

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

In re

PARAGON OFFSHORE PLC,

Debtor.

Chapter 11

Case No. 16-10386 (CSS)

Objection Deadline: July 9, 2019 at 4:00 p.m. (ET)

Hearing Date: July 16, 2019 at 11:00 a.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on June 25, 2019, the Paragon Litigation Trust filed the *The Paragon Litigation Trust's Motion Seeking Entry of a Final Order (i) Authorizing the Paragon Trust to Obtain Additional Financing and (ii) Granting Related Relief* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that any response or objection to the relief sought in the Motion must be filed with the Bankruptcy Court on or before **July 9, 2019, at 4:00 p.m. (Prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (i) counsel to the Debtor, (a) Richards Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attn: Mark D. Collins, Amanda R. Steele, Esq. and (b) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Gary T. Holtzer, Esq.; (ii) counsel to the Paragon Litigation Trust, (a) Kirkland & Ellis LLP, 300 N. LaSalle Street, Chicago, IL 60654, Attn: David J. Zott, P.C. and Jeffrey J. Zeiger, P.C. and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Laura Davis Jones, Esq.; and (iii) the



Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Benjamin A. Hackman, Esq.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE MOTION WILL BE HELD BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, UNITED STATES BANKRUPTCY JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, FIFTH FLOOR, COURTROOM 6, WILMINGTON, DELAWARE 19801 ON JULY 16, 2019 AT 11:00 A.M. (PREVAILING EASTERN TIME).

Dated: June 25, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Timothy P. Cairns

Laura Davis Jones (DE Bar No. 2436)

Timothy P. Cairns (DE Bar No. 4228)

919 N. Market Street, 17th Floor

P.O. Box 8705

Wilmington, DE 19899-8705 (Courier 19801)

Telephone: (302) 652-4100

Facsimile: (302) 652-4400

Email: ljones@pszjlaw.com

tcairns@pszjlaw.com

and

KIRKLAND & ELLIS LLP
David J. Zott, P.C. (admitted *pro hac vice*)
Jeffrey J. Zeiger, P.C. (admitted *pro hac vice*)
William E. Arnault (admitted *pro hac vice*)
Anne I. Salomon (admitted *pro hac vice*)
300 N. LaSalle Street
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: dzott@kirkland.com
jzeiger@kirkland.com
warnault@kirkland.com
anne.salomon@kirkland.com

Co-Counsel for Paragon Litigation Trust

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

In re:

PARAGON OFFSHORE PLC,

Debtor.

PARAGON LITIGATION TRUST,

Plaintiff,

v.

NOBLE CORPORATION PLC, NOBLE CORPORATION HOLDINGS LTD, NOBLE CORPORATION, NOBLE HOLDING INTERNATIONAL (LUXEMBOURG) S.à r.l., NOBLE HOLDING INTERNATIONAL (LUXEMBOURG NHIL) S.à r.l., NOBLE FDR HOLDINGS LIMITED, MICHAEL A. CAWLEY, JULIE H. EDWARDS, GORDON T. HALL, JON A. MARSHALL, JAMES A. MACLENNAN, MARY P. RICCIARDELLO, JULIE J. ROBERTSON, and DAVID WILLIAMS,

Defendants.

Chapter 11

Case No. 16-10386 (CSS)

Adv. Pro. No. 17-51882 (CSS)

THE PARAGON LITIGATION TRUST'S MOTION SEEKING ENTRY OF A FINAL ORDER (I) AUTHORIZING THE PARAGON LITIGATION TRUST TO OBTAIN ADDITIONAL FINANCING AND (II) GRANTING RELATED RELIEF

The Paragon Litigation Trust (the "Trust") submits this motion for authorization to obtain additional financing. In support of this motion, the Trust proffers the declaration of Tim Daileader, one of the representatives of Litigation Trust Management,¹ filed contemporaneously herewith. In further support of this motion, the Trust states as follows:

¹ Capitalized terms used but not otherwise defined in this Motion have the meanings ascribed to them in the Litigation Trust Agreement or the Credit Agreement, as applicable.

Preliminary Statement

1. The Trust seeks the Court's approval and authorization for the Trust to enter into a Credit Agreement that will provide it with \$40 million of additional financing necessary to fund its ongoing litigation against Noble Corporation plc ("Noble") and the other above-captioned defendants (collectively with Noble, the "Defendants"). This funding is essential to allow the Trust to fully prosecute its claims as the Trust has already utilized the \$10 million loan that it received almost two years ago. If approved and authorized, the Trust will have sufficient funds to fully litigate its claims against Defendants, including through any appeals.

2. As described in greater detail below, the Credit Agreement is the result of a months-long process that Litigation Trust Management began in July 2018 when it recognized the Trust would require additional funding. From July 2018 through March 2019, Litigation Trust Management explored obtaining additional financing from law firms, certain holders of Litigation Trust Interests, and third-party litigation funders. As a result of Litigation Trust Management's efforts, the Trust received financing proposals and indications of interest from a number of parties, including a proposal from a third-party litigation funder that was subsequently improved upon by certain holders of Litigation Trust Interests. To further market test these proposals and ensure the Trust obtained the best terms possible, Litigation Trust Management then held a bankruptcy-style "auction" wherein holders of Class A Litigation Trust Interests and other parties who elected to participate in the process bid against each other to further improve upon the proposals already provided. That process took place over the course of 17 hours on March 22 and 23, 2019. At the end of the auction, the Investor (as defined below), a third-party investor that does not serve on the Litigation Trust Committee, agreed to provide the financing while the members of the Litigation Trust Committee and certain holders of Class A Litigation Trust Interests indicated they

also would participate on those same terms as they are entitled to do under the Litigation Trust Agreement. The result of this process is \$40 million of non-recourse financing on the terms contained in the Credit Agreement.

3. Based on the competitive and open nature of this process, Litigation Trust Management believes the terms of the Credit Agreement are market and commercially-reasonable. The additional funding also is necessary for the Trust to fully pursue its claims against Defendants. Accordingly, Litigation Trust Management has concluded that obtaining Additional Litigation Funding Loans pursuant to the Credit Agreement is in the best interests of the Trust. Under the present circumstances, however, where the members of the Litigation Trust Committee will also be lenders under the Credit Agreement, the Litigation Trust Agreement is ambiguous as to who can authorize the Trust to enter into this financing. Because of the size of the financing, the Litigation Trust Agreement would ordinarily require the unanimous consent of the members of the Litigation Trust Committee. The Litigation Trust Agreement does not, however, provide an alternative approval mechanism where each member of the Litigation Trust Committee is arguably conflicted due to their participation in the financing (as they have the express right to do as holders of Class A Litigation Trust Interests under the Litigation Trust Agreement). When the Litigation Trust Agreement is ambiguous, it allows Litigation Trust Management to seek instructions or an order from the Court. Accordingly, out of an abundance of caution, the Trust seeks the Court's approval and authorization of the Trust's entry into the Credit Agreement.

Relief Requested

4. The Trust seeks entry of a final order, substantially in the form attached hereto as **Exhibit A**, approving and authorizing the Trust's entry into the Credit Agreement and granting related relief.

Jurisdiction and Venue

5. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 of the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. The Trust confirms its consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The bases for the relief requested herein are sections 105 and 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 9014, Local Rules 2002-1(b) and 4001-2, and the Litigation Trust Agreement.

Concise Statement Pursuant to Bankruptcy Rule 4001(c) and Local Rule 4001-2²

8. The below chart contains a summary of the material terms of the Credit Agreement, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rule 4001(c)(1)(B) and Local Rule 4001-2.

Bankruptcy Code	Summary of Material Terms
Borrower	Paragon Litigation Trust

² The summaries contained in this motion are qualified in their entirety by the provisions of the Credit Agreement, which is attached hereto as **Exhibit B**. To the extent anything in this motion is inconsistent with the Credit Agreement, the terms of the Credit Agreement control. Capitalized terms used in this summary chart but not otherwise defined have the meaning ascribed to them in the Credit Agreement.

Bankruptcy Rule 4001(c)(1)(B)	<i>See</i> Credit Agreement Preamble.
Lenders Bankruptcy Rule 4001(c)(1)(B)	Cantor Fitzgerald, as Administrative Agent, and each Lender from time to time party thereto, including that certain lender, which serves on the Litigation Trust Committee (the “ <u>First Lender</u> ”), that other certain lender, which serves on the Litigation Trust Committee (the “ <u>Second Lender</u> ”), and that other certain lender, which serves on the Litigation Trust Committee (the “ <u>Third Lender</u> ”) and certain funds and accounts managed by a third-party investor that was the successful bidder pursuant to the auction process described herein (the “ <u>Investor</u> ”). <i>See</i> Credit Agreement Preamble.
Term/Maturity Bankruptcy Rule 4001(c)(1)(B)	<u>Maturity Date</u> means the earliest of (i) the Litigation Trust Termination Date, (ii) such date as any distribution is made by the Borrower to any holder of Class A Litigation Trust Interests, Class B Litigation Trust Interests or the Litigation Trust Loan and (iii) the date that is ten years from the date of funding. <i>See</i> Credit Agreement § 1.1.
Commitment Bankruptcy Rule 4001(c)(1)(B)	<u>Term Loan Commitment</u> means \$40,000,000. <u>Commitments.</u> On and subject to the terms and conditions of the Agreement, each Lender, severally and for itself alone, agrees to make a loan to the Borrower on the Closing Date in an amount equal to such Lender’s applicable Pro Rata Share of the Term Loan Commitment as set forth on Annex I to the Credit Agreement. The Commitments of the Lenders to make Term Loans terminate concurrently with the making of the Term Loans on the Closing Date. Term Loans which are repaid or prepaid by the Borrower, in whole or in part, may not be reborrowed. <i>See</i> Credit Agreement §§ 1.1, 2.1, Annex I.
Borrowing Conditions Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<u>Conditions Precedent</u> <ul style="list-style-type: none"> • Payment by Borrower of all reasonable and documented out-of-pocket costs and expenses of the Agent and the Closing Date Material Lenders incurred in connection with the negotiation and documentation of the Commitments, the Agreement, and the other Loan Documents. • Delivery of fully executed Loan Documents in form and substance acceptable to the Lenders. • Delivery by Borrower of the Agreement, the Agency Fee Letter, the Notes (as requested), documentation required pursuant to the Patriot Act or BSA (as requested), a certification regarding beneficial ownership (as requested), a copy of signature and incumbency certificates of any Person executing the Agreement or any other Loan Documents on behalf of the Borrower, and a Borrowing Notice. • The representations and warranties of the Borrower set forth in the Agreement are true and correct in all material respects. • No Event of Default or Default has occurred or is occurring.

