

Richard M. Cieri (NY 4207122)
KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800

Michael A. Condyles (VA 27807)
Peter J. Barrett (VA 46179)
Ronald A. Page, Jr. (VA 71343)
KUTAK ROCK LLP
Bank of America Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219-3500
Telephone: (804) 644-1700

and

Anup Sathy, P.C. (IL 6230191)
Marc J. Carmel (IL 6272032)
KIRKLAND & ELLIS LLP
200 East Randolph Drive
Chicago, Illinois 60601-6636
Telephone: (312) 861-2000

Co-Counsel to the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:)	Case No. 07-33849
)	Jointly Administered
MOVIE GALLERY, INC., et al., ¹)	Chapter 11
)	Hon. Douglas O. Tice, Jr.
Debtors.)	

**NOTICE OF PLAN SUPPLEMENT: FORM OF THE
LITIGATION TRUST AGREEMENT**

PLEASE TAKE NOTICE THAT the above-captioned debtors (collectively, the “Debtors”) have filed with the Court the form of the Litigation Trust Agreement,² which is attached hereto as Exhibit A.³

¹ The Debtors in these proceedings are: Movie Gallery, Inc.; Hollywood Entertainment Corporation; M.G. Digital, LLC; M.G.A. Realty I, LLC; MG Automation LLC; and Movie Gallery US, LLC.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries under Chapter 11 of the Bankruptcy Code.

³ Exhibit A attached hereto, the form of the Amended and Restated First Amended Lien Credit Agreement, the form of the Amended and Restated Second Lien Credit Agreement and each of the other documents filed as part of the Plan Supplement are subject to continuing review and revision by the Debtors, the First Lien Agents, the First Lien Lenders, the Second Lien Agents, the Second Lien Lenders, Sopris and the Committee.



Richmond, Virginia
Dated: April 9, 2008

/s/ Marc J. Carmel

Richard M. Cieri (NY 4207122)
KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

and

Anup Sathy, P.C. (IL 6230191)
Marc J. Carmel (IL 6272032)
KIRKLAND & ELLIS LLP
200 East Randolph Drive
Chicago, Illinois 60601-6636
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

and

Michael A. Condyles (VA 27807)
Peter J. Barrett (VA 46179)
Ronald A. Page, Jr. (VA 71343)
KUTAK ROCK LLP
Bank of America Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219-3500
Telephone: (804) 644-1700
Facsimile: (804) 783-6192

Co-Counsel to the Debtors

EXHIBIT A

LITIGATION TRUST AGREEMENT

AND

DECLARATION OF TRUST

By and Among

**Movie Gallery, Inc.; Hollywood Entertainment Corporation; M.G. Digital, LLC,
M.G.A. Realty I, LLC; MG Automation LLC; and Movie Gallery US, LLC,**

Debtors

and

William Kaye,

as Litigation Trustee

Dated

April __, 2008

This Litigation Trust Agreement and Declaration of Trust (the “**Agreement**”) is entered into as of April __, 2008, and shall be effective as of the Effective Date of the “Second Amended Plan of Reorganization of Movie Gallery, Inc. and its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code” (together with any and all amendments thereto, all Exhibits and schedules thereto and all documents incorporated by reference therein (as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof)) (the “**Plan**”), by and among:

(i) Movie Gallery, Inc., Hollywood Entertainment Corporation, M.G. Digital, LLC, M.G.A. Realty I, LLC, MG Automation LLC and Movie Gallery US, LLC, as debtors and debtors in possession in the Chapter 11 Cases and on behalf of the Estates (“**Movie Gallery**” or the “**Debtors**”), as transferors; and

(ii) William Kaye, not in his individual capacity but solely in his capacity as trustee under this Agreement, or such other party as the Litigation Trust Committee, subject to Section 3.7 hereof, may appoint from time to time, as trustee of the MG Litigation Trust (the “**Litigation Trustee**”).

This Agreement is entered into pursuant to the Plan.

RECITALS

A. On the Commencement Date, the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. On October 18, 2007, the United States Trustee appointed the Committee. The members of the Committee presently are: Paramount Home Entertainment; The Inland Real Estate Group of Companies, Inc.; Southern Development of Mississippi; U.S. Bank N.A., as Indenture Trustee for the 11% Senior Notes; Coca-Cola Bottling Companies; Twentieth Century Fox Home Entertainment; and Universal Studios Home Entertainment.

C. On April __, 2008, the Bankruptcy Court entered the Confirmation Order. Copies of the Plan and the Confirmation Order are attached hereto as **Exhibits “A” and “B,”** respectively, and the Plan and the Confirmation Order are incorporated into this Agreement by this reference.

D. **Article V.W.** of the Plan provides for the creation of the MG Litigation Trust and the irrevocable transfer and assignment to the MG Litigation Trust of the Litigation Trust Assets.

E. The MG Litigation Trust is established for the benefit of the Beneficiaries (as defined in **Section 1.6** hereof) and is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d).

F. The primary purpose of the MG Litigation Trust is to (i) receive and maintain the Litigation Trust Assets for the benefit of the Beneficiaries, (ii) oversee and direct the orderly liquidation of the Litigation Trust Assets for the benefit of the Beneficiaries, and (iii) distribute

the Litigation Trust Assets to the Beneficiaries pursuant to the terms of the Plan, the Confirmation Order and this Agreement. The MG Litigation Trust will be administered consistent with the liquidating purpose of the MG Litigation Trust, and with no objective to continue or to engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve the value of the Litigation Trust Assets.

G. Pursuant to the Plan and the Confirmation Order, the Litigation Trustee was duly appointed as a representative of the Estates pursuant to section 1123(a)(5), (a)(7), and (b)(3)(B) of the Bankruptcy Code.

H. The MG Litigation Trust is intended to qualify as a “grantor trust” for federal income tax purposes and the Litigation Trustee shall administer and maintain the MG Litigation Trust in compliance with the guidelines for liquidating trusts as set forth in Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Section 1.671-4(a) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service (the “**IRS**”). That portion of the MG Litigation Trust that consists of the Disputed Claims Fund is intended to qualify as a “disputed ownership fund” pursuant to Treasury Regulations section 1.468B-9 and shall be administered consistent with such Treasury Regulation.

I. The Debtors have delivered to the Litigation Trustee a list setting forth the Holders of filed Claims and/or Claims included in the Debtors’ Schedules that are classified in Classes 6 and 7A, 7B and 7E, together with the respective amount and the status of each such Holder's Claims.

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

SECTION 1.
ORGANIZATION; ESTABLISHMENT
OF THE MG LITIGATION TRUST

1.1 Definitions

1.1.1 Defined Terms. Unless otherwise stated herein, capitalized terms used in this Agreement shall have the meanings assigned to them in the Plan. Terms defined in the Bankruptcy Code, and not otherwise specifically defined in the Plan or herein, when used herein, have the meanings attributed to them in the Bankruptcy Code.

1.1.2 Additional Defined Terms. As used herein, the following terms shall have the meanings set forth below, unless the context otherwise requires:

1.1.2.1 “Agreement” shall have the meaning set forth in the introductory paragraph hereof.

1.1.2.2 “Beneficiary” means the Holder of a MG Litigation Trust Interest.

1.1.2.3 “Commencement Date” means October 16, 2007, the date on which the Debtors commenced the chapter 11 cases.

1.1.2.4 “Committee” shall mean the Official Committee of Unsecured Creditors of the Debtors appointed by the United States Trustee in the chapter 11 cases on October 18, 2007, pursuant to Section 1102 of the Bankruptcy Code, comprising the committee members as reconstituted from time to time.

1.1.2.5 “Confidential Information” shall have the meaning set forth in Section 11.15.

1.1.2.6 “Covered Person” shall have the meaning set forth in Section 11.15.

1.1.2.7 “Debtors” shall have the meaning set forth in the introductory paragraph of this Agreement.

1.1.2.8 “Designated Litigation Trustee” shall have the meaning set forth in Section 4.3.

1.1.2.9 “Disputed Claims Fund” shall have the meaning set forth in Section 4.4.8.2.

1.1.2.10 “Disputed Unsecured Claim Reserve” shall have the meaning set forth in Section 5.1.2.

1.1.2.11 “Distribution Amount” shall have the meaning set forth in Section 5.2.4.

1.1.2.12 “Distribution Date” means each date on which a distribution is made by the Litigation Trustee to Beneficiaries pursuant to the terms of the Plan, the Confirmation Order and this Agreement.

1.1.2.13 “Entity” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

1.1.2.14 “Exchange Act” shall have the meaning set forth in Section 2.4.

1.1.2.15 “Expenses” shall have the meaning set forth in Section 5.1.1.1.

1.1.2.16 “Extended Trust Termination Date” shall have the meaning set forth in Section 7.1.

1.1.2.17 “Final Decree” shall have the meaning set forth in Section 6.1.2.

1.1.2.18 “Final Distribution Date” means the day on which the final Distribution is made.

1.1.2.19 “Final Report” shall have the meaning set forth in Section 4.9.1.

1.1.2.20 “Holder” means, depending on the context, any Entity holding a Claim in the case, or any Entity holding a MG Litigation Trust Interest.

1.1.2.21 “Indemnified Person” shall have the meaning set forth in Section 8.1.1.

1.1.2.22 “Initial Trust Termination Date” shall mean a date that is the fifth anniversary of the Effective Date.

1.1.2.23 “Interim Trustee” shall have the meaning set forth in Section 3.7.2.4.

1.1.2.24 “IRS” shall have the meaning set forth in Section 4.4.4.

1.1.2.25 “Investment Company Act” shall have the meaning set forth in Section 2.4.

1.1.2.26 “Litigation Fund” shall have the meaning set forth in Section 3.6.2.

1.1.2.27 “Litigation Trust Assets” shall consist of (a) any and all Causes of Action of the Debtors, including Causes of Action arising under Chapter 5 of the Bankruptcy Code, against Entities with whom the Reorganized Debtors are no longer doing business (as determined by the Litigation Trustee, subject to the good faith consent of Sopris), unless otherwise agreed by Sopris; and (b) all of the Debtors’ claims against the Non-Released Parties; provided, however, that the Litigation Trustee shall not pursue any claims that have been released pursuant to the Plan, including pursuant to Article X of the Plan or in accordance with any Accommodation Agreement.

1.1.2.28 “Litigation Trust Committee” shall mean the three (3) person committee appointed in accordance with the Plan and this Agreement to exercise the duties set forth in Section 6.

1.1.2.29 “Litigation Trust Recovery Proceeds” shall mean the proceeds of the Litigation Trust Assets recovered by the Litigation Trust, net of direct expenses of the recovery thereof (*e.g.*, the fees, expenses and costs of the subject litigation and collection).

1.1.2.30 “Movie Gallery” shall have the meaning set forth in the introductory paragraph of this Agreement.

1.1.2.31 “MG Litigation Trust” shall mean the litigation trust pursuant to this Agreement in accordance with the Plan.

1.1.2.32 “MG Litigation Trust Interest” shall have the meaning set forth in Section 2.1.2.

1.1.2.33 “Plan Administrator” shall mean the Plan Administrator appointed pursuant to the Plan Administrator Agreement entered into on the Effective Date of the Plan and any successor.

1.1.2.34 “Post Effective Date Plan Expenses” shall have the meaning set forth in Section 5.1.1.1.

1.1.2.35 “Post Effective Date Plan Reserve” shall have the meaning set forth in Section 5.1.1.

1.1.2.36 “Post Effective Date Service List” shall have the meaning set forth in Section 11.2.

1.1.2.37 “Privileges” shall have the meaning set forth in Section 1.10.

1.1.2.38 “Register” shall have the meaning set forth in Section 2.2.1.

1.1.2.39 “SEC” shall have the meaning set forth in Section 2.4.

1.1.2.40 “Sopris” shall mean Sopris Capital Advisors LLC.

1.1.2.41 “Securities Act” shall have the meaning set forth in Section 2.4.

1.1.2.42 “Transfer” shall have the meaning set forth in Section 2.6.2.

Rules of Interpretation

For purposes of this Plan: (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) “includes” and “including” are not limiting; (c) “may not” is prohibitive, and not permissive; and (d) “or” is not exclusive.

