneficiary, or (ii) the unclaimed property or escheat laws of any state or governmental unit.

#### 6.4 Cash Distributions.

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



shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all Cash shall be distributed in the final distribution of the Litigation Trust Proceeds.

## ARTICLE 7

### INDEMNIFICATION

#### 7.1 Indemnification of the Litigation Trustee and the Litigation Oversight Committee.

(a) To the fullest extent permitted by law, the Litigation Trust, to the extent of its assets legally available for that purpose, will indemnify and hold harmless the Litigation Trustee and the Litigation Oversight Committee and each of their respective directors, members, shareholders, partners, officers, agents, professionals or employees (collectively, the "Litigation Trust Indemnified Parties" and each a "Litigation Trust Indemnified Party") from and against any and all loss, cost, damage, expense (including fees and expenses of attorneys and other advisors and any court costs incurred by any Litigation Trust Indemnified Party) or liability by reason of anything any Litigation Trust Indemnified Party did, does or refrains from doing for the business or affairs of the Litigation Trust, except to the extent that it is finally judicially determined by a court of competent jurisdiction that the loss, cost, damage, expense or liability resulted from the Litigation Trust Indemnified Party's gross negligence or willful misconduct.

(b) Notwithstanding any provision herein to the contrary, the Litigation Trust Indemnified Parties shall be entitled to obtain advances from the Litigation Trust to cover their reasonable expenses of defending themselves in any action brought against them as a result of the acts and omissions, actual or alleged, of a Litigation Trust Indemnified Party in its capacity as such, provided, however, that the Litigation Trust Indemnified Parties receiving such advances shall repay the amounts so advanced to the Litigation Trust immediately upon the entry of a final, non-appealable judgment or order finding that such Litigation Trust Indemnified Parties were not entitled to any indemnity under the provisions of this Section 7.1. The foregoing indemnity in respect of any Litigation Trust Indemnified Party shall survive the termination, resignation or removal of such Litigation Trust Indemnified Party from the capacity for which they are indemnified. Termination or modification of the Trust Agreement shall not affect any indemnification rights or obligations then existing.

(c) The rights to indemnification under this Section 7.1 are not exclusive of other rights which any Litigation Trust Indemnified Party may otherwise have at law or in equity, including common law rights to indemnification or contribution. Nothing in this Section 7.1 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Litigation Trust Agreement or any other agreement or instrument to which that Person is a party.

## ARTICLE 8

### REPORTS TO LITIGATION TRUST BENEFICIARIES

#### 8.1 Reports.

(a) The Litigation Trustee shall file quarterly reports with the Bankruptcy Court (and serve the same upon counsel for the Reorganized Debtors), and provide annual reports to the Litigation Trust Beneficiaries, with respect to (i) the prosecution and resolution of the Litigation Trust Assets, and (ii) expenditures, receipts, and distributions of the Litigation Trust. The Litigation Trustee shall cause to be prepared, as applicable, either at such times as may be required by the Exchange Act, if applicable, or, not less than annually, financial statements of the Litigation Trust, to be delivered to the Litigation Trust Beneficiaries together with annual income tax reporting of the Litigation Trust. To the extent required by law, the financial statements prepared as of the end of the fiscal year shall be audited by nationally recognized independent accountants in accordance with U.S. generally accepted accounting principles. The materiality and scope of audit determinations shall be established between the Litigation Trustee (in consultation with the Litigation Oversight Committee) and the appointed auditors with a view toward safeguarding the value of the Litigation Trust Assets, but nothing relating to the mutually agreed scope of work shall result in any limitation of audit scope that would cause the auditors to qualify their opinion as to scope of work with respect to such financial statements.

(b) Within ten (10) Business Days after the end of the relevant report preparation period the Litigation Trustee shall cause any information reported pursuant to Section 8.1(a) herein to be provided to such Litigation Trust Beneficiaries and to be filed with the Bankruptcy Court.

(c) Any report required to be distributed by the Litigation Trustee under Section 8.1(a) hereof shall also be distributed to the Persons listed in Section 11.6 hereof concurrently with its distribution to the Litigation Trust Beneficiaries under Section 8.1(a) hereof. The Litigation Trustee may post any report required to be provided under this Section 8.1 on a web site maintained by the Litigation Trustee in lieu of actual notice to the Litigation Trust Beneficiaries (unless otherwise required by law) subject to providing notice to the Persons listed in Section 11.6 herein.

## ARTICLE 9

### TERM; TERMINATION OF THE LITIGATION TRUST

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

(a) The Litigation Trust will be dissolved no later than five (5) years from the Effective Date; provided, however, that the Bankruptcy Court, upon motion by a party in interest, on notice with an opportunity for a hearing, may extend the term of the Litigation Trust for a finite period if (i) such extension is necessary to the purpose of

the Litigation Trust, (ii) the Litigation Trustee receives an opinion of counsel or a ruling from the Internal Revenue Service stating that such extension would not adversely affect the status of the Litigation Trust as a liquidating trust for U.S. federal income tax purposes, and (iii) such extension is obtained within the six (6) month period prior to the Litigation Trust's fifth (5th) anniversary or the end of the immediately preceding extension period, as applicable.

(b) Upon dissolution of the Litigation Trust, any remaining Cash on hand, including any Cash in the Expense Fund, and other assets, with the exception of any Litigation Claims, will be distributed to the Litigation Trust Beneficiaries in accordance with the Plan, this Litigation Trust Agreement and the Litigation Proceeds Waterfall.

(c) If for any reason the Litigation Trust shall terminate and be deemed wound up prior to the entry of a Final Order resolving the Litigation Claims (by way of judgment, settlement or otherwise) and receipt by the Litigation Trust of all amounts to which the Litigation Trust may be entitled, notwithstanding anything to the contrary set forth herein, the distribution of any proceeds recovered at any time on account of the Litigation Claims shall be made in accordance with the Litigation Proceeds Waterfall.

## 9.2 Continuance of the Litigation Trustee for Winding Up.

After the termination of the Litigation Trust and for the purpose of liquidating and winding up the affairs of the Litigation Trust, the Litigation Trustee shall continue to act as such until the Litigation Trustee's duties have been fully performed. Prior to the final distribution of all of the remaining Litigation Trust Assets and upon approval of the Litigation Oversight Committee, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Litigation Trustee's own costs and expenses in accordance with Section 3.11 herein until such time as the winding up of the Litigation Trust is completed. Upon termination of the Litigation Trust, subject to the terms and conditions contained in the Confidentiality and Common Interest Agreement, the Litigation Trustee shall retain for a period of two (2) years, as a cost of administering the Litigation Trust, the books, records, Litigation Trust Beneficiary lists, the Trust Register, and certificates and other documents and files that have been delivered to or created by the Litigation Trustee. Subject to the terms and conditions contained in the Confidentiality and Common Interest Agreement, at the Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the completion and winding up of the affairs of the Litigation Trust. Except as otherwise specifically provided herein, upon the termination of the Litigation Trust, the Litigation Trustee shall have no further duties or obligations hereunder.

## ARTICLE 10

### AMENDMENT AND WAIVER

Any substantive provision of this Litigation Trust Agreement, except for this Article 10 and Section 1.5 herein, may be amended or waived in writing by the Litigation Trustee, upon notice and approval by the Litigation Oversight Committee and approval of the Bankruptcy Court and provision of reasonable notice to the Reorganized Debtors; provided, however, that any modification that may adversely affect distributions to Litigation Trust Beneficiaries shall require the consent of the Investors. Notwithstanding the foregoing, any amendment or waiver which materially and adversely affects the Reorganized Debtors shall require their consent. Technical amendments to this Litigation Trust Agreement may be made, as necessary to clarify this Litigation Trust Agreement or enable the Litigation Trustee to effectuate the terms of this Litigation Trust Agreement, by the Litigation Trustee with approval by a majority of the Litigation Oversight Committee; provided, however, that all amendments of this Litigation Trust Agreement shall be consistent with the Plan and the purpose and intention of the Litigation Trust to liquidate in an expeditious but orderly manner the Litigation Trust Assets in accordance with United States Treasury Regulation section 301.7701-4(d) and Section 1.4 herein.

## ARTICLE 11

### MISCELLANEOUS PROVISIONS

#### 11.1 Intention of Parties to Establish a Liquidating Trust,

The Litigation Trust is intended to be classified as a liquidating trust for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Litigation Trust Agreement may be amended in accordance with Article 10 herein to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

#### 11.2 Reimbursement of Trust Costs,

If the Litigation Trustee, the Litigation Oversight Committee, the Litigation Trust, or any Debtor or Reorganized Debtor, as the case may be, is the prevailing party in a dispute regarding the provisions of this Litigation Trust Agreement or the enforcement thereof, the Litigation Trustee, the Litigation Oversight Committee, the Litigation Trust or any Debtor or Reorganized Debtor, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action. To the extent that the Litigation Trust has advanced such amounts, the Litigation Trust may recover such amounts from the non-prevailing party.

#### 11.3 Laws as to Construction,

Except to the extent the Bankruptcy Code or Federal Rules of Bankruptcy Procedure are applicable, this Litigation Trust Agreement shall be governed by, and

construed and enforced in accordance with, the federal laws of the United States and, to the extent there is no applicable federal law, the domestic laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof.

11.4 Jurisdiction,

The Bankruptcy Court shall have the exclusive jurisdiction with respect to any action relating to or arising from the Litigation Trust.

11.5 Severability,

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

11.6 Notices,

(a) All notices, requests or other communications to the Parties hereto shall be in writing and shall be sufficiently given only if: (i) delivered in person; (ii) sent by electronic or facsimile communication (as evidenced by an electronic mail return receipt or confirmed fax transmission report, respectively); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the following addresses or facsimile numbers:

(i) If to the Litigation Trustee, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Tel: \_\_\_\_\_  
Email: \_\_\_\_\_

(ii) If to the Litigation Oversight Committee, to the last known address(es) and facsimile number(s) provided by the Litigation Oversight Committee to the Litigation Trustee.

(iii) If to the Reorganized Debtors, to:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Tel: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Tel: \_\_\_\_\_  
Email: \_\_\_\_\_

(iv) If to a Litigation Trust Beneficiary: to the name and address set forth on the Trust Register, provided that general notices to all Litigation Trust Beneficiaries may be made by posting such notice to a website identified in advance for communication with Litigation Trust Beneficiaries.

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

#### 11.7 Fiscal Year.

The fiscal year of the Litigation Trust will begin on the first day of January and end on the last day of December of each year.

#### 11.8 Headings.

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

#### 11.9 Counterparts.

This Litigation Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

#### 11.10 Confidentiality.

The Litigation Trustee and each successor Litigation Trustee and each member of the Litigation Oversight Committee and each successor member of the Litigation Oversight Committee (each a "Covered Person") shall, during the period that they serve in such capacity under this Litigation Trust Agreement and following either the termination of this Litigation Trust Agreement or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential any material, non-public information of or pertaining to any Person to which any of the Litigation Trust Assets relates or of which it has become aware in its capacity (the "Information"), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the Litigation Oversight Committee and the Reorganized Debtors reasonably promptly (unless prohibited by law) so that the Litigation Oversight Committee and/or the Reorganized Debtors may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section 11.10, subject to the Confidentiality and Common Interest Agreement, (and if the Litigation Oversight Committee or Reorganized Debtors seeks such an order, the relevant Covered Person will provide cooperation as the Litigation Oversight Committee and/or Reorganized Debtors shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Litigation Oversight Committee and the Reorganized Debtors waives compliance with the terms of this Section 11.10, subject to the LT Confidentiality and Common Interest Agreement, and that any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Litigation Oversight Committee and the Reorganized Debtors written notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

#### 11.11 Entire Agreement.

This Litigation Trust Agreement (including the Recitals), the Confirmation Order, and the Plan constitute the entire agreement by and among the Parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Litigation Trust Agreement, the Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the Parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Plan or in the Confirmation Order, nothing in this Litigation Trust Agreement is intended or shall be construed to confer upon or to give any Person other than the Parties hereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Litigation Trust Agreement.

#### 11.12 Rules of Interpretation.



For purposes of this Litigation Trust Agreement, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) the words "herein," "hereof," "hereto," "hereunder" and other words of similar import refer to this Litigation Trust Agreement as a whole and not to any particular section, subsection or clause contained in this Litigation Trust Agreement; (c) the rules of construction set forth in 11 U.S.C. § 102 will apply; and (d) the term "including" shall be construed to mean "including, but not limited to," "including, without limitation," or words of similar import.

11.13 Effectiveness.

This Litigation Trust Agreement shall become effective on the Effective Date.

11.14 No Waiver.

The Reorganized Debtors and the Litigation Trustee agree that no failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, and that no single or partial exercise thereof will preclude any other or further exercise thereof or the exercise of any right, power and privilege hereunder.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



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

ASHINC CORPORATION (for itself and on behalf of the  
other Debtors, as Debtors and Debtors in Possession

---

By:  
Title:

BLACK DIAMOND COMMERCIAL FINANCE L.L.C.  
(as Co-Administrative Agent)

---

By:  
Title:

SPECTRUM COMMERCIAL FINANCE LLC (as Co-  
Administrative Agent)

---

By:  
Title:

\_\_\_\_\_, AS LITIGATION TRUSTEE

---

\_\_\_\_\_, as

LITIGATION TRUSTEE

**EXHIBIT A**  
**THE LITIGATION TRUSTEE**

**EXHIBIT B**

**INITIAL MEMBERS OF THE LITIGATION OVERSIGHT COMMITTEE**

Jeffrey Buller  
Brad Berliner  
Samuel Goldfarb

# **EXHIBIT B**

---

**ALLIED LITIGATION TRUST,**

as Issuer

---

**INVESTMENT FUNDING AGREEMENT**

Dated \_\_\_\_\_, 2015

\$15,000,000.00

---

**PERSONS FROM TIME TO TIME PARTY HERETO,**

as Investors

and

[\_\_\_\_\_],

as Investor Agent

---

## **INVESTMENT FUNDING AGREEMENT**

**THIS INVESTMENT FUNDING AGREEMENT** (the "Agreement") is dated \_\_\_\_\_, 2015, among \_\_\_\_\_, in his/her capacity as the Litigation Trustee (the "Trustee") for the Allied Litigation Trust, a trust established under the laws of the State of Delaware (the "Litigation Trust" or "Trust"), the Persons party to this Agreement from time to time as investors (collectively, "Investors"), and \_\_\_\_\_, as agent for the Investors (in such capacity, together with its successors in such capacity, the "Investor Agent").

### **Recitals:**

WHEREAS, on September \_\_, 2015, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered an order (the "Confirmation Order") [D.I. \_\_\_\_] confirming that certain Debtors' Joint Plan of Reorganization Proposed by the Debtors, the Creditors Committee and the First Lien Agents in the jointly administered chapter 11 cases entitled In re ASHINC Corporation, et al., Debtors, Case No. 12-11564 (CSS) (the "Plan") [D.I. \_\_\_\_]; and

WHEREAS, the Plan provides for the establishment of the Allied Litigation Trust for the purpose of, among other things, prosecuting the Litigation Claims (as defined in the Plan) and making distributions to the holders of Allowed Claims (as defined in the Plan) in the manner provided in the Plan; and

WHEREAS, the Plan further contemplates that the Trust will obtain financing for the purpose of, among other things, funding the costs and expenses associated with the prosecution of the Litigation Claims; and

WHEREAS, to facilitate the Litigation Trustee's pursuit of the Litigation Claims the Litigation Trustee has requested that the Investors provide the required financing in the form of investments; and

WHEREAS, the Investors are willing to provide the required financing in the form of investments on the terms and conditions set forth in this Agreement.

### **Statement of Agreement:**

**NOW, THEREFORE**, for valuable consideration hereby acknowledged, the parties to this Agreement agree as follows:

## **SECTION 1 DEFINITIONS; RULES OF CONSTRUCTION**

**1.1. Definitions.** As used herein, the following terms have the meanings set forth below (terms defined in the singular to have the same meaning when used in the plural and vice versa):

"Accredited Investor" has the meaning ascribed to such term in Regulation D of the Securities Act (17 C.F.R. § 230.501).

"Affiliate" means, with respect to any Person (a) such Person's controlling member, general partner, manager and investment manager and affiliates thereof; (b) any entity with the same general partner, manager or investment manager as such Person or a general partner, manager or investment manager affiliated with such general partner, manager or investment manager of such Person, and (c) any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the first Person, investment manager of such Person or an affiliate of such Person, general partner or investment manager. For purposes of this definition, "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise. For the avoidance of doubt, no Investor shall be considered an "Affiliate" of the Litigation Trust.

"Agreement" shall have the meaning ascribed to such term in the Recitals.

