

**FULLY PAID LENDING TRUST AGREEMENT**

**by and between**

**APEX CLEARING CORPORATION  
As Trustor**

**And**

**WILMINGTON TRUST, NATIONAL ASSOCIATION  
As Trustee**

**Dated as of April 9, 2021**

## FULLY PAID LENDING TRUST AGREEMENT

This FULLY PAID LENDING TRUST AGREEMENT (this “Agreement”), dated as of April 9, 2021, is executed and delivered by APEX CLEARING CORPORATION, (the “Trustor”), and WILMINGTON TRUST, NATIONAL ASSOCIATION as Collateral Trustee (the “Trustee”), for the benefit of the securities lending customers of the Trustor who have, pursuant to a Consent (as defined below), thereby and hereby consented to be bound by the terms of and incorporated as a party to this Agreement (each a “Lender” and collectively, the “Lenders”).

### RECITALS

WHEREAS, each Lender and the Trustor have entered into a securities loan agreement (the “Securities Lending Agreement”) pursuant to which the Trustor has agreed to pledge to each Lender the Collateral (as defined below) in order to secure the repayment of the Trustor’s obligations to each Lender; and

WHEREAS, the Lenders wish to appoint the Trustor to act as administrative agent of the Lenders to perform certain functions on behalf of the Lenders as more fully described herein; and

WHEREAS, the Lenders and Trustor have engaged JPMorgan Chase Bank, N.A. to act as securities intermediary and depositary bank to hold the Collateral and to perform other functions (the “Securities Intermediary”); and

WHEREAS Trustor and Trustee intend that each Lender that has entered into a Consent (as defined below) shall be incorporated as a party to this Agreement; and

WHEREAS, Lenders and Trustor wish to appoint the Trustee to act as collateral trustee to perform certain functions on behalf of and for the benefit of the Lenders as more fully described herein; and

WHEREAS, the Lenders have consented that the Trustee be named as the secured party for their benefit under the Account Control Agreement to be entered into among the Trustor, the Trustee as the collateral trustee for the benefit of the Lenders and the Securities Intermediary (the “Account Control Agreement”) and have agreed to the terms of and to join and be bound by this Agreement by either executing consents in the form of Exhibit A attached hereto, or by agreeing to terms substantially the same as those contained in Exhibit A set forth in the Securities Lending Agreement or otherwise (the “Consents”); and

WHEREAS, pursuant to such Consents, the Trustee has agreed that it shall act for the benefit of such Lenders pursuant to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Trustor, the Trustee and the Lenders hereby agree as follows:

### ARTICLE I

#### APPOINTMENT OF THE TRUSTEE; INTERPRETATION AND DEFINITIONS

**1.1 APPOINTMENT OF THE TRUSTEE AND GRANT OF SECURITY INTEREST.** The Trustor hereby appoints, and the Lenders through their Consents consent to the appointment of, Wilmington Trust, National Association as Trustee hereunder, upon the terms and subject to the conditions herein mentioned and Wilmington Trust, National Association hereby accepts such appointment. The Trustor and the Lenders hereby direct the Trustee to enter into the Account Control Agreement, on such terms acceptable to the Trustee, and authorize the Trustee to take such actions on behalf of such Lenders and to exercise such powers and perform such duties for the benefit of the Lenders as are expressly granted to the Trustee by this Agreement and the Account Control Agreement, together with such other powers as are reasonably incidental thereto. To secure the obligations of Trustor under the Securities Lending Agreement between Trustor and each Lender, Trustor hereby pledges with,

assigns to, and grants Trustee for the benefit each Lender a continuing first priority security interest in, and a lien upon, all of Trustor's right, title and interest in, to and under, whether now owned or existing or hereafter acquired or arising, the Collateral and all proceeds thereof. Trustee, as collateral trustee for such Lenders, shall have all the rights and remedies of a secured party under the UCC.

**1.2 ACCEPTANCE OF APPOINTMENT.** The Trustee hereby accepts such appointment as trustee, agent and representative on behalf of and for the benefit of the Lenders under this Agreement upon the terms and conditions hereof. The Trustee hereby further agrees to and acknowledges the security interest granted by Trustor to Trustee hereunder for the benefit of the Lenders and agrees to act as secured party for the benefit of such Lenders hereunder and pursuant to the Account Control Agreement.

**1.3 INTERPRETATION AND DEFINITIONS.** In this Agreement, unless the context otherwise requires:

(a) Capitalized terms used in this Agreement but not defined in the preamble above have the respective meanings assigned to them in this Section 1.3;

(b) A term defined anywhere in this Agreement has the same meaning throughout;

(c) All references to "this Agreement" are to this Agreement as modified, supplemented or amended from time to time;

(d) All references in this Agreement to Articles, Sections and Recitals are to Articles, Sections and Recitals of this Agreement, unless otherwise specified;

(e) A reference to the singular includes the plural and vice versa and a reference to any masculine form of a term shall include the feminine and neuter forms of such term, as applicable; and

(f) The following terms have the following meanings:

"Act of Insolvency" shall mean, with respect to the Trustor, (i) the commencement by such party as debtor, of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party's seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election or (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, filing, or the filing such party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days (iii) the making by such party of a general assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party's inability to pay such party's debts as they become due.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect 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.

"Business Day" means a day other than a Saturday, Sunday or other a day on which banking institutions in the City of New York, New York are authorized or obligated by law or executive order to remain closed.

"Collateral" means the Collateral Account and all cash, securities, financial assets or other property held therein from time to time; provided that in no event shall Collateral mean non-U.S. securities.

“Collateral Account” means the collective reference to the Cash Account and the Securities Account (each as defined in the Account Control Agreement) established at and maintained by J.P. Morgan Chase Bank, N.A. for the benefit of Lenders.

“Collateral Data File” has the meaning set forth in Section 2.2.

“Event of Default” means that the Trustor has defaulted under the terms of the Securities Lending Agreement but remains solvent (i.e. a default by Trustor that is not due to an Act of Insolvency with respect to the Trustor) and that a Lender is entitled to a distribution of the Collateral pledged to such Lender pursuant to the terms of the Securities Lending Agreement.

“Instructions” means instructions, directions or other communications actually received by the Trustee in hard copy, by electronic means or other method or system specified by the Trustee as available for use in connection with the services hereunder.

“Lender Data File” has the meaning set forth in Section 2.1.

“Lender Identifying Information” means the name, address and email address of each Lender, the Lender’s account information and the payment instructions for receipt by such Lender of the proceeds of the Collateral in the event of the occurrence of an Event of Default or Act of Insolvency. If an introducing broker-dealer introduces Lenders to Trustor on an omnibus or consolidated basis, the preceding information shall be provided with respect to the introducing broker-dealer.