1.2 Name

The MG Litigation Trust shall be known as the “MG Litigation Trust,” in which name the Litigation Trustee may conduct the affairs of the MG Litigation Trust.

1.3 Office

The office of the MG Litigation Trust shall be in care of the Litigation Trustee at the name and address set forth in **Section 11.1** or at any other address that the Litigation Trustee may designate by written notice to the Post Effective Date Service List.

1.4 Incorporation of Plan and Confirmation Order

The Plan and Confirmation Order attached hereto as **Exhibit A** and **Exhibit B**, respectively, are incorporated into this Agreement. In the event of any conflict between the Plan and the Confirmation Order, on the one hand, and this Agreement, on the other, the Plan and Confirmation Order will govern.

1.5 Declaration and Establishment of the MG Litigation Trust

For good and valuable consideration, the receipt of which is hereby acknowledged by the

undersigned, and pursuant to the Plan and the Confirmation Order, the Debtors, on behalf of themselves and the Estates, execute this Agreement and, pursuant to the Plan, the Confirmation Order and this Agreement, hereby establish the MG Litigation Trust and irrevocably transfer, absolutely grant, assign, convey, set over and deliver to the Litigation Trustee, pursuant to the Plan, all of their right, title and interest in and to the Litigation Trust Assets to be held in trust to and for the benefit of the Beneficiaries for the uses and purposes stated herein and in the Plan. The Litigation Trustee hereby agrees to accept and hold the Litigation Trust Assets in trust for the Beneficiaries subject to the terms of the Plan and this Agreement. The Litigation Trustee shall have all the rights, powers and duties set forth in the Plan and this Agreement and available under applicable law for accomplishing the purposes of the MG Litigation Trust. The Litigation Trustee is hereby authorized to file with the governmental authorities (including the State of New York) any documents necessary or helpful to establish the MG Litigation Trust.

1.6 MG Litigation Trust

1.6.1 Beneficiaries. The MG Litigation Trust is organized and established as a trust for the benefit of the Beneficiaries (including without limitation, Sopris as the acquirer of beneficial interests in the Litigation Trust pursuant to the Cash-Out Election) and is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d). In accordance with Treasury Regulation Section 301.7701-4(d), the beneficiaries of the MG Litigation Trust are the Holders of Allowed Claims in Classes 6 and 7A, 7B and 7E (the “**Beneficiaries**”). The Holders of Allowed Claims in Classes 6 and 7A, 7B and 7E (including without limitation, Sopris as the acquirer of beneficial interests in the Litigation Trust pursuant to the Cash-Out Election) shall be entitled to Distributions from the MG Litigation Trust from the Litigation Trust Recovery Proceeds, which Distributions shall be as set forth in the Plan.

1.6.2 Purpose. The primary purpose of the MG Litigation Trust is to (i) receive and prosecute the Litigation Trust Assets for the benefit of the Beneficiaries, (ii) oversee and direct the liquidation of the Litigation Trust Assets for the benefit of the Beneficiaries and (iii) distribute the Litigation Recovery Proceeds to the Reorganized Debtors for the benefit of the Beneficiaries pursuant to the terms of the Plan, the Confirmation Order and this Agreement. The MG Litigation Trust will be administered consistent with the purpose of the MG Litigation Trust, and with no objective to continue or to 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 MG Litigation Trust.

1.7 Title to Litigation Trust Assets

From and after the Effective Date of the Plan, pursuant to, and at such times set forth in, the Plan, title to and all rights and interests in the Litigation Trust Assets shall be transferred to the MG Litigation Trust free and clear of all liens, Claims, encumbrances or interests of any kind in such property of any other Entity (including all liens, Claims, encumbrances or interests of creditors of, or Holders of Claims against or Interests in, the Debtors) in accordance with Sections 1123, 1141 and 1146(a) of the Bankruptcy Code, except as otherwise expressly provided for in the Plan, and the Litigation Trustee, on behalf of the MG Litigation Trust, shall receive the Litigation Trust Assets when they are transferred to the MG Litigation Trust under the Plan. The transfer of Litigation Trust Assets to the MG Litigation Trust by the Debtors is

made for the benefit and on behalf of the Beneficiaries. Upon the transfer of the Litigation Trust Assets, the Litigation Trustee succeeds to all of the Debtors' and the Estates' right, title and interest in and to the Litigation Trust Assets and the Debtors and the Estate will have no further right or interest in or with respect to the Litigation Trust Assets or the MG Litigation Trust.

1.8 Reporting Of Transfer Of Litigation Trust Assets

Subject to Section 4.1(g) hereof. for United States federal and applicable state income tax purposes, the transfer of the Litigation Trust Assets to the MG Litigation Trust pursuant to, and in accordance with, the Plan shall be deemed to be, and shall be reported as, a disposition of the Litigation Trust Assets directly to, and for the benefit of, the Beneficiaries, for all purposes of the Internal Revenue Code (including, but not limited to, sections 61(a)(12), 483, 1001, 1012 and 1274 of the Internal Revenue Code), as provided for in the Plan in consideration of the Allowed Claims held by such Beneficiaries, immediately followed by a contribution of the Litigation Trust Assets by the Beneficiaries to the MG Litigation Trust in exchange for the MG Litigation Trust Interests of the Beneficiaries. Upon the transfer of the Litigation Trust Assets to the MG Litigation Trust, neither the Debtors nor the Estate will have any further interest in or with respect to the Litigation Trust Assets or the MG Litigation Trust. The Beneficiaries will be treated as the grantors and deemed owners of the MG Litigation Trust for federal and applicable state income tax purposes.

1.9 Reservation of Bankruptcy Rights

To the fullest extent permitted by law, and without excluding or limiting other rights transferred to the MG Litigation Trust, all of the Debtors' and the Estates' rights under the Bankruptcy Code are preserved for the benefit of the MG Litigation Trust and its Beneficiaries, and may be exercised by the Litigation Trustee subject to the provisions hereof and applicable non-bankruptcy law.

1.10 Preservation of Privileges

To the fullest extent permitted by law, the Debtors will be deemed to irrevocably transfer to the Litigation Trustee, as their legal successor, all rights of the Debtors and the Estates (including the Estates after the Confirmation Date) to exercise or waive the Debtors' attorney-client privilege, accountant-client privilege, work-product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) held by the Debtors solely with respect to the Litigation Trust Assets (collectively, the "Privileges"), and the Debtors and the Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of the Privileges. All such Privileges also shall vest in the MG Litigation Trust and its representatives, to the fullest extent permitted by law. This transfer is self-executing, provided however, that the Litigation Trustee and the Debtors are authorized and directed to take any and all necessary actions to effectuate the transfer of such Privileges. After the Effective Date, the Litigation Trustee (in consultation with the Litigation Trust Committee) shall have the exclusive power and authority to waive the Privileges, provided, however, that the Litigation Trustee may effectuate such a voluntary waiver only upon the prior written consent of the Reorganized Debtors and such consent shall not be unreasonably withheld or delayed, and with respect to any involuntary waiver of any Privileges, the Litigation Trustee shall take any corrective actions

reasonably requested by the Reorganized Debtors.

1.11 No Assumption of Liabilities

The Litigation Trustee, on behalf of the MG Litigation Trust, shall receive the Litigation Trust Assets and agrees that all Litigation Trust Assets are being transferred, assigned and conveyed to the MG Litigation Trust free and clear of all liens, Claims, encumbrances or interests of creditors of, or Holders of Claims against or Interests in, the Debtors.

1.12 Appointment of and Acceptance by Litigation Trustee

William Kaye is hereby appointed as the Litigation Trustee, as of the Effective Date, provided that if William Kaye shall be unable to accept the position of Litigation Trustee, the Litigation Trust Committee may appoint a replacement Litigation Trustee, subject to confirmation of such appointment by the Bankruptcy Court. By his signature below, William Kaye accepts and confirms the appointment, transfer of Litigation Trust Assets, and obligations and duties imposed on him by this Agreement. The Litigation Trustee agrees to receive, hold, administer and distribute the Litigation Trust Assets and income derived therefrom, and to meet his duties as Litigation Trustee, all pursuant to the terms of the Plan, the Confirmation Order and this Agreement.

1.13 Valuation of Litigation Trust Assets

As soon as practicable after the Effective Date, but in no event later than 180 days after the Effective Date, and thereafter as may be required, the Litigation Trustee shall, if reasonably deemed necessary or desirable by the Litigation Trustee (in consultation with the Litigation Trust Committee) make a good faith valuation of the Litigation Trust Assets, or cause a good faith valuation of the Litigation Trust Assets to be made by such professionals as the Litigation Trustee may, in his sole discretion, retain for such purposes, and the Litigation Trustee shall, upon written request, make available, through means adopted by the Litigation Trustee in his sole and absolute discretion, to the Beneficiaries the general results of such valuation. Such general results of the valuation shall be made available from time to time, to the extent relevant as reasonably determined by the Litigation Trustee in reliance on his professionals, and shall be used consistently by all parties (including the Debtors, the Litigation Trustee and the Beneficiaries) for all federal and applicable state income tax purposes. Notwithstanding the foregoing, any such valuation shall not be binding upon the Litigation Trustee for any purpose other than federal and state income taxes.

SECTION 2. **BENEFICIARIES**

2.1 Identification of Beneficiaries; Allocation of Interests

2.1.1 Trust Beneficiaries. In accordance with the Plan, the Beneficiaries of the Litigation Trust shall be the parties identified as the Beneficiaries in Section 1.6 of this Agreement.

2.1.2 Allocation of Interests. In accordance with the Plan, each Holder of an Allowed Claim in Classes 6, 7A, 7B and 7E shall receive an uncertificated interest in the MG Litigation Trust (the “MG Litigation Trust Interest”) in the MG Litigation Trust (and which shall include any underlying or related economic or other interest within or as a part thereof), which MG Litigation Trust Interest solely shall entitle the holder thereof to the Distributions from the Litigation Trust Assets as provided for herein and in the Plan.

2.1.3 Interests Beneficial Only. The ownership of a MG Litigation Trust Interest shall not entitle any Beneficiary to any title in or to the Litigation Trust Assets (which title shall be vested in the Litigation Trustee) or to any right to call for a partition or division of the Litigation Trust Assets or to require an accounting or make any investment decision with respect to or in respect of the Litigation Trust Assets.

2.2 Register

2.2.1 Names and Addresses. The Litigation Trustee shall cause to be kept a register (the “Register”) in which the Litigation Trustee shall at all times maintain the names and addresses of the Holders of MG Litigation Trust Interests, whether they are allowed or disputed, and the respective interests of the Beneficiaries as allocated under Section 2.1.2 of this Agreement. The Register shall be adjusted as Disputed Claims are determined to be Allowed Claims or are disallowed. The Litigation Trustee may rely upon this Register for the purposes of delivering Distributions or notices. In preparing and maintaining this Register, the Litigation Trustee may rely on the name and address of each holder of a Claim as indicated on the Reorganized Debtors’ records as of the date of any such distribution, unless (i) a different name and/or address is set forth in a proof of claim filed by such Holder, or (ii) proper notice of a name or address change has been delivered by such Beneficiary to the Litigation Trustee in accordance with the Plan and Section 11.1 hereof.

2.2.2 Access to the Register by the Beneficiaries. Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Litigation Trustee, and in accordance with the reasonable regulations prescribed by the Litigation Trustee, to inspect and make copies of the Register, in each case for a purpose reasonably related to such Beneficiary's MG Litigation Trust Interest.

2.2.3 Absolute Owners. Except as provided herein, the Litigation Trustee may deem and treat the Beneficiary of record in the Register as the absolute owner of such MG Litigation Trust Interests for the purpose of receiving Distributions and payment thereon or on account thereof and for all other purposes whatsoever and the Litigation Trustee shall not be charged with having received notice of any claim or demand to such MG Litigation Trust Interests or the interest therein of any other Entity.

2.3 Evidence of MG Litigation Trust Interests

The MG Litigation Trust Interests shall be represented by book entries on the books and records of the MG Litigation Trust.