"Agreement Termination Date" means the earlier to occur of (a) the date of termination of this Agreement by written consent of Required Investors, the Investor Agent and the Litigation Trustee, (b) the date by which (i) all of the Litigation Claims have been resolved by Final Order or settlement among the parties and all amounts to which the Trust may be entitled have been received, (ii) the Litigation Trustee has remitted to Investor Agent, for the benefit of Investors, each Investor's Investor Payment Amount, and (iii) all Obligations have been paid in full, or (c) the date on which the Allied Litigation Trust terminates in accordance with the terms of the Litigation Trust Agreement.

"Applicable Law" means all laws, rules, regulations and governmental guidelines applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

"Approval Order" means an order entered by the Bankruptcy Court (which may be the Confirmation Order) approving the Funding Transaction and the transfer of the Investor Interests to the Investors and the related grant of the Liens in connection therewith, which order will otherwise be in form and substance acceptable to the Investors, will be in full force and effect and will not have been reversed, modified, amended, stayed, vacated or subject to a stay pending appeal.

"Assignment and Acceptance" means an assignment agreement between an Investor and a Qualified Investor Assignee, substantially in the form annexed as **Exhibit A**.

"Assignment Notice" means a Notice of Proposed Assignment to be given by an assigning Investor to Investor Agent and the Litigation Trustee, in the form annexed as **Exhibit B**.

"Backstop Agreement" means that certain letter agreement, dated as of September \_\_, 2015, between and among the Backstop Investors and the Litigation Trustee.

"Backstop Investors" means those affiliates of each of Black Diamond Capital Management L.L.C. and Spectrum Investment Partners LP identified as having Commitments in the Backstop Agreement.

"Bankruptcy Code" means Title 11 of the United States Code.

"Bankruptcy Court" shall have the meaning ascribed to such term in the Recitals.

"Board of Governors" means the Board of Governors of the Federal Reserve System.

"Bona Fide Dispute Period" shall have the meaning ascribed to such term in **Section 4.3.4.**

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, New York.

"Chapter 11 Cases" shall have the meaning set forth in the Plan.

"Closing Date" shall have the meaning ascribed to such term in **Section 6.1.**

"Confirmation Order" means the order entered by the Bankruptcy Court confirming the Plan and, among other things, approving this Agreement.

"Covenant Cure Period" shall have the meaning ascribed to such term in **Section 12.1.**

"Cure Amount" shall have the meaning ascribed to such term in **Section 4.3.1.**

"Debt" means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; and (c) all partial and wholly contingent obligations and liabilities incurred by the Litigation Trustee to any Litigation Trust Professional.

"Debtors" shall have the meaning set forth in the Plan.

"Default" means an event or condition that, with the lapse of time or giving of notice (or both), would constitute an Event of Default.

"Defaulting Investor" means any Investor that has failed to perform any funding obligations as and when due hereunder, and such failure is not cured in accordance with **Section 4.3.**

"Dollars" means lawful money of the United States.

"Escrow Agent" shall have the meaning ascribed to such term in **Section 13.1.5.**

"Equity Interest" means (a) with respect to any Person that is a corporation, all shares, interests, participations or other equivalents (however designated and whether or not voting) of



corporate stock, and (b) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person.

"Event of Default" shall have the meaning ascribed to such term in **Section 12**.

"Fees and Expenses" means those fees and expenses that are incurred by the Litigation Trustee and due and owing to the Litigation Trust Professionals or other Persons that are consultants, advisors or expert witnesses on behalf of the Litigation Trustee.

"Final Order" means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court and has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing is then pending or, (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, (a) such order or judgment has been affirmed by the highest court to which such order was appealed, certiorari has been denied, or a new trial, reargument, or rehearing has been denied or resulted in no modification of such order and (b) the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the local bankruptcy rules of the Bankruptcy Court, may be filed relating to such order shall not prevent such order from being a Final Order, except as provided in the Federal Rules of Appellate Procedure, the Bankruptcy Rules, or the local bankruptcy rules of the Bankruptcy Court.

"Funding Percentage" means, with respect to any Investor, a percentage (rounded to the ninth decimal place) determined by dividing (a) the amount of such Investor's outstanding Investment Commitment by (b) the aggregate amount of all outstanding Investment Commitments as set forth on **Schedule 1.1**, as it may be modified or supplemented from time to time pursuant to **Sections 4.2, 4.3 and 14.3**.

"Funding Transaction" means the transaction contemplated by the Investment Facility Documents.

"Governmental Authority" means any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, or other entity or officer exercising executive, legislative, judicial, regulatory or administrative functions for any governmental, judicial, investigative, regulatory or self-regulatory authority.

"Gross Recovery" means the sum of all cash and other property actually received by the Litigation Trustee (prior to any netting, offset, reduction or deduction of any fees, costs, expenses, payment of taxes or payment of any other amounts) from the prosecution or settlement of the Litigation Claims.

"Indemnified Matters" shall have the meaning ascribed to such term in **Section 13.5.2**.

"Indemnitees" shall have the meaning ascribed to such term in **Section 13.5.2**.

"Initial Investors" means, collectively, (a) the Backstop Investors, and (b) each other First Lien Lender that properly and timely elects to participate in the Investment Commitments in accordance with the terms of the Plan.

"Insolvency Proceeding" means any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, the Litigation Trust relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

"Investment" means, with respect to each Investor, sums advanced by such Investor pursuant to its Investment Commitment.

"Investment Commitment" means, for each Investor, its obligation to make Investments hereunder pursuant to the terms hereof, in the maximum principal amount shown on **Schedule 1.1**, as it may be modified or supplemented from time to time pursuant to **Sections 4.2, 4.3 and 14.3**.

"Investment Facility" means the investment facility established hereunder for Investments by Investors in an aggregate principal amount of \$15,000,000.

"Investment Facility Documents" means this Agreement, and any other agreement, instrument, certificate, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing any Investment or any other Obligation, and including the Plan and the Confirmation Order.

"Investment Facility Permitted Uses" means the Litigation Trust's payment of (a) costs and the fees and expenses incurred by the Litigation Trustee in connection with (i) prosecution or settlement of the Litigation Claims, including the Fees and Expenses of the Litigation Trustee Professionals; and (ii) any other aspect of the administration and liquidation of the Litigation Trust as contemplated by the Plan, (b) fees due to the Bankruptcy Court or the United States Trustee, (c) Investor Party Expenses, and (d) fees due to Investor Agent pursuant to **Section 3.1**.

"Investment Facility Termination Date" means the earliest to occur of (a) the date on which the Total Aggregate Investment has been made under this Agreement; (b) the date on which the Investment Facility is terminated by Investor Agent as a consequence of the occurrence of an Event of Default pursuant to **Section 12.1**; (c) the date on which the Litigation Claims have been resolved (whether by Final Order or settlement among the parties) and all amounts to which the Trust may be entitled have been received; or (d) the date that is the fifth anniversary of the Closing Date.

"Investment Proceeds" means proceeds of the Investments that are remitted to the Litigation Trustee (or to another Person on behalf of the Litigation Trust).

"Investment Request" means an Investment Request to be provided by the Litigation Trustee to Investor Agent to request an Investment, in substantially the form annexed as **Exhibit C**.

"Investor Agent Fee Letter" means the letter from Investor Agent to the Litigation Trustee, dated the date hereof, which is countersigned by the Litigation Trustee.

"Investor Agent Indemnitees" means Investor Agent and its owners, officers, directors, employees, Affiliates, agents, sub-agents and attorneys.

"Investor Agent Professionals" means attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Investor Agent.

"Investor Agent's Account" means an account at a bank designated in writing to the Litigation Trustee by Investor Agent from time to time as the account to which the Litigation Trustee shall direct all wire transfer payments to Investor Agent for the benefit of Investor Parties under the Investment Facility Documents.

"Investor Interests" shall have the meaning ascribed to such term in **Section 2.1.5**.

"Investor Parties" means Investor Agent and Investors.

"Investor Party Expenses" means (a) with respect to the period up to and including the Closing Date, all reasonable fees and expenses (including legal expenses) incurred by the Initial Investors and Investor Agent relating to the negotiation and documentation of the Investment Facility Documents, the closing of the Funding Transaction, and the efforts of the parties to obtain approval of the Funding Transaction, including in connection with any discovery, motion practice or other actions related thereto, and (b) with respect to the period after the Closing Date, all reasonable out-of-pocket expenses (including legal expenses) incurred by the Investor Agent, including reasonable fees and expenses in administering the Investment Facility, the negotiation and/or closing of any amendment (or any proposed amendment or waiver requested by the Litigation Trustee), and the enforcement of the security interest, other liens granted thereunder to Investor Agent, and any other remedies.

"Investor Payment Amount" means, with respect to each Investor, an amount equal to such Investor's Funding Percentage of the amounts payable on account of the Investments and for the account of the Investors pursuant to the Litigation Proceeds Waterfall set forth in Section 5.14 of the Plan.

"Investors" means the Initial Investors and each other Person who is a Qualified Investor Assignee and hereafter becomes an "Investor" pursuant to an Assignment and Acceptance.

"Lien" means any mortgage, deed of trust, pledge, lien (common law, statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any capitalized lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

"Litigation Claims" shall have the meaning set forth in the Plan.

"Litigation Claims Proceeds" means any and all proceeds and recoveries, in whatever form, recovered by the Litigation Trustee as a result of the prosecution (including settlement) of the Litigation Claims.

"Litigation Proceeds Waterfall" shall have the meaning set forth in the Plan.

"Litigation Trust Account" shall have the meaning ascribed to such term in **Section 8.1**.

"Litigation Trust Agreement" means the Litigation Trust Agreement, dated September \_\_, 2015, between and among the Litigation Trustee, ASHINC Corporation, on behalf of itself and the other Debtors and Reorganized Debtors, and Black Diamond Commercial Finance L.L.C. and Spectrum Commercial Finance LLC, each in its capacity as Co-Administrative Agent for the First Lien Lenders.

"Litigation Trustee" means \_\_\_\_\_, or any successor thereto as may be appointed by the Litigation Oversight Committee.

"Litigation Trust Professionals" means Schulte Roth & Zabel LLP, Landis Rath & Cobb LLP and such other professionals as may be engaged by the Litigation Trustee from time to time with the approval of the Litigation Oversight Committee.

"Margin Stock" means "margin stock" as defined in Regulation U of the Board of Governors of the Federal Reserve System.

"Non-Counsel Expenses" means expenditures from Investment Proceeds that are not used to pay Fees and Expenses of Litigation Trustee Professionals.

"Obligations" means (a) obligations of the Litigation Trust to pay agency fees pursuant to **Section 3.1** and Investor Party Expenses pursuant to **Section 3.2**, (b) the obligation of Litigation Trust to pay to each Investor from the Gross Recovery such Investor's Investor Payment Amount, (c) obligations of the Litigation Trust under **Section 13.5.2**, and (d) any other obligation of the Litigation Trust to pay money to an Investor Party under this Agreement.

"Organic Documents" means, with respect to any Person that is an entity, such Person's articles of incorporation, bylaws, shareholder agreements, member agreements, and similar agreements or instruments governing the formation or operation of such Person.

"Other Investor Escrow" shall have the meaning ascribed to such term in **Section 13.1.5**.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity.

"Plan" shall have the meaning set forth in the Recitals.

"Property" means any interest in any kind of property or asset, real, personal or mixed, or tangible or intangible, and whether now existing or hereafter acquired.

"Prosecuted Appeal" means, with respect to any of the Litigation Claims, an appeal taken by a party thereto from a judgment entered in any adversary proceeding in which such Litigation Claim is being prosecuted.

"Qualified Investor Assignee" means a Person that is any of the following: (a) an Initial Investor or a fund managed or sub-advised by or an Affiliate or Related Fund of an Initial Investor; and (b) any other assignee of any Investor (i) that is an Accredited Investor and (ii) has joined with such assigning Investor and the Litigation Trustee in executing an acknowledgment, consent and agreement which shall provide that such Qualified Investor Assignee (A) has not relied and will not rely on any statement, representation or warranty of any Person regarding the suitability or wisdom of becoming an Investor, the value or collectability of any asset of the Litigation Trust, the merits or potential outcome of any Litigation Claim (or any appeal) to which the Litigation Trust is a party and which is intended to serve as a potential source of return on the Investments or payment of any Obligations, and (B) will comply on a timely basis with all of the terms and conditions applicable to Investors under this Agreement. For the avoidance of doubt, in no event shall Yucaipa be a Qualified Investor Assignee.

"Qualified Investor Participant" means a Person that is any of the following (a) an Initial Investor or a fund managed or sub-advised by or an Affiliate or Related Fund of an Initial Investor; and (b) any participant of any Investor that is an Accredited Investor and has represented to such Investor that such Qualified Investor Participant (i) has not relied and will not rely on any statement, representation or warranty of any Person regarding the suitability or wisdom of becoming a participant, the value or collectability of any asset of the Litigation Trust, the merits or potential outcome of any Litigation Claim (or any appeal) to which the Litigation Trust is a party and which is intended to serve as a potential source of return on the Investments or payment of any Obligations, and (ii) will comply on a timely basis with all of the terms and conditions applicable to Qualified Investor Participants under this Agreement. For the avoidance of doubt, in no event shall Yucaipa be a Qualified Investor Participant.

"Related Fund" means any Person (other than a natural person) that is an investment fund and that is managed, sub-advised or advised by the same Person or that acts as investment manager for an Investor.

"Required Investors" means (a) the Backstop Investors, and (b) Investors (other than Defaulting Investors) whose aggregate Funding Percentages exceed 50% (inclusive of the Funding Percentages of the Backstop Investors).

"Securities Act" means the Securities Act of 1933, or any similar federal statute, and the rules and regulations thereunder as the same shall be in effect at the time.

"Securities and Exchange Act" means the Securities and Exchange Act of 1934, or any similar federal statute, and the rules and regulations thereunder as the same shall be in effect at the time.

"Securities Laws" means the Securities Act, the Securities and Exchange Act, all "blue sky" laws and all other federal, state, provincial or other Applicable Law related to the purchase, sale or registration of securities.

"Special Damages" shall have the meaning ascribed to such term in **Section 13.5.3**.

"Subsidiary" means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with generally accepted accounting principles or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the board of directors (or committee of such person serving a similar function) of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person.

"Tax Returns" shall have the meaning ascribed to such term in **Section 9.1.5**.

"Total Aggregate Investment" means \$15,000,000 in aggregate investments under the Investment Facility. Investments by Investors shall be calculated without any adjustment for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investments.

"UCC" means the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

"United States Trustee" means the United States Trustee for the District of Delaware.

"Yucaipa" shall have the meaning set forth in the Plan.

**1.2. UCC Terms.** Capitalized terms used in **Sections 7.1** and **7.2**, unless otherwise defined herein, shall have the meanings ascribed to them in the UCC.

**1.3. Certain Matters of Construction.** The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" shall mean "including, without limitation" and, for purposes of each Investment Facility Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Investment Facility Document. All references to (a) laws or statutes include all related rules, regulations, interpretations, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Investment Facility Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person includes successors and permitted

assigns of such Person; (f) time of day means time of day at Investor Agent's notice address as specified in **Section 15.2.1**; or (g) discretion of a Person means the sole and absolute discretion of such Person. No provision of any Investment Facility Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision.

## **SECTION 2. INVESTMENT FACILITY**

### **2.1. Investment Requests and Fundings.**

2.1.1. Initial Investments. Subject to all of the terms and conditions set forth herein, Investors agree, severally on a Funding Percentage basis up to each Investor's Investment Commitment, to remit initial Investment Proceeds to Investor Agent and to cause Investor Agent to remit the same to the Litigation Trustee in accordance with this Agreement in an aggregate amount equal to the amount set forth in the initial Investment Request submitted by the Litigation Trustee to Investor Agent on or prior to the Closing Date, which request shall equal the sum of (a) if requested by the Backstop Investors, the Backstop Payment, (b) all Investor Party Expenses that are due and payable on the Closing Date, (c) the Investor Agent fees payable on the Closing Date pursuant to **Section 3.1**, and (d) an amount (as determined by the Litigation Oversight Committee) necessary to fund the Expense Fund (as defined in the Litigation Trust Agreement). The initial Investments shall be funded promptly (and in any event, not later than the seventh (7th) Business Day after the Closing Date). The amount of each Investor's Investment Commitment shall be reduced by the amount of each initial Investment made by such Investor. No amount of Investment Proceeds that are returned or repaid may be readvanced or reinvested.

