

PRIVATE ACTIONS TRUST AGREEMENT

By and Among

Those Creditors and Equity Interest Holders of the Plan Debtors that have executed a Private Actions Trust Election under the "Second Amended Joint Chapter 11 Plan of Liquidation filed by the Chapter 11 Trustee and the Official Committee of Unsecured Creditors," Confirmed by Order of the United States Bankruptcy Court, District of Delaware, in the Chapter 11 cases In re DBSI, Inc., et al., Case No. 08-12687 (PJW)

and

James R. Zazzali,

As Private Actions Trustee

Dated:

October 29, 2010

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This Private Actions Trust Agreement (the "Private Actions Trust Agreement"), dated as of October 29, 2010, by and among those creditors and equity interest holders of the Plan Debtors, excluding present and former directors, officers or managers of the Plan Debtors or the Consolidated Non-Debtors (collectively, "Grantors"), that have executed a Private Actions Trust Election ("Trust Election") and James R. Zazzali, as the trustee (the "Original Trustee"), is executed in order to establish a liquidating trust in connection with the Second Amended Joint Chapter 11 Plan of Liquidation Filed by the Chapter 11 Trustee and the Official Committee of Unsecured Creditors, dated August 17, 2010, including, without limitation, any supplement to such Plan and the exhibits and schedules thereto (as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, the "Plan"). Capitalized terms used in this Private Actions Trust Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Plan.

W I T N E S S E T H

WHEREAS, DBSI, Inc. and certain Debtors filed petitions for relief under chapter 11 of the Bankruptcy Code, on or around November 10, 2008, with the Bankruptcy Court, and certain other Debtors filed petitions with the Bankruptcy Court thereafter;

WHEREAS, the Official Committee of Unsecured Creditors ("Creditors' Committee") was appointed by the United States Trustee for Region Three ("U.S. Trustee") in the Chapter 11 Cases of the Debtors on November 21, 2008;

WHEREAS, on August 31, 2009, the U.S. Trustee filed her Notice of Appointment, appointing James R. Zazzali as the trustee for the jointly administered estates of the Debtors in *In re DBSI, Inc., et al.*, Case No. 08-12687 (PJW) (the "Chapter 11 Trustee"), which appointment was approved by the Bankruptcy Court on September 11, 2008;

WHEREAS, on August 17, 2010, the Chapter 11 Trustee and the Creditors' Committee filed the Plan and related Disclosure Statement;

WHEREAS, on October 26, 2010, the Bankruptcy Court entered the Confirmation Order approving the Plan;

WHEREAS, the Private Actions Trust is created pursuant to, and to effectuate certain provisions of, the Plan and to hold Contributed Non-Estate Causes of Action;

WHEREAS, each Grantor that owns, including by assignment of litigation rights, Contributed Non-Estate Causes of Action, shall have the option to assign certain of its Contributed Non-Estate Causes of Action to the Private Actions Trust pursuant to this Private Actions Trust Agreement and Trust Election in exchange for a Private Actions Trust Beneficial Interest;

WHEREAS, each Grantor making an assignment shall reasonably cooperate with the Private Actions Trustee and the Trust Oversight Committee in the investigation and prosecution of any Contributed Non-Estate Causes of Action;

WHEREAS, this Private Actions Trust is established for the benefit of the Grantors who elect to assign their Contributed Non-Estate Causes of Action to the Private Actions Trust (the “Private Actions Trust Beneficiaries”) and the Private Actions Trust Beneficiaries have a beneficial interest in the Private Actions Trust (the “Private Actions Trust Beneficial Interest”);

WHEREAS, the Private Actions Trust is organized for the primary purpose of liquidating and distributing assets transferred to the Private Actions Trustee (as defined below) with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Private Actions Trust; and

WHEREAS, the Private Actions Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d); and

WHEREAS, the Private Actions Trust is established for the pursuit of all Contributed Non-Estate Causes of Action.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Grantors and the Original Trustee agree as follows:

ARTICLE 1

ESTABLISHMENT OF THE PRIVATE ACTION TRUST

1.1 Establishment of Private Actions Trust and Appointment of Original Trustee.

(a) Pursuant to the Plan, the Grantors and the Original Trustee hereby establish a trust which shall be known as the “Private Actions Trust”) on behalf of the Private Actions Trust Beneficiaries.

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

1.2 Transfer of Assets and Rights to the Private Actions Trustee.

(a) As of the Effective Date, each Grantor hereby transfers, assigns, and delivers (i) to the Private Actions Trust, without recourse, all of such Grantor’s right, title, and interests in and to Contributed Non-Estate Causes of Action free and clear of any and all Liens, Claims, encumbrances or interests of any kind in such property of any other Person or entity and (ii) to the Private Actions Trustee and the Trust Oversight Committee, without waiver, all of such Grantor’s right, title and interest in and to any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications

(whether written or oral) associated with the Contributed Non-Estate Causes of Action (collectively, "Privileges"), which shall vest in the Private Actions Trustee and the Trust Oversight Committee, in trust, and, consistent with section 1123(b)(3)(B), for the benefit of the Private Actions Trust Beneficiaries.

(b) On or as promptly as practicable after the Effective Date, each Grantor, shall (i) deliver or cause to be delivered to the Private Actions Trustee any and all documents in connection with the Contributed Non-Estate Causes of Action (including those maintained in electronic format and original documents) whether held by the Grantors, their respective employees, agents, advisors, attorneys, accountants, or any other professionals hired by the Grantors and (ii) provide access to such employees of the Grantors, with knowledge of matters relevant to the Contributed Non-Estate Causes of Action. Upon the reasonable request of the Private Actions Trustee, to the extent permitted by law, the Grantors, shall provide the Private Actions Trustee with a list of all documents in connection with the Contributed Non-Estate Causes of Action known to them but not held by them or any of their respective employees, agents, advisors, attorneys, accountants or any other professionals. Such list shall contain a description of each document, to the extent feasible, as well as the name of the entity or Person holding such document.

(c) At any time and from time to time on and after the Effective Date, the Grantors agree (i) at the reasonable request of the Private Actions Trustee to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), (ii) to take, or cause to be taken, all such further actions as the Private Actions Trustee may reasonably request in order to evidence or effectuate the transfer of the Contributed Non-Estate Causes of Action and the Privileges to the Private Actions Trustee (and, in the case of the Privileges, the Trust Oversight Committee) and the consummation of the transactions contemplated hereby and by the Plan and to otherwise carry out the intent of the parties hereunder and under the Plan and (iii) to cooperate with the Private Actions Trustee in the prosecution of the Contributed Non-Estate Causes of Action.

(d) Each Grantor shall reasonably cooperate with the Private Actions Trustee in the investigation and prosecution of any Contributed Non-Estate Causes of Action.

(e) No earlier than 90 days after the Private Actions Trust is established, any Grantor may formally request in writing that the Private Actions Trustee commence litigation with respect to a specific Contributed Non-Estate Cause of Action. If, within 90 days of such request, the Private Actions Trustee has not confirmed its then-present intention to pursue such Contributed Non-Estate Cause of Action, such Contributed Non-Estate Cause of Action shall be re-assigned and revert to the Grantor, who may thereafter pursue such Non-Estate Cause of Action privately. If, within 180 days of confirming its intention to pursue a specific Contributed Non-Estate Cause of Action, the Private Actions Trustee does not commence litigation on such Contributed Non-Estate Cause of Action or enter into active settlement discussions with respect to such Contributed Non-Estate Cause of Action, such Contributed Non-Estate Cause of Action shall be re-assigned and revert to the Grantor, who may thereafter pursue such Non-Estate Cause of Action privately. The Private Actions Trustee shall be entitled to one 90-day extension of either the foregoing 90-day period or the 180-day period if the Private Actions Trustee confirms in writing within the applicable period that the Trustee is actively researching whether to pursue

such Contributed Non-Estate Cause of Action. Any reassignment or reversion of a Contributed Non-Estate Cause of Action pursuant to this Section 1.2(e) shall be made by operation of this Private Actions Trust Agreement and without further action being necessary to effect the reassignment or reversion.

(f) Notwithstanding the time periods set forth in Section 1.2(e), the Private Actions Trustee must, upon written request of a Grantor, advise such requesting Grantor whether the Private Actions Trustee intends to pursue any such Contributed Non-Estate Cause of Action or re-assign such Contributed Non-Estate Cause of Action to such Grantor no later than 30 days before the expiration of any applicable statute of limitations or repose for any such Contributed Non-Estate Cause of Action. Such 30-day period will apply only if the written request by the Grantor to the Private Actions Trustee (i) sets forth the specific date that any such statute of limitations or repose will expire with respect to a specific Contributed Non-Estate Cause of Action and (ii) is received by the Private Actions Trustee no later than 60 days prior to the expiration of the applicable limitations period.

(g) The Private Actions Trustee shall communicate and coordinate with the DBSI Estate Litigation Trustee to maximize the overall recovery to the Private Actions Trust Beneficiaries. To the extent there is a settlement or court ruling involving the contemporaneous release or resolution of the claims of the Private Actions Trustee and the DBSI Estate Litigation Trustee, the proceeds of any such settlement or resolution (except for proceeds of litigation that belong exclusively to the DBSI Estate Litigation Trust or the Private Actions Trust) presumptively will be shared equally by each of the trusts subject to any party-in-interest's right to request from the Bankruptcy Court a different allocation as between the two litigation trusts, in which case the challenging party shall have the burden of rebutting such presumption.