2.4 Securities Law Registration

To the extent the MG Litigation Trust Interests (or any underlying economic or other interest or part thereof) are deemed to be “securities,” the issuance of (i) MG Litigation Trust Interests to Holders of Allowed Class 6, 7A, 7B and 7E Claims under the Plan (including without limitation MG Litigation Trust Interests acquired by Sopris pursuant to the Cash-Out Election) shall be exempt, pursuant to Section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended (the “Securities Act”) and any applicable state and local laws requiring registration of securities. If the Litigation Trustee determines, with the advice of counsel, that the MG Litigation Trust is required to comply with registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or the Investment Company Act of 1940, as amended (the “Investment Company Act”), then the Litigation Trustee shall, after consultation with the Litigation Trust Committee, take any and all actions to comply with such registration and reporting requirements, if any, and file periodic reports with the Securities and Exchange Commission (the “SEC”), after the filing of a motion with the Bankruptcy Court seeking approval to do so, upon notice and opportunity for a hearing provided to the Post Effective Date Service List, and the entry of a Final Order of the Bankruptcy Court so directing. Notwithstanding the foregoing procedure, if the Litigation Trustee determines, with the advice of counsel, that the MG Litigation Trust is required to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act, then prior to the registration of the Liquidating Trust under the Exchange Act or the Investment Company Act, the Litigation Trustee or the Litigation Trust Committee shall seek to amend this Agreement to make such changes as are deemed necessary or appropriate to ensure that the MG Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act, and this Agreement, as so amended, shall be effective after notice and opportunity for a hearing provided to the Post Effective Date Service List, and the entry of a Final Order of the Bankruptcy Court. If the Agreement, as so amended, is not approved by Final Order of the Bankruptcy Court or the Bankruptcy Court otherwise determines in a Final Order that registration under one or both of the Exchange Act or Investment Company Act is required, then the Litigation Trustee shall take such actions as may be required to satisfy the registration and reporting requirements of the Exchange Act and/or the Investment Company Act, as applicable.

2.5 Rights of Beneficiaries

Each Beneficiary will be entitled to participate in the rights due to a Beneficiary hereunder and under the Plan. Each Beneficiary shall take and hold its uncertificated MG Litigation Trust Interest subject to all of the terms and provisions of this Agreement and the Plan and the Confirmation Order. The beneficial interest of a Beneficiary of the MG Litigation Trust is in all respects personal property, and upon the death, insolvency or incapacity of an individual Beneficiary, such Beneficiary's interest shall pass to the legal representative of such Beneficiary and such death, insolvency or incapacity shall not terminate or affect the validity of this Agreement. A Beneficiary shall have no title to, right to, possession of, management of, or control of the Litigation Trust Assets, or any right to call for a partition or division of the Litigation Trust Assets, or to require an accounting, or any standing to direct the Litigation Trustee to do or not to do any act or to institute any action or proceeding upon or with respect to the Litigation Trust Assets, except as expressly provided in this Agreement, the Plan and the

Confirmation Order. Title to all the Litigation Trust Assets shall be vested in the Litigation Trustee, and the sole interest of the Beneficiaries shall be the rights and benefits given to such Entities under this Agreement and the Plan.

2.6 Limit on Transfer of Interests of Beneficiaries

2.6.1

(a) The MG Litigation Trust Interest (including any economic or other interest or part thereof) of a Beneficiary shall not be transferable, provided, however, subject to the limitations set forth herein and in Sections 2.6.2 and 2.6.3, a Beneficiary may transfer its MG Litigation Trust Interest by gift or sale, or upon death or permanent incapacity, to such person's guardian, conservator, executor, administrator, trustees, or beneficiaries of such person's will, spouse, children, stepchildren, grandchildren, parents, siblings or legal dependants, to a trust of which the beneficiary or beneficiaries of the corpus and the income shall be such a person or persons or the Beneficiary, to a partnership of which the partners shall be such a person or persons or the Beneficiary, and to its partners, members, shareholders or other equity owners. Any of the foregoing permitted transfers may only be affected if (i) the transferee agrees to become a party to this Agreement and (ii) such transfer is exempt from the registration provisions of the Securities Act of 1933, as amended, if applicable or from the qualification provisions of any state securities law, if applicable.

(b) The Litigation Trustee need not reflect any transfer (or make any Distribution to any transferee) and will give notice to such Beneficiary that no transfer has been recognized in the event the Litigation Trustee reasonably believes that such transfers (or the Distribution to such transferee) may constitute a violation of applicable laws or might cause the MG Litigation Trust to be required to register MG Litigation Trust Interests under the Exchange Act.

2.6.2

Prior to any transfer, assignment, hypothecation, pledge, exchange or conveyance of any MG Litigation Trust Interest (including any economic or other interest or part thereof) pursuant to Section 2.6.1(a) (each, a "Transfer"), the transferring Beneficiary shall submit to the Litigation Trustee a duly endorsed assignment of the MG Litigation Trust Interest to be transferred (in a form reasonably acceptable to the Litigation Trustee) together with the service charge, if any, to be specified by the Litigation Trustee pursuant to subsection 2.6.3. No such Transfer shall be effected until, and the transferee shall succeed to the rights of a Beneficiary only upon, final acceptance and registration of the Transfer by the Litigation Trustee in the Register. No transfer, assignment, pledge, hypothecation or other disposition of a MG Litigation Trust Interest may be effected until either (i) the Litigation Trustee and the Litigation Trust Committee have received such legal advice or other information that they, in their sole discretion, deem necessary or appropriate to assure that any such disposition shall not require the MG Litigation Trust to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act or (ii) the Litigation Trustee and the Litigation Trust Committee have determined 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 Trust

Committee and the Litigation Trustee may add such restrictions upon transfer and other terms to this 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.

2.6.3

Prior to the registration of any Transfer by a Beneficiary, the Litigation Trustee shall (i) treat the Entity in whose name the MG Litigation Trust Interest is registered as the owner for all purposes, and the Litigation Trustee shall not be affected by notice to the contrary, and (ii) not be liable for making any Distribution to the transferring Beneficiary. When a request to register the Transfer of an MG Litigation Trust Interest is presented to the Litigation Trustee, the Litigation Trustee shall register the Transfer as requested if the requirements for Transfers hereunder are met. The Litigation Trustee shall charge a service charge in an amount sufficient to cover the expenses of the Litigation Trustee and his agents and any tax or governmental charge that may be imposed on any Transfer of a MG Litigation Trust Interest. Failure of any Beneficiary to comply with these provisions shall void any Transfer of the related MG Litigation Trust Interest, and the proposed transferee shall have no rights under this Agreement. Upon the Transfer of a transferring Beneficiary's entire MG Litigation Trust Interest as evidenced by the Register, such transferring Beneficiary shall have no further interest in the Litigation Trust Assets or the MG Litigation Trust.

2.7 No Legal Title in Beneficiaries

No Beneficiary shall have legal title to any part of the Litigation Trust Assets. No transfer by operation of law or otherwise, of the interest of any Beneficiary in and to the Litigation Trust Assets or the MG Litigation Trust shall operate to terminate this MG Litigation Trust or entitle any successor or transferee of such Beneficiary to an accounting or to the transfer to it of legal title to any part of the Litigation Trust Assets.

SECTION 3. **THE LITIGATION TRUSTEE**

3.1 Litigation Trustee — Generally

3.1.1

The Litigation Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the MG Litigation Trust as set forth in the Plan and the Confirmation Order. The Litigation Trustee may pay Post Effective Date Plan Expenses (as defined in Section 5.1.1.1 hereof, including his reasonable fees and expenses) from the Litigation Fund or Litigation Trust Recovery Proceeds.

3.1.2

The provisions of this Agreement relating to the MG Litigation Trust are intended to create a trust and a trust relationship and are to be governed and construed in all respects as a trust. The MG 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 nor the 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 ventures. The relationship of the Beneficiaries to the MG Litigation Trust and the Litigation Trustee shall be solely that of beneficiaries of a trust and its trustee and shall not be deemed a principal and agency relationship, and the rights of the Beneficiaries shall be limited to those expressly conferred upon them by this Agreement.

3.2 Manner of Acting

The Litigation Trustee shall manage and oversee the liquidation of the Litigation Trust Assets in good faith and in a cost-effective manner in a reasonable time, with due regard for the risk that undue haste may minimize the liquidation proceeds of a particular Litigation Trust Asset. The Litigation Trustee shall make continuing efforts to liquidate the Litigation Trust Assets, make timely Distributions and not unduly prolong the duration of the Liquidating Trust. In overseeing the liquidation of the Litigation Trust Assets, or otherwise monetizing them, the Litigation Trustee shall use his best efforts to maximize the amount of the net proceeds derived therefrom. The liquidation of the Litigation Trust Assets may be accomplished in part through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or Causes of Action, subject to the terms of the Plan and this Agreement. Any and all proceeds generated from such Litigation Trust Assets shall be held and used or distributed by the Litigation Trustee. The Litigation Trustee may incur any reasonable and necessary expenses in liquidating the Litigation Trust Assets, as set forth herein.

3.3 Status of Litigation Trustee

Except as to any claims of the Debtors released under the Plan, the Litigation Trustee shall be the representative of the Estates from and after the Effective Date within the meaning of Section 1123(b)(3)(B) of the Bankruptcy Code for purposes of administering, investigating, litigating and settling the Litigation Trust Assets, and with respect thereto shall have all the rights and powers of the Debtors and the Estates as provided for in the Bankruptcy Code with respect to the MG Litigation Trust and the Litigation Trust Assets in addition to any rights and powers granted in this Agreement and in the Plan. The Litigation Trustee shall be a party in interest as to all matters relating to the MG Litigation Trust over which the Bankruptcy Court has jurisdiction.

3.4 Litigation Trust Committee

The Litigation Trustee shall, where required by this Agreement, consult with and receive approval from the Litigation Trust Committee.

3.5 Litigation Claims

3.5.1

Except as to any Causes of Action of the Debtors released under the Plan, the Litigation Trustee shall be the successor-in-interest to the Debtors and the Estates with respect to any Litigation Trust Asset that was or could have been pursued by the Debtors or the Estates prior to the Effective Date, or thereafter, until the MG Litigation Trust disposes of them. All

such Litigation Trust Assets shall be retained and pursued and enforced by the Litigation Trustee pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code and the terms of the Plan.

3.5.2

The Litigation Trustee shall have sole discretion to pursue or not to pursue any and all Litigation Trust Assets, as he determines to be in the best interests of the Beneficiaries and consistent with the purposes of the MG Litigation Trust, and shall have no liability for the outcome of his decision. With respect to any Litigation Trust Asset, the MG Litigation Trust and the Litigation Trustee shall be bound by, and shall give effect to, any release, exculpation, waiver, estoppel or injunction provided by the Plan or the Confirmation Order.

3.6 Compensation and Reimbursement of Litigation Trustee and Professionals

3.6.1 The Litigation Trustee shall be compensated for services in the administration of the MG Litigation Trust from the Litigation Fund or the Litigation Trust Recovery Proceeds as follows:

3.6.2 Litigation Fund. On the Effective Date, the Reorganized Debtors will deposit with the Litigation Trust an amount in Cash equal to \$300,000 (the "Litigation Fund") to fund the expenses of the Litigation Trust, provided that the Litigation Trust Committee may request to borrow from the Reorganized Debtors up to an additional \$300,000 to supplement the Litigation Fund. Sopris shall have sole discretion to determine whether such additional funds, if requested by the Litigation Trustee, shall be paid. Such amount, if paid, shall be repaid to the Reorganized Debtors from future Litigation Trust Recovery Proceeds.

(a) Monthly Fee. Commencing on the Effective Date of the Plan, the Litigation Trustee shall receive:

- (i) \$20,000 per month for months 1 to 9;
- (ii) \$ 15,000 per month for months 10 to 18; and
- (iii) \$ 10,000 per month for month 19 through the dissolution of the

Litigation Trust; and

(b) Success Fee. Commencing on the Effective Date of the Plan, the Litigation Trustee shall receive ten percent (10%) of the Litigation Trust Recovery Proceeds obtained by the Litigation Trust in connection with any litigated Litigation Trust Asset, such amount to be paid from such Litigation Trust Recovery Proceeds received on account of the respective litigated matter as soon as available therefrom; provided, however, that any success fee payable pursuant to this section 3.6.2(b) of this Agreement shall be reduced by ten percent (10%) of the monthly fees that: (i) pursuant to section 3.6.2(a) hereof, have been paid or are payable to the Litigation Trustee as of the first date such Success Fee could be paid to the Litigation Trustee; and (ii) have not already been utilized in calculating a reduction to a success fee payable under this section 3.6.2(b) of this Agreement.