“Lenders” means the securities lending customers of the Trustor who have agreed to join and be bound by the terms of this Agreement.

“Majority Lenders” means, on any date 51% of the Lenders who have joined and agreed to be bound by this Agreement as identified by the Trustor the Lender Identifying Information provided to the Trustee.

“Notice of Default” shall have the meaning set forth in Section 5.3.

“Notice of Revocation” shall have the meaning set forth in Section 5.3.

“Obligation Amount” has the meaning set forth in Section 2.1.

“Officer’s Certificate” means, with respect to any Person, a certificate signed by the Chairman of the Board, the President, any Vice President or the Treasurer and the Secretary or an Assistant Secretary of such Person. Any Officer’s Certificate delivered with respect to compliance with a condition or covenant provided for in this Agreement shall include:

- (i) a statement that each officer signing such Officer’s Certificate has read the covenant or condition and the definitions relating thereto;
- (ii) a brief statement of the nature and scope of the examination or investigation undertaken by each such officer in rendering such Officer’s Certificate;
- (iii) a statement that each such officer has made such examination or investigation as, in such officer’s opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (iv) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

“Opinion of Counsel” means a written opinion of legal counsel reasonably acceptable to the Trustee, which counsel may be an employee of the Trustor or a Lender.

“Person” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

“Procedures” has the meaning set forth in Section 2.1.

“Responsible Officer” means, with respect to the Trustee, any officer with direct responsibility for the administration of this Agreement and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

“Securities Intermediary” has the meaning set forth in the Recitals.

“Successor Trustee” means a successor to the Trustee possessing the qualifications to act as Trustee under Section 4.2.

“Trustee” means Wilmington Trust, National Association, until a successor trustee has been appointed and has accepted such appointment pursuant to the terms of this Agreement and thereafter means each such successor trustee.

“Trustor” means the Person named as the “Trustor” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Agreement, and thereafter “Trustor” shall mean such successor Person.

“Website” has the meaning set forth in Section 2.1.

## **ARTICLE II INFORMATION, NOTICES AND WAIVERS**

### **2.1 INFORMATION WITH RESPECT TO THE LENDERS.**

The Trustor shall provide to the Trustee, promptly following the execution of each Consent to the Trustee, the Lender Identifying Information. The Trustee hereby agrees that each such identified party shall be deemed a Lender under the terms of this Agreement and that the Trustee shall act for the benefit of each such Lender identified in the Lender Identifying Information pursuant to the terms of this Agreement. The Trustee shall be entitled to conclusively rely on the accuracy of such information until such time as the Trustor or such Lender shall have given the Trustee written notice setting forth information that supersedes the information previously provided to it. In the event of a conflict between any such information provided by the Trustor and such Lender, such information as is provided by such Lender shall control. The Trustor shall give the Trustee notice at least once on each Business Day of the amount to be collateralized at Securities Intermediary for each Lender (the “Obligation Amount”) to secure each Lender’s securities lending transactions with the Trustor (each such notice herein called a “Lender Data File”). Such notices shall be given by electronic transmission in such manner as shall be mutually acceptable to the Trustee and the Trustor, which may include utilization by the Trustor of a secure website maintained by the Trustee for purposes of this Agreement (the “Website”) in accordance with procedures prescribed by the Trustee from time to time (the “Procedures”). If on any Business Day, the Trustor fails to report the Obligation Amount in accordance with this Section 2.1, the Obligation Amount for such Business Day shall be the Obligation Amount in effect as of the immediately preceding Business Day until the Trustor, without any further action by the Trustee, notifies the Trustee in writing of the new Obligation Amount. The Trustee shall be entitled to conclusively assume the accuracy of any Lender Data File delivered to it by the Trustor pursuant to this Section 2.1 until such Lender Data File is superseded by a more current Lender Data File.

### **2.2 NOTICES BY TRUSTEE.**

(a) The Trustee and the Trustor are entitled to, and shall endeavor to, receive from the Securities Intermediary each Business Day pursuant to the Account Control Agreement, information on the Collateral

Account, including, without limitation, the aggregate value of Collateral held by it for all of the Lenders of the Trustor as of the end of the immediately preceding Business Day (a "Collateral Data File"). If on any Business Day, the Securities Intermediary fails to report the aggregate amount of Collateral held in accordance with this Section 2.2(a), the aggregate amount of Collateral for such Business Day shall be the aggregate amount of Collateral in effect as of the immediately preceding Business Day until the Securities Intermediary, without any further action by the Trustee, makes available to the Trustee pursuant to the Account Control Agreement information as to the new aggregate amount of Collateral. The Trustee shall have no responsibility to determine whether the aggregate amount of Collateral held at the Securities Intermediary is sufficient to satisfy the Obligation Amount due to each Lender, and shall be entitled to conclusively rely on the information provided by both the Securities Intermediary and the Trustor without further inquiry.

(b) If on any Business Day the Collateral Data File shows that the value of the Collateral is less than the aggregate Obligation Amount due to the Lenders as reflected in the most recent Lender Data File, the Trustee shall provide written notice of such deficiency to the Trustor which shall, prior to close of business on such Business Day, transfer additional Collateral to the Collateral Account to cure such deficiency.

(c) If on any Business Day the Collateral Data File shows that the value of the Collateral is greater than the aggregate Obligation Amount due to the Lenders on such Business Day, the Trustee shall provide written notice of such excess to the Trustor which may deliver Instructions to the Trustee instructing the Trustee to issue Instructions to the Securities Intermediary to transfer such excess from the Collateral Account to the Trustor. Such Instructions may also instruct the Trustee as to whether cash Collateral or securities Collateral are to be transferred, and if securities Collateral are to be transferred, the identifying information for the specific securities Collateral to be transferred. Trustee's Instructions to the Securities Intermediary shall include the same. Promptly following receipt of such Instruction, the Trustee will instruct Securities Intermediary to return such excess to the Trustor. The Trustee shall not instruct the Securities Intermediary to transfer an amount exceeding such excess. Assets constituting excess Collateral transferred from the Collateral Account to the Trustor pursuant hereto shall cease to be Collateral for purposes of this Agreement.

(d) Notwithstanding any provision hereof, Trustee shall have no duties or obligation whatsoever with respect to the determination or calculation of market value of the Collateral or any item of Collateral.

