

PAUL TESSIER, AS CO-TRUSTEE OF THE ANNE T. TESSIER FAMILY TRUST, and BLACK TORTUGA GROUP, LLC,  
*Plaintiffs, on behalf of themselves and all others similarly situated,*

AND

STACY R. SCHIFFMAN, ADELAIDA MARTINEZ, WILLIAM D. AND SUSAN M. MADDEN, A.H. ROOT BUILDING, LLC, RYAN AND LISSA ONG LIVING TRUST, ALLA INVESTMENTS, LLC, 2M & 3D LTD., BUN RENTALS, LLC, HUGH G. DYKES III AS TRUSTEE OF THE DYKES FAMILY REVOCABLE TRUST DATED JULY 7, 2004, SYDNEY CRISP AND NICOLA CRISP, DANIEL M. BELL, WILLIAM SMITH, DONNA DEKKER AS TRUSTEE OF THE DEKKER-ROBERTSON FAMILY TRUST; AND HARRY V. AND JOANNE P. HANSEN AS TRUSTEES OF THE HANSEN FAMILY TRUST, LAWRENCE K. SAMUELS AND JANE HEIDER AS TRUSTEES OF THE HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007, JOHN C. POLK AND JANICE C. POLK, AND JAMES PARZIALE, AS TRUSTEE OF THE PARZIALE FAMILY TRUST,

*Plaintiffs, derivatively on behalf of*  
NP SKYLOFT DST

v.

BURGUNDY 523 OFFSHORE FUND, LTD., AXONIC SPECIAL OPPORUNITIES SBL MASTER FUND LP, AXONIC CREDIT OPPORTUNITIES MASTER FUND, LP; ACO SKYLOFT MANAGER LLC; AXONIC CAPITAL, LLC; and CLAYTON DEGIACINTO,

*Defendants.*

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261<sup>ST</sup> JUDICIAL DISTRICT

**JOINT MOTION TO (I) APPROVE SKYLOFT LIQUIDATING TRUST AGREEMENT; (II) APPOINT LIQUIDATING TRUSTEE; AND (III) ASSIGN CLAIMS, RIGHTS AND INTERESTS TO LIQUIDATING TRUST**

Pursuant to the Stipulation of Settlement, dated August 22, 2024 (the “Settlement Stipulation”), Plaintiffs Paul Tessier as Co-Trustee of the Anne T. Tessier Family Trust and Black Tortuga Group, LLC, individually and on behalf of the Class (as defined in the Settlement Stipulation) and derivatively on behalf of NP Skyloft DST (together, the “Class Representatives”); Defendants ACO Skyloft Manager LLC, Axonic Special Opportunities SBL Master Fund LP, Axonic Credit Opportunities Master Fund, LP, Axonic Capital LLC, Burgundy 523 Offshore Fund Ltd., ACO Skyloft Manager LLC, and Clayton DeGiacinto (together, the “Axonic Parties”); and Gregory S. Milligan as the Administrator for the Settlement Stipulation (the “Settlement Administrator”, and with the Class Representatives and Axonic Parties, the “Parties”) jointly request the Court (1) approve the Skyloft Liquidating Trust Agreement, (2) appoint the Liquidating Trustee, (3) authorize the payment of certain fees and expenses by NP Skyloft DST, and (4) authorize the transfer of claims, rights, interests and assets (except Released Claims against Released Parties) from NP Skyloft DST to the Liquidating Trust..

## I. BACKGROUND

Class Representatives and the Axonic Parties entered into the Settlement Stipulation on August 22, 2024, which, among other things, provides for the dissolution of NP Skyloft DST (the “DST”), the formation of a liquidating trust titled “the Skyloft Liquidating Trust”, and the assignment of the DST’s assets to the Skyloft Liquidating Trust (the “Liquidating Trust”). Specifically:

14. Assignment of Claims by NP Skyloft DST to Skyloft Liquidating Trust. As of the Effective Date, all claims and causes of action held by NP Skyloft DST other than Released Claims against Released Parties are assigned and conveyed to a Liquidating Trust pursuant to 12 Del. C. § 3808(d), as further set forth in the Liquidating Trust Order and the Liquidating Trust Agreement. Lead Counsel, Defendant’s Counsel, and the Settlement Administrator’s Counsel shall agree on a proposed form of Liquidating Trust Order, which shall attach a proposed form of the Liquidating Trust Agreement and will be filed at least fourteen (14) Days before the Fairness Hearing. The Liquidating Trust Order shall appoint the Liquidating Trustee, which can be the Settlement Administrator.

15. Dissolution of NP Skyloft DST. The Parties acknowledge and agree, and the Final Order shall make a finding, that the sale of the Skyloft Property constituted a dissolution

under the terms of the NP Skyloft DST Trust Agreement and 12 Del. C. § 3808(c)(2). ... The Parties further acknowledge and agree that any claims or causes of action against third parties that are owned by NP Skyloft DST, with the exception of Released Claims against Released Parties, are assigned to a Liquidation Trust under Section 14 hereto. Within 15 Days after the payment pursuant to Section 3(b) being made to the Settlement Fund, the Axonic Parties will cause NP Skyloft ST, LLC, the signatory trustee of NP Skyloft DST, to file a Certificate of Cancellation of NP Skyloft DST with the Delaware Secretary of State.

On December 5, 2024, the Court will consider entry of the Final Approval Order and Final Judgment approving the Settlement Stipulation on a final basis. In conjunction with that approval, Class Representatives, the Axonic Parties, and the Settlement Administrator have conferred and agreed to the form of Liquidating Trust Agreement attached hereto as **Exhibit A** and hereby request its approval.

The DST currently has \$734,419.32 in cash. The Class Representatives, the Axonic Parties, and the Settlement Administrator have further conferred and agreed that the DST must pay certain fees and expenses to its counsel before its cash and other assets are assigned to the Skyloft Liquidating Trust. These fees and expenses include (1) \$32,818.83 to Burgee & Abramoff PC, counsel to the DST in (i) *Parziale v. Nelson, et al.*, No. 2:21-cv-01803 (C.D. Cal.); (ii) *Puleo, et al. v. Nelson, et al.*, No. 2:21-cv-06443 (C.D. Cal.); (iii) *Ames, et al. v. Nelson, et al.*, No. 2:22-cv-09400 (C.D. Cal.); and (iv) *Collins v. NP Skyloft ST, LLC, et al.*, No. 30-2021-01184473-CU-MC-CXC (Cal. Sup. Ct., Orange Cnty.) (the “California Litigations”); (2) \$18,856.85 to Cain & Skarnulis PLLC, counsel to the DST in *Tri Shield Security & Investigators, LLC v. TCG Skyloft Owner, LLC*, Cause No. D-1-GN-24-001071 (Travis Cnty. Dist. Ct.); and (3) \$1,637.50 to Ripp Grossman & Fitte LLP, counsel to the DST in connection with the sale of the Skyloft Property (as defined in the Settlement Stipulation) to TCG Skyloft Owner, LLC and related work for the benefit of the DST after the sale. The Parties hereby request that the Court approve the payment of such fees and expenses.

Separately, on February 17, 2022, the Court entered its *Order Granting TCG Skyloft Owner, LLC and the Axonic Lenders’ Traditional Motion For Partial Summary Judgment* (the “Summary Judgment”

Order”), and concluded that Patrick Nelson, NP Equity, LLC and Nelson Partners Property Management, LLC (the “Nelson Parties”) had and have no authority to cause NP Skyloft DST, NP Skyloft ST, LLC, and/or NP Skyloft JV, LLC to file or pursue the Underlying Litigation (as defined in the Settlement Stipulation). Consistent with the Summary Judgment Order, the Parties hereby request that the Court find that no other fees and expenses are payable by the DST, including to any counsel hired by the Nelson Parties purportedly on behalf of the DST.