	<ul style="list-style-type: none"> • The Order shall have been entered by the Bankruptcy Court or other court of competent jurisdiction (a) as to which the time to appeal shall have expired and as to which no appeal shall then be pending or (b) if a timely appeal shall have been filed or sought, either (i) no stay of the Order shall be in effect, (ii) no motion or application for a stay of the Order shall be filed and pending or such motion or application shall have been denied, or (iii) if such a stay shall have been granted, then (A) the stay shall have been dissolved or (B) a final order of the district court or circuit court having jurisdiction to hear such appeal shall have affirmed the Order and the time allowed to appeal from such affirmance or to seek review or rehearing (other than a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure) thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court or circuit court Order or timely motion to seek review or rehearing of such Order shall have been made, any appellate court having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court's (or lower appellate court's) order upholding the Order of the Bankruptcy Court and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible; provided, however, that the Lenders in their sole discretion may treat any Order as a Final Order by affirmatively agreeing to such treatment in writing. <p>See Credit Agreement § 4.</p>
<p>Repayment Features and Interest Rates Bankruptcy Rule 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(ii)</p>	<p><u>Repayment.</u> The outstanding principal balance of the Term Loans shall be Paid in Full on the Maturity Date. Any repayment pursuant to Section 2.7 of the Credit Agreement shall be accompanied by the applicable Contingent Interest and any other amount then owing.</p> <p><u>Interest.</u> The Obligations (including all Term Loans) shall be non-interest bearing except for Contingent Interest.</p> <p><u>Contingent Interest.</u> The Borrower agrees that the Term Loans outstanding hereunder shall accrue interest in an amount equal to the Contingent Interest, which shall be payable as and when due as provided in the Agreement. The obligation of the Borrower to pay the Contingent Interest shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances and shall survive (and not be reduced, modified or impaired by) any repayment or prepayment of the Term Loans, cancellation of the Notes, or termination of this Agreement. The Borrower expressly waives the provisions of any present or future statute or law that prohibits or may prohibit the collection of the Contingent Interest. The Borrower expressly agrees that (i) the Contingent Interest is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (ii) the Contingent Interest shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Borrower and the Lenders giving specific consideration in this transaction for such agreement to pay the Contingent Interest, (iv) the Borrower shall be estopped hereafter from claiming differently than as agreed to in Section 2.5 of the Credit Agreement, and (v) the Borrower's agreement to pay the Contingent Interest is a</p>

	<p>material inducement to the Lenders to make the Term Loans. Notwithstanding anything to the contrary set forth in the Credit Agreement, the Agent shall have no obligation to calculate or verify the calculation of Contingent Interest.</p> <p><u>Contingent Interest</u> means an amount, in cash or other form of consideration, equal to (a) 14% of the Aggregate Gross Proceeds received by the Borrower in respect of the Noble Claims if and to the extent such Proceeds are received prior to the date that is 270 calendar days following the Closing Date and (b) 16.5% of the Aggregate Gross Proceeds received by the Borrower in respect of the Noble Claims if and to the extent such Proceeds are received on or after the date that is 270 calendar days following the Closing Date.</p> <p><i>See Credit Agreement §§ 1.1, 2.4, 2.5, 2.7.</i></p>
<p>Use of Financing</p> <p>Local Rule 4001-2(a)(ii)</p>	<p><u>Use of Proceeds.</u> Borrower agrees that it will use the proceeds of the Term Loans solely to pay the Specified Litigation Trust Expenses and to pay a \$500,000 structuring fee to Drivetrain, LLC, in its capacity as the Litigation Trust Management, in each case in accordance with Section 2.5 of the Litigation Trust Agreement.</p> <p><i>See Credit Agreement § 7.3.</i></p>
<p>Fees</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(ii)</p>	<p>Drivetrain, LLC will receive a \$500,000 structuring fee.</p> <p><i>See Credit Agreement § 7.3.</i></p>
<p>Events of Default</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(ii)</p>	<p><u>Events of Default.</u> Failure to pay when due principal or Contingent Interest in respect of the Term Loans, Non-payment of credit, bankruptcy or insolvency of Borrower, non-compliance with Loan Documents, termination of Litigation Trust, Borrower's breach of any representations or warranties, entry against the Borrower one or more final judgments or orders for the payment of money in an aggregate amount exceeding \$100,000, failure by the Borrower to pay when due any principal or other amount payable in respect of the Litigation Trust Loan, and a breach or default by the Borrower with respect to any other material term of the Litigation Trust Loan beyond the grace period.</p> <p><i>See Credit Agreement § 8.</i></p>
<p>Liens</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(ii)</p>	<p><u>Liens.</u> No interest in the Litigation Trust Assets or the Noble Claims is subject to any assignments or Liens (other than Permitted Liens). The Term Loans shall be senior obligations of the Borrower and shall rank senior in right of payment to all obligations owed by the Borrower under the Litigation Trust Loan and to the Litigation Trust Beneficiaries, as set forth in Section 6.6 of the Litigation Trust Agreement.</p> <p><i>See Credit Agreement § 5.7.</i></p>

Background

I. The Litigation Trust Agreement

9. On February 14, 2016, the Debtors filed for bankruptcy in this Court. (Litigation Trust Agreement, Recitals) Approximately 16 months later, the Court confirmed the *Fifth Joint Chapter 11 Plan of Paragon Offshore plc and Its Affiliated Debtors* (as confirmed, the “Plan”). (*Id.*)

10. Among other things, the Plan provided for the creation of the Trust to prosecute the Noble Claims and distribute any proceeds from that litigation in accordance with the terms of the Plan and the Litigation Trust Agreement. (*Id.* § 2.1) The Plan also provided for the creation of the Litigation Trust Committee that would, in turn, select Litigation Trust Management. (*Id.* § 2.2) The Litigation Trust Committee currently includes the First Lender, the Second Lender, and the Third Lender. Drivetrain, LLC serves as Litigation Trust Management. (*Id.*) The Plan and Litigation Trust Agreement also created two interests that were distributed to Litigation Trust Beneficiaries: Class A Litigation Trust Interests and Class B Litigation Trust Interests. (*Id.* §§ 3.2, 3.3., 3.4)

11. Pursuant to the provisions in the Plan and Litigation Trust Agreement, the Trust was initially funded with a Litigation Trust Loan of up to \$10 million. (*Id.* §§ 1.1, 4.1) If that initial funding proved insufficient, the Litigation Trust Agreement also permits the Trust to supplement the funding of the Litigation Trust Expenses by, among other things, obtaining Additional Litigation Funding Loans. (*Id.* § 4.2) In that situation, “[a]ll holders of the Class A Litigation Trust Interests who are ‘accredited investors’ (as defined in Rule 501(a) of Regulation D under the Securities Act) shall have the right to participate in the funding of all Additional Litigation Funding Loans based on their pro rata share of Class A Litigation Interests held by all

‘accredited investors.’” (*Id.*) Furthermore, “[t]o the extent that any holders of Class A Litigation Trust Interests decline to participate, the Litigation Trust Management shall have discretion to obtain Additional Litigation Funding first from the participating holders of Class A Litigation Trust Interests, regardless of their pro rata shares, and then from any other party or entity.” (*Id.*)

12. If Litigation Trust Management decides to obtain Additional Litigation Funding Loan, the Litigation Trust Agreement requires (i) a majority of the Litigation Trust Committee consent to any additional Additional Litigation Funding Loans up to \$15 million; and (ii) the unanimous consent of the Litigation Trust Committee for any Additional Litigation Funding Loans in excess of \$15 million. (*Id.*) The Litigation Trust Agreement does not, however, specify whether the Litigation Trust Committee can consent to obtaining Additional Litigation Funding Loans where all of the members of the committee are participating in the financing.

13. Where, as here, the Litigation Trust Agreement is ambiguous, it allows the Litigation Trust Management to seek instructions or an order from the Court:

Section 7.7: The Litigation Trust Management shall have the right at any time to seek instructions from the Bankruptcy Court concerning the administration or disposition of the Trust Assets and the Noble Claims required to be administered by the Litigation Trust. The Litigation Trust Management and Litigation Trust Committee shall not be liable for any act that has been approved by the Bankruptcy Court, and all such actions shall be deemed not to constitute fraud, gross negligence, intentional misconduct or willful misconduct.

Section 7.10(a): If (i) in performing the Litigation Trust Management’s and Litigation Trust Committee’s respective duties under this Agreement a party is required to decide between alternative courses of action, or (ii) the Litigation Trust Management or Litigation Trust Committee is unsure of the application of any provision of this Agreement, then such party may promptly deliver a notice to the Bankruptcy Court and to all Litigation Trust Beneficiaries pursuant to Section 10.6, requesting written instructions of the Bankruptcy Court as to the course of action deemed appropriate by the Bankruptcy Court. The Bankruptcy Court is authorized to make any determination required pursuant to this Section. If the Litigation Trust Management or Litigation Trust Committee does not receive such written direction or instruction within ten (10) Business Days after the applicable party has given such notice, or such shorter period of time set forth in such notice, the party giving us notice may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement as such party shall deem advisable.

Section 10.14: The principal purpose of this Agreement is to aid in the implementation of the Plan and therefore this Agreement incorporates the provisions of the Plan. To that end, the Litigation Trust Management shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek any orders from the Bankruptcy Court in furtherance of the implementation of the Plan and this Agreement. If any provisions of this Agreement are found to be inconsistent with the provisions of the Plan, the provisions of the Plan shall control.

II. Litigation Trust Management Obtains Additional Financing

14. By July 2018, Litigation Trust Management recognized that the Trust required additional funding to continue to prosecute its claims against Defendants. (Daileader Dec. ¶ 2) As an initial step, Litigation Trust Management scheduled a meeting with the then-current members of the Litigation Trust Committee to discuss the need for funding, the process for obtaining it given the provisions in the Litigation Trust Agreement, and the rights of holders of Class A Litigation Trusts Interests to participate in any such financing. (*Id.*)

15. Around the same time, Litigation Trust Management and the Litigation Trust Committee held discussions with other law firms where they solicited proposals that would address, at least in part, the Trust's funding needs. (*Id.* ¶ 3) While this process did not fully resolve the Trust's funding needs, Litigation Trust Management and the Litigation Trust Committee ultimately retained Kirkland & Ellis LLP ("Kirkland"). (*Id.*)

16. At that point, Litigation Trust Management, at the direction of the Litigation Trust Committee,³ began to work with Kirkland to run a formal process for obtaining additional financing. (*Id.* ¶ 4) On the one hand, Litigation Trust Management had already developed an informed view of the market based on proposals it had received from the members of the Litigation Trust Committee and the law firms it interviewed. (*Id.*) But they also believed a more formal

³ Given the expressed interests of the members of the Litigation Trust Committee to provide the financing, the process for identifying the proposal with terms most favorable to the Trust was thereafter run by Litigation Trust Management and counsel.

process that included other third parties and holders of Litigation Trust Interests would ensure that the Trust received additional funding on the best terms possible. (*Id.*)

17. Litigation Trust Management began the formal process in December 2018. (*Id.* ¶ 5) Initially, it contacted the largest holder of Class A Litigation Trust Interests, a significant holder of Class B Litigation Interests, and a highly-regarded third-party litigation funder to determine whether they were interested in providing funding. (*Id.*) All three of these parties entered into non-disclosure agreements (“NDAs”) and participated in discussions with Litigation Trust Management regarding the potential funding. (*Id.*)

18. Throughout January 2019, Litigation Trust Management continued to contact additional parties it believed might be interested in providing additional financing, including two other holders of Class A Litigation Trust Interests and another third-party litigation funder. (*Id.* ¶ 6) As with the parties Litigation Trust Management contacted in December 2018, the Trust required these parties to sign an NDA if they were interested in participating. (*Id.*) In addition, Litigation Trust Management provided additional information to the prospective lenders who had signed an NDA. (*Id.*)

19. By February 18, 2019, Litigation Trust Management had contacted 11 parties that it believed might be interested in providing financing. (*Id.* ¶ 7) Of those 11, nine parties had signed NDAs, received additional information, and held discussions with Litigation Trust Management. (*Id.*) Of the nine parties who signed NDAs, four parties had submitted term sheets that provided full financing of up to \$40 million,⁴ and four other parties were willing to participate in any financing. (*Id.*)

⁴ The three members of the Litigation Trust Committee submitted one combined term sheet and another party submitted a separate term sheet.

20. Of the four parties that submitted term sheets, one of those parties was a third-party litigation funder. (*Id.* ¶ 8) That proposal was ultimately improved upon by another proposal Litigation Trust Management received.

