

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

	)	
In re:	)	Chapter 11
	)	
NSC WHOLESALE HOLDINGS LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 18-12394 (CSS)
	)	
Debtors.	)	Jointly Administered
	)	
	)	<b>Related to Docket Nos. 534, 537, 577, 581, 582 and 583</b>

**ORDER (A) APPROVING, ON A FINAL BASIS, THE ADEQUACY OF DISCLOSURES CONTAINED IN THE DEBTORS’ COMBINED DISCLOSURE STATEMENT AND PLAN; AND (B) CONFIRMING THE PLAN OF LIQUIDATION**

This matter, having come before this Court upon the request of the above-captioned debtors and debtors-in-possession for: (a) final approval of the disclosures contained in the *Debtors’ Combined Disclosure Statement and Plan of Liquidation*, dated May 29, 2019 [D.I. 537] (as modified, amended or supplemented, a copy of which is attached hereto as **Exhibit “A”**<sup>2</sup>) (the “**Plan**”); and (b) confirmation of the Plan; and this Court having found that (a) venue in the District of Delaware was proper as of the Petition Date pursuant to 28 U.S.C. §§ 1409 and 1409 and continues to be proper, (b) approval of the disclosures and confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2), (c) this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and (d) this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be approved and confirmed; and, if necessary, the Court having held a Confirmation

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: NSC Wholesale Holdings LLC (6210); National Wholesale Liquidators of Lodi, Inc. (4301); NSC Realty Holdings LLC (4779); NSC of West Hempstead, LLC (5582); Top Key LLC (7503); BP Liquor LLC (2059); and Teara LLC (8660). The Debtors’ mailing address is 111 Hempstead Turnpike, West Hempstead, NY 11552.

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

Hearing on July 16, 2019; and the Court having found that due, adequate and sufficient notice of the Plan, Confirmation Hearing and all deadlines for voting on or filing objections to the Plan was provided in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and this Court's *Order (I) Approving on an Interim Basis the Adequacy of Disclosures in the Combined Disclosure Statement and Plan, (II) Scheduling the Confirmation Hearing and the Deadline for Filing Objections, (III) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Combined Plan and Disclosure Statement, and Approving the Form of Ballot and Solicitation Package, (IV) Approving the Notice Procedures, and (V) Confirming the Plan* [D.I. 534] (the "**Voting Procedures Order**"), and that no other or further notice is or shall be required; and the Court having reviewed (a) the *Declaration of Paul Deutch Regarding Analysis of Ballots for Accepting or Rejecting the Debtors' Combined Disclosure Statement and Plan of Liquidation* [D.I. 581] (the "**Voting Report**"); (b) the *Declaration of Mark Samson in Support of Confirmation of the Debtors' Plan of Liquidation* [D.I. 582] and (c) any pleadings submitted in support of confirmation of the Plan, including the Plan Supplement [D.I. 577]; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

**I. Adequacy of Disclosure**

1. The Plan contains "adequate information" within the meaning of section 1125 of the Bankruptcy Code.

**II. General Decrees and Implementation**

2. The Debtors' solicitation of acceptances or rejections of the Plan was in compliance with the Voting Procedures Order and all applicable requirements of Bankruptcy

Code sections 1126(b)(1) and 1126(b)(2), Bankruptcy Rules 3017 and 3018 and Local Rule 3017-2.

3. The Plan, in the form annexed hereto as **Exhibit “A,”** satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and, accordingly, the Plan, and each of its provisions, as may be modified by this Confirmation Order, are hereby CONFIRMED in each and every respect pursuant to section 1129 of the Bankruptcy Code. The terms of the Plan, including all exhibits and supplements thereto, are incorporated by reference into, and are an integral part of, this Confirmation Order and shall be effective and binding as of the Effective Date of the Plan.

4. The Holders of Claims in Classes 1 and 2 are unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

5. The Holders of Claims in Classes 3 and 4 are impaired under the Plan and have voted to accept the Plan in the numbers and amounts required by section 1126(b) of the Bankruptcy Code.

6. The Holders of Claims in Class 5 and Equity Interests in Class 6 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Notwithstanding the foregoing, the Debtors have demonstrated that the Plan does not discriminate unfairly and is fair and equitable with respect to such Classes, in accordance with section 1129(b) of the Bankruptcy Code.

7. All objections to the confirmation of the Plan, to the extent not already withdrawn or otherwise resolved, shall be, and hereby are, overruled.

8. Except as otherwise provided in this Confirmation Order, all payments made or to be made by the Debtors for services or costs in connection with the Chapter 11 Cases, including

all administrative expense claims under sections 503 and 507 of the Bankruptcy Code, or in connection with the Plan and incident to the Chapter 11 Cases, are hereby approved as reasonable.

**III. Approval of Compromise with Prepetition Lender**

9. The settlement and compromise with the Prepetition Lender contained in the Plan is hereby approved and the Debtors, the Post-Effective Date Debtors and/or the Liquidating Trustee are authorized to consummate the settlement and compromise.

**IV. Limited Consolidation of Debtors**

10. Pursuant to Article X(A)(1) of the Plan, entry of this Confirmation Order shall constitute the approval, pursuant to sections 105(a), 541, 1123 and 1129 of the Bankruptcy Code, effective as of the Effective Date, of the limited consolidation of the Debtors' Estates, solely for the purposes of the Plan, including making any Distributions to Holders of Claims. On the Effective Date, (i) all assets and liabilities of the Debtors shall, solely for Distribution purposes, be treated on an aggregated basis, (ii) each Claim against any of the Debtors shall be deemed a single Claim against and a single obligation of all of the Debtors, (iii) any Claims scheduled, filed or to be filed in the Chapter 11 Cases shall be deemed single Claims against the Debtors, (iv) all guarantees of one Debtor of the payment, performance, or collection of obligations of another Debtor shall be eliminated and canceled, (v) all transfers, disbursements and Distributions on account of Claims made by or on behalf of any of the Debtors' Estates hereunder will be deemed to be made by or on behalf of all of the Debtors' Estates, and (vi) any obligation of the Debtors as to Claims will be deemed to be one obligation of all of the Debtors. Holders of Allowed Claims entitled to Distributions under this Plan shall be entitled to their share of assets available for Distribution to such Claims without regard to which Debtor was

originally liable for such Claims. Except as set forth in the Plan, such limited consolidation shall not (other than for purposes related to the Plan) affect the legal and corporate structures of the Debtors. Moreover, notwithstanding the limited consolidation provided for in the Plan, each and every Debtor shall remain responsible for the payment of quarterly fees pursuant to the provisions of 28 U.S.C. §1930(a)(6) until the earlier of such time that a particular case is closed, dismissed, or converted.

**V. Establishment of NSC Liquidating Trust**

11. The provisions of the Plan relating to the NSC Liquidating Trust are hereby approved. On the Effective Date, the Debtors shall execute the Liquidating Trust Agreement and shall take all other steps necessary to establish the NSC Liquidating Trust in accordance with and pursuant to the terms of the Liquidating Trust Agreement, the Plan and this Confirmation Order. On the Effective Date, subject to the execution of the Liquidating Trust Agreement, Edward P. Bond, CPA, CFE, CIRA, will be appointed as the Liquidating Trustee on the terms set forth in the Plan, this Confirmation Order and the Liquidating Trust Agreement, for the purposes and with the powers and responsibilities set forth in such documents. On the Effective Date, all Debtors' assets shall be transferred, and shall be deemed transferred, to the NSC Liquidating Trust without the need for any person or Entity to take any further actions or obtain any approval, and pursuant to sections 1141(b) and (c) of the Bankruptcy Code, and except as otherwise provided in the Plan or in this Confirmation Order, the Debtors' assets shall vest in the NSC Liquidating Trust, free and clear of all Claims, Liens, encumbrances, changes and other interests, except as provided in the Plan or in this Confirmation Order. Such transfers shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax.

12. On the Effective Date, subject to the execution of the Liquidating Trust Agreement, the Plan Oversight Committee shall be formed on the terms set forth in the Plan, this Confirmation Order and the Liquidating Trust Agreement, for the purposes and with the powers and responsibilities set forth in such documents.

**VI. Continued Corporate Existence**

13. All matters provided for under the Plan involving any corporate action to be taken by, or required of, the Debtors, shall be deemed to have occurred and shall be effective as provided in the Plan, and shall be authorized and approved in all respects without any requirement for further action by the equity holders or directors of the Debtors or Post-Effective Date Debtors.

14. This Order constitutes all authority, if any, required by the General Corporation Law of the State of Delaware, as applicable, and any other applicable business corporation, trust and other laws, rules or regulations of the applicable governmental units with respect to the implementation and consummation of the Plan.

**VII. Institution and Maintenance of Legal and Other Proceedings**

15. In accordance with section 1123(b)(3) of the Bankruptcy Code, the Liquidating Trustee shall retain all Causes of Action including, but not limited to, those Causes of Action set forth in Exhibit A to the Plan.

16. Where the Liquidating Trustee is authorized to compromise and settle an action without further order of the Bankruptcy Court, the Liquidating Trustee is authorized to execute all necessary documents to effectuate same, including releases and stipulations of settlement or release, without notice to any party and without further order of the Bankruptcy Court.

17. No Person may rely on the absence of a specific reference in the Plan to any Cause of Action against them as any indication that the Liquidating Trustee will not pursue any and all available Causes of Action against them. The Post-Effective Date Debtors and/or the Liquidating Trustee reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan or other order of the Court. Unless a Cause of Action against a Person is expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Final Order, such Cause of Action shall be deemed to be retained by the Post-Effective Date Debtors and/or the Liquidating Trustee for later adjudication and, therefore, no preclusion doctrine, including without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Cause of Action upon or after the confirmation or consummation of the Plan.

**VIII. Reserve Accounts**

18. On, or as soon as practicable after, the Effective Date, the Liquidating Trustee shall establish the Reserve Accounts.

**IX. No Transfer Taxes**

19. Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of any securities issued, transferred or exchanged under, or the transfer of any other assets or property pursuant to or in connection with, the Plan, or the making or delivery of an instrument of transfer under, or in connection with, the Plan shall not be taxed under any law imposing a stamp tax, transfer tax or other similar tax.

**X. Injunction, Exculpation and Release Provisions**

20. The injunction, exculpation and release provisions set forth in Article XI of the Plan are hereby approved. The injunction, exculpation and release provisions of the Plan: (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. §§ 157(b)(1), 157(b)(2), 1334(a), 1334(b) and 1334(d) and the *Amended Standing Order of Reference from the United States Bankruptcy Court for the District of Delaware* dated as of February 29, 2012; (ii) are an essential means of implementing the Plan pursuant to section 1123(a)(6) of the Bankruptcy Code; (iii) are integral elements of the settlements and transactions upon which the Plan is based; (iv) confer material benefits on, and are in the best interests of, the Debtors, the Estates, and their Creditors; (v) are critical to the overall objectives of the Plan to finally resolve all Claims and Equity Interests among or against the parties in interest in these Chapter 11 Cases with respect to the Debtors; (vi) are consistent with sections 105, 1123 and 1129 of the Bankruptcy Code and other applicable law; and (vii) are fair, equitable, reasonable and necessary to the Debtors' Plan. Based upon the record of these Chapter 11 Cases and the evidence proffered, adduced and/or presented at the Confirmation Hearing, the Court finds that the injunction, exculpation and release provisions are consistent with the Bankruptcy Code and applicable law.

21. Injunction. Except as otherwise provided in the Plan, from and after the Effective Date, all persons who have held, hold or may hold Claims against or Equity Interests in any of the Debtors are permanently enjoined from taking any of the following actions against any of the Debtors or their Estates, any Debtor's property, the NSC Liquidating Trust or the Liquidating Trustee, on account of any such Claims or Equity Interests: (a) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (b) creating, perfecting or enforcing any lien or encumbrance; (c) asserting a setoff or right of subrogation of any kind



against any debt, liability or obligation due to any Debtor; (d) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; and (e) taking any action which interferes with the implementation or consummation of the Plan; provided, however, that nothing contained in the Plan shall preclude such persons from exercising and/or enforcing their rights pursuant to and consistent with the terms of the Plan or this Confirmation Order.

22. Exculpation. Except as otherwise specifically provided in the Plan, each of the Exculpated Parties shall not be liable for any claim, action, proceeding, cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment or claim (as defined in section 101(5) of the Bankruptcy Code), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise to one another or to any holder of a claim or equity interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or any of their successors or assigns, for any act or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Chapter 11 Cases, the negotiation and filing of the Plan or any prior plans, the filing of the Chapter 11 Cases, the pursuit of confirmation of the Plan or any prior plans, any Sale Order, the consummation of the Plan, or the administration of the Plan or the property to be liquidated and/or distributed under the Plan, except for willful misconduct, gross negligence or fraud as determined by a Final Order of a court of competent jurisdiction.

23. Release of Prepetition Lender. On the Effective Date, the Debtors (on behalf of themselves and their Estates), the NSC Liquidating Trust, the Liquidating Trustee, and any other person seeking to exercise the derivative rights of the Estates shall release unconditionally, and are deemed to forever release unconditionally, the Prepetition Lender and the Prepetition Lender's current and former employees, agents, attorneys, financial advisors, officers, directors, and their affiliates, subsidiaries, predecessors, successors and assigns, and such entities' respective heirs, executors, estates, servants and nominees, in each case, from any and all claims (including claims under Chapter 5 of the Bankruptcy Code), obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever (other than the right to enforce the performance of their respective obligations, if any, to the Debtors under the Plan, and the contracts, instruments, releases and other agreements delivered under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, directly or derivatively, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan, the Prepetition Credit Agreement, the Prepetition Loan Documents or the Prepetition Loan Facility; provided, however, that notwithstanding the foregoing, nothing contained in the Plan is intended to or shall operate as a release of any claims for willful misconduct or fraud, as determined by a Final Order of a court of competent jurisdiction; provided, further, however, that nothing in the Plan shall preserve, or otherwise extend the time to bring, any Challenge (as defined in the Final Cash Collateral Order) that has expired or will otherwise expire on the terms set forth in the Final Cash Collateral Order.

24. Release of Other Parties. On the Effective Date, the Debtors, on behalf of themselves and their Estates, shall release unconditionally, and are deemed to forever release unconditionally the Debtors' respective advisors (including the Debtors' Chief Restructuring Officer and Getzler Henrich & Associates, LLC), investment bankers, consultants, and attorneys, solely in their respective capacities as such, from any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever (other than the right to enforce the performance of their respective obligations, if any, under the Plan, and the contracts, instruments, releases and other agreements delivered under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, directly or derivatively, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan, the Prepetition Credit Agreement, the Prepetition Loan Documents or the Prepetition Loan Facility; provided, however, that notwithstanding the foregoing, nothing contained in the Plan is intended to or shall operate as a release of any claims for willful misconduct, gross negligence or fraud, as determined by a Final Order of a court of competent jurisdiction.

**XI. Executory Contracts and Unexpired Leases**

25. Rejection of Executory Contracts and Unexpired Leases. Notwithstanding anything to the contrary set forth in the Plan, in accordance with section 1123(b)(2) of the Bankruptcy Code, this Order shall constitute an order under section 365 of the Bankruptcy Code, rejecting, as of and subject to the occurrence of the Effective Date, any pre-petition executory contract and unexpired lease to which the Debtors are a party, *unless* such contract or lease is the

subject of a pending motion to assume as of the Effective Date or such contract or lease has already been rejected as of the Effective Date.

26. Rejection Bar Date. With respect to executory contracts and unexpired leases that are deemed rejected as a result of the Plan and this Confirmation Order, the effective date of such rejection shall be deemed to be the Effective Date, and any Claim for rejection damages in connection with such rejection shall be filed no later than thirty (30) days after service of notice of the Effective Date.

**XII. Professional Fee Claim Bar Date**

27. All final requests for payment of Professional Fee Claims must be filed no later than forty-five (45) days after the Effective Date.

28. Objections, if any, to final fee applications filed by Professionals (“**Final Fee Applications**”) must be filed and served on counsel to the Debtors, the Post-Effective Date Debtors and the Liquidating Trustee, the requesting Professional and the U.S. Trustee no later than thirty (30) days from the date on which each such Final Fee Application is filed.

29. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the Allowed amounts of such Professional Fee Claims shall be determined by this Court and shall be paid as set forth in Article IV(C) of the Plan.

**XIII. Post-December Administrative Expense Bar Date**

30. Requests for Allowance of Administrative Expense Claims arising *after* December 31, 2018, other than Claims arising under 28 U.S.C. § 1930 and Administrative Expense Claims described in sections 503(b)(1)(B) or (C) of the Bankruptcy Code, must be filed by no later than thirty (30) days after the Effective Date; provided, however, that the Prepetition

Lender shall not be required to file a request for Allowance of Administrative Expense Claims (either for the period prior to or after December 31, 2018), it being understood and acknowledged by the Debtors that all such Administrative Expense Claims of the Prepetition Lender are included in the Prepetition Lender Secured Claim and the Prepetition Lender Deficiency Claim, which are entitled to treatment as Allowed Class 3 Claims and Allowed Class 4 Claims on the terms set forth in the Plan.

31. Unless the Post-Effective Date Debtors, the Liquidating Trustee or any other party in interest objects to such Administrative Expense Claim by the first Business Day that is one hundred and eighty (180) days after the Effective Date, or such later date as shall be extended by order of this Court, an Administrative Expense Claim shall be deemed allowed in the amount requested. If the Post-Effective Date Debtors, the Liquidating Trustee or any other party in interest does object to an Administrative Expense Claim, the Allowed Amount of such Administrative Expense Claim, if any, shall be determined by this Court or upon agreement by the Post-Effective Date Debtors or the Liquidating Trustee and the claimant.

**XIV. Retention of Jurisdiction**

32. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, this Court shall retain jurisdiction in accordance with the Plan.

**XV. Miscellaneous**

33. On and after the Confirmation Date, the Debtors shall be empowered and authorized to take or cause to be taken, prior to the Effective Date, all actions necessary to implement the provisions of the Plan.

34. On the Effective Date, or as soon as practicable thereafter, all fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid by the Debtors, the Post-

Effective Date Debtors and/or the Liquidating Trustee. The Post-Effective Date Debtors and/or the Liquidating Trustee shall also pay all required quarterly fees to the U.S. Trustee until the Debtors' Chapter 11 Cases are closed or converted and/or are subject to a final decree.

35. The Debtors, the Post-Effective Date Debtors and/or the Liquidating Trustee shall file post-confirmation quarterly reports or any pre-confirmation monthly operating reports not filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines.

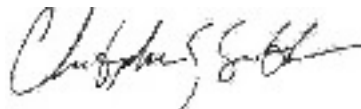
36. Except as otherwise expressly provided in the Plan or otherwise Allowed by Final Order of this Court, no interest, penalty or late charge arising after the Petition Date shall be Allowed on any Claim, including any Disputed Claim, or portion thereof, which becomes an Allowed Claim.

37. The failure to reference or discuss any particular provision of the Plan in this Order shall have no effect on the validity, binding effect and enforceability of such provision and each such provision shall have the same validity, binding effect and enforceability as every other provision of the Plan.

38. In the event of any inconsistency between the Plan and any other agreement, instrument or document intended to implement the provisions of the Plan, the provisions of the Plan shall govern unless otherwise expressly provided for in such agreements, instruments or documents. If there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be reasonably reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed to be a modification of the Plan and shall control and take precedence. This Order shall also supersede any orders of this Court issued prior to the Effective Date that may be inconsistent herewith.

39. The form of notice of Confirmation and occurrence of the Effective Date (the “**Confirmation Notice**”) annexed hereto as **Exhibit “B”** is hereby approved. Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c), the Debtors are hereby directed to serve the Confirmation Notice on all known creditors, equity holders and other parties in interest in the Chapter 11 Cases within ten (10) days after the occurrence of the Effective Date.

40. Notwithstanding any Bankruptcy Rule to the contrary (including, without limitation, Bankruptcy Rules 3020(e), 6004(h), 6006(d), and 7062) this Confirmation Order is effective immediately and not subject to any stay.



**Dated: July 16th, 2019**  
**Wilmington, Delaware**

**CHRISTOPHER S. SONTCHI**  
**UNITED STATES BANKRUPTCY JUDGE**

**EXHIBIT A**

**Plan**



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

	)		
In re:	)	)	Chapter 11
NSC WHOLESale HOLDINGS LLC, <i>et al.</i> , <sup>1</sup>	)	)	Case No. 18-12394 (CSS)
Debtors.	)	)	Jointly Administered
	)	)	
	)	)	

**DEBTORS' COMBINED DISCLOSURE STATEMENT  
AND PLAN OF LIQUIDATION**

**SAUL EWING ARNSTEIN & LEHR LLP**  
Mark Minuti (DE Bar No. 2659)  
Monique B. DiSabatino (DE Bar No. 6027)  
1201 N. Market Street, Suite 2300  
P.O. Box 1266  
Wilmington, DE 19899  
Telephone: (302) 421-6840  
Fax: (302) 421-5873  
mark.minuti@saul.com  
monique.disabatino@saul.com

*Counsel for Debtors and Debtors in Possession*

Dated: May 29, 2019

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: NSC Wholesale Holdings LLC (6210); National Wholesale Liquidators of Lodi, Inc. (4301); NSC Realty Holdings LLC (4779); NSC of West Hempstead, LLC (5582); Top Key LLC (7503); BP Liquor LLC (2059); and Teara LLC (8660). The Debtors' mailing address is 111 Hempstead Turnpike, West Hempstead, NY 11552.

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EXHIBIT A – Causes of Action

EXHIBIT B – Liquidating Trust Agreement

EXHIBIT C – Reserve Amounts

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EXHIBIT E – Proposed Members of the Plan Oversight Committee

**NOTICE**

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS PLAN. THIS PLAN WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR EQUITY INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS PLAN SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.

HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS PLAN AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.

EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS PLAN, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN.