## II. RELIEF REQUESTED

The Skyloft Liquidating Trust Agreement (“Trust Agreement”), agreed by the Parties and attached hereto, is a material aspect of the Settlement Stipulation. The Settlement Stipulation provides an immediate cash recovery for Class Members, while also allowing the Axonic Parties, while denying all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the action or arising out of or related to the Released Claims (as defined in the Settlement Stipulation), to obtain a full release from any current and future claims and obligations by dissolving NP Skyloft DST, for which NP Skyloft ST LLC currently serves as Signatory Trustee, and which is, in turn, controlled by ACO Skyloft Manager LLC.

Approval of the Trust Agreement on the terms set forth in the Proposed Order allows for the DST to pay its outstanding liabilities to its professionals and creates a path forward *after* dissolution of the DST for collection and distribution of other DST assets (including cash held of the benefit of the DST, the Judgment against Patrick Nelson and his entities, and the other claims). Approval of the Trust Agreement will also provide the Liquidating Trustee with the powers to pursue additional recoveries and assets for the benefit of the Class Members (as defined in the Settlement Stipulation), who were investors in the DST and who will be the sole beneficiaries of the Skyloft Liquidating Trust. The Trust Agreement further provides that the Liquidating Trustee will make future distributions to its beneficiaries of any recovered

assets in the same pro rata manner as provided in the Settlement Stipulation (separate and apart from the distribution of the \$9,000,000 Settlement Fund established by the Settlement Stipulation).

Therefore, the approval and implementation of the Trust Agreement, including the appointment of the Liquidating Trustee, is in the best interest of the Class Members because it provides a path forward to recovery on the remaining assets and non-Released Claims.

Accordingly, Class Representatives, Axonic Parties and the Settlement Administrator jointly request that the Court approve the Trust Agreement, payment of fees and expenses owed to professional of the DST, the transfer of the DST's assets, and appointment of the Liquidating Trustee as set forth in the Proposed Order.

Respectfully submitted,  
**WICK PHILLIPS GOULD & MARTIN, LLP**

Dated: November 21, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion for Approval of Liquidating Trust Agreement was served by e-service through efile.texas.gov and/or email on counsel of record on the 21<sup>st</sup> of November, 2024 and will be posted to the website [www.skyloftsettlement.com](http://www.skyloftsettlement.com).

\_\_\_\_\_/s/ Jennifer A. Lloyd\_\_\_\_\_

Jennifer A. Lloyd



# EXHIBIT A

## **SKYLOFT LIQUIDATING TRUST AGREEMENT**

THIS LIQUIDATING TRUST AGREEMENT (this “Trust Agreement”) dated as of the date of complete execution by all parties hereto, by and among Gregory S. Milligan, in his capacity as the Liquidating Trustee and Administrator (the “Liquidating Trustee”) for the assets of NP Skyloft DST (the “DST”), is executed to (i) preserve and monetize the assets of the DST, (ii) facilitate the implementation of the Stipulation of Settlement, dated August 22, 2024, 2024 (the “DST Settlement”) filed in *NP Skyloft DST et al. v. Burgundy 523 Offshore Fund, Ltd.*, Cause No. D-1-GN-21-000097, severed into Cause No. D-1-GN-24-005548 (the “Underlying Litigation”), both before the 261<sup>st</sup> Judicial District Court of Travis County, Texas (the “Presiding Court”); and (iii) preserve the remaining assets and complete the administration of the Stipulation and Plan of Liquidation dated April 19, 2022 with the Nelson Parties (the “Plan of Liquidation”). All capitalized terms used and not otherwise defined in this Trust Agreement but defined in the DST Settlement or the Plan of Liquidation have the meanings ascribed to them in the Settlement or the Plan of Liquidation. In the event the terms in the DST Settlement conflict with the terms in the Plan of Liquidation, the DST Settlement shall control.

**WHEREAS**, on or about April 19, 2022, certain investors in NP Skyloft DST entered into the Settlement and Plan of Liquidation with Nelson Partners, LLC, Nelson Brothers Property Management, Inc. d/b/a Nelson Partners Property Management, Inc., NP Skyloft Equity, LLC, and Patrick Nelson (collectively, the “Nelson Parties”) in the Underlying Litigation;

**WHEREAS**, on or about July 21, 2022, the Presiding Court entered its Final Order of Approval of Liquidation Plan (the “Plan Approval Order”), which approved the Plan of Liquidation as a fair, reasonable and adequate settlement for the claims against the Nelson Parties and appointed Gregory S. Milligan as administrator to implement the Plan (the “Plan Administrator”), the Court further severed implementation of the Plan of Liquidation from the Underlying Case into Cause No. D-1-GN-22-001980 (the “Plan Administration Case”);

**WHEREAS**, the Plan of Liquidation required the Nelson Parties to sell certain real estate to obtain the total Liquidation Proceeds (as defined in the Plan of Liquidation) for the Plan Administrator to administer for the benefit of all persons who purchased or acquired beneficial interests in the DST (the “Investors”). After funding only a portion of the Liquidation Proceeds to the Plan Administrator, the Nelson Parties defaulted and, on September 26, 2023, the Presiding Court entered both (1) an Agreed Final Judgment for \$50 million in favor of the Intervenor<sup>1</sup> (the “Nelson Judgment”), and (2) Findings and Order Granting Plan Administrator Gregory S. Milligan’s Motion for Contempt and for Sanctions (the “Sanctions Award”);

**WHEREAS**, on or about August 22, 2024, certain Investors in NP Skyloft DST,

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<sup>1</sup> As defined in the Nelson Judgment, the “Intervenor” are, collectively, Stacy R. Schiffman, Adelaida Martinez, William D. and Susan M. Madden, A.H. Root Building, LLC, Ryan and Lissa Ong Living Trust, Black Tortuga Group, LLC, Alla Investments, LLC, 2M & 3D Ltd., Texas Limited Partnership, Butt Rentals, LLC, Hugh G. Dykes III, Trustee of the Dykes Family Revocable Trust Dated July 7, 2004, Sydney Crisp and Nicola Crisp, Daniel M. Bell, William Smith, Paul Tessier, Co-Trustee, Anne T. Tessier Family Trust, Donna Dekker, Trustee of the Dekker-Robertson Family Trust, and Harry V. and Joanne P. Hansen, Trustees of the Hansen Family Trust, Lawrence K. Samuels and Jane Heider, Trustees of the Heider Samuels Family Trust Dated June 29, 2007, and John C. Polk and Janice C. Polk, individually and derivatively on behalf of NP Skyloft DST, LLC, a Delaware Statutory Trust and James Parziale, derivatively on behalf of NP Skyloft DST, LLC, a Delaware Statutory Trust.

individually and on behalf of the Class and derivatively on behalf of the DST, entered into the DST Settlement with defendants Axonic Credit Opportunities Master Fund LP, Burgundy 523 Offshore Fund Ltd., Axonic Special Opportunities SBL Master Fund LP, ACO Skyloft Manager LLC, Axonic Capital LLC, and Clayton DeGiacinto (collectively, the “Axonic Parties”) in the Underlying Litigation;

**WHEREAS**, on or about [December 5, 2024], the Presiding Court entered its Final Approval Order and Final Judgment (“Final DST Settlement Order”) approving the DST Settlement;

**WHEREAS**, the Final DST Settlement Order, among other things, (i) approves and appoints Gregory S. Milligan as the Administrator of the DST Settlement (the “DST Settlement Administrator”); (ii) approves the form of this Trust Agreement, and authorizes Milligan to execute this Trust Agreement as Liquidating Trustee; (iii) authorizes the assignment and transfer of all claims of the DST, except Released Claims against Released Parties, to the Liquidating Trust; and (iv) authorizes the dissolution of the DST.