21. Litigation Trust Management did not, however, stop there. (*Id.* ¶ 9) Instead, consistent with the provision in the Litigation Trust Agreement allowing all holders of Class A Litigation Trust Interests to participate in the funding of Additional Litigation Funding Loans, on March 11, 2019, Litigation Trust Management notified all holders of Class A Litigation Trust Interests that they would have the opportunity to provide either alternative financing or participate in any agreed-upon financing. (*Id.*) Litigation Trust Management also contacted the additional parties that had previously signed NDAs and requested an alternative financing proposal or a proposal to participate in financing. (*Id.*)

22. In total, Litigation Trust Management contacted 205 holders of Class A Litigation Trust Interests. (*Id.* ¶ 10) Of those 205 holders, 13 account managers responded and requested a form of the NDA, eight of whom executed the NDA and received a draft term sheet containing the best proposal Litigation Trust Management had received to date. (*Id.*) Of those eight, two committed to participate in the financing and one provided an alternative financing proposal that was superior to the prior proposals Litigation Trust Management had received. (*Id.*)

23. On March 20, 2019, Litigation Trust Management informed all parties who had expressed an interest in the financing that it would hold a meeting at Kirkland's New York office. (*Id.* ¶ 11) The purpose of this meeting was to finalize the terms of the additional funding by seeking any additional offers that were superior to the terms it had previously received. (*Id.*)

24. On March 22, 2019, Litigation Trust Management held an in-person and telephonic meeting that lasted from 9 a.m. to 2 a.m. the following morning. (*Id.* ¶ 12) Over the course of the

day and night, Litigation Trust Management conducted an “auction” where the participating parties bid against each other over several rounds. (*Id.*) By the end of the meeting, Litigation Trust Management had obtained financing for the Trust on terms that materially improved the prior proposals. (*Id.*) The Investor, a third-party investor that does not sit on the Litigation Trust Committee, set the terms of the proposal. (*Id.*) Certain other holders of Litigation Trust A Interests, as well as the members of the Litigation Trust Committee, agreed to participate in that financing. (*Id.*)

25. On March 26, 2019, Litigation Trust Management distributed the final term sheet to the participating parties. (*Id.* ¶ 13) Over the course of the next few months, Litigation Trust Management, with the assistance of Kirkland, drafted the Credit Agreement and finalized the remaining open terms, including the loan maturity, Litigation Trust Management’s financing fee, permitted Trust expenses, and events of default and remedies. (*Id.*)

Basis for Relief

26. Section 364 of the Bankruptcy Code authorizes a trustee to obtain unsecured credit under certain circumstances. Courts grant a trustee considerable deference in acting in accordance with its business judgment in obtaining credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment

to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”). To determine whether the business judgment standard is met, a court need only “examine whether a reasonable person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business judgment when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor’s] authority under the [Bankruptcy] Code”).

27. The Court should authorize the Trust’s entry into the Credit Agreement because it is a sound exercise of business judgment following an arm’s length process and careful evaluation of alternatives. As discussed above, Litigation Trust Management undertook a months-long process that involved the solicitation of proposals from all holders of Class A Litigation Trust Interests and several third-party litigation funders. Litigation Trust Management then organized a 17-hour auction further designed to ensure the financing the Trust obtained was on the best terms possible. Given Litigation Trust Management’s extensive efforts to market-test the financing, there can be no dispute that the terms of the additional financing are reasonable and the Trust’s entry into the Credit Agreement reflects sound business judgment.

28. Moreover, the Litigation Trust Agreement explicitly allows Litigation Trust Management and the Litigation Trust Committee to seek Additional Litigation Funding Loans. The decision to do so was a proper exercise of business judgment—and, in fact, necessary to allow the Trust to continue to litigate its claims against Defendants. Moreover, Litigation Trust Management took all reasonable steps to ensure it complied with the provisions of the Litigation

Trust Agreement. Specifically, Litigation Trust Management provided all holders of Class A Litigation Trust Interests with the opportunity to participate in the financing process. Accordingly, the Trust's entry into the Credit Agreement is consistent with the terms of the Litigation Trust Agreement and should be approved and authorized.

Notice

29. The Trust will provide notice of this motion to: (a) counsel to the Administrative Agent; (b) all Litigation Trust Beneficiaries; (c) all holders of Class A Litigation Trust Interests; (d) all holders of Class B Litigation Trust Interests; (d) counsel for Defendants; (e) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (f) the U.S. Trustee.

No Prior Request

30. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Trust respectfully requests that the Court enter the order attached hereto and grant the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: June 25, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Timothy P. Cairns

Laura Davis Jones (DE Bar No. 2436)

Timothy P. Cairns (DE Bar No. 4228)

919 N. Market Street, 17th Floor

P.O. Box 8705

Wilmington, DE 19899-8705 (Courier 19801)

Telephone: (302) 652-4100

Facsimile: (302) 652-4400

Email: ljones@pszjlaw.com

tcairns@pszjlaw.com

– and –

KIRKLAND & ELLIS LLP

David J. Zott, P.C. (admitted *pro hac vice*)

Jeffrey J. Zeiger, P.C. (admitted *pro hac vice*)

William E. Arnault (admitted *pro hac vice*)

Anne I. Salomon (admitted *pro hac vice*)

300 N. LaSalle Street

Chicago, IL 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Email: dzott@kirkland.com

jzeiger@kirkland.com

warnault@kirkland.com

anne.salomon@kirkland.com

Co-Counsel for Paragon Litigation Trust

Exhibit A

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

In re:

PARAGON OFFSHORE PLC,

Debtor.

PARAGON LITIGATION TRUST,

Plaintiff,

v.

NOBLE CORPORATION PLC, NOBLE CORPORATION HOLDINGS LTD, NOBLE CORPORATION, NOBLE HOLDING INTERNATIONAL (LUXEMBOURG) S.à r.l., NOBLE HOLDING INTERNATIONAL (LUXEMBOURG NHIL) S.à r.l., NOBLE FDR HOLDINGS LIMITED, MICHAEL A. CAWLEY, JULIE H. EDWARDS, GORDON T. HALL, JON A. MARSHALL, JAMES A. MACLENNAN, MARY P. RICCIARDELLO, JULIE J. ROBERTSON, and DAVID WILLIAMS,

Defendants.

Chapter 11

Case No. 16-10386 (CSS)

Adv. Pro. No. 17-51882 (CSS)

**ORDER GRANTING THE PARAGON LITIGATION TRUST'S
MOTION SEEKING ENTRY OF A FINAL ORDER
(I) AUTHORIZING THE PARAGON LITIGATION TRUST TO
OBTAIN ADDITIONAL FINANCING AND (II) GRANTING RELATED RELIEF**

Upon consideration of *The Paragon Litigation Trust's Motion Seeking Entry of a Final Order (i) Authorizing the Paragon Litigation Trust to Obtain Additional Financing and (ii) Granting Related Relief*; the Declaration of Tim Daileader in Support of *The Paragon Litigation Trust's Motion Seeking Entry of a Final Order (i) Authorizing The Paragon Litigation Trust to Obtain Additional Financing and (ii) Granting Related Relief*; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. *The Paragon Litigation Trust's Motion Seeking Entry of a Final Order (i) Authorizing the Paragon Trust to Obtain Additional Financing and (ii) Granting Related Relief* is

GRANTED.

2. The Paragon Litigation Trust's entry into the Credit Agreement is authorized and approved.

3. The Court shall retain jurisdiction to implement, interpret, and enforce the provisions of this Order.

Exhibit B

CREDIT AGREEMENT
dated as of July [], 2019
by and among
PARAGON LITIGATION TRUST,
as the Borrower,
THE LENDERS PARTY HERETO,
as Lenders,
and
CANTOR FITZGERALD SECURITIES,
as the Agent

TABLE OF CONTENTS

Page

Section 1	Definitions; Interpretation	1
1.1.	Definitions	1
1.2.	Interpretation	6
Section 2	Credit Facilities	7
2.1.	Commitments	7
2.2.	Commitments Several	7
2.3.	Loan Accounting	7
2.4.	Interest	8
2.5.	Prepayment	8
2.6.	Repayment	9
2.7.	Payment and Performance	9
2.8.	Non-Recourse	11
Section 3	Withholding Taxes	11
3.1.	Withholding Taxes	11
Section 4	Conditions Precedent	14
Section 5	Representations and Warranties	15
5.1.	Authorization; No Conflict	15
5.2.	Due Execution; Validity; Binding Nature	16
5.3.	Sufficiency of Assets	16
5.4.	Compliance with Laws	16
5.5.	Material Adverse Effect	16
5.6.	Liens	17
Section 6	Affirmative Covenants	17
6.1.	Information	17
6.2.	Compliance with Litigation Trust Agreement	19
6.3.	Maintenance of Existence	19
6.4.	Compliance with Laws; Payment of Taxes	19
6.5.	Books and Records	19
6.6.	Noble Claims	Error! Bookmark not defined.
6.7.	Budget	Error! Bookmark not defined.
6.8.	Further Assurances	19
Section 7	Negative Covenants	20
7.1.	Indebtedness	20
7.2.	Liens	20
7.3.	Use of Proceeds	20
7.4.	Mergers; Consolidations	20
7.5.	Subsidiaries	20

7.6.	Distributions	20	
7.7.	Transactions with Affiliates	20	
7.8.	Amendments to Litigation Trust Agreement	21	
7.9.	Actions Requiring Consent of Litigation Trust Committee		Error!
	Bookmark not defined.		
Section 8	Events of Default; Remedies	21	
8.1.	Events of Default	21	
8.2.	Remedies	22	
Section 9	Agent	23	
9.1.	Appointment; Authorization	23	
9.2.	Delegation of Duties	23	
9.3.	Limited Liability	23	
9.4.	Reliance	24	
9.5.	Notice of Default	25	
9.6.	Credit Decision	25	
9.7.	Indemnification	26	
9.8.	Agent Individually	26	
9.9.	Successor Agent	26	
Section 10	Miscellaneous	27	
10.1.	Waiver; Amendments	27	
10.2.	Notices	28	
10.3.	Reserved	28	
10.4.	Costs; Expenses	28	
10.5.	Indemnification by the Borrower	28	
10.6.	Payments Set Aside	30	
10.7.	Reserved	30	
10.8.	Assignments	30	
10.9.	Confidentiality	31	
10.10.	Captions	32	
10.11.	Nature of Remedies	32	
10.12.	Counterparts	32	
10.13.	Severability	32	
10.14.	Entire Agreement	32	
10.15.	Successors; Assigns	33	
10.16.	Governing Law	33	
10.17.	Forum Selection; Consent to Jurisdiction	33	
10.18.	Waiver of Jury Trial	33	
10.19.	Patriot Act	34	
10.20.	Release		Error! Bookmark not defined.

Exhibits

Exhibit A Form of Assignment Agreement

Exhibit B Form of Note

CREDIT AGREEMENT

This Credit Agreement (“Agreement”) dated as of July [___], 2019, by and among Paragon Litigation Trust (the “Borrower”), the Persons party hereto from time to time as lenders (the “Lenders”) and Cantor Fitzgerald Securities, in its capacity as the Administrative Agent for all of the Lenders (the “Agent”).

WHEREAS, the Borrower desires that the Lenders extend a term credit facility to the Borrower to provide funds necessary to fund Litigation Trust Expenses.

NOW THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

Section 1

Definitions; Interpretation.

1.1. Definitions.

When used herein the following terms shall have the following meanings:

Acceleration Event means the occurrence and continuance of any of the following: (i) an Event of Default under Section 8.1.1 as a result of the failure to Pay in Full the Term Loans on the Maturity Date; (ii) an Event of Default under Section 8.1.2; or (iii) any other Event of Default under Section 8.1 and the declaration by the Required Lenders that the Obligations are due and payable.

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. A Person shall be deemed to be “controlled by” any other Person if such Person possesses, directly or indirectly, power to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, neither the Agent nor any Lender shall be deemed an Affiliate of the Borrower.

Agency Fee Letter means that certain letter, dated as of the Closing Date, between the Agent and the Borrower.

Agent has the meaning set forth in the Preamble, and any successor thereto in such capacity as appointed pursuant to Section 9.9 hereof.

Aggregate Gross Proceeds means the total amount of all Proceeds, including all cash and Non-Cash Consideration.

Agreement has the meaning set forth in the Preamble.

Assignment Agreement means an agreement substantially in the form of Exhibit A.

Borrower has the meaning set forth in the Preamble.

Borrower Materials has the meaning set forth in Section 6.1.

Business Day means any day on which commercial banks are open for commercial banking business in New York, New York.

Closing Date means the date on which all conditions precedent set forth in Section 4.1 have been satisfied (or waived in accordance with the terms hereof) and the Lenders make the Term Loans.

Closing Date Material Lender means any Lender that, together with its Affiliates and managed entities on a collective basis, holds at least \$6,000,000 of the Term Loans issued as of the Closing Date.

Closing Date Significant Lender means any Lender that, together with its Affiliates and managed entities on a collective basis, holds at least \$15,000,000 of the Term Loans issued as of the Closing Date.

