

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-11780 (BLS)

(Jointly Administered)

Ref. Docket No. 1037

NOTICE OF FILING PLAN SUPPLEMENT

PLEASE TAKE NOTICE that Brookstone Holdings Corp. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) and the Official Committee of Unsecured Creditors (the “Committee,” and together with the Debtors, the “Plan Proponents”) hereby file the Plan Supplement in accordance with the *First Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code of Brookstone Holdings Corp., et al., Submitted by the Debtors and the Official Committee of Unsecured Creditors as Co-Proponents* [Docket No. 1037] (together with all exhibits thereto and as it may be further amended, modified or supplemented, the “Plan”).²

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibits 1 through 4, which comprise the Plan Supplement, are the following documents:

Exhibit 1: Assumed Executory Contract and Unexpired Lease List

Exhibit 2: List of Retained Causes of Action

Exhibit 3: Implementation Memorandum

Exhibit 4: Liquidating Trust Agreement

¹ The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515); and, Brookstone Properties, Inc. (2517). The Debtors’ corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan Proponents reserve all rights to amend the documents contained in the Plan Supplement at any time through and including the Effective Date.

Dated: Wilmington, Delaware
March 4, 2019

/s/ Andrew L. Magaziner

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EXHIBIT 1

Assumed Executory Contract and Unexpired Lease List

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

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ASSUMED EXECUTORY CONTRACT AND UNEXPIRED LEASE LIST²

<u>Counterparty</u>	<u>Description of Contracts</u>
Adaptive Insights, Inc.	Subscription Services Agreement
Altair Group, PLLC	Engagement Agreement
Areas USA FLTP, LLC	Real Estate Agreement
AT&T Mobility National Accounts LLC	Corporate Digital Advantage Agreement
Axis Insurance Company	Insurance Agreement
Brookstone Atlanta JV, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Brookstone Charlotte, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Brookstone Dallas Fort Worth, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Brookstone DEN T-B, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Brookstone Houston T-B, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Brookstone IAD T-B, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Brookstone IAH T-A, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Brookstone O'Hare II, LLC	Management Services Agreement; License Agreement; Employment Services Agreement

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² Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on this Assumed Executory Contract and Unexpired Lease List, nor anything contained in the Plan, shall constitute an admission by the Plan Proponents or the Liquidating Trust, as applicable, that any contract or lease is in fact an Executory Contract or Unexpired Lease subject to assumption or rejection pursuant to section 365(a) of the Bankruptcy Code, or that any of the Debtors or the Liquidating Trust, as applicable, has any liability thereunder. The Plan Proponents reserve all rights to amend and/or supplement this Assumed Executory Contract and Unexpired Lease list. Each Executory Contract or Unexpired Lease on this list shall include any amendment, modification, or supplement thereto.

Brookstone O'Hare T-5, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Brookstone Stores DTW, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Brookstone Stores SAT, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
Carry On SLC T-2 LLC	Management Services Agreement; License Agreement; Employment Services Agreement
City of Chicago	Lease Agreement (O'Hare T3HK.U.18.A)
Comcast Enterprise Services	Telecommunications Agreement
Contract Logix	License Agreement
Corporation Service Company	Services Agreement
Crowell & Moring LLP	Engagement Letter
Demandware, Inc.	Master Services Agreement
eGAIN Communications Corporation	Services Agreement
Enhanced Communications of Northern New England Inc. d/b/a/ FairPoint Internet	Telecommunications Agreement
Formax	Services Agreement
Grant Thornton	Engagement Agreement
Houston Airport System	Shared Tenant Services
Innovation Acquisition, LLC and Solon Properties, LLC	Lease Agreement
Iron Mountain	Services Agreement
MetLife Insurance Company USA	Group Term Life and Accident and Health Policy Agreement (including all amendments and certificates thereto); Group Insurance Program Agreement ³
National Concessions Management Brookstone Stores Georgia, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
National Concessions Management Brookstone Stores Georgia II, LLC	Management Services Agreement; License Agreement; Employment Services Agreement
New England Documents System	Service Agreement
Omni Management Group	Engagement Agreement
Paradies-Chicago, LLC	Sublease Agreement (O'Hare T3HK.U.18.A)
PayFlex Systems USA, Inc.	Reimbursement Account Administrative Services Agreement ⁴
The Albano Group, LLC	Engagement Agreement
Thompson Reuters	Services Agreement
TriCor	Services Agreement
Vertex, Inc.	License Agreement
Vision Service Plan (VSP)	Vision Care Policy Agreement ⁵
Wells Fargo	Master Agreement; Services Documentation
Wolters Kluwer	Tax Library Agreement
World Travel, Inc.	World Travel Agreement
Zurich American Insurance Company	Insurance Agreement

³ To the extent such agreements have not been previously assumed by the Debtors.

⁴ To the extent such agreement has not been previously assumed by the Debtors.

⁵ To the extent such agreement has not been previously assumed by the Debtors.

EXHIBIT 2

List of Retained Causes of Action

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

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SCHEDULE OF RETAINED CAUSES OF ACTION

Certain documents, or portions thereof, contained in the Plan Supplement² or referenced herein remain subject to continuing review by the Plan Proponents. The Plan Proponents reserve all rights to amend, revise, or supplement the Plan Supplement and any of the documents and designations contained therein, including, without limitation, this Schedule of Retained Causes of Action, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

Except as otherwise expressly provided in the Plan, including, without limitation, with respect to the Released Parties, all rights to commence and pursue any and all Causes of Action against any Entity, including, without limitation, Causes of Action that are not expressly identified in this Schedule of Retained Causes of Action, are reserved. Neither confirmation of the Plan nor the occurrence of the Effective Date shall in any way affect such rights.

Without in any way limiting the foregoing or the provisions of Article IV.M of the Plan, from and after the Effective Date, the Liquidating Trust shall have all rights to enforce, commence, and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in this Schedule of Retained Causes of Action, including, without limitation the right to commence, prosecute, or settle such Causes of Action, which shall be preserved notwithstanding the occurrence of the Effective Date. For the avoidance of doubt, such Causes of Action shall include, without limitation, the following:

I. Causes of Action Related to Class Action Claims

Any and all Causes of Action against any Entity related to class action claims, including, without limitation, any and all Causes of Action related to the following cases and any and all cases, ancillary proceedings, litigations, actions, or other proceedings related thereto or arising therefrom:

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515); and, Brookstone Properties, Inc. (2517). The Debtors' corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² References herein to the "Plan" refer to and, unless otherwise stated, all capitalized terms used but not defined herein have the meanings given to them in, the *Second Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code of Brookstone Holdings Corp. et al., Submitted by the Debtors and the Official Committee of Unsecured Creditors as Co-Proponents* (together with all exhibits thereto and as it may be further amended, modified, or supplemented).

- *In re Cathode Ray Tube Antitrust Litig.*, MDL No. 1917 (N.D. Cal.)
- *In re Lithium Ion Batteries Antitrust Litig.*, Case No. 13-2420 (N.D. Cal.)
- *In re Optical Disk Drive Prods. Antitrust Litig.*, Case No. 10-2143 (N.D. Cal.)
- *In re Kleen Products LLC v. Packaging Corp. of America*, Case No. 10-5711 (N.D. Ill.)
- *In re Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd. et al.*, Case No. 08-00042 (E.D.N.Y.)
- *In re Transpacific Passenger Air Transp. Antitrust Litig.*, Case No. 07-5634 (N.D. Cal.)

II. Causes of Action Related to Fizzics Group LLC

Any and all Causes of Action against Fizzics Group LLC and any affiliate, subsidiary, agent, or related party thereto, including, without limitation, any and all Causes of Action asserted or to be asserted in the case *Brookstone Purchasing Inc. v. Fizzics Group LLC*, Case No. 226-2018-CV-00301 (N.H. Super. Ct., Hillsborough Cty.) and any and all cases, ancillary proceedings, litigations, actions, or other proceedings related thereto or arising therefrom.

III. Causes of Action Related to Letters of Credit, Deposits, Adequate Assurance Postings, and Other Collateral Postings

Unless otherwise expressly released pursuant to the terms of the Plan, any and all Causes of Action against any Entity to whom or for whose benefit the Debtors provided letters of credit or deposits, made adequate assurance payments, posted any other collateral, or had any contractual agreement related thereto for (a) the recovery of such letters of credit, deposits, payments, or other collateral, (b) the credit of such letters of credit, deposits, payments, or other collateral against amounts owed, (c) the recoupment or setoff of amounts owed against such letters of credit, deposits, payments, or other collateral, or (d) any other relief or remedy, including, in each case, related to or against Apex Digital Inc. or any of its affiliates.