**WHEREAS**, on or about [December 5, 2024], the Presiding Court entered its Order Approving Joint Motion to (I) Approve Skyloft Liquidating Trust Agreement; (II) Appoint Plan Administrator as Liquidating Trustee; (III) Assign Claims, Rights and Interests to Liquidating Trust; and (IV) Approve Transfer of Reserve Funds to the Liquidating Trust (the “Plan Trust Order”);

**WHEREAS**, the Liquidating Trust is established for the purpose of liquidating and distributing all Liquidating Trust Assets for the benefit of all persons who purchased or otherwise acquired beneficial interests the DST and held interests at any point from November 7, 2018 to the Effective Date of the DST Settlement (the “Liquidating Trust Beneficiaries”);

**WHEREAS**, the Liquidating Trust is intended to qualify as a liquidating trust treated as a grantor trust within the meaning of Treasury Regulations Section 301.7701-(4)(d) and is established for the purpose of liquidating and distributing the Liquidating Trust Assets for the benefit of the Liquidating Trust Beneficiaries in accordance therewith;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants and agreements contained herein and in the DST Settlement and Plan Trust Order the parties hereto agree as follows:

## **ARTICLE I. ESTABLISHMENT OF THE TRUST**

1.1 **Establishment of Liquidating Trust**. The Trust shall be known as the “Skyloft Liquidating Trust.” Pursuant to the DST Settlement and the Plan Trust Order, the DST, the Intervenor (individually and on behalf of the Class and derivatively on behalf of the DST), the Plan Administrator, and the Liquidating Trustee hereby establish the Liquidating Trust on behalf of the Liquidating Trust Beneficiaries. The Liquidating Trustee accepts and will hold the Liquidating Trust Assets in trust for the Liquidating Trust Beneficiaries subject to the terms of the DST Settlement, the Plan Trust Order, and this Trust Agreement. The Liquidating Trust is established as a liquidating trust treated as a grantor trust within the meaning of Treasury Regulations Section 301.7701-(4)(d) with no objective or authority to carry on or conduct a trade

or business, or to accept an assignment of any claim or right of action from, or assume any liabilities of, any person or entity other than the DST, the Intervenor, and the Plan Administrator, and no part of the Liquidating Trust Assets or the proceeds, revenue, or income from the Liquidating Trust Assets may be used or disposed of by the Liquidating Trustee in furtherance of any trade or business.

1.2 **Purpose of Liquidating Trust**. The sole purpose of the Liquidating Trust is to liquidate and distribute the Liquidating Trust Assets in a manner calculated to conserve, protect, and maximize the value of the Liquidating Trust Assets. In exercising this purpose, in addition to the powers listed in Section 4.1 of this Trust Agreement, the Liquidating Trustee is authorized to, among other things,

- (a) collect and reduce the assets of the Liquidating Trust to cash,
- (b) prosecute, settle, and otherwise administer the causes of action that are Liquidating Trust Assets,
- (c) file all federal state and local tax returns of the Liquidating Trust and furnish appropriate tax reporting information to the Liquidating Trust Beneficiaries,
- (d) establish reserves and open, maintain, and administer bank accounts as necessary to discharge the duties of the Liquidating Trustee,
- (e) represent the Liquidating Trust before any court of competent jurisdiction with respect to matters concerning the Liquidating Trust and Liquidating Trust Assets; and
- (f) make distributions to the Liquidating Trust Beneficiaries in accordance with the DST Settlement, the Plan Trust Order, the orders of the Presiding Court, and this Trust Agreement.

1.3 **No Additional Beneficiaries**. The Liquidating Trust exists solely for the benefit of the Liquidating Trust Beneficiaries.

1.4 **Assignment and Transfer of Liquidating Trust Assets and Claims to the Liquidating Trust**. As of the Effective Date, the Liquidating Trust shall own and control the following property, interests, and assets, (collectively, the "Liquidating Trust Assets"):

- (a) The DST hereby conveys, transfers, assigns, and delivers to the Liquidating Trust:
  - (i) all of its rights, title, and interests in any assets, except Released Claims against Released Parties (as defined in the DST Settlement), including without limitation, any cash (after payment of certain fees and expenses as approved by the Presiding Court in the Plan Trust Order), accounts receivable, claims, causes of actions, and contingent claims, and

(ii) all of its rights with respect to the Liquidating Trust Assets, including the attorney-client privilege and the protections afforded by the work product doctrine.

(b) The Intervenors hereby convey, transfer, assign, and deliver to the Liquidating Trust:

(i) The Nelson Judgment;

(ii) All direct and derivative claims, causes of action, and requests for relief asserted or assertable in the Underlying Litigation, except Released Claims against Released Parties (as defined in the DST Settlement);

(iii) All direct and derivative claims, causes of action, and requests for relief against any party, except Released Claims against Released Parties (as defined in the DST Settlement), relating to or arising from:

(A) the Plan of Liquidation,

(B) the Presiding Court's Agreed Temporary Injunction dated April 25, 2022 entered in Cause No. D-1-GN-21-0000097,

(C) the Presiding Court's Order Approving Nelson Parties' Motion to Approve Sale of Property for Partial Satisfaction of Joint Stipulation and Liquidation Plan and Partial, and

(D) the sale of Sol y Luna, a two-tower, high-rise luxury student housing complex located in Tucson, Arizona ("Sol y Luna"); and

(iv) all their rights with respect to the Liquidating Trust Assets, including the attorney-client privilege and the protections afforded by the work product doctrine.

(c) The Plan Administrator, solely in his role as Plan Administrator and pursuant to Plan Trust Order, hereby conveys, transfers, assigns, and delivers to the Liquidating Trust:

(i) the Sanctions Award;

(ii) \$250,000.00 of Liquidation Proceeds (as defined in the Plan of Liquidation), plus any additional funds held by the Plan Administrator following issuance of final distributions to Investors under the Plan of Liquidation, as a reserve to fund the Liquidating Trust's and the Liquidating Trustee's fees and expenses (the "Trust Expense Reserve");

(iii) All direct and derivative claims, causes of action, and requests for relief against any party, except Released Claims against Released Parties

(as defined in the DST Settlement), including those relating to or arising from:

- (A) the Plan of Liquidation,
- (B) the Presiding Court's Agreed Temporary Injunction dated April 25, 2022 entered in Cause No. D-1-GN-21-0000097,
- (C) the Presiding Court's Order Approving Nelson Parties' Motion to Approve Sale of Property for Partial Satisfaction of Joint Stipulation and Liquidation Plan and Partial, and
- (D) Sol y Luna; and

(iv) all the Plan Administrator's rights with respect to the Liquidating Trust Assets, including the attorney-client privilege and the protections afforded by the work product doctrine.

1.5 **Title to Liquidating Trust Assets.** On the Effective Date, the Liquidating Trust Assets will be vested in, and transferred to, the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries. As of the Effective Date, the Liquidating Trust will hold legal title to all Liquidating Trust Assets and will succeed to all of the DST's, the Intervenors', the Class's, and the Plan Administrator's right, title, and interest in and to the Liquidating Trust Assets. The Liquidating Trustee hereby declares that he will hold the Liquidating Trust Assets in trust to be administered and disposed of pursuant to the terms of this Trust Agreement, the Plan Trust Order, and the DST Settlement.

1.6 **Governance of the Liquidating Trust.** The Liquidating Trust will be governed by the Liquidating Trustee. The Liquidating Trustee's powers are exercisable consistent with, and in furtherance of, the purposes of this Trust Agreement, the Plan Trust Order, and the DST Settlement. Subject to the terms and conditions of this Trust Agreement, the Liquidating Trustee may delegate responsibility for discrete issues or decisions to one or more third parties subject to continued oversight by the Liquidating Trustee.

1.7 **Appointment of the Liquidating Trustee.** As of the date hereof, the Liquidating Trustee is Gregory S. Milligan. The Liquidating Trustee accepts the trust imposed on him by this Trust Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Trust Agreement, the Plan Trust Order, and the DST Settlement.