1.3 Title to Contributed Non-Estate Causes of Action.

The transfer of the Contributed Non-Estate Causes of Action to the Private Actions Trustee shall be made for the ratable benefit of Private Actions Trust Beneficiaries to the extent such Private Actions Trust Beneficiaries are entitled to Private Action Trust Beneficial Interests under the Plan. Upon the transfer of the Contributed Non-Estate Causes of Action, the Private Actions Trustee shall succeed to all of the Grantors' right, title and interest in and to the Contributed Non-Estate Causes of Action and the Grantors will have no any further interest in or with respect to the Contributed Non-Estate Causes of Action or the Private Actions Trust.

1.4 Nature and Purpose of the Private Actions Trust.

(a) Purpose. The Private Actions Trust is organized and established as a trust pursuant to which the Private Actions Trustee, subject to the terms and conditions contained herein and in the Plan, is to (i) hold the assets of the Private Actions Trust and dispose of the same in accordance with this Private Actions Trust Agreement and the Plan in accordance with Treasury Regulation Section 301.7701-4(d) and (ii) oversee and direct the expeditious but orderly liquidation of the assets of the Private Actions Trust. Accordingly, the primary purpose of the Private Actions Trust is to liquidate the assets transferred to the Private Actions Trustee with no objective to continue or engage in the conduct of a trade or business, except to the extent

reasonably necessary to preserve or enhance the liquidation value of the assets of the Private Actions Trust, and consistent with, the liquidating purpose of the Private Actions Trust.

(b) Actions of the Private Actions Trustee. The Private Actions Trustee, subject to the consultation and approval powers of the Trust Oversight Committee set forth herein, and the exercise of their collective reasonable business judgment, shall, in an expeditious but orderly manner, liquidate and convert to Cash the assets of the Private Actions Trust, make timely distributions and not unduly prolong the duration of the Private Actions Trust. The liquidation of the Contributed Non-Estate Causes of Action may be accomplished either through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action, or otherwise.

(c) Prosecutorial Discretion of Private Actions Trustee. The Private Actions Trustee, subject to the approval of the Trust Oversight Committee, shall have the absolute right to pursue, settle and compromise or not pursue any and all Contributed Non-Estate Causes of Action as he determines is in the best interests of the Private Actions Trust. The Private Actions Trustee shall have no liability for the outcome of any such decision except for any damages caused by recklessness, gross negligence, willful misconduct, or knowing violation of law.

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

1.5 Incorporation of Plan.

The Plan and the Confirmation Order are each hereby incorporated into this Private Actions Trust Agreement and made a part hereof by this reference; provided, however, to the extent that there is conflict between the provisions of this Private Actions Trust Agreement and the provisions of the Plan, this Agreement shall govern, and to the extent there is a conflict among the provisions of this Private Actions Trust Agreement and the Plan, on the one hand, and the Confirmation Order, on the other hand, the Confirmation Order shall govern.

1.6 Funding of the Private Actions Trust.

(a) Initial Funding. On or after the Effective Date, upon the determination of the Private Actions Trustee, the Private Actions Trust shall be initially funded with a contribution in the amount of \$1,000,000 from the DBSI Real Estate Liquidating Trust (the "Initial Funding"). The Initial Funding shall be repaid with the first proceeds received or obtained by the Private Actions Trust on account of the liquidation of Contributed Non-Estate

Causes of Actions, net of professional fees, expenses and other costs incurred by the Private Actions Trustee; provided, however, that the Private Actions Trustee shall have no obligation to repay the Initial Funding unless and until, in the Private Actions Trustee's business judgment, such repayment would not deprive the Private Actions Trustee of sufficient funds to carry out the functions of the Private Actions Trust.

(b) Subsequent Funding. In consultation with and subject to the approval of the Trust Oversight Committee, the Private Actions Trustee may from time to time seek additional contributions from the DBSI Real Estate Liquidating Trust and/or the DBSI Liquidating Trust, without court approval, to be repaid on such terms as agreed to by the Private Actions Trustee and the trustees of the DBSI Real Estate Liquidating Trust and/or the DBSI Liquidating Trust. The Private Actions Trustee may also seek financing through other channels subject to the approval of the Trust Oversight Committee.

1.7 Appointment as Representative.

To the extent that any Contributed Non-Estate Causes of Action cannot be transferred to the Private Actions Trust because of a restriction on transferability under applicable nonbankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Contributed Non-Estate Causes of Action shall be deemed to have been retained by the Grantor, as applicable, and the Private Actions Trustee shall be deemed to have been designated as a representative of such Grantor to enforce and pursue such Contributed Non-Estate Causes of Action on behalf of such Grantor. Notwithstanding the foregoing, all net proceeds of the Contributed Non-Estate Causes of Action shall be transferred to the Private Actions Trust Beneficiaries consistent with the provisions of the Plan and this Private Actions Trust Agreement.

ARTICLE 2

PRIVATE ACTIONS TRUST INTERESTS

2.1 Allocation of Private Actions Trust Interests.

There are a total of one million (1,000,000) units of Private Actions Trust Beneficial Interests (each a "Trust Beneficial Interest"). The DBSI Real Estate Liquidating Trust shall receive 150,000 Trust Beneficial Interests and the DBSI Liquidating Trust shall receive 50,000 Trust Beneficial Interests, in accordance with the Global Claims Settlement. The remaining 800,000 Trust Beneficial Interests will be allocated to the Electing Creditors and Electing Interest Holders, in return for their Contributed Non-Estate Causes of Action, ratably based upon the amount each such Electing Creditor's or Electing Interest Holder's Allowed Claim bears to the aggregate of the Allowed Claims of all Electing Creditors and Electing Interest Holders. A secondary purchaser of a Non-Estate Cause of Action may participate in the Private Actions Trust only if such purchaser has received a lawful and valid assignment of such Non-Estate Causes of Action from the original holder of such Causes of Action and has elected to assign such Non-Estate Causes of Action to the Private Actions Trust.

2.2 Interests Beneficial Only.

The ownership of a Private Actions Trust Beneficial Interest shall not entitle any Private Actions Trust Beneficiary to any title in or to the assets of the Private Actions Trust as such (which title shall be vested in the Private Actions Trustee) or to any right to call for a partition or division of the assets of the Private Actions Trust or to require an accounting or give standing to direct the Private Actions Trustee to do or not to do any act or to institute any action or proceeding upon or with respect to the assets of the Private Actions Trust, except as expressly provided in this Agreement or the Plan.

2.3 Evidence of Beneficial Interests.

(a) The Private Actions Trustee shall cause to be kept a register (the "Register") in which the Private Actions Trustee shall at all times maintain the names and addresses of the holders of Private Actions Trust Beneficial Interests. The Private Actions Trustee may rely upon this Register for the purposes of delivering distributions or notices.

(b) Holders of Private Actions Trust Beneficial Interests and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Private Actions Trustee, and in accordance with the reasonable regulations prescribed by the Private Actions Trustee, to inspect and make copies of the Register with respect to such holder's Private Actions Trust Beneficial Interest.

(c) The Private Actions Trustee may deem and treat the holder of record in the Register as the absolute owner of a Private Actions Trust Beneficial Interest for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever and the Private Actions Trustee shall not be charged with having received notice of any claim or demand to such Beneficial Interest or the interest therein of any other Person.

2.4 Securities Law Registration.

To the extent that the Private Actions Trust Beneficial Interests (or any underlying economic or other interest or part thereof) are deemed to be "securities," the issuance of Private Actions Trust Beneficial Interests under the Plan shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended and any applicable state and local laws requiring registration of securities. If the Private Actions Trustee determines, with the advice of counsel, that the Private Actions Trust is required to comply with registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the Investment Company Act of 1940, as amended (the "Investment Company Act"), then the Private Actions Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file periodic reports with the Securities and Exchange Commission (the "SEC") after the filing of a motion with the Bankruptcy Court seeking approval to do so, and the entry of a Final Order of the Bankruptcy Court so directing. Notwithstanding the foregoing procedure, if the Private Actions Trustee determines, with the advice of counsel, that the Private Actions Trust is required to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act, then prior

to the registration of the Private Actions Trust under the Exchange Act or the Investment Company Act, the Private Actions Trustee in consultation with the Trust Oversight Committee shall seek to amend this Agreement to make such changes as are deemed necessary or appropriate to ensure that neither the Private Actions Trust nor the Private Actions Trust Beneficial Interests (or any underlying economic or other interest or part thereof) is subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act, and this Agreement, as so amended, shall be effective after notice and opportunity for a hearing provided to the Post Effective Date Service List (as defined in Section 11.6), and the entry of a Final Order of the Bankruptcy Court. If the Agreement, as amended, is not approved by Final Order of the Bankruptcy Court or the Bankruptcy Court otherwise determines in a Final Order that registration under one or both of the Exchange Act or Investment Company Act is required, then the Private Actions Trustee shall take such actions as may be required to satisfy the registration and reporting requirements of the Exchange Act and/or the Investment Company Act, as applicable.