**IMPORTANT NOTICE REGARDING CONFIRMATION  
HEARING AND OBJECTION DEADLINE**

**Confirmation Hearing.** A hearing before the Honorable Christopher S. Sontchi has been scheduled for July 16, 2019 at 10:00 a.m. (ET), at the Bankruptcy Court, 824 North Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19081, to (A) approve the Plan as providing adequate information pursuant to Section 1125 of the Bankruptcy Code on a final basis, and (B) consider confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

**Objection Deadline.** Any objection to confirmation of this Plan must: (i) be in writing; (ii) state the name and address of the objecting party and the nature of the Claim or Equity Interest of such party; (iii) state with particularity the legal and factual basis and nature of any objection; and (iv) be filed with the Bankruptcy Court and served so as to be actually received on or before July 8, 2019 at 4:00 p.m. (ET), by (a) counsel for the Debtors, Saul Ewing Arnstein & Lehr LLP, 1201 N. Market Street, Suite 2300, P.O. Box 1266, Wilmington, Delaware 19899 (Attn: Mark Minuti, Esq. and Monique B. DiSabatino, Esq.) (mark.minuti@saul.com and monique.disabatino@saul.com); (b) counsel for the Creditors Committee, Drinker Biddle & Reath LLP, at 600 Campus Dr., Florham Park, New Jersey 07932-1047 (Attn: Robert K Malone, Esq.) (Robert.Malone@dbr.com) and 222 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801-1621 (Attn: Patrick A. Jackson, Esq.) (Patrick.Jackson@dbr.com); (c) counsel to the Prepetition Lender, King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309 (Attn: W. Austin Jowers, Esq.) (ajowers@kslaw.com), and Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 N. Market Street, Suite 5400, Wilmington, Delaware 19801 (Attn: Bill Chipman, Esq.) (chipman@chipmanbrown.com); and (d) the UST, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: David L. Buchbinder, Esq.) (David.L.Buchbinder@usdoj.gov). Unless an objection is timely filed and served by the Confirmation Objection Deadline, such objection may not be considered by the Bankruptcy Court at the Confirmation Hearing.

## I. INTRODUCTION

NSC Wholesale Holdings, LLC (“**NSC**”), National Wholesale Liquidators of Lodi, Inc. (“**Lodi**”), NSC Realty Holdings LLC (“**NSC Realty**”), NSC of West Hempstead, LLC (“**NSC West Hempstead**”), Top Key LLC (“**Top Key**”), BP Liquor LLC and Teara LLC (collectively, the “**Debtors**”) hereby propose the Debtors’ Combined Disclosure Statement and Plan of Liquidation (collectively, the “**Plan**”) pursuant to Sections 1125 and 1129 of the Bankruptcy Code. The Debtors are the proponents of the Plan within the meaning of Section 1129 of the Bankruptcy Code. The Plan is the culmination of a sale and liquidation process pursuant to which the Debtors have sold substantially all of their assets.

The Plan constitutes a liquidating chapter 11 plan for the Debtors and provides for the consolidation of the Debtors for Plan purposes only and the Distribution of assets of the Debtors, which have already been liquidated or will be liquidated in the future, to Holders of Allowed Claims in accordance with the terms of the Plan. Except as otherwise provided by Order of the Bankruptcy Court, Distributions will occur on the Effective Date or as soon thereafter as is practicable and at various intervals thereafter.

The Plan includes the resolution of the Creditors Committee’s Informal Challenge to the Liens and Claims of the Prepetition Lender (as well as any other Challenge (as defined in the Final Cash Collateral Order) that could have been brought by the Creditors Committee pursuant to the terms of the Final Cash Collateral Order), as described in Article III(V) herein.

Subject to the restrictions set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtors expressly reserve the right to alter, amend or modify the Plan, including the Plan Supplement, one or more times before substantial consummation thereof.



**ALTHOUGH RECIPIENTS OF THIS PLAN ARE STRONGLY ENCOURAGED TO REVIEW THE ENTIRE PLAN, INCLUDING EXHIBITS, IN DETAIL, A SUMMARY OF THE TREATMENT OF CLAIMS AND EQUITY INTERESTS AND ESTIMATED RECOVERIES IS SET FORTH IN ARTICLE V ON PAGE 38 HEREOF .**

## II. DEFINITIONS AND CONSTRUCTION OF TERMS

### A. Definitions

As used herein, the following terms have the respective meanings specified below, unless the context otherwise requires:

1. **“Administrative Expense Claim”** means any right to payment constituting a cost or expense of administration of the Chapter 11 Cases under Sections 503(b) and 507(a)(2) of the Bankruptcy Code, including (a) any actual and necessary costs and expenses of preserving the Estates (including Claims under section 365(d)(3) of the Bankruptcy Code) and (b) any fees or charges assessed against the Estates under Section 1930 of title 28 of the United States Code, and (c) all Claims arising under Section 503(b)(9) of the Bankruptcy Code, but excluding Professional Fee Claims.

2. **“Allowed”** means, with respect to Claims: (a) any Claim, proof of which was timely filed (or for which Claim, under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court, a proof of claim is not or shall not be required to be filed); (b) any Claim that has been or hereafter is listed by the Debtors in the Schedules as liquidated in amount and not disputed or contingent and for which no proof of claim has been filed; or (c) any Claim allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; provided that any Claim described in clauses (a) and (b) shall be considered Allowed only if and to the extent that with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or such objection is interposed and the Claim is subsequently Allowed by a Final Order.

3. **“Auction”** shall have the meaning set forth in Article III(M) of this Plan.

4. **“Avoidance Actions”** means any and all rights to recover and/or avoid transfers or liens under chapter 5 of the Bankruptcy Code or otherwise, including Bankruptcy Code Sections 506(d), 522, 541, 542, 543, 544, 545, 547, 548, 549, 550, or 553, or otherwise under the Bankruptcy Code or under similar or related state or federal statutes and common law, including all preference, fraudulent conveyance, fraudulent transfer, and/or other similar avoidance claims, rights and causes of action, whether or not litigation has been commenced as of the Effective Date to prosecute such Avoidance Actions.

5. **“Balloting Agent”** means Omni Management Group, in its capacity as the Bankruptcy Court-approved solicitation, claims and noticing agent.

6. **“Bankruptcy Code”** means title 11 of the United States Code, as amended from time to time.

7. **“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware.

8. **“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, as amended from time to time, together with the Local Rules, as amended from time to time.

9. **“Bar Date Order”** means the *Order (I) Establishing Deadlines for Filing Proofs of Claim, Administrative Expense Claims, Including Section 503(B)(9) Claims, and (II) Approving the Form and Manner of Notice Thereof* entered in the Chapter 11 Cases by the Bankruptcy Court on February 11, 2019 [D.I. 366].

10. **“Bar Dates”** shall have the meaning set forth in Article III(T)(3) of this Plan.

11. **“Bid Deadline”** means 5:00 p.m. prevailing Eastern Time on November 27, 2018.

12. **“Bidding Procedures”** means the bidding procedures governing the sale of the Debtors’ assets, as defined in the Bidding Procedures Order.

13. **“Bidding Procedures Order”** means the *Order (I) Scheduling a Hearing to Consider Approval of the Sale or Sales of Substantially All of the Debtors’ Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, and (III) Granting Related Relief*, entered in the Chapter 11 Cases by the Bankruptcy Court on November 5, 2018 [D.I. 98].

14. **“Books and Records”** shall have the meaning set forth in Article XV(A) of this Plan.

15. **“Business Day”** means any day other than a Saturday, Sunday or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order.

16. **“Cash”** means legal tender of the United States of America and equivalents thereof.

17. **“Cash Collateral Motion”** means and refers to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Use Cash Collateral on an Emergency Basis Pending a Final Hearing; (II) Granting Adequate Protection to the Prepetition Lender, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [D.I. 14].

18. **“Causes of Action”** means the Avoidance Actions and all other claims, actions, causes of action, choses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, third-party claims, counterclaims, and crossclaims of any Debtor and/or any of the Estates against any Entity, based in law or equity, including under the

Bankruptcy Code, whether direct, indirect, derivative, or otherwise, and whether asserted or unasserted, and any and all commercial tort claims against any party, including the Debtors' current and former directors and officers; and subject, however, to any releases or exculpation provisions provided in this Plan, the Confirmation Order or any other Final Order of the Bankruptcy Court. Without limitation of the foregoing, Causes of Action include those claims and actions set forth on **Exhibit A** hereto.

19. “**CBA**” means and refers to the Collective Bargaining Agreement between debtor NSC and Amalgamated Local 298 AFL-CIO, dated as of December 1, 2017.

20. “**CBA Stipulation**” shall have the meaning set forth in Article III(S) of this Plan.

21. “**Challenge Deadline**” shall have the meaning set forth in Article III(V) of this Plan.

22. “**Chapter 11 Cases**” means the procedurally consolidated chapter 11 cases of the Debtors, styled as *In re NSC Wholesale Holdings, LLC, et al.*, Case No. 18-12394 (CSS), currently pending in the Bankruptcy Court.

23. “**Claim**” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

24. “**Claims Objection Deadline**” means the first Business Day that is one hundred and eighty (180) days after the Effective Date or such later date as may be approved by Order of the Bankruptcy Court upon motion of the Liquidating Trustee; provided, however, that the filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until a Final Order is entered on such motion; provided, further, that in the event a motion to extend the Claims Objection Deadline is denied, the Claims Objection Deadline shall be the later of the then-current Claims Objection Deadline or thirty (30) days after the

Bankruptcy Court's entry of an order denying the motion to extend the Claims Objection Deadline.

25. **"Class"** means any group of substantially similar Claims or Equity Interests classified by this Plan pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code.

26. **"Clerk"** means the clerk of the Bankruptcy Court.

27. **"Confirmation Date"** means the date on which the Confirmation Order is entered on the Docket.

28. **"Confirmation Hearing"** means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

29. **"Confirmation Objection Deadline"** means July 8, 2019 at 4:00 p.m. (Prevailing Eastern Time).

30. **"Confirmation Order"** means the Order of the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code.

31. **"Consultant Motion"** means and refers to the *Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement; (II) Authorizing and Approving the Conduct of Store Closing or Similar Themed Sales, with Such Sales to be Free and Clear of All Liens, Claims and Encumbrances; and (III) Granting Related Relief* [D.I. 15].

32. **"Creditor"** means any Entity that is the Holder of a Claim against any of the Debtors.

33. “**Creditors Committee**” means and refers to the Official Committee of Unsecured Creditors appointed by the UST on November 5, 2018 in the Bankruptcy Cases [D.I. 91].

34. “**Debtors**” means, collectively, NSC, Lodi, NSC Realty, NSC West Hempstead, LLC, Top Key, BP Liquor LLC and Teara LLC.

35. “**Debtors’ Cash**” means the Cash of the Debtors immediately prior to the Effective Date.

36. “**Debtors’ Cash Account**” means the account containing the Debtors’ Cash.

37. “**Debtors-in-Possession**” means the Debtors in their capacity as debtors-in-possession in the Chapter 11 Cases pursuant to Sections 1101, 1107(a) and 1108 of the Bankruptcy Code.

38. “**Disallowed**” means, with reference to any Claim, (a) a Claim, or any portion thereof, that has been disallowed by a Final Order, (b) a Claim, or any portion thereof, that is expressly disallowed under the Plan, or (c) unless scheduled by the Debtors as a liquidated, non-contingent, and undisputed Claim, a Claim as to which a Bar Date has been established by the Bankruptcy Code, Bankruptcy Rules, or Final Order but no Proof of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order.

39. “**Disputed**” means with reference to any Claim, a Claim or any portion thereof that is neither an Allowed Claim nor a Disallowed Claim.

40. “**Distributable Proceeds**” means Cash in the Distribution Account that is available for Distribution on account of Allowed Class 3 and Allowed Class 4 Claims, in accordance with the terms of the Plan.

41. “**Distribution**” means any distribution to the Holders of Allowed Claims made pursuant to the Plan.

42. “**Distribution Account**” means the account of the NSC Liquidating Trust into which Cash from the Post-Effective Date Reserve Account is to be deposited pursuant to the terms of the Plan.

43. “**Distribution Record Date**” means the date of entry of the Confirmation Order or such other date designated in the Confirmation Order.

44. “**Docket**” means the docket in the Chapter 11 Cases maintained by the Clerk.

45. “**Effective Date**” means the date on which the conditions specified in Article XIII(B) of the Plan have been satisfied or (to the extent permitted by the Plan) waived.

46. “**Entity**” means an entity as defined in Section 101(15) of the Bankruptcy Code.

47. “**Equity Interests**” means any equity interests in any of the Debtors, including all authorized and issued or unissued membership interests or stock interests together with any warrants, options or contract rights to acquire such interests at any time.

48. “**Estates**” means the estates of the Debtors created upon the commencement of the Chapter 11 Cases pursuant to Section 541 of the Bankruptcy Code.

49. “**Exculpated Parties**” means (a) the Debtors, (b) the Debtors’ Chief Restructuring Officer, (c) Getzler Henrich & Associates, LLC, (d) the Debtors’ post-petition professionals, officers, directors, employees, advisors, representatives, financial advisors, investment bankers, or agents, (d) with respect to any person named in (a)-(d), such person’s successors and assigns, (e) the Creditors Committee, (f) the members of the Creditors Committee (but solely in their capacity as such), and (g) the professionals of the Creditors Committee.



50. **“Executory Contract”** means any executory contract or unexpired lease as of the Petition Date between any of the Debtors and any other Person or Persons, specifically excluding contracts and agreements entered into pursuant to this Plan.

51. **“Face Amount”** means (a) when used in reference to a Disputed Claim, the amount of the Disputed Claim, and (b) when used in reference to an Allowed Claim, the Allowed Claim amount.

52. **“Federal Judgment Rate”** means the federal judgment rate, calculated in accordance with 28 U.S.C. § 1961, as in effect as of the Petition Date, or such other interest rate that, as determined by the Bankruptcy Court at the Confirmation Hearing, will cause the Plan to conform to, and meet, the requirements of applicable law.

53. **“FF&E”** shall have the meaning set forth in Article III(J) of this Plan.

54. **“Final Cash Collateral Order”** means and refers to the *Final Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection to the Prepetition Lender, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* entered in the Chapter 11 Cases by the Bankruptcy Court on November 14, 2018 [D.I. 166].

55. **“Final Distribution Date”** means the date on which the final distribution of Distributable Proceeds is made to Holders of Allowed Class 3 Claims and/or Allowed Class 4 Claims entitled to receive Distributions under the Plan, as determined by the Liquidating Trustee in consultation with the Plan Oversight Committee.

56. **“Final Fee Application”** means an application for final allowance of a Professional’s aggregate Professional Fee Claim.

57. **“Final Order”** means an Order of the Bankruptcy Court or a court of competent jurisdiction to hear appeals from the Bankruptcy Court that has not been reversed, stayed,

modified or amended, and as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending; provided, however, that the possibility that a motion under Rule 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be filed with respect to such order shall not cause such order not to be a Final Order.

58. **“First Adequate Protection Payment”** shall have the meaning set forth in Article III(V) of this Plan

59. **“General Bar Date”** shall have the meaning set forth in Article III(T)(3) of this Plan.

60. **“General Unsecured Claim”** means any Claim against any of the Debtors that arose or is deemed by the Bankruptcy Code or Bankruptcy Court, as the case may be, to have arisen before the Petition Date and that is not (i) an Administrative Expense Claim, (ii) a Priority Tax Claim, (iii) a Secured Claim, (iv) a Priority Non-Tax Claim, or (v) an Intercompany Claim.

61. **“Governmental Bar Date”** shall have the meaning set forth in Article III(T)(3) of this Plan.

62. **“Governmental Unit”** has the meaning set forth in Section 101(27) of the Bankruptcy Code.

63. **“Guarantors”** shall have the meaning set forth in Article III(E)(1) of this Plan.

64. **“Holder”** means the beneficial holder of any Claim or Equity Interest.

65. **“Impaired”** means “impaired” as the term is used in Section 1124 of the Bankruptcy Code.

66. **“Initial Distribution Date”** means the date upon which initial Distributable Proceeds from the Distribution Account are made to Holders of Allowed Class 3 Claims and/or Allowed Class 4 Claims entitled to receive Distributions under the Plan, as determined by the Liquidating Trustee in consultation with the Plan Oversight Committee.

67. **“Informal Challenges”** shall have the meaning set forth in Article III(V) of this Plan.

68. **“Insurance Policies”** means any issued policy of insurance and any agreements relating thereto covering one or more of the Debtors, the Debtors’ Estates, or their assets, directors, officers, members, managers, employees and fiduciaries, or that may be available to provide coverage for Claims against any Debtor or any of the foregoing, including any general liability, property, workers compensation, casualty, umbrella or excess liability policy(ies), errors and omissions, director and officer or similar executive, fiduciary and organization liability policy(ies) (A, B or C coverage), and any tail or extended reporting requirement with respect thereto.

69. **“Intercompany Claims”** means (i) any account reflecting intercompany book entries by one Debtor with respect to the other Debtor, or (ii) any Claim that is not reflected in such book entries and is held by a Debtor against another Debtor, in each case accruing before or after the Petition Date through the Effective Date, including any Claim for reimbursement, payment as guarantor or surety, or any Claim for contribution or expenses that were allocable between or among more than one of the Debtors.

70. **“Lien”** means any mortgage, pledge, deed of trust, assessment, security interest, lease, lien, adverse claim, levy, charge or other encumbrance of any kind, including any “lien” as

defined in Section 101(37) of the Bankruptcy Code, or a conditional sale contract, title retention contract or other contract to give any of the foregoing.

71. “**Liquidating Trust Agreement**” means an agreement in substantially the form as the agreement attached hereto as **Exhibit B**.

72. “**Liquidating Trustee**” means Edward P. Bond, CPA, CFE, CIRA, on behalf of Bederson LLP, the person appointed pursuant to Article VIII(A) of this Plan to serve as trustee of the NSC Liquidating Trust, and to carry out the duties and responsibilities set forth herein, in the Liquidating Trust Agreement, and in the Engagement Letter Agreement by and between the Debtors and Bederson LLP, on behalf of the Estates and the Post-Effective Date Debtors.

73. “**Local Rules**” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

74. “**Lodi**” means debtor National Wholesale Liquidators of Lodi, Inc.

75. “**Notice Parties**” shall have the meaning set forth in Article VI(2) of this Plan.

76. “**NSC**” means debtor NSC Wholesale Holdings, LLC.

77. “**NSC Liquidating Trust**” shall have the meaning set forth in the Liquidating Trust Agreement.

78. “**NSC Realty**” means debtor NSC Realty Holdings LLC.

79. “**NSC West Hempstead**” means debtor NSC of West Hempstead, LLC.

80. “**Order**” means an order or judgment of the Bankruptcy Court as entered on the Docket.

81. “**Other Secured Claims**” means all Secured Claims excluding the Prepetition Lender Secured Claim.

82. **“Person”** means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, an estate, a trust, an unincorporated association or organization, a governmental unit or any agency or subdivision thereof, or any other Entity.

83. **“Petition Date”** means October 24, 2018.

84. **“Plan”** means this combined disclosure statement and chapter 11 plan of liquidation, including, without limitation, all exhibits, supplements, appendices and schedules hereto, either in their present form or as the same may be altered, amended or modified from time to time through the Effective Date.

85. **“Plan Documents”** means this Plan, the Plan Supplement and all of the exhibits and schedules attached to any of the foregoing and any amendments or modifications made thereto.

86. **“Plan Oversight Committee”** means the committee appointed pursuant to Article VIII(C) of this Plan.

87. **“Plan Supplement”** means, if necessary, the appendix of schedules and exhibits to be filed with the Bankruptcy Court at least seven (7) calendar days prior to the earlier of (i) the deadline to submit ballots to accept or reject the Plan, or (ii) the Confirmation Objection Deadline, unless otherwise ordered by the Bankruptcy Court. The Plan Supplement may include any documents the Debtors deem appropriate.

88. **“Post-December Administrative Expense Bar Date”** means the first Business Day that is at least thirty (30) days after the Effective Date.

89. **“Post-Effective Date Debtors”** means the Debtors after the Effective Date.

90. **“Post-Effective Date Expenses”** means any and all reasonable post-Effective Date costs and expenses of the Post-Effective Date Debtors and the NSC Liquidating Trust

including: (i) Taxes; (ii) the costs and expenses expected to be incurred in connection with the implementation of the Plan (including in connection with any appeal of the Confirmation Order and the prosecution of Final Fee Applications); (iii) reasonable compensation and reimbursement of expenses paid to the Liquidating Trustee and professionals and consultants retained by the Liquidating Trustee (whether in connection with the litigation and/or settlement of Causes of Action, or otherwise); (iv) the costs and expenses to administer the Chapter 11 Cases and the NSC Liquidating Trust, including all statutory fees; (v) the costs and expenses related to the storage or destruction of Books and Records; and (vi) the costs and expenses incurred in connection with dissolving the Post-Effective Date Debtors.

91. **“Post-Effective Date Reserve Account”** means a segregated reserve account of the NSC Liquidating Trust funded from the Debtors’ Cash Account on or as soon as practicable after the Effective Date and, unless otherwise specifically provided hereunder, from any Cash obtained by the Post-Effective Date Debtors or the Liquidating Trustee after the Effective Date from whatever source, for the purpose of paying Post-Effective Date Expenses and funding, in accordance with the terms of the Plan, the Distribution Account. On the Effective Date, the Post-Effective Date Reserve Account shall be funded in the amount set forth on **Exhibit C** attached hereto or as otherwise provided in the Plan Supplement or Confirmation Order.

92. **“Prepetition Collateral”** shall have the meaning set forth in Article III(E)(1) of this Plan.

93. **“Prepetition Credit Agreement”** shall have the meaning set forth in Article III(E)(1) of this Plan.

94. **“Prepetition Lender”** means Capital One, National Association.

95. “**Prepetition Lender Secured Claim**” shall have the meaning set forth in Article III(V) of this Plan.

96. “**Prepetition Lender Deficiency Claim**” shall have the meaning set forth in Article III(V) of this Plan.

97. “**Prepetition Liens**” shall have the meaning set forth in Article III(E)(1) of this Plan.

98. “**Prepetition Loan Documents**” shall have the meaning set forth in Article III(E)(1) of this Plan.

99. “**Prepetition Loan Facility**” shall have the meaning set forth in Article III(E)(1) of this Plan.

100. “**Prepetition Loan Obligations**” shall have the meaning set forth in Article III(E)(1) of this Plan.

101. “**Prepetition Loan Parties**” shall have the meaning set forth in Article III(E)(1) of this Plan.

102. “**Priority Non-Tax Claim**” means a Claim that is accorded priority in right of payment under Section 507 of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Expense Claim.

103. “**Priority Tax Claim**” means a Claim that is entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

104. “**Pro Rata Share**” means, with respect to any Distribution on account of any Allowed Claim, the ratio that the amount of such Allowed Claim bears to the aggregate amount of all Allowed Claims in the same Class.

105. “**Professional**” means any professional person employed in the Chapter 11 Cases pursuant to Sections 327, 328 or 1103 of the Bankruptcy Code or otherwise pursuant to an Order of the Bankruptcy Court.