1.8 **Liquidating Trust Interests; Transferability.**

- (a) The Liquidating Trustee will maintain a register of the names, addresses, and interest percentages of the Liquidating Trust Beneficiaries based upon the provisions of the DST Settlement that designate the Persons who are entitled to receive the Liquidating Trust Interests. Beneficial interests in the Liquidating Trust (the "Liquidating Trust Interests") will be issued by the Liquidating Trustee to the Liquidating Trust Beneficiaries on a *pro rata*

basis in proportion to their interests in the DST pursuant to the Plan of Distribution, as this term is defined in the DST Settlement.

- (b) The Liquidating Trust Interests may not be transferred, sold, pledged, or otherwise disposed of, nor offered for transfer, sale, or pledge, except for transfers that occur by operation of law.

## **ARTICLE II. DURATION AND TERMINATION OF LIQUIDATING TRUST**

2.1 **Duration**. The duties, responsibilities, and powers of the Liquidating Trustee will terminate after all Liquidating Trust Assets, including causes of action transferred and assigned to the Liquidating Trust, are fully resolved, abandoned, or liquidated and the cash and other amounts held in reserve have been distributed in accordance this Trust Agreement. Except in the circumstances set forth below, the Liquidating Trust will terminate no later than five (5) years after the Effective Date. However, if warranted by appropriate facts and circumstances as determined by the Liquidating Trustee, and subject to the approval of a court of competent jurisdiction upon a finding that an extension is necessary for the purposes of the Liquidating Trust, the term of the Liquidating Trust may be extended one or more times (not to exceed a total of five extensions, unless the Liquidating Trustee received a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the state of the Liquidating Trust as a grantor trust for federal income tax purposes) for a finite period, not to exceed six months each, based on the particular circumstances at issue.

2.2 **Continuance of Liquidating Trust for Winding Up**. After the termination of the Liquidating Trust and for the purpose of liquidating and winding up the affairs of the Liquidating Trust, the Liquidating Trustee will continue to act as such until all duties under this Trust Agreement have been fully performed. Upon distribution of all of the Liquidating Trust Assets, or the proceeds thereof, the Liquidating Trustee must hold the books, records, and files delivered to or created by the Liquidating Trustee for a period of four (4) years after the last distribution of Liquidating Trust Assets. All costs and expenses associated with the storage of such documents will be paid by the Liquidating Trust. At the Liquidating Trustee's discretion, all such records and documents may be destroyed at any time after four years from the last distribution of the Liquidating Trust Assets. Except as otherwise specifically provided herein, upon the distribution of all of the Liquidating Trust Assets, the Liquidating Trustee will have no further duties or obligations hereunder except

- (a) to account and report as provided in Section 2.3 hereof, and
- (b) to perform such other acts as may be required by law.

2.3 **Final Accounting**. In the event a case is open at the time of the termination of the Liquidating Trust, the Liquidating Trustee shall file an accounting with the Presiding Court setting forth the amount he has collected and disbursed, and the fees and expenses incurred in administering the Liquidating Trust, including the fees and expenses incurred by the Liquidating Trustee and his professionals. The Liquidating Trustee may seek the issuance and entry of any orders necessary to approve such accounting and discharge him from any and all liability for acting

as Trustee under the DST Settlement and this Trust Agreement. The Liquidating Trust's professionals are required to maintain accurate time and expense records.

### ARTICLE III. ADMINISTRATION OF TRUST ASSETS

3.1 **Payment of Expenses.** The Liquidating Trustee may pay, and reserve for, all Liquidating Trust expenses and the costs associated with winding up the Liquidating Trust from the Liquidating Trust Assets, the proceeds thereof, and the Trust Expense Reserve.

3.2 **Disbursement to Liquidating Trust Beneficiaries.** The Liquidating Trustee must disburse funds to the Liquidating Trust Beneficiaries as such funds are liquidated. Distributions may be made as frequently as the Liquidating Trustee determines to be practicable when the Liquidating Trustee determines that sufficient cash exists to make a distribution, net of any reserves for the Liquidating Trust's expenses and costs that the Liquidating Trustee determines reasonable. The Liquidating Trustee may, from time to time, make interim distributions as he determines. Distributions to the Liquidating Trust Beneficiaries shall be made by the Liquidating Trustee: (a) at the addresses set forth in the Investor Schedule referenced in the Order Approving Distribution Procedures dated February 23, 2023, in Plan Administration Case, as the same may be amended by the Liquidating Trustee; or (b) at the addresses set forth in the most recent written notices of address delivered (including by email) to the Liquidating Trustee by a Liquidating Trust Beneficiary.

3.3 **Fractional Cents/De Minimis distributions.** Payments of fractions of cents will not be made by the Liquidating Trustee. Whenever a Liquidating Trust Beneficiary's Pro Rata share of a distribution would be a fraction of a cent, actual payment made will reflect a rounding of such fraction down to the nearest whole cent. The Liquidating Trustee will not make any payment of less than twenty dollars (\$20.00).

3.4 **Beneficiaries Must Provide Identifying Information.** To receive distributions or payments, upon the Liquidating Trustee's written request, all Liquidating Trust Beneficiaries must provide to the Liquidating Trustee, at the address set forth in Section 8.4 of this Trust Agreement, a notice identifying such holder's name, address, federal tax identification number, and any other information requested by the Liquidating Trustee to facilitate the filing of tax returns, within ten (10) days after requested in writing by the Liquidating Trustee; *provided however*, the Liquidating Trustee may rely on the name, address, federal tax identification number, and any other information received by the Liquidating Trustee or the Plan Administrator consistent with the Prior Distribution Notice, the Distribution Procedures Order, and the Plan of Distribution, as these terms are defined in the DST Settlement. The Liquidating Trustee is empowered to withhold distributions from any Liquidating Trust Beneficiaries who do not provide such information upon request. In the event any Liquidating Trust Beneficiary continues to fail to provide such information for sixty (60) days after the second written request from the Liquidating Trustee, then such Liquidating Trust Beneficiary's claim will be deemed disallowed and any withheld distributions will be available for distribution to other Liquidating Trust Beneficiaries.

3.5 **Failure to Negotiate Checks.** Checks issued in respect of distributions are null and void if not negotiated within ninety (90) days after the date of issuance. Any funds returned to the Liquidating Trustee for any reason will be held by the Liquidating Trustee until such time as they



qualify as Unclaimed Property, or if earlier, a request for reissuance is received by the Liquidating Trustee. Requests for reissuance of any such check must be made in writing within such 90-day period, directly to the Liquidating Trustee, by the holder of the claim with respect to which the check originally was issued, so as to be received by the Liquidating Trustee in the 90-day period. All claims for which void checks were issued will be forever barred from asserting the claim against the Liquidating Trust. All unclaimed property will be deposited back into the Liquidating Trust for distribution to other Liquidating Trust Beneficiaries.

3.6 **Unclaimed Property.** All property distributed by the Liquidating Trustee must be claimed within the later of (a) ninety (90) days after the Effective Date or (b) ninety (90) days after such distribution is made to the holder or, in the case of a distribution made in the form of a check, must be negotiated or a request for reissuance. All unclaimed property will be deposited back into the Liquidating Trust. Nothing contained in the DST Settlement, the Plan Trust Order, or Trust Agreement shall require Liquidating Trustee to attempt to locate any holder of a Liquidating Trust Interest other than by reviewing and records provided to the Liquidating Trustee and consistent with the Plan of Distribution.