2.1.2. Post-Closing Investments. Subject to all of the terms and conditions set forth herein, during the period from the Closing Date until the Investment Facility Termination Date, each Investor severally agrees to make Investments (based on the Funding Percentage of such Investor) promptly (and in any event, within twelve (12) Business Days) after Investor Agent's receipt of an Investment Request from the Litigation Trustee, provided that (a) no Investor shall have any obligation to make an Investment more frequently than quarterly and (b) in no event shall the aggregate amount of all Investments by an Investor exceed the amount of such Investor's Investment Commitment. The Litigation Trust agrees that the aggregate amount of all Investments requested in any quarter shall be sufficient to pay items that are described in the applicable Investment Request and have not previously been paid, and are within the Investment Facility Permitted Uses. The amount of each Investor's outstanding Investment Commitment shall be reduced by the amount of each Investment made by such Investor.

2.1.3. Remittance of Investment Proceeds. Except to the extent applied to pay amounts owing hereunder to Investor Parties, all Investment Proceeds shall be remitted to the Litigation Trust Account designated by Litigation Trustee and maintained by Litigation Trustee in compliance with this Agreement.

2.1.4. Investment Request Procedures. The Litigation Trustee (subject to the prior written approval of the Litigation Oversight Committee) may deliver Investment Requests pursuant to e-mail and facsimile instructions provided by Investor Agent. Each quarterly Investment Request shall be made no later than the seventh (7th) day of the first month following

the end of each quarter, provided that (a) the Litigation Trustee's failure to deliver, or untimely delivery of, an Investment Request in any quarter shall not prejudice the Litigation Trustee's right to submit a timely Investment Request in any ensuing quarter for the amounts in any prior quarter; and (b) the Litigation Trustee's failure to include in any Investment Request all of the amounts that the Litigation Trustee could have included in such Investment Request shall not prejudice the Litigation Trustee's right to include the omitted amounts in any later Investment Request. On the date Investor Agent receives the Investment Request (or on the following Business Day if the Investment Request is received on a day other than a Business Day or if it is received after noon on a Business Day), Investor Agent shall promptly notify each Investor of (i) Investor Agent's receipt of each Investment Request, and (ii) the amount of its share of the requested funding based on each Investor's Funding Percentage. Each Investor shall fund to Investor Agent such Investor's Funding Percentage of the aggregate Investments requested by the Litigation Trustee in an Investment Request, to be made in immediately available funds to the bank account specified by Investor Agent.

2.1.5. Investor's Participating Interests. In consideration of the Investments, the Litigation Trust grants to each Investor a participating interest relating to the Litigation Claims and the Gross Recovery, which participating interest will entitle each Investor (other than a Defaulting Investor) to receive its Investor Payment Amount as provided in **Section 5** (the "Investor Interests").

2.1.6. Investments Not Obligations. The Investments shall not constitute Obligations, but the obligation to pay each Investor its Investor Payment Amount when due shall constitute an Obligation. For purposes of clarity, the Litigation Trust shall not be obligated to repay any Investments.

**2.2. Use of Investment Proceeds.** The Investment Proceeds shall be used by the Litigation Trustee solely for Investment Facility Permitted Uses.

**2.3. Investors' Several Liability.** Notwithstanding any provision in this Agreement to the contrary, no Investor shall have any obligation or responsibility with respect to the funding obligation of any other Investor, it being understood and agreed that the obligations, responsibilities and liabilities of each Investor shall be several and not joint or joint and several with any other Investor or any other Person.

### **SECTION 3. FEES AND EXPENSE REIMBURSEMENT**

**3.1. Fees.** Without limiting **Section 3.2** hereof, the Litigation Trust shall pay all fees and expenses of Investor Agent as and to the extent set forth in the Investor Agent Fee Letter.

**3.2. Investor Party Expenses.** The Litigation Trust shall reimburse the Investor Agent and Backstop Investors for all Investor Party Expenses to the extent not duplicative of payments made pursuant to **Section 3.1** without further order of the Bankruptcy Court (a) incurred through the Closing Date, from initial Investment Proceeds on the Closing Date in an amount equal to such Investor Party Expenses and (b) after the Closing Date, within twenty (20) days after Litigation Trustee's receipt of an invoice therefor; provided that the Litigation Trustee may defer the payment of such Investor Party Expenses such that they are paid out of the next



quarterly Investment so long as there is and will be availability under the Investment Facility to do so. If Investor Party Expenses are due and owing at the time the Investment Facility has been lawfully terminated due to an Event of Default or has been fully drawn upon, then the Litigation Trustee shall pay such Investor Party Expenses from the first funds available to the Litigation Trustee. If any challenge is raised by the Trust as to the reasonableness of any Investor Party Expenses (which challenge must be in writing and served upon Investor Agent prior to the sooner to occur of the date on which the challenged Investor Party Expenses are paid or the date on which payment of such Investor Party Expenses is due and payable hereunder), such dispute will be determined by the Bankruptcy Court at the request of Trust or Investor Agent.

#### **SECTION 4. DEFAULTING INVESTORS**

**4.1. Consequences of Defaulting Investor Status.** An Investor who becomes a Defaulting Investor shall not be authorized to receive its Investor Payment Amount, to vote on any matter for which a vote by Investors is authorized or required, or to receive payment of any Obligations that are otherwise payable to it.

**4.2. Other Investors Unaffected.** The existence of a Defaulting Investor shall not adversely affect the rights, privileges or duties of any other Investor. The failure of any Defaulting Investor to fund an Investment or otherwise perform its obligations hereunder shall neither increase any other Investor's Investment Commitment nor relieve any other Investor of any obligation that it has to the Litigation Trust hereunder. No Investor shall be responsible for any default in performance by any other Investor and there shall be excluded from the Investment Commitments the Investment Commitment of any Defaulting Investor that is not assumed by any other Investor as hereinafter provided. Except as hereinafter expressly provided in this **Section 4.2**, the Funding Percentage of each Investor shall be unaffected by the existence of a Defaulting Investor and, unless another Investor that is not itself a Defaulting Investor assumes the Investment Commitment of the Defaulting Investor as hereinafter provided, the Investor Payment Amount to which the Defaulting Investor would otherwise be entitled shall be retained by the Litigation Trust, treated as Litigation Claims Proceeds, and distributed in accordance with the Litigation Proceeds Waterfall. If, as a result of a Defaulting Investor's failure to fund in response to an Investment Request, the Litigation Trust does not receive the full amount to which it is entitled pursuant to such Investment Request, then the other Investors (exclusive of any Defaulting Investor) shall make up the shortfall, and for this purpose only each such Investor's Funding Percentage shall be recalculated by excluding the Funding Percentage of the Defaulting Investor and by proportionately increasing the Funding Percentages of the other Investors (exclusive of any Defaulting Investor); provided, however, that in no event shall any Investor be obliged to fund Investments in excess of such Investor's Investment Commitment.

**4.3. Cure of Defaulting Investor's Failure to Fund.**

4.3.1. If the Litigation Trust does not receive the full amount requested in any Investment Request because any Investor fails to fund its Funding Percentage thereof, Investor Agent shall promptly advise the Litigation Trustee of the identity of each Investor that failed to fund its Funding Percentage. The Litigation Trustee may then deliver written notice of such failure to fund to each such Investor. If an Investor fails to fund its Investment Commitment as and when required by this Agreement, such Investor may cure such failure to fund within twenty

(20) days after such Investor's receipt of notice from the Litigation Trustee of such failure to fund, provided such Investor pays to the Litigation Trust such delinquent Investment amount (the "Cure Amount"), which shall be set forth in the Litigation Trustee's notice. If an Investor fails to pay the Cure Amount within the twenty-day cure period set forth hereinabove, such Investor shall for all purposes be and remain a Defaulting Investor and the Litigation Trustee shall not be obligated to give any further notices of such Defaulting Investor's failure to fund in response to any other Investment Request.

4.3.2. If an Investor has not cured its failure to fund under its Investment Commitment and thus becomes a Defaulting Investor, any other Investor that is not also a Defaulting Investor may cure such failure to fund within twenty (20) days after the lapse of the Defaulting Investor's cure period by paying to the Trust the Cure Amount and thereupon shall be deemed to have assumed the Investment Commitment of the Defaulting Investor and all of the Defaulting Investor's rights to receive the Investor Payment Amount that would be due and payable to such Defaulting Investor had such failure to fund never occurred. If more than one Investor determines to cure such Defaulting Investor's failure to fund and assume its Investment Commitment, then each participating Investor shall receive an allocation of the rights and obligations with respect to such cure and assumption equal to (a) such Investor's Investment Commitment divided by (b) the aggregate Investment Commitments of all participating Investors. If one or more Investors make a cure and assumption election, **Schedule 1.1** shall be deemed amended as of the effective date of such cure and assumption to reflect Investor's new Investment Commitments and Funding Percentages (provided that, if so requested by Investor Agent, the Litigation Trustee and Investor Parties shall enter into a formal amendment to **Schedule 1.1** to reflect such new Investment Commitments and Funding Percentages).

4.3.3. The Litigation Trustee shall promptly, but in all events within two (2) Business Days, send to each Investor any notice that the Litigation Trustee sends to another Investor of such Investor's failure to fund.

4.3.4. If, within fifteen (15) days after the date on which it receives a notice from the Litigation Trustee as described in **Section 4.3.1**, an Investor asserts a bona fide dispute as to whether or not it is a Defaulting Investor (such assertion to be in a writing served upon the Litigation Trustee and Investor Agent within such fifteen-day period and such fifteen-day period being referred to as the "Bona Fide Dispute Period"), then (a) the twenty-day cure period applicable to such Investor under **Section 4.3.1**, and the twenty-day cure period applicable to any other Investor under **Section 4.3.2**, shall be extended and shall commence on the date that there is a final determination, whether by entry of a Final Order of the Bankruptcy Court or agreement of the parties. If an Investor fails to assert a bona fide dispute as to whether or not it is a Defaulting Investor in the manner and within the Bona Fide Dispute Period or does not cure all defaults in accordance with **Section 4.3.1**, then such Investor shall be conclusively deemed to be a Defaulting Investor.

4.3.5. If the amount of Investments that a Defaulting Investor has failed to fund has not been cured by the Defaulting Investor pursuant to **Section 4.3.1** or by another Investor pursuant to **Section 4.3.2**, within the time periods prescribed in those sections (as such time periods may be extended pursuant to **Section 4.3.4**), then, in addition to the sanctions provided for in **Section 4.1.1**, (a) the Trust shall be authorized to institute an action in the Bankruptcy

Court to enforce the provisions of this Agreement against such Defaulting Investor, including an action to recover the amount of the unfunded Investments, and (b) no Investor Payment Amount, or any other payment or refund pursuant to any Investment Facility Documents, shall be or become due and payable to such Defaulting Investor.

## **SECTION 5. PAYMENTS TO INVESTORS**

**5.1. Investor Payment Amount; Source of Payments.** Subject to the disbursement of the proceeds of the initial Investment by the Investors, each Investor (other than a Defaulting Investor) shall be authorized to receive and the Litigation Trust shall pay to each Investor such Investor's Investor Payment Amount from the Gross Recovery (if any). Accordingly, all proceeds of the Gross Recovery from time to time received by the Litigation Trust or the Litigation Trustee shall be applied (promptly after receipt) in accordance with the Litigation Proceeds Waterfall.

**5.2. Timing of Remittance of Investor Payment Amount.** If the Litigation Trustee enters into any agreement for the settlement of any of the Litigation Claims, the Litigation Trustee will diligently and in good faith endeavor to implement the terms of such settlement to the end of being able to remit the Investor Payment Amount of each Investor to Investor Agent (for the benefit of Investors) at the earliest practicable date. Without further order of the Bankruptcy Court, promptly (and, in any event, within five (5) Business Days) after entry of a Final Order approving any settlement and the Litigation Trustee's receipt of any portion of the Gross Recovery in good, cleared and available funds (whether pursuant to a settlement or as a result of final adjudication on the merits of the Litigation Claims), the Litigation Trustee will remit to Investor Agent (for the benefit of and redistribution by Investor Agent to Investors) from the Gross Recovery an amount equal to the Investor Payment Amount of each Investor (other than Defaulting Investors).

**5.3. Payment of Obligations.** The Litigation Trustee shall pay to Investor Agent, on behalf of each Investor Party (other than a Defaulting Investor), all Obligations due under this Agreement by not later than 5:00 p.m. (New York City time) on the day when due, in Dollars and in immediately available funds, to the Investor Agent's Account. All such payments shall be made without setoff, counterclaim, recoupment, deduction or other defense. After receipt, Investor Agent shall promptly thereafter (and in any event not later than two (2) Business Days following receipt thereof) cause to be distributed like funds relating to the payment of Gross Recovery ratably to Investors in accordance with their respective Funding Percentages and like funds relating to the payment of any other amount payable to any Investor (including Investor Party Expenses) to such Investor in accordance with the terms of this Agreement. The Litigation Trustee may, in his discretion, elect to pay all or any part of the Investor Party Expenses from cash on hand or from Investment Proceeds received from Investors. If on the date that any Obligations are due and payable and the Investment Facility Termination Date has occurred, such Obligations shall be paid from any Gross Recovery that inures to the benefit of the Trust pursuant to **Section 5.1** or from any proceeds realized from the prosecution or settlement of any Litigation or other cash that is available to the Litigation Trustee; provided that the Investor Payment Amount shall be paid from the Gross Recovery as provided herein.

## **SECTION 6. CONDITIONS PRECEDENT**

**6.1. Conditions Precedent to Initial Investments.** In addition to the conditions set forth in **Section 6.2**, Investors shall not be required to make the requested Investments pursuant to **Section 2.1.1** until the date ("Closing Date") that each of the following conditions has been satisfied (or waived by Investor Agent, acting at the direction of Required Investors):

(a) The Litigation Trustee has paid (or made provision for the payment of) all Investor Agent fees and Investor Party Expenses that are due and payable on the Closing Date pursuant to **Section 3.1** (and the Investor Agent Fee Letter) and **Section 3.2**;

(b) Each Investment Facility Document has been duly executed and delivered to Investor Agent by each of the signatories thereto, and The Litigation Trust shall be in compliance with all terms thereof;

(c) The Bankruptcy Court has entered an Approval Order which has become a Final Order; and

(d) No dispositive ruling that is adverse to the Trust has been entered on the merits in any adversary proceeding in which any of the Litigation Claims is being prosecuted.

**6.2. Conditions Precedent to All Investments.** No Investor shall be required to fund any Investment to the Litigation Trust, unless the following conditions are satisfied (or waived by Investor Agent acting at the direction of Required Investors):

(a) No Default or Event of Default exists at the time of, or would result from, such funding, issuance or grant;

(b) The representations and warranties of the Litigation Trust in the Investment Facility Documents are true and correct on and as of such date as though made on and as of the date of such Investment Request and on and as of the date for the making of such proposed Investment (except for representations and warranties that expressly relate to an earlier date, in which case such representations and warranties shall be true and correct on and as of such earlier date);

(c) All fees, expenses and other amounts required to be paid hereunder by the Litigation Trustee to any Investor Party shall have been paid or will be paid with the proceeds of such Investment;

(d) The making of the Investment shall not contravene any law, rule, or regulation; and

(e) To the extent required hereunder, an Investment Request has been delivered on a timely basis to Investor Agent in respect of the requested Investments.

## **SECTION 7. [Intentionally Omitted]**

## **SECTION 8. LITIGATION TRUST ACCOUNT**

**8.1. Administration of The Litigation Trust Account.** The Litigation Trustee will establish an account at \_\_\_\_\_ (the "Litigation Trust Account") into which (i) all proceeds of the Investment Facility will be funded and (ii) the Litigation Trustee will deposit all proceeds realized from its administration of the Litigation Trust and prosecution of the Litigation Claims, including the proceeds of the Litigation Claims. For the avoidance of doubt, all funds received by the Litigation Trustee shall be promptly deposited into the Litigation Trust Account, and the Litigation Trust shall not maintain any funds outside of the Litigation Trust Account.

## **SECTION 9. REPRESENTATIONS AND WARRANTIES OF THE LITIGATION TRUST**

**9.1. General Representations and Warranties.** To induce Investor Agent and Investors to enter into this Agreement and to make available the Investment Commitments and Investments, the Litigation Trust represents and warrants that:

9.1.1. Organization and Qualification. The Litigation Trust is duly organized and validly existing under the laws of the State of Delaware and has all the requisite power and authority to own, lease and operate its assets, to execute, deliver and perform the Investment Facility Documents and to carry on its business as now conducted.

9.1.2. Power and Authority. Subject to the Bankruptcy Court's entry of the Approval Order, the Litigation Trust is duly authorized to execute, deliver and perform the Investment Facility Documents and no other authorization, approval or other action by, or notice to, any Governmental Authority or any other Person is required in connection with the due execution, delivery and performance of the Investment Facility Documents. The execution, delivery and performance of the Investment Facility Documents do not violate or contravene any Applicable Law or any contract or other agreement to which it is a party or otherwise affecting it or any of its Properties, or any order or decree directly binding on it.