2.5 Transfer and Exchange.

(a) A Beneficial Interest in the Private Actions Trust (including any economic or other interest or part thereof) shall not be transferable, provided, however, subject to the limitations set forth in this Section 2.5, a Private Actions Trust Beneficiary may transfer its Beneficial Interest in the Private Actions Trust by gift or sale, or upon death or permanent incapacity to such person's guardian, conservator, executor, administrator, trustees, or beneficiaries of such person's will, spouse, children, stepchildren, grandchildren, parents, siblings or legal dependants, to a trust of which the beneficiary or beneficiaries of the corpus and the income shall be such a person or persons, or the Beneficiary, to a partnership of which the partners shall be such a person or persons or the Beneficiary, and to its partners, members, shareholders or other equity owners. Any of the foregoing permitted transfers may only be effected if (i) the transferee agrees to become a party to this Agreement and (ii) such transfer is exempt from the registration provisions of the Securities Act of 1933, as amended, if applicable or from the qualification provisions of any state securities law, if applicable.

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

(c) Prior to any transfer, assignment, hypothecation, pledge, exchange or conveyance of a Beneficial Interest in the Private Actions Trust (including any economic or other interest or part thereof) pursuant to Section 2.5 (a) (each, a "Transfer"), the transferring Beneficiary shall submit to the Private Actions Trustee a duly endorsed assignment of the Beneficial Interest in the Private Actions Trust to be transferred (in a form reasonably acceptable to the Private Actions Trustee) together with the service charge, if any, to be specified by the Private Actions Trustee pursuant to this paragraph. No such Transfer shall be effected until, and the transferee shall succeed to the rights of a Beneficiary only upon, final acceptance and registration of the Transfer by the Private Actions Trustee in the Register. No transfer,

assignment, pledge, hypothecation or other disposition of a Beneficial Interest in the Private Actions Trust may be effected until either (i) the Private Actions Trustee and the Trust Oversight Committee have received such legal advice or other information that they, in their sole discretion, deem necessary or appropriate to assure that any such disposition shall not require the Private Actions Trust to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act or (ii) the Private Actions Trustee and Trust Oversight Committee have determined to register and/or make periodic reports in order to enable such disposition to be made. In the event that any such disposition is allowed, the Trust Oversight Committee and the Private Actions Trustee may add such restrictions upon transfer and other terms to this Agreement as are deemed necessary or appropriate by the Private Actions Trustee, with the advice of counsel, and in consultation with the Trust Oversight Committee, to permit or facilitate such disposition under applicable securities and other laws.

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

2.6 Access to the Trust Register by the Private Actions Trust Beneficiaries.

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

ARTICLE 3

THE PRIVATE ACTIONS TRUSTEE

3.1 Private Actions Trust Proceeds.

All of the proceeds of the prosecution, compromise and settlement of Contributed Non-Estate Causes of Action shall be added to the assets of the Private Actions Trust (the

“Litigation Trust Proceeds”) and held as a part thereof (and which title shall be vested in the Private Actions Trustee).

3.2 Collection of Income.

The Private Actions Trustee shall collect all income earned with respect to the assets of the Private Actions Trust, which shall thereupon be added to the assets of the Private Actions Trust and held as a part thereof (and which title shall be vested in the Private Action Trustee).

3.3 Payment of Private Action Trust Expenses.

(a) The Private Actions Trustee shall maintain a litigation expense fund (the “Litigation Expense Fund”) and expend the assets of the Litigation Expense Fund (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Private Actions Trust during liquidation, (ii) to pay reasonable administrative costs (including but not limited to, the costs and expenses of the Private Actions Trustee and the members of the Trust Oversight Committee (including reasonable fees, costs, and expenses of professionals employed by the Private Actions Trustee and the Trust Oversight Committee), any taxes imposed on the Private Actions Trust or fees and expenses in connection with, arising out of or related to the Contributed Non-Estate Causes of Action, and (iii) to satisfy other liabilities incurred or assumed by the Private Actions Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Private Actions Trust Agreement.

(b) The Private Actions Trustee may retain from the Litigation Trust Proceeds and add to the Litigation Expense Fund, at any time and from time to time, such amounts as the Private Actions Trustee deems reasonable and appropriate to ensure that the Litigation Expense Fund will be adequate to meet the expenses and liabilities described in subsection (a) of this Section.

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

3.4 Distributions.

The Private Actions Trustee shall distribute the net distributable assets of the Private Actions Trust to the Private Actions Trust Beneficiaries in accordance with the provisions of Article 6.

3.5 Tenure, Removal, and Replacement of the Private Actions Trustee.

(a) Each Private Actions Trustee will serve until resignation and the appointment of a successor pursuant to subsection (b) below, removal pursuant to subsection (c) below, Disability (as defined in Section 3.16(c)(ii)), or death (if applicable).

(b) The Private Actions Trustee may resign by giving not less than ninety (90) days' prior written notice to the Trust Oversight Committee. Such resignation will become effective on the later to occur of (i) the day specified in such notice and (ii) the appointment of a successor trustee as provided herein and the acceptance by such successor trustee of such appointment. If a successor trustee is not appointed or does not accept his or her appointment within ninety (90) days following delivery of notice of resignation, the Private Actions Trustee may file a motion with the Bankruptcy Court, upon notice and hearing, with notice provided to the Post Effective Date Service List, for the appointment of a successor trustee;

(c) The Private Actions Trustee may be removed for Cause as defined in Section 3.18(c)(i) by vote of the majority of the members of the Trust Oversight Committee and subject to the approval of the Bankruptcy Court with notice provided to the Post Effective Date Service List;

(d) In the event of a vacancy in the position of the Private Actions Trustee (whether by removal, resignation, Disability, or death, if applicable), the vacancy will be filled by the appointment of a successor trustee by (i) majority vote and resolution of the Trust Oversight Committee, and by the acceptance of the Private Actions Trust by the successor trustee in accordance with Section 3.6 or (ii) an order of the Bankruptcy Court after an opportunity for a hearing with notice provided to the Post Effective Date Service List (provided, however, that only the Trust Oversight Committee shall have standing to seek such an order, except as provided Section 3.5(b)). If a successor trustee is appointed by resolution, as provided in clause (i) of the preceding sentence, and such appointment is accepted by the successor trustee, the Trust Oversight Committee shall file notice of such appointment and acceptance with the Bankruptcy Court, which notice will include the name, address, and telephone number of the successor trustee; provided that the filing of such notice shall not be a condition precedent to the vesting in the successor trustee of all the estates, properties, rights, powers, trusts, and duties of his or her predecessor;

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

(f) Upon the appointment of a successor trustee, the predecessor Private Actions Trustee (or the duly appointed legal representative of a deceased Private Actions Trustee) shall, if applicable, when requested in writing by the successor trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed, without recourse to the predecessor Private Actions Trustee, all the estates, properties, rights, powers and trusts of such predecessor Private Actions Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets and documents relating to the Private Actions Trust, the Contributed Non-Estate Causes of Action, or the Private Actions Trust Beneficial Interests then in his or her possession and held hereunder; and

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

(h) Upon the resignation or removal of an Persons serving as the Private Actions Trustee, such Person shall file with the Bankruptcy Court and serve upon the Post Effective Date Service List, a report which shall contain the following information: (i) all Private Actions Trust assets; (ii) an accounting of all income and expenses in connection with the Private Actions Trust assets during the Person's term of service (including any predecessor trustee); (iii) a statement setting forth each Beneficiary's share of items of income, gain, loss, deduction or credit and the Distributions to Beneficiaries; (iv) the ending balance of all Private Actions Trust assets; (v) a narrative describing actions taken by the Private Actions Trustee in the performance of its duties which materially affect the Private Actions Trust; and (vi) a schedule reflecting the status of all then pending litigations, arbitrations, adversary proceedings and contested matters.

3.6 Acceptance of Appointment by Successor Private Actions Trustee.

Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Private Actions Trustee hereunder and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his or her predecessor in the Private Actions Trust hereunder with like effect as if originally named herein.

3.7 Trust Oversight Committee.

The Private Actions Trustee shall consult with, or obtain the prior written approval of, the Trust Oversight Committee as expressly provided for herein and the Private Actions Trustee shall not act, or refrain from acting without prior consultation with or written approval of the Trust Oversight Committee if such consultation or approval is required hereunder; provided, however, that in those instances where the prior written approval of the Trust Oversight Committee is required, and such approval is not provided, then the Private Actions Trustee can nonetheless take such action or inaction upon a motion filed with the Bankruptcy Court, upon notice and opportunity for a hearing provided to the Post Effective Date Service List and entry of a Final Order of the Bankruptcy Court approving such action or inaction. In connection with any such motion filed by the Private Actions Trustee, the Trust Oversight Committee may oppose the relief requested by the Private Actions Trustee and the fees and costs of the Trust Oversight Committee, and its agents and professionals, shall be Administrative Trust Expenses.

3.7 Meetings of the Private Actions Trustee and the Trust Oversight Committee: Reports

(a) Monthly Reports. The Private Actions Trustee shall, no less frequently than monthly, or at such other more frequent times as reasonably requested by the Trust Oversight Committee, provide the Trust Oversight Committee with a written update as to the various actions taken (or declined to be taken) during the previous month, and shall offer the Trust Oversight Committee an opportunity to ask questions with respect to such actions or inactions.