#### **ARTICLE IV. 4 POWERS OF AND LIMITATIONS ON THE TRUSTEE**

4.1 **General Powers of Trustee.** Subject to the express limitations contained in this Trust Agreement, the Plan Trust Order, or the DST Settlement, the Liquidating Trustee has, in addition to any powers conferred by other provisions of this Trust Agreement, the Plan Trust Order, or the DST Settlement, the power to take any and all actions necessary or advisable to effectuate the purpose of the Liquidating Trust, including the following powers, which he may exercise without the approval of the Presiding Court:

- (a) To hold legal title to any and all rights in or arising from the Liquidating Trust Assets, including, without limitation, the right to collect and receive any and all money and other property belonging to the Liquidating Trust;
- (b) To invest or reinvest Liquidating Trust Assets as provided in Section 4.3 hereof and to cause such investments, or any part thereof, to be registered and held in his name, as Trustee, or in the names of nominees;
- (c) To establish and maintain such bank accounts as may be necessary or appropriate, to draw checks on such bank accounts, and to perform such other necessary and appropriate duties with respect to such accounts, or designate individuals as signatories therefor, as the Liquidating Trustee may direct and authorize;
- (d) To engage employees, agents, and professional persons, to assist the Liquidating Trustee with respect to his responsibilities, and terms approved by the Liquidating Trustee in his sole discretion, including on a contingency or success fee basis;
- (e) To perform all of the Liquidating Trustee's obligations under the DST Settlement, the Plan Trust Order, and this Trust Agreement, including

making all required distributions and payments to holders of Liquidating Trust Interests, as applicable;

- (f) To pay all expenses of the Liquidating Trust;
- (g) To pursue, prosecute, settle, and compromise all causes of action that are Liquidating Trust Assets;
- (h) To institute, join, or defend actions or other requests for relief and to take such other actions, including settlements thereof, on any terms deemed reasonable by the Liquidating Trustee, in his discretion, to enforce or collect upon the awards, judgments, and causes of action that are Liquidating Trust Assets and any other Liquidating Trust Assets;
- (i) To file or cause to be filed all required federal, state, local, and foreign tax filings of the Liquidating Trust, make tax elections, if any, available to the Liquidating Trust under federal, state, local, or foreign law, and prepare applications for rulings or other administrative determinations from federal, state, local, and foreign tax authorities as may be reasonably necessary to determine the tax liabilities of the Liquidating Trust or the Liquidating Trust Beneficiaries;
- (j) To request any appropriate tax determination with respect to the Liquidating Trust;
- (k) To obtain at the expense of the Liquidating Trust, should the Liquidating Trustee choose, insurance coverage with respect to his liabilities and obligations as Liquidating Trustee under this Trust Agreement (in the form of an errors and omissions policy or otherwise);
- (l) To assert or waive any privilege on behalf of the DST, the Plan Administrator, or on behalf of the Liquidating Trust; and
- (m) To exercise such other powers as may be vested in or assumed by the Liquidating Trustee pursuant to the DST Settlement, the Plan Trust Order, this Trust Agreement, or the Final DST Settlement Order or as may be necessary and desirable to carry out the provisions of this Trust Agreement and applicable law.

4.2 **Limitations on Trustee.** The Liquidating Trustee must carry out the purposes of the Liquidating Trust and the directions contained herein, and must not at any time, on behalf of the Liquidating Trust or the Liquidating Trust Beneficiaries, enter into or engage in any business and no part of the Liquidating Trust Assets or the proceeds, revenue, or income therefrom may be used or disposed of by the Liquidating Trustee in furtherance of any business other than as contemplated by the DST Settlement and the Plan Trust Order. The Liquidating Trustee must make continuing efforts to liquidate the Liquidating Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidating Trust.

4.3 **Investment Power.** The investment power of the Liquidating Trustee, other than that reasonably necessary to maintain the value of the Liquidating Trust Assets and to further the liquidating purpose of the Liquidating Trust, is limited to the power to invest (a) in demand and time deposits, such as short-term certificates of deposit, (b) in banks or other savings institutions, or (c) in other temporary, liquid investments such as Treasury bills. Once funds are so invested, the Liquidating Trustee may not sell or otherwise liquidate the investment until such time as such funds are (a) needed to pay expenses incurred pursuant to this Trust Agreement or the DST Settlement, or (b) to be distributed pursuant to this Trust Agreement; *provided, however*, that the Liquidating Trustee may liquidate such investments if the Liquidating Trustee determines in his discretion that such liquidation is necessary to protect the Liquidating Trust from loss on the amounts invested. For the avoidance of doubt, the Liquidating Trustee may not make any investments that would cause the Liquidating Trust to fail to be treated as a “liquidating trust” for purposes of Treasury Regulation section 301.7701-4(d). The Liquidating Trustee is restricted to the holding and collection of the Liquidating Trust Assets and the payment and distribution thereof for the purposes set forth herein and to the conservation, protection, and maximization of the Liquidating Trust Assets and to the administration thereof in accordance with the provisions of this Trust Agreement. The Liquidating Trustee must keep all Liquidating Trust Assets segregated from and must not commingle any Liquidating Trust Assets with any assets of any other Person, including any of the Liquidating Trustee’s own assets.

4.4 **Additional Powers of Trustee.** Subject to the express limitations contained herein, the DST Settlement, the Plan Trust Order, or the Final DST Settlement Order, the Liquidating Trustee has, and may exercise with respect to the Liquidating Trust Assets or any part thereof, including the administration and distribution of the Liquidating Trust Assets, all powers now or hereafter conferred on trustees by the laws of the State of Texas. The powers conferred by this Section 4.4 in no way limit any power conferred on the Liquidating Trustee by any other section of this Trust Agreement, but are in addition thereto; *provided, however*, that the powers conferred by this Section 4.4 are conferred and may be exercised only and solely within the limitations and for the limited purposes imposed and expressed in the DST Settlement, the Plan Trust Order, and this Trust Agreement.

4.5 **Tax and Reporting Duties of the Liquidating Trustee.** The Liquidating Trustee is responsible for all tax and other matters as set forth in ARTICLE V of this Trust Agreement.

4.6 **Establishment and Maintenance of Accounts and Reserves.** On or after the Effective Date, the Liquidating Trustee (i) may establish and maintain such accounts and reserves as may be required by applicable law and (ii) may establish and maintain such additional accounts and reserves as he deems necessary or desirable to carry out the provisions of this Trust Agreement.

## ARTICLE V. TAX MATTERS

5.1 **Classification of the Liquidating Trust.** For all federal and applicable state and local income tax purposes, all “Persons” (defined as any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental unit, or other entity including, without limitation, the DST and the Liquidating Trust Beneficiaries) will treat the transfer and assignment of the Liquidating Trust Assets to the Liquidating Trust for the benefit of the Liquidating Trust

Beneficiaries as (a) a deemed transfer of title and interest in the Liquidating Trust Assets directly to the Liquidating Trust Beneficiaries followed by (b) a deemed transfer of title and interest in the Liquidating Trust Assets by the Liquidating Trust Beneficiaries to the Liquidating Trust. The Liquidating Trust will be treated as a grantor trust subject to the provisions of section 671 of the Internal Revenue Code and as a liquidating trust under Treasury Regulation section 301.7701-4(d) for United States federal income tax purposes and, to the extent permitted under applicable law, for state and local income tax purposes. The Liquidating Trustee must perform his duties and obligations hereunder consistent with the foregoing and must not take any action or inaction which would cause the Liquidating Trust not to be treated as a liquidating trust for United States federal income tax purposes. The Liquidating Trust Beneficiaries will be treated as the grantors and deemed owners of their allocable portion of the Liquidating Trust Assets for federal income tax purposes.

The Liquidating Trust's taxable income, gain, loss, deduction, or credit will be allocated to the Liquidating Trust Beneficiaries in accordance with their relative beneficial interests in the Liquidating Trust during the applicable taxable period. Such allocation will be binding on all parties for federal and applicable state and local income tax purposes, and the parties will be responsible for the payment of any federal, state, and local income tax due on the income and gain so allocated to them.

