

## NOTICE TO NOTEHOLDERS

**THIS NOTICE CONTAINS IMPORTANT INFORMATION THAT IS OF INTEREST TO THE REGISTERED AND BENEFICIAL OWNERS OF THE SUBJECT NOTES. IF APPLICABLE, ALL DEPOSITORIES, CUSTODIANS AND OTHER INTERMEDIARIES RECEIVING THIS NOTICE ARE REQUESTED TO EXPEDITE RE-TRANSMITTAL TO BENEFICIAL OWNERS OF THE NOTES IN A TIMELY MANNER.**

April 11, 2019

To: The Bank of New York  
525 William Penn Place, 7th Floor  
Pittsburgh, Pennsylvania 15259  
Attn: Global Corporate Trust – Preferred Term Securities XIX  
Email: [shelly.a.sterling@bnymellon.com](mailto:shelly.a.sterling@bnymellon.com)  
[christopher.p.smith@bnymellon.com](mailto:christopher.p.smith@bnymellon.com)  
[faran.ives@bnymellon.com](mailto:faran.ives@bnymellon.com)  
[kris.peet@bnymellon.com](mailto:kris.peet@bnymellon.com)  
[stuart.rothenberg@bnymellon.com](mailto:stuart.rothenberg@bnymellon.com)  
[brian.jarrett@bnymellon.com](mailto:brian.jarrett@bnymellon.com)  
[anthony.novelli@bnymellon.com](mailto:anthony.novelli@bnymellon.com)

To: Holders of the Notes Described Below:

<u>Class</u>	<u>Rule 144A CUSIP<sup>1</sup></u>	<u>Reg S CUSIP<sup>1</sup></u>	<u>Acc's Inv CUSIP<sup>1</sup></u>
Class A-1 Senior Notes	74042HAA5	G72212AA4	N/A
Class A-2 Senior Notes	74042HAB3	G72212AB2	N/A
Class B Mezzanine Notes	74042HAC1	G72212AC0	74042HAD9
Class C Mezzanine Notes	74042HAE7	G72212AD8	74042HAF4
Class D Mezzanine Notes	74042HAG2	G72212AE6	74042HAH0
Income Notes	N/A	G72212AF3	74042HAJ6

To: The Additional Addressees Set Forth on Annex A

Ladies and Gentlemen:

Reference is hereby made to that certain (i) Indenture, dated as of September 15, 2005 (the “**Indenture**”), between Preferred Term Securities XIX, Ltd. (“**Prestl XIX**”), as Issuer, Preferred Term Securities XIX, Inc., as Co-Issuer, and The Bank of New York, a New York banking corporation, as trustee and not in its individual capacity (the “**Indenture Trustee**”); and (ii) Securities Purchase Agreement, dated as of August 1, 2011 (the “**SPA**”), between HoldCo Distressed Fund II, formerly known as Tricadia Financials Restructuring Partners II, Ltd. (“**HoldCo**”), and the Indenture Trustee.

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<sup>1</sup> No representation is made as to the correctness of the CUSIP numbers contained in this notice. Such numbers are included solely for your convenience.

Pursuant to Section 3.03(b)(i) of the SPA, HoldCo is providing this notice to the Requisite Noteholders<sup>2</sup> and Prestl XIX to notify such parties of its intent to sell, transfer or otherwise dispose of certain Purchased Securities or In-Kind Proceeds (each as defined in the SPA).

HoldCo intends to sell all of the Purchased Securities and In-Kind Proceeds set forth on Schedule I hereto (the “**Owned Assets**”) on or before May 31, 2019 (or such later date as may be determined in HoldCo’s sole discretion) as follows.

With respect to Owned Assets that were issued by Managed Investments Opportunity Corp., formerly known as FirstFed Financial Corp., a Maryland corporation ( “**MIOC**”) and the sole owner of First Federal Bank of California (a failed bank that was seized by the Federal Deposit Insurance Corporation in 2009) (such Owned Assets, the “**MIOC Owned Assets**”), HoldCo intends to sell the MIOC Owned Assets to liquidating trusts organized as Delaware statutory trusts (the “**MIOC Trusts**”) pursuant to purchase agreements that are included in the sale documents attached hereto as Schedule III (the “**MIOC Sale Documents**”) in exchange for 100% of the beneficial interests in the trusts (“**MIOC Trust Interests**”) as set forth in the trust agreements for the trusts that are included in the MIOC Sale Documents. HoldCo will distribute MIOC Trust Interests from the sale of MIOC Owned Assets as a distribution in-kind pursuant to Section 4.02 of the SPA.

With respect to Owned Assets other than the MIOC Owned Assets (the “**Other Owned Assets**”), HoldCo believes that each Other Owned Asset has nominal or de minimis market value and that each Other Owned Asset may have no market value. HoldCo intends to sell, transfer or otherwise dispose of all of the Other Owned Assets in the manner and method selected by HoldCo in its sole discretion. HoldCo does not believe that there will be any material proceeds from the disposition of Other Owned Assets and, in fact, there may not be any proceeds from such disposition. But if HoldCo receives any cash proceeds from the sale, transfer or disposition of Other Owned Assets, HoldCo will distribute such proceeds in accordance with Section 4.02 of the SPA.

Following an in-kind distribution of MIOC Trust Interests in accordance with Section 4.02 of the SPA and distribution (if any) of any cash proceeds from the other Owned Assets, HoldCo will have made a final distribution of all assets under the SPA. Accordingly, the SPA will terminate and Prestl XIX will not receive any additional distributions under the SPA. All payments in respect of MIOC Trust Interests will be made directly by the MIOC Trusts in accordance with the MIOC Sale Documents.

If the Requisite Noteholders do not notify both HoldCo and the Indenture Trustee in writing of their objection to HoldCo’s potential disposition of the Owned Assets within thirty (30) days of

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<sup>2</sup> As defined in the Indenture, “**Requisite Noteholders**” shall mean for so long as any Senior Notes remain Outstanding, the Holders of more than 66• % of the Aggregate Principal Amount of the Senior Notes (the Class A-1 Senior Notes and the Class A-2 Senior Notes being considered together as one class for this purpose); thereafter, for so long as any Class B Mezzanine Notes remain Outstanding, the Holders of more than 66• % of the Aggregate Principal Amount of the Class B Mezzanine Notes; thereafter, for so long as any Class C Mezzanine Notes remain Outstanding, the Holders of more than 66• % of the Aggregate Principal Amount of the Class C Mezzanine Notes; thereafter, for so long as any Class D Mezzanine Notes remain Outstanding, the Holders of more than 66• % of the Aggregate Principal Amount of the Class D Mezzanine Notes; and thereafter the Holders of more than 66• % of the Aggregate Principal Amount of the Income Notes.

receiving this notice, then HoldCo may dispose of the MIOC Owned Assets pursuant to the MIOC Sale Documents and may dispose of the Other Owned Assets, in each case, as described above. Although, as described above, the SPA provides Requisite Noteholders a thirty (30) day period to notify both HoldCo and the Indenture Trustee in writing of their objection, HoldCo is extending the period to 35 (thirty-five) days and is thus setting a deadline of May 16, 2019 for the Requisite Noteholders' objection, if any, to be received by HoldCo and the Indenture Trustee. If the Requisite Noteholders notify both HoldCo and the Indenture Trustee in writing of their objection to HoldCo's potential disposition of the Owned Assets, then any disposition of the Owned Assets will be effected in accordance with Section 3.03(b)(iii) of the SPA.<sup>3</sup> **The Requisite Noteholders' objection, if any, must be delivered to the addresses for HoldCo and Indenture Trustee set forth on Schedule II hereto on or prior to May 16, 2019.**

Please direct any questions regarding this notice to HoldCo by contacting Misha Zaitzeff by phone or email.

HoldCo Distressed Fund II  
c/o HoldCo Asset Management  
32 Broadway, Suite 1201  
New York, New York 10004  
Attn: Misha Zaitzeff  
Phone: (917) 398-2347  
Email: [misha@holdcoadvisors.com](mailto:misha@holdcoadvisors.com)

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<sup>3</sup> Section 3.03(b)(iii) of the SPA provides:

(iii) If the Requisite Noteholders object in writing (delivered to the Buyer and the Seller) to the proposed sale, transfer or other disposition of the Purchased Security or In-Kind Proceeds within 30 days of receiving such notification, then Buyer shall determine, in good faith, whether Seller is able to accept delivery of the Seller's Portion.

(A) If Buyer determines that Seller cannot accept such delivery, Buyer shall sell, transfer or otherwise dispose the Purchased Security or In-Kind Proceeds and apply the proceeds of such sale, transfer or other disposition as Income in accordance with Section 4.02.

(B) If Buyer determines that Seller is able to accept delivery of the Seller's Portion of the Purchased Security or In-Kind Proceeds, Buyer shall be entitled to sell, transfer or otherwise dispose of an amount of such Purchased Security or In-Kind Proceeds equal to (1) the Buyer's Portion of such Purchased Security or In-Kind Proceeds plus (2) an amount of such Purchased Security or In-Kind Proceeds that will produce sufficient proceeds to equal the lesser of (x) all Buyer's Reimbursable Expenses related to such Purchased Security or In-Kind Proceeds that have not been reimbursed as of the settlement date of the sale, transfer or other disposition and (y) the Expense Reimbursement Cap, and notwithstanding anything herein to the contrary, the proceeds from such sale, transfer or other disposition ("**Buyer's Excluded Proceeds**") shall be distributed to Buyer, shall not be treated as Income hereunder and Seller shall not have any right to receive such proceeds. Buyer shall deliver the Seller's Portion of such Purchased Security or In-Kind Proceeds to Seller or to any account or party designated by Seller in writing and neither party shall have any further obligations to the other party in respect of any assets so delivered.

## ANNEX A

### (Additional Addressees)

**Issuer:**

PREFERRED TERM SECURITIES XIX, LTD.

c/o Maples Finance Limited

PO Box 1093 GT

Queensgate House

South Church Street

George Town, Grand Cayman

Cayman Islands

Attention: The Directors

Facsimile: (345) 945-7100

**Co-Issuer:**

PREFERRED TERM SECURITIES XIX, INC.

c/o PR L & F Service Corp.

One Rodney Square, 10th Floor

Tenth and King Streets

Wilmington, Delaware 19801

United States,

Attention: The Directors

Facsimile (302) 738-7210

**DTC (if applicable):**

CEDE

ATTN: Notice to Noteholders of Preferred Term Securities XIX, Ltd.

55 Water Street

New York, NY 10004

Email: [lensnotices@dtcc.com](mailto:lensnotices@dtcc.com); [voluntaryreorgannouncements@dtcc.com](mailto:voluntaryreorgannouncements@dtcc.com);  
[consentannouncements@dtcc.com](mailto:consentannouncements@dtcc.com); [legalandtaxnotices@dtcc.com](mailto:legalandtaxnotices@dtcc.com)

**Clearstream (if applicable):**

Clearstream

ATTN: Notice to Noteholders of Preferred Term Securities XIX, Ltd.

1155 Avenue of the Americas, 19<sup>th</sup> Floor

New York, NY 10036

Email: [ca\\_general.events@clearstream.com](mailto:ca_general.events@clearstream.com)

**Euroclear (if applicable):**

Euroclear

ATTN: Notice to Noteholders of Preferred Term Securities XIX, Ltd.

28 Liberty Street, 33<sup>rd</sup> Floor

New York, NY 10005

Email: [drit@euroclear.com](mailto:drit@euroclear.com)

**SCHEDULE I**  
**(OWNED ASSETS)**

<b><u>MIOC Owned Assets</u></b> <sup>4</sup>	<b><u>CUSIP/ISIN (if any)</u></b>
1. Promissory Note, dated as of October 15, 2018, issued by Managed Investments Opportunity Corp.	N/A
2. Contingent Amount Note, dated as of October 15, 2018, issued by Managed Investments Opportunity Corp.	N/A

<b><u>Other Owned Assets</u></b>	<b><u>CUSIP/ISIN (if any)</u></b>
1. Georgian Bancorporation Statutory Trust I	37362V9Z0
2. Sterling Bank	85916S9Z7
3. Financial Investors Statutory Trust II	3175869Z0
4. Sunshine Statutory Trust I	86787U9Z6

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<sup>4</sup> Both MIOC Owned Assets were received as In-Kind Proceeds on 66,384.77 shares of Managed Investments Opportunity Corp., common stock which were in turn received as In-Kind Proceeds on \$20,000,000 in original principal amount of securities issued by FirstFed Financial Corp, CUSIP 3379079Z4.

**SCHEDULE II**  
**(NOTICE ADDRESSES)**

**HOLDCO DISTRESSED FUND II**

HoldCo Distressed Fund II  
c/o HoldCo Asset Management  
32 Broadway, Suite 1201  
New York, New York 10004  
Attn: Misha Zaitzeff  
Phone: (917) 398-2347  
Email: [misha@holdcoadvisors.com](mailto:misha@holdcoadvisors.com)

**INDENTURE TRUSTEE**

The Bank of New York  
525 William Penn Place, 7th Floor  
Pittsburgh, Pennsylvania 15259  
Attn: Global Corporate Trust – Preferred Term Securities XIX  
Email: [shelly.a.sterling@bnymellon.com](mailto:shelly.a.sterling@bnymellon.com)  
[christopher.p.smith@bnymellon.com](mailto:christopher.p.smith@bnymellon.com)  
[faran.ives@bnymellon.com](mailto:faran.ives@bnymellon.com)  
[kris.peet@bnymellon.com](mailto:kris.peet@bnymellon.com)  
[stuart.rothenberg@bnymellon.com](mailto:stuart.rothenberg@bnymellon.com)  
[brian.jarrett@bnymellon.com](mailto:brian.jarrett@bnymellon.com)  
[anthony.novelli@bnymellon.com](mailto:anthony.novelli@bnymellon.com)

**SCHEDULE III**

**(MIOC SALE DOCUMENTS)**

[ATTACHED BELOW]

MANAGED INVESTMENTS OPPORTUNITY CORP.  
56 33<sup>rd</sup> Avenue South #279  
St. Cloud, MN 56301

March 29, 2019

Dear Noteholder:

You own (1) a partnership interest note substantially identical to the note attached hereto as Appendix A (the "Partnership Interest Note") issued by Managed Investments Opportunity Corp., formerly FirstFed Financial Corp., a Maryland corporation (the "Company") and the sole owner of First Federal Bank of California (a failed bank that was seized by the Federal Deposit Insurance Corporation in 2009) and (2) a contingent amount note substantially identical to the note attached hereto as Appendix B (the "Contingent Note") and together with the Partnership Interest Note, the "Notes") issued by the Company.

To provide you with the ability to transfer partial interests in the Partnership Interest Note, the Company is offering you the opportunity to sell 100% of interest in the Partnership Interest Note to a liquidating trust organized as a Delaware statutory trust (the "Partnership Interest Note Liquidating Trust") pursuant to a purchase agreement attached hereto as Appendix C-1 (the "Partnership Interest Note Purchase Agreement") and receive 100% of the beneficial interests in the Partnership Interest Note Liquidating Trust under a trust agreement attached hereto as Appendix D-1 (the "Partnership Interest Note Liquidating Trust Agreement") and together with the Partnership Interest Note Purchase Agreement, the "Partnership Interest Note Documents").

To provide you with the ability to transfer partial interests in the Contingent Note, the Company is also offering you the opportunity to sell 100% of interest in the Contingent Note to a liquidating trust organized as a Delaware statutory trust (the "Contingent Note Liquidating Trust") and together with the Partnership Interest Note Liquidating Trust, the "Trusts" and each, a "Trust") pursuant to a purchase agreement attached hereto as Appendix C-2 (the "Contingent Note Purchase Agreement") and receive 100% of the beneficial interests in the Contingent Note Liquidating Trust under a trust agreement attached hereto as Appendix D-2 (the "Contingent Note Liquidating Trust Agreement") and together with the Contingent Note Purchase Agreement, the "Contingent Note Documents" and together with the Partnership Interest Note Documents, the "Transaction Documents").

You are not required to participate in the transactions described above (the "Transactions") and if you elect to not participate in the Transactions, you are not required to take any further action. If you would like to participate in the Transactions, you will be required to (1) execute the attached Transaction Documents and (2) deliver such Transaction Documents and the Notes to the Company within 45 days of the date hereof (the "Deadline") to:

Managed Investments Opportunity Corp.  
56 33rd Avenue South #279  
St. Cloud, MN 56301

The closing date of the Transactions will be the first date on which each of the following conditions have been met: (i) the Transaction Documents have been executed by the parties thereto and (ii) you have delivered the Notes to the Company as described below for assignment and registration of the Note in the name of the respective Trust and (iii) the Notes have been assigned and re-registered in the name of the respective Trust and have been delivered to Delaware Trust Company, a Delaware



corporation, acting not in its individual capacity but solely as owner trustee for each of the Partnership Interest Note Liquidating Trust and the Contingent Note Liquidating Trust.

If you elect to not participate in the Transactions at this time but wish to participate in the Transactions in the future, please contact the Company. Although the Company may, in its sole discretion, elect to enter into the Transactions in respect of your Notes after the Deadline, the Company is not under any obligation to do so.

Neither the Company nor its advisors are providing any financial or tax advice to noteholders and they are not responsible for the tax consequences to noteholders of the transactions described above. Shareholders are urged to consult with their own financial and tax advisors when deciding whether or not to take advantage of the opportunities described above.

If you would like to contact the Company, please contact Allen Tucci at [tuccia@whiteandwilliams.com](mailto:tuccia@whiteandwilliams.com), or by mail at Suite 1800, 1650 Market Street, Philadelphia, PA 19013, or by telephone at 215-864-6352.

Very truly yours,

Managed Investments Opportunity Corp.

**APPENDIX A**

PARTNERSHIP INTEREST NOTE

[ATTACHED BELOW]

## PROMISSORY NOTE

October 15, 2018

\$5,285,555.16

Managed Investments Opportunity Corp., a Maryland corporation (the “Company”), hereby promises to pay to the order of Hare & Co. (the “Holder”) the principal amount of \$5,285,555.16 (subject to adjustment on the terms set forth below), together with interest thereon calculated from the date hereof in accordance with the terms set forth below. This Note was issued by the Company as payment of a portion of the redemption price for 66,384.77 shares of the Company’s common stock, par value \$0.01 per share, in a redemption transaction that was completed on the date of this Note. Every term that is defined or given a special meaning in the Company’s Letter to Shareholders, dated as of September 12, 2018 (the “Letter to Shareholders”) and that is not given a different meaning in this Note has the same meaning whenever it is used in this letter as the meaning it is given in the Letter to Shareholders.

This Note is one of a series of Notes issued in redemption transactions to former owners of the Company’s common stock. Each former owner also received a note in a separate series of notes (the “Contingent Notes”) in such redemption transactions.

1. **Payment of Interest.** Except as otherwise expressly provided in Section 4, interest shall accrue at the applicable federal rate in effect on the date of this Note (compounded annually) on the unpaid principal amount of this Note outstanding from time to time. The Company shall pay to the Holder all accrued interest on the Maturity Date (as defined in Section 2(a)). Any accrued interest which for any reason has not theretofore been paid shall be paid in full on the date on which the final principal payment on this Note is paid. Interest shall accrue on any principal payment due under this Note and, to the extent permitted by applicable law, on any interest which has not been paid on the date on which it is payable until such time as payment therefor is actually delivered to the holder of this Note.

2. **Payment of Principal.**

(a) **Principal Amount.** The principal amount (the “Principal Amount”) of this Note is \$5,285,555.16; provided, however, that (1) the Principal Amount shall be subject to pro rata reduction in the event that the net cash proceeds from the sale of the Company’s LP Interests (the “LP Interests”), after the payment of (and/or establishment of reserves for) all of its liabilities and operating and wind-down costs not otherwise reserved for (“Net Cash Proceeds”), is less than \$79.62 per share calculated based on the number of shares of the Company’s common stock outstanding on September 12, 2018 and (2) the Principal Amount shall be subject to pro rata increase in the event that the Net Cash Proceeds are greater than \$79.62 per share calculated based on the number of shares of the Company’s common stock outstanding on September 12, 2018. For the avoidance of doubt, the Principal Amount shall not be subject to any increase or decrease on account of any amounts payable under the Contingent Notes. In the event the Company adjusts the Principal Amount of this Note, it shall inform the Holder in writing of such adjustment as soon as reasonably practicable.

(b) **Scheduled Payment.** The Company shall pay the Principal Amount then outstanding, together with all accrued and unpaid interest thereon, to the holder of this Note on the

Maturity Date. This Note shall mature on June 30, 2019 (the “Maturity Date”); provided that the Company may elect to extend the Maturity Date as necessary to allow the Company to complete the sale of its investment securities in a prudent manner. If the Company elects to extend the Maturity Date, it shall send written notice to such effect to the Holder on or prior to the then scheduled Maturity Date. The Company may extend the Maturity Date on more than one occasion.

(c) Optional Prepayments. The Company may, at any time and from time to time without premium or penalty, prepay all or a portion of the outstanding principal amount of the Note; provided that any such prepayment shall be made pro rata among the holders of all similar Notes on the basis of the outstanding principal amount of the Note held by each holder. Any prepayment of the principal amount of the Notes shall be accompanied by all accrued but unpaid interest on the principal amount being prepaid. In the event that the Company makes an optional prepayment on this Note (and all similar Notes then outstanding) prior to the time that it has completed the redemption of shares of its Common Stock from other holders (“Other Holders”), then such prepayment shall be made to the Other Holders at the time their Notes are issued.

(d) Mandatory Prepayments. The Company shall prepay all or a portion of the outstanding principal amount of the Note at any time when it holds Net Cash Proceeds representing more than \$6.00 per share calculated based on the number of shares of the Company’s common stock outstanding on September 12, 2018 (the “Trigger Amount”); provided that any such prepayment shall be made pro rata among the holders of all similar Notes on the basis of the outstanding principal amount of the Note held by each holder. Any such mandatory prepayment shall be made within 15 Business Days after the Company’s holdings of Net Cash Proceeds exceeds the Trigger Amount. Any prepayment of the principal amount of the Notes shall be accompanied by all accrued but unpaid interest on the principal amount being prepaid. In the event that the Company makes a mandatory prepayment on this Note (and all similar Notes then outstanding) prior to the time that it has completed the redemption of shares of its Common Stock from other holders (“Other Holders”), then such prepayment shall be made to the Other Holders at the time their Notes are issued.

(e) Pro Rata Payment. Any payment on this Note (whether for principal, interest or otherwise) shall be made pro rata among all holders of similar Notes then outstanding based upon the aggregate unpaid principal amount of the Notes held by each such holder.

### 3. Covenants.

(a) Affirmative Covenants. While any portion of the Principal Amount of this Note (or any of the other Notes) or any principal amount under the Contingent Notes is outstanding, the Company shall:

(i) use reasonable best efforts to maximize proceeds from the sale of the Company’s assets and collections of amounts payable to the Company from the First Federal Bank of California and other sources;

(ii) make the payments under this Note as promptly as is reasonably practicable;

(iii) maintain proper books of record and account which present fairly in all material respects its financial condition and results of operations and make provisions in its financial statements for all proper reserves in each case in accordance with generally accepted accounting principles; and

(iv) pay all liabilities, taxes and other obligations when due (unless being disputed in good faith).

(b) Negative Covenants. While any portion of the Principal Amount of this Note (or any of the other Notes) or any principal amount under the Contingent Notes is outstanding, the Company shall not take any of the following actions:

(i) take any action which would impair its ability to make payments owed under the Notes and/or the Contingent Notes or enter into any agreement or become subject to any obligation which would conflict with the terms of the Notes or the Contingent Notes;

(ii) acquire any business or assets from a third party;

(iii) acquire any securities or make any other investments (other than short term cash reserves);

(iv) amend its charter or bylaws;

(v) issue any stock or other equity securities (or any securities convertible into, exercisable for or exchangeable for equity securities);

(vi) pay any dividends or distributions on its stock or other equity securities (other than dividends in a per share amount which does not exceed the total per share redemption price for shares redeemed by the Company in 2018 (including the per share amount payable under the Notes and Contingent Notes));

(vii) redeem any shares of stock or other equity securities at a price which exceeds the total per share redemption price paid for shares redeemed by the Company in 2018 (including the per share amount payable under the Notes and Contingent Notes);

(viii) borrow any funds or otherwise incur any indebtedness;

(ix) loan any funds or other assets to any person or entity (other than investments in short term cash reserves);

(x) enter into any merger, consolidation, asset sale or similar transaction;

(xi) enter into any transaction with any director, officer or affiliate (other than compensation arrangements consistent with those in place as of the date of this Note and indemnification and insurance consistent with arrangements in place as of the date of this Note);

(xii) subject the Company's assets to any liens or encumbrances;

(xiii) establish any subsidiaries or joint ventures; or

(xiv) on a quarterly basis, exceed the expense budget dated September 12, 2018, provided to the noteholder with the Letter to Shareholders, by 10% or more in any category,

provided, however, that in any quarter that expenses are less than budget in any category, the budget variance may be applied to future quarters.

(c) Waivers. In the event that the Company proposes to take (or refrain from taking) any action which is not consistent with Section 3(a) or 3(b), the Company shall send advance written notice of such proposed action (or inaction) to the holders of the Notes and the Contingent Notes at their addresses appearing in the Company's records. Such written notice shall contain (i) an explanation of the proposed action (or inaction), the reasons for such action (or inaction) and the potential benefits, detriments and/or risks thereof to holders of the Notes and Contingent Notes and (ii) include a statement that the Board of Directors has concluded that the proposed action (or inaction) is in the best interests of (or not contrary to the best interests of) holders of the Notes and the Contingent Notes. In the event that any holder of the Notes or Contingent Notes notifies the Company in writing (within 20 days after the date of the Company's notice) that it objects to such action or inaction, then the Company shall not be entitled to engage in such action or inaction. In the event that no holder of the Notes or Contingent Notes notifies the Company in writing (within 20 days after the date of the Company's notice) that it objects to such action or inaction, then the Company may engage in the action or inaction described in the notice to noteholders.

Events of Default Definition. For purposes of this Note, an Event of Default shall have occurred if:

(i) the Company fails to pay when due the full amount of interest then accrued on this Note or any similar Note or the full amount of any principal payment on this Note or any similar Note, and any such failure exists for five days;

(ii) the Company fails to comply with any obligation, covenant or agreement contained in Section 3 for 60 days following written notice thereof from the Holder of this Note; or

(iii) the Company makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the Company bankrupt or insolvent; or any order for relief with respect to the Company is entered under the Federal Bankruptcy Code.