(b) Quarterly Meetings and Reports. The Private Actions Trustee shall, no less frequently than quarterly, or at such other more frequent times as reasonably requested by the Trust Oversight Committee, meet with the Trust Oversight Committee (which meetings may be telephonic) to provide the Trust Oversight Committee with an update as to the various actions taken (or declined to be taken) since the prior meeting, and shall offer the Trust Oversight Committee an opportunity to ask questions with respect to such actions or inactions. If requested by the Trust Oversight Committee, the Private Actions Trustee shall prepare a quarterly written report which may include (x) financial statements of the Private Actions Trust for such period, and, at the end of each calendar year, a financial statement for such calendar year or portion thereof in which the Private Actions Trust operated (which may be prepared by an independent certified public accountant employed by the Private Actions Trustee); (y) a statement of all transactions and the amounts thereof (including, without limitation, all income of the Private Actions Trust, distributions under the Plan, expenditures and other disbursements) consummated or effected during the period covered by such report; and (z) a description of the progress in prosecuting Contributed Non-Estate Causes of Action any other material information relating to the Private Actions Trust assets and the administration of the Private Actions Trust. Such reports shall be served on each member of the Trust Oversight Committee.

(c) Other Information. The Private Actions Trustee shall, on a regular basis, inform the Trust Oversight Committee of actions that the Private Actions Trustee is pursuing and is planning to pursue in connection with the discharge of the Private Actions Trustee's duties. The Private Actions Trustee shall seek the advice or obtain the written approval of the Trust Oversight Committee when required by this Agreement and may seek approval from the Bankruptcy Court under the circumstances set forth in this Agreement. However, the Private Actions Trustee shall not be deemed to have delegated its authority or responsibilities under the Private Actions Trust to the Trust Oversight Committee by means of this Section. Any motion, pleading, report, document, notice that is required to be Filed, served or provided hereunder or under the Plan or the Confirmation Order by the Private Actions Trustee shall be served upon the Trust Oversight Committee and each of its members.

3.8 Notice of and Waiver of Notice for Private Actions Trustee and Trust Oversight Committee.

Notice of the time and place (but not necessarily the purpose or all of the purposes) of any regular or special meeting will be given to the Private Actions Trustee and the members of the Trust Oversight Committee in person or by telephone, or via mail, electronic

mail, or facsimile transmission. Notice to the Private Actions Trustee and the members of the Trust Oversight Committee of any such special meeting will be deemed given sufficiently in advance when (i) if given by mail, the same is deposited in the United States mail at least fourteen (14) calendar days before the meeting date, with postage thereon prepaid, (ii) if given by electronic mail or facsimile transmission, the same is transmitted at least five (5) business days prior to the convening of the meeting, or (iii) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the Private Actions Trustee and the members of the Trust Oversight Committee or to an adult member of his/her office staff or household, at least three (3) business days prior to the convening of the meeting. The Private Actions Trustee and any member of the Trust Oversight Committee may waive notice of any meeting and any adjournment thereof at any time before, during, or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the Private Actions Trustee or the applicable member or members of the Trust Oversight Committee entitled to the notice, and filed with the minutes or records of the Private Actions Trust. The attendance of the Private Actions Trustee or a member of the Trust Oversight Committee at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Notwithstanding any provision in this Private Actions Trust Agreement to the contrary, the Private Actions Trustee and the Trust Oversight Committee may agree to publish in the minutes of any duly noticed and convened meeting of the Private Actions Trustee and the Trust Oversight Committee and disseminate to each member of the Trust Oversight Committee and the Private Actions Trustee a copy of (in the manner provide for the giving of Notice in this Private Actions Trust Agreement), a printed schedule of the date, time and location of the then next subsequent 12 or fewer regular meetings and as to such scheduled regular meetings no further notice to the Trust Oversight Committee or the Private Actions Trustee shall be required.

3.9 Manner of Acting.

The Private Actions Trustee or any member of the Trust Oversight Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. The Private Actions Trustee or any member of the Trust Oversight Committee participating in a meeting by this means is deemed to be present in person at the meeting.

3.10 Role of the Private Actions Trustee.

In furtherance of and consistent with the purpose of the Private Actions Trust and the Plan, the Private Actions Trustee, subject to the terms and conditions contained herein and in the Plan, shall have the power to (i) prosecute, compromise and settle, abandon or dismiss for the benefit of the Private Actions Trust Beneficiaries all claims, rights and causes of action transferred to the Private Actions Trustee (whether such suits are brought in the name of the Private Actions Trustee or otherwise), and (ii) to otherwise perform the functions and take the actions provided or permitted in the Plan or in this Private Actions Trust Agreement. In all

circumstances, the Private Actions Trustee shall act in the best interests of all the Private Actions Trust Beneficiaries and in furtherance of the purpose of the Private Actions Trust.

3.11 Authority of Private Action Trustee.

Subject to any limitations contained herein (including, without limitation, Article 4 hereof) or in the Plan, the Private Actions Trustee shall have the following powers and authorities:

(a) hold legal title to any and all rights of the holders of the Private Actions Trust Beneficial Interests in or arising from the Contributed Non-Estate Causes of Action, including, without limitation, collecting, receiving any and all money and other property belonging to the Private Actions Trust and, subject to the approval of the Trust Oversight Committee, the right to vote any claim or interest relating to an Estate Cause of Action in a case under the Bankruptcy Code and receive any distribution therein;

(b) perform the duties, exercise the powers, and assert the rights of a trustee under sections 704 and 1106 of the Bankruptcy Code;

(c) in consultation with and subject to the approval of the Trust Oversight Committee, prosecute, compromise, settle, adjust, arbitrate, sue on or defend, pursue, abandon, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, all Contributed Non-Estate Causes of Action or other causes of action in favor of or against the Private Actions Trust; provided, however, that the Private Actions Trustee shall not be required to consult with or obtain approval of the Trust Oversight Committee, to the extent such matters are limited to a claim or cause of action against a person or entity where the amount demanded from such person or entity, in the aggregate, is less than or equal to \$100,000 or such other amount as may be approved by a majority of the members of the Trust Oversight Committee (a "De Minimis Claim or Cause of Action");

(d) protect and enforce the Private Actions Trustee's rights of ownership to Contributed Non-Estate Causes of Action by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(e) obtain reasonable insurance coverage with respect to the liabilities and obligations of the Private Actions Trustee under this Private Actions Trust Agreement (in the form of an errors and omissions policy or otherwise);

(f) obtain insurance coverage with respect to real and personal property that may become assets of the Private Actions Trust, if any;

(g) select counsel and other professionals, including, without limitation, any professionals employed by the same law firm as the Trustee, and/or previously retained by the Chapter 11 Trustee, the Creditors' Committee or the Plan Debtors, and/or also retained by the DBSI Estate Litigation Trustee, the DBSI Liquidating Trustee, or the DBSI Real Estate Liquidating Trustee, as the Private Actions Trustee shall select to assist the Private Actions Trustee in his or her duties, who will be entitled to reasonable compensation for services

rendered at a rate reflecting actual time billed by such professionals on an hourly basis, at the standard billing rates in effect at the time of service or such other rate or basis of compensation that is reasonable, without Bankruptcy Court approval; provided, however, in the case of any contingency fee, alternative fee, sharing arrangement, or other fee agreement that is not based upon actual time billed, the prior written approval of the Trust Oversight Committee shall be required;

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

(i) select third parties (excluding counsel and other professionals) and, in consultation with and subject to the approval of the Trust Oversight Committee, retain and approve compensation arrangements of such third parties to assist the Private Actions Trustee in carrying out his or her powers and duties under this Private Actions Trust Agreement; subject to the foregoing, the Private Actions Trustee may commit the Private Actions Trust to and shall pay all such persons or entities reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, as well as commit the Private Actions Trust to indemnify any such parties in connection with the performance of services (provided that such indemnity shall not cover any losses, costs, damages, expenses or liabilities that result from the recklessness, gross negligence, willful misconduct, or knowing violation of law by such party);

(j) in consultation with and subject to the approval of the Trust Oversight Committee, waive any privilege (including the Privileges) or any defense on behalf of the Private Actions Trust or, with respect to the Contributed Non-Estate Causes of Action of the Grantors, as applicable;

(k) in consultation with and subject to the approval of the Trust Oversight Committee, avoid and recover transfers of property of the Estates as provided for in the Plan as may be permitted by the Bankruptcy Code or applicable state law; provided, however, that the Private Actions Trustee shall not be required to consult with or obtain the approval of the Trust Oversight Committee, to the extent such matters involve a De Minimis Claim or Cause of Action;

(l) in consultation with and subject to the approval of the Trust Oversight Committee, invest any moneys held as part of the Private Actions Trust in accordance with the terms of Section 3.20 hereof, limited, however, to such investments that are consistent with the Private Actions Trust's status as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc 94-45, 1994-2 C.B. 684;

(m) request any appropriate tax determination with respect to the Private Actions Trust, including, without limitation, a determination pursuant to section 505 of the Bankruptcy Code;

(n) subject to applicable securities laws, if any, establish and maintain a website for the purpose of providing notice of Private Actions Trust activities in lieu of sending written notice to holders of Private Actions Trust Beneficial Interests, subject to providing notice of such website to such holders;

(o) seek the examination of any entity, subject to the provisions of Bankruptcy Rule 2004, to the extent applicable, or any other applicable law or rule;

(p) in consultation with and subject to the approval of the Trust Oversight Committee, incur indebtedness and grant security interests in the assets of the Private Actions Trust in order to obtain funding for the Private Actions Trust;

(q) in consultation with the Trust Oversight Committee take or refrain from taking any and all other actions (apart from those listed above) that the Private Actions Trustee reasonably deems necessary or convenient for the continuation, protection and maximization of the Contributed Non-Estate Causes of Action or to carry out the purposes hereof;

3.12 Limitation of Private Action Trustee's Authority.

(a) Notwithstanding anything herein to the contrary, the Private Actions Trustee shall not, in his capacity as Private Actions Trustee, (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation of the assets of the Private Actions Trust as are required or contemplated by applicable law, the Plan and this Private Actions Trust Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Private Actions Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

(b) The Private Actions Trust shall not hold 50% or more of the stock (in either vote or value) of any entity that is treated as a corporation for federal income tax purposes, nor be the sole member of a limited liability company, nor have any interest in an entity that is treated as a partnership for federal income tax purposes, unless such stock, membership interest, or partnership interest was obtained involuntarily or as a matter of practical economic necessity in order to preserve the value of the assets of the Private Actions Trust.