## **2.3 EVIDENCE OF COMPLIANCE WITH CONDITIONS.**

On a yearly basis, the Trustor shall, upon the request of Trustee, provide to the Trustee an Officer's Certificate that (i) it has conducted an audit of the information provided to the Trustee in its Lender Data Files and that such information, including, without limitation, the Obligation Amount for each Lender, was true and correct in all material respects and (ii) that each Lender participating in this Agreement is bound by a Consent.

## **ARTICLE III POWERS, DUTIES AND RIGHTS OF TRUSTEE**

### **3.1 POWERS AND DUTIES OF TRUSTEE.**

(a) Notwithstanding anything to the contrary in this Agreement or the Account Control Agreement, the Trustee shall not be required to exercise any rights or remedies under this Agreement or the Account Control Agreement or give any consent under this Agreement or the Account Control Agreement or enter into any agreement amending, modifying, supplementing or waiving any provision of this Agreement or the Account Control Agreement, or otherwise take any action, or refrain from taking any action, which involves the exercise of discretion, unless it shall have been directed to do so in writing by the Trustor or, subsequent to an Event of Default or Act of Insolvency, the applicable Lender(s) (which written direction the Trustee shall be deemed to have received upon an Act of Insolvency pursuant to Section 5.3(b)). So long as the Trustee has requested Instructions from the Trustor or the Lenders, as the case may be, in a timely manner, the Trustee shall not be liable for any delay in acting that is attributable to a delay or failure by the Trustor or the Lenders in providing such Instructions to the Trustee, and the Trustee shall be fully protected in, and shall incur no liability in connection with, acting (or failing to act) pursuant to such Instructions.

(b) Concurrently herewith, the Lenders hereby direct the Trustee, and the Trustee is hereby authorized, to enter into the Account Control Agreement and any other related agreements in the form delivered to, and agreed upon by, the Trustee. For the avoidance of doubt, all of the Trustee's rights, protections and immunities provided herein shall apply to the Trustee for any actions taken or omitted to be taken under the Account Control Agreement and any other related agreements in such capacity.

(c) The Trustee undertakes to perform only such duties as are specifically set forth in this Agreement, and no implied duties, obligations, or covenants shall be read into this Agreement against the Trustee.

(d) No provision of this Agreement shall be construed to relieve the Trustee from liability for its own gross negligence or willful misconduct, except that:

- (i) the Trustee is acting solely as a directed trustee hereunder and shall not have any fiduciary relationship with any Person, including any Lender, and no implied duties or obligations shall be read into this Agreement or the Account Control Agreement or otherwise exist against the Trustee;
- (ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a good faith duty to examine the same to determine whether or not they conform to the requirements of this Agreement (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);
- (iii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts upon which such judgment was made; and
- (iv) no provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if the Trustee shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Agreement or if the Trustee shall have reasonable grounds for believing that an indemnity, satisfactory to the Trustee, against such risk or liability is not reasonably assured to it under the terms of this Agreement.

(e) In no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(f) The Trustee may refuse to act on any notice, consent, direction or Instruction from the Trustor or the Lenders or any agent, trustee or similar representative thereof that, in the Trustee's reasonable opinion, (i) is contrary to law or the provisions hereof, the Account Control Agreement, or of any other document to which it is a party in connection with the transactions contemplated hereby, (ii) may expose the Trustee to liability (unless the Trustee shall have been indemnified, to its reasonable satisfaction, for such liability), provided that such refusal to act shall not be unreasonable.

(g) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, epidemics, pandemics and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

### **3.2 CERTAIN RIGHTS OF TRUSTEE.**

- (a) Subject to the provisions of Section 3.1:

- (i) Any Instruction from the Trustor or, subsequent to an Event of Default or Act of Insolvency, the applicable Lender(s) to the Trustee to take any action or refrain from taking any action shall be effective if given in writing and in a form acceptable to the Trustee;
  - (ii) Prior to the occurrence of an Event of Default or Act of Insolvency, each Lender agrees that it shall be bound by the Instructions or directions of the Trustor and that it shall have no right of dissent or any similar rights;
  - (iii) Prior to the occurrence of an Event of Default or Act of Insolvency, the Trustee may apply to the Trustor for Instructions with respect to any matter arising in connection with the Trustee's performance hereunder and such application for Instructions may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted to be taken by the Trustee with respect to its duties or obligations under this Agreement and the date on and/or after which such action shall be taken, and the Trustee shall not be liable for any action taken or omitted to be taken in accordance with a proposal included in any such application on or after the date specified therein unless, prior to taking or omitting to take any such action, the Trustee has received Instructions in response to such application specifying the action to be taken or omitted;
  - (iv) The Trustee may conclusively rely, and shall be fully protected in acting or refraining from acting, upon any Instruction, resolution, certificate, statement, instrument, direction, consent, order or other document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;
  - (v) The Trustee shall have no duty to see to any recording, filing or registration of any instrument (or any rerecording, refiling or re-registration thereof) with respect to this Agreement;
  - (vi) The Trustee may consult with counsel, including counsel of its Affiliates. The Trustee may likewise rely on the advice or opinion that Trustor provides Trustee from Trustor's counsel, including counsel of Trustor's Affiliates and such advice or opinion of such counsel with respect to legal matters may be reasonably relied upon in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion. The Trustee shall have the right at any time to seek instructions concerning the administration of this Agreement from any court of competent jurisdiction;
  - (vii) The Trustee shall not be bound to make any investigation into the facts or matters stated in any Instruction, resolution, certificate, statement, instrument, report, notice, request, direction or order, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; and
  - (viii) Any action taken by the Trustee hereunder in accordance with the terms of this Agreement shall bind the Lenders, and the duly authorized signature or action of the Trustee alone shall be sufficient and effective to perform any such action under this Agreement. No third party shall be required to inquire as to the authority of the Trustee to so act or as to its compliance with any of the terms and provisions of this Agreement, both of which shall be conclusively evidenced by the Trustee's taking such action.
- (b) No provision of this Agreement shall be deemed to impose any duty or obligation on the Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Trustee shall be unqualified or incompetent to act in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Trustee shall be construed to be a duty.
- (c) The Trustee is authorized to obey and comply, in any manner it or its counsel deems appropriate, with all writs, order, judgments, awards, decrees issued or process entered by any court or arbitral tribunal that the Trustee reasonably believes has competent jurisdiction with respect to this Agreement and if the Trustee so



complies, it shall not be liable to any party hereto or to any other party or person notwithstanding that any such writ, order, judgment, award, decree or process may be subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without competent jurisdiction.