(b) Consequences of Events of Default.

(i) If an Event of Default of the type described in Section 3(a)(i) has occurred, the interest rate on the Note shall increase immediately by an increment of two percentage point(s) to the extent permitted by law. Any increase of the interest rate resulting from the operation of this Section 3(b)(i) shall terminate as of the close of business on the date on which no such Event of Default exists (subject to subsequent increases pursuant to this Section 3(b)(i)).

(ii) If an Event of Default has occurred, the aggregate principal amount of the Note (together with all accrued interest thereon and all other amounts due and payable with respect thereto) shall become immediately due and payable without any action on the part of the Holder, and the Company shall immediately pay to the Holder all amounts due and payable with respect to the Note.

(iii) The Company hereby waives diligence, presentment, protest and demand and notice of protest and demand, dishonor and nonpayment of this Note, and expressly agrees that this

Note, or the payment hereunder, may be extended from time to time and that the holder hereof may accept security for this Note or release security for this Note, all without in any way affecting the liability of the Company hereunder.

5. Transfers. This Note shall be transferable by the Holder, subject to compliance with any restrictions on transfer under applicable securities laws. Upon receipt of written notice of a transfer of this Note by the Holder (accompanied by such evidence of compliance with applicable securities laws and such other documentation as the Company may reasonably request), the Company shall promptly reflect the transferee as the holder of this Note on its records.

6. Amendment and Waiver. Except as otherwise expressly provided herein, the provisions of this Note may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder.

7. Business Days. If any payment is due, or any time period for giving notice or taking action expires, on a day which is a Saturday, Sunday or legal holiday in the State of Maryland, the payment shall be due and payable on, and the time period shall automatically be extended to, the next business day immediately following such Saturday, Sunday or legal holiday, and interest shall continue to accrue at the required rate hereunder until any such payment is made.

8. Notices and Payment Instructions.

(a) Any notice, consent, request or other communication required or provided for by this Note shall be in writing and shall be deemed to have been duly and properly given or served for any purpose if (i) delivered personally or (ii) sent by a recognized overnight delivery service, charges prepaid, in each case to the appropriate addresses set forth below:

If to the Company:

BMC Group  
3732 W. 120<sup>th</sup> Street  
Hawthorne, California 90250  
Attn: Kevin Martin  
kmartin@bmcgroup.com

If to the Holder:

At the address set forth in the Company's records

(b) Any party may change its notice address information by giving written notice of the address change to the other party to this Note in the manner provided herein. Such notices and other communications shall be deemed given (i) in the case of personal delivery, on the date of such delivery, and (ii) in the case of mailing by recognized overnight delivery service providing receipt of delivery, on the business day following such mailing.

(c) The Holder may give the Company written notice of wire transfer or ACH instructions for payments under this Note. In the absence of such instructions, payment will be made by check payable to the Holder.

9. Governing Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by, and construed in accordance with, the laws of the State of Maryland, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Maryland or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Maryland.

\* \* \* \* \*



IN WITNESS WHEREOF, the Company has executed and delivered this Note on October 15, 2018.

MANAGED INVESTMENTS  
OPPORTUNITY CORP.

By: 

Its: Chairman

## EXHIBIT A TO PROMISSORY NOTE

Category <sup>1</sup>	First Year Budget				Second Year Budget				Post-Q2 2020 and Thereafter Budget <sup>5</sup>
	Q3 2018	Q4 2018	Q1 2019	Q2 2019	Q3 2019	Q4 2019	Q1 2020	Q2 2020	
Employee Expense Total	95,765.53	244,597.78	86,832.57	86,412.57	115,575.57	85,409.00	85,829.00	85,409.00	93,330.18
Board Fees	15,000.00	15,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00
Legal Expense Total <sup>2</sup>	175,098.70	37,500.00	37,500.00	37,500.00	31,250.00	31,250.00	31,250.00	31,250.00	5,000.00
Accounting & Tax Expense Total	22,515.90	247,484.10	110,610.00	130,000.00	81,250.00	101,250.00	81,560.00	96,250.00	25,077.50
Valuation	12,000.00	-	-	-	-	-	-	-	-
Solicitation	-	3,500.00	-	-	1,625.00	1,625.00	1,625.00	1,625.00	500.00
Third Party Contractors	-	10,000.00	20,000.00	20,000.00	12,500.00	12,500.00	12,500.00	12,500.00	-
Insurance Expense Total	761.23	57,032.62	445.76	445.76	442.79	55,442.79	442.79	442.79	37,942.79
Rent Expense	10,609.00	10,609.00	-	-	-	-	-	-	-
US Trustee Fees <sup>3</sup>	-	1,950.00	250,000.00	250,000.00	-	-	-	-	-
Misc. Expense Total	9,195.50	10,297.50	19,887.50	9,937.50	8,242.50	7,382.50	19,242.50	6,992.50	5,965.00
<b>Total Expense</b>	<b>340,945.86</b>	<b>637,971.01</b>	<b>675,275.83</b>	<b>684,295.83</b>	<b>300,885.86</b>	<b>344,859.29</b>	<b>282,446.29</b>	<b>284,469.29</b>	<b>217,824.47</b>
Budget Contingency (8%) <sup>4</sup>	27,275.67	51,037.68	46,022.07	46,743.67	24,070.87	27,588.74	22,595.94	22,757.54	17,425.96
<b>TOTAL</b>	<b>368,221.53</b>	<b>689,008.69</b>	<b>621,297.90</b>	<b>631,039.50</b>	<b>324,956.73</b>	<b>372,448.04</b>	<b>305,045.24</b>	<b>307,226.84</b>	<b>235,250.43</b>

<sup>1</sup> Each expense category listed herein is a "category" referred to in the covenants to the promissory notes.

<sup>2</sup> For avoidance of doubt, this amount does not include certain contingent fees (the amount of which is uncertain since it is based on the cash received from the FDIC receivership) that are payable to counsel on account of maximizing the value of the FDIC receivership. Aside from the aforementioned arrangement, any other expenses, including to the extent future contingency arrangements are sought, are specifically covered by the categories of the budget.

<sup>3</sup> Quarterly US Trustee fees are payable until the closure of the bankruptcy case is finalized. The fee is calculated based on quarterly disbursements.

Disbursements of \$1mm or greater incur a fee of the lesser of \$250,000.00 or 1% of total disbursements.

<sup>4</sup> Budget Contingency (8%) is outside of the 10% budget variance provided for in the covenants to the promissory notes and may be used to cover unexpected variances in any budget category throughout the term of the budget.

<sup>5</sup> Starting with the third quarter of 2020, this expense budget will continue, quarterly, until the company is completely dissolved.

**APPENDIX B**

CONTINGENT AMOUNT NOTE

[ATTACHED BELOW]

## CONTINGENT AMOUNT NOTE

October 15, 2018

Managed Investments Opportunity Corp., a Maryland corporation (the “Company”), hereby promises to pay to the order of The Bank of New York (the “Holder”) the Principal Amount (as defined below) in accordance with the terms set forth below. This Note was issued by the Company as payment of a portion of the redemption price for 66,384.77 shares of the Company’s common stock, par value \$0.01 per share, in a redemption transaction that was completed on the date of this Note. Every term that is defined or given a special meaning in the Company’s Letter to Shareholders, dated as of September 11, 2018 (the “Letter to Shareholders”) and that is not given a different meaning in this Note has the same meaning whenever it is used in this letter as the meaning it is given in the Letter to Shareholders.

This Note is one of a series of Notes issued in redemption transactions to former owners of the Company’s common stock. Each former owner also received a note in a separate series of notes (the “Securities Proceeds Notes”) in such redemption transactions.

10. Payment of Interest. No interest shall accrue on the Principal Amount or otherwise be payable under this Note.

11. Payment of Principal.

(a) Principal Amount. The principal amount (the “Principal Amount”) of this Note is equal to the Holder’s Pro Rata Portion of (i) the proceeds of the sale of certain of the Company’s Investment Securities, (ii) amounts paid to the Company out of the receivership assets of First Federal Bank of California (the “Bank”) (a failed bank whose equity interests are owned by the Company) and amounts potentially payable to the Company out of the ultimate proceeds received under a loss sharing agreement between the Federal Deposit Insurance Corporation (the “FDIC”), as receiver for the Bank, and the successor to OneWest Financial Corporation (the “Contingent Amounts”) and (iii) other assets of the Company (excluding any amounts payable under the Securities Proceeds Notes), in each case net of any reserves necessary to pay Company liabilities and wind-down costs (clauses (i), (ii) and (iii), collectively, the “Aggregate Contingent Value”). The “Pro Rata Portion” shall be equal to 13.2770% (representing the number of shares of common stock redeemed from the Holder divided by 500,000).

(b) Scheduled Payment. The Company shall pay the Principal Amount on or prior to the Maturity Date. This Note shall mature on December 31, 2020 (the “Maturity Date”); provided that the Company may elect to extend the Maturity Date as necessary to allow the Company to complete the sale of the Investment Securities and realize and collect the Contingent Amounts in full. If the Company elects to extend the Maturity Date, it shall send written notice to such effect to the Holder on or prior to the then scheduled Maturity Date. The Company may extend the Maturity Date on more than one occasion.

(c) Optional Prepayments. The Company may, at any time and from time to time without premium or penalty, prepay all or a portion of the amount owed hereunder; provided that any such prepayment shall be made pro rata among the holders of all similar Notes on the basis of their relative Pro Rata Shares. In the event that the Company makes an optional prepayment on this Note (and all similar Notes then outstanding) prior to the time that it has completed the redemption of shares

of its Common Stock from other holders (“Other Holders”), then such prepayment shall be made to the Other Holders at the time their Notes are issued.

(d) Mandatory Prepayments. The Company shall prepay all or a portion of the Principal Amount at any time it holds more than \$3,000,000 in cash in respect of the Aggregate Contingent Value (the “Trigger Amount”); provided that any such prepayment shall be made pro rata among the holders of all similar Notes on the basis their relative Pro Rata Shares. Any such mandatory prepayment shall be made within 15 Business Days after the Company’s holdings of cash in respect of the Aggregate Contingent Value exceeds the Trigger Amount. In the event that the Company makes a mandatory prepayment on this Note (and all similar Notes then outstanding) prior to the time that it has completed the redemption of shares of its Common Stock from Other Holders, then such prepayment shall be made to the Other Holders at the time their Notes are issued.

(e) Pro Rata Payment. Any payment on this Note shall be made pro rata among all holders of similar Notes then outstanding based upon their relative Pro Rata Shares.

## 12. Covenants.

(a) Affirmative Covenants. While any portion of the Principal Amount of this Note (or any of the other Notes) or any principal amount under the Securities Proceeds Notes is outstanding, the Company shall:

(i) use reasonable best efforts to maximize proceeds from the sale of the Company’s assets and collections of amounts payable to the Company from the First Federal Bank of California and other sources;

(ii) make the payments under this Note as promptly as is reasonably practicable;

(iii) maintain proper books of record and account which present fairly in all material respects its financial condition and results of operations and make provisions in its financial statements for all proper reserves in each case in accordance with generally accepted accounting principles; and

(iv) pay all liabilities, taxes and other obligations when due (unless being disputed in good faith).

(b) Negative Covenants. While any portion of the Principal Amount of this Note (or any of the other Notes) or any principal amount under the Contingent Notes is outstanding, the Company shall not take any of the following actions:

(i) take any action which would impair its ability to make payments owed under the Notes and/or the Securities Proceeds Notes or enter into any agreement or become subject to any obligation which would conflict with the terms of the Notes or the Securities Proceeds Notes;

(ii) acquire any business or assets from a third party;

(iii) acquire any securities or make any other investments (other than short term cash reserves);

(iv) amend its charter or bylaws;

(v) issue any stock or other equity securities (or any securities convertible into, exercisable for or exchangeable for equity securities);

(vi) pay any dividends or distributions on its stock or other equity securities (other than dividends in a per share amount which does not exceed the total per share redemption price for shares redeemed by the Company in 2018 (including the per share amount payable under the Notes and Securities Proceeds Notes);

(vii) redeem any shares of stock or other equity securities at a price which exceeds the total per share redemption price paid for shares redeemed by the Company in 2018 (including the per share amount payable under the Notes and the Securities Proceeds Notes);

(viii) borrow any funds or otherwise incur any indebtedness;

(ix) loan any funds or other assets to any person or entity (other than investments in short term cash reserves);

(x) enter into any merger, consolidation, asset sale or similar transaction;

(xi) enter into any transaction with any director, officer or affiliate (other than compensation arrangements consistent with those in place as of the date of this Note and indemnification and insurance consistent with arrangements in place as of the date of this Note);

(xii) subject the Company's assets to any liens or encumbrances;

(xiii) establish any subsidiaries or joint ventures; or

(xiv) on a quarterly basis, exceed the expense budget dated September 12, 2018, attached as Exhibit A to this Promissory Note, by 10% or more in any category, provided, however, that in any quarter that expenses are less than budget in any category, the budget variance may be applied to future quarters.

(c) Waivers. In the event that the Company proposes to take (or refrain from taking) any action which is not consistent with Section 3(a) or 3(b), the Company shall send advance written notice of such proposed action (or inaction) to the holders of the Notes and the Securities Proceeds Notes at their addresses appearing in the Company's records. Such written notice shall contain (i) an explanation of the proposed action (or inaction), the reasons for such action (or inaction) and the potential benefits, detriments and/or risks thereof to holders of the Notes and Securities Proceeds Notes and (ii) include a statement that the Board of Directors has concluded that the proposed action (or inaction) is in the best interests of (or not contrary to the best interests of) holders of the Notes and the Securities Proceeds Notes. In the event that any holder of the Notes or Securities Proceeds Notes notifies the Company in writing (within 20 days after the date of the Company's notice) that it objects to such action or inaction, then the Company

shall not be entitled to engage in such action or inaction. In the event that no holder of the Notes or Securities Proceeds Notes notifies the Company in writing (within 20 days after the date of the Company's notice) that it objects to such action or inaction, then the Company may engage in the action or inaction described in the notice to noteholders.

Events of Default.Definition. For purposes of this Note, an Event of Default shall have occurred if:

- (i) the Company fails to pay the full amount of any principal payment on this Note or any similar Note, and any such failure exists for five days;
- (ii) the Company fails to comply with any obligation, covenant or agreement contained in Section 3 for 60 days following written notice thereof from the Holder of this Note; or
- (iii) the Company makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the Company bankrupt or insolvent; or any order for relief with respect to the Company is entered under the Federal Bankruptcy Code.

(b) Consequences of Events of Default.

- (i) If an Event of Default has occurred, the aggregate principal amount of the Note shall become immediately due and payable without any action on the part of the Holder, and the Company shall immediately pay to the Holder all amounts due and payable with respect to the Note.
- (ii) The Company hereby waives diligence, presentment, protest and demand and notice of protest and demand, dishonor and nonpayment of this Note, and expressly agrees that this Note, or the payment hereunder, may be extended from time to time and that the holder hereof may accept security for this Note or release security for this Note, all without in any way affecting the liability of the Company hereunder.

14. Transfers. This Note shall be transferable by the Holder, subject to compliance with any restrictions on transfer under applicable securities laws. Upon receipt of written notice of a transfer of this Note by the Holder (accompanied by such evidence of compliance with applicable securities laws and such other documentation as the Company may reasonably request), the Company shall promptly reflect the transferee as the holder of this Note on its records.

15. Amendment and Waiver. Except as otherwise expressly provided herein, the provisions of this Note may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder.

16. Business Days. If any payment is due, or any time period for giving notice or taking action expires, on a day which is a Saturday, Sunday or legal holiday in the State of Maryland, the payment shall be due and payable on, and the time period shall automatically be extended to, the next business day immediately following such Saturday, Sunday or legal holiday.

17. Notices and Payment Instructions.

(a) Any notice, consent, request or other communication required or provided for by this Note shall be in writing and shall be deemed to have been duly and properly given or served for any purpose if (i) delivered personally or (ii) sent by a recognized overnight delivery service, charges prepaid, in each case to the appropriate addresses set forth below:

If to the Company:

BMC Group  
3732 W. 120<sup>th</sup> Street,  
Hawthorne, California 90250  
Attn: Kevin Martin  
kmartin@bmcgroup.com

If to the Holder:

At the address set forth in the Company's records

(b) Any party may change its notice address information by giving written notice of the address change to the other party to this Note in the manner provided herein. Such notices and other communications shall be deemed given (i) in the case of personal delivery, on the date of such delivery, and (ii) in the case of mailing by recognized overnight delivery service providing receipt of delivery, on the business day following such mailing.

(c) The Holder may give the Company written notice of wire transfer or ACH instructions for payments under this Note. In the absence of such instructions, payment will be made by check payable to the Holder.

18. Governing Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by, and construed in accordance with, the laws of the State of Maryland, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Maryland or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Maryland.

\* \* \* \* \*



IN WITNESS WHEREOF, the Company has executed and delivered this Note on October 15, 2018.

MANAGED INVESTMENTS  
OPPORTUNITY CORP.

By: 

Its: Chairman

## EXHIBIT A TO CONTINGENT PROMISSORY NOTE

Category <sup>1</sup>	First Year Budget				Second Year Budget				Post-Q2 2020 and Thereafter Budget <sup>5</sup>
	Q3 2018	Q4 2018	Q1 2019	Q2 2019	Q3 2019	Q4 2019	Q1 2020	Q2 2020	
<b>Employee Expense Total</b>	95,765.53	244,597.78	86,832.67	86,412.67	115,575.57	85,409.00	85,829.00	85,409.00	93,339.18
<b>Board Fees</b>	15,000.00	15,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00
<b>Legal Expense Total<sup>2</sup></b>	175,098.70	37,500.00	37,500.00	37,500.00	31,250.00	31,250.00	31,250.00	31,250.00	5,000.00
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<b>Valuation</b>	12,000.00	-	-	-	-	-	-	-	-
<b>Solicitation</b>	-	3,500.00	-	-	1,625.00	1,625.00	1,625.00	1,625.00	500.00
<b>Third Party Contractors</b>	-	10,000.00	20,000.00	20,000.00	12,500.00	12,500.00	12,500.00	12,500.00	-
<b>Insurance Expense Total</b>	761.23	57,032.62	445.76	445.76	442.79	55,442.79	442.79	442.79	37,942.79
<b>Rent Expense</b>	10,609.00	10,609.00	-	-	-	-	-	-	-
<b>US Trustee Fees<sup>3</sup></b>	-	1,950.00	250,000.00	250,000.00	-	-	-	-	-
<b>Misc. Expense Total</b>	9,195.50	10,297.50	19,887.50	9,937.50	8,242.50	7,382.50	19,242.50	6,992.50	5,965.00
<b>Total Expense</b>	<b>340,945.86</b>	<b>637,971.01</b>	<b>575,275.83</b>	<b>584,295.83</b>	<b>300,885.86</b>	<b>344,859.29</b>	<b>282,448.29</b>	<b>284,469.29</b>	<b>217,824.47</b>
<b>Budget Contingency (8%)<sup>4</sup></b>	<b>27,275.67</b>	<b>51,037.68</b>	<b>46,022.07</b>	<b>46,743.67</b>	<b>24,070.87</b>	<b>27,588.74</b>	<b>22,595.94</b>	<b>22,757.54</b>	<b>17,425.96</b>
<b>TOTAL</b>	<b>368,221.53</b>	<b>689,008.69</b>	<b>621,297.90</b>	<b>631,039.50</b>	<b>324,956.73</b>	<b>372,448.04</b>	<b>305,045.24</b>	<b>307,226.84</b>	<b>235,250.43</b>

<sup>1</sup> Each expense category listed herein is a "category" referred to in the covenants to the promissory notes.

<sup>2</sup> For avoidance of doubt, this amount does not include certain contingent fees (the amount of which is uncertain since it is based on the cash received from the FDIC receivership) that are payable to counsel on account of maximizing the value of the FDIC receivership. Aside from the aforementioned arrangement, any other expenses, including to the extent future contingency arrangements are sought, are specifically covered by the categories of the budget.

<sup>3</sup> Quarterly US Trustee fees are payable until the closure of the bankruptcy case is finalized. The fee is calculated based on quarterly disbursements. Disbursements of \$1mm or greater incur a fee of the lesser of \$250,000.00 or 1% of total disbursements.

<sup>4</sup> Budget Contingency (8%) is outside of the 10% budget variance provided for in the covenants to the promissory notes and may be used to cover unexpected variances in any budget category throughout the term of the budget.

<sup>5</sup> Starting with the third quarter of 2020, this expense budget will continue, quarterly, until the company is completely dissolved.

**APPENDIX C-1**

PARTNERSHIP INTEREST NOTE PURCHASE AGREEMENT

[ATTACHED BELOW]

**PURCHASE AGREEMENT**

THIS PURCHASE AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, is by and among The Bank of New York (the "Seller"), MIOC-PIN-7 Liquidating Trust (the "Buyer") and Managed Investments Opportunity Corp. (the "Initial Grantor").

WHEREAS, the Seller owns that certain partnership interest note attached hereto as Annex I (the "Note");

WHEREAS, the Seller wishes to sell the Note to the Buyer under the terms of this Agreement; and

WHEREAS, the Buyer wishes to buy the Note from the Seller under the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. **Purchase and Sale.** The Seller hereby sells, assigns, transfers, conveys and sets over to the Buyer all of the Seller's right, title and interest in, to and under the Note. Upon delivery of the Note on the Closing Date by the Seller to the Buyer, the Initial Grantor shall transfer all of its beneficial interests in the Buyer to the Seller. For the avoidance of doubt, the Buyer shall not be required to make any cash payment to the Seller as part of the consideration given by the Buyer to the Seller in connection with its purchase of the Note. "Closing Date" shall have the meaning ascribed to such term in that certain Liquidating Trust Agreement by and among the Seller, Delaware Trust Company and Managed Investments Opportunity Corp.

2. **Representations and Warranties of Seller.**

Seller hereby represents and warrants as follows as of the date hereof:

(a) Seller has been duly organized and is validly existing and in good standing under the laws of the jurisdiction of its organization and has all corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now conducted.

(b) This Agreement has been duly executed and delivered by Seller and (assuming due execution and delivery by the other parties) constitutes Seller's legal, valid and binding obligation, enforceable against Seller in accordance with its terms.

(c) The Note is free and clear of all liens, pledges, security interests, charges, claims, encumbrances, agreements, options, voting trusts, proxies, adverse claims and other arrangements or restrictions of any kind which in substance secures payment of an obligation (each, an "Encumbrance"). Upon consummation of the transactions contemplated by this Agreement, Buyer shall own the Note free and clear of all Encumbrances.

(d) The execution, delivery and performance by the Seller of this Agreement do not conflict with, violate or result in the breach of, or create any Encumbrance on the Note pursuant to, the organizational documents of the Seller or any material agreement, instrument, order, judgment, decree, law or governmental regulation to which the Seller is a party or is subject or by which the Note is bound.

(e) No governmental, administrative or other third party consents or approvals are required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(f) There are no actions, suits, claims, investigations or other legal proceedings pending or threatened by the Seller that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. There are no actions, suits, claims, investigations or other legal proceedings that have been commenced, or, to the knowledge of the Seller, which are pending or threatened, against the Seller that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

(g) Since the date of its formation, the Seller has been, and currently is, solvent, able to pay its debts as they become due and has adequate capital to conduct its business.

(h) No resolution to wind up or liquidate the Seller has been adopted by the Seller. No bankruptcy petition or similar proceeding has ever been commenced or filed by the Seller in any jurisdiction.

3. **Further Assurances.**

Following the date hereof, each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

4. **Expenses.**

All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Buyer.

5. **Entire Agreement.**

This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

6. **Successor and Assigns.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign any of its rights or obligations hereunder without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld, conditioned or delayed.

7. **Headings.**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

8. **Amendment and Modification; Waiver.**

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9. **Severability.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10. **Governing Law; Submission to Jurisdiction.**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States in the Southern District of New York or the courts of the State of New York located in the County of New York in the Borough of Manhattan, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO, OR BASED UPON, THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH THE DEALINGS OF ANY PARTY IN CONNECTION WITH ANY OF THE ABOVE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT OR OTHERWISE. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE

MUTUAL WAIVERS AND CERTIFICATIONS PROVIDED HEREIN. EACH PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE FOREGOING WAIVERS.

11. **Binding Effect**

This Agreement shall be binding upon the parties hereto and inure to the benefit of the parties hereto and their respective successors, heirs, executors, legal representatives and transferees.

12. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

13. **Limitaion of Trustee Liability.**

It is expressly understood and agreed by the parties hereto that (i) this Agreement is executed and delivered on behalf of the Buyer by Delaware Trust Company, not individually or personally but solely as Owner Trustee, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of the Buyer is made and intended not as personal representations, undertakings and agreements by Delaware Trust Company but is made and intended for the purpose of binding only the Buyer, (iii) nothing herein contained shall be construed as creating any liability on Delaware Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto, (iv) Delaware Trust Company has made no investigation as to the accuracy or completeness of any representation, warranty or covenant of the Buyer and (v) under no circumstances shall Delaware Trust Company be personally liable for the payment of any indebtedness or expenses relating to the Buyer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Buyer under this Agreement or any other related documents.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

**SELLER:**

THE BANK OF NEW YORK

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

**BUYER:**

MIOC-PIN-7 LIQUIDATING TRUST

By: Delaware Trust Company, not individually or personally but solely as Owner Trustee

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

**INITIAL GRANTOR:**

MANAGED INVESTMENTS OPPORTUNITY CORP.

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



**ANNEX I**

**COPY OF NOTE**

[ATTACHED BELOW]

**APPENDIX C-2**

CONTINGENT NOTE PURCHASE AGREEMENT

[ATTACHED BELOW]

**PURCHASE AGREEMENT**

THIS PURCHASE AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, is by and among The Bank of New York (the "Seller"), MIOC-CN-7 Liquidating Trust (the "Buyer") and Managed Investments Opportunity Corp. (the "Initial Grantor").