IV. Causes of Action to Contest Claims Asserted in the Chapter 11 Cases

Except as expressly provided otherwise in the Plan, any and all Causes of Action against any Entity that has asserted, or hereafter asserts, a Claim against any of the Debtors, or for whom a Claim against any of the Debtors has been scheduled, for purposes of contesting the validity or allowance of such Claim, to seek an offset against such Claim, or to otherwise defend against such Claim.

V. Causes of Action Related to Overpayments, Outstanding Receivables, and Other Obligations Owed to the Debtors or the Estates

Unless otherwise expressly released pursuant to the terms of the Plan, any and all Causes of Action against any Entity that owes, or that may in the future owe, money to any one of more of the Debtors, regardless of whether such Entity is specifically identified in the Plan, the Plan Supplement, the Disclosure Statement, the Debtors' respective filed schedules of assets and liabilities, the Debtors' respective statements of financial affairs, or any amendments thereto.

VI. Causes of Action Related to Taxes and Tax Refunds

Unless otherwise expressly released pursuant to the terms of the Plan, any and all Causes of Action against any Entity that owes, or that may in the future owe, money related to tax refunds to any one or more of the Debtors, or that asserts that taxes are owed to such Entity by the Debtors or the Liquidating Trust, as applicable, in each case regardless of whether such Entity is specifically identified in the Plan, the Plan Supplement, the Disclosure Statement, the Debtors' respective filed schedules of assets and liabilities, the Debtors' respective statements of financial affairs, or any amendments thereto.

VII. Causes of Action Related to Other Litigation or Potential Litigation

Unless otherwise expressly released pursuant to the terms of the Plan, any and all Causes of Action against any Entity that is party to or that may in the future become party to any litigation, arbitration, or any other type of adversarial proceeding or disputed resolution proceeding, whether formal or informal, judicial or non-judicial, involving any one or more of the Debtors or the Liquidating Trust, as applicable, regardless of whether such Entity is specifically identified in the Plan, the Plan Supplement, the Disclosure Statement, the Debtors' respective filed schedules of assets and liabilities, the Debtors' respective statements of financial affairs, or any amendments thereto.

VIII. Causes of Action Related to the Automatic Stay, Subordination, or Avoidance

Unless otherwise expressly released pursuant to the terms of the Plan, any and all Causes of Action or claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code, as applicable, regardless of whether specifically identified in the Plan, the Plan Supplement, the Disclosure Statement, the Debtors' respective filed schedules of assets and liabilities, the Debtors' respective statements of financial affairs, or any amendments thereto.

EXHIBIT 3

Implementation Memorandum

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-11780 (BLS)

(Jointly Administered)

IMPLEMENTATION MEMORANDUM

This Implementation Memorandum describes the procedures and transactions required for implementing the Plan Transactions under the Plan.² None of the procedures and transactions described herein will occur until the conditions to the Effective Date set forth in the Plan are satisfied or waived in accordance with the Plan. Although this Implementation Memorandum reflects the parties' current intentions for implementing the Plan Transactions, unless otherwise specifically provided in the Plan or the Confirmation Order, nothing in this Implementation Memorandum shall or shall be deemed to limit or modify in any way any provisions of the Plan or the Confirmation Order or any authority or discretion granted to the Plan Proponents or the Liquidating Trust under the Plan or the Confirmation Order. The Plan Proponents reserve all rights to jointly amend, revise, modify, or further supplement this Implementation Memorandum, and any of the documents attached hereto, from time to time in their discretion.

In accordance with Article IV.B. of the Plan, on or as soon as reasonably practicable after the Effective Date, the parties described below will effectuate the following transactions:

1. As described below, each direct equity owner of certain non-Debtor subsidiaries (collectively, the "Non-Debtor Subsidiaries") will cause such Non-Debtor Subsidiary, as applicable, to transfer such Non-Debtor Subsidiary's assets in excess of \$100.00 to its direct equity owner. Specifically:
 - a. Brookstone International Holdings, Inc. will cause its wholly owned Non-Debtor Subsidiary Brookstone Hong Kong Holdings Limited to transfer all of its assets in excess of \$100.00 to Brookstone International Holdings, Inc.

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² References herein to the "Plan" refer to and, unless otherwise stated, all capitalized terms used but not defined herein have the meanings given to them in, the *Second Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code of Brookstone Holdings Corp. et al., Submitted by the Debtors and the Official Committee of Unsecured Creditors as Co-Proponents* (together with all exhibits thereto and as it may be further amended, modified, or supplemented).

- b. Brookstone International Holdings, Inc. and Brookstone Company, Inc., each of which own 50% of the equity interests of Non-Debtor Subsidiary Advanced Audio Concepts, Limited, will cause Advanced Audio Concepts, Limited to transfer half of its assets in excess of \$100.00 to Brookstone International Holdings, Inc. and the remaining half of its assets in excess of \$100.00 to Brookstone Company, Inc.
 - c. Brookstone Purchasing, Inc. will cause its wholly owned Non-Debtor Subsidiaries Brookstone Labs Asia, Inc., Brookstone AR Studio, Inc., and Brookstone Design Studio, Inc. to transfer all of its assets in excess of \$100.00 to Brookstone Purchasing, Inc.
 - d. Brookstone Company, Inc. will cause each of its wholly owned Non-Debtor Subsidiaries Gardeners Eden, Inc. and Brookstone Military Sales, Inc. to transfer all of their assets in excess of \$100.00 to Brookstone Company, Inc.
2. As described below, each Debtor will cause the Brookstone Subsidiaries, as applicable, to transfer such Brookstone Subsidiary's assets in excess of \$100.00 to its direct equity owner. Specifically:
 - a. Brookstone Holdings, Inc. will cause each of its wholly owned Brookstone Subsidiaries, Big Blue Audio LLC and Brookstone Properties, Inc., to transfer all of their assets in excess of \$100.00 to Brookstone Holdings, Inc.
 - b. Brookstone Stores Inc. will cause its wholly owned Brookstone Subsidiary, Brookstone Holdings, Inc., to transfer all of its assets in excess of \$100.00 to Brookstone Stores, Inc.
 - c. Brookstone Company, Inc. will cause each of its wholly owned Brookstone Subsidiaries, Brookstone Retail Puerto Rico, Inc., Brookstone International Holdings, Inc., Brookstone Purchasing, Inc. and Brookstone Stores, Inc., to transfer all of their assets in excess of \$100.00 to Brookstone Company, Inc.
 - d. Brookstone, Inc. will cause its wholly owned Brookstone Subsidiary, Brookstone Company, Inc., to transfer all of its assets in excess of \$100.00 to Brookstone, Inc.
 - e. Brookstone Parent will cause its wholly owned Brookstone Subsidiary, Brookstone, Inc., to transfer all of its assets in excess of \$100.00 to Brookstone Parent.
3. Following the transfers of all assets in excess of \$100.00 from each Non-Debtor Subsidiary and Brookstone Subsidiary, as described in paragraphs 1 and 2 above, all of the remaining assets in excess of \$100.00 from each Non-Debtor Subsidiary and Brookstone Subsidiary will be held by Brookstone Parent. Thereafter, all of the Brookstone Subsidiaries and Non-Debtor Subsidiaries will be dissolved or

deregistered, pursuant to the relevant process under applicable law, and all Existing Equity Interests in each of the Brookstone Subsidiaries will be cancelled and extinguished and shall not receive any distribution or retain any property pursuant to the Plan. Any remaining assets distributed in dissolution or deregistration of a Non-Debtor Subsidiary or a Brookstone Subsidiary shall be distributed from the immediate parent of such Non-Debtor Subsidiary or Brookstone Subsidiary up to Brookstone Parent.