3.6.3 The Litigation Trustee's compensation will be paid monthly.

3.6.4 Any professional or any Entity retained by the Litigation Trustee pursuant to the Plan will be entitled to reasonable compensation for services rendered at a rate reflecting actual

time billed by such professional or Entity on an hourly basis, at the standard billing rates in effect at the time of service, or such other rate or basis of compensation, including but not limited to a contingent fee that is reasonable and agreed upon by the Litigation Trustee. Any professional retained by the Litigation Trustee shall be paid only from the Litigation Fund or Litigation Trust Recovery Proceeds, provided that fees incurred by a professional retained on a contingent fee basis shall be paid only from the Litigation Trust Recovery Proceeds received on account of the litigation for which such professional was retained.

3.6.5 Any and all reasonable and necessary costs and expenses incurred by the Litigation Trustee and any professional or other Entity retained by the Litigation Trustee in performing their respective duties under this Agreement will be paid by the Litigation Trustee from the Litigation Fund or the Litigation Trust Recovery Proceeds.

3.7 Tenure, Removal, and Replacement of the Litigation Trustee

3.7.1 The appointment and authority of the Litigation Trustee will be effective as of the Effective Date and will remain and continue in full force and effect until the termination of the MG Litigation Trust as provided for in Section 7.1.

3.7.2 The service of the Litigation Trustee will be subject to the following:

3.7.2.1 The Litigation Trustee will serve until death, resignation pursuant to subsection (a) below, or removal pursuant to subsection (b) below:

(a) The Litigation Trustee may resign upon not less than 60 days' prior written notice to the Litigation Trust Committee, provided that no such resignation will be effective until a successor Litigation Trustee has been appointed and approved in accordance with this Section 3.7 and such successor Litigation Trustee has accepted such appointment in accordance with Section 3.9 hereof. If a successor Litigation Trustee is not appointed or does not accept his appointment within ninety (90) days following delivery of a written notice of resignation, the resigning Litigation Trustee may file a motion with the Bankruptcy Court, upon notice and hearing to the Post Effective Date Service List, for the appointment of a successor Litigation Trustee. Immediately upon the effectiveness of such person's resignation, the resigning Litigation Trustee shall file an interim report comparable to the Final Report described in Section 4.9 but for the period of such person's service. Upon the resignation of the Litigation Trustee and the appointment and acceptance of a successor, the resigning Litigation Trustee, if applicable, will convey, transfer, and set over to the successor Litigation Trustee by appropriate instrument or instruments all of the funds, if any, then un conveyed or otherwise undisposed of and all other assets then in the resigning Litigation Trustee's possession and held under this Agreement.

(b) The Litigation Trustee may be removed upon motion by the Litigation Trust Committee filed with the consent of at least a majority of the members of the Litigation Trust Committee, which removal shall become effective upon the entry of an order of the Bankruptcy Court granting such motion and directing such removal. Prior to the effective date of removal of the Litigation Trustee, a successor to the Litigation Trustee (or an Interim Trustee (as defined below)) shall be appointed pursuant this Section 3.7. The former Litigation Trustee

having been removed immediately shall file an interim report comparable to the Final Report described in Section 4.9 but for the period of his service.

3.7.2.2 In the event of a vacancy in the position of the Litigation Trustee occurring by reason of resignation, removal or death, a successor Litigation Trustee shall be appointed upon (i)(x) the consent of at least a majority of the members of the Litigation Trust Committee eligible to vote, or (y) by the Bankruptcy Court upon motion by the Litigation Trust Committee, with notice provided to the Post Effective Date Service List, and (ii) the confirmation of such appointment by the Bankruptcy Court and the acceptance of such appointment by the successor Litigation Trustee. Upon the appointment of and acceptance by a successor Litigation Trustee, the Litigation Trust Committee shall file a notice of such appointment and acceptance with the Bankruptcy Court, which notice shall be served upon the Post Effective Date Service List and shall include the name, address, and telephone number of the successor Litigation Trustee; provided that the filing of such notice shall not be a condition precedent to the vesting in the successor Litigation Trustee of all the estates, properties, rights powers, trust and duties of his predecessor.

3.7.2.3 Immediately upon appointment of any successor Litigation Trustee and acceptance of such appointment by the 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. Any successor Litigation Trustee shall also succeed as the Plan Administrator under the Plan Administrator Agreement.

3.7.2.4 During any period in which there is a vacancy in the position of Litigation Trustee, the Litigation Trust 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 Trust Committee merely by his appointment as Interim Trustee.

3.8 Continuance of Trust

3.8.1 The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the MG Litigation Trust created by this Agreement or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Litigation Trustee, and the Litigation Trustee agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the Litigation Trustee and the Litigation Trustee's successors or assigns, as the case may be. In the event of the resignation or removal of the Litigation Trustee, in addition to preparation and filing with the Bankruptcy Court of an Interim Report, the former Litigation Trustee promptly shall:

(a) execute and deliver by the effective date of resignation or removal such documents, instruments and other writings as may be reasonably requested by the successor Litigation Trustee, or in the absence of a successor Litigation Trustee, the Litigation Trust Committee, to effect the termination of the resigning or removed Litigation Trustee's capacity under this Agreement and the conveyance of the Litigation Trust Assets then held by the

resigning or removed Litigation Trustee to the successor Litigation Trustee;

(b) deliver to the successor Litigation Trustee, or in the absence of a successor Litigation Trustee, the Litigation Trust Committee, all documents, instruments, records and other writings relating to the Litigation Trust Assets as may be in the possession or under the control of the resigning or removed Litigation Trustee; and

(c) otherwise assist and cooperate in effecting the assumption of the resigning or removed Litigation Trustee's obligations and functions by the successor Litigation Trustee, or in the absence of a successor Litigation Trustee, the Litigation Trust Committee.

3.8.2 The resigning, removed or departed Litigation Trustee hereby irrevocably appoints the successor Litigation Trustee (and the Interim Trustee) as his attorney-in-fact and agent with full power of substitution for it and his name, place and stead to do any and all acts that such resigning or removed Litigation Trustee is obligated to perform under this Section 3.8. Such appointment shall not be affected by the subsequent disability or incompetence of the Litigation Trustee making such appointment. The Bankruptcy Court also may enter such orders as are necessary to effect the termination of the appointment of the Litigation Trustee and the appointment of the successor Litigation Trustee.

3.9 Acceptance of Appointment by Successor Litigation Trustee

Any successor Litigation Trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations as and of the Litigation Trustee under this Agreement and thereupon the successor Litigation Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his predecessor as Litigation Trustee hereunder with like effect as if originally named herein. The successor Litigation Trustee will not be personally liable for any act or omission of the predecessor Litigation Trustee.

3.10 Insurance

The Litigation Trustee may in his discretion obtain insurance coverage for the liabilities, duties and obligations of the Litigation Trustee and his agents, employees, and professionals (in the form of an errors and omissions policy or otherwise) which may, at the sole option of the Litigation Trustee, remain in effect for a reasonable period after the conclusion of the Litigation Trustee's service. The Litigation Trustee shall further be authorized to obtain all reasonably necessary insurance coverage with respect to any property that is or may in the future become Litigation Trust Assets.

SECTION 4. **AUTHORITY, LIMITATIONS, DUTIES, AND** **FINAL REPORT AND DISCHARGE**

4.1 Authority

In connection with the administration of the MG Litigation Trust, the Litigation Trustee is authorized to and shall perform, in good faith, in accordance with this Agreement, the Plan and

the Confirmation Order, any and all acts necessary or desirable to accomplish the purposes of the MG Litigation Trust, and to take such actions, in good faith, as required under this Agreement, the Plan and the Confirmation Order. Except as expressly required in this Agreement, the Plan or the Confirmation Order, no prior or subsequent Bankruptcy Court approval is required for any act of the Litigation Trustee. Subject to any specific limitations contained in, or as otherwise provided by this Agreement, the Plan, or the Confirmation Order and applicable law, the Litigation Trustee shall have the authority, power and obligation, in his capacity as Litigation Trustee, to:

- (a) receive, control, manage, liquidate and dispose of all Litigation Trust Assets for the benefit of the Beneficiaries;
- (b) act as custodian of the Litigation Trust Assets and liquidate and reduce the Litigation Trust Assets to Cash at such time and in such manner as the Litigation Trustee deems appropriate to accomplish the purpose of the MG Litigation Trust, in accordance with the terms of this Agreement, the Plan, and the Confirmation Order;
- (c) hold legal title to any and all rights of the Beneficiaries in or arising from the Litigation Trust Assets, including, but not limited to, collecting any and all money and other property belonging to the MG Litigation Trust and the right to vote any claim or interest in a case under the Bankruptcy Code and receive any distribution therein, which title shall be held by the Litigation Trustee solely in his capacity as Litigation Trustee and not in any individual capacity;
- (d) perform the duties, exercise the powers, and assert the rights of a trustee under Sections 704 and 1106 of the Bankruptcy Code, including, without limitation to hold and assert applicable privileges and defenses, in connection with the Litigation Trust Assets, and assert all rights vested hereunder and file, pursue or settle the Litigation Trust Assets;
- (e) protect and enforce the rights to the Litigation Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;
- (f) establish and maintain the Post Effective Date Plan Reserve pursuant to Section 5.1 hereof and any order of the Bankruptcy Court;
- (g) file or cause to be filed, if necessary, any and all tax and information returns, and any other statements or disclosures relating to the MG Litigation Trust that are required to be filed by any governmental unit with respect to the MG Litigation Trust, and withhold and pay taxes properly payable by the MG Litigation Trust, if any;
- (h) determine and satisfy any and all liabilities created, incurred or assumed by the MG Litigation Trust;
- (i) execute offsets against Claims as provided for in the Plan and Confirmation Order;
- (j) pay all expenses and make other payments relating to the Litigation Trust Assets, including without limitation the reasonable fees and expenses of the Litigation Trustee

hereunder, and including any capital calls and other expenditures applicable to interests in entities acquired through foreclosure or execution or otherwise as Litigation Trust Assets, but only when determined by the Litigation Trustee in his discretion to be reasonably necessary and appropriate to maximize the distribution of proceeds of the Litigation Trust Assets to Beneficiaries;

(k) take or refrain from taking any action the Litigation Trustee reasonably deems necessary to protect, preserve and maximize the Litigation Trust Assets, including, but not limited to, improving or repairing the Litigation Trust Assets and purchasing insurance of any kind with respect to such assets or the administration of the Litigation Trust;

(l) enter into contracts in the course of operating the Litigation Trust Assets for liquidation or in conjunction with their disposition under the Plan and herein;

(m) manage, sell and convert all or any portion of the Litigation Trust Assets to Cash;

(n) make Distributions to the Disbursing Agent for the benefit of the Beneficiaries, as specified in the Plan;

(o) release, convey or assign any right, title or interest in or to the Litigation Trust Assets or any portion thereof;

(p) open and maintain bank accounts on behalf of the MG Litigation Trust, deposit funds therein, and draw checks thereon, as appropriate under the Plan, the Confirmation Order and this Agreement;

(q) fund from the Litigation Fund or the Litigation Trust Recovery Proceeds any necessary increase in the respective Post Effective Date Plan Reserve to the extent such Post Effective Date Plan Reserve is deemed to be insufficient by the Litigation Trustee;

(r) engage, employ and/or pay such attorneys, accountants, engineers, agents, tax specialists, financial advisors, appraisers, investment bankers, other professionals, and other Entities as may, in the discretion of the Litigation Trustee, be deemed necessary to fulfill his duties under the Plan and this Agreement, including without limitation, former employees of the Debtors, and any professionals previously engaged by the Debtors or the Committee appointed in the Case, and waive any conflicts of interest as deemed necessary or appropriate in his discretion;

(s) in compliance with Section 3.5 hereof, sue and be sued in the name of the Litigation Trustee and file or pursue Litigation Trust Assets, and seek to settle any of them, and compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, or otherwise deal with and settle any Litigation Trust Asset in favor of or against the MG Litigation Trust as the Litigation Trustee shall deem advisable;