WHEREAS, the Seller owns that certain contingent amount note attached hereto as Annex I (the "Note");

WHEREAS, the Seller wishes to sell the Note to the Buyer under the terms of this Agreement; and

WHEREAS, the Buyer wishes to buy the Note from the Seller under the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. **Purchase and Sale.** The Seller hereby sells, assigns, transfers, conveys and sets over to the Buyer all of the Seller's right, title and interest in, to and under the Note. Upon delivery of the Note on the Closing Date by the Seller to the Buyer, the Initial Grantor shall transfer all of its beneficial interests in the Buyer to the Seller. For the avoidance of doubt, the Buyer shall not be required to make any cash payment to the Seller as part of the consideration given by the Buyer to the Seller in connection with its purchase of the Note. "Closing Date" shall have the meaning ascribed to such term in that certain Liquidating Trust Agreement by and among the Seller, Delaware Trust Company and Managed Investments Opportunity Corp.

2. **Representations and Warranties of Seller.**

Seller hereby represents and warrants as follows as of the date hereof:

(a) Seller has been duly organized and is validly existing and in good standing under the laws of the jurisdiction of its organization and has all corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now conducted.

(b) This Agreement has been duly executed and delivered by Seller and (assuming due execution and delivery by the other parties) constitutes Seller's legal, valid and binding obligation, enforceable against Seller in accordance with its terms.

(c) The Note is free and clear of all liens, pledges, security interests, charges, claims, encumbrances, agreements, options, voting trusts, proxies, adverse claims and other arrangements or restrictions of any kind which in substance secures payment of an obligation (each, an "Encumbrance"). Upon consummation of the transactions contemplated by this Agreement, Buyer shall own the Note free and clear of all Encumbrances.

(d) The execution, delivery and performance by the Seller of this Agreement do not conflict with, violate or result in the breach of, or create any Encumbrance on the Note pursuant to, the organizational documents of the Seller or any material agreement, instrument, order, judgment, decree, law or governmental regulation to which the Seller is a party or is subject or by which the Note is bound.

(e) No governmental, administrative or other third party consents or approvals are required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(f) There are no actions, suits, claims, investigations or other legal proceedings pending or threatened by the Seller that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. There are no actions, suits, claims, investigations or other legal proceedings that have been commenced, or, to the knowledge of the Seller, which are pending or threatened, against the Seller that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

(g) Since the date of its formation, the Seller has been, and currently is, solvent, able to pay its debts as they become due and has adequate capital to conduct its business.

(h) No resolution to wind up or liquidate the Seller has been adopted by the Seller. No bankruptcy petition or similar proceeding has ever been commenced or filed by the Seller in any jurisdiction.

3. **Further Assurances.**

Following the date hereof, each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

4. **Expenses.**

All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Buyer.

5. **Entire Agreement.**

This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

6. **Successor and Assigns.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign any of its rights or obligations hereunder without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld, conditioned or delayed.

7. **Headings.**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

8. **Amendment and Modification; Waiver.**

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9. **Severability.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10. **Governing Law; Submission to Jurisdiction.**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States in the Southern District of New York or the courts of the State of New York located in the County of New York in the Borough of Manhattan, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO, OR BASED UPON, THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH THE DEALINGS OF ANY PARTY IN CONNECTION WITH ANY OF THE ABOVE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT OR OTHERWISE. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE

MUTUAL WAIVERS AND CERTIFICATIONS PROVIDED HEREIN. EACH PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE FOREGOING WAIVERS.

11. **Binding Effect**

This Agreement shall be binding upon the parties hereto and inure to the benefit of the parties hereto and their respective successors, heirs, executors, legal representatives and transferees.

12. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

13. **Limitaion of Trustee Liability.**

It is expressly understood and agreed by the parties hereto that (i) this Agreement is executed and delivered on behalf of the Buyer by Delaware Trust Company, not individually or personally but solely as Owner Trustee, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of the Buyer is made and intended not as personal representations, undertakings and agreements by Delaware Trust Company but is made and intended for the purpose of binding only the Buyer, (iii) nothing herein contained shall be construed as creating any liability on Delaware Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto, (iv) Delaware Trust Company has made no investigation as to the accuracy or completeness of any representation, warranty or covenant of the Buyer and (v) under no circumstances shall Delaware Trust Company be personally liable for the payment of any indebtedness or expenses relating to the Buyer or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Buyer under this Agreement or any other related documents.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

**SELLER:**

THE BANK OF NEW YORK

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

Name:

Title:

**BUYER:**

MIOC-CN-7 LIQUIDATING TRUST

By: Delaware Trust Company, not individually or personally but solely as Owner Trustee

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

Name: Title:

**INITIAL GRANTOR:**

MANAGED INVESTMENTS OPPORTUNITY CORP.

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

Name:

Title:

**ANNEX I**

**COPY OF NOTE**

[ATTACHED BELOW]



**APPENDIX D-1**

PARTNERSHIP INTEREST NOTE LIQUIDATING TRUST AGREEMENT

[ATTACHED BELOW]

MIOC-PIN-7 LIQUIDATING TRUST

LIQUIDATING TRUST AGREEMENT

by and among between

MANAGED INVESTMENTS OPPORTUNITY CORP.,

as Initial Grantor and Trust Administrator,

DELAWARE TRUST COMPANY,

as Owner Trustee,

and

the SUCCESSOR GRANTOR (as defined herein)

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**EXHIBITS**

EXHIBIT A    Form of Certificate of Trust

This LIQUIDATING TRUST AGREEMENT, dated as of \_\_\_\_\_ (this "Agreement" or this "Trust Agreement"), is by and among MANAGED INVESTMENTS OPPORTUNITY CORP., a Maryland corporation, as grantor (the "Initial Grantor") and as trust administrator (the "Trust Administrator"), DELAWARE TRUST COMPANY, a Delaware corporation, acting hereunder not in its individual capacity but solely as owner trustee (the "Owner Trustee") and the SUCCESSOR GRANTOR (as defined below).

The Initial Grantor, the Trust Administrator, the Successor Grantor and the Owner Trustee hereby agree as follows:

## ARTICLE ONE DEFINITIONS

Section 1.01. Capitalized Terms. For all purposes of this Agreement, the following terms shall have the meanings set forth below:

"Account" means each Collection Account, the Fee Account and any other Eligible Account established by or at the direction of the Grantor.

"Affiliate" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" or "Trust Agreement" means this Liquidating Trust Agreement, as the same may be modified, amended or supplemented from time to time in accordance with its terms.

"Authorized Officer" means, with respect to any corporation or limited liability company, the chairman of the board, the president, any vice president, the secretary, the treasurer, any assistant secretary, any assistant treasurer and each other officer of such corporation or the members and manager of such limited liability company specifically authorized in resolutions of the Board of Directors of such corporation or members or managers authorized in the operating agreement of such limited liability company to sign agreements, instruments or other documents in connection with this Agreement on behalf of such corporation or limited liability company, as the case may be. With respect to any trust, any authorized officer of the trust, the corporate trustee or any individual co-trustee.

"Beneficial Interest" means an individual beneficial ownership interest in the Trust, which may be certificated or uncertificated, and together, all such beneficial ownership interests, the "Beneficial Interests".

"Business Day" means any day other than a Saturday or Sunday, or another day on which banks in the State of Delaware or New York are required or authorized by law, to close.

"Certificate of Trust" means the certificate of trust substantially in the form attached hereto as Exhibit A duly executed and filed by the Owner Trustee for the Trust pursuant to Section 3810 of the Delaware Trust Statute.

"Closing Date" means the first date on which each of the following conditions have been met: (i) this Agreement has been executed by the Initial Grantor, the Successor Grantor, the Trust Administrator and the Owner Trustee and (ii) the Successor Grantor has delivered the Note to the Initial Grantor for

assignment and registration of the Note in the name of the Trust and (iii) the Note has been assigned and re-registered in the name of the Trust and has been delivered to the Owner Trustee.

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

“Collection Account” means each account established and maintained by the Owner Trustee in accordance with Section 5.02.

“Corporate Trust Office” means, with respect to the Owner Trustee, the principal corporate trust office of the Owner Trustee, located at 251 Little Falls Drive, Wilmington, Delaware 19808, or at such other address as the Owner Trustee may designate by notice to the Holders and the Grantor, or the principal corporate trust office of any successor Owner Trustee at the address designated by such successor Owner Trustee by notice to the Holders and the Grantor.

“Delaware Trust Statute” means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code §3801 *et seq.*, as the same may be amended from time to time.

“Distribution Date” means the second Business Day following any date on which the Collection Account receives any funds.

“Eligible Account” means a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company or corporation with trust powers, which institution or company has capital and surplus of not less than \$50 million, acting in its fiduciary capacity.

“Eligible Investor” means a Person that (a) is not a “U.S. person” for purposes of Regulation S promulgated under the Securities Act or (b) is an “accredited investor” as defined in Regulation D under the Securities Act.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Expenses” means the meaning assigned to such term in Section 8.02.

“Fee Account” shall have the meaning given to such term in Section 5.01.

“Grantor” means, initially, the Initial Grantor and, following the conveyance of the Note by the Successor Grantor pursuant to Section 2.05, the Successor Grantor.

“Holder” means a Person in whose name a Beneficial Interest is registered on the Register.

“Investment Company Act” means the United States Investment Company Act of 1940, as amended.

“Majority Holders” means Holders that own Beneficial Interests evidencing not less than 51% Percentage Interest of the Beneficial Interests.

“Note” means that certain fixed principal promissory note issued by the Initial Grantor to the Successor Grantor and sold by the Successor Grantor to the Trust as of the date hereof.

“Opinion of Counsel” means a written opinion of counsel, reasonably acceptable in form and substance to the Owner Trustee.

“Paying Agent” means any paying agent or co-paying agent appointed pursuant to Section 3.07; the initial Paying Agent shall be the Owner Trustee.

“Percentage Interest” means, with respect to any Beneficial Interest, the percentage of the outstanding Beneficial Interests it represents, as set forth in the Register. The aggregate Percentage Interest of all Beneficial Interests shall not exceed 100%.

“Person” means an individual, partnership, corporation (including a statutory trust), unincorporated organization, joint stock company, limited liability company, trust, association, joint venture, governmental authority or any other entity of whatever nature.

“Prospective Owner” means each prospective purchaser and any subsequent transferee of a Beneficial Interest.

“Record Date” means, with respect to each Distribution Date, the last Business Day of the calendar month immediately preceding the month in which such Distribution Date occurs.

“Register” and “Registrar” means the register of the Beneficial Interests maintained and the registrar appointed pursuant to Section 3.03.

“Secretary of State” means the Secretary of State of the State of Delaware.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Successor Grantor” means the Person that is identified on the signature page of this Agreement as the successor grantor and signs this Agreement in such capacity.

“Temporary Investments” means any cash and short-term cash equivalent investments such as short-term government securities, time deposits, certificates of deposit, bankers’ acceptances, commercial paper and mutual funds.

“Treasury Regulations” means the regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

“Trust” means MIOC-PIN-7 Liquidating Trust, the Delaware statutory trust established under this Agreement.

“Trust Assets” means the Note and Temporary Investments contributed to or deposited with (or deemed contributed to or deposited with) the Trust and any payments received by or paid to the Trust and any other property or assets otherwise purchased or acquired by the Trust and any proceeds of the foregoing.

“Trust Estate” means all property and other assets owned by the Trust.

#### Section 1.02. Other Definitional Provisions.

(a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.



(b) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

(c) The words “hereof,” “herein,” “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Section and Exhibit references contained in this Agreement are references to Sections and Exhibits in or to this Agreement unless otherwise specified; and the term “including” shall mean “including without limitation”.

(d) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(e) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a Person are also to its permitted successors and assigns.

ARTICLE TWO  
ORGANIZATION

Section 2.01. Creation and Declaration of Trust; Name. Delaware Trust Company is hereby appointed as Owner Trustee of the Trust. The Trust created hereby shall be known as “MIOC-PIN-7 Liquidating Trust” in which name the Owner Trustee may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued. The Owner Trustee is hereby authorized and directed to execute and file the Certificate of Trust, in the form attached hereto as Exhibit A, with the Secretary of State in accordance with the provisions of the Delaware Trust Statute.

Section 2.02. Office. The office of the Trust shall be in care of the Owner Trustee at the Corporate Trust Office or at such other address in Delaware as the Owner Trustee may designate by written notice to the Holders and the Trust Administrator.

Section 2.03. Purposes and Powers.

- (a) The purpose of the Trust is to engage in the following activities:
  - (i) to acquire the Note and other Trust Assets;
  - (ii) to issue the Beneficial Interests pursuant to this Agreement at the direction of the Grantor and transfer the Beneficial Interests to or at the direction of the Holders;
  - (iii) to make distributions of proceeds from Trust Assets as required hereunder;
  - (iv) to maintain the Fee Account and the Collection Account;
  - (v) to engage in those activities, including entering into agreements, that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith; and
  - (vi) to engage in such other activities as may be required in connection with conservation of the Trust Estate and the making of distributions to the Holders.
- (b) The Trust has the power and authority and is hereby authorized to engage in the foregoing activities.
- (c) Notwithstanding anything herein to the contrary, the Trust shall exist solely to hold and liquidate the Trust Assets and distribute the proceeds in accordance with this Agreement and shall not:
  - (i) hold itself out as an investment company (but rather as a trust in the process of liquidation);
  - (ii) conduct a trade or business other than holding Trust Assets;
  - (iii) permit any active trading market in Beneficial Interests to develop;
  - (iv) permit Beneficial Interests to be quoted or listed on any securities exchange; or

(v) take steps designed to facilitate the development of a secondary market in the Beneficial Interests (such as placing advertisements, distributing marketing materials or collecting or publishing information regarding prices at which the Beneficial Interests may be transferred).

Section 2.04. Initial Conveyance by Initial Grantor and Payment of Trust Expenses by Trust Administrator.

(a) The Initial Grantor hereby sells, assigns, transfers, conveys and sets over to the Owner Trustee the sum of \$20,000. The Owner Trustee hereby acknowledges receipt in trust from the Initial Grantor, as of the date hereof, of the foregoing contribution, which constitutes the initial Trust Estate and has been deposited in the Fee Account. After the Closing Date, the Trust Administrator shall promptly replenish the Fee Account upon written request of the Owner Trustee so that the Fee Account balance is \$20,000.

(b) Except to the extent this Agreement expressly provides for payment by the Grantor and/or the Holders of the Owner Trustee's expenses or liabilities, the Trust Administrator shall pay organizational and operational expenses of the Trust as they may arise to the extent the amounts in the Fee Account are insufficient to pay such amounts, or shall, upon the request of the Owner Trustee, promptly reimburse the Owner Trustee for any such amounts paid by the Owner Trustee.

Section 2.05. Conveyance of Note and Successor Grantor.

(a) The Successor Grantor hereby sells, assigns, transfers, conveys and sets over to the Trust the Note and agrees to deliver the Note to the Initial Grantor for assignment and re-registration in the name of the Trust on the date hereof. In consideration for the foregoing, the Initial Grantor sells, assigns, transfers, conveys and sets over to the Successor Grantor all of its Beneficial Interest in the Trust. The Initial Grantor shall deliver to the Owner Trustee the Note that has been assigned and re-registered in the name of the Trust.

(b) Upon the Owner Trustee's receipt of the Note registered in the name of the Trust 100% of the Initial Grantor's Beneficial Interest automatically shall transfer to the Successor Grantor; provided, however, that the Successor Grantor shall be admitted to the Trust only following Owner Trustee's receipt and approval of such documentation requested from Successor Grantor by Owner Trustee in accordance with its "know your client" procedures.

Section 2.06. Declaration of Trust and Income Tax Provisions.

(b) The Owner Trustee hereby declares that it will hold the Trust Estate provided to it for the use and benefit of the Holders. It is the intention of the parties hereto that the Trust constitutes a statutory trust under the Delaware Trust Statute and that this Agreement constitutes the governing instrument of such statutory trust. The parties hereto agree that they will take no action contrary to the foregoing intention. Effective as of the date hereof, the Owner Trustee shall have all rights, powers and authority set forth herein and, to the extent not inconsistent herewith, in the Delaware Trust Statute with respect to accomplishing the purposes of the Trust.

(c) It is the intention of the parties hereto that, for U.S. federal, state and local income tax purposes, the Trust shall be treated as a disregarded entity, and its assets shall be treated as owned by the Grantor (and not as being beneficially owned by the Grantor and the Holders as partners in a partnership). The Grantor agrees to file all income tax returns (including tax elections) in a manner consistent with such intention and the parties hereto agree to take no position or action contrary to the foregoing

intention. Each party represents that it has not made or filed and agrees that it shall not make or file any election for the Trust to be classified as an association for U.S. federal tax income tax purposes under Treasury Regulation Section 301.7701-3(a).

(d) If the Internal Revenue Service (the “IRS”) or any other applicable tax authority requires the Trust to be treated as a partnership for income tax purposes, the following selected U.S. federal income tax provisions shall apply and the Trust Administrator shall perform, or designate a firm of independent accountants to perform and satisfy, the following actions and requirements:

(i) A separate capital account (a “Capital Account”) shall be established and maintained for the Grantor and each Holder treated as a partner therein (collectively, “Partners” and each individually, a “Partner”) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).

(ii) No Partner shall be required to restore any deficit balance in its Capital Account, and no Partner shall be liable for the return of the Capital Account of, or of any capital contribution made to the Trust by, another Partner.

(iii) Each Partner will be required to report on its income tax returns its allocable share of the Trust’s income, gains, losses, deductions and credits without regard to whether corresponding cash distributions are received by that Partner. Income, deductions, gains, losses and credits shall be allocated among the Partners for income tax purposes in a reasonable manner consistent with the economic substance of their respective rights and obligations under this Agreement and in accordance with Treasury Regulations promulgated under Section 704 of the Code.

(iv) The Trust shall, to the extent permitted by law, maintain or cause to be maintained, the books of the Trust on a calendar year basis, using the accrual method of accounting.

(v) The Trust shall deliver to the Partners, as is required by the Code, the applicable Treasury Regulations or otherwise, such information as may be required to enable the Partners to prepare their U.S. federal, state and local tax returns.

(vi) The Trust shall prepare all applicable tax returns as may be required by law. Each Holder agrees to sign and file any and all such tax returns, unless applicable law requires a Partner to sign such documents, in which case such returns shall be signed by the Trust Administrator.

(e) If one may be required, the Trust Administrator shall be the “partnership representative” of the Trust pursuant to the Code and the applicable Treasury Regulations.

(f) The Trust Administrator shall cause the Trust to make such elections as may from time to time be required or appropriate under any applicable state or federal statute or rule or regulation thereunder so as to maintain the Trust’s characterization as a partnership for U.S. federal, state and local income tax purposes.

Section 2.07. Liability of the Holders. The Holders shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the general corporation law of the State of Delaware.

Section 2.08. Title to Trust Property.

(a) Legal title to the Trust Estate shall be vested at all times in the Trust as a separate legal entity. Solely to the extent where applicable law in any jurisdiction requires title to any part of the Trust Estate to be vested in a trustee or trustees, title shall be deemed to be vested in the Owner Trustee, a co-trustee and/or a separate trustee, as the case may be; *provided, however*, title shall only be vested in the Owner Trustee to the extent it gives its prior written consent, which it may grant or withhold in its sole discretion.

(b) The Holders shall not have legal title to any part of the Trust Estate. No transfer by operation of law or otherwise of any interest of the Holders shall operate to terminate this Agreement or the trusts hereunder or entitle any transferee to an accounting or to the transfer to it of any part of the Trust Estate.

Section 2.09. Situs of Trust. The Trust will be located and administered in the State of Delaware. The Trust shall not have any employees; *provided, however*, that nothing herein shall restrict or prohibit the Owner Trustee from having employees within or without the State of Delaware. The only office of the Trust will be at the Corporate Trust Office in Delaware.

Section 2.10. Representations and Warranties of the Grantor. The Grantor hereby represents and warrants to the Owner Trustee, the Trust and the Holders that:

(a) The Grantor is duly organized, validly existing and in good standing under the laws of its organization, with power and authority to own its properties and to conduct its business as such properties are currently owned and such business is presently conducted.

(b) The Grantor is duly qualified to do business, and shall have obtained all necessary licenses and approvals, in all jurisdictions in which the ownership or lease of its property or the conduct of its business shall require such qualifications.

(c) The Grantor has the power and authority to execute and deliver this Agreement and to carry out its terms; the Grantor has full power and authority to sell and assign the property to be sold and assigned to and deposited with the Trust and the Grantor has duly authorized such sale and assignment and deposit to the Trust by all necessary corporate action; and the execution, delivery and performance of this Agreement have been duly authorized by the Grantor by all necessary corporate action.

(d) This Agreement constitutes a legal, valid and binding obligation of the Grantor, enforceable in accordance with its terms, except as enforceability may be subject to or limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(e) The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time) a default under, the governing instrument of the Grantor, or conflict with or breach any of the material terms or provisions of, or constitute (with or without lapse of time) a default under, any indenture, agreement or other instrument to which the Grantor is a party or by which it is bound; or result in the creation or imposition of any lien upon any of its properties pursuant to the terms of any such indenture, agreement or other instrument; or violate any law or, to the best knowledge of the Grantor, any order, rule or regulation applicable to the Grantor of any

court or of any federal or state regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Grantor or its properties.

(f) There are no proceedings or investigations pending or, to the best knowledge of the Grantor, threatened before any court, regulatory body, administrative agency or other tribunal or governmental instrumentality (A) asserting the invalidity of this Agreement, (B) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or (C) seeking any determination or ruling that, in the reasonable judgment of the Grantor, would materially and adversely affect the performance by the Grantor of its obligations under this Agreement.

(g) The Grantor shall not take any action (a) that is inconsistent with the purposes of the Trust set forth in Section 2.03 or (b) that, to the actual knowledge of the Grantor, would result in the Trust (or any portion thereof) becoming subject to any entity level federal income tax.

Section 2.11. Investment Company. The Grantor hereby agrees, and each Holder shall be deemed to have agreed by acceptance of such Beneficial Interest, not to take any action which would cause the Trust to become an “investment company” which would be required to register under the Investment Company Act.

Section 2.12. Granting Clause. It is intended that the conveyance of the Grantor’s, right, title and interest in and to property constituting the Trust Estate pursuant to this Agreement shall constitute, and shall be construed as, a sale of such property and not a grant of a security interest to secure a loan. However, if such conveyance is deemed to be in respect of a loan, it is intended that: (i) the rights and obligations of the parties shall be established pursuant to the terms of this Agreement; (ii) the Grantor hereby grants to the Owner Trustee for the benefit of the Holders a first priority security interest in all of the Grantor’s right, title and interest in, to and under, whether now owned or hereafter acquired, the Trust Estate and all proceeds of any and all property constituting the Trust Estate to secure payment of the Beneficial Interests; and (iii) this Agreement shall constitute a security agreement under applicable law. If the trust created by this Agreement terminates prior to the satisfaction of the claims of any Person holding the Beneficial Interests, the security interest created hereby shall continue in full force and effect and the Owner Trustee shall be deemed to be the collateral agent for the benefit of such Person, and all proceeds shall be distributed as herein provided.

ARTICLE THREE  
TRANSFER OF INTERESTS

Section 3.01. Ownership.

(a) Upon the formation of the Trust by the contribution by the Initial Grantor pursuant to Section 2.04, the Initial Grantor shall be the sole beneficiary of the Trust, owning 100% Percentage Interest of the Beneficial Interests. Upon the conveyance of the Note pursuant to Section 2.05, the Successor Grantor shall be the sole beneficiary of the Trust, owning 100% Percentage Interest of the Beneficial Interests.

(b) Upon the Owner Trustee's receipt of a written direction from a Holder, the Holder's Beneficial Interests may be transferred, in whole or in part, to one or more Holders and the Registrar shall record in the Register the names of the Holders and their Percentage Interests.

(c) A Person shall become a Holder and shall be entitled to the rights and subject to the obligations of a Holder hereunder upon such Person's Beneficial Interest being duly registered in such Person's name pursuant to Section 3.02 and Section 3.03.

(d) Each Holder of a Beneficial Interest or interest therein, whether upon original issuance or subsequent transfer, acknowledges the limitations on the rights of Holders as provided herein, including without limitation the provisions of Section 3.02, and agrees that it shall be bound by the provisions hereof.

Section 3.02. Limitations on Transfer of the Beneficial Interests.

(a) Each Prospective Owner shall be deemed to have represented to, warranted to and agreed with the Grantor, the Trust Administrator, the Owner Trustee, the Registrar and the Trust that so long as it owns any Beneficial Interest:

(i) such Prospective Owner is an Eligible Investor;

(ii) such Prospective Owner is duly authorized to purchase the Beneficial Interests and its purchase of investments having the characteristics of the Beneficial Interests is authorized under, and not directly or indirectly in contravention of, any law, charter, trust instrument or other operative document, investment guidelines or list of permissible or impermissible investments that is applicable to the investor;

(iii) such Prospective Owner understands that each Holder of Beneficial Interests, by virtue of its acceptance thereof, assents to the terms, provisions and conditions of the Agreement.

(iv) such Prospective Owner understands that such Beneficial Interests have not been registered under the Securities Act, and that, if in the future it decides to offer, resell, pledge or otherwise transfer such Beneficial Interests, such Beneficial Interests may be offered, resold, pledged or otherwise transferred only to a Person which the seller reasonably believes is an Eligible Investor, in each case in compliance with the requirements of this Agreement;

(v) such Prospective Owner is not acquiring the Beneficial Interests for, on behalf of or with the assets of an employee benefit plan or other retirement arrangement subject to Title I of

ERISA or to Section 4975 of the Code or an entity deemed to hold the plan assets of any of the foregoing; and

(vi) such Prospective Owner is a corporation for U.S. tax purposes or such transfer would not result in the Trust becoming classified as a “publicly traded partnership” taxable as a corporation under Section 7704 of the Code.

(b) The Holders shall not instruct the Owner Trustee to transfer Beneficial Interests (in whole or in part) to a Prospective Owner, unless the Holder has determined in good faith that the Prospective Owner meets the requirements of Section 3.02(a)(i).

(c) In the event that Beneficial Interests are transferred to a Person that does not meet the requirements of Section 3.02(a)(i) through Section 3.02(a)(vi), such transfer shall be of no force and effect, shall be void *ab initio*, and shall not operate to transfer any rights to such Person, notwithstanding any instructions to the contrary to the Trust, the Owner Trustee, the Registrar, the Grantor or any intermediary; and such Person shall not be entitled to any distributions on such Beneficial Interests for as long as such Person is the Holder of such Beneficial Interests and the Trust shall have the right to compel such Person to transfer such Beneficial Interests to a Person who does meet the requirements of Section 3.02(a)(i) through Section 3.02(a)(vi).