9.1.3. Enforceability. Each Investment Facility Document is a legal, valid and binding obligation of the Litigation Trust, enforceable in accordance with its terms.

9.1.4. Brokers; No General Solicitation or Integrated Offering. There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Investment Facility Documents. Neither the Litigation Trust, nor any of its subsidiaries or Affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of any securities representing the Investments. Except as otherwise required herein, none of the Litigation Trust, its subsidiaries, their Affiliates, nor any Person acting on their behalf will take any action or steps that would require registration of any securities representing the Investments under any Securities Laws or cause the offering of any securities representing the Investments to be integrated with other offerings.

9.1.5. Compliance with Laws. To the Litigation Trustee's actual knowledge, The Litigation Trust has duly complied in all material respects with all Applicable Law. To the Litigation Trustee's actual knowledge, there have been no citations, notices or orders of material noncompliance issued to the Litigation Trust under any Applicable Law.

9.1.6. Litigation. To the Litigation Trustee's actual knowledge, there are no proceedings or investigations pending or threatened against the Litigation Trust.

9.1.7. No Defaults. No event or circumstance has occurred or exists that constitutes an Event of Default.

9.1.8. Margin Stock. The Litigation Trust is not currently engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Investment Proceeds will be used by the Litigation Trust to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors of the Federal Reserve System.

9.1.9. Investment Company Act. The Litigation Trust is not (i) an "investment company" or subject to or under the "control of an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended, or (ii) subject to regulation under any Securities Laws that limits in any respect its ability enter into contracts or which may otherwise render all or a portion of the Obligations unenforceable.

**9.2. No Representation or Warranty Regarding Assets or Litigation.** Notwithstanding the foregoing, nothing in this Agreement shall be construed to be (and the Litigation Trust expressly disclaims making) any representation or warranty regarding the merits or potential outcome of any of the Litigation Claims.

## **SECTION 10. REPRESENTATIONS, WARRANTIES, ACKNOWLEDGMENTS AND COVENANTS OF INVESTORS**

Each Investor, severally and not jointly, hereby represents, warrants, and covenants as to itself only and not as to any other Investor as follows:

**10.1. Authorization; No Contravention.** The execution, delivery and performance by such Investor of this Agreement: (a) is within its power and authority and has been duly authorized by all necessary action; (b) does not contravene the terms of its organizational documents or any amendment thereof; and (c) does not and will not violate, conflict with or result in any breach or contravention of any of its contracts or other agreements, or any order or decree directly relating to it.

**10.2. Binding Effect.** This Agreement has been duly executed and delivered by such Investor and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

**10.3. No Legal Bar.** The execution, delivery and performance of this Agreement by such Investor will not violate any Applicable Law applicable to it.

**10.4. Securities and other Applicable Laws.**

10.4.1. The Investments are being made by such Investor for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the Securities Act; provided, however, that by making the foregoing representation, such Investor does not agree to hold any Investments for any minimum or specific term. The foregoing representation is subject, however, to the disposition of such Investor's property being at all times within its control.

10.4.2. Such Investor is an Accredited Investor.

10.4.3. Such Investor understands that (i) the Investments hereunder are not registered under the Securities Act or under any "blue sky" laws in reliance upon certain exemptions from such registration and that the Litigation Trust is relying on the representations made herein by such Investor in its determination of whether such specific exemptions are available, and (ii) the Investments may not be sold, transferred, pledged or hypothecated except (A) in accordance with **Section 14.3** and (B) either (1) pursuant to an effective registration statement under the Securities Act or (2) under an exemption from such registration available under the Securities Act. Such Investor: (A) acknowledges that it has no right to require registration thereof under the Securities Act or any "blue sky" laws, (B) acknowledges that there is not now and is not contemplated to be any public market therefor and (C) agrees that it is prepared to bear the economic risk of an investment in the Investments for an indefinite period of time.

10.4.4. Such Investor's funding of its Investments will not constitute or result in any prohibited transaction under the Employee Retirement Income Security Act of 1974 or any other Applicable Law.

10.4.5. Such Investor (i) has received, or has had access to, certain books, records, and other documents of the Litigation Trust as it has deemed appropriate to make its own investment analysis and decisions to enter into this Agreement, including copies of the Investment Facility Documents, information regarding the Chapter 11 Cases and pleadings and orders filed therein, and pleadings and other publicly available papers filed in any of the Litigation Claims; (ii) has had an opportunity to receive all publicly available information relating to the Litigation Trust, the status of all Litigation Claims and the assets and liabilities of the Litigation Trust in order to make a fully informed decision with respect to the Investments; (iii) has generally such knowledge and experience in business and financial matters, and with respect to investments in securities of public and privately held companies, as to enable it to understand and evaluate the risks of the Investments and form an investment decision with respect thereto; and (iv) has independently made and without reliance upon the Litigation Trust or any officer, director or attorney of the Litigation Trust, or any other Investor Party, and based upon documents and information as it shall deem appropriate at the time and upon the advice of any legal counsel or other advisors selected by it, and will continue to make its own decisions in taking or refraining to take any action under any of the Investment Facility Documents.

10.4.6. Such Investor fully understands the nature, scope and duration of the limitations on resales applicable to the Investments.

**10.5. Governmental Authorizations; Third Party Consent.** Subject to the Bankruptcy Court's entry of the Approval Order, no approval, consent, compliance, exemption or authorization of any Governmental Authority or any other Person in respect of any Applicable Law, and no lapse of a waiting period under any Applicable Law, is necessary or required in connection with the execution, delivery or performance by it or enforcement against such Investor of this Agreement or the transactions contemplated hereby.

**10.6. Litigation and Assets of The Litigation Trust.** Each Investor (including each Qualified Investor Assignee that becomes an Investor) hereby acknowledges and agrees that it has not relied and will not rely on any statement, representation or warranty of any Person (including the Litigation Trust or the Litigation Trustee) regarding the suitability or wisdom of becoming an Investor, the value or collectability of any asset of the Litigation Trust, the merits or potential outcome of any Litigation Claim (or any appeal) to which the Litigation Trust is a party and which may serve as a potential source of return on the Investments or payment of any Obligations, and that the Investments represent a high degree of risk.

## **SECTION 11. COVENANTS AND CONTINUING AGREEMENTS**

**11.1. Affirmative Covenants.** Until the Agreement Termination Date, The Litigation Trust shall:

### **11.1.1. Reporting.**

(a) Provide to Investor Agent copies of all reports filed after the Closing Date with the Bankruptcy Court or otherwise made publicly available to parties in interest after the Closing Date, provided that the Litigation Trust may satisfy the foregoing requirement by including Investor Agent in the notices of electronic filings generated by CM/ECF in the Chapter 11 Cases.

(b) Provide Investor Agent, on or prior to the fifteenth (15th) day following the end of each month, a summary in reasonable detail of all uses of cash for Non-Counsel Expenses paid during such prior month.

**11.1.2. Pursuit of Litigation Claims.** Diligently and in good faith, subject to the advice of Litigation Trustee Counsel, pursue the Litigation Claims. Notwithstanding the foregoing, the Litigation Trustee, acting on the advice of Litigation Trustee Counsel (and subject to the approval of the Litigation Oversight Committee), shall be solely responsible for all decision-making with respect to the conduct or settlement (or non-settlement) of any Litigation Claim and in no event will any Investor Party (in its capacity as such) be authorized to control the method, manner or timing of the Litigation Trustee's actions in pursuing or settling any Litigation Claim.

**11.1.3. Compliance with the Investment Facility Documents.** Comply with the Investment Facility Documents, including the reporting requirements and payment of the Obligations as set forth therein.

**11.1.4. Maintenance of Accounts; Investments.** Maintain only the Litigation Trust Account and no other accounts. The Litigation Trustee shall deposit all proceeds of



Investments and recoveries on any Litigation Claims into the Litigation Trust Account. Funds on deposit in the Litigation Trust Account shall be invested as directed by the Litigation Oversight Committee.

11.1.5. Compliance with Laws. Comply with all Applicable Law.

11.1.6. Existence. Maintain and preserve its existence.

11.1.7. Books and Records. Keep and maintain books and records (which shall be available for inspection by any member of the Litigation Oversight Committee) currently in its possession or control and essential to the prosecution of the Litigation Claims.

11.1.8. Payment of Taxes. Pay and discharge all taxes due and owing by the Litigation Trust on a timely basis prior to the date on which any penalties may attach thereto.

**11.2. Negative Covenants**. Until the Agreement Termination Date, the Litigation Trust shall not:

11.2.1. Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except the Obligations.

11.2.2. Permitted Liens. Create or suffer to exist any Lien upon any of its Property, except Liens in favor of Investor Agent.

11.2.3. Distributions to Creditors. Declare or make any distribution, including distributions to pre-petition creditors of the Debtors' Chapter 11 estates, except as contemplated by the Plan and the Litigation Proceeds Waterfall.

11.2.4. Disposition of Assets. Make any Asset Disposition, including the sale of any interest in all or any portion of the Litigation Claims to any Person other than Investors.

11.2.5. Fundamental Changes. Change its name or conduct business under any fictitious name; change its tax, charter or other organizational identification number (except to the extent required by Applicable Law, in which case such information shall be provided to Investor Agent prior to the making of such change); change its form or state of organization; except as permitted by the Bankruptcy Court in the Chapter 11 Cases, wind-up, liquidate or dissolve, or merge, combine, consolidate or amalgamate with any Person, in each case, whether in a single transaction or in a series of related transactions.

11.2.6. Organic Documents. Amend, modify or otherwise change (or seek to amend, modify or otherwise change) any of its Organic Documents.

**11.3. Waiver**. Upon written request of the Litigation Trustee, Investor Agent (acting at the direction or with the consent of the Required Investors), may waive, in writing, compliance with any covenant described in **Sections 11.1 and 11.2**.

## SECTION 12. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

**12.1. Events of Default.** Each of the following shall be an "Event of Default" if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Litigation Trust uses any Investment Proceeds for purposes other than Investment Facility Permitted Uses unless a misuse by the Litigation Trustee is inadvertent and the Litigation Trust repays such misused proceeds to Investor Agent promptly (and in any event within five (5) Business Days) after the Litigation Trust having obtained actual knowledge of such misuse (in which event the aggregate Investment Commitments will be deemed to be reinstated by the amount of such repayment);

(b) Litigation Trust fails to remit the portion of the Gross Recovery to Investor Agent (for the benefit of Investors) as and when required by **Section 5.1**;

(c) [Intentionally omitted];

(d) Any representation or warranty made by the Litigation Trust in this Agreement, any other Investment Facility Document or any certificate or other writing shall have been false in any material respect when made;

(e) The Litigation Trust becomes subject to any Insolvency Proceeding;

(f) Litigation Trustee fails to perform or comply with any covenant or agreement contained in **Section 11.2**;

(g) Litigation Trustee fails to perform or comply with any covenant or agreement contained in **Section 11.1** or in any other Section of this Agreement (other than **Section 11.2**) or in any other Investment Facility Document and such failure, if capable of being remedied, shall remain unremedied for fifteen (15) days after the earlier of the date on which the Litigation Trustee obtains actual knowledge of such failure or the date written notice of such failure is given by Investor Agent to the Litigation Trust (the "Covenant Cure Period");

(h) Any material provision of any Investment Facility Document or the Approval Order ceases at any time and for any reason (other than pursuant to the express terms thereof) to be, pursuant to a Final Order of a court of competent jurisdiction, valid and binding on or enforceable against the Litigation Trust, or the validity or enforceability thereof is contested by the Litigation Trust, or a proceeding is commenced by the Litigation Trust or any Governmental Authority having jurisdiction over the Litigation Trust, seeking to establish the invalidity or unenforceability thereof, or the Litigation Trust denies in writing that it has any liability or obligation created under any Investment Facility Document to any Investor Party; or

(i) Litigation Trustee fails to comply with the last sentence of **Section 2.1.2.**

(j) .

**12.2. Remedies Upon Default.** If any Event of Default exists, Investor Agent is authorized, on behalf of Investors and at the written direction of Required Investors, upon notice to the Litigation Trustee, to do any one or more of the following:

(a) terminate any obligation to make further Investments under the Investment Facility; and/or

(b) subject to the limitations set forth in this Agreement, exercise rights and remedies afforded under the Investment Facility Documents to the extent necessary to recover payment of the Obligations then due and payable; provided, however, that in no event will any Investor Party (in its capacity as such) be authorized to control the method, manner or timing of the Litigation Trust's actions in pursuing or settling any Litigation Claim as set forth in **Section 11.1.2**.

**12.3. Remedies Cumulative; No Waiver.**

12.3.1. Cumulative Rights. All agreements, warranties, guaranties, indemnities and other undertakings of the Litigation Trust under the Investment Facility Documents are cumulative and not in derogation of each other. The rights and remedies of Investor Parties are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until the Agreement Termination Date.

12.3.2. Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Investor Agent or any Investor to require strict performance by the Litigation Trust with any terms of the Investment Facility Documents; (b) the making of an Investment during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by any Investor Party of any payment or performance by the Litigation Trust under any Investment Facility Documents in a manner other than that specified therein.

**SECTION 13. INVESTOR AGENT**

**13.1. Appointment, Authority and Duties of Investor Agent.**

13.1.1. Appointment and Authority. Subject to **Section 13.7** hereof, each Investor irrevocably appoints and designates \_\_\_\_\_, as Investor Agent under all Investment Facility Documents. Investor Agent may, and each Investor authorizes Investor Agent to, enter into all Investment Facility Documents to which Investor Agent is intended to be a party and accept all Security Documents, for the benefit of Investors. Any action taken by Investor Agent in accordance with the provisions of the Investment Facility Documents, and the exercise by Investor Agent of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Investors. Without limiting the generality of the foregoing, Investor Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Investors with respect to all payments and collections arising in connection with the Investment Facility Documents; and (b) execute and deliver as Investor Agent each Investment Facility Document and accept delivery of each Investment Facility Document. The duties of Investor Agent are ministerial and

administrative in nature only, and Investor Agent shall not have a fiduciary relationship with any Investor, Qualified Investor Participant or other Person, by reason of any Investment Facility Document or any transaction relating thereto. It is understood and agreed that the use of the term "agent" herein or in any other Investment Facility Document (or any other similar term) with reference to Investor Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law, but instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

13.1.2. Duties. Investor Agent shall not have any duties except those expressly set forth in the Investment Facility Documents. The conferral upon Investor Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Required Investors (or such other requisite number or percentage of Investors) in accordance with this Agreement.

13.1.3. Investor Agent Professionals. Investor Agent may perform its duties and exercise its rights and powers through sub-agents appointed by Investor Agent. Investor Agent may consult with and employ Investor Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Investor Agent Professional. The exculpatory provisions of this **Section 13** shall apply to sub-agents and Investor Agent Professionals. Investor Agent shall not be responsible for the negligence or misconduct of any sub-agents, employees or Investor Agent Professionals unless a court of competent jurisdiction determines in a final non-appealable judgment that the Investor Agent acted with gross negligence or willful misconduct in its selection of such sub-agent, employee or Investor Agent Professional.

13.1.4. Instructions of Required Investors. The rights and remedies conferred upon Investor Agent under the Investment Facility Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Investor Agent may request instructions from Required Investors with respect to any act (including the failure to act) in connection with any Investment Facility Documents, and may seek assurances to its satisfaction from Investors of their indemnification obligations against claims that could be incurred by Investor Agent. Investor Agent may refrain from any act until it has received such instructions and/or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Investors shall be binding upon all Investors, and no Investor shall have any right of action whatsoever against Investor Agent as a result of Investor Agent acting or refraining from acting pursuant to instructions of Required Investors. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 15.1**. In no event shall Investor Agent be required to take any action that, in its opinion, is contrary to Applicable Law or any Investment Facility Documents or could subject any Investor Agent Indemnitee to personal liability.

13.1.5. Other Investor Escrows. Investor Agent shall, at the request of any Investor, cause an escrow account or sub-accounts for such Investor to be established with \_\_\_\_\_, as escrow agent (the "Escrow Agent"), which account or accounts may be used by such Investor to pre-fund future Investments (an "Other Investor Escrow"); provided, that any Other Investor Escrow arrangements under this **Section 13.1.5** shall be in form and substance acceptable to Escrow Agent, in its sole discretion, and shall be subject to any escrow

agreement and fees required by Escrow Agent. Subject to proper documentation and authorization, Investor Agent shall seek to apply any amounts held in any Other Investor Escrow to the next Investments required to be funded by such Investor. For purposes of clarity, any Investor that has deposited funds in an Other Investor Escrow under this **Section 13.1.5** shall be entitled to withdraw such funds at any time in its sole discretion, and the Litigation Trust shall have no rights or interests in such funds unless and until such funds are transferred from the Other Investor Escrow to the Litigation Trust as an Investment.