(t) assert, enforce, waive or release rights, privileges or immunities of any kind of the Debtors in connection with the Litigation Trust Assets to the extent set forth herein;

(u) request any appropriate tax determination with respect to the MG Litigation Trust, including, without limitation, a determination pursuant to Section 505 of the Bankruptcy Code;

(v) seek the examination of any Entity under, and subject to, the provisions of the Bankruptcy Rules, including Bankruptcy Rule 2004;

(w) pay obligations or expenses of, or relating to, the Litigation Trust Assets when the Litigation Trustee, considering the purposes, terms, distributional requirements and other circumstances of the Plan and this Agreement, deems it prudent to do so to effectuate the Plan;

(x) notwithstanding anything to the contrary herein, on 30 days written notice to the Entities identified on the Post Effective Date Service List in accordance with Section 11 hereof, abandon any property that he determines in his reasonable discretion to be of de minimis value or otherwise burdensome to the MG Litigation Trust, including without limitation any pending adversary proceeding or other legal action, provided that if any Entity to whom such notice is given provides a written objection to the Litigation Trustee prior to the expiration of such thirty-day period with respect to the proposed abandonment of such property, and such objection is not withdrawn or resolved, then such property may be abandoned only pursuant to a Final Order of the Bankruptcy Court after notice and opportunity for a hearing;

(y) except as otherwise set forth in this Agreement or in the Plan, and subject to the Treasury Regulations governing liquidating trusts and the retained jurisdiction of the Bankruptcy Court as provided for in the Plan and Confirmation Order, to seek such orders, judgments, injunctions and rulings as it deems necessary to carry out the intentions and purposes, and to give full effect to the provisions, of the Plan and the Confirmation Order;

(z) in general, without in any manner limiting any of the foregoing, deal with the Litigation Trust Assets or any part or parts thereof in all other ways as would be lawful and prudent for any Entity owning the same to deal therewith, whether similar to or different from the ways herein specified, or take such other actions as may be necessary or helpful to accomplish the purposes of the Plan; and

(aa) maintain the Post Effective Date Plan Reserve under the Plan and make Distributions to the Distribution Agent for the benefit of Holders of Allowed Class 6, 7A, 7B and 7E Claims under the Plan.

4.2 Limitations on the Litigation Trustee

4.2.1 Notwithstanding anything in this Agreement to the contrary, the Litigation Trustee shall not do or undertake any of the following:

- (a) guaranty any debt;
- (b) loan Litigation Trust Assets;
- (c) transfer Litigation Trust Assets to another trust with respect to which the

Litigation Trustee serves as trustee; or

(d) make any transfer or Distribution of Litigation Trust Assets, other than those authorized under the Plan, the Confirmation Order or this Agreement.

4.2.2 Notwithstanding anything herein to the contrary, the Litigation Trustee, acting in his capacity as Litigation Trustee, other than to the extent necessary to preserve the liquidation value of the Litigation Trust Assets, shall not and shall not be authorized to engage in any trade or business, and shall take such actions consistent with the orderly liquidation of the Litigation Trust Assets as are required by applicable law, and such actions permitted hereunder. Notwithstanding any other authority granted herein, the Litigation Trustee is not authorized to engage in any investments or activities inconsistent with the treatment of the MG Litigation Trust as a litigation trust within the meaning of Treasury Regulations Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

4.2.3 Notwithstanding anything herein to the contrary, and notwithstanding Bankruptcy Rules 3020(e), 6004(h) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan (including, without limitation, Article X of the Plan) and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Litigation Trust, the Litigation Trustee and, thereafter, upon any successor Litigation Trustee, and neither the Litigation Trust nor the Litigation Trustee, or any successor Litigation Trustee, will take any action that is inconsistent with the Plan (including, without limitation, Article X of the Plan) or the Confirmation Order.

4.2.4 The MG Litigation Trust shall not hold 50% or more of the stock (in either vote or value) of any Entity that is treated as a corporation for federal income tax purposes, nor have any interest in an Entity that is treated as a partnership for federal income tax purposes, unless such stock or partnership interest was obtained involuntarily or as a matter of practical economic necessity, including through foreclosure of security interests and execution of judgments, in order to preserve the value of the Litigation Trust Assets; provided, however, the MG Litigation Trust shall not hold more than 4.9% of the issued and outstanding securities of any public company.

4.2.5 In the absence of a Final Order of the Bankruptcy Court to the contrary, (i) the Litigation Trustee shall not facilitate the development of an active trading market for the MG Litigation Trust Interests in the MG Litigation Trust, and shall not encourage any other Entity to do so (including without limitation taking steps to list such interests on any national securities exchange or on NASDAQ, engaging the services of a market maker, placing any advertisements in the media promoting investment in the MG Litigation Trust, or collecting or publishing information about prices at which such interests may be transferred); and (ii) the Litigation Trustee shall take such affirmative action, including the amendment, supplementation or elimination of provisions of this Agreement, as is necessary or desirable to assure himself, his advisors, the Bankruptcy Court and the staff of the SEC (only if required), that neither the terms of MG Litigation Trust nor its operation requires the registration of the MG Litigation Trust or its MG Litigation Trust Interests under the Exchange Act or the Investment Company Act.

4.3 Litigation Trustee and Conflicts of Interest

If the Litigation Trustee determines, in the exercise of his reasonable discretion, that he has a material conflict of interest with respect to the settlement, resolution or prosecution of a Litigation Trust Asset, or any other matter relating to the MG Litigation Trust, the Litigation Trustee with the written approval of the Litigation Trust Committee may select a designee to act on behalf of the MG Litigation Trust solely with respect to such matter (the “Designated Litigation Trustee”), with such Designated Litigation Trustee's authority to act on behalf of the MG Litigation Trust to terminate upon the matter's conclusion. If the Designated Litigation Trustee files a pleading, motion or other paper with a court or tribunal on behalf of the MG Litigation Trust, it shall do so in his own name as “Designated Litigation Trustee of the MG Litigation Trust.”

4.4 Additional Duties of the Litigation Trustee

Without limiting the authority, power and obligations set forth in Section 4.1 hereof, subject to any limitations contained in, or as otherwise provided by this Agreement, the Plan or the Confirmation Order, the Litigation Trustee, in his capacity as Litigation Trustee, shall have the following duties.

4.4.1 Distribution Agent. The Distribution Agent chosen by the Debtors pursuant to the Plan shall make Distributions to the Beneficiaries in accordance with this Agreement and the Plan.

4.4.2 Maintenance of Post Effective Date Service List. Pursuant to Section 11.2(b) hereof, the Litigation Trustee shall maintain the Post Effective Date Service List.

4.4.3 Maintenance of Books and Records. The Litigation Trustee shall store and maintain the books and records of the MG Litigation Trust, subject to Section 7.2 hereof.

4.4.4 Maintenance of Cash and Proceeds of the Litigation Trust Assets. Cash received on or collected subsequent to the Effective Date and/or Cash held by the Litigation Trustee, and all Litigation Trust Recovery Proceeds and income therefrom (pending periodic distributions in accordance with the provisions of the Plan), shall be held by the Litigation Trustee in cash, cash equivalents, interest-bearing bank accounts, deposits or investments, U.S. Treasury securities, money market investments, and similar investments, all as permissible for a debtor under Section 345 of the Bankruptcy Code, or as otherwise approved by order of the Bankruptcy Court, for the benefit of Beneficiaries entitled to Distributions under the Plan and this Agreement, provided, however, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of IRS Revenue Procedure 94-45 may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the Internal Revenue Service (“IRS”), whether set forth in IRS rulings, other IRS pronouncements or otherwise and (b) the Litigation Trustee may retain any proceeds received that are not Cash only for so long as may be required for the prompt and orderly liquidation of such assets in Cash.

4.4.5 Reports to Beneficiaries. The Litigation Trustee shall provide such reports as described in Sections 4.9 and 9 hereof.

4.4.6 Tax Returns.

4.4.6.1 The Litigation Trustee shall cause the timely preparation, distribution and/or filing of any necessary tax returns and other documents or filings as a grantor trust as required by applicable law (including but not limited to (x) those pursuant to Treasury Regulation 1.671-4(a); and (y) any federal, state and local tax returns), and pay any taxes shown as due thereon and which are payable by the MG Litigation Trust by virtue of its existence and operations. Subject to Section 4.4.8.2, the MG Litigation Trust's taxable income, gain, loss, deduction or credit will be allocated to the Beneficiaries in accordance with their relative MG Litigation Trust Interests in the MG Litigation Trust. Beneficiaries shall be responsible for the payment of any tax due on said items of income, gain, loss, deduction or credit attributable to their respective MG Litigation Trust interests.

4.4.6.2 In accordance with the Plan, all Beneficiaries shall report, for tax purposes, consistent with the provisions of this Section 4.4.6.

4.4.6.3 The Litigation Trustee shall pay out of the Litigation Fund or Litigation Recovery Proceeds, any taxes imposed on the MG Litigation Trust or the Litigation Trust Assets.

4.4.6.4 The Litigation Trustee shall be authorized to, and shall, exercise all powers regarding the MG Litigation Trust's tax matters, including filing tax returns and preparing, distributing and filing MG Litigation Trust Interest Holder tax statements and notices (including IRS Form 1065), to the same extent as if the Litigation Trustee were the debtor in possession. The Litigation Trustee may request an expedited determination of any unpaid tax liability of the MG Litigation Trust under Section 505(b) of the Bankruptcy Code prior to termination of the MG Litigation Trust, and shall represent the interest and account of the MG Litigation Trust before any taxing authority in all matters, including, but not limited to, any action, suit, proceeding or audit.

4.5 No Implied Obligations

No covenants or obligations shall be implied into this Agreement, the Plan or the Confirmation Order. The Litigation Trustee shall not be responsible in any manner whatsoever for the correctness of any recital, statement, representation, or warranty herein, or in any documents or instrument evidencing or otherwise constituting a part of the Litigation Trust Assets.

4.6 Unknown Property and Liabilities

The Litigation Trustee shall be responsible for only that property delivered to him and shall have no duty to make, nor incur any liability for failing to make, any search for unknown property or for any associated liabilities.

4.7 Compliance with Laws

Any and all Distributions of Litigation Trust Recovery Proceeds to Beneficiaries shall be in compliance with applicable laws.

4.8 Intentionally Omitted

Except as otherwise set forth in the MG Litigation Trust or in the Plan, no Entity dealing with the MG 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.

4.9 Final Report and Discharge of Litigation Trustee

4.9.1 Final Report. Prior to termination of the MG Litigation Trust, the Litigation Trustee shall prepare a final report (the "Final Report"), which shall contain the following information: (i) all Litigation Trust Assets including assets originally charged under the Litigation Trustee's control; (ii) all funds transferred into and out of, the Post Effective Date Plan Reserve and Litigation Fund; (iii) an accounting of all purchases, sales, gains, losses, and income and expenses in connection with the Litigation Trust Assets during the Litigation Trustee's term of service (including any predecessor Litigation Trustee); (iv) a statement setting forth each Beneficiary's share of items of income, gain, loss, deduction or credit and the Distributions to Beneficiaries; (v) the ending balance of the Litigation Fund and Litigation Trust Recovery Proceeds; (vi) a narrative describing actions taken by the Litigation Trustee in the performance of his duties which materially affect the MG Litigation Trust; and (vii) schedule(s) reflecting that:

- (a) all adversary proceedings and contested matters have been finally adjudicated by the entry of a Final Order or settled;
- (b) all Litigation Trust Assets have been either: (i) reduced to Cash; or (ii) abandoned by the Litigation Trustee, in accordance with the provisions of this Agreement and the Plan; and
- (c) all expenses of the MG Litigation Trust have been paid (or will be paid) and all payments and final Distributions to be made to Beneficiaries have been made (or will be made) to the Reorganized Debtors by the Litigation Trustee in accordance with the provisions of this Agreement and the Plan.

The Final Report may be audited or reviewed by the MG Litigation Trust's independent accountants in accordance with generally accepted auditing standards.