(d) Each Prospective Owner that becomes a Holder of Beneficial Interests hereby agrees to promptly notify the Grantor, the Trust Administrator and the Owner Trustee if it discovers that any of the deemed representations in Section 3.02(a) was incorrect at the time it was made or that changes in facts and circumstances have caused any of the deemed representations in Section 3.02(a) to be incorrect as of any date on which such Person remains a Holder of Beneficial Interests.

(e) Each Holder of Beneficial Interests, intending to be legally bound, does hereby remise, release and forever discharge the Trust, Grantor, Trustee, Registrar and Trust Administrator, and the affiliates of such persons (a “Released Person”) of and from any and all manner of actions, causes of action, suits, debts, accounts, bonds, covenants, agreements, understandings, contracts, controversies, judgments, damages, claims, liabilities, and demands of any kind or nature whatsoever, whether such be presently known or unknown or suspected or unsuspected, whether in law or in equity (“Claims”) which such Holder, now have, claimed to have had, now claim to have, or hereafter can, shall or may claim to have arising out of, relating to any transfer of any Beneficial Interest by, or involving any Released Person to the extent such transfer is not made in accordance with federal and state securities laws and any other restriction specified in this Section 3.02.

(f) Each Holder, by its acceptance thereof, covenants and agrees that it shall not issue interests in or obligations secured by its Beneficial Interests or issue any interest or obligation the timing or amount of payments on which are determined based on the payments (whether actual or expected) on such Beneficial Interests.

### Section 3.03. Registration of Transfer and Exchange of Beneficial Interests.

(e) The Registrar shall keep or cause to be kept, at the office or agency maintained pursuant to Section 3.06, a Register in which, subject to such reasonable regulations as it may prescribe, the Trust shall provide for the registration of Beneficial Interests and of transfers and exchanges of Beneficial Interests as herein provided. The Owner Trustee is hereby appointed as the initial Registrar.

(f) At any time, a Holder of Beneficial Interests may notify the Owner Trustee in writing to mark in the books and records of the Trust that such Beneficial Interests have been transferred or divided



and participated and to mark in such books and records the ownership interest in the Beneficial Interests owned by such transferor and each additional holder, subject to satisfaction of the conditions set forth in Section 3.02.

(g) A Holder may pledge, hypothecate or otherwise grant a security interest in all or any portion of the Beneficial Interests owned by it, without having to satisfy the conditions set forth in Section 3.02, provided, that such pledge, hypothecation, or grant may not be used as an artifice or device to avoid or limit the foregoing prohibitions on transfer.

(h) No service charge shall be made for any registration of transfer or exchange of Beneficial Interests, but the Owner Trustee or the Registrar may require payment of a sum sufficient to cover any expense, tax or governmental charge that may be imposed in connection with any transfer or exchange of Beneficial Interests.

Section 3.04. Persons Deemed Holders. Prior to request for transfer or division and participation of Beneficial Interests, the Owner Trustee, the Registrar or any Paying Agent may treat the Person in whose name any Beneficial Interest is registered in the Register as the owner of such Beneficial Interest for the purpose of receiving distributions pursuant to Section 5.02 and for all other purposes whatsoever, and none of the Owner Trustee, the Registrar or any Paying Agent shall be bound by any notice to the contrary.

Section 3.05. Access to List of Holders' Names and Addresses. The Registrar shall furnish or cause to be furnished to the Trust Administrator, within 15 days after receipt by the Registrar of a written request therefor from the Trust Administrator, a list, in such form as the Trust Administrator may reasonably require, of the names and addresses of the Holders as of the most recent Record Date. If three or more Holders or one or more Holders evidencing not less than 25% Percentage Interest of the Beneficial Interests apply in writing to the Registrar, and such application states that the applicants desire to communicate with other Holders with respect to their rights under this Agreement and such application is accompanied by a copy of the communication that such applicants propose to transmit, then the Registrar shall, within five Business Days after the receipt of such application, afford such applicants access during normal business hours to the current list of Holders. Each Holder, by receiving and holding Beneficial Interests, shall be deemed to have agreed not to hold any of the Grantor, the Trust Administrator, the Registrar or the Owner Trustee accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived. In addition, nothing in this Agreement shall be construed to prohibit the Registrar from providing information or documentation, including documentary evidence of identity, to the parties hereto or to any governmental agency requesting such pursuant to statute or regulation.

Section 3.06. Maintenance of Office or Agency. The Trust shall maintain an office or offices or agency or agencies where Beneficial Interests may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Trust in respect of the Beneficial Interests may be served. The Trust initially designates the Corporate Trust Office as its office for such purposes. The Trust shall give prompt written notice to the Grantor, the Trust Administrator and to the Holders of any change in the location of the Register or any such office or agency.

Section 3.07. Appointment of Paying Agent. The Paying Agent shall make distributions to Holders from the applicable Collection Account pursuant to Section 5.02 and shall report the amounts of such distributions to the Owner Trustee. Any Paying Agent shall have the revocable power to withdraw funds from the applicable Collection Account for the purpose of making the distributions referred to above. The Trust Administrator may revoke such power and remove the Paying Agent (i) for cause, if the Trust Administrator determines that the Paying Agent shall have failed to perform its obligations under

this Agreement in any material respect or (ii) without cause, in its sole and absolute discretion, *provided* that the Trust Administrator shall immediately appoint a successor paying agent. The Paying Agent initially shall be the Owner Trustee (who is hereby appointed as Paying Agent), and any co-paying agent chosen by the Trust Administrator and acceptable to the Owner Trustee. The Owner Trustee shall be permitted to resign as Paying Agent upon 30 days' prior written notice to the Owner Trustee and the Trust Administrator. In the event that the Owner Trustee shall no longer be the Paying Agent, the Trust Administrator shall promptly appoint a successor to act as Paying Agent. The Trust Administrator shall cause such successor Paying Agent or any additional Paying Agent appointed by the Trust Administrator to execute and deliver to the Owner Trustee and the Trust Administrator an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trust and the Trust Administrator that, as Paying Agent, such successor Paying Agent or additional Paying Agent shall hold all sums, if any, held by it for payment to the Holders in trust for the benefit of the Holders until such sums shall be paid to such Holders. The Paying Agent shall return all unclaimed funds to the Owner Trustee and upon removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Owner Trustee. The provisions of Section 7.01, Section 7.02, Section 7.03 and Section 8.01 shall apply to the Owner Trustee if it is acting the role of Paying Agent, for so long as the Owner Trustee shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

ARTICLE FOUR  
ACTIONS BY OWNER TRUSTEE

Section 4.01. Prior Notice to Holders with Respect to Certain Matters.

(a) With respect to the following matters, the Owner Trustee shall not take the following actions unless at least 10 days before the taking of such action, the Owner Trustee shall have notified the Holders in writing of the proposed action and the Majority Holders shall not have notified the Owner Trustee in writing prior to the tenth day after such notice is given that such Holders have withheld consent to such action or provided alternative direction:

(i) the initiation of any claim or lawsuit by the Trust and the compromise of any action, claim or lawsuit brought by or against the Trust;

(ii) the election by the Trust to file an amendment to the Certificate of Trust (unless such amendment is required to be filed under the Delaware Trust Statute);

(iii) the amendment or other change to this Agreement in circumstances where such amendment materially adversely affects the interests of the Holders;

(iv) the appointment pursuant to this Agreement of a successor Registrar, or the consent to the assignment by the Registrar of its obligations under this Agreement;

(v) except as provided in Article Nine, the dissolution, termination or liquidation of the Trust in whole or in part;

(vi) the merger or consolidation of the Trust with or into any other entity, or conveyance or transfer of all or substantially all of the Trust's assets to any other entity;

(vii) doing any act which would make it impossible to carry on the ordinary business of the Trust as described in Section 2.03;

(viii) the confession of a judgment against the Trust;

(ix) the possession of Trust assets, or assignment of the Trust's right to property, for other than a Trust purpose;

(x) causing the Trust to lend any funds to any Person; or

(xi) the change of the Trust's purpose and powers from those set forth in this Agreement.

(b) The Trust Administrator shall cause the Trust to abide by the following restrictions except as set forth elsewhere in this Agreement:

(i) the Trust shall not incur, assume or guaranty any indebtedness nor pay the indebtedness, operating expenses and liabilities of any other entity;

(ii) the Trust shall not engage in any dissolution, liquidation, consolidation, merger or sale of assets;

- (iii) the Trust shall not engage in any business activity in which it is not currently engaged;
  - (iv) the Trust shall not form, or cause to be formed, any subsidiaries;
  - (v) the Trust shall maintain adequate capital in light of its contemplated business operations;
  - (vi) the Trust shall conduct business with its Affiliates on an arm's-length basis;
  - (vii) the Trust shall not follow the directions or instructions of the Grantor; and
  - (viii) the Trust shall not have any of its obligations guaranteed by any of its Affiliates.
- (c) The Trust Administrator shall cause the Trust at all times to:
- (i) maintain books and records separate from any other person or entity;
  - (ii) maintain its office and bank accounts separate from any other person or entity, including the Grantor or any of its Affiliates;
  - (iii) not commingle its assets with those of any other person or entity;
  - (iv) conduct its own business in its own name;
  - (v) pay its own liabilities and expenses only out of its own funds;
  - (vi) observe all organizational formalities necessary to maintain its separate existence and all procedures required under the Delaware Trust Statute;
  - (vii) hold itself out as a separate entity from the Grantor, the Holders and any of their Affiliates, not conduct any business in the name of the Grantor, the Holders or any of their Affiliates, and use stationery, invoices, checks or other business forms under its own name and not that of the Grantor, the Holders or any of their Affiliates or any other person;
  - (viii) correct any known misunderstanding regarding its separate identity; and
  - (ix) not identify itself as a division of any other person or entity.

(d) The Owner Trustee shall not have the power, except upon the direction of the Majority Holders, to (i) institute proceedings to have the Trust declared or adjudicated bankrupt or insolvent, (ii) consent to the institution of bankruptcy or insolvency proceedings against the Trust, (iii) file a petition or consent to a petition seeking reorganization or relief on behalf of the Trust under any applicable federal or state law relating to bankruptcy, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or any similar official) of the Trust or a substantial portion of the property of the Trust, (v) make any assignment for the benefit of the Trust's creditors, (vi) cause the Trust to admit in writing its inability to pay its debts generally as they become due, or (vii) take any action, or cause the Trust to take any action, in furtherance of any of the foregoing.

Section 4.02. Restrictions on Holders' Power. The Holders shall not direct the Owner Trustee to take or to refrain from taking any action if such action or inaction would be contrary to any obligation of the Trust or the Owner Trustee under this Agreement or would be contrary to Section 2.03 and Section

4.01 or applicable law, nor shall the Owner Trustee be obligated to follow any such direction, if given. The Holders, in their capacity as Holders, shall not guarantee any obligations of the Trust.

Section 4.03. Majority Control. Except as expressly provided herein, any action that may be taken by the Holders under this Agreement may be taken by the Majority Holders. Except as expressly provided herein, any written notice of the Holders delivered pursuant to this Agreement shall be effective if signed by the Majority Holders at the time of the delivery of such notice.

ARTICLE FIVE  
APPLICATION OF TRUST FUNDS; CERTAIN DUTIES

Section 5.01. The Fee Account.

(a) The Owner Trustee, in trust for the benefit of the Holders, shall establish and maintain in the name of the Trust an Eligible Account (the “Fee Account”), bearing a designation clearly indicating that the funds deposited therein (without regard to any income or gain resulting from the investment thereof) are held for the benefit of the Holders. Funds on deposit therein shall be held separate and apart from any other moneys of the Owner Trustee. All of the right, title and interest of the Trust in all funds on deposit from time to time in the Fee Account and in all proceeds thereof shall be held for the benefit of the Holders, the Owner Trustee as provided herein and such other persons entitled to distributions therefrom. Except as otherwise expressly provided herein, the Fee Account shall be under the sole dominion and control of the Trust for the benefit of the Holders, subject to the provisions of this Agreement.

(b) Funds on deposit in the Fee Account, if invested, shall be invested by the Owner Trustee pursuant to specific written instructions from the Trust Administrator. In the absence of such written direction, such funds shall be held in a non-interest bearing account.

(c) If, at any time, the Fee Account ceases to be an Eligible Account, the Owner Trustee shall within 30 Business Days establish a new Fee Account as an Eligible Account and shall transfer any cash and/or any investments to such new account.

(d) The Owner Trustee shall deposit in the Fee Account promptly upon receipt any funds delivered to the Owner Trustee by or for the Trust Administrator for deposit into the Fee Account.

(e) On each date that it is entitled to a payment of the Owner Trustee’s fees or the payment of other amounts from the Trust, the Owner Trustee may withdraw from the Fee Account an amount sufficient to pay itself the Owner Trustee’s fee or such other amounts payable on such date. In addition, the Owner Trustee shall withdraw such amounts from the Fee Account and pay or deliver such amounts as directed from time to time by the Trust Administrator.

Section 5.02. Establishing Collection Account; Application of Trust Funds.

(a) The Owner Trustee, in trust for the benefit of the Holders, shall establish and maintain in the name of the Trust an Eligible Account (the “Collection Account”), bearing a designation clearly indicating that the funds deposited therein (without regard to any income or gain resulting from the investment thereof) are held for the benefit of the Holders. Funds on deposit therein shall be held separate and apart from any other moneys of the Owner Trustee. All of the right, title and interest of the Trust in all funds on deposit from time to time in the Collection Account and in all proceeds thereof shall be held for the benefit of the Holders, the Owner Trustee as provided herein and such other persons entitled to distributions therefrom. Except as otherwise expressly provided herein, the Collection Account shall be under the sole dominion and control of the Trust for the benefit of the Holders, subject to the provisions of this Agreement.

(b) Funds on deposit in the Collection Account, if invested, shall be invested by the Owner Trustee pursuant to specific written instructions from the Trust Administrator. In the absence of such written direction, such funds shall be held in a non-interest bearing account.

(c) If, at any time, the Collection Account ceases to be an Eligible Account, the Owner Trustee shall within 30 Business Days establish a new Collection Account as an Eligible Account and shall transfer any cash and/or any investments to such new account.

(d) The Trust Administrator shall deposit or cause to be deposited in the Collection Account immediately upon receipt any cash collections received on or with respect to the Note.

(e) On each Distribution Date (and, with respect to (i) below, at any other time), the Owner Trustee shall make, or cause to be made, allocations and withdrawals of funds from the Collection Account for the following purposes, in the following order of priority, and on the dates indicated:

(i) to withdraw funds deposited in error in the Collection Account;

(ii) to the extent permitted under Section 8.02(b), reimburse the Owner Trustee for fees, reimbursements and indemnities payable to, recoverable by or reimbursable to the Owner Trustee pursuant to this Agreement that has not been paid as of such Distribution Date pursuant to Section 8.02(b);

(iii) except on the final Distribution Date, to deposit funds to the Fee Account to restore the balance therein to \$20,000; and

(iv) to pay any amounts remaining in the Collection Account to the Holders pro rata on the basis of their Percentage Interests.

(f) In the event that any withholding tax is imposed on the Trust's payment (or allocations of income) to a Holder, such tax shall reduce the amount otherwise distributable to such Holder in accordance with this Section 5.02. The Trust is hereby authorized and directed to direct the Paying Agent to retain from amounts otherwise distributable to the Holders sufficient funds for the payment of any tax that is legally owed by the Trust (but such authorization shall not prevent the Trust from contesting any such tax in appropriate proceedings and withholding payment of such tax, if permitted by law, pending the outcome of such proceedings). The amount of any withholding tax imposed with respect to a Holder shall be treated as cash distributed to such Holder at the time it is withheld by the Trust and remitted to the appropriate taxing authority. If the amount withheld was not withheld from actual distributions, the Trust may, at its option, (i) require the Holder to reimburse the Trust for such withholding (and each Holder agrees to reimburse the Trust promptly following such request) or (ii) reduce any subsequent distributions by the amount of such withholding. If there is a possibility that withholding tax is payable with respect to a distribution, the Trust may in its sole discretion direct the Paying Agent to withhold such amounts in accordance with this paragraph (f). In the event that a Holder wishes to apply for a refund of any such withholding tax, the Trust shall reasonably cooperate with such Holder in making such claim so long as such Holder agrees to reimburse the Owner Trustee for any out-of-pocket expenses incurred.

Section 5.03. Method of Payment. Subject to Section 9.01(c), distributions required to be made to Holders on any Distribution Date shall be made to each Holder of record on the preceding Record Date either by wire transfer, in immediately available funds, to the account of such Holder at a bank or other entity having appropriate facilities therefor, if such Holder shall have provided to the Registrar appropriate written instructions at least five Business Days prior to such Distribution Date (which instructions may include a standing order), or, if not, by check mailed to such Holder at the address of such holder appearing in the Register.

Section 5.04. Segregation of Moneys; No Interest. Subject to Section 5.01 and Section 5.02, moneys received by the Trust hereunder and deposited in the Fee Account or the Collection Account shall

be segregated from the Owner Trustee's own assets and the other assets of the Grantor. The Owner Trustee shall not be liable for payment of any interest in respect of such moneys.

Section 5.05. Tax Administration.

(a) The Trust and the Owner Trustee, upon direction from the Trust Administrator, shall comply with all withholding and backup withholding tax requirements under federal (including, without limitation, Sections 1441, 1442, 1445, 1446 and 1471 through 1474 of the Code), state and local law. The Trust shall request, and the Holders shall provide to the Trust, a properly executed IRS Form W-9 and other such forms or certificates as are necessary to establish an exemption from withholding and backup withholding tax with respect to each Holder and any representations and forms as shall reasonably be requested by the Trust or Paying Agent to assist it in determining the extent of, and in fulfilling, its withholding and backup withholding tax obligations.

(b) The Owner Trustee, upon direction and at the expense of the Trust Administrator, shall deliver or shall cause to be delivered to the Holders such information, reports or statements as may be required by the Code and applicable Treasury Regulations and as may be required to enable the Holders to prepare their federal and state income tax returns. In no event shall the Owner Trustee be liable for any liabilities, costs or expenses of the Trust or the Holders arising out of the application of any tax law, including federal, state, foreign or local income or excise taxes or any other tax imposed on or measured by income (or any interest, penalty or addition with respect thereto or arising from a failure to comply therewith).



ARTICLE SIX  
AUTHORITY AND DUTIES OF OWNER TRUSTEE

Section 6.01. General Authority. The Owner Trustee is authorized and directed to execute and deliver or cause to be executed and delivered any document to be entered into by the Trust under the terms hereof to which the Trust is to be a party and each certificate or other document attached as an exhibit to which the Trust is to be a party and any amendment or other agreement or instrument described in Article Three, in each case, in such form as the Trust Administrator or Majority Holders shall approve, as evidenced conclusively by the Owner Trustee's execution thereof.

Section 6.02. General Duties. It shall be the duty of the Owner Trustee:

(a) to discharge (or cause to be discharged) all of its responsibilities pursuant to the terms of this Agreement and to administer the Trust in the interest of the Holders, in accordance with the provisions of this Agreement; and

(b) to cooperate with the Trust Administrator in obtaining and preserving (or causing to be obtained and preserved) the Trust's qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of the Note and each other instrument and agreement included in the Trust Estate; *provided, however*, that the Owner Trustee shall have no obligation to determine whether and to what extent such qualification shall be necessary; and *provided, further*, that the Owner Trustee shall only be required to take action under this Section 6.02(b) if authorized and directed in writing to do so by the Trust Administrator, advanced any necessary costs and provided adequate indemnity, subject in all cases to the protections of Article Seven.

Section 6.03. Action upon Instruction.

(a) Subject to Article Four, the Holders may by written instruction direct the Owner Trustee in the management of the Trust but only to the extent consistent with the limited purpose of the Trust. Such direction may be exercised at any time by written instruction of the Holders pursuant to Article Four.

(b) Notwithstanding any other provision herein, the Owner Trustee shall not be required to take any action hereunder if the Owner Trustee shall have reasonably determined, or shall have been advised by counsel, that such action is likely to result in liability on the part of the Owner Trustee or is contrary to the terms hereof or is otherwise contrary to law.

(c) Whenever the Owner Trustee is unable to decide between alternative courses of action permitted or required by the terms of this Agreement, the Owner Trustee shall promptly give notice (in such form as shall be appropriate under the circumstances) to the Holders requesting instruction as to the course of action to be adopted, and to the extent the Owner Trustee acts in good faith in accordance with any written instruction of the Holders received, the Owner Trustee shall not be liable on account of such action to any Person. If the Owner Trustee shall not have received appropriate instruction within 10 days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement, as it shall deem to be in the best interests of the Holders, and, subject to Section 7.01, shall have no liability to any Person for such action or inaction.

(d) In the event that the Owner Trustee is unsure as to the application of any provision of this Agreement or any such provision is ambiguous as to its application, or is, or appears to be, in conflict with any other applicable provision, or in the event that this Agreement permits any determination by the Owner Trustee or is silent or is incomplete as to the course of action that the Owner Trustee is required to take with respect to a particular set of facts, the Owner Trustee may give notice (in such form as shall be appropriate under the circumstances) to the Holders requesting instruction and, to the extent that the Owner Trustee acts or refrains from acting in good faith in accordance with any such instruction received, the Owner Trustee shall not be liable, on account of such action or inaction, to any Person. If the Owner Trustee shall not have received appropriate instruction within 10 days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement, as it shall deem to be in the best interests of the Holders, and, subject to Section 7.01, shall have no liability to any Person for such action or inaction.

Section 6.04. No Duties Except as Specified in this Agreement or in Instructions. The Owner Trustee shall not have any duty or obligation to manage, make any payment with respect to, register, record, sell, dispose of, or otherwise deal with the Trust Estate, or to otherwise take or refrain from taking any action under, or in connection with, any document contemplated hereby to which the Owner Trustee is a party, except as expressly provided by the terms of this Agreement or in any document or written instruction received by the Owner Trustee pursuant to Section 6.03; and no implied duties (including fiduciary duties) or obligations shall be read into this Agreement against the Owner Trustee. The Owner Trustee shall have no responsibility for any licensing or qualification to do business for the Trust, securities law filings, tax filings or other filings or for filing any financing or continuation statement in any public office at any time or to otherwise perfect or maintain the perfection of any security interest or lien granted to it hereunder or to record this Agreement. The Owner Trustee nevertheless agrees that it will, at its own cost and expense, promptly take all action as may be necessary to discharge any liens on any part of the Trust Estate that result from actions by, or claims against, the Owner Trustee solely in its individual capacity that are not related to its role as Owner Trustee, this Agreement or the ownership or the administration of the Trust Estate.

Section 6.05. No Action Except Under Specified Documents or Instructions. The Owner Trustee shall not manage, control, use, sell, dispose of or otherwise deal with any part of the Trust Estate except (i) in accordance with the powers granted to and the authority conferred upon the Owner Trustee pursuant to this Agreement and (ii) in accordance with any document or instruction delivered to the Owner Trustee pursuant to Section 6.03.

Section 6.06. Restrictions. The Owner Trustee shall not take any action (a) that is inconsistent with the purposes of the Trust set forth in Section 2.03 (to the extent it acts at the direction of another party it shall be entitled to rely conclusively on a certification from the directing party that any action is not inconsistent with the purposes of the Trust) or (b) that, to the actual knowledge of the Owner Trustee, would result in the Trust (or any portion thereof) becoming subject to an entity level tax for federal income tax purposes. The Holders shall not direct the Owner Trustee to take action that would violate the provisions of this Section.

ARTICLE SEVEN  
CONCERNING THE OWNER TRUSTEE

Section 7.01. Acceptance of Trusts and Duties. The Owner Trustee accepts the trusts hereby created and agrees to perform its duties hereunder with respect to such trusts, but only upon the express terms of this Agreement. The Owner Trustee also agrees to disburse all moneys actually received by it constituting part of the Trust Estate upon the terms of this Agreement. The Owner Trustee, in its capacity as Owner Trustee, shall not be answerable or accountable hereunder under any circumstances, except (i) for its own willful misconduct, gross negligence or bad faith or (ii) in the case of the inaccuracy of any representation or warranty contained in Section 7.02 expressly made by the Owner Trustee in its individual capacity. In addition, notwithstanding any other provision herein:

(a) the Owner Trustee shall not be liable for any error of judgment made in good faith by a trust officer of the Owner Trustee;

(b) the Owner Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the instructions of the Grantor, the Trust Administrator or any Holder;

(c) no provision of this Agreement shall require the Owner Trustee to expend or risk funds or otherwise incur any financial liability in the performance of any of its rights or powers hereunder;

(d) the Owner Trustee shall not be responsible for or in respect of the validity or sufficiency of this Agreement or for the due execution hereof by the Grantor, for the form, character, genuineness, sufficiency, value or validity of any of the Trust Estate, the representations, warranties, covenants or indebtedness of the Trust, and the Owner Trustee shall in no event assume or incur any liability, duty or obligation to any Holder, other than as expressly provided for herein;

(e) the Owner Trustee shall not be liable to monitor the performance of or for the default or misconduct of the Grantor, the Trust Administrator or any other Person;

(f) the Owner Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement, or to institute, conduct or defend any litigation under this Agreement or otherwise or in relation to this Agreement, at the request, order or direction of any of the Holders, unless such Holders have advanced any necessary costs and offered to the Owner Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred by the Owner Trustee therein; and

(g) the right of the Owner Trustee to perform any discretionary act enumerated in this Agreement shall not be construed as a duty, and the Owner Trustee shall not be answerable for other than its gross negligence, bad faith or willful misconduct in the performance of any such act.

Section 7.02. Representations and Warranties. Delaware Trust Company hereby represents and warrants to the Trust Administrator and the Grantor, for the benefit of the Holders, that:

(a) Delaware Trust Company is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware. It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

(b) Delaware Trust Company has taken all corporate action necessary to authorize the execution and delivery by it of this Agreement, and this Agreement will be executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its behalf.

(c) None of the execution or the delivery by it of this Agreement, the consummation by it of the transactions contemplated hereby, or compliance by it with any of the terms or provisions hereof, will contravene any federal or Delaware law, governmental rule or regulation applicable to Delaware Trust Company's trust powers or any judgment or order binding on it, or constitute any default under its charter documents or bylaws or any indenture, mortgage, contract, agreement or instrument to which it is a party or by which any of its properties may be bound.