106. “**Professional Fee Claim**” means a Claim under Sections 330(a), 331 or 503 of the Bankruptcy Code for compensation of a Professional or other Entity for services rendered or expenses incurred in the Chapter 11 Cases.

107. “**Professional Fee Claims Reserve**” means a segregated reserve account of the NSC Liquidating Trust funded from the Debtors’ Cash Account on or as soon as practicable after the Effective Date in accordance with the Plan, in the amount set forth on **Exhibit C** attached hereto or as otherwise provided in the Plan Supplement or Confirmation Order.

108. “**Rejection Bar Date**” means the deadline to file a proof of claim for damages relating to the rejection of an Executory Contract, which, pursuant to the Bar Date Order, is the later of (a) the General Bar Date or (b) 5:00 p.m. (ET) on the date that is thirty (30) days from the date that the Debtors provide written notice of the rejection date to the affected creditor (unless the order authorizing such rejection provides otherwise).

109. “**Reserve Accounts**” means the Professional Fee Reserve Account, the SAP Claims Reserve Account and the Post-Effective Date Reserve Account.

110. “**Sale Hearing**” means the hearing on November 29, 2018 whereby the Bankruptcy Court approved the Sales of substantially all of the Debtors’ remaining assets.

111. “**Sale Motion**” means the *Debtors’ Motion for Entry of (A) Order (I) Scheduling a Hearing to Consider Approval of the Sale or Sales of the Debtors’ Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of*



*Notice Thereof, and (III) Granting Related Relief; and (B) One Or More Orders (I) Approving the Sales or Other Transactions for the Assets, (II) Authorizing the Sales Free and Clear of All Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [D.I. 20].*

112. **“Sales”** shall have the meaning set forth in Article III(M) of this Plan.

113. **“SAP Claims Reserve Account”** means the reserve account of the NSC Liquidating Trust funded from the Debtors’ Cash Account, on or as soon as practicable after the Effective Date, in (A) the Face Amount of all (i) Administrative Claims asserted against any of the Debtors, (ii) Priority Tax Claims asserted against any of the Debtors, (iii) Class 1 Priority Non-Tax Claims asserted against any of the Debtors, and (iv) Class 2 Other Secured Claims asserted against any of the Debtors, plus (B) the First Adequate Protection Payment, plus (C) the amount of Administrative Claims that the Debtors and the Liquidating Trustee anticipate will be filed prior to the Post-December Administrative Claim Bar Date, to the extent not included within subsection (A)(i) of this definition.

114. **“Schedules”** means the schedules of assets and liabilities and the statement of financial affairs filed by each Debtor on November 20, 2018 [D.I. 190-203] and any and all amendments and modifications thereto.

115. **“Second Adequate Protection Payment”** shall have the meaning set forth in Article III(V) of this Plan.

116. **“Secured Claim”** means a Claim (i) that is secured by a Lien on property in which any of the Estates has an interest, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law, or a Claim that is subject to a valid right of the Creditor of setoff against amounts owed to any of the

Debtors; (ii) to the extent of the value of the Holder's interest in any of the Estate's interest in such property or to the extent of the amount subject to a valid right of setoff, as applicable; and (iii) the amount of which (A) is undisputed by the Debtors or (B) if disputed by the Debtors, such dispute is settled by written agreement between the Debtors or the Liquidating Trustee and the Holder of such Claim, or determined, resolved or adjudicated by Final Order.

117. **"Statutory Fees"** means any and all fees payable pursuant to Section 1930 of title 28 of the United States Code and any interest thereupon.

118. **"Store Closing Sales"** shall have the meaning set forth in Article III(J) of this Plan.

119. **"Stores"** shall have the meaning set forth in Article III(A) of this Plan.

120. **"SSG"** shall have the meaning set forth in Article III(D) of this Plan.

121. **"Subsequent Distribution Date"** means any date (other than the Final Distribution Date) on which Distributable Proceeds are Distributed to Holders of Allowed Class 3 Claims and/or Allowed Class 4 Claims following the Initial Distribution Date, as determined by the Liquidating Trustee in consultation with the Plan Oversight Committee.

122. **"Tax or Taxes"** means any and all taxes, levies, imposts, assessments or other charges of whatever nature imposed at any time by any governmental authority or by any political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto.

123. **"Top Key"** means debtor Top Key LLC.

124. **"True Value"** shall have the meaning set forth in Article III(E)(2) of this Plan.

125. **“Unclaimed Distribution Deadline”** means ninety (90) days from the date the Liquidating Trustee makes a Distribution of Cash or other property under the Plan to a Holder of an Allowed Claim.

126. **“Unclaimed Distribution”** means a Distribution that is either returned as undeliverable or that is unclaimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline. For the avoidance of doubt, the term “Unclaimed Distribution” shall include, without limitation, any Distribution made by a check that is not returned as undeliverable but which remains unnegotiated as of the Unclaimed Distribution Deadline.

127. **“Unimpaired”** means not Impaired.

128. **“Union”** means and refers to Amalgamated Local 298 AFL-CIO.

129. **“UST”** means the Office of the United States Trustee for the District of Delaware.

**B. Interpretation; Application of Definitions and Rules of Construction**

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter. Unless otherwise specified, all section, article, schedule or exhibit references in this Plan are to the respective section in, Article of, Schedule to, or Exhibit to the Plan. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection or clause contained in the Plan. The word “including” as used in this Plan shall mean “including without limitation” or “including but not limited to” and shall not be limiting in nature. The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the construction of this Plan. A term used herein that is not defined herein, but that is used in the Bankruptcy Code, shall have the meaning ascribed to that term in the

Bankruptcy Code. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of this Plan.

### **III. BACKGROUND AND DISCLOSURES**

#### **A. The Debtors' Business**

As of the Petition Date, the Debtors owned and operated eleven (11) general merchandise close-out stores (the “Stores”) in four (4) states, Massachusetts, New Jersey, New York and Pennsylvania, trading under the name “National Wholesale Liquidators.” The Debtors employed a unique hybrid merchandising strategy that was premised upon both continuity and close-out products. The Debtors offered customers both an everyday selection of first quality, brand name merchandise and opportunistic and varying special buys.

Debtor NSC was the primary operating entity for the Debtors’ business enterprise. Debtor Lodi operated the Store at the Debtors’ Lodi, New Jersey location and debtor Top Key operated a liquor store within the Debtors’ Long Island City, New York Store.

Debtor NSC Realty was the primary lessee with respect to the Debtors’ West Hempstead, New York Store and, in turn, sub-let the premises to debtor NSC West Hempstead.

Debtor BP Liquor existed solely to hold a liquor license with respect to the Debtors’ Bay Parkway, New York Store. Liquor sales at this Store were terminated before the Petition Date.

Debtor Teara is an inactive company that was originally intended to be used in connection with internet sales.

In addition to the Stores, the Debtors also leased a warehouse in Edison, New Jersey. The Debtors’ corporate offices were located above the West Hempstead, New York Store.

Prior to the Petition Date, the Debtors announced the closing of their Store at a leased, retail location in Middletown, New York.

The Debtors' Store in Yonkers, New York was forced to close in January of 2017 following the collapse of the roof and subsequent condemnation of the premises.

While the Debtors leased a retail location in Massapequa, New York, they never opened a Store at this location due to certain delays and liquidity issues.

**B. The Debtors' Workforce**

As of the Petition Date, the Debtors had 695 employees, 629 of whom were employed on a full time basis and 66 of whom were employed part time. Of the Debtors' 695 employees, 611 were compensated on an hourly basis and 84 were compensated on annual salary basis. 538 of the Debtors' store-level employees were members of the Union with the terms of their employment governed by the CBA.

**C. The Debtors' Financial Challenges**

Despite historically strong performance on a store-by-store basis, the Debtors' liquidity and financial performance was adversely affected by several unanticipated factors, including the closing of their Yonkers, New York Store and costly delays in opening their Massapequa, New York Store.

Like many retailers, over the last few years, the Debtors also experienced declining sales and rising costs associated with doing business as a predominantly "brick and mortar" retailer. The challenges impacting the Debtors affected their ability to borrow under their prepetition lending facility or, despite significant efforts (as described below), otherwise access additional debt or equity capital from other lenders or capital sources. Without additional liquidity, the Debtors' inventory shrank and sales declined. As a result of these challenges, the Debtors were unable to pay their debts as they came due and fell behind in payments to their trade vendors, landlords and others.

The Debtors believed their financial challenges could be overcome by access to additional liquidity to acquire more inventory and open additional retail stores. For months prior to the Petition Date, the Debtors negotiated with a group of industry players for a significant equity investment in the Debtors' businesses. Unfortunately, after substantially completing due diligence, the potential investors informed the Debtors that they were not prepared to move forward with an investment.

Instead of an equity investment, certain of the potential equity investors expressed interest in purchasing substantially all of the Debtors' assets through a sale under section 363 of the Bankruptcy Code. Similarly, another group, which includes one of the Debtors' insiders, also expressed an interest in purchasing a portion of the Debtors' assets and businesses as a going concern through a sale under section 363 of the Bankruptcy Code.

**D. The Debtors' Engagement of SSG Advisors, LLC**

In light of the expressions of interest noted above, the Debtors retained SSG Advisors, LLC ("SSG") in October 2018, to act as their investment banker and to assist them in marketing their assets, negotiating with interested parties, and facilitating due diligence.

**E. Pre-Petition Debt Structure**

**1. Prepetition Lender**

Pursuant to that certain Amended and Restated Credit Agreement dated as of October 26, 2015 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Prepetition Credit Agreement**," and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "**Prepetition Loan Documents**"), among (a) NSC, as Borrower, and (b) the other Debtors as guarantors (collectively, the "**Guarantors**," and together with NSC, the "**Prepetition Loan Parties**"), and (c) Capital One, National Association,

as Lender (the “**Prepetition Lender**”), the Prepetition Lender provided revolving and term loan credit and other financial accommodations to, and issued letters of credit for the account of, NSC, pursuant to the Prepetition Loan Documents (the “**Prepetition Loan Facility**”).

The Prepetition Loan Facility provided NSC with, among other things, (x) \$20,000,000 in Revolving Loan Commitments, including a \$2,000,000 letter of credit subfacility, and (y) \$2,500,000 in Delay Draw Term Loan Commitments.

As of the Petition Date, the principal amount of “Loans” outstanding under the Prepetition Loan Facility was not less than \$9,331,000, including: (a) not less than \$8,575,000 with respect to “Revolving Loans,” and (b) not less than \$756,000 with respect to “Delay Draw Term Loans,” and (c) the aggregate amount of all outstanding “Letters of Credit” (each as defined in the Prepetition Loan Agreement) was not less than \$125,000 (collectively, together with accrued and unpaid interest, any fees, expenses and disbursements (including attorneys’ fees, accountants’ fees, auditor fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Loan Parties’ obligations pursuant to the Prepetition Loan Documents, including all “Obligations” as defined in the Prepetition Credit Agreement, the “**Prepetition Loan Obligations**”).

As more fully set forth in the Prepetition Loan Documents, prior to the Petition Date, the Prepetition Loan Parties granted to the Prepetition Lender a security interest in and continuing lien (the “**Prepetition Liens**”) on substantially all of their assets and property, other than leasehold interests, including a first priority security interest in and continuing lien on the

Collateral (as defined in the Prepetition Loan Documents) (which, for the avoidance of doubt, includes cash collateral) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “**Prepetition Collateral**”).

**2. True Value**

On or about September 24, 2014, NSC entered into a Retail Member Agreement with True Value Company (“**True Value**”), a cooperative of independent retailers. NSC granted True Value a security interest in inventory sold, leased or consigned to NSC by True Value, and NSC’s receivables and other rights arising from inventory acquired from True Value. As of the Petition Date, the Debtors’ Books and Records indicated that NSC was indebted to True Value in the total amount of approximately \$107,516 and that the Debtors had True Value inventory on hand in the amount of approximately \$395,000. The Debtors believe that True Value has been paid in full and that no further amounts are owing or due to True Value.

**3. Unsecured Obligations**

As of the Petition Date, the Debtors estimated that they had aggregate unsecured debt of approximately \$27.2 million owed to trade creditors (i.e., suppliers of inventory and equipment) and landlords.

**F. Commencement of the Chapter 11 Cases**

By mid-October 2018, the Debtors’ debts were mounting and a number of the Debtors’ landlords had issued default notices. Given these challenges, the Debtors filed for bankruptcy on the Petition Date. By order dated October 26, 2018 [D.I. 32], the Bankruptcy Cases were jointly administered at Case No. 18-12394 (CSS).



**G. Continuation of Business after the Petition Date**

Subsequent to the Petition Date, the Debtors continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. During the period immediately following the Petition Date, the Debtors sought and obtained authority from the Bankruptcy Court with respect to a number of matters that were, in the Debtors' view, essential to the Debtors' orderly transition into chapter 11 and the stabilization of the Debtors' operations.

**H. First Day Relief**

On the Petition Date, the Debtors sought various types of "first day" relief intended to facilitate the transition of the Debtors' business operations into chapter 11. The Bankruptcy Court entered several "first day" orders (and later final orders, where appropriate), which authorized, among other things:

- the maintenance of the Debtors' existing bank accounts and business forms and the operation of the Debtors' existing cash management system [D.I. 31, 152];
- the filing of a consolidated list of creditors and the mailing of initial notices [D.I. 33];
- the payment of certain prepetition taxes and assessments [D.I. 36, 153];
- the payment of accrued prepetition wages, salaries and benefits and the continuation of existing employee programs [D.I. 38, 154];
- the establishment of procedures for requesting additional adequate assurance and prohibiting the Debtors' utility companies from altering, refusing or discontinuing service [D.I. 39, 155];
- the Debtors to honor certain pre-petition customer programs [D.I. 40, 156];
- the maintenance, renewal, cancellation or replacement of existing insurance programs and the payment of all premiums, fees and insurance premium financing obligations [D.I. 41, 157];
- the appointment of Omni as the Debtors' claims and noticing agent [D.I. 42]; and

- the payment of allowed claims under the Perishable Agricultural Commodities Act, and certain related relief [D.I.43].

**I. The Cash Collateral Motion and Orders**

In addition to the relief described above, the Debtors also filed the Cash Collateral Motion. The Cash Collateral Motion sought authority to utilize the cash collateral of the Prepetition Lender on a consensual basis and to grant the Prepetition Lender adequate protection for such cash collateral use, including: (i) replacement liens on certain of the Debtors' assets; (ii) valid and first priority liens on unencumbered property of the Debtors; and (iii) super priority administrative claims.

The Cash Collateral Motion was approved on an interim basis on October 26, 2018 [D.I. 44]. The Final Cash Collateral Order was entered on November 14, 2018 [D.I. 166]. A Revised Consensual Cash Collateral Budget was served and filed on January 8, 2019 [D.I. 314].

**J. The Consultant Motion and Store Closing Sales**

On October 25, 2018, the Debtors filed the Consultant Motion, pursuant to which the Debtors sought authority to assume a pre-petition consulting agreement with a contractual joint venture comprised of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC, pursuant to which the joint venture would, *inter alia*, supervise and coordinate the sale of the Debtors' inventory and furniture, fixtures and equipment (“**FF&E**”) pursuant to “store closing” or similar themed sales (the “**Store Closing Sales**”). The Consultant Motion was approved on an interim basis on October 26, 2018 [D.I. 37]. A final order approving the Consultant Motion was entered on November 14, 2018 [D.I. 167]. The Debtors conducted the Store Closing Sales from shortly before the Petition Date through approximately November 26, 2018. Pursuant to the Store Closing Sales, the Debtors achieved gross proceeds of \$11,065,000 (\$10,995,000 in inventory and \$70,000 for fixtures).

**K. Representation of the Debtors**

On October 26, 2018, the Debtors filed an application to retain Saul Ewing Arnstein & Lehr LLP as bankruptcy counsel [D.I. 54], an application to retain Getzler Henrich & Associates LLC to provide interim management services and Mark G. Samson as Chief Restructuring Officer [D.I. 51], and an application to retain SSG as the Debtors' investment banker [D.I. 53]. By orders dated November 13, 2018 and November 14, 2018, each of these applications was approved by the Bankruptcy Court [D.I. 162, 160, 168].

**L. Appointment and Representation of the Creditors Committee**

On November 5, 2018 [D.I. 91], the United States Trustee's Office appointed the Creditors Committee, consisting of Arett Sales Corporation, Citibank, N.A. and Telebrands Corp. The Creditors Committee filed an application on December 6, 2018 to retain Drinker Biddle & Reath LLP as its counsel [D.I. 259] and filed an application on December 7, 2018 to retain Bederson LLP as its financial advisor [D.I. 261]. By orders dated January 2, 2019, the Bankruptcy Court approved these applications [D.I. 299, 300].

**M. The Sale Motion and Sales of the Debtors' Remaining Assets**

On October 25, 2018, the Debtors filed the Sale Motion, pursuant to which the Debtors sought, *inter alia*, Bankruptcy Court approval of (i) the Bidding Procedures, and (ii) the sale of the Debtors' remaining assets to one or more purchasers. On November 5, 2018, the Bankruptcy Court entered the Bidding Procedures Order, which approved the Bidding Procedures.

SSG actively marketed the Debtors' remaining assets for sale from the Petition Date through the Bid Deadline. Ultimately, the Debtors received: (i) three bids to acquire certain of the Debtors' non-residential real property leases, one of which included the purchase of certain other property; (ii) two bids from landlords to "buy back" their non-residential real property

leases; (iii) one bid from a landlord that contemplated the rejection of its non-residential real property lease; and (iv) one bid from a landlord to terminate its lease.

All bidders were invited to attend an auction (the “**Auction**”), during which time SSG and the Debtors requested clarification of certain of the bids and sought to persuade bidders to expand their bids. By the time of the Auction, there were only two leases that were the subject of more than one bid, and only one lease was the subject of competitive bidding at the Auction.

At, or following, the Sale Hearing, the Court approved the following sales (the “**Sales**”):

<u><b>PURCHASER</b></u>	<u><b>PURCHASED ASSET(S)</b></u>	<u><b>PURCHASE PRICE</b></u>	<u><b>Docket No. of Sale Order</b></u>
MAS Wholesale Holdings, LLC	Bay Parkway, NY lease; Philadelphia, PA lease; all intellectual property (including trade name); any remaining inventory at the foregoing locations; and certain FF&E, including the Debtors’ computer system	\$375,000	234
A&A Wholesale Holdings, LLC	Rosedale, NY lease; Co-op Bronx, NY lease; Edison, NJ lease and sublease	\$105,000	239
Jackson Retail, LLC	Long Island City, NY lease	\$5,000	232
Jackson Retail, LLC	Massapequa, NY lease	\$5,000	233
River Drive Construction Corp.	Flushing, NY lease (termination)	\$25,000	230
	Total	\$515,000	

Each of the foregoing Sales closed on or about November 30, 2018.

**N. The Executory Contracts Rejection Order**

Pursuant to order dated November 30, 2018 [D.I. 241], the Bankruptcy Court approved the Debtors’ rejection of most of their Executory Contracts that were not subject to the Sales described above. The Debtors did not at that time seek the rejection of NSC’s lease of a facility in Yonkers, New York. This lease is discussed at Article III(R), below.

**O. Key Employee Retention Plan**

On November 11, 2018, the Debtors filed the *Debtors' Motion to Approve Key Employee Retention Plan* [D.I. 107], pursuant to which the Debtors sought authority to pay up to \$64,000 to approximately twenty (20) employees deemed to be key to the Debtors' sale process. By order dated November 29, 2018 [D.I. 221], the Bankruptcy Court approved this motion. The Debtors thereafter paid key employee retention payments totaling approximately \$64,000.

**P. Sale of Miscellaneous Assets**

On January 4, 2019, the Debtors filed the *Motion of the Debtors for Entry of an Order (I) Approving Procedures for the Sale, Transfer and Abandonment of De Minimis Assets, and (II) Authorizing the Debtors to Abandon and/or Destroy Certain Books and Records* [D.I. 303], pursuant to which the Debtors sought authority, *inter alia*, to sell or abandon *de minimis* assets. By order dated February 11, 2019 [D.I. 365], the Bankruptcy Court approve this motion. To date, pursuant to the procedures approved by the Bankruptcy Court, the Debtors have achieved gross proceeds of \$400 through the sale of *de minimis* assets.

**Q. Sale of Liquor License**

On January 1, 2019, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Approving the Auction Agreement by and between the Debtors and A.J. Willner Auctions with Respect to the Sale of a Liquor License; (II) Authorizing the Sale and Liquidation of the Liquor License through Public Auction; and (III) Waiving One or More of the Information Requirements of Local Rule 2016-2* [D.I. 297], pursuant to which the Debtors sought Bankruptcy Court authority to hire A.J. Willner Auctions (“**AJW**”) to advertise and sell, through auction, the liquor license previously used by the Debtors at their Lodi, New Jersey Store. By order dated February 11, 2019 [D.I. 364], the Bankruptcy Court approved this motion. Following a marketing process and an auction conducted on March 5, 2019, the liquor license was sold to Mr.

Vijay Papaiya for gross proceeds of \$190,000. The Debtors anticipate the sale to close on or before June 12, 2019, pending state and municipal approval of Mr. Papaiya's license transfer application. Consistent with the terms of its engagement, the Debtors will pay AJW \$18,050 for its services.

**R. Settlement with AAC Cross Country Mall, LLC, Ashkenazy Acquisition Corporation and Ben Ashkenazy**

On March 20, 2019, the Debtors filed the *Motion of NSC Wholesale Holdings, LLC for Entry of an Order Approving Settlement Agreement and Mutual Release with AAC Cross Country Mall, LLC, Ashkenazy Acquisition Corporation and Ben Ashkenazy* [D.I. 433]. As further detailed in this motion, debtor NSC held certain claims against AAC Cross Country Mall, LLC, the landlord for the Debtors' retail store located in Yonkers, New York. By order dated April 5, 2019 [D.I. 460], the Bankruptcy Court approved this motion. In exchange for the release of certain claims and the assumption and assignment of NSC's Yonkers, New York lease, the ACC Parties (as described in the motion) and Mr. Ashkenazy released claims against debtor NSC and the ACC Parties paid settlement proceeds to the Debtors of \$500,000.