Code means the Internal Revenue Code of 1986, as amended.

Commitment means, as to any Lender, such Lender's Pro Rata Share of the Term Loan Commitment as set forth on Annex I.

Contingent Interest means an amount, in cash or other form of consideration, equal to (a) 14% of the Aggregate Gross Proceeds received by the Borrower in respect of the Noble Claims if and to the extent such Proceeds are received prior to the date that is 270 calendar days following the Closing Date and (b) 16.5% of the Aggregate Gross Proceeds received by the Borrower in respect of the Noble Claims if and to the extent such Proceeds are received on or after the date that is 270 calendar days following the Closing Date.

Default means any event that, if it continues uncured or unwaived hereunder, will, with the lapse of applicable grace period or the giving of notice or both hereunder, constitute an Event of Default.

Dollar and \$ mean lawful money of the United States of America.

Event of Default means any of the events described in Section 8.1.

Excluded Taxes means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such

Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Term Loan or Loan Document), (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Recipient with respect to an applicable interest in a Term Loan or Commitment pursuant to a law in effect on the date on which (i) such Recipient acquires such interest in the Term Loan or Commitment or (ii) such Recipient changes its lending office, except in each case to the extent that, pursuant to Section 3, amounts with respect to such Taxes were payable either to such Recipient's assignor immediately before such Recipient became a party hereto or to such Recipient immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to provide documentation in accordance with Section 3.1, and (d) any withholding Taxes imposed under FATCA.

FATCA means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among governmental authorities and implementing such Sections of the Code.

Indemnified Liabilities has the meaning set forth in Section 10.5 hereof.

Indemnified Taxes means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

Legal Costs means, with respect to any Person, (a) all reasonable and invoiced out-of-pocket fees and charges of one primary outside legal counsel, one special or regulatory counsel and one additional counsel per relevant material jurisdiction and (b) all court costs and similar legal expenses, in each case, solely to the extent reimbursable by the Borrower under this Agreement.

Lender Party has the meaning set forth in Section 10.5.

Lenders has the meaning set forth in the Preamble.

Lien means, with respect to any Person, any interest granted by such Person (or any interest imposed by law) in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Litigation Trust Agreement means that certain Litigation Trust Agreement, dated as of July 18, 2017, among Paragon Offshore Limited, Paragon Offshore plc (in administration), the administrators (as defined therein), the other debtor subsidiaries set forth on the signature pages thereto, Drivetrain, LLC, as the Litigation Trust Management, and the Litigation Trust Committee.

Litigation Trust Assets shall have the meaning set forth in the Litigation Trust Agreement.

Litigation Trust Beneficiaries shall have the meaning set forth in the Litigation Trust Agreement.

Litigation Trust Committee shall have the meaning set forth in the Litigation Trust Agreement.

Litigation Trust Expenses shall have the meaning set forth in the Litigation Trust Agreement.

Litigation Trust Loan shall have the meaning set forth in the Litigation Trust Agreement.

Litigation Trust Management shall have the meaning set forth in the Litigation Trust Agreement.

Loan Documents means (i) this Agreement and any amendment hereof, (ii) the Notes, (iii) the Agency Fee Letter and (iv) each document, instrument and agreement delivered in connection with the foregoing and designated as a “Loan Document” by the Borrower and the Agent.

Material Adverse Effect means any event, circumstance or condition that has had or could reasonably be expected to have a material and adverse effect on (a) the financial condition of the Borrower, (b) the ability of the Borrower to perform its payment obligations under this Agreement or any of the other Loan Documents or (c) the rights and remedies of the Agent or the Lenders in respect of the Loan Documents.

Maturity Date means the earliest of (i) the Litigation Trust Termination Date (as defined in the Litigation Trust Agreement), (ii) such date as any distribution is made by the Borrower to any holder of Class A Litigation Trust Interests, Class B Litigation Trust Interests or the Litigation Trust Loan (as each such term is defined in the Litigation Trust Agreement) and (iii) [___], 2029¹. The Borrower shall notify the Agent of the occurrence of the Maturity Date no later than 2 p.m. on the date thereof.

Noble Claims has the meaning set forth in in the Litigation Trust Agreement.

Note means a promissory note substantially in the form of Exhibit B.

Obligations means all liabilities, indebtedness and obligations (monetary (including post-petition costs, fees, expenses, indemnities and other amounts, whether allowed or not) or otherwise) of the Borrower under this Agreement, any other Loan Document, or any other document or instrument executed in connection herewith or therewith, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

Order has the meaning set forth in Section 4.1.5.

Other Taxes means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery,

¹ NTD: to be 10 years from date hereof.

performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are described in clause (a)(ii) of the definition of “Excluded Taxes” that are imposed with respect to an assignment.

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the indefeasible payment in full of all such Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) and the termination of all commitments to lend or other obligations of the Agent and the Lenders to provide any additional credit or extensions or credit hereunder or under any other Loan Document.

Permitted Liens means the following encumbrances: (a) Liens for Taxes or assessments or other governmental charges not yet due and payable or which are being contested, (b) deposits securing, or in lieu of, surety, appeal or customs bonds in proceedings relating to the Noble Claims to which the Borrower is a party, and (c) Liens on any deposit accounts in favor of the financial institutions at which such accounts are held in respect of customary fees and expenses or otherwise arising by operation of law.

Person means any natural person, corporation, partnership, trust, limited liability company, association, governmental authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

Platform has the meaning set forth in Section 6.1.

Proceeds means cash and all of the other property paid and payable (including amounts paid into escrow and ultimately released to the Borrower) in respect of the Noble Claims (by way of settlement, judgement or otherwise), including amounts paid and payable in the form of debt securities, convertible securities, preferred equity securities, common stock, warrants, stock appreciation rights, options or similar rights, whether or not vested (such non-cash property, collectively, the “Non-Cash Consideration”). For purposes of calculating the value of any Non-Cash Consideration, (a) the value of securities (whether debt or equity) that are freely tradable in an established public market will be determined on the basis of the average closing price in such market for the ten (10) trading days prior to the receipt by the Borrower of such securities, (b) the value of securities that have no established public market or other property will be the fair market value, as reasonably determined by the Borrower, of such securities or other property on the date of receipt by the Borrower, and (c) (i) in the case of any repayment of the principal amount of the Term Loans, any restricted stock (i.e., stock in a public company not freely tradeable) received shall be valued at 85% of the public market price of such stock, and (ii) in the case of the calculation of Aggregate Gross Proceeds and Contingent Interest, any restricted stock will be valued in accordance with clause (a) above.

Pro Rata Share means, with respect to any Lender, the percentage equal to such Lender’s share of the Term Loan Commitment, or if the Term Loan Commitment has terminated, its share of the outstanding principal amounts of the Term Loans, in each case as reflected in this Agreement on Annex I (as the same may be adjusted from time to time as a result of an assignment of Term Loans pursuant to an Assignment Agreement).

Public Lender has the meaning set forth in Section 6.1.

Recipient means (a) the Agent or (b) any Lender, as applicable.

Required Lenders means either (i) Lenders having Pro Rata Shares the aggregate Dollar equivalent amount of which exceeds fifty percent (50%) of the outstanding Commitments or Term Loans, collectively; provided that the Required Lenders pursuant to this clause (i) must include each Closing Date Significant Lender to the extent such Closing Date Significant Lender (and its Affiliates and managed entities, collectively) holds at least \$5,000,000 of the Term Loans or (ii) Lenders having Pro Rata Shares the aggregate Dollar equivalent amount of which equals or exceeds sixty percent (60%) of the outstanding Commitments or Term Loans, collectively.

Specified Litigation Trust Expenses means all Litigation Trust Expenses necessary for the prosecution of the Noble Claims and otherwise customary for litigation matters of a similar type.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company, or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

Taxes means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any governmental agency, including any interest, additions to tax or penalties applicable thereto.

Term Loan Commitment means \$40,000,000.

Term Loans has the meaning set forth in Section 2.1.

1.2. Interpretation.

In the case of this Agreement and each other Loan Document, (a) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (b) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (c) the term “including” is not limiting and means “including but not limited to”; (d) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including”; (e) unless otherwise expressly provided in such Loan Document, (i) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements, supplements, and other modifications thereto, but only to the extent such amendments, restatements, supplements and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation; (f) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms; (g) any reference herein to any Person shall be construed to include such Person’s

successors and permitted assigns; (h) the words “asset” and “property” shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights; (i) [reserved]; (j) all certifications to be made hereunder by an officer or representative of the Borrower shall be made by such person in his or her capacity solely as an officer or a representative of the Borrower, on the Borrower’s behalf and not in such Person’s individual capacity; (k) the fair market value of any property, other than cash, as of any date of determination, means, with respect to such property, the value reasonably determined by the Borrower in good faith of the consideration obtainable in a sale of such property at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time giving regard to the nature and characteristics of such property; and (l) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Agent, the Borrower, the Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against the Agent or the Lenders merely because of the Agent’s or the Lenders’ involvement in their preparation.

Section 2 **Credit Facilities.**

2.1. Commitments.

On and subject to the terms and conditions of this Agreement, each Lender, severally and for itself alone, agrees to make a loan to the Borrower (each such loan, a “Term Loan” and collectively the “Term Loans”) on the Closing Date in an amount equal to such Lender’s applicable Pro Rata Share of the Term Loan Commitment as set forth on Annex I. The Commitments of the Lenders to make Term Loans shall terminate concurrently with the making of the Term Loans on the Closing Date. Term Loans which are repaid or prepaid by the Borrower, in whole or in part, may not be reborrowed.

2.2. Commitments Several.

The failure of any Lender to make a requested Term Loan on any date shall not relieve any other Lender of its obligation (if any) to make a Term Loan on such date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender.

2.3. Loan Accounting.

2.3.1. Recordkeeping.

The Agent, on behalf of each Lender, shall record in its records the date and amount of each Term Loan made by each Lender and each repayment thereof. The aggregate unpaid principal amount so recorded shall be conclusive evidence, absent demonstrable error, of the principal amount of the Term Loans owing and unpaid. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of the Borrower hereunder or under any Note to repay the principal amount of the Term Loans hereunder.

2.3.2. Notes.

Promptly following the reasonable request of any Lender, the Term Loans of such Lender shall be evidenced by a Note, with appropriate insertions, payable to the order of such Lender in a face principal amount equal to the sum of such Lender's Pro Rata Share of the Term Loans and payable in such amounts and on such dates as are set forth herein.

2.4. Interest. The Obligations (including all Term Loans) shall be non-interest bearing except as set forth in Section 2.5.

2.5. Contingent Interest. The Borrower agrees that the Term Loans outstanding hereunder shall accrue interest in an amount equal to the Contingent Interest, which shall be payable as and when due as provided in this Agreement. The obligation of the Borrower to pay the Contingent Interest shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances and shall survive (and not be reduced, modified or impaired by) any repayment or prepayment of the Term Loans, cancellation of the Notes, or termination of this Agreement. The Borrower expressly waives the provisions of any present or future statute or law that prohibits or may prohibit the collection of the Contingent Interest. The Borrower expressly agrees that (i) the Contingent Interest is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (ii) the Contingent Interest shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Borrower and the Lenders giving specific consideration in this transaction for such agreement to pay the Contingent Interest, (iv) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this Section 2.5, and (v) Borrower's agreement to pay the Contingent Interest is a material inducement to the Lenders to make the Term Loans. Notwithstanding anything to the contrary herein, the Agent shall have no obligation to calculate or verify the calculation of Contingent Interest.

2.6. Prepayment.

2.6.1. Voluntary Prepayment.

The Borrower may from time to time, on at least one (1) Business Day's prior written notice (such notice shall include delivery via telefacsimile or other electronic methods of transmission) to the Agent (which shall promptly advise each Lender thereof) not later than 1:00 p.m. New York time on such day, prepay the Term Loans in cash in whole or in part. Such notice to the Agent shall specify the Term Loans to be prepaid and the date and amount of prepayment and the application of such prepayment shall be subject to Section 2.8.2. For the avoidance of doubt, in the event any such prepayment is made on account of the Obligations at any time prior to the receipt by the Borrower of Proceeds on account of the Noble Claims (as a result of a refinancing of the Obligations or otherwise), the Obligations consisting of Contingent Interest shall be and remain Obligations hereunder, shall constitute Additional Litigation Funding Loans pursuant to the Litigation Trust Agreement, and shall be payable in accordance with Section 6.6 of the Litigation Trust Agreement and this Agreement.