(d) The execution, delivery, authentication and performance by it of this Agreement will not require the authorization, consent or approval of, the giving of notice to, the filing or registration with, or the taking of any other action with respect to, any federal or State of Delaware governmental authority or agency applicable to its trust powers.

(e) This Agreement, assuming due authorization, execution and delivery by the Grantor and the Trust Administrator, constitutes a valid, legal and binding obligation of Delaware Trust Company, enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally and to general principles of equity, regardless of whether such enforcement is considered in a proceeding in equity or at law.

(f) Delaware Trust Company is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency, which default might have consequences that would materially and adversely affect the condition (financial or other) or operations of Delaware Trust Company or its properties or might have consequences that would materially adversely affect its performance hereunder.

(g) No litigation is pending or, to the best of knowledge of Delaware Trust Company, threatened against Delaware Trust Company which would prohibit its entering into this Agreement or performing its obligations under this Agreement.

Section 7.03. Reliance; Advice of Counsel. (a) Except as provided in Section 7.01, the Owner Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond, or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Owner Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the method of determination of which is not specifically prescribed herein, the Owner Trustee may for all purposes hereof rely on a certificate, signed by the president or any vice president or by the treasurer or other authorized officers of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(b) In the exercise or administration of the trusts hereunder and in the performance of its duties and obligations under this Agreement, the Owner Trustee (i) may at the expense of the Trust act directly or through its agents or attorneys pursuant to agreements entered into with any of them, and the Owner Trustee shall not be liable for the conduct or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Owner Trustee in good faith, and (ii) may consult with counsel, accountants and other skilled Persons to be selected in good faith by it. The Owner Trustee shall

not be liable for anything done, suffered or omitted in good faith by it in accordance with the written opinion or advice of any such counsel, accountants or other such Persons pursuant to this Agreement. To the fullest extent permitted by law and notwithstanding anything in this Agreement to the contrary, the Owner Trustee shall not be personally liable for (x) indirect, incidental, special, consequential or punitive damages, however styled, including, without limitation, lost profits or (y) the acts or omissions of any nominee, correspondent, clearing agency or securities depository through which it holds the Trust's securities or assets. The Owner Trustee shall not be liable or responsible for delays or failures in the performance of its obligations hereunder arising out of or caused, directly or indirectly, by circumstances beyond its control (such acts include but are not limited to acts of God, strikes, lockouts, riots, acts of war and interruptions, losses or malfunctions of utilities, computer (hardware or software) or communications services); it being understood that the Owner Trustee shall use commercially reasonable efforts to resume performance as soon as reasonably practicable under the circumstances. Each of the parties hereto hereby agrees and, as evidenced by its acceptance of any benefits hereunder, any Holder agrees that the Owner Trustee in any capacity (x) has not provided and will not provide in the future, any advice, counsel or opinion regarding the tax, financial, investment, securities law or insurance implications and consequences of the formation, funding and ongoing administration of the Trust, including, but not limited to, income, gift and estate tax issues, insurable interest issues, and the initial and ongoing selection and monitoring of financing arrangements, (y) has not made any investigation as to the accuracy of any representations, warranties or other obligations of the Trust under any contract to which the Trust is a party and shall have no liability in connection therewith and (z) the Owner Trustee has not prepared or verified, and shall not be responsible or liable for, any information, disclosure or other statement in any disclosure or offering document or in any other document issued or delivered in connection with the sale or transfer of the Beneficial Interests. It shall be the Trust Administrator's duty and responsibility, and not the Owner Trustee's duty or responsibility, to cause the Trust to respond to, defend, participate in or otherwise act in connection with any regulatory, administrative, governmental, investigative or other proceeding or inquiry relating in any way to the Trust, its assets or the conduct of its business.

Section 7.04. Not Acting in Individual Capacity. Except as provided in this Article, in accepting the trusts hereby created, Delaware Trust Company acts solely as Owner Trustee hereunder and not in its individual capacity, and all Persons having any claim against the Owner Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust Estate for payment or satisfaction thereof.

Section 7.05. Owner Trustee Not Liable for Beneficial Interests or Note. The recitals contained herein shall be taken as the statement of the Grantor, and the Owner Trustee assumes no responsibility for the correctness thereof. The Owner Trustee makes no representations as to the validity or sufficiency of this Agreement or related documents. The Owner Trustee shall at no time have any liability for or with respect to the legality, validity and enforceability of any Note or the perfection and priority of any security interest created by any Note or the maintenance of any such perfection and priority, or for or with respect to the sufficiency of the Trust Estate or its ability to generate the payments to be distributed to Holders under this Agreement, including, without limitation: the existence, condition and ownership of any Note; or the existence and enforceability of any insurance thereon; the existence and contents of any Note on any computer or other record thereof; the validity of the assignment of any Note to the Trust or of any intervening assignment; the performance or enforcement of any Note.

Section 7.06. Doing Business in Other Jurisdictions. Notwithstanding anything contained herein to the contrary, Delaware Trust Company shall not be required to take any action in any jurisdiction other than in the State of Delaware if the taking of such action will (i) require the consent or approval or authorization or order of or the giving of notice to, or the registration with or the taking of any other action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware; (ii) result in any fee, tax or other governmental charge under the laws of any

jurisdiction or any political subdivisions thereof in existence on the date hereof other than the State of Delaware becoming payable by Delaware Holding Services, Inc.; or (iii) subject Delaware Holding Services, Inc. to personal jurisdiction in any jurisdiction other than the State of Delaware for causes of action arising from acts unrelated to the consummation of the transactions by Delaware Holding Services, Inc. contemplated hereby. The Owner Trustee shall be entitled to obtain advice of counsel (which advice shall be an expense of the Trust) to determine whether any action required to be taken pursuant to the Agreement results in the consequences described in clauses (i), (ii) and (iii) of the preceding sentence. In the event that said counsel advises the Owner Trustee that such action will result in such consequences, the Owner Trustee will appoint an additional trustee pursuant to Section 10.05 to proceed with such action.

Section 7.07. Licenses. The Owner Trustee shall cooperate with the Trust Administrator in causing the Trust to use its best efforts to obtain and maintain the effectiveness of any licenses required in connection with this Agreement and the transactions contemplated hereby and thereby until such time as the Trust shall terminate in accordance with the terms hereof; *provided, however*, that the Owner Trustee shall have no obligation to determine whether and to what extent such licensing shall be necessary; and *provided, further*, that the Owner Trustee shall only be required to take action under this Section 7.07 if authorized and directed in writing to do so by the Trust Administrator, advanced any necessary costs and provided adequate indemnity, subject in all cases to the protections of this Article Seven.

Section 7.08. Liability of Registrar and Paying Agent. All provisions affording protection to or limiting the liability of the Owner Trustee shall inure as well to the Registrar and Paying Agent.

Section 7.09. Statements and Reports to the Trust Administrator and Holders.

(a) No later than the fifth Business Day of each month, the Owner Trustee shall provide to the Trust Administrator a statement setting forth the cash balances and investments held by the Trust in the Fee Account as of the last day of the previous calendar month, and such other matters as mutually agreed upon by the Owner Trustee and the Trust Administrator in a form mutually agreed upon by the Owner Trustee and the Trust Administrator;

(b) On each Distribution Date, the Owner Trustee shall provide to the Holders and the Trust Administrator such report as the Trust Administrator shall provide to the Owner Trustee in respect of such Distribution Date, which report shall set forth the amount of the distribution on such Distribution Date to Holders and any additional information provided to it by the Trust Administrator for forwarding to the Holders; and

(c) Annually, upon request, in January of each year, the Owner Trustee shall furnish to each Person that was a Holder during the prior calendar year a statement showing the aggregate amounts received by such Person with respect to the Beneficial Interests during the prior calendar year.

ARTICLE EIGHT  
COMPENSATION OF OWNER TRUSTEE

Section 8.01. Owner Trustee's Fees and Expenses.

(g) The Owner Trustee shall receive as compensation for its services hereunder as provided in the letter agreement with the Trust Administrator.

(h) The Owner Trustee (in its individual capacity) may earn compensation in the form of short-term interest ("float") on items like uncashed distribution checks (from the date issued until the date cashed), funds that the Owner Trustee is directed not to invest, deposits awaiting investment direction or received too late to be invested overnight in previously directed investments.

Section 8.02. Indemnification.

(a) To the fullest extent permitted by applicable law, Delaware Trust Company and the Owner Trustee, and its officers, directors, employees and agents (each an "Indemnified Party") shall be entitled to be indemnified and held harmless by the Trust from and against any and all liabilities, obligations, indemnity obligations, losses (excluding loss of anticipated profits), damages, taxes, claims, actions and suits, and any and all reasonable costs, expenses and disbursements (including reasonable legal and consultants' fees and expenses and other fees and expenses incurred in connection with the enforcement of indemnification rights) of any kind and nature whatsoever (collectively, the "Expenses") which may at any time be imposed on, incurred by or asserted against Delaware Trust Company or the Owner Trustee or any other Indemnified Party in any way relating to or arising out of this Agreement, the Trust Estate, the administration of the Trust Estate or any action or inaction of the Owner Trustee hereunder, except to the extent that such Expenses arise out of or result from (i) the Owner Trustee's own willful misconduct, bad faith or gross negligence, (ii) the inaccuracy of any of the Owner Trustee's representations or warranties contained in Section 7.02, (iii) taxes based on or measured by any fees, commissions or compensation received by the Owner Trustee for acting as such in connection with any of the transactions contemplated by this Agreement and (iv) the Owner Trustee's failure to use due care to receive, manage and disburse moneys actually received by it in accordance with the terms hereof. The indemnities contained in this Section shall survive the resignation or termination of the Owner Trustee or the termination of this Agreement.

(b) Any fees, reimbursements and indemnities to Delaware Trust Company or the Owner Trustee or any other Indemnified Party pursuant to this Section 8.02 shall be payable: *first*, out of amounts on deposit in the Fee Account prior to payments on the Beneficial Interests; *second*, to the extent not paid pursuant to clause *first* within 60 days of first being incurred, by (i) the Trust Administrator to the extent this Agreement expressly specifies that the Trust Administrator shall pay such fees, reimbursements and indemnities or (ii) by the Trust Administrator; and *third*, to the extent not paid pursuant to clause *second* within 90 days of first being incurred, on the immediately succeeding Distribution Date out of the Collection Account to the extent not paid prior to such Distribution Date.

Section 8.03. Payments to the Owner Trustee. Any amounts paid to the Owner Trustee pursuant to this Article Eight shall be deemed not to be a part of the Trust Estate immediately after such payment.

ARTICLE NINE  
TERMINATION OF TRUST AGREEMENT

Section 9.01. Termination of Trust Agreement.

(a) The bankruptcy, liquidation, dissolution, death or incapacity of any Holder shall not (x) operate to terminate this Agreement or the Trust, (y) entitle such Holder's legal representatives or heirs to claim an accounting or to take any action or proceeding in any court for a partition or winding up of all or any part of the Trust or Trust Estate or (z) otherwise affect the rights, obligations and liabilities of the parties hereto.

(b) The Trust shall be dissolved on the earliest of:

(i) the date on which all of the Trust Assets have been liquidated and proceeds distributed to the Holders;

(ii) the date on which all assets of the Trust Administrator have been liquidated and distributed to the Trust Administrator's creditors and shareholders;

(iii) the date on which the Trust Administrator elects to dissolve the Trust.

(c) Notice of any dissolution of the Trust shall be given by the Owner Trustee within five Business Days of receipt of notice of such dissolution from the Trust Administrator. The Trust Administrator shall provide written notice to the Owner Trustee stating (i) the Distribution Date upon or with respect to which final payment of the Beneficial Interests shall be made, (ii) the amount of any such final payment (or the amount of final in-kind distributions, if any, including, without limitation, the Note or interests therein) and (iii) that the Record Date otherwise applicable to such Distribution Date is not applicable, payments being made only on such final Distribution Date. The Owner Trustee shall give such notice to the Registrar (if other than the Owner Trustee) and the Paying Agent at the time such notice is given to Holders. The Trust Administrator shall windup or cause the windup of the Trust.

(d) Upon receipt of direction from the Trust Administrator that the Trust has been wound up in accordance with Section 3808(e) of the Delaware Trust Statute, the Owner Trustee shall cause the Certificate of Trust to be cancelled by filing, at the expense of the Trust Administrator, a certificate of cancellation with the Delaware Secretary of State in accordance with the provisions of Section 3810 of the Delaware Trust Statute and, thereupon, the Trust shall terminate and this Agreement (other than Article Eight, which shall survive) shall be of no further force or effect.



ARTICLE TEN  
SUCCESSOR OWNER TRUSTEES AND ADDITIONAL OWNER TRUSTEES

Section 10.01. Eligibility Requirements for Owner Trustee. The Owner Trustee shall at all times be a company satisfying the provisions of Section 3807(a) of the Delaware Trust Statute and authorized to exercise corporate trust powers. In case at any time the Owner Trustee shall cease to be eligible in accordance with the provisions of this Section, the Owner Trustee shall resign immediately in the manner and with the effect specified in Section 10.02.

Section 10.02. Resignation or Removal of Owner Trustee.

(i) The Owner Trustee may at any time resign and be discharged from the trusts hereby created by giving 30 days' prior written notice thereof to the Trust Administrator. Upon receiving such notice of resignation, the Trust Administrator shall promptly appoint a successor Owner Trustee meeting the eligibility requirements of Section 10.01 by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Owner Trustee and one copy to the successor Owner Trustee. If no successor Owner Trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Owner Trustee, the Trust Administrator or any Holder may petition any court of competent jurisdiction for the appointment of a successor Owner Trustee.

(j) If at any time the Owner Trustee shall cease to be eligible in accordance with the provisions of Section 10.01 and shall fail to resign after written request therefor by the Trust Administrator, or if at any time the Owner Trustee shall be legally unable to act, or shall be adjudged bankrupt or insolvent, or a receiver of the Owner Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Owner Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Trust Administrator may remove the Owner Trustee. If the Trust Administrator shall remove the Owner Trustee under the authority of the immediately preceding sentence, the Trust Administrator shall promptly appoint a successor Owner Trustee meeting the eligibility requirements of Section 10.01 by written instrument, in duplicate, one copy of which instrument shall be delivered to the outgoing Owner Trustee so removed and one copy to the successor Owner Trustee, and shall pay all fees owed to the outgoing Owner Trustee.

(k) Any resignation or removal of the Owner Trustee and appointment of a successor Owner Trustee pursuant to any of the provisions of this Section shall not become effective until acceptance of appointment by the successor Owner Trustee pursuant to Section 10.03 and payment of all fees and expenses owed to the outgoing Owner Trustee.

Section 10.03. Successor Owner Trustee.

(l) Any successor Owner Trustee appointed pursuant to Section 10.02 shall execute, acknowledge and deliver to the Trust Administrator and to its predecessor Owner Trustee an instrument accepting such appointment under this Agreement, and thereupon the resignation or removal of the predecessor Owner Trustee shall become effective, and such successor Owner Trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor under this Agreement, with like effect as if originally named as Owner Trustee. The predecessor Owner Trustee shall upon payment of its fees and expenses deliver to the successor Owner Trustee all documents and statements and monies held by it under this Agreement; and the Trust Administrator and the predecessor Owner Trustee shall execute and deliver such instruments

and do such other things as may reasonably be required for fully and certainly vesting and confirming in the successor Owner Trustee all such rights, powers, duties and obligations.

(m) No successor Owner Trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor Owner Trustee shall be eligible pursuant to Section 10.01.

(n) Upon acceptance of appointment by a successor Owner Trustee pursuant to this Section, the Trust Administrator shall mail notice thereof to Holders. If the Trust Administrator shall fail to mail such notice within 10 days after acceptance of such appointment by the successor Owner Trustee, the successor Owner Trustee shall cause such notice to be mailed at the expense of the Trust Administrator.

Section 10.04. Merger or Consolidation of Owner Trustee. Any Person into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Owner Trustee, shall be the successor of the Owner Trustee hereunder, without the execution or filing of any instrument or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding; *provided*, that such Person shall be eligible pursuant to Section 10.01.

Section 10.05. Appointment of Co-Trustee or Separate Trustee. Notwithstanding any other provisions of this Agreement, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located or any other purpose hereunder, the Trust Administrator and the Owner Trustee acting jointly shall have the power and shall execute and deliver all instruments to appoint one or more Persons approved by the Trust Administrator to act as co-trustee, jointly with the Owner Trustee, or as separate trustee or separate trustees, of all or any part of the Trust Estate, and to vest in such Person, in such capacity, such title to the Trust or any part thereof and, subject to the other provisions of this Section, such powers, duties, obligations, rights and trusts as the Trust Administrator may consider necessary or desirable. If the Trust Administrator shall not have joined in such appointment within 15 days after the receipt by it of a request so to do, the Owner Trustee alone shall have the power to make such appointment. No co-trustee or separate trustee under this Agreement shall be required to meet the terms of eligibility as a successor Owner Trustee pursuant to Section 10.01, and no notice of the appointment of any co-trustee or separate trustee shall be required pursuant to Section 10.03. Each separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(a) Unless otherwise provided in the instrument of appointment, all rights, powers, duties and obligations conferred or imposed upon the Owner Trustee shall be conferred upon and exercised or performed by the Owner Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Owner Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Trust Estate or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Trust Administrator;

(b) No trustee under this Agreement shall be personally liable by reason of any act or omission of any other trustee under this Agreement; and

(c) The Trust Administrator and the Owner Trustee acting jointly may at any time accept the resignation of or remove any separate trustee or co-trustee.

Any notice, request or other writing given to the Owner Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Agreement and the conditions of this Article. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Owner Trustee or separately, as may be provided therein, subject to all the provisions of this Agreement, specifically including every provision of this Agreement relating to the conduct of, affecting the liability of, or affording protection to, the Owner Trustee. Each such instrument shall be filed with the Owner Trustee and a copy thereof given to the Trust Administrator.

Any separate trustee or co-trustee may at any time appoint the Owner Trustee as its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Agreement on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and may be exercised by the Owner Trustee, to the extent permitted by law, without the appointment of a new or successor co-trustee or separate trustee.

ARTICLE ELEVEN  
MISCELLANEOUS

Section 11.01. Supplements and Amendments.

(i) This Agreement may be amended by the Trust Administrator and the Owner Trustee, without the consent of any of the Holders, (i) to correct any mistake or cure any ambiguity, (ii) to correct or supplement any provision herein that may be inconsistent with any other provision herein, or (iii) to make any other provisions with respect to matters or questions arising under this Agreement; *provided*, that such action under clause (iii) shall not, as evidenced by an Opinion of Counsel, adversely affect in any material respect the interests of any Holder, cause the Trust (or any portion thereof) to be subject to an entity level tax for federal income tax purposes. Notwithstanding the preceding sentence, an opinion shall be required with respect to tax matters as set forth in this paragraph.

(j) This Agreement may also be amended from time to time by the Trust Administrator and the Owner Trustee and the consent of the Holders evidencing not less than 66⅔% Percentage Interest of the Beneficial Interests, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of Holders; *provided, however*, that no such amendment shall (a) reduce in any manner the amount of, or accelerate or delay the timing of, distributions that shall be required to be made for the benefit of the Holders or (b) reduce the aforesaid Percentage Interest of the Beneficial Interests required to consent to any such amendment, without the consent of the Holders of all the outstanding Beneficial Interests affected thereby; *provided, however*, that such action shall not, as evidenced by an Opinion of Counsel, cause the Trust (or any portion thereof) to be subject to an entity level tax for federal income tax purposes; and *provided, further*, that no Opinion of Counsel shall be required if the Trust Administrator consents to such action.

(k) Promptly after the execution of any such amendment or consent, the Owner Trustee shall furnish written notification of the substance of such amendment or consent to each Holder.

(l) It shall not be necessary for the consent of Holders pursuant to this Section to approve the particular form of any proposed amendment or consent, but it shall be sufficient if such consent shall approve the substance thereof. The manner of obtaining such consents (and any other consents of Holders provided for in this Agreement) and of evidencing the authorization of the execution thereof by Holders shall be subject to such reasonable requirements as the Owner Trustee may prescribe.

(m) Promptly after the execution of any amendment to the Certificate of Trust, the Owner Trustee shall cause the filing of such amendment with the Secretary of State.

(n) Prior to the execution of any amendment to this Agreement or the Certificate of Trust, the Owner Trustee shall be entitled to receive and rely upon an officer's certificate or Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Agreement. The Owner Trustee may, but shall not be obligated to, enter into any such amendment that affects the Owner Trustee's own rights, duties or immunities under this Agreement or otherwise.

Section 11.02. No Legal Title to Trust Estate in Holders

. The Holders shall not have legal title to any part of the Trust Estate. The Holders shall be entitled to receive distributions only in accordance with Articles Article Five and Article Nine. No

transfer, by operation of law or otherwise, of any right, title or interest of the Holders to and in their ownership interest in the Trust Estate shall operate to terminate this Agreement or the trusts hereunder or entitle any transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

Section 11.03. Limitations on Rights of Others. The provisions of this Agreement are solely for the benefit of the Owner Trustee (including each Indemnified Party), the Trust Administrator, the Trust Administrator and the Holders and nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Trust Estate or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

Section 11.04. Notices. (a) Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing and shall be deemed given upon receipt by the intended recipient or three Business Days after mailing if mailed by certified mail, postage prepaid (except that notice to the Owner Trustee shall be deemed given only upon actual receipt by the Owner Trustee), to the applicable address specified below for each party or, as to each party, at such other address as shall be designated by such party in a written notice to each other party:

(i) in the case of the Owner Trustee, at the Corporate Trust Office; and

(ii) in the case of the Trust Administrator, at 56 33rd Avenue South #279, St. Cloud, MN 56301.

(b) Any notice required or permitted to be given to a Holder shall be given by first-class mail, postage prepaid, at the address of such Holder as shown in the Register. Any notice so mailed within the time prescribed in this Agreement shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

Section 11.05. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 11.06. Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 11.07. Successors and Assigns. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, each of the Trust Administrator and its permitted assignees, the Owner Trustee and its successors and each Holder and its successors and permitted assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by a Holder shall bind the successors and assigns of such Holder.

Section 11.08. No Petition.

(a) Delaware Trust Company, by entering into this Agreement, and each Holder, by accepting Beneficial Interests, by accepting the benefits of this Agreement, hereby covenant and agree that they will not at any time institute against the Trust Administrator or the Trust, or join in any institution against the Trust Administrator or the Trust of, any bankruptcy proceedings under any United States federal or state bankruptcy or similar law in connection with any obligations relating to the Beneficial Interests or this Agreement; *provided, however*, nothing in this Section shall preclude, or be

deemed to stop, Delaware Trust Company (i) from taking any action in (A) any case or proceeding voluntarily filed or commenced by the Trust Administrator of the Trust or (B) any involuntary insolvency proceeding filed or commenced by a Person other than the Owner Trustee, or (ii) from commencing against the Trust or the Trust Administrator or any of its property any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceeding.

Section 11.09. No Recourse. Each Holder by accepting Beneficial Interests acknowledges that such Holder's Beneficial Interest represents a beneficial ownership interest in the Trust only and does not represent an interest in or an obligation of the Trust Administrator or the Owner Trustee and no recourse may be had against such parties or their assets, except as may be expressly set forth or contemplated in this Agreement.

Section 11.10. Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 11.11. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. THE VALIDITY AND CONSTRUCTION OF THIS TRUST AGREEMENT AND ALL AMENDMENTS HERETO SHALL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE, AND THE RIGHTS OF ALL PARTIES HERETO AND THE EFFECT OF EVERY PROVISION HEREOF SHALL BE SUBJECT TO AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF; *PROVIDED, HOWEVER*, THAT THE PARTIES HERETO AND THE HOLDERS INTEND THAT THE PROVISIONS HEREOF SHALL CONTROL OVER ANY CONTRARY OR LIMITING STATUTORY OR COMMON LAW OF THE STATE OF DELAWARE (OTHER THAN THE DELAWARE TRUST STATUTE) AND THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THERE SHALL NOT BE APPLICABLE TO THE TRUST, THE TRUST ADMINISTRATOR, THE GRANTOR, THE OWNER TRUSTEE, THE HOLDERS OR THIS TRUST AGREEMENT ANY PROVISION OF THE LAWS (STATUTORY OR COMMON) OF THE STATE OF DELAWARE (OTHER THAN THE DELAWARE TRUST STATUTE) PERTAINING TO TRUSTS WHICH RELATE TO OR REGULATE IN A MANNER INCONSISTENT WITH THE TERMS HEREOF: (A) THE FILING WITH ANY COURT OR GOVERNMENTAL BODY OR AGENCY OF TRUSTEE ACCOUNTS OR SCHEDULES OF TRUSTEE FEES AND CHARGES, (B) AFFIRMATIVE REQUIREMENTS TO POST BONDS FOR TRUSTEES, OFFICERS, AGENTS, OR EMPLOYEES OF A TRUST, (C) THE NECESSITY FOR OBTAINING COURT OR OTHER GOVERNMENTAL APPROVAL CONCERNING THE ACQUISITION, HOLDING OR DISPOSITION OF REAL OR PERSONAL PROPERTY, (D) FEES OR OTHER SUMS PAYABLE TO TRUSTEES, OFFICERS, AGENTS OR EMPLOYEES OF A TRUST, (E) THE ALLOCATION OF RECEIPTS AND EXPENDITURES TO INCOME OR PRINCIPAL, (F) RESTRICTIONS OR LIMITATIONS ON THE PERMISSIBLE NATURE, AMOUNT OR CONCENTRATION OF TRUST INVESTMENTS OR REQUIREMENTS RELATING TO THE TITLING, STORAGE OR OTHER MANNER OF HOLDING OF TRUST ASSETS, (G) THE EXISTENCE OF RIGHTS OR INTERESTS (BENEFICIAL OR OTHERWISE) IN TRUST ASSETS, (H) THE ABILITY OF BENEFICIAL OWNERS OR OTHER PERSONS TO TERMINATE OR DISSOLVE A TRUST, OR (I) THE ESTABLISHMENT OF FIDUCIARY OR OTHER STANDARDS OR RESPONSIBILITIES OR LIMITATIONS ON THE ACTS OR POWERS OF TRUSTEES OR BENEFICIAL OWNERS THAT ARE INCONSISTENT WITH THE LIMITATIONS ON LIABILITY OR AUTHORITIES AND POWERS OF THE OWNER TRUSTEE OR THE HOLDERS SET FORTH OR REFERENCED IN THIS TRUST AGREEMENT. SECTIONS 3540, 3542 AND 3561 OF TITLE 12 OF THE DELAWARE CODE SHALL NOT APPLY TO THE TRUST. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE GRANTOR, THE TRUST ADMINISTRATOR, THE HOLDERS AND THE OWNER TRUSTEE HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) CONSENT TO SUBMIT TO THE

NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF DELAWARE FOR PURPOSES OF ANY ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND (II) AGREE, TO THE EXTENT SUCH PARTY IS NOT A RESIDENT OF THE STATE OF DELAWARE, TO APPOINT IRREVOCABLY AND TO MAINTAIN AN AGENT IN THE STATE OF DELAWARE AS SUCH PARTY'S AGENT FOR ACCEPTANCE OF LEGAL PROCESS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING AGAINST SUCH PARTY WITH THE SAME LEGAL FORCE AND VALIDITY AS IF SERVED UPON SUCH PARTY PERSONALLY WITHIN THE STATE OF DELAWARE, AND TO NOTIFY PROMPTLY EACH OTHER PARTY HERETO OF THE NAME AND ADDRESS OF SUCH AGENT.