4. Brookstone Parent will transfer certain accounts receivable and promissory note assets related to certain Non-Debtor Affiliates (collectively, the “JV Assets”) and certain information technology assets to Apex Digital Inc. (“Apex”), as described in more detail in the *Declaration of Greg Tribou in Support of Confirmation of the Second Amended Joint Plan of Liquidation of Brookstone Holdings Corp. and its Chapter 11 Affiliates and their Official Committee of Unsecured Creditors* (the “Tribou Declaration”). In exchange for the JV Assets and the information technology assets, Apex will provide certain cash and other considerations to Brookstone Parent, as described in more detail in the Tribou Declaration.
5. All remaining assets held by Brookstone Parent will become Liquidating Trust Assets which, together with the Administrative/Priority Claims Reserve Account and the Other Secured Claims Reserve Account will be transferred to the Liquidating Trust free and clear of all liens, claims, and encumbrances, except to the extent otherwise provided in the Plan.
6. Brookstone Parent shall retain the OPEB Plan or, with the consent of the Liquidating Trustee, shall transfer the OPEB Plan to the Liquidating Trust and, in each case, shall preserve all rights thereunder. The Debtors reserve all rights of any of the Debtors, the Liquidating Trust, and/or the Liquidating Trustee to terminate the OPEB Plan at any time on or after the Effective Date.
7. All Existing Equity Interests in Brookstone Parent will be cancelled and extinguished and shall not receive any distribution or retain any property pursuant to the Plan.

EXHIBIT 4

Liquidating Trust Agreement

LIQUIDATING TRUST AGREEMENT

This LIQUIDATING TRUST AGREEMENT (this “Agreement” or “Liquidating Trust Agreement”) is made and entered into, as of the Effective Date, by and among Brookstone Holdings Corp., Brookstone, Inc., Brookstone Company, Inc., Brookstone Retail Puerto Rico, Inc., Brookstone International Holdings, Inc., Brookstone Purchasing, Inc., Brookstone Stores, Inc., Big Blue Audio LLC, Brookstone Holdings, Inc., and Brookstone Properties, Inc. (collectively, the “Debtors”), the official committee of unsecured creditors appointed in the Debtors’ Chapter 11 Cases (the “Committee”), and META Advisors LLC (the “Liquidating Trustee”). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Plan (defined below).

RECITALS

WHEREAS, on August 2, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court; and

WHEREAS, the Debtors filed with the Bankruptcy Court the *Second Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code of Brookstone Holding Corp., et al., Submitted by the Debtors and the Official Committee of Unsecured Creditors as Co-Proponents*, dated as of March 4, 2019 (together with all exhibits thereto, including, without limitation, the Plan Supplement, as the same may be amended, modified, or supplemented, the “Plan”); and

WHEREAS, pursuant to the Confirmation Order [Docket No. ____], on [●], 2019, the Bankruptcy Court confirmed the Plan; and

WHEREAS, under the terms of the Plan, certain assets and other property of the Debtors as of the Effective Date of the Plan, as well as Claims against the Debtors, will be transferred to and held by the Liquidating Trust created by this Liquidating Trust Agreement so that, among other things: (i) the Liquidating Trust Assets can be pursued and/or disposed of in an orderly and expeditious manner; (ii) objections to Claims can be pursued and/or resolved by the Liquidating Trust; and (iii) distributions can be made to the Liquidating Trust Beneficiaries in accordance with the Plan and this Agreement; and

WHEREAS, this Liquidating Trust is established under and pursuant to the Plan which provides for the appointment of the Liquidating Trustee to administer the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries, and to implement the Plan pursuant to the terms of the Plan and this Agreement; and

WHEREAS, the Liquidating Trustee has agreed to serve as such upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in accordance with the Plan and in consideration of the promises and of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

DECLARATION OF TRUST

The Debtors hereby absolutely assign to the Liquidating Trust, and to its successors in trust and its successors and assigns, all right, title and interest of the Debtors in and to the Liquidating Trust Assets;

TO HAVE AND TO HOLD unto the Liquidating Trust and its successors in trust and its successors and assigns forever;

IN TRUST NEVERTHELESS upon the terms and subject to the conditions set forth herein and for the benefit of the Liquidating Trust Beneficiaries, as and to the extent provided in the Plan, and for the performance of and compliance with the terms hereof and of the Plan;

PROVIDED, HOWEVER, that upon termination of the Liquidating Trust in accordance with Article V hereof, this Agreement shall cease, terminate and be of no further force and effect; and

IT IS HEREBY FURTHER COVENANTED AND DECLARED that the Liquidating Trust Assets are to be held and applied by the Liquidating Trustee upon the further covenants and terms and subject to the conditions herein set forth.

I NAME; PURPOSE; LIQUIDATING TRUST ASSETS

1.1 Name of Trust. The trust created by this Agreement shall be known as the “Brookstone Liquidating Trust” or sometimes herein as the “Liquidating Trust.”

1.2 Transfer of Liquidating Trust Assets. In accordance with the provisions of the Plan, on the Effective Date, the Debtors and their Chapter 11 Estates shall be deemed to transfer, assign and convey to the Liquidating Trust Beneficiaries the Liquidating Trust Assets, followed by a deemed transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, to be held by the Liquidating Trustee in trust for the Liquidating Trust Beneficiaries, on the terms and subject to the conditions set forth herein and in the Plan. In accordance with the provisions of the Plan, on the Effective Date, the Debtors and their Chapter 11 Estates shall also be deemed to transfer, assign and convey to the Liquidating Trust the Administrative/Priority Claims Reserve Account and the Other Secured Claims Reserve Account.

1.3 Title to the Liquidating Trust Assets, the Administrative/Priority Claims Reserve Account, and the Other Secured Claims Reserve Account. Pursuant to the Plan, all of the Debtors’ right, title and interest in and to the Liquidating Trust Assets, the Administrative/Priority Claims Reserve Account, and the Other Secured Claims Reserve Account, including all such assets held or controlled by third parties, are automatically vested in the Liquidating Trust on the Effective Date, free and clear of all liens, claims, encumbrances and other interests, except as specifically provided in the Plan. The transfer of the Liquidating Trust Assets is on behalf of the Liquidating Trust Beneficiaries to establish the Liquidating Trust. The Liquidating Trust shall be authorized to obtain possession or control of, liquidate, and collect all of the Liquidating Trust Assets, the Administrative/Priority Claims Reserve Account, and the Other Secured Claims Reserve Account, including any such assets in the possession or control of third parties, and pursue, assert and/or exercise all rights of setoffs and recoupment and defenses of the Debtors to any counterclaims that

may be asserted by any and all defendants as to any Claims. On the Effective Date, the Liquidating Trust shall stand in the shoes of the Debtors for all purposes with respect to the Liquidating Trust Assets, the Administrative/Priority Claims Reserve Account, and the Other Secured Claims Reserve Account. To the extent any law or regulation prohibits the transfer of ownership of any of the assets to be transferred from the Debtors to the Liquidating Trust and such law is not superseded by the Bankruptcy Code, the Liquidating Trust's interest shall be a lien upon and security interest in such assets, in trust, nevertheless, for the sole use and purposes set forth in this Agreement, and this Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. By executing this Agreement, the Liquidating Trustee, on behalf of the Liquidating Trust, hereby accepts all of such property as assets to be held in trust for the Liquidating Trust Beneficiaries, subject to the terms of this Agreement and the Plan.

1.4 Purposes. The purposes of the Liquidating Trust are to hold and effectuate an orderly disposition of the Liquidating Trust Assets, to resolve Claims and prosecute Causes of Action, to distribute or pay over the Liquidating Trust Assets, or proceeds thereof, in accordance with this Agreement and the Plan, and to wind-down the Estates of the Debtors, with no objective or authority to engage in any trade or business.

1.5 Acceptance by the Liquidating Trustee. The Liquidating Trustee is willing and hereby accepts the appointment to serve as Liquidating Trustee pursuant to this Agreement and the Plan and agrees to observe and perform all duties and obligations imposed upon the Liquidating Trustee by this Agreement and the Plan, including, without limitation, to accept, hold and administer the Liquidating Trust Assets and otherwise to carry out the purpose of the Liquidating Trust in accordance with the terms and subject to the conditions set forth herein and in the Plan.

1.6 The Liquidating Trust Oversight Committee.

(a) As provided for in Article IV.C.7 of the Plan, the Liquidating Trust Oversight Committee shall consist of those initial members identified on **Schedule A** hereto. The Liquidating Trust Oversight Committee shall at all times consist of at least three (3) members. In the event that a member of the Liquidating Trust Oversight Committee resigns, the Liquidating Trustee shall appoint a new member, subject to the approval of the remaining members of the Liquidating Trust Oversight Committee or the Bankruptcy Court. Notwithstanding the foregoing, in the event that fewer than three persons are willing to serve on the Liquidating Trust Oversight Committee or there shall have been fewer than three (3) Liquidating Trust Oversight Committee members for a period of thirty (30) consecutive days, then during such vacancy all references to the Liquidating Trust Oversight Committee's ongoing duties in the Plan, this Agreement and the Confirmation Order will be null and void.