## **5.2 General Tax Reporting by the Liquidating Trust and the Liquidating Trust Beneficiaries.**

- (a) The Liquidating Trustee must prepare, consistent with Section 5.1 hereof, and file on behalf of the Liquidating Trust, at the time and in the manner prescribed by the Internal Revenue Code and applicable state and local law, such tax returns and reports as may be required, including but not limited to returns and reports required by Treasury Regulations section 1.671-4(a), and must promptly furnish copies of such returns and reports as filed to the Liquidating Trust Beneficiaries upon their written request. The Liquidating Trustee must pay or cause to be paid any and all taxes imposed on the Liquidating Trust from the Liquidating Trust Assets.
- (b) As soon as practicable after the close of each fiscal year, the Liquidating Trustee must mail to each of the Liquidating Trust Beneficiaries a statement setting forth the beneficiary's share of items of the Liquidating Trust's income, gain, loss, deduction, or credit and must instruct all such beneficiaries to report such items on their federal income tax returns. The Liquidating Trust's taxable income, gain, loss, deduction, or credit will be allocated to the Liquidating Trust Beneficiaries in accordance with their relative beneficial interests in the Liquidating Trust. Such items are subject to tax to the Liquidating Trust Beneficiaries on a current basis, even if no cash distributions are made to the Liquidating Trust Beneficiaries.
- (c) The Liquidating Trustee is responsible for payments, out of the Liquidating Trust Assets, of any taxes imposed on the Liquidating Trust or its assets.

- (d) The Liquidating Trustee may retain professionals to perform the Liquidating Trustee's duties under this Section 5.2 and, subject to Section 6.6 hereof, may rely upon the performance and advice of such professionals with respect to such duties.

5.3 **Withholding of Taxes and Other Charges.** To the extent that the Liquidating Trustee is required by applicable law to withhold or otherwise deduct any taxes, fees, levies, assessments, or other governmental charges in respect of any distributions, payments, or allocations made pursuant to the DST Settlement and this Trust Agreement, the Liquidating Trustee is entitled to withhold or deduct the amount of such taxes, fees, levies, assessments, or other governmental charges from the gross amounts of such distributions, payments, or allocations and remit such amounts to the applicable taxing or other governmental authorities. The Liquidating Trustee, in the exercise of his discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this Section 5.3.

5.4 **Other.** The Liquidating Trustee must file, or cause to be filed, any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any governmental unit or applicable law.

## **ARTICLE VI. THE TRUSTEE**

### **6.1 Trustee's Compensation and Reimbursement.**

- (a) The Liquidating Trustee's compensation, on a post-Effective Date basis, will be incurred and paid on an hourly basis. The Liquidating Trustee's hourly rate, on the Effective Date will be \$650.00 per hour, subject to yearly reasonable annual adjustments. The payment of the fees of the Liquidating Trustee and any professionals retained by the Liquidating Trustee will be made by the Liquidating Trustee from the Liquidating Trust Assets or the proceeds thereof, and, as to either source of funds, in accordance with the DST Settlement and this Trust Agreement. The Liquidating Trustee's compensation will not be subject to the approval of the Presiding Court.
- (b) The Liquidating Trustee has the right to retain the services of attorneys, accountants, and other professionals who, in the discretion of the Liquidating Trustee, are necessary to assist the Liquidating Trustee in performing his duties. The reasonable fees and expenses of such professionals, including any negotiated contingency or success fee, will be paid by the Liquidating Trustee from the Liquidating Trust Assets, the proceeds thereof, or the Trust Expense Reserve. The compensation of the professionals will not be subject to the approval of the Presiding Court. The Liquidating Trustee may employ professionals also engaged by or previously engaged by the DST, the Intervenor, or the Plan Administrator.
- (c) Subject to the provisions of this Trust Agreement, all costs, expenses, and obligations incurred by the Liquidating Trustee in administering the

Liquidating Trust Assets, the Liquidating Trust, or in any manner connected, incidental, or related thereto, in effectuating distributions from the Liquidating Trust thereunder (including the reimbursement of reasonable expenses) will be a charge against the Liquidating Trust Assets, the proceeds remaining thereof from time to time in the hands of the Liquidating Trustee, and the Trust Expense Reserve. The cost and expenses will not be subject to approval of the Presiding Court.

6.2 **Resignation.** The Liquidating Trustee may resign by giving not less than thirty (30) days' prior written notice thereof to the Presiding Court. Such resignation will become effective on the later to occur of: (a) the day specified in such notice or (b) the appointment of a successor Liquidating Trustee and the acceptance of such successor Liquidating Trustee of such appointment. If a successor Liquidating Trustee is not appointed or does not accept his appointment within thirty (30) days following delivery of notice of resignation, the Liquidating Trustee may petition the Presiding Court for the appointment of a successor Liquidating Trustee.

6.3 **Removal.** The Liquidating Trustee (and his successors) may be removed for cause shown by an order of the Presiding Court and upon notice to the Liquidating Trustee and a hearing, and the Presiding Court will retain jurisdiction for this purpose under the DST Settlement, the Plan Trust Order, and this Trust Agreement, and the Liquidating Trustee consents to such jurisdiction.

6.4 **Appointment of Successor Trustee.** In the event of the resignation, removal, or incapacity of the Liquidating Trustee, the Intervenor's counsel must designate a successor Liquidating Trustee. The successor Liquidating Trustee must give written notice of his or her appointment to the Presiding Court as soon thereafter as is practicable. Any successor Liquidating Trustee appointed hereunder must execute, acknowledge, and file with the Presiding Court an instrument duly accepting such appointment and agreeing to be bound by the terms of this Trust Agreement and thereupon such successor Liquidating Trustee, without further act, deed, or conveyance, will become vested with all the rights, powers, trusts, and duties of the Liquidating Trustee under this Trust Agreement. All fees and expenses of the Liquidating Trustee will be paid by the Liquidating Trust unless disputed by the successor Liquidating Trustee, in which case such dispute will be resolved by the Presiding Court.

6.5 **Liquidating Trust Continuance.** The resignation or removal of the Liquidating Trustee does not operate to terminate the Liquidating Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement or invalidate any action theretofore taken by the Liquidating Trustee or any prior Liquidating Trustee. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee must promptly execute and deliver such documents, instruments, and other writings as may be reasonably requested by the successor Liquidating Trustee to effectuate the termination of the Liquidating Trustee's capacity under this Trust Agreement and the conveyance of the Liquidating Trust Assets then held by the Liquidating Trustee to such Liquidating Trustee's successor; deliver to the successor Liquidating Trustee all documents, instruments, records, and other writings related to the Liquidating Trust as may be in the possession of the Liquidating Trustee; and otherwise assist and cooperate in effectuating the assumption of his obligations and functions by such successor Liquidating Trustee.

6.6 **Reliance by Trustee.** The Liquidating Trustee may rely, and is fully protected personally in acting, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document which the Liquidating Trustee believes to be genuine and to have been signed or presented by the proper party or parties or, in the case of facsimile transmissions or electronic mail, to have been sent by the proper party or parties, in each case without obligation to satisfy himself that the same was given in good faith and without responsibility for errors in delivery, transmission, or receipt. In the absence of fraud, willful misconduct, or gross negligence on the Liquidating Trustee's part, the Liquidating Trustee may rely as to the truth of any statements contained therein in acting thereon. The Liquidating Trustee may consult with and rely on the advice of legal counsel and such other experts, advisors, consultants, or other professionals as have been retained pursuant to this Trust Agreement and is fully protected in respect of any action taken or suffered in accordance with the written opinion of legal counsel. Notwithstanding such authority, the Liquidating Trustee is under no obligation to consult with attorneys, accountants, or his agents, and his determination not to do so should not result in imposition of liability on the Liquidating Trustee unless such determination is based on willful misconduct, gross negligence, or fraud.

6.7 **Standard of Care.** Except in the case of fraud, willful misconduct, or gross negligence, the Liquidating Trustee is not liable for any loss or damage by reason of any action taken or omitted by the Liquidating Trustee pursuant to the discretion, power, and authority conferred on the Liquidating Trustee by this Trust Agreement, the DST Settlement, the Plan Trust Order, or the Final DST Settlement Order.

6.8 **No Liability for Acts of Predecessor Trustees.** No successor Liquidating Trustee is in any way liable for the acts or omissions of any predecessor Liquidating Trustee unless a successor Liquidating Trustee expressly assumes such responsibility.