2.6.2. Mandatory Prepayment.

The Borrower shall prepay the Term Loans within five (5) Business Days following the receipt by the Borrower of any Proceeds from any Noble Claims with 100% of such Proceeds net of any then outstanding Litigation Trust Expenses.

The Borrower shall give prior written notice (such notice shall include delivery via telefacsimile or other electronic methods of transmission) to the Agent not later than 1:00 p.m. New York time at least one (1) Business Day prior to each mandatory prepayment pursuant to Section 2.6.2, and the Agent shall promptly notify each Lender of such notice. Such notice to the Agent shall specify the Term Loans to be prepaid, the amount of Contingent Interest and the date and amount of prepayment and the application of such prepayment shall be subject to Section 2.8.2. Any prepayment pursuant to this Sections 2.6.2 shall be accompanied by the applicable Contingent Interest.

2.6.3. All Prepayments.

All prepayments of Term Loans and other Obligations (including Contingent Interest) shall be applied on a pro rata basis to the Term Loans of Lenders holding Term Loans. Notwithstanding anything to the contrary in this Agreement, to the extent the Borrower has received any Proceeds that includes any Non-Cash Consideration, with respect to any payment or prepayment thereafter made under this Agreement, such payment or prepayment (consisting of such Non-Cash Consideration and any cash received in connection therewith) shall be applied to the outstanding Obligations, with the payment to each Lender consisting of a pro rata share of the cash and each form of Non-Cash Consideration so received.

2.7. Repayment.

The outstanding principal balance of the Term Loans shall be Paid in Full on the Maturity Date. Any repayment pursuant to this Section 2.7 shall be accompanied by the applicable Contingent Interest and any other amount then owing.

2.8. Payment and Performance.

2.8.1. Making and Settlement of Payments.

All payments of principal of the Term Loans, and of all other Obligations (including Contingent Interest), shall be made by the Borrower to the Agent without setoff, recoupment or counterclaim and in immediately available funds at the office specified by the Agent no later than 1:00 p.m. New York time on the date due, and funds received after that hour may be deemed to have been received by the Agent on the following Business Day. The Agent shall promptly remit to each Lender its share of all principal payments received in collected funds by the Agent for the account of such Lender.

2.8.2. Application of Payments and Proceeds.

(a) Concurrently with each remittance to any Lender of its share of any such payment, the Agent shall advise such Lender as to the application of such payment.

(b) The principal of all Term Loans, and all other Obligations identified in clauses (c)(i) and (ii) below, shall, under all circumstances (absent the consent of the Agent (with respect to clause (c)(i) below) and the Lenders (with respect to clauses (c)(ii), (iii) and (iv) below)) be paid first from Proceeds consisting of cash and, to the extent that the amount of cash is insufficient therefor, thereafter from Proceeds consisting of Non-Cash Consideration. Contingent Interest shall be paid from the remaining Proceeds received by the Borrower (after payment of the principal amount of the Term Loans and the items identified in clauses (c)(i) and (ii) below) in connection with the Noble Claims, it being understood that (i) the form of any such payment of Contingent Interest shall be in accordance with the percentage that each form of consideration comprising such Proceeds bears to the aggregate amount of Proceeds remaining, and (ii) the form of payment to each Lender shall be consistent with Section 2.6.3.

(c) Notwithstanding anything herein or in any other Loan Document to the contrary, the Agent shall apply all or any part of payments in respect of the Obligations to the payment of the Obligations in the following order:

(i) FIRST, to the payment of all fees, costs, expenses and indemnities due and owing to the Agent under this Agreement or any other Loan Document, until Paid in Full;

(ii) SECOND, to the payment of all fees, costs, expenses and indemnities due and owing to the Lenders in respect of the Term Loans and Commitments, pro rata based on each Lender's Pro Rata Share thereof, until Paid in Full;

(iii) THIRD, pro rata to the payment of all principal of the Term Loans and the Contingent Interest due and owing, pro rata based on each Lender's Pro Rata Share thereof, until Paid in Full;

(iv) FOURTH, to the payment of all other Obligations owing to each Lender, pro rata based on each Lender's Pro Rata Share thereof, until Paid in Full; and

(v) FIFTH, to the Borrower or such other Person entitled thereto under applicable law and the Litigation Trust Agreement, in each case, as a court of competent jurisdiction or the Borrower may direct the Agent in writing.

2.8.3. Payment and Performance Dates.

If any payment of principal with respect to any of the Term Loans, or of any other Obligations, or the performance of any covenant, duty or obligation falls due on a day which is not a Business Day, then such due date shall be extended to the immediately following Business Day.

2.8.4. Proration of Payments.

If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of set-off or otherwise, on account of a Term Loan in excess of its applicable Pro Rata Share, respectively, of payments and other recoveries obtained by all the Lenders on account of Term Loans or other Obligations then held by them, then such Lender shall purchase from the other Lenders such participations in the Term Loans of the other Lenders, or shall make such other payments or adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of such payments or adjustments; provided that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery.

2.9. Non-Recourse. Notwithstanding anything to the contrary herein or any other Loan Document, the Lenders shall have no recourse to any party in respect of the Obligations except to the Borrower and the Litigation Trust Assets and the Proceeds thereof. For the avoidance of doubt, none of the Litigation Trust Management, the Litigation Trust Committee, the Litigation Trust Beneficiaries, nor the members thereof, nor any of their professionals shall be personally liable for the payment of the Obligations, and no Person shall look to the Litigation Trust Management or other Indemnified Parties (as defined in the Litigation Trust Agreement) personally for the payment of the Obligations.

Section 3 **Taxes.**

3.1. Withholding Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of Borrower) requires the deduction or withholding of any Tax from any such payment by Borrower, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant governmental agency in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made. All Recipients shall be required, upon the reasonable request of Borrower, to provide any information necessary under applicable law to effect the withholding of such taxes, subject to the obligation of Borrower described in the preceding sentence.

3.2. Payment of Other Taxes by Borrower. The Borrower shall timely pay to the relevant governmental agency in accordance with applicable law any Other Taxes.

3.3. Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a governmental agency pursuant to this Section, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such governmental agency evidencing

such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

3.4. Indemnification by Borrower. The Borrower shall indemnify the Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Agent or such Lender or required to be withheld or deducted from a payment to such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant governmental agency. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender shall be conclusive absent manifest error.

3.5. Tax Forms.

3.5.1. Each Recipient shall deliver to the Borrower and the Agent at the time or times reasonably requested by the Borrower such properly completed and executed tax documentation reasonably requested by the Borrower and the Agent as will permit payments made under any Loan Document to be made without withholding or at a reduced rate of withholding (including without limitation Forms W-9, W-8BEN-E, W-8BEN, W-8IMY, or W-8EXP, as applicable). Each Recipient shall, whenever a lapse in time or change in circumstances renders such documentation expired, obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Agent updated or other appropriate documentation or promptly notify the Borrower of its inability to do so. In addition, each Lender, if reasonably requested by the Borrower, shall deliver such other documentation described by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

3.5.2. If a payment made to any Lender under any Loan Document would be subject to withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (ii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

3.6. Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3 (including by the payment of additional amounts pursuant to this Section 3), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party

and without interest (other than any interest paid by the relevant governmental authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 3.6 (plus any penalties, interest or other charges imposed by the relevant governmental authority) in the event that such indemnified party is required to repay such refund to such governmental authority. Notwithstanding anything to the contrary in this Section 3.6, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.6 the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 3.6 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

3.7. Designation of a Different Lending Office. If any Lender requests compensation under this Section 3, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any governmental authority for the account of any Lender pursuant to this Section 3, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to this Section 3 in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.8. CPDI. Notwithstanding anything to the contrary herein, the Borrower, the Lenders and the Agent acknowledge and agree that the Term Loans are contingent payment debt instruments subject to the noncontingent bond method described in Treas. Reg. Section 1.1275-4(b) and that any amount of Contingent Interest payable hereunder constitutes a contingent payment of interest for U.S. federal income and other applicable tax purposes. The Borrower, the Lenders and the Agent further agree that the comparable yield, projected payment schedule, and daily portions of interest for the Term Loans is set forth on Schedule [] and the Borrower, the Lenders and the Agent shall not take any position on any tax return inconsistent with such Schedule unless otherwise required by applicable law.

3.9. Survival. Each party's obligations under Section 3 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the commitments and the repayment, satisfaction or discharge of any or all obligations under any Loan Document.

Section 4
Conditions Precedent.

4.1 The obligation of each Lender (severally and not jointly) to make its Term Loan on the Closing Date is subject to the satisfaction (or waiver by the Required Lenders) of the following conditions precedent:

4.1.1. Costs and Expenses.

To the extent invoiced at least one (1) Business Day prior to the Closing Date, the Borrower shall have paid (or will be paid out of the netted proceeds of the Term Loans funded on the Closing Date) all reasonable and documented out-of-pocket costs and expenses of the Agent and the Closing Date Material Lenders incurred in connection with the negotiation and documentation of the Commitments, this Agreement and the other Loan Documents.

4.1.2. Delivery of fully executed Loan Documents in form and substance acceptable to the Lenders.

The Borrower shall have delivered the following documents duly executed and dated the Closing Date:

- (a) Agreement. This Agreement.
- (b) Agency Fee Letter. The Agency Fee Letter.
- (c) Notes. Notes, for each Lender requesting a Note one (1) Business Day prior to the Closing Date.
- (d) Know Your Customer. To the extent requested at least three (3) Business Days in advance of the Closing Date, the Agent and each Lender shall have received (i) documentation that is required pursuant to Section 326 of the USA PATRIOT ACT (P.L. 107-56, 115 Stat. 272 (2001)) (the "Patriot Act") and under any other provision of the Patriot Act, the Bank Secrecy Act (P.L. 91-508, 84 Stat. 1118 (1970)) (the "BSA") or any regulations under the BSA or the Patriot Act and (ii) a certification regarding beneficial ownership required by 31 C.F.R. § 1010.230.
- (e) Incumbency. A copy of signature and incumbency certificates of any Person executing this Agreement or any other Loan Documents on behalf of the Borrower, all certified by as being in full force and effect.
- (f) Borrowing Notice. Delivery by the Borrower of a written borrowing request at least three (3) Business Days prior to the requested funding date.

4.1.3. Representations and Warranties.

The representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects.

4.1.4. Default; Event of Default.

No Event of Default or Default shall have then occurred and be continuing.

For purposes of determining compliance with the conditions specified in this Section 4.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.1.5. Order.

The [Order Approving The Loan Agreement] (as the same may be amended, supplemented or otherwise modified in accordance with the terms hereof and thereof, the “Order”) shall have been entered by the Bankruptcy Court or other court of competent jurisdiction (a) as to which the time to appeal shall have expired and as to which no appeal shall then be pending or (b) if a timely appeal shall have been filed or sought, either (i) no stay of the Order shall be in effect, (ii) no motion or application for a stay of the Order shall be filed and pending or such motion or application shall have been denied, or (iii) if such a stay shall have been granted, then (A) the stay shall have been dissolved or (B) a final order of the district court or circuit court having jurisdiction to hear such appeal shall have affirmed the Order and the time allowed to appeal from such affirmance or to seek review or rehearing (other than a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure) thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court or circuit court Order or timely motion to seek review or rehearing of such Order shall have been made, any appellate court having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court’s (or lower appellate court’s) order upholding the Order of the Bankruptcy Court and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible; provided, however, that the Lenders in their sole discretion may treat any Order as a Final Order by affirmatively agreeing to such treatment in writing.