(b) Any member of the Liquidating Trust Oversight Committee may resign upon reasonable notice to the Liquidating Trustee, counsel for the Liquidating Trustee, and other members of the Liquidating Trust Oversight Committee. Fourteen (14) days prior written notice shall constitute reasonable notice under this Section. Any member of the Liquidating Trust Oversight Committee may be removed by the Bankruptcy Court for cause. The Liquidating Trust Oversight Committee may authorize its own dissolution by filing with the Bankruptcy Court an appropriate notice that its responsibilities under the Plan have concluded. Unless earlier dissolved,

the Liquidating Trust Oversight Committee shall be automatically dissolved on the date the Debtors' Chapter 11 Cases are closed.

(c) Members of the Liquidating Trust Oversight Committee shall have fiduciary duties to the Liquidating Trust Beneficiaries in the same manner that members of an official committee of creditors appointed pursuant to section 1102 of the Bankruptcy Code have fiduciary duties to the constituents represented by such a committee and shall be entitled to indemnification from the Liquidating Trust in the same manner as the Liquidating Trustee for service as members of the Liquidating Trust Oversight Committee from and after the Effective Date of the Plan under or in connection with this Agreement.

(d) The Liquidating Trustee shall periodically report to the Liquidating Trust Oversight Committee on a basis subsequently agreed to between the Liquidating Trust Oversight Committee and the Liquidating Trustee, as to the status of all material litigation, Claims objections, and all other material matters affecting the Liquidating Trust.

(e) Subject to Section 1.6(f) below, the Liquidating Trustee shall obtain the approval of the Liquidating Trust Oversight Committee by at least a majority vote prior to taking any action regarding any of the following matters:

(i) The commencement, prosecution, settlement, compromise, withdrawal or other resolution of any Cause of Action by the Liquidating Trust where the amount in controversy in the complaint or other document initiating such Cause of Action exceeds \$250,000;

(ii) The sale, transfer, assignment, or other disposition of any non-Cash Liquidating Trust Assets having a valuation in excess of \$250,000;

(iii) The abandonment of any non-Cash Liquidating Trust Assets having a valuation of at least \$100,000;

(iv) The settlement, compromise, or other resolution of any Disputed Claim, wherein the amount in controversy exceeds \$250,000;

(v) The borrowing of any funds by the Liquidating Trust or pledge of any portion of the Liquidating Trust Assets;

(vi) The exercise of any right or action set forth in this Liquidating Trust Agreement that expressly requires approval of the Liquidating Trust Oversight Committee; and

(f) The Liquidating Trustee's failure to receive written objections from 50% or more of the disinterested members of the Liquidating Trust Oversight Committee within two (2) business days after written (including facsimile or electronic) notice is provided to the Liquidating Trust Oversight Committee of a proposed action shall be deemed approval of the Liquidating Trust Oversight Committee for purposes of this Agreement. In the event that the Liquidating Trust Oversight Committee does not approve of any action proposed to be taken by the Liquidating Trustee, the Liquidating Trustee shall have the right to ask the Bankruptcy Court to approve his

proposed course of action and the Bankruptcy Court may authorize such action if it is found to be in the best interest of the Liquidating Trust Beneficiaries.

II RIGHTS, POWERS AND DUTIES OF LIQUIDATING TRUSTEE

2.1 General. As of the Effective Date, the Liquidating Trustee shall take possession and charge of the Liquidating Trust Assets, the Administrative/Priority Claims Reserve Account, and the Other Secured Claims Reserve Account, and, subject to the provisions hereof and in the Plan, shall have full right, power and discretion to manage the affairs of the Liquidating Trust, subject to Section 1.6 above. Except as otherwise provided herein and in the Plan, the Liquidating Trustee shall have the right and power to enter into any covenants or agreements binding the Liquidating Trust and in furtherance of the purpose hereof and of the Plan and to execute, acknowledge and deliver any and all instruments that are necessary or deemed by the Liquidating Trustee to be consistent with and advisable in connection with the performance of his or her duties hereunder. On and after the Effective Date, the Liquidating Trustee shall have the power and responsibility to do all acts contemplated by the Plan to be done by the Liquidating Trustee and all other acts that may be necessary or appropriate in connection with the disposition of the Liquidating Trust Assets (and the distribution of the proceeds thereof), the disposition of the Administrative/Priority Claims Reserve Account and the Other Secured Claims Reserve Account, the resolution of Claims, the prosecution of Causes of Action, and the winding down of the Debtors' Estates, as contemplated by the Plan, including:

(a) To exercise all power, authority, and rights (including any attorney-client privilege, the work-product privilege, and any other applicable evidentiary privileges) that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any of the Debtors with respect to the Liquidating Trust Assets, the Administrative/Priority Claims Reserve Account, and the Other Secured Claims Reserve Account with like effect as if authorized, exercised and taken by the Debtors;

(b) To open and maintain bank and other deposit accounts, escrows and other accounts, calculate and implement distributions to Holders of Allowed Claims as provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves;

(c) Hold, manage, sell, invest, and distribute to the Liquidating Trust Beneficiaries the Net Proceeds of the Liquidating Trust Assets, hold, manage, and distribute to the Holders of Allowed Administrative/Priority Claims amounts in the Administrative/Priority Claims Reserve Account, and hold, manage, and distribute to the Holders of Allowed Other Secured Claims amounts in the Other Secured Claims Reserve Account as set forth in the Plan;

(d) To make distributions to Holders of Allowed Claims, as contemplated by the Plan;

(e) Subject to the applicable provisions of the Plan, to collect and liquidate all assets of the Debtors' Estates pursuant to the Plan;

(f) To prosecute or object to any Claims (Disputed or otherwise), and to estimate, defend, compromise and/or settle any such Claims prior to or following objection without the necessity of approval of the Bankruptcy Court, and/or to seek Bankruptcy Court approval for any Claims settlement, to the extent thought appropriate by the Liquidating Trustee or to the extent such approval is required by prior order of the Bankruptcy Court;

(g) To make decisions,, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees (including the Retained Professionals) and consultants by the Liquidating Trust and to pay, from the Liquidating Trust Administrative Fund, the charges incurred by the Liquidating Trust and/or Liquidating Trust Oversight Committee on or after the Effective Date for services of professionals, disbursements, expenses or related support services under this Agreement or relating to the winding down of the Debtors and implementation of the Plan, without application to the Bankruptcy Court;

(h) To cause, on behalf of the Liquidating Trust, the Debtors, and their Estates to file all necessary tax returns and all other appropriate or necessary tax-related documents;

(i) To invest Cash in accordance with section 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Bankruptcy Court and as deemed appropriate by the Liquidating Trustee in accordance with the investment and deposit guidelines set forth in this Agreement;

(j) To collect any accounts receivable or other claims and assets of the Debtors or their estates not otherwise disposed of pursuant to the Plan;

(k) To enter into any agreement or execute any document required by or consistent with the Plan and perform all of the obligations of the Liquidating Trustee thereunder;

(l) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization(s) approved by the Liquidating Trust Oversight Committee, any assets that the Liquidating Trustee concludes are of no benefit to creditors of the Debtors or are too impractical to distribute;

(m) To investigate (including pursuant to Bankruptcy Rule 2004), prosecute and/or settle any Causes of Action, other than the Released Causes of Action, (in consultation with the Liquidating Trust Oversight Committee), participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction, participate as a party or otherwise in any administrative, arbitrate or other non-judicial proceeding, litigate or settle such Causes of Action on behalf of the Liquidating Trust and pursue to settlement or judgment such actions;

(n) To approve, without Bankruptcy Court approval, the settlement of any Cause of Action for which the amount claimed by the Liquidating Trust against a defendant is less than five hundred thousand dollars (\$500,000) and to seek Bankruptcy Court approval, upon notice and a hearing, of the settlement of any Cause of Action for which the amount claimed by the Liquidating Trust is unliquidated or equals or exceeds five hundred thousand dollars (\$500,000);

(o) To purchase or create and carry all appropriate insurance policies, employee benefit plans, bonds or other means of assurance and protection of the Liquidating Trust Assets,

the Administrative/Priority Claims Reserve Account, and the Other Secured Claims Reserve Account, and the employees of the Liquidating Trust and pay all insurance premiums and other costs he or she deems necessary or advisable to insure the acts and omissions of the Liquidating Trustee, and if appropriate, the Liquidating Trust Oversight Committee;

- (p) To implement and/or enforce all provisions of the Plan;
- (q) To maintain appropriate books and records (including financial books and records) to govern the liquidation and distribution of the Liquidating Trust Assets;
- (r) To pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and to file with the Bankruptcy Court and serve on the U.S. Trustee quarterly post-confirmation financial reports for each and every Debtor until its particular case is closed (pursuant the Plan or otherwise), dismissed or converted;
- (s) To seek a final decree closing any or all of the Chapter 11 Cases; and
- (t) To do all other acts or things consistent with the provisions of the Plan that the Liquidating Trustee deems reasonably necessary or desirable with respect to implementing the Plan and/or winding down the Debtors' Estates.