**S. Rejection of the CBA under 11 U.S.C. § 1113**

In connection with the closing of the Sales, the Debtors terminated the employment of substantially all of their employees. Shortly thereafter, the Debtors contacted the Union concerning the rejection of the CBA pursuant to Section 1113 of the Bankruptcy Code. On February 13, 2019, NSC and the Union entered into the *Stipulation among Debtors and Amalgamated Local 298 AFL-CIO Rejecting Agreement Pursuant to 11 U.S.C. § 1113* (the "CBA Stipulation"). By Notice dated February 13, 2019 [D.I. 375], the Debtors sought Bankruptcy Court approval of the CBA Stipulation. By order dated March 4, 2019 [D.I. 420], the Bankruptcy Court approved the rejection of the CBA.

**T. Claims Process and Bar Date**

**1. Section 341(a) Meeting of Creditors**

On November 21, 2018, the UST conducted the meeting of creditors in the Chapter 11 Cases pursuant to Section 341(a) of the Bankruptcy Code.

**2. Schedules and Statements**

Each of the Debtors filed its Schedules with the Bankruptcy Court on November 20, 2018. Subsequently, NSC amended and modified its Schedules E and F on November 28, 2018 [D.I. 222].

**3. Bar Dates**

By the Bar Date Order, the Bankruptcy Court established (i) March 20, 2019 at 5:00 p.m. (prevailing Eastern Time) (the “**General Bar Date**”) as the deadline for filing non-governmental proofs of claim and certain Administrative Expense Claims against the Debtors and (ii) April 22, 2019 at 5:00 p.m. (prevailing Eastern Time) as the deadline for Governmental Units to file proofs of claim against the Debtors (the “**Governmental Bar Date**,” and together with the General Bar Date, the “**Bar Dates**”).

**U. Results Of Debtors’ Sale and Liquidation Efforts**

As a result of the Debtors’ Sales and the liquidation efforts described in this Plan, the Debtors’ Estates have realized gross proceeds of approximately \$12,785,000. Subject to a full reservation of rights in favor of the Creditors Committee, on December 14, 2018, the Debtors transferred \$5,898,000 to the Prepetition Lender as a pay down of the Prepetition Obligations.

As of the date of this Plan, the Prepetition Lender continues to assert a Secured Claim against the Debtors in an amount of at least \$4,160,215.00. The Prepetition Lender continues to assert Liens in, and Claims to, all of the Debtors’ cash and other remaining assets, pursuant to the

Prepetition Loan Facility and the Final Cash Collateral Order, including adequate protection Liens based upon alleged diminution in the value of the Prepetition Collateral.

**V. The Creditors Committee's Investigation of, and Negotiations and Settlement With, the Prepetition Lender**

Pursuant to the Final Cash Collateral Order, the Creditors Committee was given sixty (60) days from its formation (the “**Challenge Deadline**”) to investigate and challenge, *inter alia*, the Prepetition Lender’s Liens and Prepetition Collateral position. By Stipulations dated January 4, 2019 [D.I. 305], January 22, 2019 [D.I. 336], February 8, 2019 [D.I. 360] and February 22, 2019 [D.I. 411], and otherwise by written agreement of the Prepetition Lender, the Challenge Deadline has been extended through and including the date of the Confirmation Hearing.

Following a full and complete investigation, the Creditors Committee informally challenged the Prepetition Lender’s alleged Liens in certain property of the Estates and also challenged the amount of the Prepetition Lenders’ asserted adequate protection Liens based upon alleged diminution in the value of the Prepetition Collateral (the “**Informal Challenges**”).

The Creditors Committee and the Debtors engaged the Prepetition Lender in settlement negotiations regarding the Informal Challenges and the funding of a chapter 11 liquidating plan that will result in a higher and better distribution to the Prepetition Lender and other Holders of Allowed Claims than conversion to a chapter 7 proceeding.

Following an exchange of information and protracted and good faith settlement negotiations among the Debtors, the Creditors Committee and the Prepetition Lender, the Creditors Committee agreed to settle the Informal Challenges (as well as any other Challenges (as defined in the Final Cash Collateral Order) that could have been brought by the Creditors Committee pursuant to the terms of the Final Cash Collateral Order) and the Prepetition Lender agreed to compromise certain of its alleged Liens and Claims to permit the Debtors to propose



and seek confirmation of this Plan. Pursuant to this compromise, and as set forth further in the Plan: (i) the Prepetition Lender shall have an Allowed Secured Claim in the total amount of \$1,597,000 (the “**Prepetition Lender Secured Claim**”) and an Allowed General Unsecured Claim in the total amount of \$2,563,215.26 (the “**Prepetition Lender Deficiency Claim**”).

In full satisfaction of the Prepetition Lender Secured Claim, the Prepetition Lender shall receive: (i) on the Effective Date, a Distribution of \$625,000 (the “**First Adequate Protection Payment**”) from the SAP Claim Reserve Account; (ii) as soon as the Liquidating Trustee determines, in his discretion, that such funds are available, \$200,000 of the first available Distributable Proceeds from the Distribution Account (the “**Second Adequate Protection Payment**,” and together with the First Adequate Protection Payment, the “**Adequate Protection Payments**”); and (iii) thereafter, as soon as the Liquidating Trustee determines, in his discretion, that such funds are available, 80% of the next \$965,000 of Distributable Proceeds from the Distribution Account. Holders of Allowed Class 4 Claims other than the Prepetition Lender Deficiency Claim shall receive a Pro Rata Share (calculated without considering the Prepetition Lender Deficiency Claim) of the remaining 20% of the next \$965,000 of Distributable Proceeds from the Distribution Account, and Holders of Allowed Class 4 Claims (including the Prepetition Lender Deficiency Claim) shall receive a Pro Rata Share of any additional Distributable Proceeds from the Distribution Account.

Specifically, in full resolution of the Informal Challenges (as well as any other Challenges (as defined in the Final Cash Collateral Order) that could have been brought by the Creditors Committee pursuant to the terms of the Final Cash Collateral Order) and in exchange for the release contained in Article XI(B) of this Plan, the Prepetition Lender agreed to the continued use of Cash Collateral to fund the Plan process and the Plan (in excess of amounts

originally “carved out” or otherwise budgeted for under the Final Cash Collateral Order), and the compromise and treatment of its Liens and Claims as set forth in this Plan.

**W. Alternate Plan**

If this Plan is not confirmed, the Debtors could attempt to formulate a different plan, but there is no assurance that the Prepetition Lender would compromise its Liens and Claims as set forth herein. Further, the additional costs, including, among other amounts, additional professional fees or asserted substantial contribution claims, all of which would constitute Administrative Expense Claims (subject to allowance), could be so significant that one or more parties in interest could request that the Chapter 11 Cases be converted to chapter 7. Accordingly, the Debtors believe this Plan enables Creditors to realize the best return under the circumstances.

The allowance, classification and treatment of Allowed Claims and Allowed Equity Interests provided for herein takes into account the relative priority and rights of such Claims and Equity Interests in connection with any contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, Section 510 of the Bankruptcy Code or otherwise.

The Debtors believe this Plan is beneficial to all of the Debtors’ Creditors, as the Plan avoids costly and protracted litigation between the Creditors Committee and the Prepetition Lender, permits the payment of all Allowed Administrative Expense Claims, Other Secured Claims, Priority Tax Claims, Priority Non-Tax Claims and Professional Fee Claims, provides a mechanism and some initial funding for the pursuit of Causes of Action and should provide greater recoveries to Holders of Allowed Claims than any other possible alternative.

For all these reasons, the Debtors believe this Plan is in the best interests of their Estates.

**X. Best Interests Test**

Section 1129(a)(7) of the Bankruptcy Code requires that each Holder of an Impaired claim or interest either (a) accept this Plan or (b) receive or retain under this Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

Here, as reflected in the analysis attached hereto as **Exhibit D**, the value of any Distributions to Holders of Claims if the Debtors' Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code would be less than the value of Distributions under this Plan. This is because conversion of the Chapter 11 Cases to chapter 7 cases would require the appointment of a chapter 7 trustee, and in turn, such chapter 7 trustee's likely retention of new professionals. The "learning curve" that the trustee and new professionals would face comes with potential additional costs to the Estates. A chapter 7 trustee would also be entitled to a statutory commission based on disbursements. Moreover, and as previously stated, there is no assurance that a chapter 7 trustee would resolve the Informal Challenges against the Prepetition Lender on the same, or better terms, than the settlement set forth in this Plan.

As a result, the Debtors believe that the Estates would have fewer funds available for distribution on account of Allowed Claims in a hypothetical chapter 7 liquidation than they would if this Plan is confirmed and that, as such, Holders of Allowed Claims would recover less in hypothetical chapter 7 cases. Accordingly, the Debtors believe that the "best interest" test of Bankruptcy Code Section 1129 is satisfied.

**Y. Certain Risk Factors to be Considered**

Holders of Claims and Equity Interests should read and consider carefully the risk factors below, as well as the other information set forth in this Plan, the documents attached to this Plan, and the documents referred to or incorporated by reference in this Plan. These factors should not

be regarded as constituting the only risks present in connection with this Plan and its implementation.

**1. Risk Factors that May Affect the Debtors' Ability to Consummate this Plan**

**a. Debtors May Not Be Able to Secure Confirmation of this Plan**

As is described in greater detail below, Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan. While, as set forth below, the Debtors believe that this Plan complies with or will comply with all such requirements, there can be no guarantee that the Bankruptcy Court will agree.

**b. Risk of Non-Occurrence of the Effective Date**

Although the Debtors believe that the Effective Date will occur and may occur quickly after the Confirmation Date, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur.

**c. Parties May Object to the Classification of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. As is described in greater detail in Article X below, the Debtors believe that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. Nevertheless, there can be no assurance the Bankruptcy Court will reach the same conclusion.

**2. Risk Factors that may Affect Distributions under this Plan**

The estimates of Allowed Claims and recoveries for Holders of Allowed Claims set forth in this Plan are based on various assumptions. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims may vary

significantly from the estimated Allowed Claim amounts contained in this Plan. Moreover, the Debtors cannot determine with any certainty at this time the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the recoveries to Holders of Allowed Claims under this Plan.

**Z. Certain Federal Income Tax Consequences**

The confirmation and execution of this Plan may have tax consequences to Holders of Claims and Equity Interests. The Debtors do not offer an opinion as to any federal, state, local or other tax consequences to Holders of Claims and Equity Interests as a result of the confirmation of this Plan. All Holders of Claims and Equity Interests are urged to consult their own tax advisors with respect to the federal, state, local and foreign tax consequences of this Plan. This Plan is not intended, and should not be construed, as legal or tax advice to any Creditor, Equity Interest Holder or other party in interest.

**IV. TREATMENT OF UNCLASSIFIED CLAIMS**

**A. Administrative Expense Claims**

Requests for Allowance of Administrative Expense Claims arising on or prior to December 31, 2018, including Claims arising under Section 503(b)(9) of the Bankruptcy Code, were required to be filed or asserted by the Bar Dates. Requests for Allowance of Administrative Expense Claims arising *after* December 31, 2018, other than Claims arising under 28 U.S.C. § 1930 and Administrative Expense Claims described in sections 503(b)(1)(B) or (C) of the Bankruptcy Code, must be filed by no later than the Post-December Administrative Expense Bar Date; provided, however, that the Prepetition Lender shall not be required to file a request for Allowance of Administrative Expense Claims (either for the period prior to or after December 31, 2018), it being understood and acknowledged that all such Administrative Expense Claims of the Prepetition Lender are included in the Prepetition Lender Secured Claim

and the Prepetition Lender Deficiency Claim, which are entitled to treatment as Allowed Class 3 Claims and Allowed Class 4 Claims on the terms set forth herein.

Each Holder of an Allowed Administrative Expense Claim, if any, shall receive Cash from the SAP Claims Reserve Account in an amount equal to such Allowed Administrative Expense Claim on, or as soon as reasonably practicable after, the later of (i) the Effective Date, if the Administrative Expense Claim is an Allowed Administrative Expense Claim on the Effective Date, or (ii) the date such Claim becomes an Allowed Administrative Expense Claim.

Unpaid, Allowed Administrative Expense Claims are projected to be approximately \$84,000.

**B. Priority Tax Claims**

Each Holder of an Allowed Priority Tax Claim, if any, shall receive Cash from the SAP Claims Reserve Account in an amount equal to such Allowed Priority Tax Claim on, or as soon as reasonably practicable after, the later of (i) the Effective Date, if the Priority Tax Claim is an Allowed Priority Tax Claim on the Effective Date, or (ii) the date such Claim becomes an Allowed Priority Tax Claim.

Unpaid, Allowed Priority Tax Claims are projected to be approximately \$262,000.

**C. Professional Fee Claims**

All final requests for Professional Fee Claims incurred prior to the Effective Date shall be filed and served on the Notice Parties by no later than forty-five (45) days after the Effective Date, unless otherwise agreed by the Debtors or the Liquidating Trustee. Upon the Effective Date, any requirement that Professionals comply with Sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and Professionals may be employed and paid in the ordinary course of business without any further notice to, or action, Order, or approval of, the Bankruptcy Court.

On or as soon as reasonably practicable after the later of (i) the Effective Date or (ii) the date a Professional Fee Claim becomes an Allowed Professional Fee Claim, a Holder of an Allowed Professional Fee Claim shall receive Cash from the Professional Fee Claims Reserve equal to the unpaid portion of the Allowed Professional Fee Claim;<sup>1</sup> provided, however, with respect to Professional Fee Claims incurred prior to the Effective Date, the Allowed Professional Fee Claim shall not exceed the “carve out” agreed upon with respect to such Professional Fee Claim by and among the Prepetition Lender, the Debtors and the Creditors Committee.

Unpaid, Allowed Professional Fee Claims are projected to be approximately \$325,000.

**D. Payment of Statutory Fees**

All Statutory Fees incurred prior to the Effective Date shall be paid by the Debtors on the Effective Date. After the Effective Date, the Liquidating Trustee shall pay any and all such fees when due and payable, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the UST. Notwithstanding the limited substantive consolidation of the Debtors called for in this Plan, each of the Debtors shall remain obligated to pay quarterly fees to the UST until the earliest of that particular Debtor’s case being closed, dismissed or converted to a case under chapter 7 of the Bankruptcy Code.

**V. SUMMARY OF TREATMENT OF CLAIMS AND EQUITY INTERESTS AND ESTIMATED RECOVERIES**

The following chart provides a summary of the treatment of each Class of Claims and Equity Interests (other than Administrative Expense Claims, Professional Fee Claims and

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<sup>1</sup> Unpaid, Allowed Professional Fee Claims may also be paid from the Carve-Out Reserve Account as provided for in the Final Cash Collateral Order in accordance with the terms set forth therein.

Priority Tax Claims) and an estimate of the recoveries of each Class.<sup>2</sup> The actual Allowed amount of Claims may differ from the amounts set forth in the summary chart below.

<i>Class</i>	<i>Class Name</i>	<i>Amounts of Filed and Scheduled Claims</i>	<i>Estimated Allowed Claim Amounts</i>	<i>Voting Status</i>	<i>Estimated Recovery &amp; Treatment</i>
1	Priority Non-Tax Claims	\$195,415.95	\$42,000.00	Unimpaired / Deemed to Accept	<p>Except to the extent that a Holder of an Allowed Priority Non-Tax Claim against the Debtors has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as reasonably practicable after the later of (i) the Effective Date, if the Priority Non-Tax Claim is an Allowed Priority Non-Tax Claim on the Effective Date, or (ii) the date such Claim becomes an Allowed Priority Non-Tax Claim, the Liquidating Trustee shall pay to each Holder of an Allowed Priority Non-Tax Claim, Cash from the SAP Claims Reserve Account in an amount equal to such Allowed Priority Non-Tax Claim.</p> <p>Anticipated recovery: 100%</p>
2	Other Secured Claims	\$6,333,465.88	\$350,000	Unimpaired / Deemed to Accept	<p>Except to the extent that a Holder of an Allowed Class 2 Other Secured Claim against the Debtors has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as is reasonably practicable after the later of (a) the Effective Date, if the Class 2 Other Secured Claim is an Allowed Class 2 Other Secured Claim on the Effective Date or (b) the date such Claim becomes an Allowed Other Secured Claim, the Liquidating Trustee shall either: (i) pay to each Holder of an Allowed Class 2 Other</p>

<sup>2</sup> The amounts set forth below represent estimated Allowed Claims, and do not represent amounts actually asserted by the Creditors in proofs of claim or otherwise. The Debtors have not completed their analysis of Claims in the Chapter 11 Cases and objections to such Claims have not been fully litigated. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be more or less than estimated.



<i>Class</i>	<i>Class Name</i>	<i>Amounts of Filed and Scheduled Claims</i>	<i>Estimated Allowed Claim Amounts</i>	<i>Voting Status</i>	<i>Estimated Recovery &amp; Treatment</i>
					Secured Claim, Cash from the SAP Claims Reserve Account in an amount equal to such Allowed Class 2 Other Secured Claim; or (ii) release to such Holder the collateral securing such Allowed Class 2 Other Secured Claim.  Anticipated recovery: 100%
3	Prepetition Lender Secured Claim	N/A	\$1,597,000	Impaired / Entitled to Vote	<p>Except to the extent that the Prepetition Lender agrees to a different treatment, and in full satisfaction of the Allowed Prepetition Lender Secured Claim, (i) the Liquidating Trustee shall pay the Prepetition Lender, from the SAP Claim Reserve Account on the Effective Date, the First Adequate Protection Payment, (ii) the Liquidating Trustee shall pay to the Prepetition Lender the Second Adequate Protection Payment from the first available Distributable Proceeds in the Distribution Account, upon determining, in his discretion, that sufficient funds are available to do so, and (iii) thereafter, the Liquidating Trustee shall pay to the Prepetition Lender eighty percent (80%) of the next \$965,000 of Distributable Proceeds, if any, in the Distribution Account, upon determining in his discretion that sufficient funds are available to do so.</p> <p>Notwithstanding anything to the contrary set forth herein, the Prepetition Lender shall not be entitled to receive Cash under the Plan in excess of 100% of the Allowed Prepetition Lender Secured Claim plus 100% of the Allowed Prepetition Lender Deficiency Claim.</p>

<i>Class</i>	<i>Class Name</i>	<i>Amounts of Filed and Scheduled Claims</i>	<i>Estimated Allowed Claim Amounts</i>	<i>Voting Status</i>	<i>Estimated Recovery &amp; Treatment</i>
					Anticipated recovery: 39%-100%
4	General Unsecured Claims	\$50 million	\$44.5 million (For the avoidance of doubt, Class 4 includes the Allowed Prepetition Lender Deficiency Claim.)	Impaired / Entitled to Vote	<p>Except to the extent that a Holder of an Allowed Class 4 General Unsecured Claim against the Debtors agrees to a different treatment, (i) each Holder of an Allowed Class 4 Unsecured Claim other than the Prepetition Lender Deficiency Claim, shall receive a Pro Rata Share (calculated without considering the Prepetition Lender Deficiency Claim) of 20% of the first \$965,000 of Distributable Proceeds, if any, that remain in the Distribution Account following payment of the Adequate Protection Payments, and (ii) thereafter, each Holder of an Allowed Class 4 Unsecured Claim (including the Prepetition Lender Deficiency Claim) shall receive a Pro Rata Share of any additional Distributable Proceeds.</p> <p>Notwithstanding anything to the contrary set forth herein (i) no Holder of an Allowed Class 4 General Unsecured Claim shall be entitled to receive Cash under the Plan in excess of 100% of such Holder's Allowed Class 4 General Unsecured Claim plus interest thereon accrued after the Petition Date at the Federal Judgment Rate; and (ii) the Liquidating Trustee may delay any Distribution otherwise payable hereunder to Holders of Allowed Class 4 Claims if the Liquidating Trustee determines, in consultation with the Plan Oversight Committee, that the cost of making such Distribution is not cost-effective, in relation to the</p>

<i>Class</i>	<i>Class Name</i>	<i>Amounts of Filed and Scheduled Claims</i>	<i>Estimated Allowed Claim Amounts</i>	<i>Voting Status</i>	<i>Estimated Recovery &amp; Treatment</i>
					amount of the Distribution.  Anticipated recovery: 7%
5	Intercompany Claims	N/A	N/A	Impaired / Deemed to Reject	Holders of Intercompany Claims shall not receive a Distribution on account of their Intercompany Claims.  Anticipated recovery: 0%.
6	Equity Interests	N/A	N/A	Impaired / Deemed to Reject	On the Effective Date, all Equity Interests shall be deemed canceled, extinguished and discharged and of no further force or effect, and the Holders of Equity Interests shall not be entitled to receive or retain any property on account of such Equity Interests.  Anticipated recovery: 0%

## **VI. CONFIRMATION PROCEDURES**

### **A. Confirmation Procedure**

#### **1. Confirmation Hearing**

A hearing before the Honorable Christopher S. Sontchi has been scheduled for **July 16, 2019 at 10:00 a.m. (ET)**, at the Bankruptcy Court, 824 North Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19081 to (A) approve the Plan as providing adequate information pursuant to Section 1125 of the Bankruptcy Code on a final basis and (B) consider confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

**2. Procedure for Objections**

Any objection to confirmation of this Plan must: (i) be in writing; (ii) state the name and address of the objecting party and the nature of the Claim or Equity Interest of such party; (iii) state with particularity the legal and factual basis and nature of any objection; and (iv) be filed with the Bankruptcy Court and served so as to be actually received on or before **July 8, 2019 at 4:00 p.m. (ET)**, by (a) counsel for the Debtors, Saul Ewing Arnstein & Lehr LLP, 1201 N. Market Street, Suite 2300, P.O. Box 1266, Wilmington, Delaware 19899 (Attn: Mark Minuti, Esq. and Monique B. DiSabatino, Esq.) (mark.minuti@saul.com and monique.disabatino@saul.com); (b) counsel for the Creditors Committee, Drinker Biddle & Reath LLP, at 600 Campus Dr., Florham Park, New Jersey 07932-1047 (Attn: Robert K Malone, Esq.) (Robert.Malone@dbr.com) and 222 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801-1621 (Attn: Patrick A. Jackson, Esq.) (Patrick.Jackson@dbr.com); (c) counsel to the Prepetition Lender, King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309 (Attn: W. Austin Jowers, Esq.) (ajowers@kslaw.com), and Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 N. Market Street, Suite 5400, Wilmington, Delaware 19801 (Attn: Bill Chipman, Esq.) (chipman@chipmanbrown.com); and (d) the UST, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: David L. Buchbinder, Esq.) (David.L.Buchbinder@usdoj.gov) (collectively, the “**Notice Parties**”). **Unless an objection is timely filed and served by the Confirmation Objection Deadline, such objection may not be considered by the Bankruptcy Court at the Confirmation Hearing.**

**3. Requirements for Confirmation**

The Bankruptcy Court will confirm the Plan only if it meets all the applicable requirements of Section 1129 of the Bankruptcy Code. Among the requirements for

confirmation in these Chapter 11 Cases is that the Plan: (i) be accepted by all Impaired Classes of Claims and Equity Interests or, if rejected by an Impaired Class, that the Plan “does not discriminate unfairly” against, and is “fair and equitable” with respect to, such Class; and (ii) be feasible. The Bankruptcy Court must also find that:

- a. the Plan has classified Claims and Equity Interests in a permissible manner;
- b. the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code; and
- c. the Plan has been proposed in good faith.