6.9 **Insurance.** The Liquidating Trustee may purchase, at the expense of the Liquidating Trust, errors and omissions insurance with regard to any liabilities, losses, damages, claims, costs, and expenses he may incur, including but not limited to attorneys' fees, arising out of or due to his actions or omissions or consequences of such actions or omissions, other than as a result of his fraud, gross negligence, or willful misconduct, with respect to the implementation of this Trust Agreement, the DST Settlement, the Plan Trust Order, or the Final DST Settlement Order.

6.10 **No Implied Obligations.** No Liquidating Trustee is liable for any duties or obligations except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations may be read into this Liquidating Trust.

6.11 **No Personal Liability.** Persons dealing with the Liquidating Trust must look solely to the Liquidating Trust or the Liquidating Trust Assets for the enforcement of any claims against the Liquidating Trust or to satisfy any liability incurred by the Liquidating Trustee to such Persons in carrying out the terms of this Trust Agreement, and neither the Liquidating Trustee nor the DST, nor any of their professionals, nor any other Person has any personal liability or individual obligation to satisfy any such liability.

6.12 **Liability; Indemnification.** The Liquidating Trustee is not liable for any act or omission taken or omitted to be taken in his capacity as the Liquidating Trustee, other than acts or omissions resulting from willful misconduct, gross negligence, or fraud. The Liquidating Trustee may, in connection with the performance of his functions, and in his sole and absolute discretion, consult with attorneys, accountants, and agents, and he is not liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals. Notwithstanding such authority, the Liquidating Trustee is under no obligation to consult with attorneys, accountants, or agents, and his determination not to do so should not result in imposition of liability on the Liquidating Trustee unless such determination is based on willful misconduct, gross negligence, or fraud. The Liquidating Trust will indemnify and hold harmless the Liquidating Trustee and his agents, representatives, professionals, and employees from and against and in respect of any and all liabilities, losses, damages, claims, costs, and expenses, including but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Liquidating Trust or the implementation or administration of the DST Settlement; *provided, however*, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence, or fraud.

## ARTICLE VII. AMENDMENTS

7.1 **Amendments.** The parties hereto may make and execute written amendments to this Trust Agreement; *provided, however*, that in no event may this Trust Agreement be amended

- (a) so as to change the purpose of the Liquidating Trust as set forth in Article I hereof,
- (b) so as to allow funds constituting Liquidating Trust Assets to be invested in a manner other than as permitted in Section 4.3 hereof,
- (c) so as to adversely affect the distributions or payments to be made under this Trust Agreement to any Liquidating Trust Beneficiaries, or
- (d) so as to adversely affect the U.S. Federal income status of the Liquidating Trust in accordance with Article I hereof.

## ARTICLE VIII. MISCELLANEOUS PROVISIONS

8.1 **Applicable Law.** The Liquidating Trust created herein shall be construed, regulated, and administered under the laws of the State of Texas without regard to principles of conflicts of law.

8.2 **No Association, Partnership or Joint Venture.** This Trust Agreement is not intended to create and must not be interpreted as creating an association, partnership, or joint venture of any kind.

8.3 **Partial Invalidity.** If any term or provision of this Trust Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Trust Agreement, such term or provision is fully severable, and this Trust Agreement must be construed



and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Trust Agreement; and the remaining terms and provisions of this Trust Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Trust Agreement.

8.4 **Notices.** All notices, requests, consents and other communications hereunder must be in writing and must be addressed (i) if to the Liquidating Trustee, to *Gregory S. Milligan, Trustee of the Skyloft Liquidating Trust, Harney Partners, P.O. Box 90099, Austin, TX 78709-0099* or such other address as such Trustee or any successor will have furnished; and (ii) if to any Liquidating Trust Beneficiary, at the address stated in the Investor Schedule referenced in the Order Approving Distribution Procedures dated February 23, 2023, in the Plan Administration Case, as the same may be amended by the Liquidating Trustee based on information received from a Liquidating Trust Beneficiary. To the extent a Liquidating Trust Beneficiary desires to receive notice at a different address, it is such Person's obligation to notify the Liquidating Trustee in writing. All such notices, requests, consents, and other communications must be given to the Liquidating Trustee by email, with a copy sent by first-class mail, postage prepaid, hand delivery or overnight delivery, or, to a Liquidating Trust Beneficiary, by first-class mail, postage prepaid, and will be deemed given when actually delivered (with respect to the Liquidating Trustee), or three (3) business days after deposit in the U.S. mail if mailed (with respect to a Liquidating Trust Beneficiary).

8.5 **Counterparts.** This Trust Agreement may be executed in any number of counterparts, each of which constitutes an original, but such counterparts together constitute one and the same instrument.

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

8.7 **Retention of Jurisdiction.** The Judicial District Courts of Travis County, Texas in the Underlying Litigation shall retain jurisdiction as set forth in the DST Settlement, the Plan Trust Order, and the Final DST Settlement Order, over issues related to the enforcement or interpretation of this Trust Agreement, including the determination of claims, controversies, disputes, and issues arising under or in connection with the Liquidating Trust or this Trust Agreement and the management and administration of the Liquidating Trust and for all of the purposes contemplated herein.

8.8 **Relationship to DST Settlement.** In the event any provision of this Trust Agreement is found to be inconsistent with a provision of the DST Settlement, the provision of the DST Settlement or the Final DST Settlement Order controls.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement as of the day and year last written.

**NP SKYLOFT DST**

By: NP Skyloft ST, LLC  
As Signatory Trustee

By: NP Skyloft JV, LLC,  
A Manager of NP Skyloft ST, LLC

By: ACO Skyloft Manager LLC  
As Manager of  
NP Skyloft JV, LLC

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**GREGORY S. MILLIGAN,  
AS PLAN ADMINISTRATOR**

By: Gregory S. Milligan

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**LIQUIDATING TRUSTEE**

By: Gregory S. Milligan

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**COUNSEL IN FACT FOR THE  
INTERVENORS**

By:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**PROPOSED  
ORDER**

PAUL TESSIER, AS CO-TRUSTEE OF THE ANNE T. TESSIER FAMILY TRUST, and BLACK TORTUGA GROUP, LLC,

*Plaintiffs, on behalf of themselves and all others similarly situated,*

AND

STACY R. SCHIFFMAN, ADELAIDA MARTINEZ, WILLIAM D. AND SUSAN M. MADDEN, A.H. ROOT BUILDING, LLC, RYAN AND LISSA ONG LIVING TRUST, ALLA INVESTMENTS, LLC, 2M & 3D LTD., BUN RENTALS, LLC, HUGH G. DYKES III AS TRUSTEE OF THE DYKES FAMILY REVOCABLE TRUST DATED JULY 7,2004, SYDNEY CRISP AND NICOLA CRISP, DANIEL M. BELL, WILLIAM SMITH, DONNA DEKKER AS TRUSTEE OF THE DEKKER-ROBERTSON FAMILY TRUST; AND HARRY V. AND JOANNE P. HANSEN AS TRUSTEES OF THE HANSEN FAMILY TRUST, LAWRENCE K. SAMUELS AND JANE HEIDER AS TRUSTEES OF THE HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007, JOHN C. POLK AND JANICE C. POLK, AND JAMES PARZIALE, AS TRUSTEE OF THE PARZIALE FAMILY TRUST,

*Plaintiffs, derivatively on behalf of*  
NP SKYLOFT DST

v.