(d) To the fullest extent permitted by applicable law, the Lenders shall jointly pay, indemnify and hold the Trustee, the Securities Intermediary, each agent or attorney-in-fact appointed by the Trustee under this Agreement or the Account Control Agreement, and each of their respective officers, directors, shareholders, controlling persons, employees, agents and servants (each, an “Indemnified Party”) harmless from and against, any and all losses, costs, reasonably incurred and reasonably documented out-of-pocket expenses and disbursements, claims, damages, and liabilities (including, but not limited to, reasonable out-of-pocket attorneys’ fees) and any and all fees and expenses whatsoever incurred in investigating, preparing, or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation for which such Indemnified Party may become subject to or liable by reason of the Trustee’s acting as Trustee under this Agreement and the Account Control Agreement, unless (in each case) arising from the gross negligence, bad faith or willful misconduct of any Indemnified Party.

(e) The indemnification obligations of the Lenders pursuant to this Section 3.2 shall be, in the case of expenses incurred by the Trustee in enforcing the provisions of this Agreement and the Account Control Agreement and realizing upon any of the Collateral, limited to the reasonable expenses (including reasonable fees and expenses of legal counsel) so incurred, provided, however, that any and all expenses incurred in the course of following Instructions or other directions of the Trustor or the Lenders shall be deemed reasonable.

(f) To the fullest extent permitted by applicable law, the Trustor shall pay, indemnify and hold the Trustee, each agent or attorney in fact appointed by the Trustee hereunder and each of their respective officers, directors, shareholders, controlling persons, employees, agents and servants (each, an “Trustee Indemnified Party”) harmless from and against, any and all losses, costs, reasonably incurred and reasonably documented out-of-pocket expenses and disbursements, claims, damages, and liabilities (including, but not limited to, reasonable out-of-pocket attorneys’ fees and any and all fees and expenses whatsoever incurred in investigating, preparing, or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation for which such Trustee Indemnified Party may become subject to or liable, by reason of complying with any Instructions or directions of the Trustor including any Instructions or directions to issue any Instructions or entitlement orders, unless (in each case) arising from the gross negligence, bad faith or willful misconduct of any Trustee Indemnified Party.

(g) The obligations of the Lenders and the Trustor under this Section 3.2 shall survive each of (i) the termination of this Agreement, (ii) the resignation or removal of the Trustee under this Agreement and (iii) the resignation or removal of the Securities Intermediary under the Account Control Agreement. The obligations of the Lenders under this Section 3.2 shall be subject to Section 8.4.

## **ARTICLE IV TRUSTEE**

### **4.1 TRUSTEE; ELIGIBILITY.**

(a) There shall be at all times be a Trustee which shall (i) not be an Affiliate of the Trustor and (ii) be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Trustee shall cease to be eligible to so act under Section 4.1(a), the Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

#### **4.2 REMOVAL AND RESIGNATION OF TRUSTEE; APPOINTMENT OF SUCCESSOR TRUSTEE.**

(a) The Trustee may be removed (i) by the Trustor's delivery of not less than ninety (90) days' written notice of removal to the Trustee and each of the Lenders, or (ii) by the Majority Lenders' delivery of not less than ninety (90) days' written notice of removal executed by such Lenders and delivered to the Trustee and the Trustor. Such resignation or removal shall not become effective unless and until a Successor Trustee has been appointed pursuant to Section 4.2(c) and has accepted such appointment by written instrument executed by such Successor Trustee and delivered to the Trustor.

(b) If the Trustee materially defaults on any of its material obligations under this Agreement, Trustor may immediately remove Trustee from office and appoint a Successor Trustee. A material default under this Agreement includes, but is not limited to, the Trustee becoming insolvent as declared pursuant to the public filing of any case, proceeding, petition or decree against Trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, or any other applicable U.S. law or regulation.

(c) The Trustee may resign from office by an instrument in writing executed by the Trustee and delivered to the Trustor and the Lenders, which resignation shall not take effect until a Successor Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Trustee and delivered to the Trustor and the resigning Trustee.

(d) If the Trustee resigns or is removed by the Trustor or the Majority Lenders, or if a vacancy exists in the office of the Trustee for any reason, the Trustor shall promptly appoint a Successor Trustee. A Successor Trustee shall be appointed by the Trustor by written instrument executed by the Trustor and delivered to the Lenders and the retiring Trustee. If no Successor Trustee shall have been appointed and accepted appointment as provided in this Section 4.2(c) within forty-five (45) days after delivery to the Trustee of an instrument of removal or delivery by the Trustee of a notice of resignation, the removed or resigning Trustee may petition any court of competent jurisdiction for appointment of a Successor Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Trustee.

(e) Notwithstanding the foregoing, in the event that Trustor is unable to appoint a Successor Trustee, or appoint a Successor Trustee on a timely basis, under the provisions of this Section 4.2, Trustor shall have the right to, upon notice to Trustee, with such notice not required if Trustee has defaulted on its obligations under this Agreement and been removed from office, immediately take any of the following actions:

- i. Petition a court of competent jurisdiction for appointment of a Successor Trustee, subject to the terms and qualifications set forth in Section 4.1 and this Section 4.2; or
- ii. Appoint a collateral agent ("Collateral Agent") to serve on a temporary basis until a Successor Trustee is appointed. Trustor shall make available to the Collateral Agent each Business Day the Obligation Amount in accordance with Section 2.1, and Collateral shall be entitled to, and shall endeavor to, receive from Securities Intermediary each Business Day the Collateral Data File in accordance with Section 2.2. Based on the preceding, the Collateral Agent shall provide written notice to Trustor of any Collateral excess or deficiency and Trustor shall act in accordance with the provisions of Section 2.2(b) and 2.2(c). If an Act of Insolvency occurs with respect to Trustor during the service of a Collateral Agent, Securities Intermediary shall return all Collateral to Lenders on a pro rata basis; or
- iii. In its sole discretion, suspend its securities borrowing activities under the Securities Lending Agreements, return borrowed securities to Lenders, and issue Instructions directly to Securities Intermediary for the return of all Collateral to Trustor.

Trustee hereby acknowledges, agrees, represents, and warrants that Trustee is acting solely and exclusively as the Trustee for the benefit of the Lenders at all times when it acts hereunder and accepts, holds, administers and/or enforces (i) the security interest in the Collateral; (ii) the Collateral; and (iii) any accounts in which the Collateral is

held. Trustee acknowledges and agrees that upon the insolvency or bankruptcy of Trustee, the Collateral shall not be treated as property of Trustee or Trustee's estate and Trustee or the estate of Trustee, as applicable, shall not have any claim or other interest in the Collateral or any account in which the Collateral is held.