The Debtors believe that the Plan complies, or will comply, with all such requirements.

#### **4. Classification of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code requires the Plan to place a Claim or Equity Interest in a particular Class only if such Claim or Equity Interest is substantially similar to the other Claims or Equity Interests in such Class. The Plan creates separate Classes to deal respectively with Other Secured Claims, the Prepetition Lender Secured Claim, Priority Non-Tax Claims, General Unsecured Claims, Intercompany Claims, and Equity Interests. The Debtors believe that the Plan’s classifications place substantially similar Claims or Equity Interests in the same Classes and thus meet the requirements of Section 1122 of the Bankruptcy Code.

#### **5. Impaired Claims or Equity Interests**

Pursuant to Section 1124 of the Bankruptcy Code, a Class of Claims or Equity Interests may be Impaired if the Plan alters the legal, equitable or contractual rights of the Holders of such Claims or Equity Interests treated in such Class. The Holders of Claims not Impaired by the Plan are deemed to accept the Plan and do not have the right to vote on the Plan. The Holders of Intercompany Claims and Equity Interests are deemed to reject this Plan and do not have the

right to vote on the Plan. Finally, the Holders of Claims whose Claims are not classified under the Plan are not entitled to vote on the Plan.

**6. Elimination of Vacant Classes**

Any Class of Claims or Equity Interests that does not contain, as of the date of commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Equity Interest, shall be deemed deleted from the Plan for all purposes.

**VII. TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**A. Treatment of Claims**

**1. Class 1 –Priority Non-Tax Claims**

**a. Classification**

Class 1 consists of Priority Non-Tax Claims.

**b. Impairment and Voting**

Class 1 is Unimpaired by the Plan. Holders of Allowed Priority Non-Tax Claims are deemed to have accepted the Plan and therefore, are not entitled to vote to accept or reject the Plan.

**c. Treatment**

Except to the extent that a Holder of an Allowed Priority Non-Tax Claim against the Debtors has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as reasonably practicable after the later of (i) the Effective Date, if the Priority Non-Tax Claim is an Allowed Priority Non-Tax Claim on the Effective Date, or (ii) the date such Claim becomes an Allowed Priority Non-Tax Claim, the Liquidating Trustee shall pay to each Holder of an Allowed Priority Non-Tax Claim, Cash from the SAP Claims Reserve Account in an amount equal to such Allowed Priority Non-Tax Claim.

**2. Class 2 – Other Secured Claims**

**a. Classification**

Class 2 consists of all Other Secured Claims.

**b. Impairment and Voting**

Class 2 is Unimpaired by the Plan. Holders of Class 2 Other Secured Claims are deemed to have accepted the Plan and therefore, are not entitled to vote to accept or reject the Plan.

**c. Treatment**

Except to the extent that a Holder of an Allowed Class 2 Other Secured Claim against the Debtors has been paid prior to the Effective Date or agrees to a different treatment, on or as soon as is reasonably practicable after the later of (a) the Effective Date, if the Class 2 Other Secured Claim is an Allowed Class 2 Other Secured Claim on the Effective Date or (b) the date such Claim becomes an Allowed Other Secured Claim, the Liquidating Trustee shall either: (i) pay to each Holder of an Allowed Class 2 Other Secured Claim, Cash from the SAP Claims Reserve Account in an amount equal to such Allowed Class 2 Other Secured Claim; or (ii) release to such Holder the collateral securing such Allowed Class 2 Other Secured Claim.

**3. Class 3 – Prepetition Lender Secured Claim**

**a. Classification**

Class 3 consists of the Prepetition Lender Secured Claim.

**b. Impairment and Voting**

Class 3 is Impaired. The Prepetition Lender is entitled to vote on the Plan.

**c. Treatment**

Except to the extent that the Prepetition Lender agrees to a different treatment, and in full satisfaction of the Allowed Prepetition Lender Secured Claim, the Liquidating Trustee shall pay the Prepetition Lender (i) from the SAP Claim Reserve Account, on the Effective Date, the First

Adequate Protection Payment, (ii) upon determining, in his discretion, that sufficient funds are available to do so, the Second Adequate Protection Payment from the first available Distributable Proceeds in the Distribution Account, and (iii) eighty percent (80%) of the next \$965,000 of Distributable Proceeds, if any, in the Distribution Account, upon determining in his discretion that sufficient funds are available to do so.

Notwithstanding anything to the contrary set forth herein, the Prepetition Lender shall not be entitled to receive Cash under the Plan in excess of 100% of the Allowed Prepetition Lender Secured Claim plus 100% of the Allowed Prepetition Lender Deficiency Claim.

**4. Class 4 – General Unsecured Claims**

**a. Classification**

Class 4 consists of General Unsecured Claims (including, for the avoidance of doubt, the Prepetition Lender Deficiency Claim).

**b. Impairment and Voting**

Class 4 is Impaired. Holders of Allowed General Unsecured Claims in Class 4 are entitled to vote on the Plan.

**c. Treatment**

Except to the extent that a Holder of an Allowed Class 4 General Unsecured Claim against the Debtors agrees to a different treatment, (i) each Holder of an Allowed Class 4 Unsecured Claim other than the Prepetition Lender Deficiency Claim, shall receive a Pro Rata Share (calculated without considering the Prepetition Lender Deficiency Claim) of 20% of the first \$965,000 of Distributable Proceeds remaining after the Adequate Protection Payments are made, if any, and (ii) thereafter, each Holder of an Allowed Class 4 Unsecured Claim (including the Prepetition Lender Deficiency Claim) shall receive a Pro Rata Share of any additional Distributable Proceeds.



Notwithstanding anything to the contrary set forth herein (i) no Holder of an Allowed Class 4 General Unsecured Claim shall be entitled to receive Cash under the Plan in excess of 100% of such Holder's Allowed Class 4 General Unsecured Claim plus interest thereon accrued after the Petition Date at the Federal Judgment Rate; and (ii) the Liquidating Trustee may delay any Distribution otherwise payable hereunder to Holders of Allowed Class 4 Claims if the Liquidating Trustee determines, in consultation with the Plan Oversight Committee, that the cost of making such Distribution is not cost-effective, in relation to the amount of the Distribution.

**5. Class 5 – Intercompany Claims**

**a. Classification**

Class 4 consists of all Intercompany Claims.

**b. Impairment and Voting**

Class 5 is impaired and deemed to reject the Plan.

**c. Treatment**

Allowed Intercompany Claims shall not receive a Distribution under the Plan.

**6. Class 6 –Equity Interests**

**a. Classification**

Class 6 consists of all Equity Interests.

**b. Impairment and Voting**

Class 6 is impaired and deemed to reject the Plan.

**c. Treatment**

On the Effective Date, all Equity Interests shall be deemed canceled, extinguished and discharged and of no further force or effect, and the Holders of Equity Interests shall not be entitled to receive or retain any property on account of such Equity Interests.

**B. Modification of Treatment of Claims**

The Liquidating Trustee reserves the right to modify the treatment of any Allowed Claim in any manner adverse only to the Holder of such Claim at any time after the Effective Date upon the consent of the Holder of the Claim whose Allowed Claim is being adversely affected.

**C. Cramdown and No Unfair Discrimination**

With respect to the Impaired Classes of Claims and Equity Interests that reject or that are deemed to have rejected the Plan, the Debtors hereby request, without any delay in the occurrence of the Confirmation Hearing or Effective Date, that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code with respect to such non-accepting Classes, in which case the Plan shall constitute a motion for such relief.

Confirming the Plan under such a circumstance is what is known as a “cramdown.” Among other things, a “cramdown” is appropriate where the Bankruptcy Court finds that such plan does not unfairly discriminate against the objecting class, is fair and equitable with respect to such objecting class, and at least one class of impaired creditors has voted to accept the plan. A plan unfairly discriminates against a class if another class of equal rank in priority will receive greater value under the plan than the non-accepting class without reasonable justification. A plan is fair and equitable if no claim or interest junior to the objecting class shall receive or retain any claim or interest under the plan.

**VIII. PROVISIONS REGARDING THE POST-CONFIRMATION LIQUIDATING TRUST**

**A. Appointment of the Liquidating Trustee**

On the Effective Date, all assets of the Debtors will be transferred to the NSC Liquidating Trust and the Liquidating Trustee shall be appointed and thereafter serve in accordance with this Plan and the Liquidating Trust Agreement. The Liquidating Trustee shall not be required to give any bond or surety or other security for the performance of his duties unless otherwise directed by the Bankruptcy Court. The material terms of the Liquidating Trustee's compensation are included in the Liquidating Trust Agreement.<sup>3</sup> Effective as of the Effective Date, and without any further action of any Person or Entity, the board of directors or managing members of each Post-Effective Date Debtor shall be comprised solely of the Liquidating Trustee. Effective as of the Effective Date, and without any further action or any Person or Entity, the members of the board of directors or the managing members of each Debtor prior to the Effective Date, in their capacities as such, shall have no continuing obligations to any of the Post-Effective Date Debtors on or after the Effective Date. Effective as of the Effective Date, the sole officer of each Post-Effective Date Debtor shall be the Liquidating Trustee.

**B. Rights and Powers of the Liquidating Trustee**

Subject to the rights and duties of the Plan Oversight Committee set forth below, the Liquidating Trustee shall, in addition to any powers and authority specifically set forth in other provisions of the Plan or in the Liquidating Trust Agreement, be empowered to act on behalf of the Estates, the Post-Effective Date Debtors and the NSC Liquidating Trust to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan or the Liquidating Trust Agreement, (ii) establish and maintain the

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<sup>3</sup> A copy of the proposed form of Liquidating Trust Agreement is attached hereto as **Exhibit B**.

Distribution Account and the Reserve Accounts, (iii) make Distributions in accordance with the Plan, (iv) object to and/or settle Claims, as appropriate, (v) employ and compensate professionals to represent the Liquidating Trustee with respect to his responsibilities, (vi) assert any of the Debtors' claims, Causes of Action, rights of setoff, or other legal or equitable defenses, and (vii) exercise such other powers as may be vested in the Post-Effective Date Debtors and/or the Liquidating Trustee by Order of the Bankruptcy Court, pursuant to this Plan, by the Liquidating Trust Agreement, or as deemed by the Liquidating Trustee to be necessary and/or desirable to implement the provisions hereof. The Liquidating Trustee may take any and all actions that he deems reasonably necessary or appropriate to defend against any Claim, including the right to: (a) exercise any and all judgment and discretion with respect to the manner in which to defend against or settle any Claim, including the retention of professionals, experts and consultants; and (b) enter into a settlement agreement or agreements without approval of the Bankruptcy Court. Post-Effective Date Expenses shall be paid by the Liquidating Trustee from the Post-Effective Date Reserve Account.

As noted in Article III(L) herein, the Liquidating Trustee has served as financial advisor to the Creditors' Committee throughout these Chapter 11 Cases.

**C. Plan Oversight Committee**

On the Effective Date, there shall be established a Plan Oversight Committee consisting of three members, one of whom shall be the Pre-Petition Lender and two of whom shall be selected by the Creditors Committee after consulting with the Debtors. The Plan Oversight Committee shall have the responsibility to oversee and advise the Liquidating Trustee with respect to the liquidation and distribution of the Debtors' assets in accordance with the Plan, as specified below. A member of the Plan Oversight Committee shall recuse him/herself from considering any matter in which he/she is not disinterested; provided, however, such member

shall not be considered non-disinterested solely as a result of such member's affiliation with or employment by the Holder of a Claim (including the Prepetition Lender or any member of the Creditors Committee). The proposed members of the Plan Oversight Committee are identified on **Exhibit E** attached hereto or will otherwise be identified in the Plan Supplement. Vacancies on the Plan Oversight Committee shall be filled by a Person designated by the remaining member or members of the Plan Oversight Committee from among the holders of General Unsecured Claims; provided, however, that any vacancy with respect to any member appointed by the Prepetition Lender shall be filled by a Person designated by the Prepetition Lender. A majority of the Plan Oversight Committee may remove or replace members of the Plan Oversight Committee for cause, and any party-in-interest shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Plan Oversight Committee for cause. Any successor appointed pursuant to this Section shall become fully vested with all of the rights, powers, duties and obligations of his or her predecessor. For the avoidance of doubt, no member of the Plan Oversight Committee shall be compensated for serving as a member of the Plan Oversight Committee; provided, however, that such members may be reimbursed by the Liquidating Trustee, from funds in the Post-Effective Date Reserve Account, for documented reasonable out-of-pocket costs and expenses.

The rights, powers and duties of the Plan Oversight Committee shall be as follows:

- (i) To terminate by majority vote the Liquidating Trustee for cause, and upon such termination (or upon the resignation, death or incapacity of the Liquidating Trustee), appoint a successor Liquidating Trustee in accordance with the terms of the Plan;
- (ii) To approve any release or indemnity in favor of any third party granted or agreed to by the Liquidating Trustee, other than as set forth in the Plan;
- (iii) To authorize the Liquidating Trustee to commence or continue to prosecute any Cause of Action;

(iv) To approve the settlement of any Cause of Action or dispute, for which the amount in controversy exceeds \$100,000;

(v) To approve the allowance of any Disputed Claim if the proposed Allowed amount of such Claim exceeds \$50,000;

(vi) To approve the sale of any assets by the Liquidating Trustee;

(vii) To approve any budget in connection with the administration of the Plan and the winding down of the Debtors' affairs prepared by the Liquidating Trustee at the request of the Plan Oversight Committee;

(viii) To approve the Initial Distribution Date, the Subsequent Distribution Dates and the Final Distribution Date;

(ix) To review and object to fees and expenses of professionals retained by the Liquidating Trustee in accordance with the terms of the Plan; and

(x) To consider and, if appropriate, approve any action proposed by the Liquidating Trustee that is not specifically authorized by the Plan that would have a material effect upon the administration of the Estates and/or the NSC Liquidating Trust, provided, however, nothing contained herein shall be deemed to authorize the Liquidating Trustee to take any action that is inconsistent with the terms of the Plan.

**D. Post Confirmation Date Expenses of the Liquidating Trustee and the Post-Effective Date Debtors**

Without further order of the Bankruptcy Court, the Liquidating Trustee shall, from the Post-Effective Date Reserve Account, receive reasonable compensation for services rendered to the Estates, the Post-Effective Date Debtors and/or the NSC Liquidating Trust pursuant to the Plan and/or the Liquidating Trust Agreement.

In addition, the Liquidating Trustee may pay, from the Post-Effective Date Reserve Account, all reasonable fees and expenses incurred by the Liquidating Trustee on or after the Effective Date (including but subject to the rights of the Plan Oversight Committee as set forth above, reasonable attorney and professional fees and expenses) without further order of the Bankruptcy Court.

**IX. PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE PLAN**

**A. Method of Payment**

Unless otherwise expressly agreed in writing, all Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank or an electronic wire.

**B. Objections to and Resolution of Claims**

Subject to the rights and duties of the Plan Oversight Committee noted above, the Liquidating Trustee shall have the right to file objections and/or motions to estimate any and all Claims after the Effective Date. The Liquidating Trustee shall have the authority to compromise, settle, otherwise resolve or withdraw any objections, without approval of the Bankruptcy Court. The Liquidating Trustee shall further have the authority to resolve and settle any and all Claims without approval of the Bankruptcy Court.

**C. Claims Objection Deadline**

Subject to the rights and duties of the Plan Oversight Committee noted above, the Liquidating Trustee, and any other party in interest to the extent permitted pursuant to Section 502(a) of the Bankruptcy Code, shall file and serve any objection to any Claims, including Administrative Expense Claims, no later than the Claims Objection Deadline, as such Claims Objection Deadline may be extended from time to time upon motion by the Liquidating Trustee in accordance with the terms of this Plan.

**D. No Distribution Pending Allowance**

Notwithstanding any other provision of the Plan, no payment or Distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by this Plan.

**E. Claims Reserve**

On any date that Distributions are to be made under the terms of the Plan, the Liquidating Trustee shall reserve Cash or property equal to one-hundred percent (100%) of the Cash or property that would be Distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim, unless otherwise Ordered by the Bankruptcy Court following notice to the affected Claim Holder. Such Cash or property, as the case may be, shall be held in reserve for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

**F. Adjustments to Claims Without Objection**

After the Effective Date, upon 10 days' written notice to the affected Claimant, any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be marked as satisfied, adjusted or expunged on the register of Claims in the Chapter 11 Cases by the Balloting Agent at the direction of the Liquidating Trustee without a Claims objection having to be filed.

**G. Late Claims and Amendments to Claims**

Except as provided herein or otherwise agreed, any and all Holders of proofs of claim filed after the applicable Bar Date shall not be treated as Creditors for purposes of Distribution pursuant to Bankruptcy Rule 3003(c)(2) and the Bar Date Order unless, on or before the Confirmation Date, such late Claim has been deemed timely filed by a Final Order.

**H. Distribution Record Date**

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will be treated as the Holders of those Claims for all purposes. The Liquidating Trustee shall have no obligation to recognize any transfer of any Claim occurring after the



Distribution Record Date. In making any Distribution with respect to any Claim, the Liquidating Trustee shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the proof of claim filed with respect thereto or on the Schedules as the Holder thereof as of the close of business on the Distribution Record Date and upon such other evidence or record of transfer or assignment that are actually known to the Liquidating Trustee as of the Distribution Record Date.

**I. Delivery of Distributions**

Except as provided herein, Distributions to Holders of Allowed Claims shall be made: (1) at the addresses set forth on the respective proofs of claim filed by such Holders; (2) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related proof of claim; or (3) at the address reflected in the Schedules if no proof of claim is filed and the Liquidating Trustee has not received a written notice of a change of address.

If the Distribution to the Holder of any Claim is returned to the Liquidating Trustee as undeliverable, no further Distribution shall be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder's then current address. Undeliverable Distributions shall remain in the possession of the Liquidating Trustee until the earlier of (i) such time as a Distribution becomes deliverable or (ii) such time as an undeliverable Distribution becomes an Unclaimed Distribution.

The Liquidating Trustee shall make reasonable efforts to update or correct contact information for recipients of undeliverable Distributions; provided, however, nothing contained in the Plan shall require the Liquidating Trustee to locate any Holder of an Allowed Claim.

**J. Unclaimed Distributions**

Any Unclaimed Distributions that are not claimed on or before the Unclaimed Distribution Deadline shall revert to the NSC Liquidating Trust; provided, however, the NSC Liquidating Trust shall thereafter, and within one hundred twenty (120) days after the Final Distribution Date, donate such Unclaimed Distributions to a 501(c)(3) charity to be selected by the Liquidating Trustee in consultation with the Plan Oversight Committee.

**K. De Minimis Distributions**

The Liquidating Trustee shall not distribute cash to the Holder of an Allowed Claim in an Impaired Class if the amount of Cash to be distributed on account of such Claim is less than \$25.00 in the aggregate. Any holder of an Allowed Claim on account of which the amount of Cash to be distributed is less than \$25.00 in the aggregate will be forever barred from asserting its claim for such distribution against the Liquidating Trustee, the Debtors or their property. Any Cash not distributed pursuant to this Article IX(K) of the Plan will be property of the Estates and transferred to the NSC Liquidating Trust.

**L. Setoff**

The Liquidating Trustee shall have and retain the right to reduce any Claim by way of setoff in accordance with the Debtors' Books and Records.

**X. IMPLEMENTATION AND EFFECT OF CONFIRMATION OF COMBINED PLAN AND DISCLOSURE STATEMENT**

**A. Means for Implementation of the Plan**

In addition to the provisions set forth elsewhere in the Plan, the following shall constitute the means for implementation of the Plan:

**1. Limited Consolidation**

The Plan provides for the limited consolidation of the Debtors' Estates, but solely for the purposes of this Plan, including making any Distributions to Holders of Allowed Claims. The Debtors propose limited consolidation to promote efficient administration and effectuation of the Plan, including for purposes of Distributions to be made under the Plan, and to avoid the inefficiency of proposing Entity-specific Claims for which there would be little to no impact on Distributions. On the Effective Date, (i) all assets and liabilities of the Debtors shall, solely for Distribution purposes, be treated on an aggregated basis, (ii) each Claim against any of the Debtors shall be deemed a single Claim against and a single obligation of all of the Debtors, (iii) any Claims scheduled, filed or to be filed in the Chapter 11 Cases shall be deemed single Claims against the Debtors, (iv) all guarantees of one Debtor of the payment, performance, or collection of obligations of another Debtor shall be eliminated and canceled, (v) all transfers, disbursements and Distributions on account of Claims made by or on behalf of any of the Debtors' Estates hereunder will be deemed to be made by or on behalf of all of the Debtors' Estates, and (vi) any obligation of the Debtors as to Claims will be deemed to be one obligation of all of the Debtors. Holders of Allowed Claims entitled to Distributions under this Plan shall be entitled to their share of assets available for Distribution to such Claims without regard to which Debtor was originally liable for such Claims. Except as set forth herein, such limited consolidation shall not (other than for purposes related to this Plan) affect the legal and corporate structures of the Debtors. Moreover, notwithstanding the limited consolidation provided for herein, each and every Debtor shall remain responsible for the payment of quarterly fees pursuant to the provisions of 28 U.S.C. §1930(a)(6) until the earlier of such time that a particular case is closed, dismissed, or converted.

Absent such deemed consolidation, it would be necessary to (i) allocate the purchase price received from various purchasers for the assets of the various Estates, (ii) allocate the expenses of administration of the Chapter 11 Cases across the various Estates, and (iii) reconcile intercompany balances, indemnity, and contribution rights, if any, between the Debtors, all before it would be possible to determine the appropriate amount to be distributed to creditors of each Estate. The Debtors believe that the administrative costs of taking these measures would consume, if not totally exhaust, the limited assets available for distribution in these Chapter 11 Cases, to the detriment of all creditors.