**13.2. Maintenance of Register.** Investor Agent shall cause to be kept at the offices of the Investor Agent, or at such other places as may be designated by the Investor Agent from time to time, a registry of the Investors and their respective Funding Percentages.

**13.3. Reliance By Investor Agent.** Investor Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Investor Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Investment Facility Document, and shall not be liable for any delay in acting.

**13.4. Action Upon Default.** Investor Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from the Litigation Trustee or Required Investors specifying the occurrence and nature thereof. If any Investor acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Investor Agent and the other Investors thereof in writing. Each Investor agrees that, except as otherwise provided in any Investment Facility Documents or with the written consent of Investor Agent and Required Investors, it will not take any individual enforcement action or exercise any right that it might otherwise have against the Litigation Trust.

**13.5. Indemnification.**

**13.5.1. Investor Agent Indemnitees.** Each Investor, on a pro rata basis, agrees to indemnify Investor Agent (i) to the extent that the Investor Party Expenses shall not have been paid or reimbursed by the Litigation Trust (to the extent required to be paid or reimbursed by the Litigation Trust pursuant to **Section 3.2** or otherwise under this Agreement), and (ii) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including fees and disbursements owed or paid to third parties, including legal, financial and other advisors) or disbursements of any kind or nature whatsoever (including taxes, interest and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Investor) that may be imposed on, incurred by or on behalf of or asserted against any Investor Agent Indemnitee in exercising its powers, rights and remedies or performing its duties hereunder or under the other Investment Facility Documents or otherwise in its capacity as the Investor Agent or Investor Agent Indemnitee in any way relating to or arising out of this Agreement or the other Investment Facility Documents; provided that no Investor shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from an Investor Agent Indemnitee's, as applicable, gross negligence or willful misconduct, as determined by a court of

competent jurisdiction in a final and non-appealable judgment. If any indemnity furnished to the Investor Agent Indemnitees for any purpose shall, in the opinion of Investor Agent, be insufficient or become impaired, Investor Agent may call upon Investors for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided that in no event shall this sentence require any Investor to indemnify any Investor Agent Indemnitee against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Investor's pro rata share thereof. In Investor Agent's discretion, it may reserve for any claims made against an Investor Agent Indemnitee. If Investor Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Investor Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Investor Agent by each Investor to the extent of its Funding Percentage.

13.5.2. The Litigation Trust Indemnification. The Litigation Trust agrees to defend, protect, indemnify and hold harmless each Investor Party, such Investor Party's officers, directors and employees and such Investor Party's attorneys, consultants and agents engaged at any time in respect of the transactions contemplated by this Agreement (collectively, the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including reasonable attorneys' fees, costs and expenses) incurred by such Indemnitees, from and after the Closing Date as a result of any claim, litigation, investigation or proceeding relating to the transactions contemplated by this Agreement, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Litigation Trust shall not have any obligation to any Indemnitee under this subsection for any Indemnified Matters (i) caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a Final Order, (ii) that relates to or arises out of any action, suit or other proceeding involving disputes between or among Investor Parties or any Investor Party and such Investor Party's assignees, participants, fund managers or Affiliates, (iii) that relates to or arises out of any action, suit or other proceeding instituted by The Litigation Trust against any Investor Party to enforce any Investment Facility Documents, or (iv) that relates to or arises out of any action, suit or other proceeding instituted by the Litigation Trust or an Investor Party to resolve a dispute as to whether or not an Investor is a Defaulting Investor (except in the case of an Investor that is the prevailing party).

13.5.3. Limitation of Liability for Certain Damages. No party shall assert, and each party hereby waives, any claim against the other party and its officers, directors and employees and such party's attorneys, consultants and agents engaged at any time in respect of the transactions contemplated by this Agreement, for Special Damages (as defined below), as opposed to general or direct damages (on any theory of liability and whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement), that arises out of, in connection with, as a result of, or in any way related to, any Investment Facility Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the Funding Transactions, any Investment or the use of Investment Proceeds or any act or omission or event occurring in connection therewith, and each party hereby waives, releases and agrees not to sue upon any such claim for such Special Damages or seek to recover any such Special Damages, whether or not accrued and whether or not known or suspected to

exist in its favor. As used herein, the term "Special Damages" means any special, indirect, consequential or punitive damages.

**13.6. Limitation on Responsibilities of Investor Agent.** Investor Agent shall not be liable to any Investor for any action taken or omitted to be taken under the Investment Facility Documents, except for losses directly and solely caused by Investor Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment. Investor Agent does not assume any responsibility for any failure or delay in performance or any breach by the Litigation Trust, any Investor or any other Person of any obligations under the Investment Facility Documents. Investor Agent does not make any express or implied representation, warranty or guarantee to Investors, including with respect to any Obligations, Investment Facility Documents, Litigation Claims or the Litigation Trust. No Investor Agent Indemnitee shall be responsible to Investors for any recitals, statements, information, representations or warranties contained in any Investment Facility Documents; the execution, validity, genuineness, effectiveness or enforceability of any Investment Facility Documents; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of the Litigation Trust. No Investor Agent Indemnitee shall have any obligation to any Investor to ascertain or inquire into the existence of any Default or Event of Default, the observance by the Litigation Trust of any terms of the Investment Facility Documents, or the satisfaction of any conditions precedent contained in any Investment Facility Documents.

**13.7. Successor Investor Agent.** Subject to the appointment and acceptance of a successor Investor Agent as provided below, Investor Agent may resign at any time by giving at least thirty (30) days written notice thereof to Investors and the Litigation Trustee. Upon receipt of such notice, Required Investors shall have the right to appoint a successor Investor Agent which shall be (a) an Investor or an Affiliate of an Investor; or (b) a financial institution reasonably acceptable to Required Investors and (so long as no Event of Default has occurred and is continuing) the Litigation Trustee. If no successor agent is appointed prior to the effective date of Investor Agent's resignation, then Investor Agent may appoint a successor agent that is a financial institution acceptable to it, which shall be an Investor unless no Investor accepts the role. In addition to the foregoing, Required Investors shall have the right to replace Investor Agent at any time and from time to time by giving at least ten (10) days written notice to Investor Agent and the Litigation Trustee, which notice shall indicate the date of the proposed replacement and the identity of the proposed successor Investor Agent (which shall be (i) an Investor or an Affiliate of an Investor or (ii) a financial institution reasonably acceptable to Required Investors and (so long as no Event of Default has occurred and is continuing) the Litigation Trustee). Upon acceptance by a successor Investor Agent of its appointment hereunder, such successor Investor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Investor Agent without further act, and the retiring (or replaced, as the case may be) Investor Agent shall be discharged from its duties and obligations hereunder but shall continue to have the benefits of the indemnification set forth in **Section 13.5**. Notwithstanding any Investor Agent's resignation or replacement, the provisions of this **Section 13** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Investor Agent. Any successor to \_\_\_\_\_, by merger or acquisition of stock or this loan shall continue to be Investor Agent hereunder without further act on the part of any Investor or the Litigation Trustee.

**13.8. Due Diligence and Non-Reliance.** Each Investor acknowledges and agrees that it has, independently and without reliance upon Investor Agent, any other Investors, the Litigation Trust, the Litigation Trustee, or any Litigation Trust consultant or any other agent, attorney or representative of the Litigation Trust or any representation of any of the foregoing Persons regarding the Litigation Claims and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of the Litigation Trust and its own decision to enter into this Agreement and to make Investments hereunder. Each Investor has made such inquiries as it feels necessary concerning the Investment Facility Documents, and the Litigation Trust. Each Investor acknowledges and agrees that the other Investor Parties have made no representations or warranties concerning the Litigation Trust, or the legality, validity, sufficiency or enforceability of any Investment Facility Documents or Obligations. Each Investor will, independently and without reliance upon any Investor Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Investments and in taking or refraining from any action under any Investment Facility Documents. Except for notices, reports and other information expressly requested by an Investor, Investor Agent shall have no duty or responsibility to provide any Investor with any notices, reports or certificates furnished to Investor Agent by the Litigation Trust or any credit or other information concerning the affairs, financial condition, business or Properties of the Litigation Trust (or any of its Affiliates) which may come into possession of Investor Agent or its Affiliates.

**13.9. Individual Capacities.** Investor Agent, Investors and their Affiliates may accept deposits from, lend money to, act as financial or other advisor to, and generally engage in any kind of business with, the Litigation Trust and its Affiliates, as if they were not Investor Agent or Investors hereunder, without any duty to account therefor to any such Investor on account of such Investor's Investment. In their individual capacities, each Investor Party may receive information regarding the Litigation Trust (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any other Investor Party.

**13.10. No Third Party Beneficiaries.** This **Section 13** shall survive the Agreement Termination Date. This **Section 13** does not confer any rights or benefits upon the Litigation Trust or any other Person. As between the Litigation Trust and Investor Agent, any action that Investor Agent may take under any Investment Facility Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Investors.

## **SECTION 14. BENEFIT OF AGREEMENT; ASSIGNMENTS**

**14.1. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Litigation Trust and Investor Parties and their respective successors and assigns, except that (a) the Litigation Trust shall not have the right to assign its rights or delegate its obligations under any Investment Facility Documents (any such assignment or delegation to be null and void); and (b) any assignment by an Investor must be made in compliance with **Section 14.3.**

**14.2. Participations.**



14.2.1. Qualified Investor Participants; Effect. Any Investor may sell to a Qualified Investor Participant a participating interest in the rights and obligations of such Investor under any Investment Facility Documents. Despite any sale by an Investor of a participating interest to a Qualified Investor Participant, such Investor's obligations under the Investment Facility Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Investments and Investment Commitments for all purposes, all amounts to be remitted by the Litigation Trustee to such Investor on account of such Investor's Investor Payment Amount shall be determined as if it had not sold such participating interest, and the Litigation Trustee and Investor Agent shall continue to deal solely and directly with such Investor in connection with the Investment Facility Documents. In addition, the selling Investor shall not make any representations or warranties to any Qualified Investor Participant regarding the wisdom or worth of the Investment, the nature, extent, value or collectability of any Property of the Litigation Trust or the merits or potential outcome of any Litigation Claim. Each Investor shall be solely responsible for notifying its Qualified Investor Participants of any matters under the Investment Facility Documents, and Investor Agent and the other Investors shall not have any obligation or liability to any such Participant.

14.2.2. Voting Rights. Each Investor shall retain the sole right to approve, without the consent of any Qualified Investor Participant, any amendment, waiver or other modification of an Investment Facility Document.

### **14.3. Assignments.**

14.3.1. Permitted Assignments. An Investor may assign to a Qualified Investor Assignee (including, if consummated, as a result of trades with a third party dealer or financial intermediary) any of its rights and obligations under the Investment Facility Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Investor's rights and obligations under the Investment Facility Documents (including any previously funded Investments) and, in the case of a partial assignment, is in a minimum principal amount of the relevant Investment Commitment equal to \$500,000 (unless otherwise agreed by Investor Agent in its discretion) and integral multiples of \$250,000 in excess of that amount (or the remainder of such Investor's Investment Commitment) (except such minimum amount shall not apply to an assignment by an Investor to an Investor, an Affiliate of such Investor or a Related Fund of such Investor); (b) except in the case of an assignment in whole of an Investor's rights and obligations, the aggregate amount of the Investment Commitments retained by the transferor Investor is at least \$250,000 (unless otherwise agreed by Investor Agent in its discretion); (c) the parties to each such assignment execute and deliver to Investor Agent and the Litigation Trustee an Assignment Notice, which the Litigation Trustee shall accept if the Assignee under such Assignment Notice is a Qualified Investor Assignee, and execute and deliver to Investor Agent, for its acceptance and recording, an Assignment and Acceptance; and (d) the assigning Investor pays to Investor Agent a fee of \$3,500. The Litigation Trust shall not be responsible for any of the fees or expenses incurred by any Investor in connection with an assignment and such fees and expenses will not reduce the amount of the Investment Commitments or be deemed a funding of an Investment.

14.3.2. Effect; Effective Date. Upon satisfaction of the requirements in clauses (a) through (d) of **Section 14.3.1**, the assignment shall become effective as specified in the Assignment Notice. From such effective date, the Qualified Investor Assignee shall for all purposes be an Investor under the Investment Facility Documents, and shall have all rights and obligations of an Investor thereunder (including all unperformed obligations of the assigning Investor) and shall be deemed to have assumed all of the obligations of the transferor Investor to the extent of the assignment and the transferor shall be deemed to be released from the portion of its Investment Commitment that is the subject of such assignment except for any unperformed obligations. **Schedule 1.1** shall be amended from time to time in accordance with the provisions of this **Section 14.3** effective as of the effective date of the assignment of any Investor's rights and obligations under the Investment Facility Documents.

## **SECTION 15. MISCELLANEOUS**

**15.1. Consents, Amendments and Waivers.** No modification of any Investment Facility Document, including any extension or amendment of an Investment Facility Document or any waiver of a covenant as described in **Section 11.3**, Default or Event of Default, shall be effective without the prior written consent of Investor Agent (acting at the direction or with the consent of Required Investors) and the Litigation Trustee; provided, however, that

15.1.1. without the prior written consent of Investor Agent, no modification shall be effective with respect to any provision in an Investment Facility Document that relates to any rights, duties or discretion of Investor Agent;

15.1.2. without the prior written consent of each affected Investor, no modification shall be effective that would (i) increase the Investment Commitment of such Investor; or (ii) reduce the amount of, or waive or delay payment of, any Investor Payment Amount or fees payable to such Investor (except as provided in **Section 4.2**); or

15.1.3. without the prior written consent of all Investors (except any Defaulting Investor), no modification shall be effective that would (i) alter **Sections 5.2**, or **15.1**; or (ii) amend the definition of Funding Percentage, Investor Payment Amount or Required Investors, or remove or amend either term in any provision where either term is used.

## **15.2. Notices and Communications.**

15.2.1. Notice Address. All notices and other communications by or to a party hereto shall be in writing and shall be given to the Litigation Trust, c/o the Litigation Trustee at the address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes an Investor concurrently with or after the Closing Date, at the address shown on its Assignment and Acceptance, and if such address does not include a telecopy number or email address, such Person shall provide a telecopy number or email address to the Litigation Trustee and Investor Agent promptly after becoming an Investor), or at such other address as a party may hereafter specify by notice in accordance with this **Section 15.2**. Each notice or communication shall be effective only (a) if by electronic mail or telecopy, on the date of transmission if before 3:00 p.m. (prevailing Eastern Time) on a Business Day, otherwise on the next Business Day; provided that a hard copy of such

notice or communication is also sent pursuant to (b), (c) or (d) below and provided further that the transmission is shown as complete by electronic verification; (b) if by U.S. mail, three (3) Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; (c) if by overnight courier, next Business Day delivery guaranteed, on the next Business Day on which delivery is guaranteed after delivery to the courier; or (d) if by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Investor Agent pursuant to **Section 4.3** shall be effective until actually received by the individual to whose attention at Investor Agent such notice is required to be sent. Any written communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party.

15.2.2. Communications. Internet-based “data rooms” may be used only for routine communications, administrative matters, and distribution of Investment Facility Documents. Investor Agent and Investors make no assurances as to the privacy and security of electronic communications. Voice mail may not be used as effective notice under the Investment Facility Documents.

**15.3. Severability.** Wherever possible, each provision of the Investment Facility Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision of the Investment Facility Documents is prohibited by Applicable Law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of Investment Facility Documents so long as Investment Facility Documents as so modified continue to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

**15.4. Counterparts.** Any Investment Facility Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Investor Agent has received counterparts bearing the signatures of all parties hereto. Delivery of a signature page of any Investment Facility Document by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of such agreement.

**15.5. Entire Agreement.** The Investment Facility Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.

**15.6. Relationship with Investors.** The obligations of each Investor hereunder are several, and no Investor shall be responsible for the obligations or Investment Commitments of

any other Investor. Nothing in this Agreement and no action of Investor Agent or Investors pursuant to the Investment Facility Documents or otherwise shall be deemed to constitute Investor Agent and any Investor to be a partnership, joint venture or similar arrangement, nor to constitute control of the Litigation Trust.

**15.7. No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated by any Investment Facility Document, each party to this Agreement acknowledges and agrees that (a)(i) this Investment Facility and any related services by any party hereto are arm's-length commercial transactions between the parties to this Agreement; (ii) such party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate; and (iii) such party is capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Investment Facility Documents; (b) each party has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any other Person, and has no obligation with respect to the transactions contemplated by the Investment Facility Documents except as expressly set forth therein; and (c) the other parties to this Agreement may be engaged in a broad range of transactions that involve interests that differ from those of such party and its Affiliates, and have no obligation to disclose any of such interests to such party or its Affiliates.