THE GRANTOR, THE TRUST ADMINISTRATOR AND THE OWNER TRUSTEE EACH HEREBY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT. INSTEAD, ANY DISPUTE RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

\* \* \* \* \*



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

DELAWARE TRUST COMPANY, as Owner Trustee

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

MANAGED INVESTMENTS OPPORTUNITY CORP., as Initial Grantor and Trust Administrator

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

Accepted and Agreed to by the Successor Grantor Identified Below:

\_\_\_\_\_  
[PRINT NAME OF SUCCESSOR GRANTOR ABOVE]

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

EXHIBIT A

FORM OF CERTIFICATE OF TRUST

THIS Certificate of Trust of MIOC-PIN-7 LIQUIDATING TRUST (the "Trust") is being duly executed and filed by the undersigned, as trustee, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. Code, § 3801 *et seq.*) (the "Act").

1. Name. The name of the statutory trust formed hereby is MIOC-PIN-7 Liquidating Trust.

2. Delaware Trustee. The name and address of the trustee of the Trust in the State of Delaware is Delaware Trust Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

3. Effective Date. This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

Delaware Trust Company,  
not in its individual capacity but solely as  
Owner Trustee.

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

**APPENDIX D-2**

CONTINGENT NOTE LIQUIDATING TRUST AGREEMENT

[ATTACHED BELOW]

MIOC-CN-7 LIQUIDATING TRUST

LIQUIDATING TRUST AGREEMENT

by and among between

MANAGED INVESTMENTS OPPORTUNITY CORP.,

as Initial Grantor and Trust Administrator,

DELAWARE TRUST COMPANY,

as Owner Trustee,

and

the SUCCESSOR GRANTOR (as defined herein)

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**EXHIBITS**

EXHIBIT A    Form of Certificate of Trust

This LIQUIDATING TRUST AGREEMENT, dated as of \_\_\_\_\_ (this "Agreement" or this "Trust Agreement"), is by and among MANAGED INVESTMENTS OPPORTUNITY CORP., a Maryland corporation, as grantor (the "Initial Grantor") and as trust administrator (the "Trust Administrator"), DELAWARE TRUST COMPANY, a Delaware corporation, acting hereunder not in its individual capacity but solely as owner trustee (the "Owner Trustee") and the SUCCESSOR GRANTOR (as defined below).

The Initial Grantor, the Trust Administrator, the Successor Grantor and the Owner Trustee hereby agree as follows:

## ARTICLE ONE DEFINITIONS

Section 1.01. Capitalized Terms. For all purposes of this Agreement, the following terms shall have the meanings set forth below:

"Account" means each Collection Account, the Fee Account and any other Eligible Account established by or at the direction of the Grantor.

"Affiliate" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" or "Trust Agreement" means this Liquidating Trust Agreement, as the same may be modified, amended or supplemented from time to time in accordance with its terms.

"Authorized Officer" means, with respect to any corporation or limited liability company, the chairman of the board, the president, any vice president, the secretary, the treasurer, any assistant secretary, any assistant treasurer and each other officer of such corporation or the members and manager of such limited liability company specifically authorized in resolutions of the Board of Directors of such corporation or members or managers authorized in the operating agreement of such limited liability company to sign agreements, instruments or other documents in connection with this Agreement on behalf of such corporation or limited liability company, as the case may be. With respect to any trust, any authorized officer of the trust, the corporate trustee or any individual co-trustee.

"Beneficial Interest" means an individual beneficial ownership interest in the Trust, which may be certificated or uncertificated, and together, all such beneficial ownership interests, the "Beneficial Interests".

"Business Day" means any day other than a Saturday or Sunday, or another day on which banks in the State of Delaware or New York are required or authorized by law, to close.

"Certificate of Trust" means the certificate of trust substantially in the form attached hereto as Exhibit A duly executed and filed by the Owner Trustee for the Trust pursuant to Section 3810 of the Delaware Trust Statute.

"Closing Date" means the first date on which each of the following conditions have been met: (i) this Agreement has been executed by the Initial Grantor, the Successor Grantor, the Trust Administrator and the Owner Trustee and (ii) the Successor Grantor has delivered the Note to the Initial Grantor for



assignment and registration of the Note in the name of the Trust and (iii) the Note has been assigned and re-registered in the name of the Trust and has been delivered to the Owner Trustee.

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

“Collection Account” means each account established and maintained by the Owner Trustee in accordance with Section 5.02.

“Corporate Trust Office” means, with respect to the Owner Trustee, the principal corporate trust office of the Owner Trustee, located at 251 Little Falls Drive, Wilmington, Delaware 19808, or at such other address as the Owner Trustee may designate by notice to the Holders and the Grantor, or the principal corporate trust office of any successor Owner Trustee at the address designated by such successor Owner Trustee by notice to the Holders and the Grantor.

“Delaware Trust Statute” means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code §3801 *et seq.*, as the same may be amended from time to time.

“Distribution Date” means the second Business Day following any date on which the Collection Account receives any funds.

“Eligible Account” means a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company or corporation with trust powers, which institution or company has capital and surplus of not less than \$50 million, acting in its fiduciary capacity.

“Eligible Investor” means a Person that (a) is not a “U.S. person” for purposes of Regulation S promulgated under the Securities Act or (b) is an “accredited investor” as defined in Regulation D under the Securities Act.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Expenses” means the meaning assigned to such term in Section 8.02.

“Fee Account” shall have the meaning given to such term in Section 5.01.

“Grantor” means, initially, the Initial Grantor and, following the conveyance of the Note by the Successor Grantor pursuant to Section 2.05, the Successor Grantor.

“Holder” means a Person in whose name a Beneficial Interest is registered on the Register.

“Investment Company Act” means the United States Investment Company Act of 1940, as amended.

“Majority Holders” means Holders that own Beneficial Interests evidencing not less than 51% Percentage Interest of the Beneficial Interests.

“Note” means that certain contingent amount note issued by the Initial Grantor to the Successor Grantor and sold by the Successor Grantor to the Trust as of the date hereof.

“Opinion of Counsel” means a written opinion of counsel, reasonably acceptable in form and substance to the Owner Trustee.

“Paying Agent” means any paying agent or co-paying agent appointed pursuant to Section 3.07; the initial Paying Agent shall be the Owner Trustee.

“Percentage Interest” means, with respect to any Beneficial Interest, the percentage of the outstanding Beneficial Interests it represents, as set forth in the Register. The aggregate Percentage Interest of all Beneficial Interests shall not exceed 100%.

“Person” means an individual, partnership, corporation (including a statutory trust), unincorporated organization, joint stock company, limited liability company, trust, association, joint venture, governmental authority or any other entity of whatever nature.

“Prospective Owner” means each prospective purchaser and any subsequent transferee of a Beneficial Interest.

“Record Date” means, with respect to each Distribution Date, the last Business Day of the calendar month immediately preceding the month in which such Distribution Date occurs.

“Register” and “Registrar” means the register of the Beneficial Interests maintained and the registrar appointed pursuant to Section 3.03.

“Secretary of State” means the Secretary of State of the State of Delaware.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Successor Grantor” means the Person that is identified on the signature page of this Agreement as the successor grantor and signs this Agreement in such capacity.

“Temporary Investments” means any cash and short-term cash equivalent investments such as short-term government securities, time deposits, certificates of deposit, bankers’ acceptances, commercial paper and mutual funds.

“Treasury Regulations” means the regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

“Trust” means MIOC-CN-7 Liquidating Trust, the Delaware statutory trust established under this Agreement.

“Trust Assets” means the Note and Temporary Investments contributed to or deposited with (or deemed contributed to or deposited with) the Trust and any payments received by or paid to the Trust and any other property or assets otherwise purchased or acquired by the Trust and any proceeds of the foregoing.

“Trust Estate” means all property and other assets owned by the Trust.

#### Section 1.02. Other Definitional Provisions.

(a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(b) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

(c) The words “hereof,” “herein,” “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Section and Exhibit references contained in this Agreement are references to Sections and Exhibits in or to this Agreement unless otherwise specified; and the term “including” shall mean “including without limitation”.

(d) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(e) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a Person are also to its permitted successors and assigns.

ARTICLE TWO  
ORGANIZATION

Section 2.01. Creation and Declaration of Trust; Name. Delaware Trust Company is hereby appointed as Owner Trustee of the Trust. The Trust created hereby shall be known as “MIOC-CN-7 Liquidating Trust” in which name the Owner Trustee may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued. The Owner Trustee is hereby authorized and directed to execute and file the Certificate of Trust, in the form attached hereto as Exhibit A, with the Secretary of State in accordance with the provisions of the Delaware Trust Statute.

Section 2.02. Office. The office of the Trust shall be in care of the Owner Trustee at the Corporate Trust Office or at such other address in Delaware as the Owner Trustee may designate by written notice to the Holders and the Trust Administrator.

Section 2.03. Purposes and Powers.

- (a) The purpose of the Trust is to engage in the following activities:
  - (i) to acquire the Note and other Trust Assets;
  - (ii) to issue the Beneficial Interests pursuant to this Agreement at the direction of the Grantor and transfer the Beneficial Interests to or at the direction of the Holders;
  - (iii) to make distributions of proceeds from Trust Assets as required hereunder;
  - (iv) to maintain the Fee Account and the Collection Account;
  - (v) to engage in those activities, including entering into agreements, that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith; and
  - (vi) to engage in such other activities as may be required in connection with conservation of the Trust Estate and the making of distributions to the Holders.
- (b) The Trust has the power and authority and is hereby authorized to engage in the foregoing activities.
- (c) Notwithstanding anything herein to the contrary, the Trust shall exist solely to hold and liquidate the Trust Assets and distribute the proceeds in accordance with this Agreement and shall not:
  - (i) hold itself out as an investment company (but rather as a trust in the process of liquidation);
  - (ii) conduct a trade or business other than holding Trust Assets;
  - (iii) permit any active trading market in Beneficial Interests to develop;
  - (iv) permit Beneficial Interests to be quoted or listed on any securities exchange; or

(v) take steps designed to facilitate the development of a secondary market in the Beneficial Interests (such as placing advertisements, distributing marketing materials or collecting or publishing information regarding prices at which the Beneficial Interests may be transferred).

Section 2.04. Initial Conveyance by Initial Grantor and Payment of Trust Expenses by Trust Administrator.

(a) The Initial Grantor hereby sells, assigns, transfers, conveys and sets over to the Owner Trustee the sum of \$20,000. The Owner Trustee hereby acknowledges receipt in trust from the Initial Grantor, as of the date hereof, of the foregoing contribution, which constitutes the initial Trust Estate and has been deposited in the Fee Account. After the Closing Date, the Trust Administrator shall promptly replenish the Fee Account upon written request of the Owner Trustee so that the Fee Account balance is \$20,000.

(b) Except to the extent this Agreement expressly provides for payment by the Grantor and/or the Holders of the Owner Trustee's expenses or liabilities, the Trust Administrator shall pay organizational and operational expenses of the Trust as they may arise to the extent the amounts in the Fee Account are insufficient to pay such amounts, or shall, upon the request of the Owner Trustee, promptly reimburse the Owner Trustee for any such amounts paid by the Owner Trustee.

Section 2.05. Conveyance of Note and Successor Grantor.

(a) The Successor Grantor hereby sells, assigns, transfers, conveys and sets over to the Trust the Note and agrees to deliver the Note to the Initial Grantor for assignment and re-registration in the name of the Trust on the date hereof. In consideration for the foregoing, the Initial Grantor sells, assigns, transfers, conveys and sets over to the Successor Grantor all of its Beneficial Interest in the Trust. The Initial Grantor shall deliver to the Owner Trustee the Note that has been assigned and re-registered in the name of the Trust.

(b) Upon the Owner Trustee's receipt of the Note registered in the name of the Trust 100% of the Initial Grantor's Beneficial Interest automatically shall transfer to the Successor Grantor; provided, however, that the Successor Grantor shall be admitted to the Trust only following Owner Trustee's receipt and approval of such documentation requested from Successor Grantor by Owner Trustee in accordance with its "know your client" procedures.

Section 2.06. Declaration of Trust and Income Tax Provisions.

(a) The Owner Trustee hereby declares that it will hold the Trust Estate provided to it for the use and benefit of the Holders. It is the intention of the parties hereto that the Trust constitutes a statutory trust under the Delaware Trust Statute and that this Agreement constitutes the governing instrument of such statutory trust. The parties hereto agree that they will take no action contrary to the foregoing intention. Effective as of the date hereof, the Owner Trustee shall have all rights, powers and authority set forth herein and, to the extent not inconsistent herewith, in the Delaware Trust Statute with respect to accomplishing the purposes of the Trust.

(b) It is the intention of the parties hereto that, for U.S. federal, state and local income tax purposes, the Trust shall be treated as a disregarded entity, and its assets shall be treated as owned by the Grantor (and not as being beneficially owned by the Grantor and the Holders as partners in a partnership). The Grantor agrees to file all income tax returns (including tax elections) in a manner consistent with such intention and the parties hereto agree to take no position or action contrary to the foregoing

intention. Each party represents that it has not made or filed and agrees that it shall not make or file any election for the Trust to be classified as an association for U.S. federal tax income tax purposes under Treasury Regulation Section 301.7701-3(a).

(c) If the Internal Revenue Service (the “IRS”) or any other applicable tax authority requires the Trust to be treated as a partnership for income tax purposes, the following selected U.S. federal income tax provisions shall apply and the Trust Administrator shall perform, or designate a firm of independent accountants to perform and satisfy, the following actions and requirements:

(i) A separate capital account (a “Capital Account”) shall be established and maintained for the Grantor and each Holder treated as a partner therein (collectively, “Partners” and each individually, a “Partner”) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).

(ii) No Partner shall be required to restore any deficit balance in its Capital Account, and no Partner shall be liable for the return of the Capital Account of, or of any capital contribution made to the Trust by, another Partner.

(iii) Each Partner will be required to report on its income tax returns its allocable share of the Trust’s income, gains, losses, deductions and credits without regard to whether corresponding cash distributions are received by that Partner. Income, deductions, gains, losses and credits shall be allocated among the Partners for income tax purposes in a reasonable manner consistent with the economic substance of their respective rights and obligations under this Agreement and in accordance with Treasury Regulations promulgated under Section 704 of the Code.

(iv) The Trust shall, to the extent permitted by law, maintain or cause to be maintained, the books of the Trust on a calendar year basis, using the accrual method of accounting.

(v) The Trust shall deliver to the Partners, as is required by the Code, the applicable Treasury Regulations or otherwise, such information as may be required to enable the Partners to prepare their U.S. federal, state and local tax returns.

(vi) The Trust shall prepare all applicable tax returns as may be required by law. Each Holder agrees to sign and file any and all such tax returns, unless applicable law requires a Partner to sign such documents, in which case such returns shall be signed by the Trust Administrator.

(d) If one may be required, the Trust Administrator shall be the “partnership representative” of the Trust pursuant to the Code and the applicable Treasury Regulations.

(e) The Trust Administrator shall cause the Trust to make such elections as may from time to time be required or appropriate under any applicable state or federal statute or rule or regulation thereunder so as to maintain the Trust’s characterization as a partnership for U.S. federal, state and local income tax purposes.

Section 2.07. Liability of the Holders. The Holders shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the general corporation law of the State of Delaware.

Section 2.08. Title to Trust Property.

(a) Legal title to the Trust Estate shall be vested at all times in the Trust as a separate legal entity. Solely to the extent where applicable law in any jurisdiction requires title to any part of the Trust Estate to be vested in a trustee or trustees, title shall be deemed to be vested in the Owner Trustee, a co-trustee and/or a separate trustee, as the case may be; *provided, however*, title shall only be vested in the Owner Trustee to the extent it gives its prior written consent, which it may grant or withhold in its sole discretion.

(b) The Holders shall not have legal title to any part of the Trust Estate. No transfer by operation of law or otherwise of any interest of the Holders shall operate to terminate this Agreement or the trusts hereunder or entitle any transferee to an accounting or to the transfer to it of any part of the Trust Estate.

Section 2.09. Situs of Trust. The Trust will be located and administered in the State of Delaware. The Trust shall not have any employees; *provided, however*, that nothing herein shall restrict or prohibit the Owner Trustee from having employees within or without the State of Delaware. The only office of the Trust will be at the Corporate Trust Office in Delaware.

Section 2.10. Representations and Warranties of the Grantor. The Grantor hereby represents and warrants to the Owner Trustee, the Trust and the Holders that:

(a) The Grantor is duly organized, validly existing and in good standing under the laws of its organization, with power and authority to own its properties and to conduct its business as such properties are currently owned and such business is presently conducted.

(b) The Grantor is duly qualified to do business, and shall have obtained all necessary licenses and approvals, in all jurisdictions in which the ownership or lease of its property or the conduct of its business shall require such qualifications.

(c) The Grantor has the power and authority to execute and deliver this Agreement and to carry out its terms; the Grantor has full power and authority to sell and assign the property to be sold and assigned to and deposited with the Trust and the Grantor has duly authorized such sale and assignment and deposit to the Trust by all necessary corporate action; and the execution, delivery and performance of this Agreement have been duly authorized by the Grantor by all necessary corporate action.

(d) This Agreement constitutes a legal, valid and binding obligation of the Grantor, enforceable in accordance with its terms, except as enforceability may be subject to or limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(e) The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time) a default under, the governing instrument of the Grantor, or conflict with or breach any of the material terms or provisions of, or constitute (with or without lapse of time) a default under, any indenture, agreement or other instrument to which the Grantor is a party or by which it is bound; or result in the creation or imposition of any lien upon any of its properties pursuant to the terms of any such indenture, agreement or other instrument; or violate any law or, to the best knowledge of the Grantor, any order, rule or regulation applicable to the Grantor of any

court or of any federal or state regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Grantor or its properties.

(f) There are no proceedings or investigations pending or, to the best knowledge of the Grantor, threatened before any court, regulatory body, administrative agency or other tribunal or governmental instrumentality (A) asserting the invalidity of this Agreement, (B) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or (C) seeking any determination or ruling that, in the reasonable judgment of the Grantor, would materially and adversely affect the performance by the Grantor of its obligations under this Agreement.

(g) The Grantor shall not take any action (a) that is inconsistent with the purposes of the Trust set forth in Section 2.03 or (b) that, to the actual knowledge of the Grantor, would result in the Trust (or any portion thereof) becoming subject to any entity level federal income tax.

Section 2.11. Investment Company. The Grantor hereby agrees, and each Holder shall be deemed to have agreed by acceptance of such Beneficial Interest, not to take any action which would cause the Trust to become an “investment company” which would be required to register under the Investment Company Act.

Section 2.12. Granting Clause. It is intended that the conveyance of the Grantor’s, right, title and interest in and to property constituting the Trust Estate pursuant to this Agreement shall constitute, and shall be construed as, a sale of such property and not a grant of a security interest to secure a loan. However, if such conveyance is deemed to be in respect of a loan, it is intended that: (i) the rights and obligations of the parties shall be established pursuant to the terms of this Agreement; (ii) the Grantor hereby grants to the Owner Trustee for the benefit of the Holders a first priority security interest in all of the Grantor’s right, title and interest in, to and under, whether now owned or hereafter acquired, the Trust Estate and all proceeds of any and all property constituting the Trust Estate to secure payment of the Beneficial Interests; and (iii) this Agreement shall constitute a security agreement under applicable law. If the trust created by this Agreement terminates prior to the satisfaction of the claims of any Person holding the Beneficial Interests, the security interest created hereby shall continue in full force and effect and the Owner Trustee shall be deemed to be the collateral agent for the benefit of such Person, and all proceeds shall be distributed as herein provided.



ARTICLE THREE  
TRANSFER OF INTERESTS

Section 3.01. Ownership.

(a) Upon the formation of the Trust by the contribution by the Initial Grantor pursuant to Section 2.04, the Initial Grantor shall be the sole beneficiary of the Trust, owning 100% Percentage Interest of the Beneficial Interests. Upon the conveyance of the Note pursuant to Section 2.05, the Successor Grantor shall be the sole beneficiary of the Trust, owning 100% Percentage Interest of the Beneficial Interests.

(b) Upon the Owner Trustee's receipt of a written direction from a Holder, the Holder's Beneficial Interests may be transferred, in whole or in part, to one or more Holders and the Registrar shall record in the Register the names of the Holders and their Percentage Interests.

(c) A Person shall become a Holder and shall be entitled to the rights and subject to the obligations of a Holder hereunder upon such Person's Beneficial Interest being duly registered in such Person's name pursuant to Section 3.02 and Section 3.03.

(d) Each Holder of a Beneficial Interest or interest therein, whether upon original issuance or subsequent transfer, acknowledges the limitations on the rights of Holders as provided herein, including without limitation the provisions of Section 3.02, and agrees that it shall be bound by the provisions hereof.

Section 3.02. Limitations on Transfer of the Beneficial Interests.

(a) Each Prospective Owner shall be deemed to have represented to, warranted to and agreed with the Grantor, the Trust Administrator, the Owner Trustee, the Registrar and the Trust that so long as it owns any Beneficial Interest:

(i) such Prospective Owner is an Eligible Investor;

(ii) such Prospective Owner is duly authorized to purchase the Beneficial Interests and its purchase of investments having the characteristics of the Beneficial Interests is authorized under, and not directly or indirectly in contravention of, any law, charter, trust instrument or other operative document, investment guidelines or list of permissible or impermissible investments that is applicable to the investor;

(iii) such Prospective Owner understands that each Holder of Beneficial Interests, by virtue of its acceptance thereof, assents to the terms, provisions and conditions of the Agreement.

(iv) such Prospective Owner understands that such Beneficial Interests have not been registered under the Securities Act, and that, if in the future it decides to offer, resell, pledge or otherwise transfer such Beneficial Interests, such Beneficial Interests may be offered, resold, pledged or otherwise transferred only to a Person which the seller reasonably believes is an Eligible Investor, in each case in compliance with the requirements of this Agreement;

(v) such Prospective Owner is not acquiring the Beneficial Interests for, on behalf of or with the assets of an employee benefit plan or other retirement arrangement subject to Title I of

ERISA or to Section 4975 of the Code or an entity deemed to hold the plan assets of any of the foregoing; and

(vi) such Prospective Owner is a corporation for U.S. tax purposes or such transfer would not result in the Trust becoming classified as a “publicly traded partnership” taxable as a corporation under Section 7704 of the Code.

(b) The Holders shall not instruct the Owner Trustee to transfer Beneficial Interests (in whole or in part) to a Prospective Owner, unless the Holder has determined in good faith that the Prospective Owner meets the requirements of Section 3.02(a)(i).

(c) In the event that Beneficial Interests are transferred to a Person that does not meet the requirements of Section 3.02(a)(i) through Section 3.02(a)(vi), such transfer shall be of no force and effect, shall be void *ab initio*, and shall not operate to transfer any rights to such Person, notwithstanding any instructions to the contrary to the Trust, the Owner Trustee, the Registrar, the Grantor or any intermediary; and such Person shall not be entitled to any distributions on such Beneficial Interests for as long as such Person is the Holder of such Beneficial Interests and the Trust shall have the right to compel such Person to transfer such Beneficial Interests to a Person who does meet the requirements of Section 3.02(a)(i) through Section 3.02(a)(vi).

(d) Each Prospective Owner that becomes a Holder of Beneficial Interests hereby agrees to promptly notify the Grantor, the Trust Administrator and the Owner Trustee if it discovers that any of the deemed representations in Section 3.02(a) was incorrect at the time it was made or that changes in facts and circumstances have caused any of the deemed representations in Section 3.02(a) to be incorrect as of any date on which such Person remains a Holder of Beneficial Interests.

(e) Each Holder of Beneficial Interests, intending to be legally bound, does hereby remise, release and forever discharge the Trust, Grantor, Trustee, Registrar and Trust Administrator, and the affiliates of such persons (a “Released Person”) of and from any and all manner of actions, causes of action, suits, debts, accounts, bonds, covenants, agreements, understandings, contracts, controversies, judgments, damages, claims, liabilities, and demands of any kind or nature whatsoever, whether such be presently known or unknown or suspected or unsuspected, whether in law or in equity (“Claims”) which such Holder, now have, claimed to have had, now claim to have, or hereafter can, shall or may claim to have arising out of, relating to any transfer of any Beneficial Interest by, or involving any Released Person to the extent such transfer is not made in accordance with federal and state securities laws and any other restriction specified in this Section 3.02.

(f) Each Holder, by its acceptance thereof, covenants and agrees that it shall not issue interests in or obligations secured by its Beneficial Interests or issue any interest or obligation the timing or amount of payments on which are determined based on the payments (whether actual or expected) on such Beneficial Interests.

### Section 3.03. Registration of Transfer and Exchange of Beneficial Interests.

(a) The Registrar shall keep or cause to be kept, at the office or agency maintained pursuant to Section 3.06, a Register in which, subject to such reasonable regulations as it may prescribe, the Trust shall provide for the registration of Beneficial Interests and of transfers and exchanges of Beneficial Interests as herein provided. The Owner Trustee is hereby appointed as the initial Registrar.

(b) At any time, a Holder of Beneficial Interests may notify the Owner Trustee in writing to mark in the books and records of the Trust that such Beneficial Interests have been transferred or divided

and participated and to mark in such books and records the ownership interest in the Beneficial Interests owned by such transferor and each additional holder, subject to satisfaction of the conditions set forth in Section 3.02.