3.13 Books and Records.

(a) The Private Actions Trustee shall maintain books and records relating to the assets of the Private Actions Trust and income of the Private Actions Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Private Actions Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements of the Private Actions Trust. Nothing in this Private Actions

Trust Agreement requires the Private Actions Trustee to file any accounting or seek approval of any court with respect to the administration of the Private Actions Trust, or as a condition for managing any payment or distribution out of the assets of the Private Actions Trust.

(b) The Private Actions Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Private Actions Trustee, to inspect and, at the sole expense of such Private Actions Trust Beneficiary seeking the same, make copies of the books and records referenced in Section 3.15(a) on any business day and as often as may be reasonably be desired, in each case for a proper purpose reasonably related to such Private Actions Trust Beneficiary's interest in the Private Actions Trust.

3.14 Inquiries into Trustee's Authority.

Except as otherwise set forth in the Private Actions Trust or in the Plan, no Person dealing with the Private Actions Trust shall be obligated to inquire into the authority of the Private Actions Trustee in connection with the protection, conservation or disposition of the Contributed Non-Estate Causes of Action.

3.15 Compliance with Laws.

Any and all distributions of assets of the Private Actions Trust and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

3.16 Compensation of the Private Actions Trustee.

(a) The Original Trustee shall be compensated for his services, and reimbursed for his expenses, in accordance with Schedule A attached hereto, as a cost of administering the Private Actions Trust. In the event a successor trustee is appointed, such successor shall be compensated for his or her services; and reimbursed for his or her expenses, as cost of administering the Private Actions Trust, in accordance with and pursuant to the terms of, a separate agreement to be negotiated and executed by the Trust Oversight Committee, which agreement shall not be subject to any third-party notice or approval.

(b) In the event that the Private Actions Trustee's appointment terminates by reason of (i) the death of the Private Actions Trustee, (ii) the removal of the Private Actions Trustee by the Trust Oversight Committee pursuant to Section 3.5(c), or (iii) by reason of the Private Action Trustee's Disability, the Private Actions Trustee, or his or her estate, as applicable, shall be entitled to payment of any earned but unpaid portion of compensation, any earned but unpaid bonus, and any un-reimbursed business expenses incurred prior to such death, Disability, or effective date of removal.

(c) For purposes of Section 3.5(c) and Section 3.18(b), the following terms shall have the following meanings:

(i) "Cause" shall mean (a) commission of any act of fraud or dishonesty in connection with his or her appointment as the Private Actions Trustee; (b) breach of this Private Actions Trust Agreement that adversely and materially affects, as determined in

good faith by the Trust Oversight Committee, the assets held by the Private Actions Trustee for the benefit of the Private Actions Trust Beneficiaries; (c) engaging in conduct constituting a misdemeanor involving moral turpitude or a felony or the indictment of the Private Actions Trustee for a felony; (d) failure of the Private Actions Trustee to perform his or her substantial job functions, or failure to respond to information inquiries or requests made in accordance with the Private Actions Trust Agreement, where such failure (even if not a breach hereof), has occurred on more than two occasions, and each such occasion has been the subject of a written notice of such failure delivered by the Trust Oversight Committee to the Private Actions Trustee; or (e) Disability; provided, however, the Trust Oversight Committee shall not deliver a notice pursuant to clause (d) hereof where the failure is the result of the Private Actions Trustee's absence from duties or incapacity due to a Disability.

(ii) "Disability" of the Private Actions Trustee shall have occurred as a result of the Private Actions Trustee's : (i) incapacity to perform his obligations under the Private Actions Trust Agreement due to physical or mental reasons; or (ii) having substantially not performed his or her duties under the Private Actions Trust Agreement for three consecutive months, or for an aggregate of 90 days during any period of six months.

3.17 Reliance by Private Actions Trustee.

Except as otherwise provided herein:

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

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

3.18 Investment and Safekeeping of Private Actions Trust Assets.

The Private Actions Trustee shall invest all assets transferred to the Private Actions Trust (other than Contributed Non-Estate Causes of Action), all Litigation Trust Proceeds, the Litigation Expense Fund and all income earned by the Private Actions Trust (pending periodic distributions in accordance with the provisions of the Plan) only in cash, cash equivalents, U.S. Treasury securities, money market investments, and similar investments; provided, however, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the United States Internal Revenue Service (the "IRS"), whether set forth in IRS rulings, other IRS pronouncements or otherwise, (b) the Private Actions Trustee may retain any Litigation Trust Proceeds received that are not Cash only for so long as

may be required for the prompt and orderly liquidation of such assets in Cash; and (c) under no circumstances, shall the Private Actions Trustee segregate the assets of the Private Actions Trust on the basis of classification of the holders of Private Actions Trust Beneficial Interests.

3.19 Standard of Care: Exculpation.

(a) Neither the Private Actions Trustee nor any of his or her duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the Private Actions Trustee in good faith, other than acts or omissions resulting from the Private Actions Trustee's own gross negligence, recklessness, willful misconduct, knowing and material violation of law, or fraud.

(b) Neither the Private Actions Trustee nor any of his or her duly designated agents or representatives or professionals shall be liable to any Grantor for the impairment, waiver, lapse or bar of any Contributed Non-Estate Cause of Action (including, without limitation, the expiration of the applicable statute of limitations or repose) related to a failure by the Private Actions Trustee to prosecute the Contributed Non-Estate Cause of Action, unless (i) the Grantor made a written request pursuant to Sections 1.2(e) and (f), and (ii) the failure to prosecute the Contributed Non-Estate Cause of Action was the result of gross negligence, recklessness, willful misconduct, or knowing violation of law.

(c) The Private Actions Trustee may, in connection with the performance of his or her functions, and in his or her sole and absolute discretion, consult with his or her attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, the Private Actions Trustee shall be under no obligation to consult with his or her attorneys, accountants, financial advisors or agents, and his or her good faith determination not to do so shall not result in the imposition of liability on the Private Actions Trustee, unless such determination is based on gross negligence, recklessness, willful misconduct, knowing and material violation of law, or fraud.

3.20 Conflicts of Interest

If the Private Actions Trustee determines, in the exercise of his reasonable discretion, that it has a material conflict of interest with respect to the settlement, resolution or prosecution of an Contributed Non-Estate Cause of Action, or any other matter, the Private Actions Trustee with the written approval of Trust Oversight Committee may select a designee to act on behalf of the Private Actions Trust solely with respect to such matter (the "Designated Private Actions Trustee"), with such designee's authority to act on behalf of the Private Actions Trust to terminate upon the matter's conclusion. If the designee files a pleading, motion or other paper with a court or tribunal on behalf of the Private Actions Trust, it shall do so in its own name as "Designated Private Actions Trustee of the Private Actions Trust."

3.21 No Implied Obligations

No covenants or obligations shall be implied into this Agreement, the Plan or the Confirmation Order. The Private Actions Trustee shall not be responsible in any manner

whatsoever for the correctness of any recital, statement, representation, or warranty herein, or in any documents or instrument evidencing or otherwise constituting a part of the Private Actions Trust assets.

3.22 Final Report and Discharge of the Private Actions Trustee

(a) Prior to termination of the Private Actions Trust, the Private Actions Trustee shall prepare a final report (the "Final Report"), which shall contain the following information: (i) all Private Actions Trust assets including Contributed Non-Estate Causes of Action and other assets originally charged under the Private Actions Trustee's control; (ii) an accounting of all recoveries in respect of Contributed Non-Estate Causes of Action, and all income and expenses in connection with the Private Actions Trust assets during the Private Actions Trustee's term of service (including any predecessor Private Actions Trustee); (iii) a statement setting forth each Beneficiary's share of items of income, gain, loss, deduction or credit and the distributions to Beneficiaries; (iv) a narrative describing actions taken by the Private Actions Trustee in the performance of its duties which materially affect the Private Actions Trust; and (v) schedule(s) reflecting that:

(A) all Contributed Non-Estate Causes of Action and other Private Actions Trust assets have been either: (i) reduced to Cash; or (ii) abandoned by the Private Actions Trustee, in accordance with the provisions of this Agreement and the Plan; and

(B) all expenses of the Private Actions Trust have been paid (or will be paid) and all payments and final distributions to be made to Beneficiaries have been made (or will be made) by the Private Actions Trustee in accordance with the provisions of this Agreement and the Plan.

At the discretion of the Trust Oversight Committee, the Final Report may be audited, or reviewed, by the Private Actions Trust's independent accountants in accordance with generally accepted auditing standards.