(f) No Trustee shall be liable for the acts or omissions to act of any Successor Trustee and no Successor Trustee shall be liable for the acts or omissions to act of any prior Trustee.

(g) Upon termination of this Agreement or removal or resignation of the Trustee pursuant to this Section 4.2, the Trustor shall pay to the Trustee all undisputed amounts owing for fees and reimbursement of expenses which have accrued to the date of such termination, removal or resignation.

## **ARTICLE V REMEDIES AND NOTICE OF DEFAULT**

**5.1 REMEDIES.** The Trustee may exercise any of the rights and remedies granted by the Account Control Agreement.

**5.2 APPOINTMENT OF A RECEIVER.** Subject to the requirements of the Securities Investor Protection Act of 1970, as amended, if a receiver of the Collateral shall be appointed in judicial proceedings, the Trustee may be appointed as such receiver, or may have a separate receiver appointed. Notwithstanding the appointment of a receiver, but subject to an order of the court in the judicial proceedings referred to above, each of the Trustee and the Securities Intermediary shall be entitled to retain possession and control of all cash or property held by or deposited with it or its agents pursuant to any provision of this Agreement or the Account Control Agreement.

### **5.3 NOTICE OF DEFAULT.**

(a) A Lender may, subject to the terms of the Securities Lending Agreement, deliver to the Trustee a Notice of Default (with a copy to Trustor) stating that an Event of Default has occurred under the Securities Lending Agreement wherein the Trustor remains solvent (i.e. the Event of Default is not due to an Act of Insolvency with respect to the Trustor) substantially in the form attached hereto as Exhibit B (a "Notice of Default"). Such Lender hereby covenants, for the benefit of the Trustor, that the Lender will not deliver a Notice of Default until all of the Lender's rights of enforcement pursuant to the Securities Lending Agreement have fully accrued following an event of Default (as defined in the Securities Lending Agreement) by the Trustor and the expiration of any applicable notice requirement or grace period. The Trustee shall have no duty to determine whether the Lender has complied with the immediately preceding sentence nor shall such covenant by the Lender constitute a limitation on the Trustee's right to act upon a Notice of Default without inquiry. The Trustee agrees to promptly notify the Trustor of its receipt of such Notice of Default and shall not act in accordance with Instructions from the Lender for the withdrawal, payment, transfer or other disposition with respect to that portion of the Collateral allocated to it until the passage of three (3) Business Days after Trustee's receipt of such Notice of Default. Upon the passage of such three (3) Business Day period, unless Lender sends a written notice to Trustee revoking such Notice of Default substantially in the form attached hereto as Exhibit C (a "Notice of Revocation"), Trustee is authorized to act upon such Notice of Default, and shall, without inquiry and in reliance upon such Notice of Default, direct the Securities Intermediary to deliver to it that portion of the Collateral allocable to such Lender pursuant to the information contained in the Lender Data File. No such three (3) Business Day delay shall be imposed in a situation involving an Act of Insolvency with respect to the Trustor, as described in paragraph (b) of this Section 5.3. Delivery of such Notice of Default shall constitute a representation and warranty by the Lender that the Trustee's compliance therewith does not violate any law, regulation, court order or other legal impediment or the terms of the Securities Lending Agreement or any other agreement between the Trustor and the Lender. The Trustee may conclusively rely without further inquiry on the statements set forth in any Notice of Default and any related instructions.

(b) Upon "actual knowledge" that an Act of Insolvency has occurred and is continuing with respect to the Trustor, the Trustee shall be "deemed to have received" a Notice of Default from each of the Lenders which instructs and directs Trustee to disregard and not follow any and all Instructions or entitlement orders of Trustor with respect to the Collateral, and authorizes and directs Trustee to direct the Securities Intermediary to deliver all of the Collateral held by it to the Trustee and for the Trustee to distribute the Collateral to each of the Lenders pursuant

to the information contained in the Lender Data File. Trustee agrees to notify each Lender of the occurrence of an Act of Insolvency with respect to the Trustor. “Actual knowledge” of the occurrence of an Act of Insolvency with respect to Trustor shall mean that a Responsible Officer has actual knowledge of a public notice of the filing of any case, proceeding, petition or decree against Trustor under Chapter 7 or Chapter 11 of the Bankruptcy Code, under the Securities Investor Protection Act of 1970 or under the Orderly Liquidation Authority under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act., as amended. Upon the lifting, expiration or termination of any stays mandated by applicable law, the Trustee shall promptly to distribute such Collateral to each Lender in an amount not to exceed the Obligation Amount with respect to such Lender as last communicated to the Trustee by the Trustor pursuant to Section 2.2. It is acknowledged and agreed that the Lenders rights pursuant to this Section 5 represent “contractual rights” to cause the acceleration, termination, and/or liquidation of a securities contract in respect of “termination values”, “payment amounts” or “other transfer obligations” within the meaning of Sections 362, 555 and 561 of the Bankruptcy Code and Section 78eee(b)(2)(C) of the Securities Investor Protection Act of 1970, as amended. Each Lender and Trustor shall be entitled to the protections afforded by these provisions and other applicable safe harbor provisions of the Bankruptcy Code. In no event shall the Trustee accept from any Lender a notification of a Default by the Trustor due to an Act of Insolvency. The existence of an Act of Insolvency can only be established through “actual knowledge” pursuant to the foregoing provisions of this Section 5.3(b).

(c) In the event that Trustor fails to transfer additional Collateral into the Collateral Account as and when required under the provisions of Section 2.2(b) hereof (a “Collateralization Default”), and such failure is not cured:

- (i) Prior to the close of business on the next succeeding Business Day, then
  - (A) Trustor shall immediately cease engaging in the loan of Lender securities under each Securities Lending Agreement until such Collateralization Default is cured, and
  - (B) Trustee shall suspend the performance of its obligations under Sections 2.2 until the close of business on the second Business Day following the Business Day on which the Collateralization Default occurred (the “Collateralization Cure Date”); and
- (ii) Prior to the close of business on the Collateralization Cure Date, the Trustee shall provide notice to all Lenders of the Collateralization Default.

(d) If following distribution of the Obligation Amount due to each Lender and the satisfaction of all remaining obligations of Trustor to Lender under the Securities Lending Agreement, there is any balance remaining, including any proceeds from a sale of Collateral, such balance shall be returned to the Trustor, or upon the occurrence of an Act of Insolvency with respect to Trustor, to Trustor’s estate, subject to the instructions of the trustee or receiver appointed in connection with Trustor’s insolvency or the court presiding over Trustor’s bankruptcy case. In the event that distributions are made to Lenders as a result of a Collateralization Default, Trustee shall make such distributions in accordance with the provisions of Section 5.6 hereof, but it is acknowledged and agreed that the Trustee shall only distribute each Lender’s ratable share of the Collateral available for distribution, in proportion to such Lender’s Obligation Amount relative to the aggregate of all Obligation Amounts owing to all Lenders.