(c) A Holder may pledge, hypothecate or otherwise grant a security interest in all or any portion of the Beneficial Interests owned by it, without having to satisfy the conditions set forth in Section 3.02, provided, that such pledge, hypothecation, or grant may not be used as an artifice or device to avoid or limit the foregoing prohibitions on transfer.

(d) No service charge shall be made for any registration of transfer or exchange of Beneficial Interests, but the Owner Trustee or the Registrar may require payment of a sum sufficient to cover any expense, tax or governmental charge that may be imposed in connection with any transfer or exchange of Beneficial Interests.

Section 3.04. Persons Deemed Holders. Prior to request for transfer or division and participation of Beneficial Interests, the Owner Trustee, the Registrar or any Paying Agent may treat the Person in whose name any Beneficial Interest is registered in the Register as the owner of such Beneficial Interest for the purpose of receiving distributions pursuant to Section 5.02 and for all other purposes whatsoever, and none of the Owner Trustee, the Registrar or any Paying Agent shall be bound by any notice to the contrary.

Section 3.05. Access to List of Holders' Names and Addresses. The Registrar shall furnish or cause to be furnished to the Trust Administrator, within 15 days after receipt by the Registrar of a written request therefor from the Trust Administrator, a list, in such form as the Trust Administrator may reasonably require, of the names and addresses of the Holders as of the most recent Record Date. If three or more Holders or one or more Holders evidencing not less than 25% Percentage Interest of the Beneficial Interests apply in writing to the Registrar, and such application states that the applicants desire to communicate with other Holders with respect to their rights under this Agreement and such application is accompanied by a copy of the communication that such applicants propose to transmit, then the Registrar shall, within five Business Days after the receipt of such application, afford such applicants access during normal business hours to the current list of Holders. Each Holder, by receiving and holding Beneficial Interests, shall be deemed to have agreed not to hold any of the Grantor, the Trust Administrator, the Registrar or the Owner Trustee accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived. In addition, nothing in this Agreement shall be construed to prohibit the Registrar from providing information or documentation, including documentary evidence of identity, to the parties hereto or to any governmental agency requesting such pursuant to statute or regulation.

Section 3.06. Maintenance of Office or Agency. The Trust shall maintain an office or offices or agency or agencies where Beneficial Interests may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Trust in respect of the Beneficial Interests may be served. The Trust initially designates the Corporate Trust Office as its office for such purposes. The Trust shall give prompt written notice to the Grantor, the Trust Administrator and to the Holders of any change in the location of the Register or any such office or agency.

Section 3.07. Appointment of Paying Agent. The Paying Agent shall make distributions to Holders from the applicable Collection Account pursuant to Section 5.02 and shall report the amounts of such distributions to the Owner Trustee. Any Paying Agent shall have the revocable power to withdraw funds from the applicable Collection Account for the purpose of making the distributions referred to above. The Trust Administrator may revoke such power and remove the Paying Agent (i) for cause, if the Trust Administrator determines that the Paying Agent shall have failed to perform its obligations under

this Agreement in any material respect or (ii) without cause, in its sole and absolute discretion, *provided* that the Trust Administrator shall immediately appoint a successor paying agent. The Paying Agent initially shall be the Owner Trustee (who is hereby appointed as Paying Agent), and any co-paying agent chosen by the Trust Administrator and acceptable to the Owner Trustee. The Owner Trustee shall be permitted to resign as Paying Agent upon 30 days' prior written notice to the Owner Trustee and the Trust Administrator. In the event that the Owner Trustee shall no longer be the Paying Agent, the Trust Administrator shall promptly appoint a successor to act as Paying Agent. The Trust Administrator shall cause such successor Paying Agent or any additional Paying Agent appointed by the Trust Administrator to execute and deliver to the Owner Trustee and the Trust Administrator an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trust and the Trust Administrator that, as Paying Agent, such successor Paying Agent or additional Paying Agent shall hold all sums, if any, held by it for payment to the Holders in trust for the benefit of the Holders until such sums shall be paid to such Holders. The Paying Agent shall return all unclaimed funds to the Owner Trustee and upon removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Owner Trustee. The provisions of Section 7.01, Section 7.02, Section 7.03 and Section 8.01 shall apply to the Owner Trustee if it is acting the role of Paying Agent, for so long as the Owner Trustee shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

ARTICLE FOUR  
ACTIONS BY OWNER TRUSTEE

Section 4.01. Prior Notice to Holders with Respect to Certain Matters.

(a) With respect to the following matters, the Owner Trustee shall not take the following actions unless at least 10 days before the taking of such action, the Owner Trustee shall have notified the Holders in writing of the proposed action and the Majority Holders shall not have notified the Owner Trustee in writing prior to the tenth day after such notice is given that such Holders have withheld consent to such action or provided alternative direction:

(i) the initiation of any claim or lawsuit by the Trust and the compromise of any action, claim or lawsuit brought by or against the Trust;

(ii) the election by the Trust to file an amendment to the Certificate of Trust (unless such amendment is required to be filed under the Delaware Trust Statute);

(iii) the amendment or other change to this Agreement in circumstances where such amendment materially adversely affects the interests of the Holders;

(iv) the appointment pursuant to this Agreement of a successor Registrar, or the consent to the assignment by the Registrar of its obligations under this Agreement;

(v) except as provided in Article Nine, the dissolution, termination or liquidation of the Trust in whole or in part;

(vi) the merger or consolidation of the Trust with or into any other entity, or conveyance or transfer of all or substantially all of the Trust's assets to any other entity;

(vii) doing any act which would make it impossible to carry on the ordinary business of the Trust as described in Section 2.03;

(viii) the confession of a judgment against the Trust;

(ix) the possession of Trust assets, or assignment of the Trust's right to property, for other than a Trust purpose;

(x) causing the Trust to lend any funds to any Person; or

(xi) the change of the Trust's purpose and powers from those set forth in this Agreement.

(b) The Trust Administrator shall cause the Trust to abide by the following restrictions except as set forth elsewhere in this Agreement:

(i) the Trust shall not incur, assume or guaranty any indebtedness nor pay the indebtedness, operating expenses and liabilities of any other entity;

(ii) the Trust shall not engage in any dissolution, liquidation, consolidation, merger or sale of assets;

- (iii) the Trust shall not engage in any business activity in which it is not currently engaged;
  - (iv) the Trust shall not form, or cause to be formed, any subsidiaries;
  - (v) the Trust shall maintain adequate capital in light of its contemplated business operations;
  - (vi) the Trust shall conduct business with its Affiliates on an arm's-length basis;
  - (vii) the Trust shall not follow the directions or instructions of the Grantor; and
  - (viii) the Trust shall not have any of its obligations guaranteed by any of its Affiliates.
- (c) The Trust Administrator shall cause the Trust at all times to:
- (i) maintain books and records separate from any other person or entity;
  - (ii) maintain its office and bank accounts separate from any other person or entity, including the Grantor or any of its Affiliates;
  - (iii) not commingle its assets with those of any other person or entity;
  - (iv) conduct its own business in its own name;
  - (v) pay its own liabilities and expenses only out of its own funds;
  - (vi) observe all organizational formalities necessary to maintain its separate existence and all procedures required under the Delaware Trust Statute;
  - (vii) hold itself out as a separate entity from the Grantor, the Holders and any of their Affiliates, not conduct any business in the name of the Grantor, the Holders or any of their Affiliates, and use stationery, invoices, checks or other business forms under its own name and not that of the Grantor, the Holders or any of their Affiliates or any other person;
  - (viii) correct any known misunderstanding regarding its separate identity; and
  - (ix) not identify itself as a division of any other person or entity.

(d) The Owner Trustee shall not have the power, except upon the direction of the Majority Holders, to (i) institute proceedings to have the Trust declared or adjudicated bankrupt or insolvent, (ii) consent to the institution of bankruptcy or insolvency proceedings against the Trust, (iii) file a petition or consent to a petition seeking reorganization or relief on behalf of the Trust under any applicable federal or state law relating to bankruptcy, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or any similar official) of the Trust or a substantial portion of the property of the Trust, (v) make any assignment for the benefit of the Trust's creditors, (vi) cause the Trust to admit in writing its inability to pay its debts generally as they become due, or (vii) take any action, or cause the Trust to take any action, in furtherance of any of the foregoing.

Section 4.02. Restrictions on Holders' Power. The Holders shall not direct the Owner Trustee to take or to refrain from taking any action if such action or inaction would be contrary to any obligation of the Trust or the Owner Trustee under this Agreement or would be contrary to Section 2.03 and Section

4.01 or applicable law, nor shall the Owner Trustee be obligated to follow any such direction, if given. The Holders, in their capacity as Holders, shall not guarantee any obligations of the Trust.

Section 4.03. Majority Control. Except as expressly provided herein, any action that may be taken by the Holders under this Agreement may be taken by the Majority Holders. Except as expressly provided herein, any written notice of the Holders delivered pursuant to this Agreement shall be effective if signed by the Majority Holders at the time of the delivery of such notice.

ARTICLE FIVE  
APPLICATION OF TRUST FUNDS; CERTAIN DUTIES

Section 5.01. The Fee Account.

(a) The Owner Trustee, in trust for the benefit of the Holders, shall establish and maintain in the name of the Trust an Eligible Account (the “Fee Account”), bearing a designation clearly indicating that the funds deposited therein (without regard to any income or gain resulting from the investment thereof) are held for the benefit of the Holders. Funds on deposit therein shall be held separate and apart from any other moneys of the Owner Trustee. All of the right, title and interest of the Trust in all funds on deposit from time to time in the Fee Account and in all proceeds thereof shall be held for the benefit of the Holders, the Owner Trustee as provided herein and such other persons entitled to distributions therefrom. Except as otherwise expressly provided herein, the Fee Account shall be under the sole dominion and control of the Trust for the benefit of the Holders, subject to the provisions of this Agreement.

(b) Funds on deposit in the Fee Account, if invested, shall be invested by the Owner Trustee pursuant to specific written instructions from the Trust Administrator. In the absence of such written direction, such funds shall be held in a non-interest bearing account.

(c) If, at any time, the Fee Account ceases to be an Eligible Account, the Owner Trustee shall within 30 Business Days establish a new Fee Account as an Eligible Account and shall transfer any cash and/or any investments to such new account.

(d) The Owner Trustee shall deposit in the Fee Account promptly upon receipt any funds delivered to the Owner Trustee by or for the Trust Administrator for deposit into the Fee Account.

(e) On each date that it is entitled to a payment of the Owner Trustee’s fees or the payment of other amounts from the Trust, the Owner Trustee may withdraw from the Fee Account an amount sufficient to pay itself the Owner Trustee’s fee or such other amounts payable on such date. In addition, the Owner Trustee shall withdraw such amounts from the Fee Account and pay or deliver such amounts as directed from time to time by the Trust Administrator.

Section 5.02. Establishing Collection Account; Application of Trust Funds.

(a) The Owner Trustee, in trust for the benefit of the Holders, shall establish and maintain in the name of the Trust an Eligible Account (the “Collection Account”), bearing a designation clearly indicating that the funds deposited therein (without regard to any income or gain resulting from the investment thereof) are held for the benefit of the Holders. Funds on deposit therein shall be held separate and apart from any other moneys of the Owner Trustee. All of the right, title and interest of the Trust in all funds on deposit from time to time in the Collection Account and in all proceeds thereof shall be held for the benefit of the Holders, the Owner Trustee as provided herein and such other persons entitled to distributions therefrom. Except as otherwise expressly provided herein, the Collection Account shall be under the sole dominion and control of the Trust for the benefit of the Holders, subject to the provisions of this Agreement.

(b) Funds on deposit in the Collection Account, if invested, shall be invested by the Owner Trustee pursuant to specific written instructions from the Trust Administrator. In the absence of such written direction, such funds shall be held in a non-interest bearing account.



(c) If, at any time, the Collection Account ceases to be an Eligible Account, the Owner Trustee shall within 30 Business Days establish a new Collection Account as an Eligible Account and shall transfer any cash and/or any investments to such new account.

(d) The Trust Administrator shall deposit or cause to be deposited in the Collection Account immediately upon receipt any cash collections received on or with respect to the Note.

(e) On each Distribution Date (and, with respect to (i) below, at any other time), the Owner Trustee shall make, or cause to be made, allocations and withdrawals of funds from the Collection Account for the following purposes, in the following order of priority, and on the dates indicated:

(i) to withdraw funds deposited in error in the Collection Account;

(ii) to the extent permitted under Section 8.02(b), reimburse the Owner Trustee for fees, reimbursements and indemnities payable to, recoverable by or reimbursable to the Owner Trustee pursuant to this Agreement that has not been paid as of such Distribution Date pursuant to Section 8.02(b);

(iii) except on the final Distribution Date, to deposit funds to the Fee Account to restore the balance therein to \$20,000; and

(iv) to pay any amounts remaining in the Collection Account to the Holders pro rata on the basis of their Percentage Interests.

(f) In the event that any withholding tax is imposed on the Trust's payment (or allocations of income) to a Holder, such tax shall reduce the amount otherwise distributable to such Holder in accordance with this Section 5.02. The Trust is hereby authorized and directed to direct the Paying Agent to retain from amounts otherwise distributable to the Holders sufficient funds for the payment of any tax that is legally owed by the Trust (but such authorization shall not prevent the Trust from contesting any such tax in appropriate proceedings and withholding payment of such tax, if permitted by law, pending the outcome of such proceedings). The amount of any withholding tax imposed with respect to a Holder shall be treated as cash distributed to such Holder at the time it is withheld by the Trust and remitted to the appropriate taxing authority. If the amount withheld was not withheld from actual distributions, the Trust may, at its option, (i) require the Holder to reimburse the Trust for such withholding (and each Holder agrees to reimburse the Trust promptly following such request) or (ii) reduce any subsequent distributions by the amount of such withholding. If there is a possibility that withholding tax is payable with respect to a distribution, the Trust may in its sole discretion direct the Paying Agent to withhold such amounts in accordance with this paragraph (f). In the event that a Holder wishes to apply for a refund of any such withholding tax, the Trust shall reasonably cooperate with such Holder in making such claim so long as such Holder agrees to reimburse the Owner Trustee for any out-of-pocket expenses incurred.

Section 5.03. Method of Payment. Subject to Section 9.01(c), distributions required to be made to Holders on any Distribution Date shall be made to each Holder of record on the preceding Record Date either by wire transfer, in immediately available funds, to the account of such Holder at a bank or other entity having appropriate facilities therefor, if such Holder shall have provided to the Registrar appropriate written instructions at least five Business Days prior to such Distribution Date (which instructions may include a standing order), or, if not, by check mailed to such Holder at the address of such holder appearing in the Register.

Section 5.04. Segregation of Moneys; No Interest. Subject to Section 5.01 and Section 5.02, moneys received by the Trust hereunder and deposited in the Fee Account or the Collection Account shall

be segregated from the Owner Trustee's own assets and the other assets of the Grantor. The Owner Trustee shall not be liable for payment of any interest in respect of such moneys.

Section 5.05. Tax Administration.

(a) The Trust and the Owner Trustee, upon direction from the Trust Administrator, shall comply with all withholding and backup withholding tax requirements under federal (including, without limitation, Sections 1441, 1442, 1445, 1446 and 1471 through 1474 of the Code), state and local law. The Trust shall request, and the Holders shall provide to the Trust, a properly executed IRS Form W-9 and other such forms or certificates as are necessary to establish an exemption from withholding and backup withholding tax with respect to each Holder and any representations and forms as shall reasonably be requested by the Trust or Paying Agent to assist it in determining the extent of, and in fulfilling, its withholding and backup withholding tax obligations.

(b) The Owner Trustee, upon direction and at the expense of the Trust Administrator, shall deliver or shall cause to be delivered to the Holders such information, reports or statements as may be required by the Code and applicable Treasury Regulations and as may be required to enable the Holders to prepare their federal and state income tax returns. In no event shall the Owner Trustee be liable for any liabilities, costs or expenses of the Trust or the Holders arising out of the application of any tax law, including federal, state, foreign or local income or excise taxes or any other tax imposed on or measured by income (or any interest, penalty or addition with respect thereto or arising from a failure to comply therewith).

ARTICLE SIX  
AUTHORITY AND DUTIES OF OWNER TRUSTEE

Section 6.01. General Authority. The Owner Trustee is authorized and directed to execute and deliver or cause to be executed and delivered any document to be entered into by the Trust under the terms hereof to which the Trust is to be a party and each certificate or other document attached as an exhibit to which the Trust is to be a party and any amendment or other agreement or instrument described in Article Three, in each case, in such form as the Trust Administrator or Majority Holders shall approve, as evidenced conclusively by the Owner Trustee's execution thereof.

Section 6.02. General Duties. It shall be the duty of the Owner Trustee:

(a) to discharge (or cause to be discharged) all of its responsibilities pursuant to the terms of this Agreement and to administer the Trust in the interest of the Holders, in accordance with the provisions of this Agreement; and

(b) to cooperate with the Trust Administrator in obtaining and preserving (or causing to be obtained and preserved) the Trust's qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of the Note and each other instrument and agreement included in the Trust Estate; *provided, however*, that the Owner Trustee shall have no obligation to determine whether and to what extent such qualification shall be necessary; and *provided, further*, that the Owner Trustee shall only be required to take action under this Section 6.02(b) if authorized and directed in writing to do so by the Trust Administrator, advanced any necessary costs and provided adequate indemnity, subject in all cases to the protections of Article Seven.

Section 6.03. Action upon Instruction.

(a) Subject to Article Four, the Holders may by written instruction direct the Owner Trustee in the management of the Trust but only to the extent consistent with the limited purpose of the Trust. Such direction may be exercised at any time by written instruction of the Holders pursuant to Article Four.

(b) Notwithstanding any other provision herein, the Owner Trustee shall not be required to take any action hereunder if the Owner Trustee shall have reasonably determined, or shall have been advised by counsel, that such action is likely to result in liability on the part of the Owner Trustee or is contrary to the terms hereof or is otherwise contrary to law.

(c) Whenever the Owner Trustee is unable to decide between alternative courses of action permitted or required by the terms of this Agreement, the Owner Trustee shall promptly give notice (in such form as shall be appropriate under the circumstances) to the Holders requesting instruction as to the course of action to be adopted, and to the extent the Owner Trustee acts in good faith in accordance with any written instruction of the Holders received, the Owner Trustee shall not be liable on account of such action to any Person. If the Owner Trustee shall not have received appropriate instruction within 10 days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement, as it shall deem to be in the best interests of the Holders, and, subject to Section 7.01, shall have no liability to any Person for such action or inaction.

(d) In the event that the Owner Trustee is unsure as to the application of any provision of this Agreement or any such provision is ambiguous as to its application, or is, or appears to be, in conflict with any other applicable provision, or in the event that this Agreement permits any determination by the Owner Trustee or is silent or is incomplete as to the course of action that the Owner Trustee is required to take with respect to a particular set of facts, the Owner Trustee may give notice (in such form as shall be appropriate under the circumstances) to the Holders requesting instruction and, to the extent that the Owner Trustee acts or refrains from acting in good faith in accordance with any such instruction received, the Owner Trustee shall not be liable, on account of such action or inaction, to any Person. If the Owner Trustee shall not have received appropriate instruction within 10 days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement, as it shall deem to be in the best interests of the Holders, and, subject to Section 7.01, shall have no liability to any Person for such action or inaction.

Section 6.04. No Duties Except as Specified in this Agreement or in Instructions. The Owner Trustee shall not have any duty or obligation to manage, make any payment with respect to, register, record, sell, dispose of, or otherwise deal with the Trust Estate, or to otherwise take or refrain from taking any action under, or in connection with, any document contemplated hereby to which the Owner Trustee is a party, except as expressly provided by the terms of this Agreement or in any document or written instruction received by the Owner Trustee pursuant to Section 6.03; and no implied duties (including fiduciary duties) or obligations shall be read into this Agreement against the Owner Trustee. The Owner Trustee shall have no responsibility for any licensing or qualification to do business for the Trust, securities law filings, tax filings or other filings or for filing any financing or continuation statement in any public office at any time or to otherwise perfect or maintain the perfection of any security interest or lien granted to it hereunder or to record this Agreement. The Owner Trustee nevertheless agrees that it will, at its own cost and expense, promptly take all action as may be necessary to discharge any liens on any part of the Trust Estate that result from actions by, or claims against, the Owner Trustee solely in its individual capacity that are not related to its role as Owner Trustee, this Agreement or the ownership or the administration of the Trust Estate.

Section 6.05. No Action Except Under Specified Documents or Instructions. The Owner Trustee shall not manage, control, use, sell, dispose of or otherwise deal with any part of the Trust Estate except (i) in accordance with the powers granted to and the authority conferred upon the Owner Trustee pursuant to this Agreement and (ii) in accordance with any document or instruction delivered to the Owner Trustee pursuant to Section 6.03.

Section 6.06. Restrictions. The Owner Trustee shall not take any action (a) that is inconsistent with the purposes of the Trust set forth in Section 2.03 (to the extent it acts at the direction of another party it shall be entitled to rely conclusively on a certification from the directing party that any action is not inconsistent with the purposes of the Trust) or (b) that, to the actual knowledge of the Owner Trustee, would result in the Trust (or any portion thereof) becoming subject to an entity level tax for federal income tax purposes. The Holders shall not direct the Owner Trustee to take action that would violate the provisions of this Section.

ARTICLE SEVEN  
CONCERNING THE OWNER TRUSTEE

Section 7.01. Acceptance of Trusts and Duties. The Owner Trustee accepts the trusts hereby created and agrees to perform its duties hereunder with respect to such trusts, but only upon the express terms of this Agreement. The Owner Trustee also agrees to disburse all moneys actually received by it constituting part of the Trust Estate upon the terms of this Agreement. The Owner Trustee, in its capacity as Owner Trustee, shall not be answerable or accountable hereunder under any circumstances, except (i) for its own willful misconduct, gross negligence or bad faith or (ii) in the case of the inaccuracy of any representation or warranty contained in Section 7.02 expressly made by the Owner Trustee in its individual capacity. In addition, notwithstanding any other provision herein:

(a) the Owner Trustee shall not be liable for any error of judgment made in good faith by a trust officer of the Owner Trustee;

(b) the Owner Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the instructions of the Grantor, the Trust Administrator or any Holder;

(c) no provision of this Agreement shall require the Owner Trustee to expend or risk funds or otherwise incur any financial liability in the performance of any of its rights or powers hereunder;

(d) the Owner Trustee shall not be responsible for or in respect of the validity or sufficiency of this Agreement or for the due execution hereof by the Grantor, for the form, character, genuineness, sufficiency, value or validity of any of the Trust Estate, the representations, warranties, covenants or indebtedness of the Trust, and the Owner Trustee shall in no event assume or incur any liability, duty or obligation to any Holder, other than as expressly provided for herein;

(e) the Owner Trustee shall not be liable to monitor the performance of or for the default or misconduct of the Grantor, the Trust Administrator or any other Person;

(f) the Owner Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement, or to institute, conduct or defend any litigation under this Agreement or otherwise or in relation to this Agreement, at the request, order or direction of any of the Holders, unless such Holders have advanced any necessary costs and offered to the Owner Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred by the Owner Trustee therein; and

(g) the right of the Owner Trustee to perform any discretionary act enumerated in this Agreement shall not be construed as a duty, and the Owner Trustee shall not be answerable for other than its gross negligence, bad faith or willful misconduct in the performance of any such act.

Section 7.02. Representations and Warranties. Delaware Trust Company hereby represents and warrants to the Trust Administrator and the Grantor, for the benefit of the Holders, that:

(a) Delaware Trust Company is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware. It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

(b) Delaware Trust Company has taken all corporate action necessary to authorize the execution and delivery by it of this Agreement, and this Agreement will be executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its behalf.

(c) None of the execution or the delivery by it of this Agreement, the consummation by it of the transactions contemplated hereby, or compliance by it with any of the terms or provisions hereof, will contravene any federal or Delaware law, governmental rule or regulation applicable to Delaware Trust Company's trust powers or any judgment or order binding on it, or constitute any default under its charter documents or bylaws or any indenture, mortgage, contract, agreement or instrument to which it is a party or by which any of its properties may be bound.

(d) The execution, delivery, authentication and performance by it of this Agreement will not require the authorization, consent or approval of, the giving of notice to, the filing or registration with, or the taking of any other action with respect to, any federal or State of Delaware governmental authority or agency applicable to its trust powers.

(e) This Agreement, assuming due authorization, execution and delivery by the Grantor and the Trust Administrator, constitutes a valid, legal and binding obligation of Delaware Trust Company, enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally and to general principles of equity, regardless of whether such enforcement is considered in a proceeding in equity or at law.

(f) Delaware Trust Company is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency, which default might have consequences that would materially and adversely affect the condition (financial or other) or operations of Delaware Trust Company or its properties or might have consequences that would materially adversely affect its performance hereunder.

(g) No litigation is pending or, to the best of knowledge of Delaware Trust Company, threatened against Delaware Trust Company which would prohibit its entering into this Agreement or performing its obligations under this Agreement.

Section 7.03. Reliance; Advice of Counsel. (a) Except as provided in Section 7.01, the Owner Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond, or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Owner Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the method of determination of which is not specifically prescribed herein, the Owner Trustee may for all purposes hereof rely on a certificate, signed by the president or any vice president or by the treasurer or other authorized officers of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(b) In the exercise or administration of the trusts hereunder and in the performance of its duties and obligations under this Agreement, the Owner Trustee (i) may at the expense of the Trust act directly or through its agents or attorneys pursuant to agreements entered into with any of them, and the Owner Trustee shall not be liable for the conduct or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Owner Trustee in good faith, and (ii) may consult with counsel, accountants and other skilled Persons to be selected in good faith by it. The Owner Trustee shall

not be liable for anything done, suffered or omitted in good faith by it in accordance with the written opinion or advice of any such counsel, accountants or other such Persons pursuant to this Agreement. To the fullest extent permitted by law and notwithstanding anything in this Agreement to the contrary, the Owner Trustee shall not be personally liable for (x) indirect, incidental, special, consequential or punitive damages, however styled, including, without limitation, lost profits or (y) the acts or omissions of any nominee, correspondent, clearing agency or securities depository through which it holds the Trust's securities or assets. The Owner Trustee shall not be liable or responsible for delays or failures in the performance of its obligations hereunder arising out of or caused, directly or indirectly, by circumstances beyond its control (such acts include but are not limited to acts of God, strikes, lockouts, riots, acts of war and interruptions, losses or malfunctions of utilities, computer (hardware or software) or communications services); it being understood that the Owner Trustee shall use commercially reasonable efforts to resume performance as soon as reasonably practicable under the circumstances. Each of the parties hereto hereby agrees and, as evidenced by its acceptance of any benefits hereunder, any Holder agrees that the Owner Trustee in any capacity (x) has not provided and will not provide in the future, any advice, counsel or opinion regarding the tax, financial, investment, securities law or insurance implications and consequences of the formation, funding and ongoing administration of the Trust, including, but not limited to, income, gift and estate tax issues, insurable interest issues, and the initial and ongoing selection and monitoring of financing arrangements, (y) has not made any investigation as to the accuracy of any representations, warranties or other obligations of the Trust under any contract to which the Trust is a party and shall have no liability in connection therewith and (z) the Owner Trustee has not prepared or verified, and shall not be responsible or liable for, any information, disclosure or other statement in any disclosure or offering document or in any other document issued or delivered in connection with the sale or transfer of the Beneficial Interests. It shall be the Trust Administrator's duty and responsibility, and not the Owner Trustee's duty or responsibility, to cause the Trust to respond to, defend, participate in or otherwise act in connection with any regulatory, administrative, governmental, investigative or other proceeding or inquiry relating in any way to the Trust, its assets or the conduct of its business.