Other than the obligations of the Liquidating Trustee enumerated or referred to under this Agreement or the Plan, the Liquidating Trustee shall have no duties or obligations of any kind or nature respecting the implementation and administration of the Plan or this Agreement.

2.2 Costs. On and after the Effective Date, the Liquidating Trustee shall reserve Cash from the Liquidating Trust Assets to fund and maintain the Liquidating Trust Administrative Fund for the purpose of paying the expenses incurred by the Liquidating Trust (including fees and expenses (including employee benefit plans) for professionals or employees (including the Retained Professionals) retained by the Liquidating Trust in connection with the Liquidating Trust and any obligations imposed on the Liquidating Trustee, Liquidating Trust, or Liquidating Trust Oversight Committee, including expenses relating to the performance of the Liquidating Trustee's obligations under the Liquidating Trust Agreement and the Plan (including any taxes imposed on the Liquidating Trust or in respect of the Liquidating Trust Assets). The Liquidating Trustee may, in its sole discretion, set aside additional funds from the Liquidating Trust Assets for the purposes of increasing the Liquidating Trust Administrative Fund. In the event that amounts held in the Liquidating Trust Administrative Fund, together with any remaining Liquidating Trust Assets, are insufficient to pay all expenses of the Liquidating Trust, the Liquidating Trustee shall, unless reserves sufficient for such purpose have otherwise been made available from any other sources, follow the procedures set forth in Article XIII.I of the Plan. For the avoidance of doubt, the Liquidating Trust shall pay all of its outstanding expenses, including, without limitation, those of each of the Retained Professionals pursuant to the terms of any agreements related to the retention of each Retained Professional, before making any distributions contemplated by the Plan.

2.3 Distributions and Reserves.

(a) Generally. Subject to Article VI of the Plan, the Liquidating Trustee shall distribute beginning on the first Business Day following the Effective Date, or as soon thereafter

as is reasonably practicable, the appropriate Net Proceeds of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries in proportion to the Liquidating Trust Interests held by such Liquidating Trust Beneficiary; *provided* that the Liquidating Trustee shall not be required to make a distribution if the Liquidating Trust Assets are insufficient or the Liquidating Trustee otherwise determines that making a distribution would be impractical under the circumstances; *provided further* that, if a Disputed General Unsecured Claim subsequently becomes an Allowed General Unsecured Claim after a distribution(s) has been made, the Liquidating Trustee shall make one or more catch-up distributions to such Holder on account of its Liquidating Trust Interests, as applicable. The Liquidating Trustee shall utilize, in accordance with the Liquidating Trust Agreement and the Plan, Cash from the Liquidating Trust Administrative Fund in amounts sufficient to (i) fund costs and expenses of the Liquidating Trust, including, without limitation, the fees and expenses of the Liquidating Trustee and his or her professionals, the Liquidating Trust Oversight Committee, , and the Retained Professionals, (ii) compensate the Liquidating Trustee, and (iii) satisfy other liabilities incurred by the Liquidating Trust in accordance with the Plan or the Liquidating Trust Agreement (including any taxes imposed on the Liquidating Trust or in respect of the Liquidating Trust Assets).

(b) Manner of Payment or Distribution. Following the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make continuing efforts to liquidate all Liquidating Trust Assets in accordance with the Plan and this Agreement, *provided* that the timing of all distributions made by the Liquidating Trustee to Liquidating Trust Beneficiaries shall be at the discretion of the Liquidating Trustee; *provided, further*, that no distributions to Liquidating Trust Beneficiaries shall be made until such time all Other Secured Claims and Administrative/Priority Claims are either (i) paid in full, otherwise satisfied, withdrawn, or disallowed, or (ii) fully reserved for in the appropriate reserve account provided for by this Agreement or the Plan. If the distribution shall be in Cash, the Liquidating Trustee shall distribute such Cash by wire, check, or such other method as the Liquidating Trustee deems appropriate under the circumstances.

(c) Delivery of Distributions. Except as otherwise provided in the Plan, all distributions to be made by the Liquidating Trust under the Plan and this Agreement to any holder of an Allowed Claim shall be made (i) at the address for each such Holder as indicated on such Holder's Proof of Claim, (ii) to a different address and to another party if the Liquidating Trustee is so directed in writing by a Holder of an Allowed Claim, or (iii) if no Proof of Claim has been filed, as reflected in the Debtors' books and records, which may be the Schedules, as of the date of any such distribution. For the avoidance of doubt, the Liquidating Trustee shall conduct a reasonable search to locate any Holder for purposes of making a distribution pursuant to Article VI.C.1 of the Plan; *provided, however*, that the Liquidating Trustee shall not be required to engage an outside consultant to conduct such search.

(d) Undeliverable Distributions and Unclaimed Property. In the event that a distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Liquidating Trustee has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided, however*, that ninety (90) days after the date such undeliverable distribution was initially made, all such unclaimed property or interests in property shall irrevocably revert to the Liquidating Trust automatically and without need for a further order by the Bankruptcy Court (notwithstanding any

applicable federal, provincial or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or interest in property shall be discharged and forever barred.

(e) Time Bar to Cash Payments. Checks issued by the Liquidating Trustee in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for re-issuance of any check shall be made to the Liquidating Trustee by the holder of the Allowed Claim to whom such check originally was issued. Any Claim in respect of such a voided check shall be made on or before thirty (30) days after the expiration of the sixty (60) day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Liquidating Trust, and any Claim in respect of such voided check shall be discharged and forever barred.

(f) Disputed Claim Reserve. On and after the Effective Date, the Liquidating Trustee is authorized to establish one or more Cash reserves for the benefit of the Holders of Disputed Claims pending a determination of their entitlement thereto under the terms of the Plan (a “Disputed Claim Reserve”). The Liquidating Trustee shall treat any such Disputed Claims Reserve as a Disputed Ownership Fund within the meaning of Treasury Reg. § 1.468B-9.

(g) Other Secured Claims Reserve Account. Pursuant to the Plan, prior to the Effective Date, the Debtors shall establish a reserve account in an amount equal to the estimated Other Secured Claims. As provided by the Plan and this Agreement, on the Effective Date, the Other Secured Claims Reserve Account shall be transferred to the Liquidating Trust for the sole purpose of paying Allowed Other Secured Claims in accordance with Articles III.B.2 and VI.B of the Plan. On and after the Effective Date, the Liquidating Trustee shall continue to maintain the Other Secured Claims Reserve Account until such time all Other Secured Claims are paid in full, otherwise satisfied, withdrawn, or disallowed. If the Liquidating Trustee determines that the amount the Debtors have funded in the Other Secured Claims Reserve Account prior to the Effective Date is insufficient to satisfy or reserve for all Allowed Other Secured Claims in full, the Liquidating Trustee shall fund the Other Secured Claims Reserve Account from the Liquidating Trust Assets in an amount sufficient to satisfy or reserve for any Allowed Other Secured Claims which have not otherwise been satisfied or reserved for.

(h) Administrative/Priority Claims Reserve Account. Pursuant to the Plan, prior to the Effective Date, the Debtors shall establish a reserve account in an amount equal to the estimated Administrative/Priority Claims. As provided by the Plan and this Agreement, on the Effective Date, the Administrative/Priority Claims Reserve Account shall be transferred to the Liquidating Trust for the sole purpose of paying Allowed Administrative/Priority Claims in accordance with Articles III.B.2 and VI.B of the Plan. On and after the Effective Date, the Liquidating Trustee shall continue to maintain the Administrative/Priority Claims Reserve Account until such time all Administrative/Priority Claims are paid in full, otherwise satisfied, withdrawn, or disallowed. If the Liquidating Trustee determines that the amount the Debtors have funded in the Administrative/Priority Claims Reserve Account prior to the Effective Date is insufficient to satisfy or reserve for all Allowed Administrative/Priority Claims in full, the Liquidating Trustee shall fund the Administrative/Priority Claims Reserve Account from the Liquidating Trust Assets in an amount sufficient to satisfy or reserve for any Allowed Administrative/Priority Claims which have not otherwise been satisfied or reserved for.