**5.4 INSTRUCTIONS BY LENDERS.** To the extent that any provision of this Agreement or the Account Control Agreement provides that the Trustee shall act according to the Instructions or directions of the Trustor, subsequent to an Event of Default, such Instructions or directions may instead be provided by the Lenders affected by such Event of Default and the Trustee shall be entitled to rely on, and shall be obligated to follow such Instructions or other directions.

**5.5 CORPORATE ACTIONS.** It is not generally anticipated, given the nature of the arrangements set out herein, that (i) Collateral will be subject to voluntary Corporate Actions (as hereinafter defined) or (ii) in the event that the Collateral is subject to a voluntary Corporate Action, that Trustee would receive notice thereof in its capacity as Trustee. Nevertheless, if at any time prior to or subsequent to the occurrence of an Event of Default, the Trustee, in its capacity as Trustee hereunder, receives notice regarding the exercise of any voting or consent rights,

or similar actions with respect to the Collateral (including, but not limited to, warrants, options, tenders, options to tender or non-mandatory puts or calls)(a “Corporate Action”), it must receive specific corporate action Instructions from, (i) if prior to an Event of Default, the Trustor, and (ii) if subsequent to an Event of Default, the Lenders. In order for Trustee to act, it must receive the applicable corporate action Instructions not later than noon at least two (2) Business Days prior to the last scheduled date to act (or such earlier date or time as Trustee may notify the Lenders). Absent Trustee’s timely receipt of such corporate action Instructions, Trustee shall have no obligation to take any action with respect to such Corporate Action and shall not be liable for failure to take any action relating to or to exercise any such voting, consent or similar rights.

## **5.6 DISTRIBUTIONS TO LENDERS.**

(a) Following its receipt of a Notice of Default or deemed Notice of Default in the event of an Act of Insolvency with respect to the Trustor and delivery by the Securities Intermediary of the applicable amount of Collateral to the Trustee, the Trustee will as promptly as reasonably practicable under the circumstances, deliver to each applicable Lender, its proportionate interest in the Collateral as set forth in the Lender Data File.

(b) The Trustee shall be responsible for calculating the amount to be distributed to each Lender and performing all other calculations necessary for distribution of the Collateral, provided, however, that the Trustee shall be entitled to rely conclusively on the information contained in the Lender Identifying Information, the Lender Data File and the Collateral Data File and shall not be liable for any loss resulting from an error contained in such Lender Identifying Information, the Lender Data File or the Collateral Data File.

(c) Prior to the distribution of any excess Collateral to the Trustor pursuant to Section 5.3(d), the Trustee shall be entitled to apply such excess Collateral first to the Trustee in such amount as is necessary to satisfy any then unpaid amounts owing to the Trustee pursuant to this Agreement.

**5.7 RECEIPT OF AMOUNTS BY THE LENDERS.** If at any time following a distribution to the Lenders pursuant to Section 5.6 any Lender (a “Receiving Party”) shall have received any payment or distribution (whether voluntary, involuntary, through the exercise of any rights of set-off, or otherwise, and whether in cash, property or securities) in excess of the payments or distributions such Receiving Party would have received through the operation of Section 5.6 (such excess payment or distribution being referred to as an “Excess Payment”), then such Receiving Party shall hold such Excess Payment in trust for the benefit of all Lenders, and shall promptly pay over such Excess Payments in the form received (duly endorsed, if necessary, to the Trustee) to the Trustee for distribution by the Trustee pursuant to Section 5.6.

## **ARTICLE VI TERMINATION**

**6.1 TERMINATION.** This Agreement shall terminate on the date that the Account Control Agreement terminates in accordance with its terms, provided, however, that if at the time of the termination of the Account Control Agreement, proceeds of the Collateral remain in the possession of the Trustee pending distribution, this Agreement shall not terminate until such time as such proceeds of the Collateral have been distributed to each Lender entitled thereto.

## **ARTICLE VII COMPENSATION; REIMBURSEMENT OF EXPENSES**

**7.1 TRUSTOR OBLIGATIONS.** The Trustor agrees to pay to the Trustee from time to time such compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and to reimburse the Trustee for such expenses and disbursements as shall have been agreed to in the Fee Schedule dated of even date herewith, between the Trustor and the Trustee; and to indemnify the Trustee (which shall include its directors, officers, employees and agents), against any loss, liability or expense incurred without gross negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the reasonable costs and expenses of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The provisions of this Section 7.1 shall survive the

termination of this Agreement or the resignation or removal of the Trustee. To secure the Trustor's payment obligations in this Section 7.1, the Trustee shall have a lien subordinate to that of the Lenders on all money or property held or collected by the Trustee under this Agreement.

## **ARTICLE VIII MISCELLANEOUS**

### **8.1 REPRESENTATIONS AND WARRANTIES**

(a) The Trustor and the Trustee. The Trustor and the Trustee each represents and warrants for itself, which representations and warranties shall be deemed to be continuing, that:

(i) It is duly organized and existing under the laws of the jurisdiction of its organization with full power and authority to execute and deliver this Agreement and to perform all of the duties and obligations to be performed by it hereunder;

(ii) This Agreement is legally and validly entered into, does not, and will not, violate any ordinance, charter, by-law, rule or statute applicable to it, and is enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, administration, liquidation or analogous or similar laws or regulations, or by equitable principles; and

(iii) The person executing this Agreement and any other document related hereto on its behalf has been duly and properly authorized to do so.

(b) Further Representations and Warranties of the Trustor.

(i) The Trustor represents and warrants that it is in compliance, and covenants that it shall remain in compliance during the term hereof, in all material respects, with the requirements of SEC Rules 8c-1, 15c2-1, and 15c3-3 promulgated under the Securities and Exchange Act of 1934, as amended;

(ii) Trustor represents and warrants that each Lender whose Collateral is held pursuant to this Agreement has provided a Consent either in the form of Exhibit A attached hereto or has agreed to terms substantially the same as those contained in Exhibit A as part of the Securities Lending Agreement or otherwise;

(iii) Trustor represents and warrants that all information contained in each Lender Data File provided hereunder, and all Lender Identifying Information provided hereunder is true and correct in all material respects;

(iv) Trustor represents and warrants that it will promptly notify the Trustee if any of the representations and warranties made hereunder are no longer true and correct in all material respects; and

(v) Trustor represents and warrants that each provision of Lender Identifying Information to the Trustee shall constitute an affirmation of the accuracy of the representations and warranties set forth in this Section 8.1(b), including, without limitation, the representation and warranty that the applicable Lender has executed a Consent.