**This Plan shall serve as a motion seeking entry of an order consolidating the Debtors, as described and to the limited extent set forth above. Unless an objection to such consolidation is made in writing by any creditor affected by the Plan, filed with the Bankruptcy Court and served in accordance with the objection procedures established by the Bankruptcy Court, the consolidation order (which may be the Confirmation Order) may be entered by the Bankruptcy Court. In the event any such objections are timely filed, a hearing with respect thereto shall occur at or before the Confirmation Hearing.**

**2. Settlement of the Informal Challenges**

As described above, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates a compromise and settlement of the Creditors Committee's Informal Challenges to the Liens and Claims of the Prepetition Lender, as well as any other Challenges (as defined in the Final Cash Collateral Order) that could have been brought by the Creditors Committee pursuant to the terms of the Final Cash Collateral Order. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement.

**3. Funding of the Reserve Accounts**

a. Professional Fee Claims Reserve. On or as soon as practicable after the Effective Date, the Liquidating Trustee shall fund the Professional Fee Claims Reserve from Cash in the Debtors' Cash Account, in the amount set forth in the Plan Supplement or as otherwise provided in the Confirmation Order. There shall be deposited into the Professional Fee Claims Reserve an amount sufficient for the payment of all Professional Fee Claims that are anticipated to be Allowed.

Any Cash remaining in the Professional Fee Claims Reserve after payment of all Allowed Professional Fee Claims shall be transferred by the Liquidating Trustee to the Post-Effective Date Reserve Account.

The Professional Fee Claims Reserve shall be established, and at all times be maintained, as a segregated account.

b. Post-Effective Date Reserve Account. On or as soon as practicable after the Effective Date, the Liquidating Trustee shall fund the Post-Effective Date Reserve Account from Cash in the Debtors' Cash Account, in the amount set forth in the Plan Supplement or as otherwise provided in the Confirmation Order. The Liquidating Trustee, in consultation with the Plan Oversight Committee, may at any time increase or decrease the amount of the Post-Effective Date Reserve Account.

The Post-Effective Date Reserve Account shall at all times be maintained by the Liquidating Trustee in a segregated account.

Unless otherwise specifically provided hereunder, all Cash obtained by the Post-Effective Date Debtors or the Liquidating Trustee after the Effective Date from whatever source shall be deposited by the Liquidating Trustee into the Post-Effective Date Reserve Account.

The Liquidating Trustee shall, in consultation with the Plan Oversight Committee, transfer Cash in the Post-Effective Date Reserve Account to the Distribution Account only after full payment of, or other provision for, all actual and anticipated Post-Effective Date Expenses.

c. SAP Claims Reserve Account. On or as soon as practicable after the Effective Date, the Liquidating Trustee shall establish the SAP Claims Reserve Account and fund such account from the Debtors' Cash Account, in an amount equal to the First Adequate Protection Payment, plus the Face Amount of: (i) all Administrative Claims asserted against any of the Debtors; (ii) all Priority Tax Claims asserted against any of the Debtors, (iii) all Priority Non-Tax Claims asserted against any of the Debtors, and (iv) all Class 2 Other Secured Claims. If and to the extent any such Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims and/or Class 2 Other Secured Claims become Disallowed, withdrawn or reduced, the Liquidating Trustee shall reduce the amount in the SAP Claims Reserve Account in a corresponding amount and shall transfer such amount from the SAP Claims Reserve Account to the Post-Effective Date Reserve Account.

The SAP Claims Reserve Account shall be established, and at all times be maintained, as a segregated account.

Notwithstanding anything to the contrary set forth herein, the SAP Claims Reserve Account shall not be funded multiple times with respect to the same Claim.

**4. Funding of the Distribution Account**

Distribution Account. On or as soon as practicable after the Effective Date, and as Distributable Proceeds become available, the Liquidating Trustee shall transfer such Distributable Proceeds to the Distribution Account in accordance with the terms of the Plan.

The Distribution Account shall be established, and at all times be maintained, as a segregated account.

**5. Implementing Actions**

Unless otherwise provided in the Plan, on the Effective Date or as soon thereafter as practicable, the following shall occur in implementation of the Plan: (i) all actions, documents and agreements necessary to implement the Plan shall have been effected or executed; (ii) the Debtors shall have received all authorizations, consents, regulatory approvals, rulings, opinions or other documents, if any, that are determined by the Debtors to be necessary to implement the Plan; (iii) the Liquidating Trustee shall make all Distributions, if any, required to be made on the Effective Date pursuant to the Plan; and (iv) the Professional Fee Claims Reserve Account, the Post-Effective Date Reserve Account and the SAP Claims Reserve Account, shall be established and funded in a manner consistent with Article X(A)(3) of the Plan. All Cash in such accounts shall be deposited or invested in accordance with section 345 of the Bankruptcy Code and Local Rule 4001-3.

**6. Corporate Action; Effectuating Documents; Further Transactions**

From and after the Effective Date, the Post-Effective Date Debtors shall continue in existence for all purposes contemplated or required by the Plan, including (i) winding up their affairs as expeditiously as reasonably possible, (ii) filing appropriate tax returns, and (iii) dissolution. Upon the Effective Date, all transactions and other actions provided for under the Plan shall be deemed to be authorized and approved by the Debtors without any requirement of further action by the Debtors, the Debtors' members, the Debtors' shareholders or the Debtors' boards of directors. As of the Effective Date, the Liquidating Trustee shall be deemed to be the sole equity holder and the only duly authorized, board-appointed officer, director or manager of each of the Post-Effective Date Debtors and all by-laws, articles or certificates of incorporation or agreements and related corporate documents of the Post-Effective Date Debtors shall be deemed to have been amended by the Plan to permit and authorize such sole

appointment.

After the Effective Date, the Liquidating Trustee shall be authorized to take, in his or her sole discretion, all actions reasonably necessary to dissolve one or more of the Debtors under applicable law, and, from the Post-Effective Date Reserve, to pay all reasonable costs and expenses in connection with such dissolution, including the costs of preparing or filing any necessary paperwork or documentation. Upon the Final Distribution Date, any Post-Effective Date Debtors that have not been previously dissolved shall be deemed dissolved for all purposes without the necessity for other or further actions to be taken by or on behalf of the Post-Effective Date Debtors, and the Liquidating Trustee shall be authorized to file any documents as he may deem necessary or desirable in connection with such dissolution. Further, upon the entry of a final decree or other order of the Bankruptcy Court, the Liquidating Trustee shall be authorized to discard or destroy any and all of the Post-Effective Date Debtors' Books and Records except to the extent that such books relate to open tax years, are necessary for the completion and filing of tax returns or the analysis or prosecution of Causes of Action, or are required to be retained pursuant to an agreement of sale approved by a Sale Order and any ancillary documents or agreements entered in connection therewith.

**7. Dissolution of the Creditors Committee**

On the Effective Date, the Creditors Committee shall be dissolved and the members thereof shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to, arising from or in connection with the Chapter 11 Cases, and the retention or employment of the Creditors Committee's attorneys, accountants, and other agents, if any, shall terminate, except for purposes of filing and prosecuting Final Fee Applications or any appeal of the Confirmation Order.



**XI. EXCULPATION, RELEASES AND INJUNCTIONS**

**A. Exculpation and Limitation of Liability**

**EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, EACH OF THE EXCULPATED PARTIES SHALL NOT BE LIABLE FOR ANY CLAIM, ACTION, PROCEEDING, CAUSE OF ACTION, SUIT, ACCOUNT, CONTROVERSY, AGREEMENT, PROMISE, RIGHT TO LEGAL REMEDIES, RIGHT TO EQUITABLE REMEDIES, RIGHT TO PAYMENT OR CLAIM (AS DEFINED IN SECTION 101(5) OF THE BANKRUPTCY CODE), WHETHER KNOWN, UNKNOWN, REDUCED TO JUDGMENT, NOT REDUCED TO JUDGMENT, LIQUIDATED, UNLIQUIDATED, FIXED, CONTINGENT, MATURED, UNMATURED, DISPUTED, UNDISPUTED, SECURED OR UNSECURED AND WHETHER ASSERTED OR ASSERTABLE DIRECTLY OR DERIVATIVELY, IN LAW, EQUITY OR OTHERWISE TO ONE ANOTHER OR TO ANY HOLDER OF A CLAIM OR EQUITY INTEREST, OR ANY OTHER PARTY IN INTEREST, OR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES, FINANCIAL ADVISORS, ATTORNEYS, OR ANY OF THEIR SUCCESSORS OR ASSIGNS, FOR ANY ACT OR OMISSION ORIGINATING OR OCCURRING ON OR AFTER THE PETITION DATE THROUGH AND INCLUDING THE EFFECTIVE DATE IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF THE CHAPTER 11 CASES, THE NEGOTIATION AND FILING OF THE PLAN OR ANY PRIOR PLANS, THE FILING OF THE CHAPTER 11 CASES, THE PURSUIT OF CONFIRMATION OF THE PLAN OR ANY PRIOR PLANS, ANY SALE ORDER, THE CONSUMMATION OF THE PLAN, OR THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE LIQUIDATED AND/OR DISTRIBUTED UNDER THE PLAN, EXCEPT FOR WILLFUL MISCONDUCT, GROSS NEGLIGENCE**

**OR FRAUD AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION.**

**B. Releases By the Debtors**

**1. Prepetition Lender**

**ON THE EFFECTIVE DATE, THE DEBTORS (ON BEHALF OF THEMSELVES AND THEIR ESTATES), THE NSC LIQUIDATING TRUST, THE LIQUIDATING TRUSTEE, AND ANY OTHER PERSON SEEKING TO EXERCISE THE DERIVATIVE RIGHTS OF THE ESTATES SHALL RELEASE UNCONDITIONALLY, AND HEREBY ARE DEEMED TO FOREVER RELEASE UNCONDITIONALLY, THE PREPETITION LENDER AND THE PREPETITION LENDER'S CURRENT AND FORMER EMPLOYEES, AGENTS, ATTORNEYS, FINANCIAL ADVISORS, OFFICERS, DIRECTORS, AND THEIR AFFILIATES, SUBSIDIARIES, PREDECESSORS, SUCCESSORS AND ASSIGNS, AND SUCH ENTITIES' RESPECTIVE HEIRS, EXECUTORS, ESTATES, SERVANTS AND NOMINEES, IN EACH CASE, FROM ANY AND ALL CLAIMS (INCLUDING CLAIMS UNDER CHAPTER 5 OF THE BANKRUPTCY CODE), OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER (OTHER THAN THE RIGHT TO ENFORCE THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS, IF ANY, TO THE DEBTORS UNDER THE PLAN, AND THE CONTRACTS, INSTRUMENTS, RELEASES AND OTHER AGREEMENTS DELIVERED UNDER THE PLAN), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, DIRECTLY OR DERIVATIVELY, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE THAT ARE**

**BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS, THE CHAPTER 11 CASES, THE PLAN, THE PREPETITION CREDIT AGREEMENT, THE PREPETITION LOAN DOCUMENTS OR THE PREPETITION LOAN FACILITY; PROVIDED, HOWEVER, THAT NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN IS INTENDED TO OR SHALL OPERATE AS A RELEASE OF ANY CLAIMS FOR WILLFUL MISCONDUCT OR FRAUD, AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION; PROVIDED, FURTHER, HOWEVER, THAT NOTHING HEREIN SHALL PRESERVE, OR OTHERWISE EXTEND THE TIME TO BRING, ANY CHALLENGE (AS DEFINED IN THE FINAL CASH COLLATERAL ORDER) THAT HAS EXPIRED OR WILL OTHERWISE EXPIRE ON THE TERMS SET FORTH IN THE FINAL CASH COLLATERAL ORDER.**

**2. Other Parties**

**ON THE EFFECTIVE DATE, THE DEBTORS, ON BEHALF OF THEMSELVES AND THEIR ESTATES, SHALL RELEASE UNCONDITIONALLY, AND HEREBY ARE DEEMED TO FOREVER RELEASE UNCONDITIONALLY THE DEBTORS' RESPECTIVE ADVISORS (INCLUDING THE DEBTORS' CHIEF RESTRUCTURING OFFICER AND GETZLER HENRICH & ASSOCIATES, LLC), INVESTMENT BANKERS, CONSULTANTS, AND ATTORNEYS, SOLELY IN THEIR RESPECTIVE CAPACITIES AS SUCH, FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER (OTHER THAN THE RIGHT TO ENFORCE THE PERFORMANCE**

OF THEIR RESPECTIVE OBLIGATIONS, IF ANY, UNDER THE PLAN, AND THE CONTRACTS, INSTRUMENTS, RELEASES AND OTHER AGREEMENTS DELIVERED UNDER THE PLAN), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, DIRECTLY OR DERIVATIVELY, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS, THE CHAPTER 11 CASES, THE PLAN, THE PREPETITION CREDIT AGREEMENT, THE PREPETITION LOAN DOCUMENTS OR THE PREPETITION LOAN FACILITY; PROVIDED, HOWEVER, THAT NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN IS INTENDED TO OR SHALL OPERATE AS A RELEASE OF ANY CLAIMS FOR WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR FRAUD, AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION.

C. **Injunction**

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, FROM AND AFTER THE EFFECTIVE DATE, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN ANY OF THE DEBTORS ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST ANY OF THE DEBTORS OR THEIR ESTATES, ANY DEBTOR'S PROPERTY, THE NSC LIQUIDATION TRUST OR THE LIQUIDATING TRUSTEE, ON ACCOUNT OF ANY SUCH CLAIMS OR INTERESTS: (A) ENFORCING,

ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (B) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE; (C) ASSERTING A SETOFF OR RIGHT OF SUBROGATION OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO ANY DEBTOR; (D) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN; AND (E) TAKING ANY ACTION WHICH INTERFERES WITH THE IMPLEMENTATION OR CONSUMMATION OF THE PLAN; PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE SUCH PERSONS FROM EXERCISING AND/OR ENFORCING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN OR THE CONFIRMATION ORDER.

**XII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, all Executory Contracts not assumed before the Effective Date, or subject to a pending motion to assume as of the Effective Date, shall be deemed rejected. The Confirmation Order shall constitute an Order approving such rejection as of the Effective Date.

**B. Deadline for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan**

If the rejection by the Debtors of an Executory Contract pursuant to the Plan gives rise to a Claim, a proof of claim must be submitted to the **NSC Wholesale Holdings, LLC, et al. Claims Processing c/o Omni Management Group, 5955 DeSoto Ave., Suite 100, Woodland Hills, CA 91367**, by no later than thirty (30) days after service of the notice of the Effective

Date. Any proofs of claim not filed and served within such time period will be forever barred from assertion against the Debtors and their Estates. Unless otherwise Ordered by the Bankruptcy Court, all Claims arising from the rejection of Executory Contracts shall be treated as Class 4 Claims under the Plan. For the avoidance of doubt, any Claims arising from the rejection of an Executory Contract pursuant to a separate motion are subject to the Rejection Bar Date.

**C. Debtors' Insurance Policies**

Notwithstanding anything to the contrary contained in the Plan, all Insurance Policies shall remain in full force and effect unless otherwise validly terminated, and issuers of such Insurance Policies shall remain responsible for Claims, in accordance with the terms and provisions of such Insurance Policies. The Debtors do not consider Insurance Policies that have expired as of the Effective Date (whether or not entered into prior or subsequent to the Petition Date) to be executory contracts subject to assumption or rejection. However, the issuers of Insurance Policies shall be responsible for continuing coverage obligations thereunder, regardless of the payment status of any retrospective or other insurance premiums. Nothing in the Plan shall constitute or be deemed to be a waiver of any Cause of Action that the Debtors may hold against Persons, including any issuer under any Insurance Policy of the Debtors.

Nothing in the Plan and/or the Confirmation Order shall alter the rights and obligations of the Debtors (and their Estates) and the Debtors' insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms or conditions thereof or diminishes or impairs the enforceability of the Insurance Policies.

**XIII. CONDITIONS PRECEDENT TO AND OCCURRENCE OF CONFIRMATION AND THE EFFECTIVE DATE**

**A. Conditions Precedent to Confirmation**

The following are conditions precedent to Confirmation that must be satisfied or waived:

(i) The Confirmation Order shall be reasonably acceptable in form and substance to the Debtors, in consultation with the Creditors Committee; and

(ii) The Plan Supplement and any other exhibits or schedules incorporated as part of the Plan shall be reasonably acceptable in form and substance to the Debtors, in consultation with the Creditors Committee.

**B. Conditions Precedent to the Effective Date**

The Plan shall not become effective unless and until the following conditions shall have been satisfied or, solely with respect to item (ii) below, waived:

(i) Entry of the Confirmation Order;

(ii) The Confirmation Order becomes a Final Order; and

(iii) The Debtors shall have sufficient Cash available to fund the Reserve Accounts in accordance with the terms of the Plan.

**C. Establishing the Effective Date**

The Effective Date shall be a Business Day on or promptly following the satisfaction or waiver of all conditions to the Effective Date, which date will be selected by the Debtors. On or within two (2) Business Days after the Effective Date, the Liquidating Trustee shall file and serve a notice of occurrence of the Effective Date. Such notice shall contain, among other things, notice of the Administrative Expense Bar Date, the deadline by which Professionals must file and serve any Professional Fee Claims and the deadline to file a proof of claim relating to damages from the rejection of any Executory Contract pursuant to the terms of the Plan.

**D. Effect of Failure of Conditions**

In the event the Effective Date does not occur, the Plan shall be null and void in all respects.

**E. Waiver of Conditions to Confirmation and Effective Date**

Each of the conditions to the Effective Date that is subject to waiver may be waived, in whole or in part, by the Debtors, in consultation with the Creditors Committee, without notice to or an order of the Bankruptcy Court.

**XIV. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, following the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Cases, and all proceedings arising in or related to the Chapter 11 Cases, as is legally permissible, including such jurisdiction as is necessary to ensure that the interests and purposes of the Plan are carried out. Without limiting the generality of the foregoing, the Bankruptcy Court shall have jurisdiction of all matters arising out of, and related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(i) To hear and determine any objections to Claims and to address any issues relating to Disputed Claims;

(ii) To hear and determine Causes of Action (including the Causes of Action identified in **Exhibit A** hereto);

(iii) To enter and implement such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

(iv) To issue such Orders in aid of execution and consummation of the Plan, to the extent authorized by Section 1142 of the Bankruptcy Code;



(v) To consider any amendments to or modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including the Confirmation Order;

(vi) To hear and determine all requests for compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under Sections 330 or 503 of the Bankruptcy Code;

(vii) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;

(viii) To hear and determine matters concerning state, local and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code (including any request by the Debtors or the Liquidating Trustee for an expedited determination of tax under Section 505(b) of the Bankruptcy Code);

(ix) To hear any other matter not inconsistent with the Bankruptcy Code;

(x) To enter a final decree closing the Chapter 11 Cases (or any of them);

(xi) To ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(xii) To decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

(xiii) To issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Plan, except as otherwise provided herein;

(xiv) To determine any other matters that may arise in connection with or related to the Plan, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created or implemented in connection with the Plan;

(xv) To enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Cases (whether or not the Chapter 11 Cases have been closed);

(xvi) To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;

(xvii) To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Cases, the General Bar Date, the Governmental Unit Bar Date, the Rejection Bar Date, the Administrative Expense Bar Date, and/or the hearing on the approval of the Plan for the purpose of determining whether a Claim, or Equity Interest is discharged and/or enjoined hereunder or for any other purpose; and

(xviii) To resolve any other matter or for any purpose specified in the Plan, the Confirmation Order, or any other document entered into in connection with any of the foregoing.

## **XV. MISCELLANEOUS PROVISIONS**

### **A. Books and Records**

On the Effective Date, the Debtors' remaining books and records (the "**Books and Records**") shall be transferred to the Post-Effective Date Debtors. The Liquidating Trustee shall be free, in his discretion, to abandon, destroy or otherwise dispose of the Books and Records in compliance with applicable non-bankruptcy law at any time on and after the Effective Date, without the need for any order of the Bankruptcy Court.

**B. Transfer of Debtors' Assets**

Except as otherwise provided herein, any assets that are property of any of the Debtors' Estates on the Effective Date, including any Causes of Action, shall transfer to the NSC Liquidating Trust on the Effective Date. Thereafter, the NSC Liquidating Trust (at the direction of the Liquidating Trustee) may use, acquire and dispose of such property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or Bankruptcy Court approval. Except as specifically provided in the Plan or the Confirmation Order, as of the Effective Date, all property of any of the Debtors shall be free and clear of any Liens, Claims, encumbrances and interests of any kind.

**C. Injunctions or Stays**

All injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect.

**D. Amendment or Modification of the Plan**

Alterations, amendments or modifications of the Plan may be proposed in writing by the Debtors at any time before the Confirmation Date, provided that the Plan, as altered, amended or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy Code and the Debtors shall have complied with Section 1125 of the Bankruptcy Code.

**E. Severability**

In the event the Bankruptcy Court determines, before the Confirmation Date, that any provision in the Plan is invalid, void or unenforceable, such provision shall be invalid, void or unenforceable with respect to the Holder or Holders of such Claims or Equity Interests as to which the provision is determined to be invalid, void or unenforceable. The invalidity,

voidability or unenforceability of any such provision shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

**F. Revocation or Withdrawal of the Plan**

The Debtors, in consultation with the Creditors Committee, reserve the right to revoke or withdraw the Plan before the Confirmation Date. If the Debtors revoke or withdraw the Plan before the Confirmation Date, then (i) the Challenge Deadline (solely as it relates to the Creditors Committee) shall be extended through and including the date that is fourteen (14) days following the date of such revocation or withdrawal (provided, however, that in no event shall the Challenge Deadline be extended beyond May 31, 2019 without the consent of the Prepetition Lender), and (ii) the Plan shall otherwise be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Debtors.

**G. Binding Effect**

The Plan shall be binding upon and inure to the benefit of the Debtors, the Holders of Claims and the Holders of Equity Interests, and their respective successors and assigns.

**H. Notices**

All notices, requests and demands to or upon the Liquidating Trustee or the Debtors, as applicable, to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as shall be set forth in the Confirmation Order.

**I. Governing Law**

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise, the rights and obligations

arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

**J. Withholding and Reporting Requirements**

In connection with the consummation of the Plan, the Post-Effective Date Debtors and Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding and other tax obligations, on account of such Distribution. The Debtors and the Liquidating Trustee have the right, but not the obligation, to not make a Distribution until such Holder has made arrangements satisfactory to any disbursing party for payment of any such tax obligations.