**15.8. Governing Law.** This Agreement and the other Investment Facility Documents, unless otherwise specified, shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any conflict of law principles.

**15.9. Tax Treatment.** Investor Parties and the Litigation Trust agree to treat the Obligations as other than debt for tax purposes.

**15.10. Jury Trial Waivers.** To the fullest extent permitted by Applicable Law, each of the parties waives the right to trial by jury in any proceeding or dispute of any kind relating in any way to any Investment Facility Documents or Obligations, and each party acknowledges that the foregoing waivers are a material inducement to the other parties to enter into this Agreement. Each party has reviewed the foregoing waiver with its legal counsel and has knowingly and voluntarily waived its jury trial right following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**15.11. Survival of Waivers and Indemnities.** All of the indemnities and waivers by one or more Parties in favor of any other Party, including the indemnities set forth in **Section 13.5**, shall survive the Agreement Termination Date.

**15.12. Retention of Jurisdiction.** The Bankruptcy Court has and will retain jurisdiction with respect to any proceeding or dispute relating in any way to the Investment Facility.

*[Remainder of page intentionally left blank; signatures begin on following page]*

**IN WITNESS WHEREOF**, this Agreement has been executed and delivered on the date set forth above.

**THE LITIGATION TRUST:**

*[Remainder of page intentionally left blank; signatures continue on following page]*

**INVESTOR AGENT AND INVESTORS:**

SCHEDULE 1.1  
to  
Investment Funding Agreement

**INVESTMENT COMMITMENTS OF INVESTORS**

<u>Investor</u>	<u>Investment Commitment</u>	<u>Funding Percentage</u>
Affiliates of Black Diamond Capital Management L.L.C.		
Affiliates of Spectrum Investment Partners LP		
<b>All Investors</b>	<b>\$15,000,000</b>	<b>100%</b>

SCHEDULE 7.1  
to  
Investment Funding Agreement



**EXHIBIT A**  
**to**  
**Investment Funding Agreement**

**ASSIGNMENT AND ACCEPTANCE**

Reference is made to the First Amended and Restated Investment Funding Agreement dated January 29, 2013 (as amended, restated, supplemented or otherwise modified from time to time, "Investment Funding Agreement"), among the ALLIED LITIGATION TRUST (the "Litigation Trust"), \_\_\_\_\_, as agent ("Investor Agent") for the Persons from time to time party to the Investment Funding Agreement ("Investors"), and such Investors. Capitalized terms used herein shall have the meanings ascribed to them in the Investment Funding Agreement.

\_\_\_\_\_ ("Assignor") and \_\_\_\_\_ ("Assignee") agree as follows:

1. Effective as of the Effective Date (as defined below), Assignor hereby irrevocably sells, transfers, conveys and assigns, without recourse, representation or warranty (except as set forth below) to Assignee, and Assignee hereby irrevocably purchases and assumes from Assignor, (a) a principal amount of \$\_\_\_\_\_ of Assignor's outstanding Investments (which represents \_\_\_\_\_% of the total Investments); and (b) \$\_\_\_\_\_ of Assignor's Investment Commitment (which represents \_\_\_\_\_% of the total Investment Commitments), the foregoing items being, collectively, the "Assigned Interest." For the avoidance of doubt, it is understood and agreed that the percentage of total outstanding Investments being assigned and the percentage of total Investment Commitments being assigned must be equal. The assignment pursuant to this Assignment and Acceptance shall be effective as of the date ("Effective Date") indicated in the corresponding Assignment Notice delivered to Investor Agent, provided that all of the conditions to effectiveness as set forth in **Section 14.3.1** of the Investment Funding Agreement have been satisfied, the Assignor has received the purchase price for the Assigned Interest in immediately available funds, and this Assignment and Acceptance is executed by Assignor, Assignee, and Investor Agent. From and after the Effective Date, (i) Assignee assumes, and undertakes to perform, all of Assignor's obligations in respect of the Assigned Interest, and all amounts which would otherwise be payable to or for Assignor's account in respect of the Assigned Interest shall be payable to or for Assignee's account, to the extent such amounts accrue on or after the Effective Date, (ii) Assignee shall become an "Investor" under the Investment Funding Agreement and, to the extent of the interest assigned pursuant to this Assignment and Acceptance, have the rights and obligations of an Investor thereunder and under the other Investment Facility Documents, (iii) Assignor shall, to the extent of the interest assigned pursuant to this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Investment Funding Agreement and the other Investment Facility Documents, and (iv) Investor Agent shall make all payments under the Investment Funding Agreement and the other Investment Facility Documents in respect of the interest assigned hereby with respect thereto to the Assignee.

2. Assignor (a) represents that as of the date hereof and prior to giving effect to this assignment, its Investment Commitment is \$\_\_\_\_\_ and the outstanding balance of its Investments is \$\_\_\_\_\_; (b) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Investment Funding Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Investment Facility Documents or any other instrument or document furnished pursuant thereto, other than that Assignor is the legal and beneficial owner of the Assigned Interest, is legally authorized to enter into this Assignment and Acceptance and such Assigned Interest is free and clear of any Liens and adverse claims; and (c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Litigation Trust, the status or outcome of any Litigation Claim, the value of any Litigation Claim or the performance by the Litigation Trust of its obligations under the Investment Facility Documents.

3. Assignee appoints and authorizes Investor Agent to take such action as agent on its behalf and to exercise such powers under the Investment Facility Documents as are delegated to Investor Agent by the terms thereof, together with such powers as are incidental thereto.

4. This Assignment and Acceptance shall be governed by the laws of the State of New York. If any provision hereof is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of this Assignment and Acceptance shall remain in full force and effect.

5. Each notice or other communication hereunder shall be in writing, shall be sent by electronic mail or telecopy, U.S. mail, overnight courier or personal delivery, the effectiveness of such delivery shall be determined in accordance with **Section 15.2.1** of the Investment Funding Agreement and shall be sent as follows:

- (a) If to Assignee, to the following address (or to such other address as Assignee may designate from time to time):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) If to Assignor, to the following address (or to such other address as Assignor may designate from time to time):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Payments hereunder shall be made by wire transfer of immediately available Dollars as follows:

If to Assignee, to the following account (or to such other account as Assignee may designate from time to time):

\_\_\_\_\_  
\_\_\_\_\_  
ABA No. \_\_\_\_\_  
\_\_\_\_\_  
Account No. \_\_\_\_\_  
Reference: \_\_\_\_\_

If to Assignor, to the following account (or to such other account as Assignor may designate from time to time):

\_\_\_\_\_  
\_\_\_\_\_  
ABA No. \_\_\_\_\_  
\_\_\_\_\_  
Account No. \_\_\_\_\_  
Reference: \_\_\_\_\_

**7. THIS ASSIGNMENT AND ACCEPTANCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON OR ARISING OUT OF THIS ASSIGNMENT AND ACCEPTANCE OR ANY OF THE TRANSACTIONS RELATED HERETO, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

8. This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Assignment and Acceptance by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart.

*[Remainder of page intentionally left blank; signatures begin on following page]*

**IN WITNESS WHEREOF**, this Assignment and Acceptance is dated \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
("Assignee")

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
("Assignor")

By: \_\_\_\_\_  
Name:  
Title:

Receipt acknowledged:

\_\_\_\_\_  
("Investor Agent")

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT B**  
**to**  
**Investment Funding Agreement**

**NOTICE OF PROPOSED ASSIGNMENT**

Reference is made to (1) the Funding Agreement dated \_\_\_\_\_, 2015 (as amended, restated, supplemented or otherwise modified from time to time, the "Investment Funding Agreement"), among the **ALLIED LITIGATION TRUST** ( the "Litigation Trust"), \_\_\_\_\_, as agent ("Investor Agent") for the Persons from time to time party to the Investment Funding Agreement as investors ("Investors"), and such Investors; and (2) the Assignment and Acceptance dated \_\_\_\_\_, 20\_\_ (the "Assignment Agreement"), between \_\_\_\_\_ ("Assignor") and \_\_\_\_\_ ("Assignee"). Capitalized terms used herein shall have the meanings ascribed to them in the Investment Funding Agreement.

Assignor hereby notifies the Litigation Trust and Investor Agent of Assignor's intent to assign to Assignee pursuant to the Assignment Agreement (a) \$\_\_\_\_\_ of Assignor's outstanding Investment (which represents \_\_\_\_% of the total outstanding Investments) and (b) \$\_\_\_\_\_ of Assignor's Investment Commitment (which represents \_\_\_\_% of the total Investment Commitments), the foregoing items being, collectively, the "Assigned Interest." This assignment will be effective as of the date of this Assignment Notice (the "Effective Date") indicated below, provided that this Assignment Notice is executed by Assignor, Assignee, Investor Agent and the Litigation Trustee and the conditions set forth in **Section 14.3.1** of the Investment Funding Agreement are satisfied. Pursuant to the Assignment Agreement, Assignee has agreed irrevocably to assume all of Assignor's obligations under the Investment Funding Agreement to the extent of the Assigned Interest, as of the Effective Date.

To induce the Litigation Trust and Investor Agent to accept the assignment of the Assigned Interest, and Assignor to make the assignment, Assignee hereby represents, warrants and covenants as follows:

(a) The execution, delivery and performance by Assignee of the Assignment Agreement and this Assignment Notice and the performance by Assignee of its duties and obligations under the Investment Funding Agreement: (i) are within its power and authority and have been duly authorized by all necessary action, (ii) do not contravene the terms of its organizational documents or any amendment thereof, and (iii) do not and will not violate, conflict with or result in any breach or contravention of any of its contracts or other agreements, or any order or decree directly relating to it.

(b) The Assignment Agreement and this Assignment Notice have been duly executed and delivered by Assignee and the Assignment Agreement, this Assignment Notice and the Investment Funding Agreement constitute its legal, valid and binding obligation, enforceable against it in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the

enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(c) The execution, delivery and performance by Assignee of the Assignment Agreement and this Assignment Notice will not violate any Applicable Law.

(d) (i) The Investments are being made by Assignee for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof in any transaction which would be in violation of Securities Laws representations or which would require the issuance and sale of the Investments hereunder to be registered under the Securities Act, subject, however, to the disposition of Assignee's property being at all times within its control.

(ii) Assignee is an Accredited Investor and has provided the Litigation Trustee all evidence requested by the Litigation Trustee to demonstrate to the Litigation Trustee's reasonable satisfaction that Assignee is an Accredited Investor.

(iii) Assignee understands that (A) the Investments under the Investment Funding Agreement are not registered under the Securities Act or under any "blue sky" laws in reliance upon certain exemptions from such registration and that the Litigation Trustee is relying on the representations made herein by Assignee in its determination of whether such specific exemptions are available, and (B) the Investments may not be sold, transferred, pledged or hypothecated except (1) in accordance with **Section 14.3** of the Investment Funding Agreement and (2) either (a) pursuant to an effective registration statement under the Securities Act or (b) under an exemption from such registration available under the Securities Act. Assignee: (X) acknowledges that it has no right to require registration thereof under the Securities Act or any "blue sky" laws, (Y) acknowledges that there is not now and is not contemplated to be any public market for the Investments and (Z) agrees that it is prepared to bear the economic risk of an investment in the Investments for an indefinite period of time.

(iv) Assignee (A) has received, or has had access to, certain books, records, material contracts and other documents of the Litigation Trust as it has deemed appropriate to make its own credit analysis and decisions to become an Investor under the Investment Funding Agreement, including copies of the Investment Facility Documents, information regarding the Chapter 11 Cases and publicly available pleadings and orders filed therein, and pleadings and other papers filed in any of the Litigation Claims; (B) has had an opportunity to receive all publicly available information relating to the Litigation Trust, the status of all Litigation Claims and the assets and liabilities of the Litigation Trust in order to make a fully informed decision with respect to the Investments; (C) has generally such knowledge and experience in business and financial matters, and with respect to investments in securities of public and privately held companies, as to enable it to understand and evaluate the risks of the Investments and form an investment decision with respect thereto; and (D) has independently made and

without reliance upon the Litigation Trust, or any officer, director or attorney of the Litigation Trust, or any other Investor Party, and based upon documents and information as it shall deem appropriate at the time and upon the advice of any legal counsel or other advisors selected by it, and will continue to make its own credit decisions in taking or refraining to take any action under any of the Investment Facility Documents.

(v) Assignee fully understands the nature, scope and duration of the limitations on resales applicable to the Investments.

(e) **Qualified Investor Assignee Status.** Assignee is a Qualified Investor Assignee because (i) [it is an Initial Investor ][ it is an Affiliate of an Initial Investor and has demonstrated to the reasonable satisfaction of the Litigation Trustee that it is an Accredited Investor (*which satisfaction is evidenced by the Litigation Trustee's execution of this Assignment Notice*)] [it has demonstrated to the reasonable satisfaction of the Litigation Trustee that it is an Accredited Investor (*which satisfaction is evidenced by the Litigation Trustee's execution of this Assignment Notice*)], and (ii) it is not a Defaulting Investor under the Investment Funding Agreement.

(f) Assignee will observe and perform all obligations that are required to be performed by it as an "Investor" under the Investment Facility Documents.

**Assignee hereby acknowledges and agrees that (a) nothing in the Assignment Agreement, this Assignment Notice or any of the other Investment Facility Documents shall be construed to be (and the Litigation Trustee expressly disclaims making) any representation or warranty regarding the merits or potential outcome of any Litigation Claim, (b) it has not relied and will not rely on any statement, representation or warranty of any Person (including the Litigation Trustee) regarding the suitability or wisdom of becoming an Investor, the value or collectability of any asset of the Litigation Trust, the merits or potential outcome of any Litigation Claim (or any appeal) to which the Litigation Trust is a party and which may serve as a potential source of return on the Investments or payment of any Obligations, (c) the Investments represent a high degree of risk and (d) it will comply on a timely basis with all of the terms and conditions applicable to Investors under the Investment Funding Agreement.**

For purposes of the Investment Funding Agreement, Investor Agent shall deem Assignor's Investment Commitment to be reduced by \$\_\_\_\_\_, and Assignee's Investment Commitment to be increased by \$\_\_\_\_\_.

The addresses of Assignor and Assignee to which notices, information and payments are to be sent under the terms of the Investment Funding Agreement are shown in the Assignment and Acceptance.

This Assignment Notice shall be governed by the laws of the State of New York.

This Assignment Notice is being delivered to the Litigation Trust and Investor Agent pursuant to **Section 14.3** of the Investment Funding Agreement. The Litigation Trust will kindly

acknowledge its consent to the assignment by executing and returning to Assignee and Assignor a copy of this Assignment Notice.

*[Remainder of page intentionally left blank; signatures begin on following page]*



**IN WITNESS WHEREOF**, this Assignment Notice is dated \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
("Assignee")

By \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
("Assignor")

By \_\_\_\_\_  
Name:  
Title:

Assignment consented to:

**THE ALLIED LITIGATION TRUST**  
("The Litigation Trust")

By \_\_\_\_\_  
\_\_\_\_\_  
Litigation Trustee

\_\_\_\_\_  
("Investor Agent")

By \_\_\_\_\_  
Name:  
Title:

**EXHIBIT C**  
**to**  
**Investment Funding Agreement**

**FORM OF INVESTMENT REQUEST**

\_\_\_\_\_, 20\_\_

\_\_\_\_\_,  
as Investor Agent for the Investors party to the  
Investment Funding Agreement referred to below

\_\_\_\_\_  
Attention: \_\_\_\_\_

Ladies and Gentlemen:

Reference is made to the Investment Funding Agreement, dated \_\_\_\_\_, 2015 (as the same may be amended, restated, modified and/or supplemented from time to time, the "Investment Funding Agreement"), among the Allied Litigation Trust, a Delaware statutory trust (the "Litigation Trust"), the persons party thereto from time to time as investors (the "Investors"), and \_\_\_\_\_, as investor agent for the Investors (in such capacity, the "Investor Agent"). Capitalized terms used herein, unless otherwise defined, will have the meanings ascribed to them in the Investment Funding Agreement.

This will serve as an Investment Request pursuant to Section [2.1.1]<sup>1</sup> [2.1.2]<sup>2</sup> of the Investment Funding Agreement for Investors to remit Investment Proceeds to the Litigation Trustee in the aggregate amount of \$\_\_\_\_\_. The date for the making of the Investments is \_\_\_\_\_, 201\_, which date is [not later than the second (2nd) Business Day after the Closing Date]<sup>3</sup>[not less than seven (7) Business Days after Investor Agent's receipt of such Investment Request]<sup>4</sup>. The Litigation Trustee hereby certifies that:

- (a) The Investment Proceeds requested herein will be used solely for the following Investment Facility Permitted Uses:
- (b) As of the date hereof and as of the date for the proposed Investments, (i) the representations and warranties of the Litigation Trust in the Investment Facility Documents are true and correct on and as of such date as though made on and as

<sup>1</sup> Use for Initial Investments only.