### **8.2 SUCCESSORS AND ASSIGNS.**

(a) All agreements contained in this Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Trustor and shall inure to the benefit of the Trustee and the Lenders. Except in connection with a consolidation, merger, sale, assignment, conveyance, transfer, lease or other disposition involving the Trustor that is permitted by this Article VIII and pursuant to which the successor or assignee agrees in writing to perform the Trustor's obligations hereunder, the Trustor shall not assign its obligations hereunder.

(b) Nothing contained in this Agreement shall prevent (i) any consolidation or merger of the Trustor with or into any other Person (whether or not affiliated with the Trustor), or successive consolidations or mergers in which the Trustor or its successor or successors shall be a party or parties, or shall prevent any sale, assignment,

conveyance, transfer, lease or other disposition of all or substantially all of the assets or other property of the Trustor or its successor or successors to any other Person (whether or not affiliated with the Trustor or its successor or successors), provided that the Trustor is the surviving or continuing entity, or (if the Trustor is not the surviving or continuing entity) the surviving or continuing entity or entity that acquires all or substantially all of the Trustor's assets by sale, assignment, conveyance, transfer or lease or other disposition is incorporated in the United States of America and expressly assumes by an agreement supplemental hereto in form satisfactory to the Trustee the payment and performance of all obligations of the Trustor under this Agreement or (ii) any consolidation or merger of the Trustee with or into any other Person (whether or not affiliated with the Trustee), or successive consolidations or mergers in which the Trustee or its successor or successors shall be a party or parties, or shall prevent any sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the assets or other property of the Trustee or its successor or successors to any other Person (whether or not affiliated with the Trustee or its successor or successors), provided that the (A) Trustee is the surviving or continuing entity, or (if the Trustee is not the surviving or continuing entity) the surviving or continuing entity or entity that acquires all or substantially all of the Trustee's assets by sale, assignment, conveyance, transfer or lease or other disposition is incorporated in the United States of America and expressly assumes by an agreement supplemental hereto in form satisfactory to the Trustor the payment and performance of all obligations of the Trustee under this Agreement and (B) such surviving entity is qualified to act according to the terms hereof.

(c) In case of any such consolidation, merger, sale, assignment, conveyance, transfer, lease or other disposition and upon the assumption by the successor Person in accordance with the preceding paragraph of the payment and performance of all obligations of the predecessor Person under this Agreement, such successor Person shall succeed to and be substituted for the predecessor Person, with the same effect as if it had been named herein, and thereupon the predecessor Person, except in the case of a lease, shall be relieved of all duties, obligations and covenants under this Agreement.

(d) Each Person shall be entitled to receive an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer, lease or other disposition, any such assumption and any succession to the role of the predecessor Person permitted by this Section 8.2, comply with the provisions of this Article VIII.

(e) Except as expressly provided by this Section 8.2, the Trustee may not otherwise assign its rights or delegate its duties under this Agreement without the prior written consent of the Trustor and the Lenders, which consent will not be unreasonably withheld or delayed, provided that the Trustee continues to be liable to the Trustor and the Lenders for the performance of the Trustee's obligations under this Agreement.

(f) In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected thereby.

### **8.3 AMENDMENTS.**

(a) The Trustor and the Trustee may from time to time and at any time enter into an agreement or agreements supplemental hereto, without the consent of the Lenders, for one or more of the following purposes, provided, however, that such agreement or agreements supplement hereto do not adversely affect the powers and rights of each Lender to issue Instructions to the Trustee subsequent to an Event of Default or adversely affect the security interest granted to the Trustee for benefit of the Lenders:

- (i) To evidence the succession of another Person to the Trustor, and the assumption by any such successor of the covenants of the Trustor contained;
- (ii) To add to the covenants of the Trustor further covenants, restrictions, conditions or provisions for the protection of;
- (iii) To cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental agreement which may be defective or inconsistent with any other provision contained herein or in any supplemental agreement, or to make such other provisions in regard to matters or

questions arising under this Agreement as shall not be inconsistent with the provisions of this Agreement and in all such cases shall not adversely affect the interests of the Lenders in any material respect; or

- (iv) To evidence and provide for the acceptance of appointment hereunder by a Successor Trustee pursuant to the requirements of Section 4.2.

(b) The Trustee is hereby authorized to join with the Trustor in the execution of any such supplemental agreement, and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental agreement which affects the Trustee's own rights, duties or immunities under this Agreement or otherwise. Any supplemental agreement authorized by the provisions of this Section 8.3(b) may be executed by the Trustor and the Trustee without the consent of the Lenders, notwithstanding any of the provisions of Section 8.3(c).

(c) With the consent (evidenced as provided in Section 8.4) of the Lenders (to the extent required), the Trustor and the Trustee may from time to time and at any time enter into an agreement or agreements supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Agreement or of any supplemental agreement or of modifying in any manner the rights of the Lenders under this Agreement; provided, however, that no such supplemental agreement shall change or terminate the obligation of the Trustee to distribute the Collateral in accordance with the provisions hereof in a manner that adversely affects the interests of the Lenders in any material respect.

(d) Upon the request of the Trustor and upon the filing with the Trustee of evidence of the consent of the Lenders required to consent thereto as aforesaid, the Trustee shall join with the Trustor in the execution of such supplemental agreement unless such supplemental agreement affects the Trustee's own rights, duties or immunities under this Agreement or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental agreement.

(f) It shall not be necessary for the consent of the Lenders under this Section 8.3 to approve the particular form of any proposed supplemental agreement, but it shall be sufficient if such consent shall approve the substance thereof.

(g) Promptly after the execution by the Trustor and the Trustee of any supplemental agreement pursuant to the provisions of this Section 8.3, the Trustee shall transmit by mail, first-class postage prepaid, a notice, setting forth in general terms the substance of such supplemental agreement, to the Lenders. Any failure of the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental agreement.

(h) Upon the execution of any supplemental agreement pursuant to the provisions of this Section 8.3, this Agreement shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Agreement of the Trustee, the Trustor and the Lenders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental agreement shall be and be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

(i) The Trustee shall be entitled to receive an Opinion of Counsel as conclusive evidence that any supplemental agreement executed pursuant to this Section 8.3 is authorized or permitted by, and conforms to, the terms of this Section 8.3 and that it is proper for the Trustee under the provisions of this Section 8.3 to join in the execution thereof.