The Post-Effective Date Debtors and/or Liquidating Trustee may require, as a condition to receipt of a Distribution, that the Holder of an Allowed Claim complete and return a Form W-9. If the Post-Effective Date Debtors and/or Liquidating Trustee make such a request and the Holder fails to comply before the date that is 90 days after the request is made, the amount of such Distribution shall irrevocably revert to the Liquidating Trustee and any Claim in respect of such Distribution shall be disallowed and forever barred from assertion against the Post-Effective Date Debtors or the Liquidating Trustee, or their respective property.

**K. Exhibits/Schedules**

All exhibits and schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

**L. Filing of Additional Documents**

On or before substantial consummation of the Plan, the Debtors shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**M. No Admissions**

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed as an admission by any Entity with respect to any matter set forth herein.

**N. Successors and Assigns**

The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Person or Entity.

**O. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained herein, or the taking of any action by the Debtors with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of the Debtors or Holders of Claims or Equity Interests before the Effective Date.

**P. Implementation**

The Debtors and the Liquidating Trustee shall take all steps, and execute all documents, necessary to effectuate the provisions contained in this Plan.

**Q. Inconsistency**

In the event of any inconsistency among the Plan and any other instrument or document created or executed pursuant to the Plan, the provisions of the Plan shall govern.

**R. Final Decrees**

Following the occurrence of the Effective Date and upon the filing of a certification of the Liquidating Trustee's counsel, after consultation with the Office of the United States Trustee, the Court shall enter final decrees and orders closing the Chapter 11 Cases of Lodi, NSC Realty, NSC West Hempstead, LLC, Top Key, BP Liquor LLC and Teara LLC (the "**Non-Lead Debtors**"). Following closure of the Non-Lead Debtors' Chapter 11 Cases, any and all recourse for any Claims, Interests, or equitable relief with respect to the Non-Lead Debtors shall proceed exclusively in the Chapter 11 Case of NSC Wholesale Liquidators, Inc., in accordance with the Plan and any Final Orders entered in the Chapter 11 Cases.

**S. Termination of the Liquidating Trustee**

After the Chapter 11 Cases are closed and the Liquidating Trustee has completed all of the tasks necessary to fully and completely wind down, dissolve and/or terminate the Debtors and to otherwise comply with its obligations under the terms of the Plan, the Liquidating Trustee shall have fully completed its duties under the Plan and thereby shall be fully released and discharged of his duties and obligations to carry out the terms of the Plan.

**T. Compromise of Controversies**

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Plan and in these Chapter 11 Cases. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan and the Chapter 11 Cases, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors and their Estates.

**U. Request for Expedited Determination of Taxes**

The Debtors and the Liquidating Trustee shall have the right to request an expedited determination under Section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

Dated: May 29, 2019

NSC Wholesale Holdings LLC

By: /s/ Mark Samson

Name: Mark Samson

Title: Chief Restructuring Officer

Dated: May 29, 2019

National Wholesale Liquidators of Lodi, Inc.

By: /s/ Mark Samson

Name: Mark Samson

Title: Chief Restructuring Officer

Dated: May 29, 2019

NSC Realty Holdings LLC

By: /s/ Mark Samson

Name: Mark Samson

Title: Chief Restructuring Officer

Dated: May 29, 2019

NSC of West Hempstead, LLC

By: /s/ Mark Samson

Name: Mark Samson

Title: Chief Restructuring Officer

Dated: May 29, 2019

Top Key LLC

By: /s/ Mark Samson

Name: Mark Samson

Title: Chief Restructuring Officer

Dated: May 29, 2019

BP Liquor LLC

By: /s/ Mark Samson

Name: Mark Samson

Title: Chief Restructuring Officer

Dated: May 29, 2019

Teara LLC

By: /s/ Mark Samson

Name: Mark Samson

Title: Chief Restructuring Officer



**Exhibit A**

**Causes of Action Include the Following:**

- Claims or causes of action against credit card companies and their respective member banks related to credit card obligations, including, but not limited to, obligations relating to interchange and swipe fees;
- Claims or causes of action against present or former officers, directors, members or managers of the Debtors that are not otherwise released under the Plan, including, but not limited to, unreleased claims or causes of action (i) arising under federal bankruptcy or applicable state fraudulent conveyance laws on account of any transfers to or for the benefit of such persons, or payments of debts owed to such persons; (ii) arising under applicable common law for fraud, for breaches of contractual obligations or fiduciary duties owed to the Debtors, or for aiding and abetting any of the foregoing, in connection with the management of the Debtors (including specifically, without limitation, in connection with the valuation of any Debtor's inventory); and (iii) arising under applicable state laws on account of any wrongful dividends paid by the Debtors, or for aiding and abetting any of the foregoing;
- Claims or causes of action against any Debtor's accountants or auditors arising under applicable common law (i) for breaches of contractual obligations or duties of care owed to such Debtor, including, without limitation, in connection with the valuation of any Debtor's inventory, and (ii) for aiding and abetting any fraud or breach of contractual obligations or fiduciary duties by any Debtor's present or former officers, directors, members or managers; and
- Claims or causes of action under Chapter 5 of the Bankruptcy Code, including claims against any recipient of a payment listed in response to items 3 and/or 4 in any of the Debtors' Statements of Financial Affairs.

**Exhibit B**

**Liquidating Trust Agreement**

## NSC LIQUIDATING TRUST AGREEMENT

THIS AGREEMENT AND DECLARATION OF TRUST (this “Agreement”), dated as of [•], 2019, by and between NSC Wholesale Holdings LLC, National Wholesale Liquidators of Lodi, Inc., NSC Realty Holdings LLC, NSC of West Hempstead, LLC, Top Key LLC, BP Liquor LLC, and Teara LLC, as Settlers, and Edward P. Bond, CPA, CFE, CIRA, on behalf of Bederson LLP, as Trustee, is executed to facilitate the implementation of the *Debtors’ Combined Disclosure Statement and Plan of Liquidation* dated [•], 2019 (as amended, modified and supplemented, the “Plan”). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Plan.

### WITNESSETH

**WHEREAS**, on [•], 2019, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), after a hearing on notice, confirmed the Plan;

**WHEREAS**, the Plan provides for, among other things, the transfer of all assets of the Debtors’ Estates to a trust (the “NSC Liquidating Trust” or the “Trust”); the management and liquidation of such assets by the Trustee; and the making of Distributions to the holders of Allowed Claims pursuant to the Plan; and

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

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

## ARTICLE I DEFINITIONS AND INTERPRETATIONS

### 1.1 Additional Definitions.

1.1.1 “Assets” shall mean, collectively, (i) all property of the Settlers and their Estates transferred to the Trust on the Effective Date pursuant to the Plan, including, but not limited to, all legal and equitable rights of the Settlers as of the Effective Date, (ii) any property acquired by the Trust after the Effective Date, and (iii) any proceeds of any of the foregoing.

1.1.2 “Beneficiaries” shall collectively mean the Holders of Allowed Claims under the Plan, or any successors to such Holders or their interests in the Trust.

1.1.3 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (c) such other investments as the Bankruptcy Court may approve from time to time, or (d) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and

surplus aggregating at least \$1,000,000,000, provided, however, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS Guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise.

1.1.4 “Plan Oversight Committee” shall mean the committee appointed pursuant to Article VIII(C) of the Plan, consisting of the Prepetition Lender and two members selected by the Creditors’ Committee after consulting with the Debtors, and any successors to such parties thereafter.

1.1.5 “Settlors” shall mean the Debtors.

1.1.6 “Trustee” shall mean Edward P. Bond, CPA, CFE, CIRA, on behalf of Bederson LLP, or his duly-appointed successor under this Agreement, and is the Liquidating Trustee referred to in the Plan.

1.3 Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the singular shall include the plural and vice versa, and words denoting one gender shall include the other gender. Except as otherwise expressly stated herein, the term “including” is illustrative and means “including, without limitation.”

1.4 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to such Section or Article under this Agreement. The words “hereof,” “herein,” “hereinafter,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

## **ARTICLE II ESTABLISHMENT OF THE TRUST**

2.1 Creation and Name. There is hereby created the Trust, which shall be known as the “NSC Liquidating Trust,” and is the NSC Liquidating Trust referred to in the Plan. The Trustee agrees to accept and hold the Assets in trust for the Beneficiaries, subject to the terms of this Agreement, the Plan, and the Confirmation Order. The Trust is established as a liquidating trust to be treated as a grantor trust within the meaning of Treasury Regulations Section 301.7701-(4)(d), with no objective or authority to carry on or conduct a trade or business, or to accept an assignment of any claim or right of action from, or assume any liabilities of, any person or entity other than the Settlers. The Trustee may conduct the affairs of the Trust under the name of the “NSC Liquidating Trust.”

2.2 Purpose of Trust. The primary purposes of this Trust are to (a) liquidate the Assets in a manner calculated to conserve, protect and maximize the value of the Assets and (b) collect and distribute the Assets and the income and proceeds therefrom to the Beneficiaries, after the establishment of, or provisions for, the Reserve Accounts required by the Plan. The activities of the Trust shall be limited to those activities set forth in this Agreement and as otherwise contemplated by the Plan, and no part of the Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business.

### 2.3 Transfer of Assets.

A. Pursuant to §§ 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and Confirmation Order, the Settlers hereby grant, release, assign, convey, transfer and deliver, on behalf of the Beneficiaries, all of the Settlers' right, title and interest in any Assets as of the Effective Date to the Trustee, in trust for the benefit of the Beneficiaries, free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons and Governmental Units to the maximum extent contemplated by and permissible under § 1141(c) of the Bankruptcy Code, for the uses and purposes as specified in this Agreement and the Plan, including satisfaction of the following liabilities: (a) all post-confirmation quarterly fees payable pursuant to 28 U.S.C. § 1930 incurred after the Effective Date until such time as the Bankruptcy Court enters a final decree closing each of the Settlers' Chapter 11 Cases; (b) any expenses incurred and unpaid, or to be incurred, by the Trustee and the Plan Oversight Committee in the performance of their administrative duties in respect of winding up the Settlers' Estates, after the Effective Date; and (c) any other obligations as may be specifically set forth in the Plan or the Confirmation Order. Notwithstanding anything in this Agreement to the contrary, and subject to the Plan, the Trustee, in consultation with the Plan Oversight Committee (or by order of the Bankruptcy Court), may abandon or otherwise not accept any Assets that the Trustee believes, in good faith, to be burdensome to or of inconsequential value and benefit to the Trust. Any Assets that the Trust so abandons or otherwise does not accept shall not vest in the Trust and shall be deemed abandoned by the Debtors pursuant to § 554(a) of the Bankruptcy Code, effective as of the Effective Date.

B. The Trustee shall automatically, and without need for further notice or approval of the Bankruptcy Court or the Settlers, be designated as the representative of the Estates pursuant to § 1123 of the Bankruptcy Code to enforce or pursue any Cause of Action transferred to the Trust on, or arising on or after, the Effective Date in accordance with the terms of this Agreement, the Plan, and the Confirmation Order. Any proceeds of a Cause of Action shall be distributed pursuant to the terms of the Plan and this Agreement.

2.4 Appointment of and Acceptance by Trustee. The Trustee shall be deemed to be appointed pursuant to § 1123(b)(3)(B) and all other applicable sections of the Bankruptcy Code. The Trustee accepts the Trust created by this Agreement and the grant, assignment, transfer, conveyance, and delivery to the Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Settlers of all of their respective right, title, and interest in any Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order.

## **ARTICLE III DURATION AND TERMINATION OF TRUST**

3.1 Duration. The Trust shall commence as of the Effective Date and shall continue and remain in full force and effect until the earlier of (i) the date that is five (5) years after the Effective Date (as such date may be extended by the Bankruptcy Court, for cause shown, upon request of the Trustee after notice and a hearing); or (ii) the date on which each of the following conditions is satisfied: (A) the conclusion by settlement or Final Order of litigation to which the Trustee is or may become a party and, in the sole opinion and discretion of the Trustee, the exhaustion of all efforts to collect thereon, (B) all of the Assets are liquidated in accordance with

the Plan and this Agreement and all of the funds in the Trust have been completely distributed in accordance with the Plan and this Agreement, (C) all tax returns and any other filings or reports attributable to the Trust have been filed by the Trustee with the appropriate state or federal regulatory authorities and all time periods and all opportunity for such authorities to challenge such final tax returns have expired, and (D) the order closing the Chapter 11 Cases is a Final Order.

3.2 Winding Up. For the purposes of winding up the affairs of the Trust at its termination, the Trustee shall continue to act as Trustee under the terms of this Agreement until his duties have been fully discharged. After doing so, the Trustee and his agents, representatives, professionals, and employees shall have no further duties or obligations hereunder, except as required by this Agreement, the Plan, or applicable law concerning the termination of a trust. Upon a motion by the Trustee, the Bankruptcy Court may enter an order relieving the Trustee and his agents, representatives, professionals, and employees, of any further duties, and discharging the Trustee.

#### **ARTICLE IV ADMINISTRATION OF THE TRUST**

4.1 Distributions. On the Effective Date, the Settlers or their named successor or assign shall make any Distributions required to be made on the Effective Date. Thereafter, the Trustee or his named successor or assign shall make remaining Distributions as and when required under the terms of the Plan. The Trustee shall require any Beneficiary to furnish to the Trustee in writing his/her or its Employer or Taxpayer Identification Number as assigned by the IRS or an executed IRS Form W-9 or similar tax form, and the Trustee shall condition any Distribution upon receipt of such identification number or document. If such identification number or document is not provided to the Trustee within sixty (60) calendar days after the Trustee's original mailing of a written request for the same, then the Trustee shall file with the Bankruptcy Court the name and last known address of the relevant Beneficiary, and any Distribution due to that Beneficiary will be treated as an Unclaimed Distribution subject to Section 4.3 hereof.

4.2 Distributions After Allowance or Disallowance of a Disputed Claim. Within thirty (30) days of a Disputed Claim becoming an Allowed Claim, the Trustee shall distribute to the Holder thereof such amount of Distributable Proceeds as would have been distributed to such Holder if its Claim had been an Allowed Claim on the Effective Date. The Trustee shall no longer reserve for and shall distribute to the Beneficiaries, pursuant to this Agreement, their Pro Rata share of any funds withheld on account of any Disputed Claim that becomes Disallowed.

4.3 Undeliverable or Unclaimed Distribution. If any Distribution to or on behalf of a Beneficiary is either (i) returned to the Trustee or his agent as undeliverable, or (ii) not cashed or otherwise presented for collection by the applicable Beneficiary within sixty (60) calendar days after the mailing of such Distribution, then the Trustee shall file with the Bankruptcy Court the name and last known address of the relevant Beneficiary. No further Distribution to such Beneficiary shall be made unless and until the Trustee is notified in writing of such Beneficiary's then-current address. Notwithstanding the foregoing, if the Trustee is still unable to be make a Distribution by the date that is ninety (90) days following the Trustee's original mailing of such

Distribution, then (i) the Beneficiary shall no longer have any claim to or interest in such undeliverable or Unclaimed Distribution, (ii) all title to and all beneficial interest in the Assets represented by any such undeliverable or Unclaimed Distributions shall revert to and/or remain in the Trust and shall be distributed in accordance with this Agreement and the Plan; and (iii) the Claim(s) of any such Beneficiary shall be deemed disallowed and expunged.

4.4 Payments Limited to Assets. All payments to be made by the Trustee to or for the benefit of any Beneficiary shall be made only from the Assets.

4.5 United States Trustee Fees and Reports. After the Effective Date, the Trustee shall pay as an expense of the Trust all post-confirmation quarterly fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Trust's disbursements as required under the Plan and Confirmation Order until the Settlor's Chapter 11 Cases are closed. After the Confirmation Date, the Trustee shall prepare, file with the Bankruptcy Court and serve on the Office of the U.S. Trustee such quarterly disbursement reports for the Trust as required by the U.S. Trustee for as long as any of the Chapter 11 Cases remain open.

4.6 Insurance. Subject to the Plan, the Trustee shall use Assets in the Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Persons or Entities serving as Trustee or administrator of the Trust on and after the Effective Date.

4.7 Payment of Expenses and Liabilities. The Trustee shall pay all Trust expenses, including the fees and expenses of Trustee's professionals, and the costs associated with winding up the Trust, from the Post-Effective Date Reserve Account.

4.8 De Minimis Distributions. Notwithstanding any provision of this Agreement to the contrary, (a) the Trustee shall not be required to make Distributions or payments of fractions of dollars, (b) all Distributions shall be rounded to the nearest whole dollar (up or down), with half dollars being rounded down, and (c) the Trustee shall not make an interim or final Distribution to any Holder in an amount less than twenty-five dollars (\$25.00). Cash allocated to an Allowed Claim but withheld from an interim Distribution pursuant to this Section 4.1 shall be held by the Trustee for the account of and future distribution to the Holder of such Allowed Claim. Cash allocated to an Allowed Claim but withheld from the final Distribution pursuant to this Section 4.1 shall be distributed as provided in this Agreement and the Plan, and the Holder of such Allowed Claim shall have no further interest therein or rights with respect thereto.

4.9 Establishment and Maintenance of Accounts and Reserves. On the Effective Date, or as soon thereafter as practicable, the Trustee shall establish the Distribution Account and the Reserve Accounts. On or after the Effective Date, the Trustee (i) shall establish and maintain such additional accounts and reserves as may be required by this Agreement, applicable law, or order of the Bankruptcy Court and (ii) may establish and maintain such additional accounts and reserves as he deems necessary or desirable to carry out the provisions of the Plan and this Agreement.

4.10 Claims Administration.

A. Subject in all respects to the provisions hereof and the Plan, the Trustee shall have the authority to allow, reconcile, and object to Claims or Interests, and to settle, compromise, withdraw, or litigate to judgment objections to any and all Claims or Interests, regardless of whether such Claims or Interests are in a Class or otherwise.

B. Subject to the foregoing and the provisions of the Plan, from and after the Effective Date, the Trustee (a) may settle or compromise any Disputed Claim in accordance with this Agreement and (b) shall succeed to the Settlor's or the Creditors Committee's rights with respect to any objections filed by the Settlor or the Creditors Committee that remain pending as of the Effective Date. From and after the Effective Date, the Trustee shall have the sole authority to administer and adjust the official claims register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

4.11 Estimation. Subject to the Plan, after the Effective Date, the Trustee may (but is not required to), at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any Contingent Claim pursuant to applicable law, including Section 502(c) of the Bankruptcy Code, regardless of whether the Settlor, the Creditors Committee, or the Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any Disputed Claim or Contingent Claim, including during litigation concerning any objection to any such Claim or during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court estimates any Disputed Claim or Contingent Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Trustee may pursue supplementary proceedings to object to the allowance of such Claim.

4.12 Disputed Claims Reserve.

A. Upon delivery by the Trustee of a Distribution to Beneficiaries, the Trustee shall fund a reserve account (the "Disputed Claims Reserve") with Cash equal to one hundred percent (100%) of the amount of Cash that a Holder of each Disputed Claim would have received in connection with the Distribution if such Claim had been an Allowed Claim as of the applicable Distribution date in an amount that is the lesser of (i) its face amount, and (ii) the amount estimated as allowable by the Bankruptcy Court after notice and opportunity to be heard to the affected Holder of such Disputed Claim.



B. From time to time, the Trustee shall determine the amount of Cash required to adequately maintain the Disputed Claims Reserve on and after such date and maintain a reserve of Cash in such amount. If separate accounts are maintained and if, to the extent that, after making and giving effect to the determination referred to in the immediately preceding sentence and the Distributions to holders of a Disputed Claim that have become Allowed Claims, the Trustee determines that the Disputed Claims Reserve (i) contains Cash in an amount in excess of the amount then required to adequately maintain the Disputed Claims Reserve, then at any such time the Trustee shall transfer such surplus Cash to the Distribution Account for Distribution Holders of Allowed Claims, or (ii) does not contain Cash in an amount sufficient to adequately maintain the Disputed Claims Reserve, then at any such time the Trustee shall transfer Cash from the Distribution Account until the deficit in the Disputed Claims Reserve is eliminated.

C. After a Final Order has been entered, or other final resolution has been reached, with respect to any given Disputed Claim for which Cash was reserved in the Disputed Claims Reserve, the balance, if any, of Cash remaining in the Disputed Claims Reserve on account of such Disputed Claim after making any Distribution to which the Holder of such Claim may have become entitled by virtue of such Final Order or other final resolution shall be transferred to the Distribution Account for Distribution to Holders of Allowed Claims.

4.13 Causes of Action. Subject to the Plan, on and after the Effective Date, the Trustee may pursue any claim, Cause of Action, right of setoff or recoupment, or other legal or equitable right or defense on behalf of the Debtors' Estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law or rule, common law, equitable principle, or other source of right or obligation.

## **ARTICLE V THE TRUSTEE**

5.1 Term of Service. The Trustee shall serve until (a) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement, and the Plan; (b) termination of the Trust in accordance with this Agreement; or (c) the Trustee's death or dissolution, incapacitation, resignation, or removal, as set forth below or as provided for in the Plan.

5.2 Removal of a Trustee. Subject to the Plan, the Plan Oversight Committee may remove and replace the Trustee for cause, including, without limitation, incapacity or failure or refusal to perform his duties under the Plan and this Agreement; provided, that if all Claims have not been paid in full, approval from the Bankruptcy Court shall be required to remove and/or replace the Trustee. If removal of the Trustee is sought from the Bankruptcy Court under such a motion for cause (or similar motion), then the Trustee is entitled to oppose such motion and to pay his reasonable attorneys' fees and expenses in connection with such objection from the Assets of the Trust, subject to Section 7.6 hereof.

5.3 Resignation of Trustee. The Trustee may resign at any time by giving the Plan Oversight Committee, with copy to counsel for the Trust and any member of the Plan Oversight Committee, at least thirty (30) days' written notice of the Trustee's intention to do so. In the

event of a resignation, the resigning Trustee shall render to the Plan Oversight Committee a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee. The resignation shall be effective on the later of (a) the date specified in the notice; (b) the date that is thirty days (30) after the date the notice is delivered; or (c) the date the accounting described in the preceding sentence is delivered.

5.4 Appointment of Successor Trustee. Subject to the Plan, upon the resignation, death, incapacity, or removal of a Trustee, the Plan Oversight Committee shall appoint, by unanimous consent, a successor Trustee to fill the vacancy so created, or in the absence of such consent by the members of the Plan Oversight Committee, the Bankruptcy Court shall appoint a successor Trustee. Any successor Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns. Notwithstanding anything in this Agreement, in the event that a successor Trustee is not appointed within sixty (60) days of the occurrence or effectiveness, as applicable, of the prior Trustee's resignation, death, incapacity, or removal, the Plan Oversight Committee shall be authorized to move the Bankruptcy Court for the appointment of a successor Trustee.