4.9.2 Approval of Final Report and Discharge of the Litigation Trustee. The Litigation Trustee's Final Report, and any audit or review thereof, prepared pursuant to the Plan and this Section 4.9, shall be filed with the Bankruptcy Court and served on each Entity listed on the Post Effective Date Service List, along with a motion for approval of the Final Report and discharge of the Litigation Trustee. Upon the entry of the order of the Bankruptcy Court approving the Final Report, the Litigation Trustee shall be discharged from all liability to the MG Litigation Trust or any Entity who or which has had or may then or thereafter have a claim against the Litigation Trustee or the MG Litigation Trust for acts or omissions in the Litigation Trustee's capacity as the Litigation Trustee or in any other capacity contemplated by this Trust Agreement or the Plan, unless the Bankruptcy Court orders otherwise for good cause.

4.10 Reliance by 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 reasonably by the Litigation Trustee to be genuine and to have been signed or presented by the proper party or parties; and

(b) Entities dealing with the Litigation Trustee shall look only to the assets of the MG Litigation Trust to satisfy any liability incurred by the Litigation Trustee to such Entity in carrying out the terms of this Agreement, and neither the Litigation Trustee nor any member of the Litigation Trust Committee shall have any personal obligation to satisfy any such liability.

4.11 Standard of Care; Exculpation

Neither the Litigation Trustee, any of his duly designated agents or representatives or professionals, nor the Litigation Trustee and its professionals shall be liable for any act or omission taken or omitted to be taken by the Litigation Trustee in good faith, other than acts or omissions resulting from the recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud of the Litigation Trustee or his designated agents or representatives. The Litigation Trustee may, in connection with the performance of his functions, and in his sole and absolute discretion, consult with his attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Entities. Notwithstanding such authority, the Litigation Trustee shall be under no obligation to consult with his attorneys, accountants, financial advisors or agents, and his good faith determination to not do so shall not result in the imposition of liability on the Litigation Trustee, unless such determination is based on recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud.

SECTION 5. **DISTRIBUTIONS**

5.1 Establishment of Post Effective Date Plan Reserve

5.1.1 Post Effective Date Plan Reserve

5.1.1.1 On or as soon as practicable after the Effective Date, the Litigation Trustee shall establish, and shall thereafter maintain, one or more reserve accounts (the “**Post Effective Date Plan Reserve**”) that will fund, and from which Post Effective Date Plan Reserve the Litigation Trustee shall pay: (a) all voluntary and involuntary, costs, expenses, charges, obligations, or liabilities of any kind or nature, whether unmatured, contingent or unliquidated (collectively, the “Expenses”) incurred by the MG Litigation Trust or the Litigation Trustee after the Effective Date of or related to the implementation of the Plan, including, but not limited to: (i) the Expenses of the Litigation Trustee, and the Distribution in connection with administering and implementing the Plan, including any taxes incurred by the MG Litigation Trust or on the Litigation Trust Assets and accrued on or after the Effective Date; (ii) the Expenses of the

Litigation Trustee in making the Distributions required by the Plan, including paying taxes, filing tax returns, and paying professionals' fees with respect to such Distributions; (iii) any Expenses incurred by the MG Litigation Trust, the Litigation Trustee, and the Litigation Trust Committee, but not including any attorneys' fees or other professional fees of members of the Litigation Trust Committee; (iv) the Expenses of independent contractors and professionals (including, without limitation, attorneys, advisors, accountants, brokers, consultants, experts, professionals and other Entities) providing services to the Litigation Trustee, or the Litigation Trust Committee; and (v) the Expenses related to the MG Litigation Trust indemnity obligations, the purchase of errors and omissions insurance and/or other form of indemnification; (vi) all liabilities described in Sections 3.10 and 8.1; and (b) all reasonably foreseeable expenses of preserving, enhancing and maximizing the value of, and distributable proceeds of Litigation Trust Assets and Litigation Trust Recovery Proceeds (collectively, the "Post Effective Date Plan Expenses"); provided, however, that funds in reserve accounts comprising the Post Effective Date Plan Reserve may be re-allocated and transferred to different reserve accounts, or other accounts maintained by the Liquidating Trustee, and provided further that nothing herein shall prohibit payment of any Post Effective Date Plan Expenses from the Litigation Fund or the Litigation Trust Recovery Proceeds.

5.1.1.2 The Litigation Trustee shall initially fund the Post Effective Date Plan Reserve from Cash transferred to the MG Litigation Trust on the Effective Date, and shall periodically re-assess and may modify the funding level, in his reasonable discretion in an amount necessary to pay in full in Cash the Post Effective Date Plan Expenses. The Post Effective Date Plan Reserve may be funded thereafter as determined by the Litigation Trustee in his reasonable discretion to be necessary with Cash and Cash proceeds from the Litigation Trust Recovery Proceeds. The Litigation Trustee shall pay Post Effective Date Plan Expenses hereunder from the Post Effective Date Plan Reserve as soon as practicable.

5.2 Distributions to Beneficiaries; Disbursing Agent

5.2.1 The Litigation Trustee shall be responsible for providing funds to the Reorganized Debtors for the purpose of making Distributions to Beneficiaries from the MG Litigation Trust as required by and set forth in the Plan, the Confirmation Order and in this Agreement.

5.2.2 All Distributions made by the Litigation Trustee to the Reorganized Debtors for the benefit of the Beneficiaries shall be payable to the Beneficiaries of record, as set forth in the Register, as of the 30th day prior to the date scheduled for the Distribution, unless such day is not a Business Day, then such day shall be the following Business Day. If the Distribution shall be in Cash, the Litigation Trustee shall distribute such Cash by wire from a domestic bank, by check drawn on a MG Litigation Trust bank account, or by such other method as the Litigation Trustee deems appropriate under the circumstances. The Litigation Trustee may direct the Disbursing Agent to withhold from amounts distributable to any Entity any and all amounts, determined in the Litigation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

5.2.3 All Distributions made to the Beneficiaries under the Plan and this Agreement shall be made only from the Litigation Fund or Litigation Trust Recovery Proceeds, and only to the extent that the Litigation Trustee shall have sufficient funds to make such Distributions in

accordance with the terms of the Plan and this Agreement, including adequate funding of the Post Effective Date Plan Expenses Reserve. Each Beneficiary shall look solely to the Litigation Fund and Litigation Trust Recovery Proceeds, and not to the Litigation Trustee in his personal, individual or corporate capacity for Distribution to such Beneficiary as herein provided.

5.2.4 When, in the discretion of the Litigation Trustee, the MG Litigation Trust has Cash in an amount sufficient to render feasible a Distribution to the Reorganized Debtors on behalf of the Beneficiaries after taking into account adequate funding of the Post Effective Date Plan Reserve, the Litigation Trustee shall transfer and pay, or cause to be transferred and be paid, to the Distribution Agent for the benefit of the Beneficiaries such aggregate amount of Cash as shall then be held in the MG Litigation Trust in accordance with the Plan; provided, however, that the aggregate amount of Cash shall exclude any Cash held in the Post Effective Date Plan Reserve or otherwise needed to pay the expenses, debts, charges, liabilities and obligations of the MG Litigation Trust (net of such exclusions, the "Distribution Amount"). The Distribution Agent shall establish and maintain a disputed claims reserve from the Distribution Amount to account for unresolved and disputed Class 7A, 7B and 7E in the same manner as the reserve for Disputed Claims is established and maintained under the Plan with respect to distributions of shares of New Common Stock and Warrants to Holders of Claims in those Classes under the Plan. The Distribution Amount shall be determined by the Litigation Trustee in his reasonable discretion, after consultation with, and the written approval of, the Litigation Trust Committee and, in the absence of recklessness, willful misconduct, knowing and material violation of law, or fraud on the part of the Litigation Trustee, his determination regarding the Distribution Amount shall be final and conclusive on all Persons and shall not be reviewed by the Bankruptcy Court; provided, however, in the event of a dispute between the Litigation Trustee and the Litigation Trust Committee, the Litigation Trustee may seek approval from the Bankruptcy Court. In determining the Distribution Amount, the Litigation Trustee may rely on and shall be fully protected in relying on the advice and opinion of professionals employed to advise the Litigation Trustee. Notwithstanding anything in this Agreement to the contrary, the Litigation Trustee shall distribute at least annually to the Beneficiaries of the MG Litigation Trust all of the MG Litigation Trust's net income plus all net proceeds from the sale of assets, except that the MG Litigation Trust may retain an amount of net proceeds or net income that the Litigation Trustee determines in his discretion is necessary to maintain the Post-Effective Date Plan Reserve, maximize the value of the MG Litigation Trust assets and/or to meet claims and contingent liabilities.

5.3 Minimum Distributions

Distributions of Cash shall be subject to the same limitations on Cash distributions set forth in the Plan.

SECTION 6. **LITIGATION TRUST COMMITTEE**

6.1 Litigation Trust Committee

6.1.1 Function and Initial Composition. The Litigation Trustee shall be advised by, and where required by this Agreement receive approval from, the Litigation Trust Committee, a

committee of consisting of three (3) members, with one (1) member appointed by the Committee and two (2) members appointed by Sopris.

6.1.2 Term.

(a) The Litigation Trust Committee shall continue in effect until the latest to occur of (i) final Distribution of the entire Litigation Trust Recovery Proceeds and Litigation Fund, (ii) entry of the order of the Bankruptcy Court closing the Chapter 11 Cases (the “Final Decree”), and (iii) entry of the order of the Bankruptcy Court determining that the Litigation Trustee shall have no further duties or obligations under this Agreement. The members of the Litigation Trust Committee shall serve so long as the Litigation Trust Committee is in effect, or until resignation, removal or death.

(b) A member of the Litigation Trust Committee may resign at any time by providing ten (10) days’ written notice to the Litigation Trust Committee and the Litigation Trustee.

6.1.3 Replacement of Members of Litigation Trust Committee. In the event of a resignation or other removal of any member(s) of the Litigation Trust Committee, such member(s) shall be replaced as follows: (a) in the event the Litigation Trustee Committee member who resigned or is removed was the member appointed under the Plan by the Committee or any successor of such member, the Litigation Trustee shall appoint the successor member; and (b) in the event the Litigation Trustee Committee member who resigned or is removed was one of the two members appointed under the Plan by Sopris, or any successor of such member, Sopris shall appoint the successor member. Within 30 days of any such appointment, the Liquidating Trust Committee shall file a notice of such appointment with the Bankruptcy Court and serve upon the Post Effective Date Notice List. Pending the appointment of a replacement member, the Litigation Trust Committee shall function in its reduced number.

Immediately upon the appointment of any successor member of the Litigation Trust Committee, all rights, powers, duties, authority and privileges of the predecessor member of the Litigation Trust Committee hereunder will be vested in and undertaken by the successor member of the Litigation Trust Committee without any further act or required authorization; and the successor member of the Litigation Trust Committee will not be liable personally for any act or omission of the predecessor member of the Litigation Trust Committee, or the Litigation Trust Committee taken as a whole.

6.1.4 Action By Litigation Trust Committee. The Litigation Trust Committee actions and consent of the Litigation Trust Committee shall be taken or given by a vote of at least the majority of the members of the Litigation Trust Committee eligible to vote on such a matter, unless otherwise specified herein.

6.1.5 Duties, Rights and Powers of the Litigation Trust Committee. The Litigation Trust Committee shall have the following duties, rights and powers:

(a) To adopt rules of governance including those relating to conflicts of, and material financial interests in, matters which are the subject matter of deliberations or persons related to deliberations with the business of the Liquidating Trust and the role, authority or

responsibility of any member of the Litigation Trust Committee in respect thereof.

- (b) To review and advise the Litigation Trustee, including:
 - (i) determining whether an Entity is a permissible defendant; and
 - (ii) recommending whether Sopris should consent to additional funding by the Reorganized Debtors for the Litigation Trust.
- (c) To remove the Litigation Trustee in accordance with Section 3.7 herein.
- (d) To select and engage such Entities, and select and engage such professional advisors (including, without limitation, any professional retained by the Committee, or the Debtors), in accordance with the terms of this Agreement, the Plan and the Confirmation Order, as the Litigation Trust Committee deems necessary and desirable to assist the Litigation Trust Committee in fulfilling his obligations under this Agreement and the Plan, and the Litigation Trustee shall pay the reasonable fees of such Entities (including on an hourly, contingency, or modified contingency basis) and reimburse such Entities for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Agreement.