#### **8.4 ACTS OF LENDERS.**

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Agreement to be given, made or taken by Lenders, including by the Majority Lenders, may be embodied in and evidenced by one or more Instructions, instruments of substantially similar tenor signed by such Lenders, or Majority Lenders, as applicable in person or by agent duly appointed in writing; and, except as herein



otherwise expressly provided, such action shall become effective when such Instruction, instrument or instruments are delivered to the Trustee.

(b) Proof of execution of any such Instruction, instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and conclusive in favor of the Trustee and the Trustor, if made in the manner provided in this Section.

## **8.5 SEPARATE LIABILITY.**

(a) The obligations of each Lender under this Agreement (if any) shall be several and not joint, and no Lender shall be liable or responsible for any amounts owed hereunder by, or any other liability of, any other Lender.

(b) With respect to any amount expressed to be payable by the Lenders, rather than a particular Lender, to the Trustee or the Securities Intermediary, the liability of each Lender for such amount payable by the Lenders on any date of determination shall not exceed each Lender's pro rata interest in the Collateral, in each case as of such date of determination.

## **8.6 NOTICES.**

(a) Except as otherwise expressly provided in this Agreement, all notices and other communications provided for in this Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered by hand, telecopied or mailed by registered or certified mail, as follows:

If given to the Trustee, at the Trustee's mailing address set forth below (or such other address as the Trustee may give notice of to the Trustor and the Lenders):

Wilmington Trust, National Association  
285 Delaware Avenue  
Buffalo, NY 14202  
Attn: Collateral Management  
[Collateralmgmt@wilmingtontrust.com](mailto:Collateralmgmt@wilmingtontrust.com)

If given to the Trustor, at the Trustor's mailing addresses set forth below (or such other address as the Trustor may give notice of to the Trustee and the Lenders):

Apex Clearing Corporation  
350 N. St. Paul Street  
Suite 1300  
Dallas, TX 75054  
Attn: Treasury  
[treasury@apexclearing.com](mailto:treasury@apexclearing.com)

If given to any Lender, at the address or email address set forth in the Lender Identifying Information (or such other address as the Trustor or such Lender may give notice of to the Trustee; provided that if there is a conflict between an address provided by the Trustor and such Lender, such address as is provided by such Lender shall control).

(b) All such notices and other communications shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

(c) The Trustee agrees to accept and act upon Instructions or other directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that with regard to any Notice of Default or Notice of Revocation the Lender providing such electronic Instructions or directions, subsequent to the transmission thereof, shall provide the originally executed Instructions or directions to the Trustee in a timely manner and (b) such originally executed Instructions or directions shall be signed by an authorized representative of the party providing such Instructions or directions. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's good faith reliance upon and compliance with such Instructions or directions notwithstanding such Instructions or directions conflict or are inconsistent with a subsequent written Instruction or direction or if the subsequent written Instruction or direction is never received. The party providing Instructions or directions by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, as aforesaid, agrees to assume all risks arising out of the use of such electronic methods to submit Instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

**8.7 CIP and CDD/BO Reliance.** As a condition to the Trustee entering into this Agreement and continuing to perform its duties hereunder, the Trustor represents and warrants to the Trustee, which representations and warranties shall be deemed to be continuing, that it is subject to a rule implementing 31 USC 5318(h), it is regulated by a Federal functional regulator (as defined in 31 CFR §1010.100(r)), that it has implemented and currently maintains an anti-money laundering program, including a customer identification program ("CIP") and customer due diligence and beneficial ownership program ("CDD/BO"), and a Know Your Customer program ("KYC"), that are reasonably designed to comply with the requirements of 31 CFR 1023.220, 31 CFR 1010.230, and associated regulations, and that it is in material compliance therewith. Further, the Trustor will certify annually to the Trustee, upon written request, that it has implemented and maintains such CIP, CDD/BO, and KYC program, that it is in compliance in all material respects with such programs for all Lenders. The Trustor acknowledges and represents that the Lenders are customers of the Trustor and not customers of the Trustee or joint customers of the Trustor and the Trustee.

**8.8 BENEFIT.** Nothing in this Agreement, express or implied, shall give to any Person, other than the parties hereto and their permitted successors hereunder and the Lenders, any benefit or any legal or equitable right, remedy or claim under this Agreement.

**8.9 INTEGRATION; COUNTERPARTS.** This Agreement and the exhibits, Fee Schedule, and addenda, together with the Account Control Agreement referenced herein, (a) are a final, complete, and exclusive statement of the agreement and understanding of the parties hereto with respect to the subject matter hereof; (b) collectively constitute the entire agreement of the parties hereto with respect to the subject matter hereof; and (c) supersede and merge herein any prior and contemporaneous negotiations, discussions, representations, understandings, and agreements between the parties hereto, whether oral or written, with respect to the subject matter hereof. Without limiting the generality of the foregoing, it is expressly acknowledged and agreed that obligations and duties of the parties under that certain letter agreement between the parties dated on and as of April 7, 2021 with respect to the confidentiality obligations of the parties prior to the execution of this Agreement, are hereby superseded by, and merged into, this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to constitute an original, but all of which shall constitute one and the same agreement, and may be delivered by e-mail of a .pdf attachment, generally recognized e-signature technology (e.g., DocuSign® or Adobe Sign®) or other electronic means intended to preserve the original graphic or pictorial appearance of a document.

**8.10 GOVERNING LAW; WAIVER OF TRIAL BY JURY.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE TRUSTOR, THE TRUSTEE AND EACH LENDER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. NOTWITHSTANDING THE FOREGOING, WITH RESPECT TO EACH LENDER, THE TERMS OF THIS SECTION SHALL ONLY APPLY TO THE EXTENT PERMITTED UNDER THE LAWS OF THE JURISDICTION PURSUANT TO WHICH SUCH LENDER WAS INCORPORATED OR OTHERWISE ORGANIZED. IF AS A RESULT OF THE PREVIOUS SENTENCE, THE

LAWS OF A JURISDICTION OTHER THAN THAT OF THE STATE OF NEW YORK SHALL BE DEEMED TO GOVERN THIS AGREEMENT WITH RESPECT TO A PARTICULAR LENDER, THEN, TO THE EXTENT THIS AGREEMENT IS SO GOVERNED, THE IMMUNITIES AND STANDARD OF CARE OF THE TRUSTEE IN CONNECTION WITH ITS ADMINISTRATION OF THE TRUST HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

*[Signature Page Follows]*