(b) Notice of the Private Actions Trustee's Final Report, and any audit, or review, thereof, prepared pursuant to the Plan and this Section 3.22, shall be filed with the Bankruptcy Court and served on each Person listed on the Post Effective Date Service List, along with a motion for approval of the Final Report and discharge of the Private Actions Trustee. Upon the entry of the order of the Bankruptcy Court approving the Final Report, the Private Actions Trustee and the Trust Oversight Committee shall be discharged from all liability to the Private Actions Trust or any Person who or which has had or may then or thereafter have a claim against or the Private Actions Trust or the Trust Oversight Committee for acts or omissions in the Private Actions Trustee's capacity as such, or the Trust Oversight Committee in its capacity as such, or in any other capacity contemplated by this Trust Agreement or the Plan, unless the Bankruptcy Court orders otherwise for good cause.

3.23 Reliance by Private Actions Trustee

Except as otherwise provided herein:

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

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

3.24 Action upon Instructions

If in performing the Private Actions Trustee's duties under this Agreement, the Private Actions Trustee is required to decide between alternative courses of action, or the Private Actions Trustee is unsure of the application of any provision of this Agreement or the Plan, then the Private Actions Trustee shall be under no duty to take or refrain from taking such action as is consistent with this Agreement as the Private Actions Trustee shall deem advisable. The Private Actions Trustee and the Trust Oversight Committee members may consult with legal counsel and shall be fully protected in respect of any action taken or suffered in accordance with the advice of legal counsel. The Private Actions Trustee and the Trust Oversight Committee may at any time apply to the Bankruptcy Court for a determination as to the course of action to be taken by the Private Actions Trustee, or at any time seek instructions from the Bankruptcy Court concerning the acquisition, management or disposition of the Private Actions Trust assets.

ARTICLE 4

TRUST OVERSIGHT COMMITTEE

4.1 Trust Oversight Committee.

A trust committee (the "Trust Oversight Committee") shall be established and shall initially consist of not less than three (3) and not more than seven (7) members of the Creditors' Committee.

4.2 Authority of the Trust Oversight Committee.

(a) The Trust Oversight Committee shall have the authority and responsibility to consult with the Private Actions Trustee and approve (or disapprove) those actions of the Private Actions Trustee specified in this Private Actions Trust Agreement as requiring the consultation and approval of the Trust Oversight Committee.

(b) The Trust Oversight Committee shall have the authority to oversee and review the activities and performance of the Private Actions Trustee and shall have the authority to remove and/or replace the Private Actions Trustee in accordance with Section 3.5 herein.

(c) The Private Actions Trustee shall consult with and provide information to the Trust Oversight Committee in accordance with and pursuant to the terms of this Private Actions Trust Agreement and the Plan.

(d) The Trust Oversight Committee shall have the authority to select and engage such Persons, and select and engage such professional advisors, including, without limitation, any professional previously retained by the Grantors, the Creditors' Committee, the Chapter 11 Trustee or the Plan Debtors, as the Trust Oversight Committee deems necessary and desirable to assist the Trust Oversight Committee in fulfilling its obligations under this Private Actions Trust Agreement and the Plan, and the Private Actions Trust shall pay the reasonable fees of such Persons (including on an hourly, contingency, or modified contingency basis) and reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Private Actions Trust Agreement.

(e) The Trust Oversight Committee shall have the authority to adopt rules of governance including those relating to conflicts of, and material financial interests in, matters which are the subject matter of deliberations or persons related to deliberations with the business of the Private Actions Trust and the role, authority or responsibility of any member of the Trust Oversight Committee in respect thereof.

4.3 Regular Meetings of the Trust Oversight Committee.

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

4.4 Special Meetings of the Trust Oversight Committee.

Special meetings of the Trust Oversight Committee may be held whenever and wherever called for by the Private Actions Trustee or any of the members of the Trust Oversight Committee.

4.5 Time for Consultation and Approval

Upon written notice by the Private Actions Trustee pursuant to Section 11.6 regarding any proposed action by the Private Actions Trustee subject to the right of consultation and approval by the Trust Oversight Committee as specified in this Private Actions Trust Agreement, the Trust Oversight Committee shall promptly consult with the Private Actions Trustee, and the Private Actions Trustee shall provide such additional information as the Trust Oversight Committee shall reasonably request to facilitate its review of the proposed action. The Trust Oversight Committee shall be deemed to approve the proposed action, and the Private Actions Trustee may rely on such approval for all purposes, unless the Trust Oversight Committee disapproves of the proposed action within thirty (30) days of the written notice provided by the Private Actions Trustee.

4.6 Manner of Acting.

(a) A majority of the total number of members of the Trust Oversight Committee then in office shall constitute a quorum for the transaction of business at any meeting of the Trust Oversight Committee. The affirmative vote of a majority of the members of the Trust Oversight Committee present and entitled to vote at a meeting at which a quorum is present shall be the act of the Trust Oversight Committee except as otherwise required by law or as provided in this Private Actions Trust Agreement. Any or all of the members of the Trust Oversight Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the Trust Oversight Committee participating in a meeting by this means is deemed to be present in person at the meeting. Voting may be conducted by electronic mail or individual communications by the Private Actions Trustee and each member of the Trust Oversight Committee.

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

(c) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each member of the Trust Oversight Committee shall confirm and report to the Trust Oversight Committee with respect to any such person's possible conflict of interest, any potential violation of the rules of governance adopted by the Trust Oversight Committee, or whether such member has or may have with respect to the matter or issue at hand any potential involvement or violation including any conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue, other than solely as a Private Actions Trust Beneficiary). A member who is or may be disqualified from voting or further participating in the deliberations relating to any such matter (as determined by a majority vote of the Trust Oversight Committee (without the vote of such affected person) or has or who may have a conflict of interest (as determined by a majority vote of the Trust Oversight Committee (without the vote of such affected person) shall be deemed to be a "conflicted member" who shall not be entitled to participate in any discussion regarding, or vote on any action with respect to, such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to such matter or issue shall be undertaken only by members of the Trust Oversight Committee who are not "conflicted members." If with respect to a particular issue there are more than two "conflicted members," then in such instance, notwithstanding anything to the contrary herein, with respect to such issues

action of the Trust Oversight Committee will require a majority of the members who are not "conflicted members."

4.7 Trust Oversight Committee's Action Without a Meeting.

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

4.8 Tenure, Removal, and Replacement of the Members of the Trust Oversight Committee.

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

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

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

A member of the Trust Oversight Committee may be removed by the majority vote of the other members of the Trust Oversight Committee, a written resolution of which shall be delivered to the removed Trust Oversight Committee member; provided, however, that such removal may only be made for Cause. For purposes of this Section 4.8(c), "Cause" shall be defined as:

(i) recklessness, gross negligence or willful misconduct in connection with the performance of the duties of a Trust Oversight Committee member;

(ii) knowing and material violation of law;

(iii) fraud;

(iv) The member no longer holds an interest in any of the Trusts;

(v) The designated representative of the Trust Oversight Committee member frequently fails to participate (by telephone or in person) in Trust Oversight Committee meetings and telephone conferences, and the Trust Oversight Committee in good faith believes that holders of Beneficial Interests would be better served by a replacement;

(vi) The presence of circumstances that makes the member incapable of representing the interests of holders of Beneficial Interests; or

(vii) Disability.

Any dispute between the Trust Oversight Committee and the removed member with respect to whether cause for removal exists shall be determined by the Bankruptcy Court. Upon resignation or removal, the Trust Oversight Committee member shall be discharged from his duties.

(c) In the event of a vacancy on the Trust Oversight Committee (whether by removal, death or resignation), a new member may be appointed to fill such position by a majority of the remaining members of the Trust Oversight Committee. Any such appointment of a new member cannot alter the structure or power of the Trust Oversight Committee as set forth in Sections 4.1 and 4.2. In the event that there are no remaining members of the Trust Oversight Committee, appointments to fill such vacancies that would have been made by a majority of the remaining members of the Trust Oversight Committee shall be made upon an order entered after an opportunity for a hearing by the Bankruptcy Court upon notice to the Post Effective Date Service List, upon motion of the Private Actions Trustee. The appointment of a successor member of the Trust Oversight Committee will be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor member of the Trust Oversight Committee.

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

4.9 Standard of Care; Exculpation.

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

4.10 Recusal

Notwithstanding any other provision of this Agreement, individual members of the Trust Oversight Committee shall recuse themselves from participating in any discussion concerning, and voting on, any proposed action by the Private Actions Trustee that involves any matter as to which such member has a conflict of interest.

4.11 No Liability

Nothing in this Agreement shall be deemed to have transferred any fiduciary responsibilities of the Private Actions Trustee to any member of the Trust Oversight Committee or the Trust Oversight Committee as a whole.

4.12 Compensation

Any and all reasonable and necessary costs and expenses incurred by the Trust Oversight Committee (and any professional or other Person retained by the Trust Oversight Committee), or members of the Trust Oversight Committee in performing their respective services under this Agreement, will be reimbursed by the Private Actions Trustee from the Private Actions Trust assets.

ARTICLE 5

TAX MATTERS

5.1 Federal Income Tax Reporting.

(a) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Private Actions Trustee of a private letter ruling if the Private Actions Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Private Actions Trustee), the Private Actions Trustee shall file returns for the Private Actions Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with this Article 5. The Private Actions Trustee shall also annually send to each Private Actions Trust Beneficiary a separate statement setting forth such Private Actions Trust Beneficiary's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns.