Section 5 **Representations and Warranties.**

To induce the Agent and the Lenders to enter into this Agreement and to induce the Lenders to make Term Loans hereunder, the Borrower represents and warrants to the Agent and the Lenders on the Closing Date that:

5.1. Authorization; No Conflict.

The Borrower is duly organized and validly existing under the laws of the State of Delaware. The Borrower has all requisite power and authority to own and operate and to carry out its business as now conducted and as proposed to be conducted. Subject to the entry and terms of the Order, the Borrower is duly authorized to execute and deliver this Agreement and each other

Loan Document to which it is a party and is duly authorized to perform its Obligations under this Agreement and each other Loan Document to which it is a party. Subject to the entry and terms of the Order, the execution, delivery and performance by the Borrower of this Agreement and each of the other Loan Documents, and the borrowings by the Borrower hereunder, do not and will not (a) require any consent or approval of any governmental agency or authority (other than any consent or approval which has been obtained and is in full force and effect), (b) violate any order, judgment or decree of any court or other agency of government binding on it, other than violations which would not reasonably be expected to have a Material Adverse Effect. (c) result in or require the creation or imposition of any lien upon any of the assets of the Borrower (other than Permitted Liens), (d) conflict with the Litigation Trust Agreement, or (e) conflict with any provision of applicable law, the Borrower's organizational documents or any agreement, document or instrument to which the Borrower is a party, other than conflicts which would not reasonably be expected to have a Material Adverse Effect.

5.2. Due Execution; Validity; Binding Nature.

This Agreement and each other Loan Document has been duly executed and delivered by the Borrower. Subject to the entry and terms of the Order, this Agreement and each other Loan Document is the legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

5.3. Sufficiency of Assets.

The proceeds of the Term Loans are expected to be sufficient to fund the litigation of the Noble Claims through trial and any appeals thereof. After giving effect to the Term Loans, the amount of cash on hand will not be in excess of the reasonable amount necessary to meet the claims and contingent liabilities or to maintain the value of the Litigation Trust Assets and administer the Litigation Trust.

5.4. Compliance with Laws.

The Borrower is in compliance with the requirements of all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Borrower is not subject to or in default in any material respect with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

5.5. Adverse Proceedings.

There is no action, suit, investigation, litigation or proceeding or any other legal or regulatory developments, pending or to the knowledge of the Borrower, threatened, in any court or before any arbitrator or governmental authority with respect to the Borrower or the transactions contemplated hereunder.

5.6. Material Adverse Effect.

Since [_____]², no event has occurred or condition exists that would reasonably be expected to cause a material adverse effect on the value or expected recovery of the Noble Claims.

5.7. Liens.

No interest in the Litigation Trust Assets or the Noble Claims is subject to any assignments or Liens (other than Permitted Liens). The Term Loans shall be senior obligations of the Borrower and shall rank senior in right of payment to all obligations owed by the Borrower under the Litigation Trust Loan and to the Litigation Trust Beneficiaries, as set forth in Section 6.6 of the Litigation Trust Agreement.

5.8. Claims.

As of the Closing Date, the Borrower has not set off or agreed to set off any amounts against any Noble Claim or any Proceeds thereof, and, to the knowledge of the Borrower, there exist no rights of set-off or similar rights against the Borrower that could permit any set-off or counterclaim against the Noble Claims or the Proceeds thereof.

Section 6
Affirmative Covenants.

Until all Obligations have been Paid in Full, the Borrower agrees that, unless at any time Required Lenders shall otherwise expressly consent in writing or waive compliance therewith, it will:

6.1. Information.

Furnish to the Agent (for prompt distribution to each Lender):

6.1.1. Notice of Event of Default.

Promptly upon becoming aware of the occurrence of a Default or an Event of Default, written notice describing the same and the steps being taken by the Borrower with respect thereto.

6.1.2. Other Information.

(a) Promptly after the same are generally sent to the Borrower's beneficiaries, copies of any reporting provided to the Borrower's beneficiaries (except individual beneficiaries' tax information) in accordance with Section 6.14 of the Litigation Trust Agreement;

(b) Promptly after the filing thereof, copies of all substantive court filings, to the extent that such filings are non-redacted and not filed under seal;

² NTD: date to be date of last budget delivered to Lenders prior to the Closing Date.

provided that each Lender shall have the right to enter into a customary confidentiality agreement to receive such redacted or sealed materials;

(c) Promptly after the publication thereof on the docket, copies of all court transcripts related to the Noble Claims;

(d) Promptly following the conclusion thereof, summaries of all chamber's conferences related to the Noble Claims;

(e) Within thirty (30) days after the end of each fiscal quarter, quarterly budget reports of the Litigation Trust Expenses in a form agreed upon by the Borrower and the Required Lenders prior to the Closing Date, including details of all cash balances of the Borrower as of the last day of such fiscal quarter; and

(f) Promptly from time to time, such other information concerning the Borrower, the Litigation Trust Assets and the Noble Claims as the Agent or any Lender (through the Agent) may reasonably request.

Notwithstanding the foregoing, the Borrower will not be required to disclose or permit the inspection or discussion of, any document, information or other matter pursuant to this Section 6.1.3 (i) in respect of which disclosure to the Agent or any Lender (or their respective agents or representatives) is prohibited by law, orders or stipulations entered by the court, fiduciary duty or any binding agreement entered into prior to and not in response to such request for disclosure, (ii) that is subject to attorney client or similar privilege or constitutes attorney work product, or (iii) that constitutes or reflects a settlement discussion pursuant to Rule 408 of the Federal Rules of Evidence or any state law equivalent.

Delivery of any reports, information, documents and other deliverables pursuant to this Section 6.1 or any other provision hereof, to the Agent is for informational purposes only and the Agent's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Borrower's compliance with any of their covenants hereunder (as to which the Agent is entitled to rely exclusively on the certificates from the Borrower). The Agent shall have no responsibility or liability for the filing, timeliness or content of any report required under this Section 6.1 or any other reports, information and documents required under this Agreement.

The Borrower hereby acknowledges that (a) the Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, SyndTrak or another E-System (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower, or the respective securities of the Borrower, and who may be engaged in investment and other market-related activities with respect to the Borrower. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC", the Borrower shall be deemed to have authorized

the Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws; (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Agent shall treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information". Notwithstanding the foregoing, the Borrower shall not be under any obligation to mark any Borrower Materials "PUBLIC"; provided, it is understood and agreed that the portion of the report delivered pursuant to Section 6.1.2(e) containing historical information shall be marked "PUBLIC".

6.2. Compliance with Litigation Trust Agreement. Comply in all material respects with the terms of the Litigation Trust Agreement.

6.3. Maintenance of Existence.

Maintain and preserve its existence.

6.4. Compliance with Laws; Payment of Taxes.

(a) Comply in all material respects with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply could not reasonably be expected to have a Material Adverse Effect; and (b) file all tax returns and reports required to be filed and pay, prior to delinquency, all taxes and similar charges or claims imposed upon it or upon its income or profits or in respect of its property except to the extent either (i) the same is being contested in good faith by appropriate proceedings for which adequate reserves with respect thereto have been established or (ii) where the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

6.5. Books and Records.

Maintain in respect of the Litigation Trust and the Litigation Trust Beneficiaries, books and records relating to the assets and the income of the Litigation Trust and the payment of expenses of the Litigation Trust, in accordance with, and for the purposes of complying with, the Litigation Trust Agreement.

6.6. Litigation Trust Management.

To the extent that Drivetrain, LLC is removed or replaced, or resigns, as the Litigation Trust Management, the Borrower shall ensure that any successor thereto that is appointed in accordance with the terms of the Litigation Trust Agreement is reasonably satisfactory to the Required Lenders (such consent not to be unreasonably withheld, delayed, conditioned or denied).

6.7. Further Assurances.

Subject to any express limitations contained herein, take such actions as are reasonably necessary or as the Agent or the Required Lenders may reasonably request from time to time to carry out the terms of this Agreement.

Section 7
Negative Covenants.

Until all Obligations have been Paid in Full, the Borrower agrees that, unless at any time the Agent and Required Lenders shall otherwise expressly consent in writing, it will:

7.1. Indebtedness.

Not create, incur, assume or suffer to exist any indebtedness (excluding Litigation Trust Expenses) except (a) Obligations under this Agreement and the other Loan Documents and (b) the Loan Obligations (as defined in the Litigation Trust Agreement).

7.2. Liens.

Not create, incur, assume or permit to exist any Lien on any of its properties or assets (whether now owned or hereafter acquired), except Permitted Liens.

7.3. Use of Proceeds.

Use the proceeds of the Term Loans solely to pay the Specified Litigation Trust Expenses and to pay a \$500,000 structuring fee to Drivetrain, LLC, in its capacity as the Litigation Trust Management, in each case in accordance with Section 2.5 of the Litigation Trust Agreement.

7.4. Divisions; Mergers; Consolidations.

Not be a party to any division, merger or consolidation.

7.5. Subsidiaries.

Not establish or acquire a Subsidiary.

7.6. Distributions.

Apply all Litigation Trust Assets pursuant to Section 6.6 of the Litigation Trust Agreement and this Agreement.

7.7. Transactions with Affiliates.

Not enter into any transaction with any Affiliate of the Borrower or the Litigation Trust Management, except for transactions that are on terms no less favorable than could be obtained from an unaffiliated third party or such transactions with the Litigation Trust Management entered into pursuant to the Litigation Trust Agreement or as set forth on Schedule 7.7 hereto. Notwithstanding the foregoing, the Borrower shall not enter into any transaction with any Litigation Trust Beneficiary or their respective Affiliates (whether or not in such capacity as a Lender) except pursuant to this Agreement.

7.8. Amendments to Litigation Trust Agreement.

Not amend, modify or supplement the Litigation Trust Agreement in a manner materially adverse to the interests of the Lenders without the consent of the Agent (at the direction of the Required Lenders) and the Required Lenders, such consent not to be unreasonably withheld, delayed, conditioned or denied.

Notwithstanding the foregoing, it is the intent of the parties hereto that this Section 7 be at least as restrictive on the Borrower as Section 4.1(g) of the Litigation Trust Agreement. To the extent that Section 4.1(g) of the Litigation Trust Agreement is amended or modified after the Closing Date in a manner that is more restrictive on the Borrower, such amendment or modification shall automatically apply to the applicable covenant in this Section 7 without further action by any Person or party hereto.

Section 8
Events of Default; Remedies.

8.1. Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

8.1.1. Non-Payment of Credit.

Default in the payment when due of the principal of any Term Loan or any Contingent Interest; or default, and continuance thereof for five (5) Business Days in the payment when due of any other amount payable by the Borrower hereunder.

8.1.2. Bankruptcy; Insolvency.

The Borrower applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for the Borrower or any property thereof, or makes a general assignment for the benefit of creditors; or in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for the Borrower or for a substantial part of the property of any thereof and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is commenced in respect of the Borrower, and if such case or proceeding is not commenced by the Borrower, it is consented to or acquiesced in by the Borrower, or remains for sixty (60) consecutive days undismissed.

8.1.3. Non-Compliance with Loan Documents; Litigation Trust Agreement.

(a) (i) Failure by the Borrower to comply with or to perform any covenant set forth in Sections 6.1.1, 6.2, 6.3, 6.6, or 7; or (ii) failure by the Borrower to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8) and continuance of such failure described in this clause (ii) for thirty (30) consecutive days after written notice thereof by the Agent or any Lender.

(b) Failure by the Borrower to comply with Section 6.6 of the Litigation Trust Agreement.

8.1.4. Termination of Litigation Trust.

Upon the termination of the Litigation Trust.

8.1.5. Representations; Warranties.

Any representation or warranty made by the Borrower herein is breached or is false or misleading in any material respect on the date as of which are made.

8.1.6. Judgments.

There is entered against the Borrower one or more final judgments or orders for the payment of money in an aggregate amount exceeding \$100,000 (excluding amounts covered by insurance to the extent the relevant independent third-party insurer has not denied coverage therefor) which has not been paid, vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof.

8.1.7. Cross-Default.

(a) Failure by the Borrower to pay when due any principal of or any other amount payable in respect of the Litigation Trust Loan.