6.1.6 Recusal. Notwithstanding any other provision of this Agreement, individual members of the Litigation Trust Committee shall recuse themselves from participating in any discussion concerning, and voting on, any proposed action by the Litigation Trustee that involves (a) an objection to any Claim held by such member or any Insider (as defined by Section 101(31) of the Bankruptcy Code) of such member, (b) the initiation of any litigation or prosecution of any Litigation Claim against such member or any Insider of such member, (c) the settlement of any Litigation Claim against such member or any Insider of such member, or (d) any other matter as to which such member has a conflict of interest; for purposes of this provisions, “member” shall include the Beneficiary that such member represents.

6.1.7 No Liability. Nothing in this Section or in this Agreement shall be deemed to have transferred any fiduciary responsibilities of the Litigation Trustee to any member of the Litigation Trust Committee or the Litigation Trust Committee as a whole.

6.2 Meetings

Meetings of the Litigation Trust Committee are to be held with such frequency and at such place as the Litigation Trustee and the members of the Litigation Trust Committee may jointly determine in their reasonable discretion.

6.3 Manner of Acting

A majority of the total number of members of the Litigation Trust Committee then in office shall constitute a quorum for the transaction of business at any meeting of the Litigation Trust Committee. Any or all of the members of the Litigation Trust Committee may participate in a 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 Trust Committee participating in a meeting by this means is deemed to be present in person at the meeting. Voting may be conducted by electronic mail or individual communications by each member of the Litigation Trust Committee.

6.4 Action Without a Meeting

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

6.5 Compensation

Each member of the Litigation Trust Committee shall be paid, by the MG Litigation Trust, all reasonable and documented out-of-pocket expenses, subject to the limitations below, incurred by members of the Litigation Trust Committee in connection with the performance of the services rendered hereunder shall be reimbursed, without duplication, by the MG Litigation Trust upon demand for payment thereof.

6.6 Standard of Care; Exculpation

None of the Litigation Trust Committee, its members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable for the act or omission of the Litigation Trustee, any other member, agent or representative of the Litigation Trustee or the Litigation Trust Committee, nor shall the Litigation Trust Committee or any of its members be liable for any act or omission taken or omitted to be taken by the Litigation Trust Committee in good faith, other than acts or omissions resulting from the Litigation Trust Committee's own recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. The Litigation Trust Committee and each of its members may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its 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 good faith in accordance with advice or opinions rendered by such Entities. Notwithstanding such authority, neither the Litigation Trust Committee nor any of its members shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the Litigation Trust Committee or, as applicable, its members or designees, unless such determination is based on recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud.

SECTION 7. **DURATION OF MG LITIGATION TRUST**

7.1 Duration of MG Litigation Trust

The MG Litigation Trust shall terminate as soon as practicable, but in no event later than the fifth anniversary of the Effective Date; provided that, on or later than the date that is six

months prior to the Initial Trust Termination Date, the Bankruptcy Court, upon motion by the Litigation Trustee, may extend the term of the MG Litigation Trust for a finite period (any such extension, an “Extended Trust Termination Date”) if such an extension is necessary to complete any pending litigation or any Distribution required under this Agreement. Notwithstanding the foregoing, multiple extensions may be obtained so long as Bankruptcy Court approval is obtained no more than six months prior to the expiration of each Extended Trust Termination Date.

7.2 Continuance of MG Litigation Trust for Winding Up

After the termination of the MG Litigation Trust and for the purpose of liquidating and winding up the affairs of the MG Litigation Trust, the Litigation Trustee shall continue to act as such until he has fully executed his duties pursuant to the Plan and this Agreement. Prior to the final Distribution of all of the remaining assets of the MG Litigation Trust and upon approval of the Litigation Trust Committee, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for his own costs and expenses, in accordance with Section 3.6 herein, until such time as the winding up of the MG Litigation Trust is completed. Upon the final distribution and the entry of the Final Decree and unless ordered otherwise by the Bankruptcy Court as part of the Final Decree, the Litigation Trustee deliver all documents, records, Register and other documents and files relating to the Litigation Trust to the Reorganized Debtors, which shall retain such documents at their sole cost and expense for a period of not less than one (1) year and provide the Litigation Trustee with reasonable access to such documents for such period. Upon the discharge of all liabilities of the Litigation Trustee, final Distribution and entry of the Final Decree, the Litigation Trustee shall have no further duties or obligations hereunder.

SECTION 8. **INDEMNIFICATION; LIMITATIONS ON LIABILITY**

8.1 Indemnification

8.1.1 Indemnification of Indemnified Persons. To the fullest extent permitted by law, the MG Litigation Trust, to the extent of its Litigation Trust Assets, but not any Beneficiary, shall indemnify, defend and hold harmless any person who was, or is, a party, or is threatened to be made a party, to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was: (i) the Litigation Trustee; (ii) an employee of the MG Litigation Trust; (iii) the Litigation Trust Committee; (iv) a member of the Litigation Trust Committee; or (v) an employee, contractor, agent, attorney, accountant or other professional for any person described in the preceding clauses (i) through (iv) (each of the foregoing, an “Indemnified Person”), from and against any and all losses, costs, damages, expenses (including fees and expenses of attorneys and other advisors and any court costs incurred by an Indemnified Person), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with such action, suit or proceeding, or the defense or settlement of any claim, issue or matter therein, to the fullest extent, except to the extent such liability is determined to be the result of such Indemnified Person's recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud, and provided that the indemnified parties acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Beneficiaries, and with

respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Costs or expenses incurred by any such Indemnified Person in defending any such action, suit or proceeding may be paid by the MG Litigation Trust in advance of the institution or final disposition of such action, suit or proceeding, if authorized by the Litigation Trustee after consultation with the Litigation Trust Committee. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court will conclusively be deemed not to constitute recklessness, gross negligence, willful misconduct, knowing and material violation of law or fraud. Notwithstanding anything to the contrary herein, no Indemnified Person shall be indemnified by the Liquidating Trust under this Section for any costs, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement arising from or relating to any claim, demand, or cause of action arising, or liability by reason of any act or omission by the Indemnified Person occurring prior to the existence of the MG Litigation Trust. Notwithstanding the foregoing, nothing in this Agreement shall preclude actions by the Litigation Trustee or the Litigation Trust Committee against any professionals engaged by it as Litigation Trustee for professional malpractice, and no indemnity shall be available for any such actions.

8.1.2 Waiver. Any Indemnified Person may waive the benefits of indemnification under this Section 8.1, but only by an instrument in writing executed by such Indemnified Person.

8.1.3 Non-Exclusive Rights. The rights to indemnification under this Section 8.1 are not exclusive of other rights that any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Section 8.1 will affect the rights or obligations of any Indemnified Person (or the limitations on those rights or obligations) under this Agreement, or any other agreement or instrument to which that Indemnified Person is a party.

8.1.4 Advice of Counsel. The fact that an act or omission of an Indemnified Person was based upon advice of counsel shall be evidence of good faith and reasonable judgment. Each Indemnified Person 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 it to be genuine and to have been signed or presented by the proper party or parties, and any order of the Bankruptcy Court.

8.1.5 Status of Indemnification Claims. Any Indemnified Persons entitled to indemnification under the Plan shall have a priority distribution right on the corpus of the MG Litigation Trust ranking pari passu with other Indemnified Persons entitled to indemnification hereunder or under the Plan, provided, however, that such right to payment shall be in all respects Post Effective Date Plan Expenses.

8.1.6 Insurance. The Litigation Trustee may use Litigation Trust Assets to purchase indemnification insurance to satisfy any potential indemnification claims that may arise under this Section 8.1 or the Plan, in conjunction with any insurance obtained pursuant to Section 3.10, for the benefit of the MG Litigation Trust, the Litigation Trustee, the Litigation Trust Committee (and its members), and any agents, representatives, attorneys, accountants, advisors or other professionals employed by any of them.

8.2 Limited Recourse

8.2.1 No recourse shall ever be had, directly or indirectly, against the Litigation Trustee personally, or any member of the Litigation Trust Committee, or against any employee, contractor, agent, attorney, accountant or other professional retained in accordance with the terms of this Agreement or the Plan by either the Litigation Trustee or the Litigation Trust Committee, by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Litigation Trustee or the Litigation Trust Committee in implementation of this Agreement or the Plan, or by reason of the creation of any indebtedness by the Litigation Trustee under the Plan for any purpose authorized by this Agreement or the Plan, it being expressly understood and agreed that all such liabilities, covenants, and agreements of the MG Litigation Trust or the Litigation Trust Committee, whether in writing or otherwise, shall be enforceable only against and be satisfied only out of the Litigation Trust Assets or such part thereof as shall under the term of any such agreement be liable therefore or shall be evidence only of a right of payment out of the Litigation Trust Assets. Notwithstanding the foregoing, the Litigation Trustee may be held liable for his recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud; and if liability on such grounds is established, recourse may be had against (a) the Litigation Trustee's applicable insurance coverage, and, (b) to the extent not covered by insurance, subject to Section 8.3, directly against the Litigation Trustee, and nothing herein shall preclude actions by the Litigation Trustee or the Litigation Trust Committee against any professionals engaged by it as Litigation Trustee for professional malpractice.

8.3 No Liability for Acts of Predecessor

No successor Litigation Trustee shall be in any way responsible or liable for the acts or omissions of any predecessor Litigation Trustee in office prior to the date on which such person becomes the Litigation Trustee, nor shall such successor Litigation Trustee be obligated to inquire into the validity or propriety of any such act or omission unless such successor Litigation Trustee expressly assumes such responsibility. Any successor Litigation Trustee shall be entitled to accept as conclusive any final accounting and statement of Litigation Trust Assets furnished to such successor Litigation Trustee by the predecessor Litigation Trustee and shall further be responsible only for those Litigation Trust Assets properly includable in such statement.

No successor member of the Litigation Trust Committee shall be in any way responsible or liable for the acts or omissions of any predecessor members of the Litigation Trust Committee in office prior to the date on which such person becomes the Litigation Trustee, nor shall such successor member be obligated to inquire into the validity or propriety of any such act or omission unless such successor member expressly assumes such responsibility.

8.4 Express Exculpatory Clauses in Instruments

As far as practicable, the Litigation Trustee shall cause any written instrument creating an obligation of the MG Litigation Trust to include a reference to this Agreement and to provide that none of the Beneficiaries or the Litigation Trustee or the Litigation Trust Committee or any of its members shall be liable thereunder and that the other parties to such instrument shall look

solely to the Litigation Trust Assets for the payment of any claim thereunder or the performance thereof; provided, however, that the omission of such provision from any such instrument shall not render any Beneficiary, the Litigation Trustee, the Litigation Trust Committee or any of its members, liable nor shall the Beneficiaries, Litigation Trustee, or Litigation Trust Committee or any of its members be liable to anyone for such omission.

8.5 Limited Liability of the Plan Administrator

For the avoidance of doubt, the provisions of Sections 8 hereof, to the extent applicable, shall include the Litigation Trustee acting in his capacity as Plan Administrator under the Plan.

SECTION 9. **REPORTS TO BENEFICIARIES OTHER** **THAN FINAL REPORT**

9.1 Securities Laws and Investment Company Act

If the MG Litigation Trust Interests are deemed by Final Order of the Bankruptcy Court (or any other judicial or quasi-judicial authority with applicable jurisdiction) to be securities as defined in applicable federal and state securities laws, then under Section 1145 of the Bankruptcy Code, the issuance of the MG Litigation Trust Interests pursuant to the Plan are intended to be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of securities. The MG Litigation Trust is organized as a liquidating trust in the process of liquidation, and therefore should not be considered, and the MG Litigation Trust does not and will not hold itself out as, an “investment company” or a person “controlled” by an “investment company” as such terms are defined in the Investment Company Act. Notwithstanding the foregoing, if the Litigation Trustee determines, with the advice of counsel, that the MG Litigation Trust is required to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act, then prior to the registration of the Liquidating Trust under the Exchange Act or the Investment Company Act, the Litigation Trustee or the Litigation Trust Committee shall seek to amend this Agreement to make such changes as are deemed necessary or appropriate to ensure that the MG Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act, and this Agreement, as so amended, shall be effective after notice and opportunity for a hearing provided to the Post Effective Date Service List, and the entry of a Final Order of the Bankruptcy Court. If the Agreement, as so amended, is not approved by Final Order of the Bankruptcy Court or the Bankruptcy Court otherwise determines in a Final Order that registration under one or both of the Exchange Act or Investment Company Act is required, then the Litigation Trustee shall take such actions as may be required to satisfy the registration and reporting requirements of the Exchange Act and/or the Investment Company Act, as applicable.