(b) As soon as practicable after the Effective Date, but in no event later than sixty (60) days thereafter, (i) the Private Actions Trustee, in consultation with the Trust Oversight Committee, will determine the fair market value as of the Effective Date of all assets transferred to the Private Actions Trustee, and such determined fair market value shall be used by the Private Actions Trust, the Trust Oversight Committee, and the Private Actions Trust Beneficiaries for all federal income tax purposes, and (ii) the Private Actions Trustee shall apprise the Private Actions Trust Beneficiaries, in writing of such valuation. The Private Actions Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to

the Private Actions Trust that are required by any governmental unit and pay taxes, if any, properly payable by the Private Actions Trust.

(c) The Private Actions Trustee may request an expedited determination of taxes of the Private Actions Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Private Actions Trust for all taxable periods through the effective date of the dissolution of the Private Actions Trust.

(d) For federal income tax purposes, the Chapter 11 Trustee, the Private Actions Trustee, and the Private Actions Trust Beneficiaries will treat the transfer of assets to the Private Actions Trustee and issuance of Private Actions Trust Beneficial Interests as a deemed transfer by the Chapter 11 Trustee of the assets to the Private Actions Trust Beneficiaries, followed by a deemed transfer of such assets by the Private Actions Trust Beneficiaries to the Private Actions Trustee in exchange for direct or indirect beneficial interests in the Private Actions Trust.

(e) For federal income tax purposes, the Private Actions Trust Beneficiaries will be treated as the grantors, deemed owners and beneficiaries of the Private Actions Trust.

5.2 Allocations of Private Action Trust Taxable Income.

(a) Allocations of Private Actions Trust taxable income shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described in the Plan) if, immediately prior to such deemed distribution, the Private Actions Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Private Actions Trust Beneficiaries, taking into account all prior and concurrent distributions from the Private Actions Trust (including all distributions held in escrow pending the resolution of Disputed Claims). Similarly, taxable loss of the Private Actions Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Contributed Non-Estate Causes of Action. The tax book value of the Contributed Non-Estate Causes of Action for these purposes shall equal their fair market value on the Effective Date, adjusted in either case in accordance with tax accounting principles prescribed by the United States Internal Revenue Code, the regulations and other applicable administrative and judicial authorities and pronouncements.

(b) To the extent of any transfers of Private Actions Trust Beneficial Interests in accordance with Section 2.5(a) herein, the Private Actions Trustee shall promptly establish a standard convention for allocating and apportioning taxable income and loss between a transferor and its transferee and shall not be required to so allocate and apportion based on the actual Private Actions Trust activities prior and subsequent to the date of any transfer. The Private Actions Trustee shall notify the Private Actions Trust Beneficiaries of the convention adopted promptly after such adoption. The Private Actions Trustee shall use his or her discretion to establish a fair and equitable convention to apply and may, but is not required to, adopt a monthly, quarterly or similar record date convention.

ARTICLE 6

DISTRIBUTIONS

6.1 Annual Distribution: Withholding.

The Private Actions Trustee shall distribute at least annually to the Private Actions Trust Beneficiaries all net cash income plus all net cash proceeds from the liquidation of assets; provided, however, that the Private Actions Trust may retain such amounts (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Private Actions Trust during liquidation, (ii) to pay or reserve for reasonable administrative expenses (including the costs and expenses of the Private Actions Trust, the Private Actions Trustee, and the Trust Oversight Committee and the fees, costs and expenses of all professionals retained by the Private Actions Trustee or the Trust Oversight Committee, and any taxes imposed on the Private Actions Trust or in respect of the assets of the Private Actions Trust), and (iii) to satisfy other liabilities incurred or assumed by the Private Actions Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Private Actions Trust Agreement. All such distributions shall be pro rata based on the number of Private Actions Trust Beneficial Interests held by a Private Actions Trust Beneficiary compared with the aggregate number of Private Actions Trust Beneficial Interests outstanding, subject to the terms of the Plan and this Private Actions Trust Agreement. The Private Actions Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the Private Actions Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.2 Manner of Payment or Distribution.

(a) All distributions made by the Private Actions Trustee to holders of Private Actions Trust Beneficial Interests shall be payable to the holders of Private Actions Trust Beneficial Interests of record as of the 20th day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such day shall be the following Business Day. If the distribution shall be in Cash, the Private Actions Trustee shall distribute such Cash by wire, check, or such other method as the Private Actions Trustee deems appropriate under the circumstances.

(b) Any net recoveries on Contributed Non-Estate Causes of Action shall first be used to repay the Initial Funding described in Section 1.6(a) and then such proceeds shall be distributed to the Private Actions Trust Beneficiaries.

6.3 Delivery of Private Actions Trust Distributions.

All distributions under this Private Actions Trust to any holder of Private Actions Trust Beneficial Interests shall be made at the address of such holder as set forth in the Trust Register or at such other address or in such other manner as such holder of Private Actions Trust Interests shall have specified for payment purposes in a written notice to the Private Actions Trustee and the Registrar at least 20 days prior to such distribution date. In the event that any distribution to any holder is returned as undeliverable, the Private Actions Trustee shall be

entitled to rely on the most current information available from the Chapter 11 Trustee, to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Private Actions Trustee has determined the then current address of such holder, at which time such distribution shall be made to such holder without interest; provided, however, that such undeliverable or unclaimed distributions shall be deemed unclaimed property at the expiration of one year from the date of distribution. The Private Actions Trustee shall reallocate the undeliverable and unclaimed distributions for the benefit of all other Private Actions Trust Beneficiaries.

6.4 Cash Distributions.

No Cash distributions shall be required to be made to any Private Actions Trust Beneficiary in an amount less than \$100.00. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all cash shall be distributed in the final distribution of the Private Actions Trust.

ARTICLE 7

INDEMNIFICATION

7.1 Indemnification of Private Actions Trustee and the Trust Oversight Committee.

(a) To the fullest extent permitted by law, the Private Actions Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Private Actions Trustee and each of the members of the Trust Oversight Committee and each of their respective directors, members, shareholders, partners, officers, agents, employees, attorneys and other professionals (collectively, the “Indemnified Persons”) from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Private Actions Trust, except to the extent that the loss, cost, damage, expense or liability resulted primarily from the Indemnified Person’s recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. To the extent reasonable, the Private Actions Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Private Action Trust.

(b) Any Indemnified Person may waive the benefits of indemnification under this Section 7.1, but only by an instrument in writing executed by such Indemnified Person.

(c) The fact that an act or omission of an Indemnified Person was based upon advice of counsel will conclusively be deemed not to constitute recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. Each Indemnified Person may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by it to be

genuine and to have been signed or presented by the proper party or parties, and any order of the Bankruptcy Court.

(d) Any Persons entitled to indemnification under the Plan shall have a priority distribution right on the corpus of the Private Actions Trust ranking pari passu with other Persons entitled to indemnification hereunder or under the Plan, provided, however, that such right to payment shall be (i) in all respects Administrative Trust Expenses, and (ii) subordinate to any right of payment of any Distributions to holders of S/A/P Allowed Claims.

(e) The Private Actions Trustee may use Private Actions Trust assets to purchase indemnification insurance to satisfy any potential indemnification claims that may arise under this Section 7.1 or the Plan, in conjunction with any insurance obtained pursuant to Section 3.11(e), for the benefit of the Private Actions Trust, the Private Actions Trustee, the Trust Oversight Committee (and its members), and any agents, representatives, attorneys, accountants, advisors or other professionals employed by any of them.

(f) The rights to indemnification under this Section 7.1 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Section 7.1 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Private Actions Trust Agreement, or any other agreement or instrument to which that Person is a party.

7.2 Limited Recourse

No recourse shall ever be had, directly or indirectly, against the Private Actions Trustee personally, or any member of Trust Oversight Committee, or against any employee, contractor, agent, attorney, accountant or other professional retained in accordance with the terms of this Agreement or the Plan by either the Private Actions Trustee or the Trust Oversight Committee, by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Private Actions Trustee or the Trust Oversight Committee in implementation of this Agreement or the Plan, or by reason of the creation of any indebtedness by the Private Actions Trustee under the Plan for any purpose authorized by this Agreement or the Plan, it being expressly understood and agreed that all such liabilities, covenants, and agreements of the Private Actions Trust or the Trust Oversight Committee, whether in writing or otherwise, shall be enforceable only against and be satisfied only out of the Private Actions Trust assets or such part thereof as shall under the term of any such agreement be liable therefore or shall be evidence only of a right of payment out of the Private Actions Trust assets. Notwithstanding the foregoing, the Private Actions Trustee may be held liable for its recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud as determined by a final order of a court of competent jurisdiction not subject to appeal; and if liability on such grounds is established, recourse may be had against (a) the Private Actions Trustee's bond or applicable insurance coverage, and, (b) to the extent not covered by such bond or insurance, subject to Section 7.3, directly against the Private Actions Trustee, provided, however, in no event shall the liability of the Private Actions Trustee based upon recklessness or gross negligence be any more than the fees to which the Private Actions Trustee is entitled to hereunder that are paid to, or are

received by way of set off or otherwise by, the Private Actions Trustee. The Private Actions Trustee shall be discharged from all liability and obligations to any Beneficiary which has received its final distribution from the Private Actions Trust.