(i) No Distributions of Less Than \$25 On Account of Allowed General Unsecured Claims. Notwithstanding anything to the contrary in the Plan, if a distribution to be received by the Holder of an Allowed General Unsecured Claim would be less than \$25, no such payment will be made to such Holder.

(j) Inapplicability of Unclaimed Property or Escheat Laws. Unclaimed property held by the Liquidating Trust shall not be subject to the unclaimed property or escheat laws of the United States, any state, or any local governmental unit.

(k) Voided Checks; Request for Reissuance. Distribution checks issued to Holders of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Requests for reissuance of any check shall be made in writing directly to the Liquidating Trustee by such Holder that was originally issued such check. Distributions in respect of voided checks shall be forfeited.

2.4 Limitations on Investment Powers of Liquidating Trustee. Funds in the Liquidating Trust shall be invested in demand and time deposits in banks or other savings institutions, or in other temporary, liquid investments, such as Treasury bills, consistent with the liquidity needs of the Liquidating Trust as determined by the Liquidating Trustee in accordance with section 345 of the Bankruptcy Code, unless the Bankruptcy Court otherwise requires; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

2.5 Liability of Liquidating Trustee.

(a) Standard of Care. Except in the case of willful misconduct (including, but not limited to, conduct that results in a personal profit at the expense of the Liquidating Trust), gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), or ultra vires acts, each as determined pursuant to a final order from a court of competent jurisdiction, the Liquidating Trustee shall not be liable for any loss or damage by reason of any action taken or omitted by him or her pursuant to the discretion, powers and authority conferred, or in good faith believed by the Liquidating Trustee to be conferred on the Liquidating Trustee by this Agreement or the Plan.

(b) No Liability for Acts of Predecessors. No successor Liquidating Trustee shall be in any way responsible for the acts or omissions of any Liquidating Trustee in office prior to the date on which such successor becomes the Liquidating Trustee, unless a successor Liquidating Trustee expressly assumes such responsibility.

(c) No Implied Obligations. The Liquidating Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein or in the Plan, and no implied covenants or obligations shall be read into this Agreement against the Liquidating Trustee.

(d) No Liability for Good Faith Error of Judgment. Unless otherwise provided herein or in the Plan, the Liquidating Trustee shall not be liable for any error of judgment made in

good faith, unless it shall be proved that the Liquidating Trustee was grossly negligent in ascertaining the pertinent facts.

(e) Reliance by Liquidating Trustee on Documents or Advice of Counsel or Other Persons. Except as otherwise provided herein or in the Plan, the Liquidating Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document believed by the Liquidating Trustee to be genuine and to have been signed or presented by the proper party or parties. The Liquidating Trustee also may engage and consult with legal counsel, accountants and other professionals for the Liquidating Trust and other agents and advisors and shall not be liable for any action taken or suffered by the Liquidating Trustee in reliance upon the advice of such counsel, agents or advisors. The Liquidating Trustee or the Liquidating Trust Oversight Committee shall have the right at any time to seek instructions from the Bankruptcy Court concerning the administration or disposition of the Liquidating Trust Assets.

(f) No Personal Obligation for Trust Liabilities. Persons dealing with the Liquidating Trustee, or seeking to assert Claims against the Debtors or the Liquidating Trust, shall look only to the Liquidating Trust Assets to satisfy any liability incurred by the Liquidating Trustee to any such Person in carrying out the terms of this Agreement, and neither the Liquidating Trustee nor his or her company or organization shall have a personal or individual obligation to satisfy any such liability.

2.6 Selection of Agents. Immediately after the Effective Date, the Liquidating Trustee shall retain the Retained Professionals set forth on Exhibit B to the Disclosure Statement on the general terms described therein. In addition to the foregoing, , the Liquidating Trustee may engage any employee of the Debtors or other persons, and also may engage or retain brokers, banks, custodians, investment and financial advisors, attorneys, accountants and other advisors and agents (including professionals formerly or currently retained by the Committee or the Debtors), in each case without Bankruptcy Court approval. The Liquidating Trustee may pay the salaries, fees and expenses of such Persons from amounts in the Liquidating Trust Administrative Fund, or, if such amounts are insufficient therefor, out of the Liquidating Trust Assets or proceeds thereof. The Liquidating Trustee shall not be liable for any loss to the Liquidating Trust or any person interested therein by reason of any mistake or default of any such Person referred to in this Section 2.6 selected by the Liquidating Trustee in good faith and without either gross negligence or intentional malfeasance.

2.7 Liquidating Trustee's Compensation, Indemnification and Reimbursement.

(a) As compensation for services in the administration of this Liquidating Trust, the Liquidating Trustee shall be compensated as specified on **Schedule B** attached hereto. The Liquidating Trustee shall also be reimbursed for all documented actual, reasonable and necessary out-of-pocket expenses incurred in the performance of his or her duties hereunder.

(b) The Liquidating Trustee and the Liquidating Trust Oversight Committee (and their agents and professionals) shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Liquidating Trustee, the Liquidating Trust Oversight Committee, or the Liquidating Trust, except those acts arising out of its or their willful misconduct (including,

but not limited to, conduct that results in a personal profit at the expense of the Liquidating Trust), gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), or ultra vires acts, each as determined pursuant to a final order from a court of competent jurisdiction. The Liquidating Trustee and the Liquidating Trust Oversight Committee (and their agents and professionals) shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Liquidating Trustee, the Liquidating Trust Oversight Committee, or the Liquidating Trust, except for any actions or inactions involving willful misconduct (including, but not limited to, conduct that results in a personal profit at the expense of the Liquidating Trust), gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), or ultra vires acts., each as determined by a court of competent jurisdiction. Any indemnification claim of the Liquidating Trustee, the Liquidating Trust Oversight Committee, and the other parties entitled to indemnification under this subsection shall be satisfied (i) first from the Liquidating Trust Administrative Fund and (ii) second from the Liquidating Trust Assets, as provided in the Liquidating Trust Agreement. The Liquidating Trustee and the Liquidating Trust Oversight Committee shall be entitled to rely, in good faith, on the advice of their professionals. The Liquidating Trustee is authorized to obtain, at the sole expense of the Liquidating Trust, all reasonable insurance coverage for himself/herself, his/her agents, representatives, employees or independent contractors, including, without limitation, coverage with respect to the liabilities, duties and obligations of the Liquidating Trustee and his/her agents, representatives, employees or independent contractors under the Plan and this Agreement.

(c) Notwithstanding any state or applicable law to the contrary, the Liquidating Trustee (including any successor Liquidating Trustee) shall be exempt from giving any bond or other security in any jurisdiction and shall serve hereunder without bond.

2.8 Tax Provisions.

(a) It is intended that the Liquidating Trust qualify as a grantor trust for federal income tax purposes, and that the Liquidating Trust Beneficiaries are treated as grantors (other than with respect to the Disputed Claims Reserve). As described more fully in the Plan and the Disclosure Statement, the transfer of the Liquidating Trust Assets will be treated for federal income tax purposes as a transfer to the Liquidating Trust Beneficiaries, followed by a deemed transfer from such Liquidating Trust Beneficiaries to the Liquidating Trust, *provided, however*, that the Liquidating Trust Assets will be subject to any post-Effective Date obligations incurred by the Liquidating Trust relating to the pursuit of Liquidating Trust Assets. Accordingly, the Liquidating Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. Subject to the Plan, all items of income, gain, loss, deduction and credit will be included in the income of the Liquidating Trust Beneficiaries as if such items had been recognized directly by the Liquidating Trust Beneficiaries in the proportions in which they own beneficial interests in the Liquidating Trust.

(b) The Liquidating Trustee shall comply with all tax reporting requirements and, in connection therewith, the Liquidating Trustee may require Liquidating Trust Beneficiaries to provide certain tax information as a condition to receipt of distributions, including, without limitation, filing returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a)

(c)

(i) Under the guidelines set forth in Revenue Procedure 94-95, 1994-2 C.B. 684 and Treasury Regulation § 1.671-4(a), the Liquidating Trustee will file returns for the Liquidating Trust as a grantor trust.

(ii) Except to the extent definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the issuance of applicable Treasury Regulations or the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one) indicates that such valuation is not necessary to maintain the treatment of the Liquidating Trust as a liquidating trust for purposes of the Internal Revenue Code and applicable Treasury Regulations, the Liquidating Trustee shall make a good faith valuation of the Liquidating Trust Assets. Such valuation shall be made available from time to time to all parties to the Liquidating Trust Agreement and to all Liquidating Trust Beneficiaries, to the extent relevant to such parties for tax purposes, and shall be used consistently by such parties for all United States federal income tax purposes.