(b) A breach or default by the Borrower with respect to any other material term of the Litigation Trust Loan beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of the Litigation Trust Loan (or a trustee or agent on behalf of such holder or holders), to cause, the Litigation Trust Loan to become or be declared due and payable (or redeemable) prior to its stated maturity; provided that clauses (a) and (b) shall not apply to any breach or default that is (I) remedied by the Borrower or (II) waived in writing (including in the form of amendment) by the required holders of the Litigation Trust Loan, in either case, prior to any exercise of remedies pursuant to Section 8.2 below.

8.2. Remedies.

If any Event of Default described in Section 8.1.2 shall occur, the Term Loans and all other Obligations shall become immediately due and payable, all without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, the Agent, upon the written request of Required Lenders, shall (subject to Article 9) (i) declare the Commitments to be terminated in whole or in part and/or declare all or any part of the Term Loans and other Obligations to be due and payable, whereupon the Term Loans and other Obligations shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind and/or (ii) subject to Section 2.9, exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the

Loan Documents or applicable law. The Agent shall promptly advise the Borrower of any such declaration.

Section 9 **Agent.**

9.1. Appointment; Authorization.

Each Lender hereby irrevocably appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall the Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent.

9.2. Delegation of Duties.

The Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care. The exculpatory, indemnification and other provisions of this Article 9, Section 10.04 and Section 10.5 shall apply to any such sub agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Article 9 shall apply to any such sub agent. Without limiting the generality of the powers of the Agent, as set forth above, in its capacity as the Agent, the Agent has the right to exercise all rights and remedies available under the Loan Documents and other applicable law, as directed by the Required Lenders. Without limiting the generality of the powers of the Agent, as set forth above, in the context of any bankruptcy or other insolvency proceeding involving the Borrower, the Agent is hereby authorized to, at the direction of Required Lenders, file proofs of claim and other documents on behalf of the Lenders.

9.3. Limited Liability.

None of the Agent or any of its directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction), (b) be liable for any action taken or omitted to be taken with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary) or (c) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by the Borrower, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other

document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of the Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. The Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Borrower.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document or made in any written or oral statements made in connection with the Loan Documents and the transactions contemplated thereby, (ii) the contents of any financial or other statements, instruments, certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, whether made by the Agent to the Lenders or by or on behalf of the Borrower to the Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby, (iii) the financial condition or business affairs of the Borrower, (iv) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the use of proceeds of the Loans by the Borrower or the occurrence or possible occurrence of any Default or Event of Default or to make any disclosures with respect to the foregoing, (v) the execution, validity, enforceability, effectiveness, genuineness, collectability or sufficiency of this Agreement, any other Loan Document or any other agreement, instrument or document or (vi) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent. Anything contained herein to the contrary notwithstanding, the Agent shall have no liability arising from confirmation of the amount of outstanding Loans or the component amounts thereof.

In no event shall the Agent be responsible or liable for any failure or delay in the performance of their obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, future changes in applicable law or regulation, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Agent shall use commercially reasonable efforts consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

9.4. Reliance.

The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Agent. The Agent shall be entitled to rely on and may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of Required Lenders (or all of the Lenders if expressly required hereunder), which may be delivered by counsel to the Required Lenders as it deems appropriate and, if it so requests, indemnification satisfactory to the Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Required Lenders (or all of the Lenders if expressly required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender. The Agent shall not be subject to any fiduciary or other implied duties as a result of this Agreement, regardless of whether a Default or Event of Default has occurred and is continuing.

9.5. Notice of Default.

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default except with respect to defaults in the payment of principal and fees required to be paid to the Agent for the account of the Lenders, unless the Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a “notice of default”. The Agent will notify the Lenders of its receipt of any such notice or any such default in the payment of principal and fees required to be paid to the Agent for the account of the Lenders. The Agent shall take such action with respect to such Event of Default or Default as may be requested by Required Lenders in accordance with Section 8.2.

9.6. Credit Decision.

Each Lender acknowledges that the Agent has not made any representation or warranty to it, and that no act by the Agent hereafter taken, including any review of the affairs of the Borrower, shall be deemed to constitute any representation or warranty by the Agent to any Lender. Each Lender represents to the Agent that it has, independently and without reliance upon the Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon the Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly herein required to be furnished to the Lenders by the Agent, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of the Borrower which may come into the possession of the Agent.

9.7. Indemnification.

Each Lender shall indemnify upon demand the Agent and its directors, officers, employees and agents (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), based on such Lender's Pro Rata Share, from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs, except to the extent any thereof result from the applicable Person's own gross negligence or willful misconduct, as determined by a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse the Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Legal Costs) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section 9.7 shall survive repayment of the Term Loans, cancellation of the Notes, termination of this Agreement and the resignation or replacement of the Agent.

9.8. Agent Individually.

Cantor Fitzgerald Securities and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower as though Cantor Fitzgerald Securities were not the Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, Cantor Fitzgerald Securities or its Affiliates may receive information regarding the Borrower (including information that may be subject to confidentiality obligations in favor of the Borrower) and acknowledge that the Agent shall be under no obligation to provide such information to them. With respect to their Term Loans (if any), Cantor Fitzgerald Securities and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though Cantor Fitzgerald Securities were not the Agent, and the terms "Lender" and "Lenders" include Cantor Fitzgerald Securities and its Affiliates, to the extent applicable, in their individual capacities.

9.9. Successor Agent.

The Agent may resign as the Agent at any time upon thirty (30) days' prior notice to the Lenders (unless such notice is waived by Required Lenders) and the Borrower. If the Agent resigns under this Agreement, Required Lenders shall, with the consent of the Borrower (which shall not be unreasonably withheld or delayed), appoint from among the Lenders a successor agent for the Lenders. If no successor agent is appointed prior to the effective date of the resignation of the Agent, the Agent may appoint, after consulting with the Lenders and the Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring the Agent and the term "Agent" shall mean such successor agent, and the retiring the Agent's appointment, powers and duties as the Agent shall be terminated. After any retiring the Agent's resignation hereunder as the Agent, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Agent under this Agreement. If

no successor agent has accepted appointment as the Agent by the date which is thirty (30) days following a retiring the Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above.

9.10. Actions in Concert.

For the sake of clarity, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of the Agent and Required Lenders, it being the intent of the Lenders that any such action to protect or enforce rights under this Agreement, the Notes and the other Loan Documents shall be taken in concert and at the direction or with the consent of the Agent or Required Lenders.

Section 10
Miscellaneous.

10.1. Waiver; Amendments.

(a) No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that:

(i) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly and adversely affected thereby (but not the Required Lenders) and the Borrower, do any of the following: (1) increase any of the Commitments (provided, that only the Lenders participating in any such increase of the Commitments shall be considered directly and adversely affected by such increase), (2) extend the date scheduled for payment of any principal of the Term Loans or the Contingent Interest payable hereunder, or (3) reduce the principal amount of any Term Loan or the Contingent Interest payable hereunder; and

(ii) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders in addition to the Borrower (with respect to Loan Documents to which the Borrower is a party), do any of the following: (1) change the definition of Required Lenders to reduce the percentage set forth therein, (2) change any provision of this Section 10.1 to reduce the percentage of Lenders required to consent to any amendment, modification, waiver or consent, or (3) amend the provisions of Section 2.8.2.

(b) No amendment, modification, waiver or consent shall, unless in writing and signed by the Agent, in addition to the Borrower and Required Lenders,

affect the rights, privileges, duties or obligations of the Agent (including without limitation under the provisions of Section 9) under this Agreement or any other Loan Document.

(c) No delay on the part of the Agent or any Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

10.2. Notices.

All notices hereunder shall be in writing (including facsimile or other electronic transmission) and shall be sent to the applicable party at its address shown on the signature pages hereof or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by facsimile transmission shall be deemed to have been given when sent; notices sent by mail shall be deemed to have been given three Business Days after the date when sent by registered or certified mail, postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. The Borrower and the Lenders each hereby acknowledge that, from time to time, the Agent may deliver information and notices to the Lenders using the Platform or electronic mail. Each of the Borrower and each Lender hereby agree that the Agent may, in its discretion, utilize the Platform or electronic mail for such purpose.

10.3. Reserved.

10.4. Costs; Expenses.

The Borrower agrees to pay promptly following written demand amounts due pursuant to the Agency Fee Letter and all reasonable and documented out-of-pocket costs and expenses of the Agent and the Closing Date Material Lenders (including Legal Costs) in connection with the preparation, execution, delivery and administration of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith (including any amendment, supplement or waiver to any Loan Document), and all reasonable and documented out-of-pocket costs and expenses (including Legal Costs) incurred by the Agent and each Lender after an Event of Default in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. All Obligations provided for in this Section 10.4 shall survive repayment of the Term Loans, cancellation of the Notes, and termination of this Agreement), or the earlier resignation or removal of the Agent.

10.5. Indemnification by the Borrower.

In consideration of the execution and delivery of this Agreement by the Agent and the Lenders and the agreement to extend the Commitments provided hereunder, the Borrower hereby agrees to indemnify, exonerate and hold the Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of the Agent and each Lender (each a "Lender Party") free and harmless from and against any and all actions, causes of action, suits, actual losses, liabilities, damages and expenses, including Legal Costs (but limited, in the case of Legal Costs, to one

primary counsel to the Lender Parties (other than the Agent), taken as a whole, a separate counsel for the Agent's Lender Parties, taken as a whole, plus, if reasonably necessary, one local counsel in each applicable material jurisdiction (and, in the case of an actual conflict of interest, one additional counsel to each affected Lender Party)) (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party or any breach of any representation, warranty, covenant or other obligation under any Loan Document by the Borrower, except to the extent any such Indemnified Liabilities result from (i) (x) the applicable Lender Party's own gross negligence or willful misconduct or (y) a material breach by such Lender Party of its obligations under the Loan Documents (other than a material breach by the Agent and its related Lender Parties in their capacity as such), in each case as determined by a court of competent jurisdiction in a final non-appealable judgment, (ii) a dispute solely among Lender Parties and not involving any act or omission of the Borrower or any of its Affiliates (other than a dispute against the Agent in its capacity as the Agent) or (iii) settlements entered into without the Borrower's consent (which consent shall not be unreasonably conditioned, withheld or delayed). The Borrower shall not be liable for any settlement of any proceedings (or costs and expenses solely in respect of such settlement) effected without the Borrower's written consent (which consent shall not be unreasonably conditioned, withheld or delayed), but if settled with the Borrower's written consent or if there is a final judgment against the applicable Lender Party and for the plaintiff in any such proceedings, the Borrower agrees to indemnify and hold harmless each such Lender Party from and against any and all Indemnified Liabilities by reason of such settlement or judgment in accordance with this paragraph. The Borrower shall not, without the prior written consent of the applicable Lender Party (which consent shall not be unreasonably conditioned, withheld or delayed), effect any settlement or consent to the entry of any judgment of any pending or threatened proceedings against such Lender Party in respect of which indemnity could have been sought hereunder by such Lender Party unless (i) such settlement includes an unconditional release of such Lender Party in form and substance reasonably satisfactory to such Lender Party from all liability on claims that are the subject matter of such proceedings, (ii) does not include any statement as to any admission of fault, culpability or a failure to act by or on behalf of such Lender Party, and (iii) contains customary confidentiality and non-disparagement provisions. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. All Obligations provided for in this Section 10.5 shall survive repayment of the Term Loans, cancellation of the Notes and termination of this Agreement and the other Loan Documents, or the earlier resignation or removal of the Agent. To the fullest extent permitted by applicable Law, no party hereto (and by its acceptance of the terms hereof, no Lender Party) shall assert, and each hereby waive, any claim against any other party hereto or any Lender Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof; provided that such waiver shall not limit the Borrower's reimbursement or indemnification obligations under Section 10.4 and this Section 10.5, respectively. By its acceptance of the terms hereof, each Lender Party agrees to consult with the Borrower in order to reduce the amount of the Indemnified Liabilities. This Section 10.5 shall

not apply with respect to Taxes other than any Taxes that represent liabilities resulting from any non-Tax claim.