7.3 No Liability for Acts of Predecessor

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

7.4 Express Exculpatory Clauses in Instruments

As far as practicable, the Private Actions Trustee shall cause any written instrument creating an obligation of the Private Actions Trust to include a reference to this Agreement and to provide that none of the Beneficiaries or the Private Actions Trustee or the Trust Oversight Committee or any of its members shall be liable thereunder and that the other parties to such instrument shall look solely to the Private Actions Trust Assets for the payment of any claim thereunder or the performance thereof; provided, however, that the omission of such provision from any such instrument shall not render any Beneficiary, the Private Actions Trustee, the Trust Oversight Committee or any of its members, liable nor shall the Beneficiaries, Private Actions Trustee, or Trust Oversight Committee or any of its members be liable to anyone for such omission.

ARTICLE 8

REPORTS TO PRIVATE ACTIONS TRUST BENEFICIARIES

8.1 Reports.

(a) The Private Actions Trustee shall cause to be prepared, as applicable, either at such times as may be required by the Exchange Act, if applicable, or, not less than annually, financial statements of the Private Actions Trust, to be delivered to the holders of the Private Actions Trust Beneficial Interests, together with annual income tax reporting of the Private Actions Trust. To the extent required by law, the financial statements prepared as of the end of the fiscal year shall be audited by nationally recognized independent accountants in accordance with U.S. generally accepted accounting principles. The materiality and scope of audit determinations shall be established between the Private Actions Trustee (in consultation with the Trust Oversight Committee) and the appointed auditors with a view toward safeguarding the value of the assets of the Private Actions Trustee, but nothing relating to the

mutually agreed scope of work shall result in any limitation of audit scope that would cause the auditors to qualify their opinion as to scope of work with respect to such financial statements.

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

(c) Any report required to be distributed by the Private Actions Trustee under Section 8.1(a) hereof shall also be distributed to the Persons listed in Section 11.6 hereof within ten Business Days of his or her distribution to the Private Actions Trust Beneficiaries under Section 8.1(a) hereof. The Private Actions Trustee may post any report required to be provided under this Section 8.1 on a web site maintained by the Private Actions Trustee in lieu of actual notice to the Private Actions Trust Beneficiaries (unless otherwise required by law) subject to providing notice to the Persons listed in Section 11.6 herein.

ARTICLE 9

TERM; TERMINATION OF THE PRIVATE ACTIONS TRUST

9.1 Term: Termination of the Private Actions Trust.

(a) The Private Actions Trust shall have an initial term of five (5) years, provided that if reasonably necessary to realize maximum value with respect to the assets in the Private Actions Trust and following Bankruptcy Court approval, which shall be applied for within six (6) months prior to the end of the applicable term, the initial term may be extended for one or more one (1) year terms; provided further, however, that the aggregate of all such extensions shall not exceed three (3) years, unless the Private Actions Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Private Actions Trust as a "liquidating trust" for federal income tax purposes within the meaning of Treasury Regulations 301.7701-4(d).

(b) The Private Actions Trust may be terminated earlier than its scheduled termination if (i) the Bankruptcy Court has entered a Final Order closing all of or the last of the Chapter 11 Cases pursuant to Section 350(a) of the Bankruptcy Code; and (ii) the Private Actions Trustee has administered all assets of the Private Actions Trust and performed all other duties required by the Plan and the Private Actions Trust.

9.2 Continuance of Trust for Winding Up.

After the termination of the Private Actions Trust and for the purpose of liquidating and winding up the affairs of the Private Actions Trust, the Private Actions Trustee shall continue to act as such until his or her duties have been fully performed. Prior to the final distribution of all of the remaining assets of the Private Actions Trust and upon approval of the Trust Oversight Committee, the Private Actions Trustee shall be entitled to reserve from such assets any and all amounts required to provide for his or her own costs and expenses, in accordance with Section 3.18 herein, until such time as the winding up of the Private Actions Trust is completed. Upon termination of the Private Actions Trust, the Private Actions Trustee

shall retain for a period of two years, as a cost of administering the Private Actions Trust, the books, records, Private Actions Trust Beneficiary lists, the Trust Register, and certificates and other documents and files that have been delivered to or created by the Private Actions Trustee. At the Private Actions Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two years from the completion and winding up of the affairs of the Private Actions Trust. Except as otherwise specifically provided herein, upon the termination of the Private Actions Trust, the Private Actions Trustee shall have no further duties or obligations hereunder.

ARTICLE 10

AMENDMENT AND WAIVER

10.1 Amendment and Waiver.

(a) The Private Actions Trustee, with the prior approval of the majority of the members of the Trust Oversight Committee, may amend, supplement or waive any provision of, this Private Actions Trust Agreement, without notice to or the consent of any Private Actions Trust Beneficiary or the approval of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect or inconsistency in this Private Actions Trust Agreement provided that such amendments, supplements or waivers shall not adversely affect the distributions to be made under this Private Actions Trust Agreement to any of the Private Actions Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Private Actions Trust as a "liquidating trust"; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the Private Actions Trust as a "liquidating trust"; (iii) to comply with any requirements in connection with maintaining that the Private Actions Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act; (iv) to make the Private Actions Trust a reporting entity and, in such event, to comply with or seek relief from any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act or the Investment Company Act; and (v) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Private Actions Trust Agreement and the Plan.

(b) Any substantive provision of this Private Actions Trust Agreement may be amended or waived by the Private Actions Trustee, subject to the prior approval of the Trust Oversight Committee, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; provided, however, that no change may be made to this Private Actions Trust Agreement that would adversely affect the distributions to be made under this Private Actions Trust Agreement to any of the Private Actions Trust Beneficiaries, or adversely affect the U.S. Federal income tax status of the Private Actions Trust as a "liquidating trust." Notwithstanding this Section 10.1, any amendments to this Private Actions Trust Agreement shall not be inconsistent with the purpose and intention of the Private Actions Trust to liquidate in an expeditious but orderly manner the Contributed Non-Estate Causes of Action in accordance with Treasury Regulation Section 301.7701-4(d).

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish the Private Actions Trust.

This Private Actions Trust Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Private Actions Trust Agreement may be amended in accordance with Section 10.1 to comply with such federal income tax laws, which amendments may apply retroactively.

11.2 Laws as to Construction.

THIS PRIVATE ACTIONS TRUST AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO WHETHER ANY CONFLICTS OF LAW WOULD REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

11.3 Jurisdiction.

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

11.4 Dispute Resolution.

In the event of any unresolved dispute between the Private Actions Trustee and the Trust Oversight Committee, such dispute shall be resolved by the Bankruptcy Court upon motion by the Private Actions Trustee or the Trust Oversight Committee, with notice provided to the Post Effective Date Service List.

11.5 Severability.

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

11.6 Notices.

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

If to the Private Actions Trustee, to:

James R. Zazzali, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102
Facsimile: (973) 639-6483

With a copy to:

Brian J. McMahon, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102
Facsimile: (973) 639-6229

If to the Trust Oversight Committee, to:

c/o Greenberg Traurig LLP
Attn: Michael H. Goldstein, Esq.
Nathan A. Schultz, Esq.
2450 Colorado Avenue
Suite 400 East
Santa Monica, CA 90404
Facsimile: (310) 586-0250 / (310) 586-0523

If to the Grantors, to the persons identified on the applicable Trust Elections:

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

A holder of a Beneficial Interest requesting notice under this Agreement where this Agreement provides such notice to a holder of a Beneficial Interest who makes a request therefore, shall make such request in accordance with this Section 11.6. A list setting forth the name, address, e-mail address, if any, and telephone number of each such requesting holder of a Beneficial Interest shall be maintained by the Private Actions Trustee and shall be provided upon request (the "Post Effective Date Service List"). The Persons listed in this Section 11.6 shall be automatically placed on the Post Effective Date Service List without any further action or direction.

11.7 Fiscal Year.

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

11.8 Headings.

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

11.9 Counterparts.

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

11.10 Confidentiality.

The Private Actions Trustee and each successor trustee and each member of the Trust Oversight Committee and each successor member of the Trust Oversight Committee (each a "Covered Person") shall, during the period that they serve in such capacity under this Private Actions Trust Agreement and following either the termination of this Private Actions Trust Agreement or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, nonpublic information of or pertaining to any entity to which any of the assets of the Private Actions Trust relates or of which it has become aware in its capacity (the "Information"), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the Trust Oversight Committee reasonably promptly (unless prohibited by law) so that the Trust Oversight Committee may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the Trust Oversight Committee seeks such an order, the relevant Covered Person will provide cooperation as the Trust Oversight Committee shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Trust Oversight Committee waives compliance with the terms of this Section and that any Covered Person is

nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Trust Oversight Committee written notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.11 Entire Agreement.

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

11.12 Joint Litigation Privilege

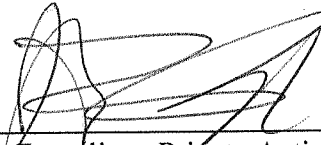
All communications, whether in writing or oral, among, and all documents exchanged among, the Private Actions Trustee, and its agents and representatives, on the one hand, and the Trust Oversight Committee, and its agents and representative, on the other hand, shall be for all purposes deemed to be,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

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

**GRANTORS EXECUTING ASSIGNMENTS
AND ACKNOWLEDGMENTS**

-and-

PRIVATE ACTIONS TRUSTEE:

A handwritten signature in black ink, appearing to read 'James R. Zazzali', is written over a horizontal line.

James R. Zazzali, as Private Actions Trustee

SCHEDULE A

Trustee will be compensated at his standard hourly rate at the time of services. Such rate is subject to adjustment on an annual basis.