(iii) In accordance with the provisions of section 6012(b)(3) of the Internal Revenue Code of 1986, as amended, the Liquidating Trustee shall cause to be prepared, at the cost and expense of the Liquidating Trust, the corporate income tax returns (federal, state and local) that the Debtors are required to file (to the extent such returns have not already been filed by the Effective Date). The Liquidating Trustee shall timely file each such tax return with the appropriate taxing authority and shall pay out of the Liquidating Trust Assets all taxes with respect to the period covered by each such tax return determined to be due consistent with the Bankruptcy Code and any order of the Bankruptcy Court.

(iv) The Disputed Claims Reserve shall be treated as a “disputed ownership fund” within the meaning of Treasury Regulation section 1.468B-9. Following the funding of the Liquidating Trust, Brookstone Parent shall provide a “§ 1.468B-9 Statement” in respect of the Disputed Claims Reserve to the Liquidating Trustee in accordance with Treasury Regulation section 1.468B-9(g).

(d) Attribution of Income. Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), attribution of Liquidating Trust taxable income or loss shall be by reference to the manner in which any economic gain or loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purpose of this paragraph shall equal their

fair market value on the date the Liquidating Trust Assets are transferred to the Liquidating Trust, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

(e) Withholding. The Liquidating Trustee may withhold from the amount distributable from the Liquidating Trust at any time to any Liquidating Trust Beneficiary such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges which have been or may be imposed on such Liquidating Trust Beneficiary or upon the Liquidating Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any distribution provided for by any law, regulation, rule, ruling, directive, or other governmental requirement. Any tax withheld shall be treated as distributed to the Liquidating Trust Beneficiary for purposes of this Agreement.

(f) Tax Identification Numbers. The Liquidating Trustee may require any Liquidating Trust Beneficiary to furnish to the Liquidating Trustee its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service or certify to the Liquidating Trustee's satisfaction that distributions to the Liquidating Trust Beneficiary are exempt from backup withholding. The Liquidating Trustee may condition any distribution to any Liquidating Trust Beneficiary upon receipt of such identification number. If a Holder of a General Unsecured Claim does not provide the appropriate Form W-8 or Form W-9 within ninety (90) days of the request by the Liquidating Trustee, then such Holder shall be deemed to have forfeited its right to any reserved and future distributions from the Liquidating Trust, any Liquidating Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred.

(g) Annual Statements. The Liquidating Trustee shall annually (for tax years in which distributions from the Liquidating Trust are made) send to each Liquidating Trust Beneficiary a separate statement setting forth the Liquidating Trust Beneficiary's share of items of income, gain, loss, deduction or credit and all such holders shall report such items on their federal income tax returns.

(h) Notices. The Liquidating Trustee shall distribute such notices to the Liquidating Trust Beneficiaries as the Liquidating Trustee determines are necessary or desirable.

(i) Expedited Determination. The Liquidating Trustee may request an expedited determination of taxes of the Debtors or of the Liquidating Trust under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Debtors and the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

2.9 Conflicting Claims. If the Liquidating Trustee becomes aware of any disagreement or conflicting Claims with respect to the Liquidating Trust Assets, or is in good faith doubt as to any action that should be taken under this Agreement, the Liquidating Trustee may take any or all of the following actions as reasonably appropriate:

(i) to the extent of such disagreement or conflict, or to the extent deemed by the Liquidating Trustee necessary or appropriate in light of such disagreement or conflict, withhold or stop all further performance under this Agreement with respect to the matter of such dispute (except, in all cases, the safekeeping of the Liquidating Trust Assets) until the Liquidating Trustee is reasonably satisfied that such disagreement or conflicting Claims have been fully resolved; or

(ii) file a suit in interpleader or in the nature of interpleader in the Bankruptcy Court (or any other court of competent jurisdiction) and obtain an order requiring all Persons involved to litigate in the Bankruptcy Court or such other court of competent jurisdiction their respective Claims arising out of or in connection with this Agreement; or

(iii) file any other appropriate motion for relief in the Bankruptcy Court (or any other court of competent jurisdiction).

2.10 Records of Liquidating Trustee. The Liquidating Trustee shall maintain accurate records of receipts and disbursements and other activity of the Liquidating Trust, and duly authorized representatives of the Liquidating Trust Oversight Committee shall have reasonable access to the records of the Liquidating Trust. On or after thirty (30) days from the Effective Date, the books and records maintained by the Liquidating Trustee, as well as any and all other books and records of the Debtors, may be disposed of by the Liquidating Trustee in his or her sole discretion, without notice or a filing with the Bankruptcy Court, at such time as the Liquidating Trustee determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Liquidating Trust or the Liquidating Trust Beneficiaries, or upon the termination of the Liquidating Trust; *provided, however*, that the Liquidating Trustee shall not dispose or abandon any books and records that are reasonably likely to pertain to pending litigation in which the Debtors or their current or former officers or directors are a party, Causes of Action or Claims without further order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, nothing contained in this Agreement, the Plan, or the Confirmation Order shall affect the obligations of any third party to maintain, preserve, and/or provide access to the Debtors' books and records on the terms so specified in any such document setting forth such obligations.

2.11 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Liquidating Trust Assets shall not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trustee.

III RIGHTS, POWERS AND DUTIES OF LIQUIDATING TRUST BENEFICIARIES

3.1 Interests of Liquidating Trust Beneficiaries. The Liquidating Trust shall issue the Liquidating Trust Interests to the Holders of Allowed General Unsecured Claims in accordance with Article III.B.3 of the Plan so that each Holder of an Allowed General Unsecured Claim shall receive a percentage of the Liquidating Trust Interests equal to such Holder's Allowed General Unsecured Claim divided by the sum of all Allowed General Unsecured Claims *plus* all Disputed General Unsecured Claims; *provided, however*, that (i) if a Disputed General Unsecured Claim is subsequently Disallowed, (a) the amount of such Disputed General Unsecured Claim shall no

longer be included in the calculation set forth above and (b) the Liquidating Trust shall issue additional Liquidating Trust Interests to the Holders of Allowed General Unsecured Claims in accordance with the calculation set forth above and (ii) if a Disputed General Unsecured Claim subsequently becomes an Allowed General Unsecured Claim, the Liquidating Trust shall make subsequent distributions of Liquidating Trust Interests to such Holder on account of such Allowed General Unsecured Claim. Liquidating Trust Interests shall be uncertificated.

3.2 Interests Beneficial Only. The ownership of a beneficial interest hereunder shall not entitle any Liquidating Trust Beneficiary to any title in or to the Liquidating Trust Assets as such (which title shall be vested in the Liquidating Trustee) or to any right to call for a partition or division of Liquidating Trust Assets or to require an accounting.

3.3 No Right to Accounting. None of the Liquidating Trust Beneficiaries, their successors, assigns or creditors, or any other Person shall have any right to an accounting by the Liquidating Trustee, and the Liquidating Trustee shall not be obligated to provide any accounting to any Person. Nothing in this Agreement is intended to require the Liquidating Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust or as a condition for making any advance, payment or distribution out of proceeds of Liquidating Trust Assets.

3.4 No Standing. Except as expressly provided in this Agreement, a Liquidating Trust Beneficiary shall not have standing to direct or to seek to direct the Liquidating Trust or Liquidating Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any person upon or with respect to the Liquidating Trust Assets.

IV AMENDMENT OF TRUST OR CHANGE IN LIQUIDATING TRUSTEE

4.1 Resignation of the Liquidating Trustee. The Liquidating Trustee may resign by an instrument in writing signed by the Liquidating Trustee and filed with the Bankruptcy Court with notice to the Liquidating Trust Oversight Committee and the U.S. Trustee, *provided* that the Liquidating Trustee shall continue to serve as such after his or her resignation for thirty (30) days or, if longer, until the time when appointment of his or her successor shall become effective in accordance with Section 4.3 hereof, or as otherwise agreed with the Liquidating Trust Oversight Committee.