Section 7.04. Not Acting in Individual Capacity. Except as provided in this Article, in accepting the trusts hereby created, Delaware Trust Company acts solely as Owner Trustee hereunder and not in its individual capacity, and all Persons having any claim against the Owner Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust Estate for payment or satisfaction thereof.

Section 7.05. Owner Trustee Not Liable for Beneficial Interests or Note. The recitals contained herein shall be taken as the statement of the Grantor, and the Owner Trustee assumes no responsibility for the correctness thereof. The Owner Trustee makes no representations as to the validity or sufficiency of this Agreement or related documents. The Owner Trustee shall at no time have any liability for or with respect to the legality, validity and enforceability of any Note or the perfection and priority of any security interest created by any Note or the maintenance of any such perfection and priority, or for or with respect to the sufficiency of the Trust Estate or its ability to generate the payments to be distributed to Holders under this Agreement, including, without limitation: the existence, condition and ownership of any Note; or the existence and enforceability of any insurance thereon; the existence and contents of any Note on any computer or other record thereof; the validity of the assignment of any Note to the Trust or of any intervening assignment; the performance or enforcement of any Note.

Section 7.06. Doing Business in Other Jurisdictions. Notwithstanding anything contained herein to the contrary, Delaware Trust Company shall not be required to take any action in any jurisdiction other than in the State of Delaware if the taking of such action will (i) require the consent or approval or authorization or order of or the giving of notice to, or the registration with or the taking of any other action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware; (ii) result in any fee, tax or other governmental charge under the laws of any

jurisdiction or any political subdivisions thereof in existence on the date hereof other than the State of Delaware becoming payable by Delaware Holding Services, Inc.; or (iii) subject Delaware Holding Services, Inc. to personal jurisdiction in any jurisdiction other than the State of Delaware for causes of action arising from acts unrelated to the consummation of the transactions by Delaware Holding Services, Inc. contemplated hereby. The Owner Trustee shall be entitled to obtain advice of counsel (which advice shall be an expense of the Trust) to determine whether any action required to be taken pursuant to the Agreement results in the consequences described in clauses (i), (ii) and (iii) of the preceding sentence. In the event that said counsel advises the Owner Trustee that such action will result in such consequences, the Owner Trustee will appoint an additional trustee pursuant to Section 10.05 to proceed with such action.

Section 7.07. Licenses. The Owner Trustee shall cooperate with the Trust Administrator in causing the Trust to use its best efforts to obtain and maintain the effectiveness of any licenses required in connection with this Agreement and the transactions contemplated hereby and thereby until such time as the Trust shall terminate in accordance with the terms hereof; *provided, however*, that the Owner Trustee shall have no obligation to determine whether and to what extent such licensing shall be necessary; and *provided, further*, that the Owner Trustee shall only be required to take action under this Section 7.07 if authorized and directed in writing to do so by the Trust Administrator, advanced any necessary costs and provided adequate indemnity, subject in all cases to the protections of this Article Seven.

Section 7.08. Liability of Registrar and Paying Agent. All provisions affording protection to or limiting the liability of the Owner Trustee shall inure as well to the Registrar and Paying Agent.

Section 7.09. Statements and Reports to the Trust Administrator and Holders.

(a) No later than the fifth Business Day of each month, the Owner Trustee shall provide to the Trust Administrator a statement setting forth the cash balances and investments held by the Trust in the Fee Account as of the last day of the previous calendar month, and such other matters as mutually agreed upon by the Owner Trustee and the Trust Administrator in a form mutually agreed upon by the Owner Trustee and the Trust Administrator;

(b) On each Distribution Date, the Owner Trustee shall provide to the Holders and the Trust Administrator such report as the Trust Administrator shall provide to the Owner Trustee in respect of such Distribution Date, which report shall set forth the amount of the distribution on such Distribution Date to Holders and any additional information provided to it by the Trust Administrator for forwarding to the Holders; and

(c) Annually, upon request, in January of each year, the Owner Trustee shall furnish to each Person that was a Holder during the prior calendar year a statement showing the aggregate amounts received by such Person with respect to the Beneficial Interests during the prior calendar year.



ARTICLE EIGHT  
COMPENSATION OF OWNER TRUSTEE

Section 8.01. Owner Trustee's Fees and Expenses.

(f) The Owner Trustee shall receive as compensation for its services hereunder as provided in the letter agreement with the Trust Administrator.

(g) The Owner Trustee (in its individual capacity) may earn compensation in the form of short-term interest ("float") on items like uncashed distribution checks (from the date issued until the date cashed), funds that the Owner Trustee is directed not to invest, deposits awaiting investment direction or received too late to be invested overnight in previously directed investments.

Section 8.02. Indemnification.

(a) To the fullest extent permitted by applicable law, Delaware Trust Company and the Owner Trustee, and its officers, directors, employees and agents (each an "Indemnified Party") shall be entitled to be indemnified and held harmless by the Trust from and against any and all liabilities, obligations, indemnity obligations, losses (excluding loss of anticipated profits), damages, taxes, claims, actions and suits, and any and all reasonable costs, expenses and disbursements (including reasonable legal and consultants' fees and expenses and other fees and expenses incurred in connection with the enforcement of indemnification rights) of any kind and nature whatsoever (collectively, the "Expenses") which may at any time be imposed on, incurred by or asserted against Delaware Trust Company or the Owner Trustee or any other Indemnified Party in any way relating to or arising out of this Agreement, the Trust Estate, the administration of the Trust Estate or any action or inaction of the Owner Trustee hereunder, except to the extent that such Expenses arise out of or result from (i) the Owner Trustee's own willful misconduct, bad faith or gross negligence, (ii) the inaccuracy of any of the Owner Trustee's representations or warranties contained in Section 7.02, (iii) taxes based on or measured by any fees, commissions or compensation received by the Owner Trustee for acting as such in connection with any of the transactions contemplated by this Agreement and (iv) the Owner Trustee's failure to use due care to receive, manage and disburse moneys actually received by it in accordance with the terms hereof. The indemnities contained in this Section shall survive the resignation or termination of the Owner Trustee or the termination of this Agreement.

(b) Any fees, reimbursements and indemnities to Delaware Trust Company or the Owner Trustee or any other Indemnified Party pursuant to this Section 8.02 shall be payable: *first*, out of amounts on deposit in the Fee Account prior to payments on the Beneficial Interests; *second*, to the extent not paid pursuant to clause *first* within 60 days of first being incurred, by (i) the Trust Administrator to the extent this Agreement expressly specifies that the Trust Administrator shall pay such fees, reimbursements and indemnities or (ii) by the Trust Administrator; and *third*, to the extent not paid pursuant to clause *second* within 90 days of first being incurred, on the immediately succeeding Distribution Date out of the Collection Account to the extent not paid prior to such Distribution Date.

Section 8.03. Payments to the Owner Trustee. Any amounts paid to the Owner Trustee pursuant to this Article Eight shall be deemed not to be a part of the Trust Estate immediately after such payment.

ARTICLE NINE  
TERMINATION OF TRUST AGREEMENT

Section 9.01. Termination of Trust Agreement.

(a) The bankruptcy, liquidation, dissolution, death or incapacity of any Holder shall not (x) operate to terminate this Agreement or the Trust, (y) entitle such Holder's legal representatives or heirs to claim an accounting or to take any action or proceeding in any court for a partition or winding up of all or any part of the Trust or Trust Estate or (z) otherwise affect the rights, obligations and liabilities of the parties hereto.

(b) The Trust shall be dissolved on the earliest of:

(i) the date on which all of the Trust Assets have been liquidated and proceeds distributed to the Holders;

(ii) the date on which all assets of the Trust Administrator have been liquidated and distributed to the Trust Administrator's creditors and shareholders;

(iii) the date on which the Trust Administrator elects to dissolve the Trust.

(c) Notice of any dissolution of the Trust shall be given by the Owner Trustee within five Business Days of receipt of notice of such dissolution from the Trust Administrator. The Trust Administrator shall provide written notice to the Owner Trustee stating (i) the Distribution Date upon or with respect to which final payment of the Beneficial Interests shall be made, (ii) the amount of any such final payment (or the amount of final in-kind distributions, if any, including, without limitation, the Note or interests therein) and (iii) that the Record Date otherwise applicable to such Distribution Date is not applicable, payments being made only on such final Distribution Date. The Owner Trustee shall give such notice to the Registrar (if other than the Owner Trustee) and the Paying Agent at the time such notice is given to Holders. The Trust Administrator shall windup or cause the windup of the Trust.

(d) Upon receipt of direction from the Trust Administrator that the Trust has been wound up in accordance with Section 3808(e) of the Delaware Trust Statute, the Owner Trustee shall cause the Certificate of Trust to be cancelled by filing, at the expense of the Trust Administrator, a certificate of cancellation with the Delaware Secretary of State in accordance with the provisions of Section 3810 of the Delaware Trust Statute and, thereupon, the Trust shall terminate and this Agreement (other than Article Eight, which shall survive) shall be of no further force or effect.

ARTICLE TEN  
SUCCESSOR OWNER TRUSTEES AND ADDITIONAL OWNER TRUSTEES

Section 10.01. Eligibility Requirements for Owner Trustee. The Owner Trustee shall at all times be a company satisfying the provisions of Section 3807(a) of the Delaware Trust Statute and authorized to exercise corporate trust powers. In case at any time the Owner Trustee shall cease to be eligible in accordance with the provisions of this Section, the Owner Trustee shall resign immediately in the manner and with the effect specified in Section 10.02.

Section 10.02. Resignation or Removal of Owner Trustee.

(a) The Owner Trustee may at any time resign and be discharged from the trusts hereby created by giving 30 days' prior written notice thereof to the Trust Administrator. Upon receiving such notice of resignation, the Trust Administrator shall promptly appoint a successor Owner Trustee meeting the eligibility requirements of Section 10.01 by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Owner Trustee and one copy to the successor Owner Trustee. If no successor Owner Trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Owner Trustee, the Trust Administrator or any Holder may petition any court of competent jurisdiction for the appointment of a successor Owner Trustee.

(b) If at any time the Owner Trustee shall cease to be eligible in accordance with the provisions of Section 10.01 and shall fail to resign after written request therefor by the Trust Administrator, or if at any time the Owner Trustee shall be legally unable to act, or shall be adjudged bankrupt or insolvent, or a receiver of the Owner Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Owner Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Trust Administrator may remove the Owner Trustee. If the Trust Administrator shall remove the Owner Trustee under the authority of the immediately preceding sentence, the Trust Administrator shall promptly appoint a successor Owner Trustee meeting the eligibility requirements of Section 10.01 by written instrument, in duplicate, one copy of which instrument shall be delivered to the outgoing Owner Trustee so removed and one copy to the successor Owner Trustee, and shall pay all fees owed to the outgoing Owner Trustee.

(c) Any resignation or removal of the Owner Trustee and appointment of a successor Owner Trustee pursuant to any of the provisions of this Section shall not become effective until acceptance of appointment by the successor Owner Trustee pursuant to Section 10.03 and payment of all fees and expenses owed to the outgoing Owner Trustee.

Section 10.03. Successor Owner Trustee.

(a) Any successor Owner Trustee appointed pursuant to Section 10.02 shall execute, acknowledge and deliver to the Trust Administrator and to its predecessor Owner Trustee an instrument accepting such appointment under this Agreement, and thereupon the resignation or removal of the predecessor Owner Trustee shall become effective, and such successor Owner Trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor under this Agreement, with like effect as if originally named as Owner Trustee. The predecessor Owner Trustee shall upon payment of its fees and expenses deliver to the successor Owner Trustee all documents and statements and monies held by it under this Agreement; and the Trust Administrator and the predecessor Owner Trustee shall execute and deliver such instruments

and do such other things as may reasonably be required for fully and certainly vesting and confirming in the successor Owner Trustee all such rights, powers, duties and obligations.

(b) No successor Owner Trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor Owner Trustee shall be eligible pursuant to Section 10.01.

(c) Upon acceptance of appointment by a successor Owner Trustee pursuant to this Section, the Trust Administrator shall mail notice thereof to Holders. If the Trust Administrator shall fail to mail such notice within 10 days after acceptance of such appointment by the successor Owner Trustee, the successor Owner Trustee shall cause such notice to be mailed at the expense of the Trust Administrator.

Section 10.04. Merger or Consolidation of Owner Trustee. Any Person into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Owner Trustee, shall be the successor of the Owner Trustee hereunder, without the execution or filing of any instrument or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding; *provided*, that such Person shall be eligible pursuant to Section 10.01.

Section 10.05. Appointment of Co-Trustee or Separate Trustee. Notwithstanding any other provisions of this Agreement, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located or any other purpose hereunder, the Trust Administrator and the Owner Trustee acting jointly shall have the power and shall execute and deliver all instruments to appoint one or more Persons approved by the Trust Administrator to act as co-trustee, jointly with the Owner Trustee, or as separate trustee or separate trustees, of all or any part of the Trust Estate, and to vest in such Person, in such capacity, such title to the Trust or any part thereof and, subject to the other provisions of this Section, such powers, duties, obligations, rights and trusts as the Trust Administrator may consider necessary or desirable. If the Trust Administrator shall not have joined in such appointment within 15 days after the receipt by it of a request so to do, the Owner Trustee alone shall have the power to make such appointment. No co-trustee or separate trustee under this Agreement shall be required to meet the terms of eligibility as a successor Owner Trustee pursuant to Section 10.01, and no notice of the appointment of any co-trustee or separate trustee shall be required pursuant to Section 10.03. Each separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(a) Unless otherwise provided in the instrument of appointment, all rights, powers, duties and obligations conferred or imposed upon the Owner Trustee shall be conferred upon and exercised or performed by the Owner Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Owner Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Trust Estate or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Trust Administrator;

(b) No trustee under this Agreement shall be personally liable by reason of any act or omission of any other trustee under this Agreement; and

(c) The Trust Administrator and the Owner Trustee acting jointly may at any time accept the resignation of or remove any separate trustee or co-trustee.

Any notice, request or other writing given to the Owner Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Agreement and the conditions of this Article. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Owner Trustee or separately, as may be provided therein, subject to all the provisions of this Agreement, specifically including every provision of this Agreement relating to the conduct of, affecting the liability of, or affording protection to, the Owner Trustee. Each such instrument shall be filed with the Owner Trustee and a copy thereof given to the Trust Administrator.

Any separate trustee or co-trustee may at any time appoint the Owner Trustee as its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Agreement on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and may be exercised by the Owner Trustee, to the extent permitted by law, without the appointment of a new or successor co-trustee or separate trustee.

ARTICLE ELEVEN  
MISCELLANEOUS

Section 11.01. Supplements and Amendments.

(a) This Agreement may be amended by the Trust Administrator and the Owner Trustee, without the consent of any of the Holders, (i) to correct any mistake or cure any ambiguity, (ii) to correct or supplement any provision herein that may be inconsistent with any other provision herein, or (iii) to make any other provisions with respect to matters or questions arising under this Agreement; *provided*, that such action under clause (iii) shall not, as evidenced by an Opinion of Counsel, adversely affect in any material respect the interests of any Holder, cause the Trust (or any portion thereof) to be subject to an entity level tax for federal income tax purposes. Notwithstanding the preceding sentence, an opinion shall be required with respect to tax matters as set forth in this paragraph.

(b) This Agreement may also be amended from time to time by the Trust Administrator and the Owner Trustee and the consent of the Holders evidencing not less than 66⅔% Percentage Interest of the Beneficial Interests, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of Holders; *provided, however*, that no such amendment shall (a) reduce in any manner the amount of, or accelerate or delay the timing of, distributions that shall be required to be made for the benefit of the Holders or (b) reduce the aforesaid Percentage Interest of the Beneficial Interests required to consent to any such amendment, without the consent of the Holders of all the outstanding Beneficial Interests affected thereby; *provided, however*, that such action shall not, as evidenced by an Opinion of Counsel, cause the Trust (or any portion thereof) to be subject to an entity level tax for federal income tax purposes; and *provided, further*, that no Opinion of Counsel shall be required if the Trust Administrator consents to such action.

(c) Promptly after the execution of any such amendment or consent, the Owner Trustee shall furnish written notification of the substance of such amendment or consent to each Holder.

(d) It shall not be necessary for the consent of Holders pursuant to this Section to approve the particular form of any proposed amendment or consent, but it shall be sufficient if such consent shall approve the substance thereof. The manner of obtaining such consents (and any other consents of Holders provided for in this Agreement) and of evidencing the authorization of the execution thereof by Holders shall be subject to such reasonable requirements as the Owner Trustee may prescribe.

(e) Promptly after the execution of any amendment to the Certificate of Trust, the Owner Trustee shall cause the filing of such amendment with the Secretary of State.

(f) Prior to the execution of any amendment to this Agreement or the Certificate of Trust, the Owner Trustee shall be entitled to receive and rely upon an officer's certificate or Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Agreement. The Owner Trustee may, but shall not be obligated to, enter into any such amendment that affects the Owner Trustee's own rights, duties or immunities under this Agreement or otherwise.

Section 11.02. No Legal Title to Trust Estate in Holders

. The Holders shall not have legal title to any part of the Trust Estate. The Holders shall be entitled to receive distributions only in accordance with Articles Article Five and Article Nine. No

transfer, by operation of law or otherwise, of any right, title or interest of the Holders to and in their ownership interest in the Trust Estate shall operate to terminate this Agreement or the trusts hereunder or entitle any transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

Section 11.03. Limitations on Rights of Others. The provisions of this Agreement are solely for the benefit of the Owner Trustee (including each Indemnified Party), the Trust Administrator, the Trust Administrator and the Holders and nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Trust Estate or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

Section 11.04. Notices. (a) Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing and shall be deemed given upon receipt by the intended recipient or three Business Days after mailing if mailed by certified mail, postage prepaid (except that notice to the Owner Trustee shall be deemed given only upon actual receipt by the Owner Trustee), to the applicable address specified below for each party or, as to each party, at such other address as shall be designated by such party in a written notice to each other party:

(i) in the case of the Owner Trustee, at the Corporate Trust Office; and

(ii) in the case of the Trust Administrator, at 56 33rd Avenue South #279, St. Cloud, MN 56301.

(b) Any notice required or permitted to be given to a Holder shall be given by first-class mail, postage prepaid, at the address of such Holder as shown in the Register. Any notice so mailed within the time prescribed in this Agreement shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

Section 11.05. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 11.06. Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 11.07. Successors and Assigns. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, each of the Trust Administrator and its permitted assignees, the Owner Trustee and its successors and each Holder and its successors and permitted assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by a Holder shall bind the successors and assigns of such Holder.

Section 11.08. No Petition.

(a) Delaware Trust Company, by entering into this Agreement, and each Holder, by accepting Beneficial Interests, by accepting the benefits of this Agreement, hereby covenant and agree that they will not at any time institute against the Trust Administrator or the Trust, or join in any institution against the Trust Administrator or the Trust of, any bankruptcy proceedings under any United States federal or state bankruptcy or similar law in connection with any obligations relating to the Beneficial Interests or this Agreement; *provided, however*, nothing in this Section shall preclude, or be

deemed to stop, Delaware Trust Company (i) from taking any action in (A) any case or proceeding voluntarily filed or commenced by the Trust Administrator of the Trust or (B) any involuntary insolvency proceeding filed or commenced by a Person other than the Owner Trustee, or (ii) from commencing against the Trust or the Trust Administrator or any of its property any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceeding.

Section 11.09. No Recourse. Each Holder by accepting Beneficial Interests acknowledges that such Holder's Beneficial Interest represents a beneficial ownership interest in the Trust only and does not represent an interest in or an obligation of the Trust Administrator or the Owner Trustee and no recourse may be had against such parties or their assets, except as may be expressly set forth or contemplated in this Agreement.

Section 11.10. Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 11.11. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. THE VALIDITY AND CONSTRUCTION OF THIS TRUST AGREEMENT AND ALL AMENDMENTS HERETO SHALL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE, AND THE RIGHTS OF ALL PARTIES HERETO AND THE EFFECT OF EVERY PROVISION HEREOF SHALL BE SUBJECT TO AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF; *PROVIDED, HOWEVER*, THAT THE PARTIES HERETO AND THE HOLDERS INTEND THAT THE PROVISIONS HEREOF SHALL CONTROL OVER ANY CONTRARY OR LIMITING STATUTORY OR COMMON LAW OF THE STATE OF DELAWARE (OTHER THAN THE DELAWARE TRUST STATUTE) AND THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THERE SHALL NOT BE APPLICABLE TO THE TRUST, THE TRUST ADMINISTRATOR, THE GRANTOR, THE OWNER TRUSTEE, THE HOLDERS OR THIS TRUST AGREEMENT ANY PROVISION OF THE LAWS (STATUTORY OR COMMON) OF THE STATE OF DELAWARE (OTHER THAN THE DELAWARE TRUST STATUTE) PERTAINING TO TRUSTS WHICH RELATE TO OR REGULATE IN A MANNER INCONSISTENT WITH THE TERMS HEREOF: (A) THE FILING WITH ANY COURT OR GOVERNMENTAL BODY OR AGENCY OF TRUSTEE ACCOUNTS OR SCHEDULES OF TRUSTEE FEES AND CHARGES, (B) AFFIRMATIVE REQUIREMENTS TO POST BONDS FOR TRUSTEES, OFFICERS, AGENTS, OR EMPLOYEES OF A TRUST, (C) THE NECESSITY FOR OBTAINING COURT OR OTHER GOVERNMENTAL APPROVAL CONCERNING THE ACQUISITION, HOLDING OR DISPOSITION OF REAL OR PERSONAL PROPERTY, (D) FEES OR OTHER SUMS PAYABLE TO TRUSTEES, OFFICERS, AGENTS OR EMPLOYEES OF A TRUST, (E) THE ALLOCATION OF RECEIPTS AND EXPENDITURES TO INCOME OR PRINCIPAL, (F) RESTRICTIONS OR LIMITATIONS ON THE PERMISSIBLE NATURE, AMOUNT OR CONCENTRATION OF TRUST INVESTMENTS OR REQUIREMENTS RELATING TO THE TITLING, STORAGE OR OTHER MANNER OF HOLDING OF TRUST ASSETS, (G) THE EXISTENCE OF RIGHTS OR INTERESTS (BENEFICIAL OR OTHERWISE) IN TRUST ASSETS, (H) THE ABILITY OF BENEFICIAL OWNERS OR OTHER PERSONS TO TERMINATE OR DISSOLVE A TRUST, OR (I) THE ESTABLISHMENT OF FIDUCIARY OR OTHER STANDARDS OR RESPONSIBILITIES OR LIMITATIONS ON THE ACTS OR POWERS OF TRUSTEES OR BENEFICIAL OWNERS THAT ARE INCONSISTENT WITH THE LIMITATIONS ON LIABILITY OR AUTHORITIES AND POWERS OF THE OWNER TRUSTEE OR THE HOLDERS SET FORTH OR REFERENCED IN THIS TRUST AGREEMENT. SECTIONS 3540, 3542 AND 3561 OF TITLE 12 OF THE DELAWARE CODE SHALL NOT APPLY TO THE TRUST. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE GRANTOR, THE TRUST ADMINISTRATOR, THE HOLDERS AND THE OWNER TRUSTEE HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) CONSENT TO SUBMIT TO THE



NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF DELAWARE FOR PURPOSES OF ANY ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND (II) AGREE, TO THE EXTENT SUCH PARTY IS NOT A RESIDENT OF THE STATE OF DELAWARE, TO APPOINT IRREVOCABLY AND TO MAINTAIN AN AGENT IN THE STATE OF DELAWARE AS SUCH PARTY'S AGENT FOR ACCEPTANCE OF LEGAL PROCESS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING AGAINST SUCH PARTY WITH THE SAME LEGAL FORCE AND VALIDITY AS IF SERVED UPON SUCH PARTY PERSONALLY WITHIN THE STATE OF DELAWARE, AND TO NOTIFY PROMPTLY EACH OTHER PARTY HERETO OF THE NAME AND ADDRESS OF SUCH AGENT.

THE GRANTOR, THE TRUST ADMINISTRATOR AND THE OWNER TRUSTEE EACH HEREBY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT. INSTEAD, ANY DISPUTE RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

\* \* \* \* \*

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

DELAWARE TRUST COMPANY, as Owner Trustee

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

MANAGED INVESTMENTS OPPORTUNITY CORP., as Initial Grantor and Trust Administrator

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

Accepted and Agreed to by the Successor Grantor Identified Below:

\_\_\_\_\_  
[PRINT NAME OF SUCCESSOR GRANTOR ABOVE]

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

EXHIBIT A

FORM OF CERTIFICATE OF TRUST

THIS Certificate of Trust of MIOC-CN-7 LIQUIDATING TRUST (the “Trust”) is being duly executed and filed by the undersigned, as trustee, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. Code, § 3801 *et seq.*) (the “Act”).

1. Name. The name of the statutory trust formed hereby is MIOC-CN-7 Liquidating Trust.

2. Delaware Trustee. The name and address of the trustee of the Trust in the State of Delaware is Delaware Trust Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

3. Effective Date. This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

Delaware Trust Company,  
not in its individual capacity but solely as  
Owner Trustee.

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