BURGUNDY 523 OFFSHORE FUND, LTD., AXONIC SPECIAL OPPORUNITIES SBL MASTER FUND LP, AXONIC CREDIT OPPORTUNITIES MASTER FUND, LP; ACO SKYLOFT MANAGER LLC; AXONIC CAPITAL, LLC; and CLAYTON DEGIACINTO,

*Defendants.*

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261<sup>ST</sup> JUDICIAL DISTRICT

**ORDER APPROVING JOINT MOTION TO (I) APPROVE SKYLOFT LIQUIDATING TRUST AGREEMENT; (II) APPOINT LIQUIDATING TRUSTEE; AND (III) ASSIGN CLAIMS, RIGHTS AND INTERESTS TO LIQUIDATING TRUST**

On this day, the Court considered the Joint Motion to (I) Approve Skyloft Liquidating Trust Agreement; (II) Appoint Liquidating Trustee; and (III) Assign Claims, Rights and Interests to Liquidating Trust (the “Motion”) filed by Plaintiffs Paul Tessier as Co-Trustee of the Anne T. Tessier Family Trust and Black Tortuga Group, LLC, individually and on behalf of the Class (as defined in the DST Settlement) and derivatively on behalf of NP Skyloft DST (together, the “Class Representatives”), Gregory S. Milligan as the Administrator for the DST Settlement, as defined below (the “Settlement Administrator”), and the Axonic Parties<sup>1</sup>. Having considered the Motion, any supplement, any response or reply to the Motion, the Court finds and orders that the Motion is GRANTED.

In *NP Skyloft DST et al. v. Burgundy 523 Offshore Fund, Ltd.*, Cause No, D-1-GN-21-000097, before the 261<sup>st</sup> Judicial District Court of Travis County, Texas (the “Underlying Litigation”), the Class Representatives entered into the Stipulation of Settlement, dated August 22, 2024 (the “DST Settlement” with the Axonic Parties. which, among other things, provides for the formation of a liquidating trust titled “the Skyloft Liquidating Trust”, and the assignment of the assets of NP Skyloft DST (“DST”) to the Skyloft Liquidating Trust (the “Liquidating Trust”). Contemporaneously with this Order, the Court is entering its Final Approval Order and Final Judgment (“Final DST Settlement Order”), finding that the sale of the Trust Property, the Skyloft Apartments at 527 West 23<sup>rd</sup> Street, Austin, Texas 78703, consisted a dissolution under the terms of the NP Skyloft DST Trust Agreement and 12 Del. C. § 3808(c), and approving the DST

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<sup>1</sup> The “Axonic Parties” are collectively, Axonic Credit Opportunities Master Fund LP, Burgundy 523 Offshore Fund Ltd., Axonic Special Opportunities SBL Master Fund LP, ACO Skyloft Manager LLC, Axonic Capital LLC, and Clayton DeGiacinto

Settlement on a final basis. The Court further severed implementation of the DST Settlement from the Underlying Litigation into the above cause number (the “DST Settlement Case”). The Court enters this Order pursuant to the Motion and Sections 14 and 15 of the DST Settlement.

IT IS THEREFORE ORDERED that the Skyloft Liquidating Trust Agreement (“Trust Agreement”), attached hereto and incorporated herein as **Exhibit A**, is approved as to form and substance and the DST, the Axonic Parties, the Settlement Administrator, the Class Representatives, and the Intervenors<sup>2</sup> are authorized to execute the Trust Agreement and carry out all transfers, actions, powers, assignments, rights, and distributions provided therein;

IT IS FURTHER ORDERED that Gregory S. Milligan is appointed as the “Liquidating Trustee,” as defined in the Trust Agreement, and is immediately authorized to execute the Trust Agreement and carry out all professional retentions, transfers, actions, powers, assignments, rights, and distributions provided therein;

IT IS FURTHER ORDERED that the DST shall pay certain fees and expenses to its counsel before its cash and other assets are assigned to the Skyloft Liquidating Trust. These fees and expenses include (1) \$32,818.83 to Burgee & Abramoff PC, counsel to the DST in (i) *Parziale v. Nelson, et al.*, No. 2:21-cv-01803 (C.D. Cal.); (ii) *Puleo, et al. v. Nelson, et al.*, No. 2:21-cv-06443 (C.D. Cal.); (iii) *Ames, et al. v. Nelson, et al.*, No. 2:22-cv-09400 (C.D. Cal.); and (iv) *Collins v. NP Skyloft ST, LLC, et al.*, No. 30-2021-01184473-CU-MC-CXC (Cal. Sup. Ct., Orange Cnty.) (the “California Litigations”); (2) \$18,856.85 to Cain & Skarnulis PLLC, counsel to the DST in

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<sup>2</sup> The “Intervenors” are, collectively, Stacy R. Schiffman, Adelaida Martinez, William D. and Susan M. Madden, A.H. Root Building, LLC, Ryan and Lissa Ong Living Trust, Black Tortuga Group, LLC, Alla Investments, LLC, 2M & 3D Ltd., Texas Limited Partnership, Butt Rentals, LLC, Hugh G. Dykes III, Trustee of the Dykes Family Revocable Trust Dated July 7, 2004, Sydney Crisp and Nicola Crisp, Daniel M. Bell, William Smith, Paul Tessier, Co-Trustee, Anne T. Tessier Family Trust, Donna Dekker, Trustee of the Dekker-Robertson Family Trust, and Harry V. and Joanne P. Hansen, Trustees of the Hansen Family Trust, Lawrence K. Samuels and Jane Heider, Trustees of the Heider Samuels Family Trust Dated June 29, 2007, and John C. Polk and Janice C. Polk, individually and derivatively on behalf of NP Skyloft DST, LLC, a Delaware Statutory Trust and James Parziale, derivatively on behalf of NP Skyloft DST, LLC, a Delaware Statutory Trust.

*Tri Shield Security & Investigators, LLC v. TCG Skyloft Owner, LLC*, Cause No. D-1-GN-24-001071 (Travis Cnty. Dist. Ct.); and (3) \$1,637.50 to Ripp Grossman & Fite LLP, counsel to the DST in connection with the sale of the Skyloft Property (as defined in the Settlement Stipulation) to TCG Skyloft Owner, LLC and related work for the benefit of the DST after the sale.

IT IS FURTHER ORDERED THAT, consistent with the Court's February 17, 2024 *Order Granting TCG Skyloft Owner, LLC and the Axonic Lenders' Traditional Motion For Partial Summary Judgment*, which concluded that Patrick Nelson, NP Equity, LLC and Nelson Partners Property Management, LLC (the "Nelson Parties") had and have no authority to cause NP Skyloft DST, NP Skyloft ST, LLC, and/or NP Skyloft JV, LLC to file or pursue the Underlying Litigation (as defined in the Settlement Stipulation), no other fees and expenses are payable by the DST, including to any counsel hired by the Nelson Parties purportedly on behalf of the DST.

IT IS FURTHER ORDERED that that effective upon full execution of the Trust Agreement, and payment of the fees and expenses as ordered above, pursuant to 12 Delaware Code § 3808(d), and without further order of the Court, the DST is deemed to convey, transfer, assign, and deliver to the Liquidating Trust:

(i) all of its rights, title, and interests in any assets, except Released Claims against Released Parties (as defined in the DST Settlement), including without limitation, any cash, accounts receivable, claims, causes of actions, and contingent claims, and

(ii) all of its rights with respect to the Liquidating Trust Assets (as defined in the Trust Agreement), including the attorney-client privilege and the protections afforded by the work product doctrine.

IT IS FURTHER ORDERED that this Order is without prejudice to the Court approving further powers, authority, or procedures for the Liquidating Trust and the Liquidating Trustee. To

the fullest extent permitted by law, the Court hereby retains exclusive jurisdiction over the Liquidating Trust, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Order, including without limitation, any action against the Liquidating Trustee or any professional retained by the Liquidating Trustee, in each case in its capacity as such. Upon a motion by the Liquidating Trustee, the Court may enter an order relieving the Liquidating Trustee, his agents, professionals, and employees of any further duties, discharging, and releasing the Liquidating Trustee.

SIGNED THIS \_\_\_\_\_ DAY OF DECEMBER, 2024.

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Honorable Judge Karin Crump

AGREED AS TO FORM AND SUBSTANCE:

/s/ Jason M. Rudd

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/s/ DRAFT

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