4.2 Removal of the Liquidating Trustee. The Liquidating Trust Oversight Committee may remove the Liquidating Trustee with or without cause at any time. Such removal shall be effective ten (10) days after the Liquidating Trust Oversight Committee provides written notice to the Liquidating Trustee and the U.S. Trustee. Upon removal of the Liquidating Trustee by the Liquidating Trust Oversight Committee in accordance with this Section other than for cause, the Liquidating Trustee shall be entitled to all compensation that has accrued through the effective date of termination but remains unpaid as of such date, which payment shall be made promptly from the Liquidating Trust Administrative Fund. For the purposes of this Agreement, "cause" shall mean: (a) the willful and continued refusal by the Liquidating Trustee to perform his or her duties as set forth herein; or (b) gross negligence, gross misconduct, fraud, embezzlement or theft.

4.3 Appointment of Successor Liquidating Trustee. In the event of the death, resignation, termination, incompetence or removal of the Liquidating Trustee, the Liquidating Trust Oversight Committee may appoint a successor Liquidating Trustee without the approval of the Bankruptcy Court, which the parties acknowledge shall nevertheless retain jurisdiction to resolve any disputes in connection with the service of the Liquidating Trustee or his/her successor; *provided* that the Bankruptcy Court may appoint a successor Liquidating Trustee *sua sponte* at any time. If the Liquidating Trust Oversight Committee fails to appoint a successor Liquidating Trustee within thirty (30) days of the occurrence of a vacancy, any Liquidating Trust Beneficiary, or the outgoing Liquidating Trustee may petition the Bankruptcy Court for such appointment. Every successor Liquidating Trustee appointed hereunder shall execute, acknowledge and file with the Bankruptcy Court and deliver to the predecessor Liquidating Trustee (if practicable), with notice to the Liquidating Trust Oversight Committee and the U.S. Trustee, an instrument accepting such appointment and the terms and provisions of this Agreement, and thereupon such successor Liquidating Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers and duties of the retiring Liquidating Trustee.

4.4 Continuity. Unless otherwise ordered by the Bankruptcy Court, the death, resignation, incompetence or removal of the Liquidating Trustee shall not operate to terminate or to remove any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Liquidating Trustee. In the event of the resignation or removal of the Liquidating Trustee, the Liquidating Trustee shall promptly execute and deliver such documents, instruments, final reports, and other writings as may be reasonably requested from time to time by the Liquidating Trust Oversight Committee or the successor Liquidating Trustee.

4.5 Amendment of Agreement. This Agreement may be amended, modified, terminated, revoked or altered only upon: (a) order of the Bankruptcy Court; or (b) agreement of the Liquidating Trustee and the Liquidating Trust Oversight Committee, *provided, however*, that any such amendment, modification, termination, revocation or alteration is consistent with the terms of the Plan and the Confirmation Order.

V TERMINATION OF LIQUIDATING TRUST

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as: (a) all Disputed Claims have been resolved; (b) all of the Liquidating Trust Assets have been liquidated; (c) all duties and obligations of the Liquidating Trustee under this Agreement have been fulfilled; (d) all distributions required under the Plan and this Agreement have been made; and (e) the Debtors' Chapter 11 Cases have been closed; *provided, however*, that in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension not to exceed one (1) year is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets. Upon dissolution of the Liquidating Trust, any remaining Liquidating Trust Assets that exceed the amounts required to be paid under the Plan may be transferred by the Liquidating Trustee to a charitable organization(s) approved by the Liquidating Trust Oversight Committee.

VI RETENTION OF JURISDICTION

Subject to the following sentence, the Bankruptcy Court shall have exclusive jurisdiction over the Liquidating Trust, the Liquidating Trustee and the Liquidating Trust Assets as provided in the Plan, including, without limitation, the determination of all controversies and disputes arising under or in connection with the Liquidating Trust or this Agreement. However, if the Bankruptcy Court abstains or declines to exercise such jurisdiction or is without jurisdiction under applicable law, any other court of competent jurisdiction may adjudicate any such matter. All Liquidating Trust Beneficiaries consent to the jurisdiction of the United States District Court for the District of Delaware and the state courts sitting in Wilmington, Delaware, over all disputes related to this Agreement.

VII MISCELLANEOUS

7.1 Applicable Law. The Liquidating Trust created by this Agreement shall be construed in accordance with and governed by the laws of the State of Delaware without giving effect to principles of conflict of laws, but subject to any applicable federal law.

7.2 Waiver. No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver thereof.

7.3 Relationship Created. Nothing contained herein shall be construed to constitute any relationship created by this Agreement as an association, partnership or joint venture of any kind.

7.4 Confirmation of Survival of Provisions. Without limitation in any way of any provision of this Agreement, the limitation of liability and indemnity provisions in sections 2.5 through 2.7 shall survive the death, dissolution, liquidation, resignation, replacement, or removal, as may be applicable, of the Liquidating Trustee and the Liquidating Trust Advisory Committee, or the termination of the Liquidating Trust or this Agreement, and shall inure to the benefit of the Liquidating Trustee's (together with and any persons indemnified under this Agreement) heirs and assigns.

7.5 Interpretation. Section and paragraph headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision hereof.

7.6 Savings Clause. If any clause or provision of this Agreement shall for any reason be held invalid or unenforceable by the Bankruptcy Court, such invalidity or unenforceability shall not affect any other clause or provision hereof, but this Agreement shall be construed, insofar as reasonable to effectuate the purpose hereof, as if such invalid or unenforceable provision had never been contained herein.

7.7 Entire Agreement. This Agreement, the Plan and the Confirmation Order constitute the entire agreement by and among the parties and there are no representations, warranties, covenants or obligations with respect to the subject matter hereof except as set forth herein or therein. This Agreement together with the Plan and the Confirmation Order supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral,

of the parties hereto, relating to such subject matter. Except as otherwise authorized by the Bankruptcy Court or specifically provided in this Agreement, the Plan, or the Confirmation Order nothing in this Agreement is intended or shall be construed to confer upon or to give any Person other than the parties hereto, the Liquidating Trust Oversight Committee, and the Liquidating Trust Beneficiaries any rights or remedies under or by reason of this Agreement.

7.8 Counterparts. This Agreement may be executed by facsimile or electronic transmission and in counterparts, each of which when so executed and delivered shall be an original document, but all of which counterparts shall together constitute one and the same instrument.

7.9 Notices.

(a) All notices, requests or other communications required or permitted to be made in accordance with this Agreement shall be in writing and shall be deemed given five Business Days after first-class mailing, one Business Day after sending by overnight courier, or on the first Business Day after facsimile or electronic transmission.

(i) if to the Liquidating Trustee:

META Advisors LLC
101 Park Avenue – 30th Floor
New York, New York 10178
Attn.: James S. Carr
James D. Hunt
Email: jhunt@metaadvisorsllc.com

(b) Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice to the Liquidating Trustee in the same manner as above.

7.10 Effective Date. This Agreement shall become effective as of the Effective Date.

7.11 Successors and Assigns. This Agreement shall be binding upon each of the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties, the Liquidating Trust Oversight Committee, the Liquidating Trust Beneficiaries and, subject to the provisions hereof, their respective successors and assigns.

7.12 Conflict with the Plan. In the event of any conflict between the terms of this Agreement and the Plan, the terms of the Plan shall govern; *provided, however*, that in the event of a conflict between Article IV.C of the Plan and this Agreement, this Agreement shall govern.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the undersigned have caused this Agreement to be executed as of the day and year first above written.

Brookstone Holdings Corp., Brookstone, Inc., Brookstone Company, Inc., Brookstone Retail Puerto Rico, Inc., Brookstone International Holdings, Inc., Brookstone Purchasing, Inc., Brookstone Stores, Inc., Big Blue Audio LLC, Brookstone Holdings, Inc., and Brookstone Properties, Inc.

By: _____
Name:
Title:

META Advisors LLC, not individually, but solely in its capacity as the Creditors' Fund Trustee of the American Apparel Creditors' Fund Trust

By: _____
Name: James Hunt
Title: Chief Operating Officer

Official Committee of Unsecured Creditors of Brookstone Holdings Corp., *et al.*

By: _____
Name: Ronald Tucker, solely in his capacity as Chairperson of the Committee, and not in his individual capacity

SCHEDULE A

INITIAL MEMBERS OF TRUST OVERSIGHT COMMITTEE

Simon Property Group, L.P.

GGP Limited Partnership¹

Pilot Air Freight, LLC

Natasha Davis

Telstar

¹ After its appointment to the Committee, GGP Limited Partnership was acquired by Brookfield Properties and now conducts business as Brookfield Properties REIT.

SCHEDULE B

**TERMS OF COMPENSATION AND REIMBURSEMENT
OF EXPENSES OF THE LIQUIDATING TRUSTEE**