9.2 Quarterly Reports

The Litigation Trustee in his discretion may prepare a quarterly written report which may include (x) financial statements of the MG Litigation Trust for such period, and, at the end of each calendar year, a financial statement for such calendar year or portion thereof in which the

MG Litigation Trust operated (which may be prepared by an independent certified public accountant employed by the Litigation Trustee); (y) a statement of all transactions and the amounts thereof (including, without limitation, all income of the MG Litigation Trust, all dispositions and settlements of Litigation Claims, Distributions under the Plan, expenditures and other disbursements) consummated or effected during the period covered by such report, as well as all settlements or other resolutions regarding Disputed Claims consummated or effected during the period covered by such report; and (z) a description of the progress of converting Litigation Trust Assets to Cash and making Distributions to Beneficiaries and any other material information relating to the Litigation Trust Assets and the administration of the MG Litigation Trust. Such reports shall be served on each member of the Litigation Trust Committee and any Entity listed on the Post Effective Date Service List. Any Beneficiary may receive a copy of any such report by making a written request to the Litigation Trustee, which in his discretion the Litigation Trustee may make available by way of an internet website.

9.3 Other Reports

The Litigation Trustee shall prepare all such other reports and financial statements as may be required by law and concurrent with filing or delivery of the same as may be required by law shall serve a copy on each member of the Litigation Trust Committee and any Entity listed on the Post Effective Date Service List. Any Beneficiary may receive a copy of any such report by making a written request to the Litigation Trustee, which in his discretion the Litigation Trustee may make available by way of an internet website.

9.4 Calculations; Source of Distributions

The Litigation Trustee shall maintain detailed records of (i) the calculations performed by the Litigation Trustee or his professionals in respect of any Distributions and disbursements made pursuant to the Plan and this Agreement; and (ii) the accounts from which any such Distributions or disbursements were made.

9.5 Tax Reporting

Following the end of each calendar year, the Litigation Trustee shall promptly submit to each Beneficiary appearing in its records during such year a separate statement setting forth the information necessary for such Beneficiary to determine its share of items of income, gain, loss, deduction, or credit and will instruct each Beneficiary to report such items on its federal income tax returns (and state and local tax returns, as applicable).

SECTION 10. AMENDMENT AND WAIVER

10.1

The Litigation Trustee, with the prior written approval of the majority of the members of the Litigation Trust Committee, may amend, supplement, delete or waive any provision of, this Agreement, without notice to or the consent of any Beneficiary or the approval of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect or inconsistency in this Agreement provided that such amendments, supplements or waivers shall not adversely affect the

Distributions to be made under this Agreement to any of the Beneficiaries, or adversely affect the U.S. federal income tax status of the Litigation Trust as a “liquidating trust;” (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the MG Litigation Trust as a “liquidating trust;” (iii) to comply with any requirements in connection with maintaining that the MG Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act; (iv) to make the MG Litigation Trust a reporting person and, in such event, to comply with any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act or the Investment Company Act; (v) to correct provisions which may cause the staff of the SEC, counsel to the Litigation Trustee or counsel to the Litigation Trust Committee otherwise to conclude that without such deletions, modifications or supplements the Liquidating Trust may be subject to the registration or reporting provisions of the Exchange Act or the Investment Company Act; and (vi) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Agreement and the Plan; provided, however, that no such amendment, supplement, deletion or waiver may cause this Agreement or the Litigation Trustee to violate the terms of the Plan. Only if ordered by the Bankruptcy Court to register under the Exchange Act or the Investment Company Act, then the Litigation Trustee, with the prior approval of the majority of the members of the Litigation Trust Committee, shall make such amendments, deletions and supplements of provisions of this Agreement as are necessary or desirable under the circumstances, including amendments to provide for the certification of MG Litigation Trust Interests and the mechanics relating thereto.

10.2

Any substantive provision of this Agreement may be amended or waived by the Litigation Trustee, subject to the prior written approval of a majority of the members of the Litigation Trust Committee, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; provided, however, that no change may be made to this Agreement that would adversely affect the Distributions to be made under this Agreement to any of the Beneficiaries, adversely affect the indemnification or other provisions limiting the liability of the Litigation Trustee and the Litigation Trustee Committee, or adversely affect the U.S. Federal income tax status of the Litigation Trust as a “liquidating trust.”

10.3

Notwithstanding this Section 10, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the MG Litigation Trust to liquidate in an expeditious but orderly manner the Litigation Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d).

SECTION 11. **MISCELLANEOUS PROVISIONS**

11.1 Notices

All notices, requests, elections, demands or other communications in connection with this Agreement or the Plan, including, without limitation, any change of address of any Holder of an

Allowed Claim for the purposes of receiving any Distributions under this Agreement or the Plan, shall be served upon the Litigation Trustee as follows:

(a) Litigation Trustee

William Kaye
[Address]
Telephone: (516) 374-3705
Facsimile: (516) 569-6531
billkaye@jllconsultants.com

11.1.1 Any notice, report, document, statement, pleading or other writing to be provided under this, or pursuant to this, Agreement shall be in writing and shall be delivered personally, by overnight delivery service, or mailed by stamped first class certified mail, return receipt requested. Any person may change the address to which notices shall be sent by notice given in accordance with this Section. Such notice shall be deemed to have been given the next Business Day after receipt or, if mailed by first class certified mail, return receipt requested, seven (7) days after receipt. In delivering any such notice, report, document, statement, pleading or other writing, the Litigation Trustee shall deliver same to the address for each such Holder as indicated on the Reorganized Debtors' records as of the date of any such delivery.

11.2 Post Effective Date Service List

A Beneficiary requesting notice under this Agreement where this Agreement provides such notice to a Beneficiary who makes a request therefore, shall make such request in accordance with Section 11.1. A list setting forth the name, address, e-mail address, if any, and telephone number of each such requesting Beneficiary shall be maintained by the Litigation Trustee and shall be provided upon request (the "Post Effective Date Service List"). The persons listed in Section 11.1, the Committee, and its counsel, shall be automatically placed on the Post Effective Date Service List without any further action or direction.

11.3 Effectiveness

This Agreement shall become effective upon the Effective Date.

11.4 Counterparts

This Agreement may be executed in one or more counterparts, all of which shall be taken together to constitute one and the same instrument.

11.5 Governing Law

Except to the extent the Bankruptcy Code or the Bankruptcy Rules are applicable, this Agreement shall be governed by, construed under and interpreted in accordance with, the laws of the State of New York, without giving effect to conflict-of-law principles.

11.6 Severability of Provisions

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

11.7 Entire Agreement

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

11.8 Effect of Death, Incapacity or Bankruptcy of Beneficiary

The death, incapacity or bankruptcy of a Beneficiary during the term of this Agreement shall not operate to terminate the Agreement, nor shall it entitle the representatives or creditors of the deceased Beneficiary to an accounting, or to take any action in the courts or elsewhere for the distribution of the Litigation Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of any Beneficiary.

11.9 Waiver

No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

11.10 Tax Identification Numbers

The Litigation Trustee may require any Beneficiary to furnish to the Litigation Trustee (a) its employer or taxpayer identification number as assigned by the IRS, and (b) such other records or documents necessary to satisfy the Litigation Trustee's tax reporting obligations (including, but not limited to, certificates of non-foreign status). The Litigation Trustee may condition the payment of any Distribution to any Beneficiary upon receipt of such identification number and requested documents.

11.11 Headings

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

11.12 Reimbursement of Costs

If the Litigation Trustee or the MG Litigation Trust, as the case may be, is the prevailing party in a dispute initiated by a Beneficiary of the Litigation Trust regarding the provisions of this Agreement or the enforcement thereof, the Litigation Trustee or the MG Litigation Trust, 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 Beneficiary incurred in connection with such dispute or enforcement action. To the extent that the MG Litigation Trust has advanced such amounts, the MG Litigation Trust may recover such amounts from the non-prevailing Beneficiary.

11.13 Jurisdiction

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

11.14 Fiscal Year

The first fiscal year of the MG Litigation Trust will begin on the Effective Date and end on the last day of December of such year. All subsequent fiscal years of the MG Litigation Trust will begin on the first day of January and end of the last day of December of each such year.

11.15 Confidentiality

The Litigation Trustee and each successor Litigation Trustee and each member of the Litigation Trust Committee and each successor member of the Litigation Trust Committee (each a "Covered Person") shall, during the period that each such person, respectively, serves in such capacity under this Agreement and following either the termination of this Agreement or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of, or pertaining to, any Entity to which any of the assets of the MG Litigation Trust relates or of which it has become aware in its capacity as a Covered Person (the "Confidential 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 Confidential Information, such Covered Person shall notify the Litigation Trust Committee and

the Litigation Trustee promptly (unless prohibited by law) so that the Litigation Trust Committee or the Litigation Trustee may seek an appropriate protective order or other appropriate remedy or, in the discretion of the Litigation Trust Committee or the Litigation Trustee, waive compliance with the terms of this Section (and if the Litigation Trust Committee or the Litigation Trustee seeks such an order, the relevant Covered Person will provide cooperation as the Litigation Trust Committee or the Litigation Trustee, as the case may be, shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Litigation Trust Committee and the Litigation Trustee waives compliance with the terms of this Section and that any Covered Person is nonetheless legally compelled to disclose the Confidential Information, the Covered Person will furnish only that portion of the Confidential Information, which the Covered Person, advised by counsel, is legally required to disclose and will give the Litigation Trust Committee written notice (unless prohibited by law) of the Confidential 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 Confidential Information.

11.16 Joint Litigation Privilege

All communications, whether in writing or oral, among, and all documents exchanged among, the Litigation Trustee, and his agents and representatives, on the one hand, and the Litigation Trust Committee, and its agents and representative, on the other hand, shall be for all purposes deemed to be, and treated as, privileged communications, not subject to discovery, disclosure, or process seeking the same, based upon the common interests, joint litigation privileges and joint attorney-work product protections, of the Litigation Trustee and the Litigation Trust Committee with respect to all matters pertaining to the Plan and this Agreement, except for matters pertaining to the compensation of the Litigation Trustee.

11.17 Rules of Construction

Except as otherwise expressly provided in this Agreement or unless the context otherwise clearly requires:

(a) References to designated Sections and other subdivisions of this Agreement, such as “Section ___,” refer to the designated Section or other subdivision of this Agreement as a whole and to all subdivisions of the designated Section or other subdivision. The words “herein,” “hereof,” “hereto,” “hereunder” and other words and phrases of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision of this Agreement.

(b) Any term that relates to a document or a statute, rule or regulation includes any amendments, modifications, supplements, replacements or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Agreement to the extent they apply to this Agreement by their terms.

(c) Any party may perform any of the requirements under this Agreement either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Agreement. Unless a provision is

restricted as to time or limited as to frequency, all provisions under this Agreement are implicitly available from time to time.

(d) The term “including” and all its variations mean “including, but not limited to.”

(e) All accounting terms used in an accounting context and not otherwise defined shall be construed in accordance with generally accepted accounting principles.

(f) Words denoting one gender shall include the other gender.

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

MOVIE GALLERY, INC.

By: _____
Name: _____
Title: _____

HOLLYWOOD ENTERTAINMENT CORPORATION

By: _____
Name: _____
Title: _____

M.G. DIGITAL, LLC

By: _____
Name: _____
Title: _____

M.G.A. REALTY I, LLC

By: _____
Name: _____
Title: _____

MG AUTOMATION LLC

By: _____
Name: _____
Title: _____

MOVIE GALLERY US, LLC

By: _____
Name: _____
Title: _____

SOPRIS CAPITAL ADVISORS LLC

By: _____
Name: _____
Title: _____

LITIGATION TRUSTEE

William Kaye

By: _____
Name: _____
Title: _____

EXHIBIT “A”

PLAN

EXHIBIT "B"

CONFIRMATION ORDER

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