<sup>2</sup> Use for all Investments other than the Initial Investments.

<sup>3</sup> Use for Initial Investments only.

<sup>4</sup> Use for all Investments other than the Initial Investments.

of such date (except for representations and warranties that expressly relate to an earlier date, in which case such representations and warranties shall be true and correct on and as of such earlier date), and (ii) no Default or Event of Default exists on the date of this Investment Request or as of the date for the proposed Investments, nor will any Default or Event of Default result from the funding or application of Investment Proceeds pursuant to this Investment Request.

- (d) All conditions precedent set forth in Section 6 of the Investment Funding Agreement have been satisfied (or waived in writing by Investor Agent acting at the direction of Required Investors).

Very truly yours,

ALLIED LITIGATION TRUST

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

\_\_\_\_\_  
Litigation Trustee

# **EXHIBIT C**

September \_\_, 2015

\_\_\_\_\_, as Litigation  
Trustee for the Allied Litigation Trust

Re: Investment Funding Agreement

Ladies and Gentlemen:

Reference is made to the following:

a. The Debtors' Joint Plan of Reorganization Proposed by the Debtors, the Committee and the First Lien Agents, dated June 17, 2015 (as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, the "Plan"). All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Plan;

b. The Confirmation Order entered by the Bankruptcy Court on September \_\_, 2015;

c. The Investment Funding Agreement between and among the Allied Litigation Trust, as issuer, the persons from time to time party thereto, as Investors, and \_\_\_\_\_, as Investor Agent, dated September \_\_, 2015 (the "Investment Funding Agreement"); and

d. The Litigation Trust Agreement, dated September \_\_, 2015, between and among the Litigation Trustee, ASHINC Corporation, on behalf of itself and the other Debtors and Reorganized Debtors, and Black Diamond Commercial Finance, L.L.C. and Spectrum Commercial Finance LLC, each in its capacity as Co-Administrative Agent for the First Lien Lenders (the "Litigation Trust Agreement").

The Litigation Trustee has advised Black Diamond Capital Management, L.L.C. ("Black Diamond") and Spectrum Investment Partners LP ("Spectrum") that the Litigation Trustee is seeking commitments for \$15,000,000.00 of investments to permit the Litigation Trust to prosecute the Litigation Claims to be contributed to the Litigation Trust pursuant to the Plan, on the terms and subject to the conditions set forth in the Plan, the Investment Funding Agreement and the Litigation Trust Agreement. The Litigation Trustee has further advised Black Diamond and Spectrum that, pursuant to the Plan, each First Lien Lender (other than Yucaipa) is being offered the right to commit to its Pro Rata share of the Investments (calculated in the manner set forth in Section 5.1(c) of the Plan)..

### ***Backstop Commitment***

Black Diamond and Spectrum, on behalf of their respective affiliates (each a "Backstop Party", and collectively, the "Backstop Investors"), severally and not jointly, hereby commit to provide their respective shares of the entire amount of the Investments (the "Commitment") on the terms and subject to the conditions set forth in the Investment Funding Agreement (the form of which is attached as Exhibit A). The Commitments of each of Black Diamond and Spectrum are set forth on Exhibit B. To the extent any First Lien Lender elects to commit to its Pro Rata share of the Commitments, the Commitments of each of Black Diamond and Spectrum shall be ratably and permanently reduced as of the Closing Date (as defined below).

### ***Backstop Payment***

In return for the Commitment, the Litigation Trust shall pay to the Backstop Parties a payment in the aggregate amount of \$900,000.00, which amount shall be fully earned and non-refundable upon the execution of this letter (the "Backstop Payment"). The Backstop Payment shall be allocated between and among the Backstop Investors ratably in accordance with their respective portions of the Commitments. The Backstop Payment shall be paid either from (a) proceeds of the Investments (to the extent requested by the Backstop Investors upon the closing of the Investment Funding Agreement, or (b) through the Litigation Proceeds Waterfall as provided in the Plan.

### ***Information***

The Litigation Trust represents and warrants to the Backstop Investors that (i) all written information (other than any Projections) that has been or will hereafter be made available to the Backstop Investors by or on behalf of the Litigation Trust (collectively, the "Information") is and will be (when taken as a whole) correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in any material respect in light of the circumstances under which such statements were or are made (after giving effect to all supplements and updates thereto) and (ii) all projections ("Projections") have been or will be prepared by the Litigation Trust and made available to the Backstop Investors have been or will be prepared in good faith based upon reasonable assumptions believed at the time so made to be reasonable (it being understood that projections are not viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond the Litigation Trust's control, and that no assurance can be given that any projections will be realized, that actual results may differ from those projected and that such differences may be material). The Litigation Trust agrees to supplement the Information and Projections it has provided from time to time until the closing date of the Investments (the "Closing Date") so that the representations and warranties contained in this paragraph remain correct in all material respects (in the case of the foregoing clause (ii)) and in all respects (in the case of the foregoing clause (i)).

### ***Conditions***

The Commitment and other undertakings hereunder are subject to (a) the preparation, execution and delivery of definitive documentation for the Investments in form and substance acceptable to the Backstop Investors, including the Investment Funding Agreement (collectively, the “Loan Documents”); (b) the entry of the Confirmation Order; (c) the occurrence of the Effective Date of the Plan, and (d) the absence of any event or circumstance that has had or is reasonably likely to have a material adverse effect on the Litigation Claims (including there having been no adverse ruling in any court of competent jurisdiction the has had or is reasonably likely to have a material adverse effect on the likely success of the Litigation Trust in the prosecution of the Litigation Claims).

### ***Termination***

The Commitment of the Backstop Investors will terminate at 5:00 p.m., New York City time, on September 30, 2015 if the Effective Date of the Plan shall not have occurred prior to such time.

### ***Sharing Information; Absence of Fiduciary Relationship***

The Litigation Trust acknowledges that the Backstop Investors may provide financing, equity capital or other services (including financial advisory services) to parties whose interests may conflict with the interests of the Litigation Trust. None of the Backstop Investors or any of their respective affiliates will use in connection with the transactions contemplated hereby, or furnish to the Litigation Trust, confidential information that the Backstop Investors or any of their respective affiliates has obtained or may obtain from any other person.

The Litigation Trust further acknowledges and agrees that (a) no fiduciary, advisory or agency relationship between the Litigation Trust, on the one hand, and any Backstop Party, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Commitment Letter, irrespective of whether the Backstop Investors or their respective affiliates have advised or are advising you on other matters, and (b) the Litigation Trust will not bring or otherwise assert any claim against any Backstop Party for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that none of the Backstop Investors shall have any liability (whether direct or indirect) to the Litigation Trust in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Litigation Trust, including any Litigation Trust Beneficiary.

### ***Miscellaneous***

This Commitment Letter and the Commitment and undertakings hereunder shall not be assignable by (a) the Litigation Trust without the prior written consent of the Backstop Investors or (b) the Backstop Investors without the prior written consent of the Litigation Trust; ***provided***, that the Backstop Investors may assign all or any portion their Commitment hereunder to one or more of their respective affiliates without the prior written consent of the



Litigation Trust; *provided, further*, that the Backstop Investors shall not be relieved of their obligation to provide the Commitment hereunder in the event that its affiliate fails to fund such Commitment when required in accordance with the terms of this Commitment Letter. This Commitment Letter may not be amended or any provision hereof waived or modified except by an instrument in writing signed by the party against whom enforcement of the same is sought. This Commitment Letter may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Commitment Letter by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart of this Commitment Letter. This Commitment Letter is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person or entity other than the parties hereto. By executing this Commitment Letter, the Litigation Trust acknowledges that this Commitment Letter is the only agreement between the Litigation Trust, on one hand, and the Backstop Investors and their affiliates, on the other hand, with respect to the Investments and sets forth the entire understanding of the parties with respect to the subject matter thereof. This Commitment Letter shall be governed by, and construed in accordance with, the laws of the State of New York. Each party hereto irrevocably waives all right to trial by jury in any action or proceeding arising out of or relating to this Commitment Letter or the transactions contemplated hereby.

Please indicate your acceptance of the terms hereof by signing in the appropriate space below and returning to the Backstop Investors the enclosed duplicate originals of this Commitment Letter not later than 5:00 p.m., New York time, on September \_\_, 2015, at which time (if not so accepted prior thereto) this Commitment Letter and the Commitment and undertakings hereunder will expire.

Very truly yours,

**BLACK DIAMOND CAPITAL  
MANAGEMENT L.L.C., ON BEHALF  
OF ITSELF AND ITS AFFILIATED  
FUNDS AND/OR MANAGED  
ACCOUNTS**

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of  
\_\_\_\_\_, 2015

**SPECTRUM INVESTMENT  
PARTNERS LP, ON BEHALF OF  
ITSELF AND ITS AFFILIATED  
FUNDS AND/OR MANAGED  
ACCOUNTS**

By: \_\_\_\_\_  
Name:  
Title

**ALLIED LITIGATION TRUST**

By: \_\_\_\_\_  
Name:  
Title: Litigation Trustee

**EXHIBIT A**

**Form of Investment Funding Agreement**

**EXHIBIT B****Commitments of Backstop Investors**

<u>Investor</u>	<u>Investment Commitment</u>	<u>Funding Percentage</u>
Affiliates of Black Diamond Capital Management L.L.C.	\$9,075,000	60.5%
Affiliates of Spectrum Investment Partners LP	\$5,925,000	39.5%
<b>All Investors</b>	<b>\$15,000,000</b>	<b>100%</b>

# **EXHIBIT D**

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ASHINC CORPORATION**

---

1. The date of the filing of the original Certificate of Incorporation of ASHINC Corporation (formerly known as Allied Systems Holdings, Inc.) with the Secretary of State of Delaware was May 8, 2007 and the date of filing of the Amended Certificate of Incorporation of ASHINC Corporation with the Secretary of State of Delaware was May 29, 2007 (the “Amended Certificate of Incorporation”).
2. Pursuant to Sections 242 and 245 of the General Corporation Law of Delaware (the “DGCL”), this Second Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Amended Certificate of Incorporation.
3. This Second Amended and Restated Certificate of Incorporation was duly adopted by the stockholders and the board of directors (the “Board of Directors”) of ASHINC Corporation by written consent in accordance with Sections 228 and 141(f) of the DGCL, respectively.
4. This Second Amended and Restated Certificate of Incorporation shall become effective immediately upon filing with the Secretary of State of Delaware (such time of effectiveness, the “Effective Time”).
5. The text of the Amended Certificate of Incorporation of ASHINC Corporation shall, at the Effective Time, be amended and restated in its entirety to read as follows:

**ARTICLE ONE**

The name of the corporation is ASHINC Corporation (hereinafter called the “Corporation”).

**ARTICLE TWO**

The address of the Corporation’s registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808. Corporation Service Company is the Corporation’s registered agent at that address.

**ARTICLE THREE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (the “DGCL”).

#### **ARTICLE FOUR**

The total number of shares which the Corporation shall have the authority to issue is [•] ([•]) shares, all of which shall be shares of Common Stock, with a par value of one cent (\$[0.01]) per share. Except as required by law, each holder of Common Stock shall be entitled, with respect to each share of Common Stock held by such holder on the applicable record date, to one (1) vote in person or by proxy on all actions or matters submitted to a vote of the holders of Common Stock (including by written consent in lieu of a meeting without prior notice or vote if such consent is in writing, sets forth the action so taken, bears the dates of signature of the stockholders who signed such consent, and is signed by the holders of outstanding Common Stock having not less than a majority of the shares entitled to vote, or, if greater as provided in the Bylaws, not less than the minimum number of votes necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in its state of incorporation, or the Corporation's principal place of business, or an officer or agent of the Corporation having custody of the book(s) in which proceedings of meetings of such stockholders are recorded), including, without limitation, in connection with the election of directors to the Board of Directors (it being understood that in respect of the election of directors, no stockholder shall be entitled to cumulate votes on behalf of any candidate), whether voting separately as a class or otherwise.

#### **ARTICLE FIVE**

The Board of Directors shall have the power to adopt, amend or repeal the Bylaws, except as may otherwise be provided in the Bylaws.

#### **ARTICLE SIX**

The Corporation expressly elects not to be governed by Section 203 of the DGCL.

#### **ARTICLE SEVEN**

Each director, stockholder and each officer, manager, director, employee or agent of a director, stockholder or the Corporation, and their affiliates (each, an "Indemnitee") shall to the fullest extent permitted or required by the DGCL or other applicable law, be exculpated from, and indemnified by, the Corporation against any liability, loss, damage, penalty, action, claim, judgment, settlement, cost or expense of any kind or nature whatsoever (including all reasonable attorneys' fees, costs and expenses of defense, appeal and settlement of any proceedings instituted against such Indemnitee or the Corporation and all costs of investigation in connection therewith) ("Losses") that relates to or arises out of, or is alleged to relate to or arise out of, any action or inaction on the part of the Corporation or such Indemnitee acting on behalf of the Corporation; provided, that an Indemnitee shall be entitled to indemnification hereunder only to the extent that such Indemnitee's conduct did not constitute fraud, willful misconduct, gross negligence or a material breach of the Corporation's governing documents.

## ARTICLE EIGHT

(a) The Corporation hereby eliminates, to the fullest extent permitted by law, the personal liability of any person who serves as a director of the Corporation, or any of their affiliates, to the Corporation and/or its stockholders for monetary damages for breach of fiduciary duty as a director except where the acts or omissions of such director constitute for purposes of § 102(b)(7) of the DGCL (A) a breach of such director's duty of loyalty to the Corporation; (B) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (C) a transaction in which such director derived an improper personal benefit. The directors and each of their respective affiliates shall, to the fullest extent permitted by § 102(b)(7) of the DGCL be exculpated from any liability arising out of the operation of the Corporation or any actions in their capacity as directors of the Corporation. If in the future the DGCL is amended or modified (including, but not limited to, Section 102(b)(7)) to permit the elimination of the personal liability of a director of the Corporation to a greater extent than contemplated above, then the provisions of this Article Eight shall be deemed to be automatically amended to provide for the elimination of the personal liability of the directors of the Corporation to such greater extent. This Article Eight shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date when this Article Eight becomes effective.

(b) To the fullest extent permitted by law, the directors, their affiliates, and their respective affiliates' shareholders, officers, directors, partners, members, managers, employees and agents (the foregoing, a "Director Group") (i) shall not be subject to the corporate opportunity doctrine under the DGCL, or any analogous doctrine under applicable law, (ii) may engage in or possess any interest in another business or venture competitive with the Corporation or any of its subsidiaries, and neither the Corporation nor any stockholder shall have any rights in or to any such independent business or venture or the income or profits derived therefrom and (iii) shall have no obligation to present business opportunities to the Corporation, refrain from engaging in any line of business, refrain from investing in any person or refrain from doing business with any person, even if the business venture or opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so. The pursuit of any such business or venture shall not be deemed wrongful, improper or a breach of any duty hereunder, at law, in equity or otherwise. Each member of each Director Group shall be permitted to transact business or enter into agreements with the Corporation to the fullest extent permissible under the DGCL, subject to the terms and conditions of the Corporation's governing documents.

## ARTICLE NINE

Subject to applicable law, the Corporation reserves the right to amend or repeal any provisions contained in this Certificate of Incorporation from time to time and at any time in the manner now or hereafter prescribed by the Bylaws, and all rights conferred upon stockholders and directors are granted subject to such reservation.



IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Certificate of Incorporation as of the [•] day of [•], 2015.

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

[•],[•]

*[Signature Page to  
Second  
Amended and Restated Certificate of  
Incorporation of ASHINC  
Corporation]*

# **EXHIBIT E**

**BYLAWS**  
**OF**  
**ASHINC CORPORATION**  
ADOPTED AS OF \_\_\_\_\_, 2015  
(these “Bylaws”)

**ARTICLE I**  
**OFFICES**

**Section 1.01 Offices.** The registered office of ASHINC Corporation (the “**Corporation**”) shall be Corporation Service Company, 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808. The Corporation may have other offices, both within and without the State of Delaware, as the board of directors of the Corporation (the “**Board of Directors**”) from time to time shall determine or the business of the Corporation may require.

**Section 1.02 Books and Records.** Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be maintained on any information storage device or method.

**ARTICLE II**  
**MEETINGS OF THE STOCKHOLDERS**

**Section 2.01 Place of Meetings.** Except as otherwise provided in these Bylaws, all meetings of the stockholders shall be held on such dates and at such times and places, within or without the State of Delaware, as shall be determined by the Board of Directors and as shall be stated in the notice of the meeting or in waivers of notice thereof. If the place of any meeting is not so fixed, it shall be held at the registered office of the Corporation in the State of Delaware.