10.6. Payments Set Aside.

To the extent that the Borrower makes a payment or payments to the Agent or any Lender and such payment or payments (or any part thereof) are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent or any Lender in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (a) to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred and (b) each Lender severally agrees to pay to the Agent upon demand its ratable share of the total amount so recovered from or repaid by the Agent to the extent paid to such Lender.

10.7. Reserved.

10.8. Assignments.

10.8.1. Any Lender may at any time assign to one or more Persons (any such Person, an “Assignee”) all or any portion of such Lender’s Term Loans and Commitments without the consent of the Borrower; provided that no such assignment may be made (i) if such assignment (x) would constitute a violation of the Litigation Trust Agreement or any applicable order of the Bankruptcy Court or (y) would cause the Borrower to be required to register Litigation Trust Interests under, and/or to become subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act or (ii) to Noble Corporation plc or any of its Affiliates, successors, designees, or any entity or person acting on behalf thereof. The Agent shall be entitled to conclusively rely on the representations and warranties of the assigning Lender and the Assignee in connection with the foregoing restrictions. The Borrower and the Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Assignee until the Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto, and a processing fee of \$5,000 to be paid to Agent by the Lender to whom such interest is assigned, and any tax documentation required by the Borrower and/or the Agent hereunder. Any attempted assignment not made in accordance with this Section 10.8.1 shall be null and void.

10.8.2. From and after the date on which the conditions described above have been met (including execution and delivery of an effective Assignment Agreement), (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder (including the obligations under Section 3.5) and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights (other than its indemnification rights) and obligations hereunder. Promptly following the reasonable request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, the

Borrower shall execute and deliver to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee's Pro Rata Share of the Term Loans (and, as applicable, a Note in the principal amount of the Term Loans retained by the assigning Lender). Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note or if no such Note is requested, promptly upon the Effective Date (as defined in the applicable Assignment Agreement), the assigning Lender shall return to the Borrower any prior Note held by it.

10.8.3. The Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the Commitments of, and principal amount of the Term Loans owing to, such Lender pursuant to the terms hereof. No assignment shall be effective unless it has been recorded in the register as provided in this Section 10.8.3. The entries in such register shall be conclusive absent demonstrable error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by the Borrower and, solely with respect to its own position, any Lender, at any reasonable time upon reasonable prior notice to the Agent. This Section 10.8.1(c) shall be construed so that the Term Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h) and 881(c)(2) of the IRC and any related Treasury Regulations (or any other relevant or successor provisions of the Code or of such Treasury Regulations).

10.9. Confidentiality.

The Agent and each Lender agree to maintain as confidential all information provided to them by the Borrower and to use such information solely for the purposes of evaluating and maintaining the Term Loans hereunder, except that the Agent and each Lender may disclose such information (a) to the officers, directors, partners, agents, representatives and professional consultants of the Agent or such Lender or Persons employed or engaged by the Agent or such Lender or any of their Affiliates (including collateral managers of the Lenders) in evaluating, approving, structuring or administering the Term Loans and the Commitments (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential); (b) to any assignee, or potential assignee that has agreed to comply with the covenant substantially similar (but otherwise no less favorable) to that contained in this Section 10.9 (and any such assignee or potential assignee may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) to the extent consented to by the Borrower, (d) as required or requested by any federal or state regulatory authority or examiner, or any self-regulatory authority such as an insurance industry association; (e) as is required by law, regulation, any court decree, subpoena or legal, regulatory or administrative order or process (in such case, such Person shall promptly notify the Borrower of such disclosure, in advance, to the extent permitted by law); (f) to the extent necessary or useful, in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which the Agent or such Lender is a party; (g) to the extent such information presently is or hereafter becomes publicly available other than as a result of a breach of this Section 10.9 or any other confidentiality obligation owed to the Borrower, (h) that ceases

to be confidential through no fault of the Agent or any Lender, (i) to the extent such information was already known to the Agent or such Lender prior to the Borrower's disclosure thereof not in violation of any confidentiality obligation or fiduciary duty owed to the Borrower or (j) to the extent such information was received by the Agent or such Lender from a source other than the Borrower not in violation of any confidentiality obligation or fiduciary duty owed to the Borrower.

10.10. Captions.

Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

10.11. Nature of Remedies.

All Obligations of the Borrower and rights of the Agent and the Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of the Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.12. Counterparts.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by telecopy or other electronic transmission (including "pdf") of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page. This Agreement and the other Loan Documents to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including "pdf"), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such other Loan Document shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

10.13. Severability.

The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.14. Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter

hereof and thereof, and any prior arrangements made with respect to the payment by the Borrower of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of the Agent or the Lenders.

10.15. Successors; Assigns.

This Agreement shall be binding upon the Borrower, the Lenders and the Agent and their respective successors and permitted assigns, and shall inure to the benefit of the Borrower, the Lenders and the Agent and the successors and permitted assigns of the Lenders and the Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. The Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of the Agent and each Lender.

10.16. Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

10.17. Forum Selection; Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT REFERRED TO ABOVE FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY HERETO FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.18. Waiver of Jury Trial.

EACH OF BORROWER, AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP

EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.19. Patriot Act.

Each Lender that is subject to the Patriot Act, and the Agent (for itself and not on behalf of any Lender), hereby notifies the Borrower that, pursuant to the requirements of the Patriot Act, such Lender and the Agent are required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Agent, as applicable, to identify the Borrower in accordance with the Patriot Act.

10.20. Acknowledgement.

Each Lender party hereto, for and on behalf of itself and each of its Affiliates and each of their respective successors and assigns, to the maximum extent permitted by law, hereby acknowledges and agrees that this Agreement and the arranging, offering and syndicating or making of the Term Loans hereunder (and/or any alternative thereto) were consummated in compliance with, and in satisfaction of its rights under, Section 4.2 of the Litigation Trust Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

PARAGON LITIGATION TRUST, as the
Borrower

By: _____
Name: _____
Title: _____

Address for Notices:

[_____]

[_____]

Attention: [_____]

Phone: [_____]

Email: [_____]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

CANTOR FITZGERALD SECURITIES, as the
Agent

By: _____
Name: _____
Title: _____

Address for Notices:

Cantor Fitzgerald Securities
1801 N. Military Trail, Suite 202
Boca Raton, FL 33431
Telecopier: (646) 219-1180
Attention: N. Horning (Paragon)
E-mail: NHorning@cantor.com

and

Cantor Fitzgerald Securities
900 West Trade Street, Suite 725
Charlotte, North Carolina 28202
Phone: (704) 374-0574
Telecopier: (646) 390-1764
Attention: B. Young (Paragon)
E-mail: BYoung@cantor.com

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

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103
Attention: Nathan Plotkin
E-mail: NPlotkin@goodwin.com

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

LENDERS:

[_____] , as a Lender

By: _____
Name:
Title:

Address for Notices:

[_____] _____
[_____] _____
Attention: [_____] _____
Phone: [_____] _____
Email: [_____] _____

ANNEX I

Commitments and Pro Rata Shares

Lender	Term Loan Commitment	Pro Rata Share
[]	\$ []	[]%
TOTALS	\$40,000,000.00	100%

EXHIBIT A

Form of Assignment Agreement

This Assignment Agreement (this "Assignment Agreement") is entered into as of _____, 20__, by and between the Assignor named on the signature page hereto ("Assignor") and the Assignee named on the signature page hereto ("Assignee") and accepted by the Borrower. Reference is made to that certain Credit Agreement dated as of July [___], 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Paragon Litigation Trust (the "Borrower"), the lenders party thereto from time to time, as Lenders, and Cantor Fitzgerald Securities, as administrative agent (the "Agent"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Credit Agreement.

Assignor and Assignee agree as follows:

1. Assignor hereby sells and assigns to Assignee, and Assignee hereby purchases and assumes from Assignor the interests set forth on the schedule attached hereto, in and to Assignor's rights and obligations under the Credit Agreement as of the Effective Date (as defined below). Such purchase and sale is made without recourse, representation or warranty except as expressly set forth herein.
2. Assignor (i) represents that as of the Effective Date, that it is the legal and beneficial owner of the interests assigned hereunder free and clear of any adverse claim, (ii) makes no other representation or warranty and assumes no responsibility with respect to any statement, warranties or representations made in or in connection with the Credit Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any Loan Documents or any other instrument or document furnished pursuant thereto; and (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or any other Person or the performance or observance by the Borrower of its Obligations under the Credit Agreement or the Loan Documents or any other instrument or document furnished pursuant thereto.
3. Assignee (i) represents and warrants that it is legally authorized to enter into this Assignment Agreement; (ii) confirms that it has received a copy of the Credit Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment Agreement; (iii) agrees that it will, independently and without reliance upon the Agent, Assignor or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iv) appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to the Agent by the terms thereof, together with such powers as are reasonably incidental thereto; (v) agrees that it will perform in accordance with their terms all obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender; and (vi) represents that on the date of this Assignment Agreement it is not presently aware of any facts that would cause it to make a claim under the Credit Agreement.

4. The effective date for this Assignment Agreement shall be as set forth on the schedule attached hereto (the “Effective Date”). Following the execution of this Assignment Agreement, it will be delivered to the Agent for acceptance and recording by the Agent pursuant to the Credit Agreement.

5. Upon such acceptance and recording, from and after the Effective Date, (i) Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment Agreement, have the rights and obligations of a Lender thereunder and (ii) Assignor shall, to the extent provided in this Assignment Agreement, relinquish its rights (other than indemnification rights) and be released from its obligations under the Credit Agreement, except for obligations to the Borrower of the type described in Section 10.5 of the Credit Agreement which arose prior to the Effective Date.

6. Upon such acceptance and recording, from and after the Effective Date, the Agent shall make all payments in respect of the interest assigned hereby (including payments of principal, fees and other amounts) to Assignee. Assignor and Assignee shall make all appropriate adjustments in payments for periods prior to the Effective Date with respect to the making of this assignment directly between themselves.

7. THIS ASSIGNMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

8. This Assignment Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Assignment Agreement. Receipt by telecopy or other electronic transmission (including “pdf”) of any executed signature page to this Assignment Agreement shall constitute effective delivery of such signature page.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment Agreement to be executed and delivered as of the date first written above.

ASSIGNOR:

By: _____
Name: _____
Title: _____

ASSIGNEE:

By: _____
Name: _____
Title: _____

Accepted by:

PARAGON LITIGATION TRUST, as the Borrower

By: _____
Name: _____
Title: _____

Schedule to Assignment Agreement

Assignor: _____
Assignee: _____
Effective Date: _____

Credit Agreement dated as of July [___], 2019, by and among Paragon Litigation Trust, as the Borrower, the financial institutions party thereto from time to time, as Lenders, and Cantor Fitzgerald Securities, as the Agent

Interests Assigned:

	Term Loan
Aggregate Amount of Term Loan for all Lenders:	
Principal Amount of Term Loan Assigned:	
Percentage Assigned of Term Loan:	

Assignee Information:

Address for Notices:

Attention: _____

Telephone: _____

Facsimile: _____

Address for Payments:

Bank: _____

ABA #: _____

Account #: _____

Reference: _____

EXHIBIT B

Form of Note

\$ _____

The undersigned (the "Borrower"), for value received, promises to pay to _____ ("Lender") at the principal office of Cantor Fitzgerald Securities, as agent (the "Agent") in [____], the aggregate unpaid amount of all Term Loans made to the Borrower by Lender pursuant to the Credit Agreement referred to below, such principal amount to be payable on the dates set forth in the Credit Agreement and to be made in lawful money of the United States of America.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, that certain Credit Agreement, dated as of July [___], 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; terms not otherwise defined herein are used herein as defined in the Credit Agreement), by and among the Borrower, the lenders (including Lender) party thereto from time to time and the Agent, to which Credit Agreement reference is hereby made for a statement of the terms and provisions under which this Note may or must be paid prior to its due date or its due date accelerated.

This Note is a registered obligation, transferable only upon notation in the Register, and no assignment hereof shall be effective until recorded therein.

This Note is made under and governed by the laws of the State of New York (without regard to conflicts of law principles) applicable to contracts made and to be performed entirely within such State.

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered by its officer thereunto duly authorized on the date first above written.

PARAGON LITIGATION TRUST

By: _____
Name: _____
Title: _____