**Section 2.02 Annual Meeting.** The annual meeting of stockholders for the election of directors and the transaction of such other proper business as may be brought before the meeting shall be held on such date after the close of the Corporation’s fiscal year, and at such time, as the Board of Directors may from time to time determine.

**Section 2.03 Special Meetings.** Special meetings of the stockholders, for any purpose or purposes, may be called by the Board of Directors and shall be called by the

president or the secretary upon the written request of a majority of the directors. The request shall state the date, time, place and purpose or purposes of the proposed meeting.

**Section 2.04 Adjournments.** Any meeting of the stockholders, annual or special, may be adjourned from time to time to reconvene at the same or some other place, if any, and notice need not be given of any such adjourned meeting if the time, place, if any, thereof and the means of remote communication, if any, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date is fixed for stockholders entitled to vote at the adjourned meeting, the Board of Directors shall fix a new record date for notice of the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

**Section 2.05 Notice of Meetings.** Notice of the place, if any, date, hour, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and means of remote communication, if any, of every meeting of stockholders shall be given by the Corporation not less than ten days nor more than 60 days before the meeting (unless a different time is specified by law) to every stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. Notices of special meetings shall also specify the purpose or purposes for which the meeting has been called. Except as otherwise provided herein or permitted by applicable law, notice to stockholders shall be in writing and delivered personally or mailed to the stockholders at their address appearing on the books of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, notice of meetings may be given to stockholders by means of electronic transmission in accordance with applicable law. Notice of any meeting need not be given to any stockholder who shall, either before or after the meeting, submit a waiver of notice or who shall attend such meeting, except when the stockholder attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of the meeting shall be bound by the proceedings of the meeting in all respects as if due notice thereof had been given.

**Section 2.06 List of Stockholders.** The officer of the Corporation who has charge of the stock ledger shall prepare a complete list of the stockholders entitled to vote at any meeting of stockholders (provided, however, if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date),

arranged in alphabetical order, and showing the address of each stockholder and the number of shares of each class of capital stock of the Corporation registered in the name of each stockholder at least ten days before any meeting of the stockholders. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network if the information required to gain access to such list was provided with the notice of the meeting or during ordinary business hours, at the principal place of business of the Corporation for a period of at least ten days before the meeting. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting the whole time thereof and may be inspected by any stockholder who is present. If the meeting is held solely by means of remote communication, the list shall also be open for inspection by any stockholder during the whole time of the meeting as provided by applicable law. Except as provided by applicable law, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger and the list of stockholders or to vote in person or by proxy at any meeting of stockholders.

**Section 2.07 Quorum.** Unless otherwise required by law, the Corporation's Certificate of Incorporation (the "**Certificate of Incorporation**") or these Bylaws, at each meeting of the stockholders, a majority in voting power of the shares of the Corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 2.04, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the subsequent withdrawal of enough votes to leave less than a quorum. At any such adjourned meeting at which there is a quorum, any business may be transacted that might have been transacted at the meeting originally called.

**Section 2.08 Conduct of Meetings.** At each meeting of the stockholders, the president or, in his or her absence, any one of the vice presidents, in order of their seniority, shall act as chairman of the meeting. The secretary or, in his or her absence, any person appointed by the chairman of the meeting shall act as secretary of the meeting and shall keep the minutes thereof. The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting.

**Section 2.09 Voting; Proxies.** Unless otherwise required by law, or the Certificate of Incorporation, the election of directors shall be decided by a plurality of the votes cast at a meeting of the stockholders by the holders of stock entitled to vote in the election. Unless otherwise required by law, the Certificate of Incorporation, or these Bylaws, any matter, other than the election of directors, brought before any meeting of stockholders shall be decided by the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter. Each

stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot.

**Section 2.10 Written Consent of Stockholders Without a Meeting.** Unless otherwise provided in the Certificate of Incorporation, any action required to be taken or which may be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed, in person or by proxy, by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted in person or by proxy and shall be delivered to the Corporation as required by law. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

**Section 2.11 Fixing the Record Date.**

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than ten days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date

as that fixed for the determination of stockholders entitled to vote therewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting: (i) when no prior action by the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery (by hand, or by certified or registered mail, return receipt requested) to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded; and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

### **ARTICLE III**

#### **BOARD OF DIRECTORS**

**Section 3.01 General Powers.** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may adopt such rules and procedures, not inconsistent with the Certificate of Incorporation, these Bylaws, or applicable law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

**Section 3.02 Number; Term of Office.** Except as otherwise provided by the Certificate of Incorporation, until such time as the Board of Directors or the stockholders determines otherwise, the number of directors shall be two (2), and in no event shall be less than one (1). Each director shall hold office until a successor is duly elected and qualified or until the director's earlier death, resignation, disqualification or removal.

**Section 3.03 Newly Created Directorships and Vacancies.** Any newly created directorships resulting from an increase in the authorized number of directors and any vacancies occurring in the Board of Directors, may be filled by the affirmative votes of a majority of the remaining members of the Board of Directors, although less than a quorum, or the stockholders. A director so elected shall be elected to hold office until the earlier of the expiration of the term of office of the director whom he or she has replaced, a successor is duly elected and qualified or the earlier of such director's death, resignation or removal.

**Section 3.04 Resignation.** Any director may resign at any time by notice given in writing or by electronic transmission to the Corporation. Such resignation shall take effect at the date of receipt of such notice by the Corporation or at such later time as is therein specified.

**Section 3.05 Regular Meetings.** Regular meetings of the Board of Directors may be held without notice at such times and at such places as may be determined from time to time by the Board of Directors or its chairman (if any). Notice of regular meetings need not be given, except as otherwise required by law.

**Section 3.06 Special Meetings.** Special meetings of the Board of Directors, for any purpose or purposes, may be called by the president and shall be called by the president or the secretary upon the written request of a majority of the directors. The request shall state the date, time, place and purpose or purposes of the proposed meeting.

**Section 3.07 Telephone Meetings.** Board of Directors or Board of Directors committee meetings may be held by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other and be heard. Participation by a director in a meeting pursuant to this Section shall constitute presence in person at such meeting.

**Section 3.08 Adjourned Meetings.** A majority of the directors present at any meeting of the Board of Directors, including an adjourned meeting, whether or not a quorum is present, may adjourn and reconvene such meeting to another time and place. At least 24 hours notice of any adjourned meeting of the Board of Directors shall be given to each director whether or not present at the time of the adjournment, if such notice shall be given by one of the means specified in Section 3.09 hereof other than by mail, or at least three days notice if by mail. Any business may be transacted at an adjourned meeting that might have been transacted at the meeting as originally called.

**Section 3.09 Notices.** Subject to Section 3.06, Section 3.08 and Section 3.10 hereof, whenever notice is required to be given to any director by applicable law, the Certificate of Incorporation or these Bylaws, such notice shall be deemed given effectively if given in person or by telephone, mail addressed to such director at such



director's address as it appears on the records of the Corporation, facsimile, e-mail or by other means of electronic transmission.

**Section 3.10 Waiver of Notice.** Whenever the giving of any notice to directors is required by applicable law, the Certificate of Incorporation or these Bylaws, a waiver thereof, given by the director entitled to the notice, whether before or after such notice is required, shall be deemed equivalent to notice. Attendance by a director at a meeting shall constitute a waiver of notice of such meeting except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special Board of Directors or committee meeting need be specified in any waiver of notice.

**Section 3.11 Organization.** At each meeting of the Board of Directors, the chairman or, in his or her absence, another director selected by the Board of Directors shall preside. The secretary shall act as secretary at each meeting of the Board of Directors. If the secretary is absent from any meeting of the Board of Directors, an assistant secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the secretary and all assistant secretaries, the person presiding at the meeting may appoint any person to act as secretary of the meeting.

**Section 3.12 Quorum of Directors.** The presence of a majority of the Board of Directors shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

**Section 3.13 Action By Majority Vote.** Except as otherwise expressly required by these Bylaws, the Certificate of Incorporation, or by applicable law, the vote of not less than a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**Section 3.14 Action Without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if the number of directors or members of such committee, as the case may be, necessary to take such action at a meeting consent thereto in writing or by electronic transmission, and the writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee in accordance with applicable law.

**Section 3.15 Committees of the Board of Directors.** The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors

as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. If a member of a committee shall be absent from any meeting, or disqualified from voting thereat, the remaining member or members present at the meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may, by a unanimous vote, appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by applicable law, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it to the extent so authorized by the Board of Directors. Unless the Board of Directors provides otherwise, at all meetings of such committee, a majority of the then authorized members of the committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the committee present at any meeting at which there is a quorum shall be the act of the committee. Each committee shall keep regular minutes of its meetings. Unless the Board of Directors provides otherwise, each committee designated by the Board of Directors may make, alter and repeal rules and procedures for the conduct of its business. In the absence of such rules and procedures each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to this Article III.

#### **ARTICLE IV**

##### **OFFICERS**

**Section 4.01 Positions and Election.** The officers of the Corporation shall be elected by the Board of Directors and may include, amongst others, a president, a treasurer and a secretary. The Board of Directors, in its discretion, may also elect a chairman (who must be a director), one or more vice chairmen (who must be directors) and one or more vice presidents, assistant treasurers, assistant secretaries and other officers. Any individual may be elected to, and may hold, more than one office of the Corporation. Unless the Board of Directors decide otherwise, if the title assigned to an officer is one commonly used for officers of a business corporation formed under the General Corporation Law of the State of Delaware (the “**General Corporation Law**”), the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office.

**Section 4.02 Term.** Each officer of the Corporation shall hold office until such officer’s successor is elected and qualified or until such officer’s earlier death, resignation or removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors at any time with or without cause by the majority vote of the members of the Board of Directors then in office. The removal of an officer shall be without prejudice to his or her contract rights, if any. The election or appointment of an officer shall not of itself create contract rights. Any officer of the Corporation may resign at any time by giving written notice of his or her resignation to the president or the

secretary. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Should any vacancy occur among the officers, the position shall be filled for the unexpired portion of the term by appointment made by the Board of Directors.

**Section 4.03 Duties of Officers May be Delegated.** In case any officer is absent, or for any other reason that the Board of Directors may deem sufficient, the president or the Board of Directors may delegate for the time being the powers or duties of such officer to any other officer or to any director.

## **ARTICLE V**

### **STOCK CERTIFICATES AND THEIR TRANSFER**

**Section 5.01 Certificates Representing Shares.** Certificates for the Corporation's capital stock, if any, shall be in such form as required by law and as approved by the Board of Directors. Each certificate, if any, shall be signed in the name of the Corporation by the president or any vice president and by the secretary, the treasurer, any assistant secretary or any assistant treasurer. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who shall have signed or whose facsimile signature shall have been placed on any certificate shall have ceased to be such officer, transfer agent or registrar before the certificate shall be issued, the certificate may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

**Section 5.02 Transfers of Stock.** Stock of the Corporation shall be transferable in the manner prescribed by law and these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the holder of record thereof, by such person's attorney lawfully constituted in writing and, in the case of certificated shares, upon the surrender of the certificate thereof, which shall be cancelled before a new certificate or uncertificated shares shall be issued. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred. To the extent designated by the president or any vice president or the treasurer of the Corporation, the Corporation may recognize the transfer of fractional uncertificated shares, but shall not otherwise be required to recognize the transfer of fractional shares.

**Section 5.03 Transfer Agents and Registrars.** The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

**Section 5.04 Lost, Stolen or Destroyed Certificates.** The Board of Directors may direct a new certificate or uncertificated shares to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the owner of the allegedly lost, stolen or destroyed certificate. When authorizing such issue of a new certificate or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of the lost, stolen or destroyed certificate, or the owner's legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate or uncertificated shares.

## **ARTICLE VI**

### **INDEMNIFICATION**

**Section 6.01 Right to Advancement of Expenses.** In addition to the right of any stockholder or director, or any officer, manager, director, employee or agent of a director or stockholder, of the Corporation, and their affiliates, to indemnification conferred under the Certificate of Incorporation or any other agreement, vote of stockholders or disinterested directors or otherwise relating to the indemnification thereof, by reason of the fact that he is or was a stockholder, director, or officer, manager, director, employee or agent of a director or stockholder, of the Corporation, and their Affiliates, or is or was serving at the request of the Corporation as an officer, director, manager, employee or agent of the Corporation (an “**Indemnatee**”), an Indemnatee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”) in advance of its final disposition (an “**Advancement of Expenses**”); provided, however, an Advancement of Expenses incurred by an Indemnatee shall be made only upon receipt by the Company of the signed statement of such Indemnatee (hereinafter an “**Undertaking**”) agreeing to reimburse the Corporation for such advance in the event it is ultimately determined by final judicial decision from which there is no further right to appeal (hereinafter a “**Final Adjudication**”) that such Indemnatee is not entitled to be indemnified by the Corporation for such expenses and in such case any such Indemnatee shall reimburse the Corporation for such expenses previously paid to or on behalf of such Indemnatee.

**Section 6.02 Right of Indemnatee to Bring Suit.** If the Corporation lacks sufficient cash assets to indemnify the Indemnatee under Section 6.01 or otherwise under the Certificate of Incorporation, then the Indemnatee shall be entitled to reimbursement, with interest at the prime rate, when the Corporation has cash assets available

**Section 6.03 Non-Exclusivity of Rights.** The rights to the Advancement of Expenses conferred in this Article VI shall not be exclusive of any other right which any

person may have or hereafter acquire under any statute, the Certificate of Incorporation, or the Bylaws, any other agreement, vote of stockholders or directors, or otherwise.

**Section 6.04 Insurance.** The Corporation may purchase and maintain insurance on behalf of any Person that is or was a director, shareholder, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, shareholder, officer, employee or agent of another Person, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not he or she would be entitled to indemnity against such liability under the provisions of this Article VI, or the Certificate of Incorporation.

**Section 6.05 Indemnification of Employees and Agents of the Corporation.** The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to the Advancement of Expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VI with respect to the Advancement of Expenses under the provisions of this Article VI.

**Section 6.06 Nature of Rights.** The rights conferred upon Indemnitees in this Article VI shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a stockholder, officer or director and shall inure to the benefit of the Indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an Indemnitee or his heirs, executors or administrators, shall be prospective only and shall not limit or eliminate any such right with respect to any Proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

## **ARTICLE VII**

### **GENERAL PROVISIONS**

**Section 7.01 Seal.** The seal of the Corporation shall be in such form as shall be approved by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise, as may be prescribed by law or custom or by the Board of Directors.

**Section 7.02 Fiscal Year.** The fiscal year of the Corporation shall end on December 31 of each calendar year, unless otherwise determined by the Board of Directors.

**Section 7.03 Voting Shares in Other Corporations.** Unless otherwise directed by the Board of Directors, shares in other corporations which are held by the Corporation shall be represented and voted only by the president or by a proxy or proxies appointed by him or her.

**Section 7.04 Dividends.** Subject to applicable law and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting of the Board of Directors. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock, unless otherwise provided by applicable law or the Certificate of Incorporation.

**Section 7.05 Shareholders Agreement.** Notwithstanding anything to the contrary in these Bylaws, the terms and conditions of these Bylaws shall be subject to the terms and conditions of that certain Shareholders Agreement, dated [as of the date hereof] (as may be amended from time to time, the "**Shareholders Agreement**"), by and among the Corporation, Black Diamond CLO 2005-1 Ltd., BDCM Opportunity Fund II, LP, Spectrum Investment Partners, L.P. and the other parties signatory thereto.

## **ARTICLE VIII**

### **AMENDMENTS**

In each case subject to the Shareholders Agreement, (i) these Bylaws may be amended, altered, changed, adopted and repealed or new Bylaws adopted by the Board of Directors, and (ii) the stockholders may make additional Bylaws and may alter and repeal any Bylaws whether such Bylaws were originally adopted by them or otherwise.

**EXHIBIT F**

List of Executory Contracts and Unexpired Leases to Be Assumed

[TO COME]

**EXHIBIT G**Disclosure Concerning Identities of Individuals Associated with the  
Litigation Oversight Committee, Litigation Trust, and Reorganized Allied Holdings

Entity	Applicable Individual(s)
Litigation Oversight Committee	<u>Members designated by the First Lien Requisite Lenders</u>  Jeffrey Buller Samuel Goldfarb  <u>Member designated by the Committee</u>  Brad Berliner
Litigation Trustee	TBD
Plan Administrator	TBD
Officers and Directors of Reorganized Allied Holdings	<u>Board of Directors</u>  Jeffrey Buller Richard Ehrlich  <u>Officers</u>  TBD