5.5 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement and the Plan.

5.6 Trust Continuance. The death, incapacity, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee.

5.7 Compensation and Costs of Administration. The Trustee shall receive fair and reasonable compensation and reimbursement of expenses for his services, which shall be a charge against and paid out of the Assets. All costs, expenses, and obligations incurred by the Trustee (or professionals who may be employed by the Trustee in administering the Trust, in carrying out their other responsibilities under this Agreement, the Plan, and the Confirmation Order, or in any manner connected, incidental, or related thereto) shall be paid by the Trustee from the Assets prior to any Distribution to the Beneficiaries. The compensation of the Trustee shall be (i) \$2,500 per month beginning on the first day of the month following the Effective Date, plus reimbursement of documented reasonable out-of-pocket costs and expenses, and (ii) a bonus at the conclusion of the administration of the Trust in such an amount and subject to such conditions as may be approved by the Plan Oversight Committee. The Trustee is authorized to engage Bederson LLP to assist with his duties. Bederson LLP shall be compensated on an hourly basis plus expenses, and pursuant to other reasonable and customary terms to be further specified in an engagement letter and agreed to by the Plan Oversight Committee.

5.8 Rights, Powers, and Duties. Subject to the terms of this Agreement and the Plan, the Trustee shall be empowered (i) to act on behalf of the Estates, the Post-Effective Date Debtors, and the Trust to effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan or this Agreement, (ii) to exercise such other powers as may be vested in the Post-Effective Date Debtors and/or the Trustee by Order of

the Bankruptcy Court, pursuant to the Plan, by this Agreement, or as deemed by the Trustee to be necessary and/or desirable to implement the provisions hereof or of the Plan. Without limiting the generality of the foregoing, the Trustee's powers shall include:

A. Retaining such professionals as the Trustee deems necessary to fulfill his duties and responsibilities under this Agreement;

B. Acting as sole director or managing member of each of the Post-Effective Date Debtors;

C. Investing the Assets received by the Trust or Trustee or otherwise held by the Trust or Trustee in accordance with this Agreement, and withdrawing, making Distributions, and paying taxes and other obligations owed by the Trust from such funds in accordance with this Agreement and the Plan;

D. Pursuing, prosecuting, resolving or otherwise compromising and settling or abandoning, for the benefit of the Trust, any and all Causes of Action transferred to the Trust or arising in favor of the Trust, including, without limitation, taking any action with respect to appeals, counterclaims, and defenses of or with respect to Claims and Causes of Action;

E. Exercising all powers provided to the Trustee or the Trust under the Plan or Confirmation Order, including, without limitation, the right to allow, object to, or reconcile Claims asserted against the Debtors' Estates, including, without limitation, the power to seek subordination or recharacterization of Claims by objection, motion, or adversary proceeding, as applicable;

F. Enforcing any prior Orders of the Bankruptcy Court with respect to the sale or compromise of any assets or Causes of Action of the Debtors' Estates, and otherwise exercising or enforcing any rights of the Estates in connection with any such sales or compromises;

G. Liquidating, selling or abandoning the Assets or any portion thereof;

H. Executing any documents and taking any other actions related to, or in connection with, the liquidation of the Assets and the exercise of the Trustee's powers granted in this Agreement, the Plan, and Confirmation Order;

I. Holding legal title to any and all rights of the Beneficiaries in, to, or arising from the Assets;

J. Establishing any required reserves, including the Reserve Accounts and the Disputed Claims Reserve;

K. Protecting and enforcing the rights to the Assets vested in the Trustee by this Agreement by any method reasonably determined to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

L. Preserving and liquidating the Assets and making Distributions to or on behalf of the Beneficiaries in accordance with this Agreement, the Plan, and the Confirmation Order;

M. Filing any and all tax returns with respect to the Trust and paying taxes properly payable by the Trust, if any; and filing and issuing any and all necessary information statements as required for tax purposes, and taking any and all action necessary to obtain payment of any tax refund(s) due to the Settlers, their Estates and/or the Trust;

N. Making all necessary filings in accordance with any applicable law, statute, or regulation;

O. Determining and satisfying from the Assets any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, incurred by or on behalf of the Trust and the Plan Oversight Committee, including payment of reasonable out-of-pocket expenses for the members of the Plan Oversight Committee;

P. In the event that the Trustee determines that the Beneficiaries or the Trust may, will or have become subject to different tax consequences than those described in this Agreement, taking such actions that will, or are intended to, address such different tax consequences;

Q. Opening and maintaining bank accounts on behalf of or in the name of the Trust;

R. Sending annually to each Beneficiary a separate statement stating the Beneficiary's share of income, gain, loss, deduction, or credit and instructing all such Beneficiaries to report such items on their federal tax returns.

S. In reliance upon the official claims register maintained in the Settlers' Chapter 11 Cases and any applicable court order, maintaining on the Trustee's books and records a register evidencing the beneficial interest in the Trust held by each Beneficiary;

T. Performing such functions and taking such actions as are provided for or permitted in this Agreement, the Plan, the Confirmation Order, or any other agreement executed pursuant to this Agreement, the Plan, or the Confirmation Order; and

U. Terminating the Trust and seeking to close the Settlers' Chapter 11 Cases pursuant to § 350(a) of the Bankruptcy Code, to the extent not previously closed in accordance with the Plan and Confirmation Order.

#### 5.9 Plan Oversight Committee.

A. Pursuant to the Plan, on the Effective Date, the Plan Oversight Committee shall be established to oversee and advise the Liquidating Trustee with respect to the liquidation and distribution of the Assets in accordance with this Agreement and the Plan.

B. The Plan Oversight Committee shall initially consist of three (3) entities, one of which shall be the Prepetition Lender and the other two shall be selected by the Creditors Committee after consulting with the Debtors. The members of the Plan Oversight Committee shall use reasonable efforts to maintain the composition of the members of the Plan Oversight Committee throughout its existence. Vacancies on the Plan Oversight Committee shall be filled by a Person designated by the remaining member or members of the Plan Oversight Committee from among the holders of Allowed General Unsecured Claims in excess of \$25,000 (or, if there are no such holders willing to serve, then by an independent Person acceptable to the Trustee and the remaining members of the Plan Oversight Committee); provided, however, that any vacancy with respect to any member appointed by the Prepetition Lender shall be filled by a Person designated by the Prepetition Lender. A majority of the Plan Oversight Committee may remove or replace members of the Plan Oversight Committee for cause, and any party in interest shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Plan Oversight Committee for cause. Any successor appointed pursuant to this Section 5.5(B) shall become fully vested with all of the rights, powers, duties, and obligations of his or her predecessor.

D. A member of the Plan Oversight Committee shall recuse him- or herself from considering any matter in which he or she is not disinterested; provided, however, that such member shall not be considered non-disinterested solely as a result of such member's affiliation with or employment by the Holder of a Claim (including the Prepetition Lender or any member of the Creditors Committee).

E. The rights, powers and duties of the Plan Oversight Committee shall be as follows:

(i) To terminate by majority vote the Trustee for cause, and upon such termination (or upon the resignation, death or incapacity of the Trustee), appoint a successor Trustee in accordance with the terms of the Plan and this Agreement;

(ii) To approve any release or indemnity in favor of any third party granted or agreed to by the Trustee, other than as set forth in the Plan;

(iii) To authorize the Trustee to commence or continue to prosecute any Cause of Action;

(iv) To approve the settlement of any Cause of Action or dispute, for which the amount in controversy exceeds \$100,000;

(v) To approve the allowance of any Disputed Claim if the proposed Allowed amount of such Claim exceeds \$50,000;

(vi) To approve the sale of any assets by the Trustee;

(vii) To approve any budget in connection with the administration of the Plan and the winding down of the Debtors' affairs prepared by the Trustee at the request of the Plan Oversight Committee;

(viii) To approve the Initial Distribution Date, the Subsequent Distribution Dates and the Final Distribution Date; and

(ix) To consider and, if appropriate, approve any action proposed by the Trustee that is not specifically authorized by the Plan that would have a material effect upon the administration of the Estates and/or the Trust;

provided, however, nothing contained herein shall be deemed (i) to authorize the Trustee to take any action that is inconsistent with the terms of the Plan or (ii) to preclude the Trustee, in the exercise of his business judgment, from seeking approval from the Bankruptcy Court of any action or transaction for which approval by the Plan Oversight Committee was sought but not obtained.

F. No member of the Plan Oversight Committee shall be compensated for serving as a member of the Plan Oversight Committee; provided, however, that such members may be reimbursed by the Trustee, from funds in the Post-Effective Date Reserve Account, for documented reasonable out-of-pocket costs and expenses.

5.10 Agents and Professionals. Subject to the Plan, the Trustee, in consultation with the Plan Oversight Committee, may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants or other professionals and employees as the Trustee deems appropriate in the reasonable exercise of his discretion, and whom the Trustee reasonably determines to have qualifications necessary to assist the Trustee in the proper administration of the Trust. For the avoidance of doubt, the Trustee may retain professionals who previously were employed by the Creditors Committee and/or Settlers. The Trustee may pay the reasonable fees, costs, and expenses of such persons out of the funds available in the Post-Confirmation Reserve Account:

5.11 Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, and no part of the Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business.

5.12 Investment. The Trustee may only invest funds held in the Trust in Permitted Investments, in a manner consistent with the requirements of the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Trustee does so, he shall have no liability in the event of insolvency of any institution in which he or she has invested any of the Assets or any proceeds, revenue, or income therefrom.

5.13 Trustee Action. The Trustee shall hold, collect, conserve, protect, and administer the Trust in accordance with the provisions of this Agreement and the Plan, and pay and distribute amounts as set forth therein for the purposes set forth in the Plan and this Agreement. Any good faith determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative, subject to approval by the Plan Oversight Committee as may be required by the Plan or this Agreement.

5.14 Bankruptcy Court Approval of Trustee Actions. Except as provided in the Plan or as otherwise specified in this Agreement, the Trustee need not obtain an order or approval of the

Bankruptcy Court in the exercise of any power, right, or discretion conferred hereunder, or account to the Bankruptcy Court. Except as provided in the Plan or otherwise specified in this Agreement, the Trustee shall exercise his business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and distributions, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing in this Section 5.9, the Trustee may submit to the Bankruptcy Court any question or questions regarding which the Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Trustee with respect to the Assets, the Trust, and the Settlers, and as provided in the Plan or this Agreement, including the administration and Distribution of the Assets. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon motion.

## **ARTICLE VI BENEFICIARIES**

6.1 Incidents of Ownership. The Beneficiaries shall be the sole beneficiaries of the Trust and the Assets, and the Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in this Agreement, the Plan and the Confirmation Order.

6.2 Beneficial Interest Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or any of the Settlers to any title in or to the Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein or in the Plan.

6.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the 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 Trust by the Trustee.

6.4 Limitation on Transferability. A beneficial interest in the Trust shall be non-assignable and non-transferable except upon death of the interest holder or by operation of law. An assignment or transfer shall not be effective until appropriate notification and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof of assignment or transfer. The Trustee may rely upon such proof without the requirement of any further investigation.

## **ARTICLE VII THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY**

7.1 Reliance. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Trustee may rely and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed to be genuine and to have been signed or presented to the Trustee.

7.2 Parties Dealing with the Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Assets.

There is no obligation on any Person dealing with the Trustee to inquire into the validity, expediency, or propriety of any transaction by the Trustee or any agent of the Trustee.

7.3 Limited Recourse. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, Persons (including any professionals retained by the Trustee in accordance with this Agreement) engaged in transactions with the Trust or the Trustee shall look only to the Assets to satisfy any liability incurred in connection with the carrying out the terms of this Agreement, the Plan, or the Confirmation Order.

7.4 Limitation of Liability. The Trustee and his agents, employees, officers, directors, professionals, attorneys, accountants, advisors, and representatives shall not be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Assets or the affairs of the Trust, except for liability arising from any acts or omissions that are the result of their own gross negligence, breach of the fiduciary duty of loyalty, willful misconduct, or fraud. Other than as set forth in the Plan or Confirmation Order, nothing in this Agreement shall be deemed to release any Beneficiary from any actions or omissions occurring prior to the Effective Date.

7.5 Non-Liability for Acts of Others. Nothing contained in this Agreement, the Plan, or the Confirmation Order shall be deemed to be an assumption by the Trustee of any of the liabilities, obligations, or duties of the Settlers or Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Trustee to assume or accept any such liability, obligation, or duty. Any successor Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement or representation made by a predecessor Trustee or his agents as to the assets comprising the Assets or as to any other fact bearing upon the prior administration of the Trust, so long as he or she has a good faith basis to do so. A Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. A Trustee or successor Trustee shall not be liable for any act or omission of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission.

7.6 Indemnification. The Trustee and Plan Oversight Committee and its members, and each of their respective agents, employees, officers, directors, professionals, attorneys, accountants, advisors and representatives (collectively, the “Indemnified Parties”) shall be indemnified and held harmless by the Trust, to the fullest extent permitted by law, solely from the Assets for any losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding, or investigation brought or threatened against one or more of the Indemnified Parties on account of the acts or omissions of an Indemnified Party solely in its capacity as such; provided, however, that the Trust shall not be liable to indemnify any Indemnified Party for any loss finally determined by the Bankruptcy Court to have resulted primarily from any act or omission constituting gross negligence, breach of the fiduciary duty of loyalty, willful misconduct, or fraud by such Indemnified Party, which in either event caused actual material damage to the Trust or the Beneficiaries, or for breach of contract claims that may arise from such Indemnified Party’s breach of its own agreement with the Trust.



Notwithstanding any provision in this Agreement to the contrary, the Indemnified Parties shall be entitled to request advances from the Trust to cover reasonable fees and necessary expenses incurred in connection with defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such; provided, however, that the Trustee shall not be required to make any such advances; provided further, however, that any Indemnified Parties receiving such advances shall repay the amounts so advanced to the Trust upon the entry of an order of a court of competent jurisdiction finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 6.6. This indemnification shall survive the death, dissolution, resignation, or removal, as may be applicable, of the Indemnified Parties, or the termination of the Trust, and shall inure to the benefit of the Indemnified Parties' heirs and assigns.

## **ARTICLE VIII TAX MATTERS**

8.1 Classification of the Trust. For all federal income tax purposes, all parties (including the Settlers, the Post-Effective Date Debtors, the Trustee, and the Beneficiaries) are required to treat the transfer of Assets from the Settlers to the Trust for the benefit of the Trust Beneficiaries as (a) a transfer of such Assets directly to the Beneficiaries followed by (b) the transfer by the Beneficiaries to the Trust of such Assets. Accordingly, the Beneficiaries shall be treated as the grantors and owners of their allocable portion of the Trust for federal income tax purposes.

8.2 General Tax Reporting by the Trust and Beneficiaries.

A. The Trustee shall prepare, consistent with Section 8.1 hereof, and file on behalf of the Trust, at the time and in the manner prescribed by the Internal Revenue Code and applicable state and local law, such tax returns and reports as may be required, including but not limited to returns and reports required by Treasury Regulations Section 1.671-4(a), and shall promptly furnish copies of such returns and reports as filed, upon written request, to a Beneficiary. The Trustee will also file or cause to be filed, all appropriate tax returns with respect to any Assets allocable to Disputed Claims as set forth in Section 4.12 hereof.

B. As soon as practicable after the close of each fiscal year, and only to the extent so required, the Trustee shall mail to each of the Beneficiaries a statement setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct all such Beneficiaries to report such items on their federal income tax returns. The Trust's taxable income, gain, loss, deduction or credit will be allocated (subject to the following subsection, related to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust.

C. Absent definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Trustee shall:

(i) treat all Assets allocable to, or retained on account of, Disputed Claims, as a discrete trust for federal income tax purposes, consisting of separate and independent shares to be established in respect of each Disputed Claim;

(ii) treat as taxable income or loss of this separate trust with respect to any given taxable year the portion of the taxable income or loss of the Trust that would have been allocated to the holders of such Disputed Claims had such claims been Allowed on the Effective Date (but only for the portion of the taxable year with respect to which such claims are unresolved);

(iii) treat as a distribution from this separate trust any increased amounts distributed by the Trust as a result of any Disputed Claim resolved earlier in the taxable year, to the extent such distribution relates to taxable income or loss of this separate trust determined in accordance with the provisions hereof; and

(iv) to the extent permitted by applicable law, report consistently for state and local income tax purposes.

D. The Trustee shall be responsible for payments, out of the Assets, of any taxes imposed on the Trust or its assets including any Reserve Account or the Disputed Claims Reserve. In the event, and to the extent any cash retained on account of Disputed Claims in any such reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes paid by the Trustee other than from the applicable Reserve Account or Disputed Claims Reserve shall be (i) reimbursed from any subsequent cash amount retained on account of Disputed Claims, or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Trustee as a result of the resolutions of such Disputed Claims.

E. The Trustee may request an expedited determination of taxes of the Trust (including with respect to any Assets allocable to, or retained on account of, Disputed Claims) under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Trust for all taxable periods through the dissolution of the Trust.

8.3 Withholding of Taxes and Other Charges. The Trust may withhold from any amounts distributable at any time to the Beneficiaries such sum or sums as may be necessary to pay any taxes or other charges which have been or may be imposed on the Trust or the Beneficiaries under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution hereunder or under the Plan, whenever such withholding is required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Trustee, in the exercise of his discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this Section 8.3.

8.4 Valuation of Assets. As soon as practicable after the Effective Date, the Trustee (to the extent that he deems it necessary or appropriate in the reasonable exercise of his discretion) shall, in good faith, value the Assets, and shall apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including the Settlers, the Post-Effective Date Debtors, the Trustee, and the Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

**ARTICLE IX  
MISCELLANEOUS**

9.1 Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over (a) the Trust and the Trustee with respect to the administration of and activities relating to the Trust, as well as (b) any issues or disputes arising out of this Agreement; provided, however, that notwithstanding the foregoing, the Trustee shall have the power and authority to bring any action in any court of competent jurisdiction to prosecute any Causes of Action assigned to or otherwise held by the Trust.

13.3 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

If to the Trust/Trustee:

Edward P. Bond, as Trustee  
c/o Bederson LLP  
347 Mt. Pleasant Avenue, Suite 200  
West Orange, NJ 07052

With a copy to:

[•]

If to the Plan Oversight Committee:

Plan Oversight Committee Members

[•]

(or to such other address(es) as may from time to time be provided in written notice by the Trustee).

13.4 No Bond. Notwithstanding any state law to the contrary, the Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction.

13.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to conflicts of law principles.

13.6 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

13.7 No Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can bind, pledge, encumber, execute upon, garnish, or attach the Assets or the Trustee in any manner or compel payment from the Trust except by Final Order of the Bankruptcy Court. Payment shall be governed solely by the Plan and this Agreement.

13.8 Plan and Confirmation Order. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of the Plan shall govern and control. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order shall govern and control.

13.9 Amendment. This Agreement may be amended by the Trustee with the consent of each member of the Plan Oversight Committee (which consent shall not be unreasonably withheld) or, in the absence of such agreement, by order of the Bankruptcy Court.

13.10 Severability. If any term, provision, covenant, or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms, provisions, covenants, and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year written above.

Dated: NSC Wholesale Holdings LLC

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

Name:

Title:

Dated: National Wholesale Liquidators of Lodi, Inc.

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

Name:

Title:

Dated: NSC Realty Holdings LLC

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

Name:

Title:

Dated: NSC of West Hempstead, LLC

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

Name:

Title:

Dated: Top Key LLC

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

Name:

Title:

Dated: BP Liquor LLC

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

Name:

Title:

Dated: Teara LLC

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

Name:

Title:

Dated: Edward P. Bond, CPA, CFE, CIRA, as Trustee

\_\_\_\_\_

**Exhibit C**

Amount in Professional Fee Reserve Account - \$325,000

Amount in Post-Effective Date Reserve Account - \$1,950,000

**Exhibit D**

**Liquidation Analysis**



**NSC HOLDINGS, ET. AL**  
**PLAN OF LIQUIDATION**  
**LIQUIDATION ANALYSIS**  
**FOR ILLUSTRATIVE PURPOSES ONLY - ACTUAL RECOVERY MAY VARY**

	<u>Chapter 11 Liquidation</u>	<u>Chapter 7 Liquidation</u>
1 Available cash held at Capital One Bank as of April 29, 2019	\$ 2,122,301	\$ 2,122,301
2 Cash held in Saul Ewing escrow account as of May 3, 2019	304,000	304,000
3		
4 Liquor License Proceeds in Debtor's account will be available		
5 when the liquor license is officially transferred to buyer	171,000	171,000
6		
7 <b>Anticipated collections:</b>		
8 True Value refund	-	-
9 Insurance refund-Liability policy	114,000	114,000
10 Insurance refund-Workers comp policy	6,500	6,500
11 Rent settlement-Subtenant	100,000	100,000
12 Visa/MasterCard Claim Sales Proceeds	18,000	18,000
13	35,000	35,000
14 <b>PROJECTED TOTAL CASH BEFORE PAYMENT OF CHAPTER 11 ADMINISTRATIVE EXPENSES</b>	<b>2,870,801</b>	<b>2,870,801</b>
15		
16 <b>Amount available for Chapter 11 Administration and all Creditors</b>		
17 Contingency	10,000	10,000
18 2019 Q2 US Trustee Fees	30,000	30,000
19 1099 Contractor - ML	22,000	22,000
20 Claims Agent - to be paid	45,000	45,000
21 Storage fees	1,375	1,375
22 Secured Claims based on review of claims register	64,400	64,400
23 503(B) Claims	84,000	84,000
24 Priority tax claims	262,000	262,000
25 Other priority claims	42,000	42,000
26 Insurance broker	4,500	4,500
27 Professional fees	432,000	432,000
28 Post-Effective Date 1099 Contractor Payment	15,000	15,000
29 Additional Professional Fees through Confirmation	325,000	325,000
30	-	-
31 <b>Total Projected Secured, Administrative and Priority Claims</b>		
32 <b>through Plan Confirmation Date</b>	<b>1,337,275</b>	<b>1,337,275</b>
33 <b>PROJECTED CASH AVAILABLE TO FUND LIQUIDATING TRUST</b>	<b>1,533,526</b>	<b>1,533,526</b>

**NSC HOLDINGS, ET. AL**  
**PLAN OF LIQUIDATION**  
**LIQUIDATION ANALYSIS**  
**FOR ILLUSTRATIVE PURPOSES ONLY - ACTUAL RECOVERY MAY VARY**

	<u>Chapter 11 Liquidation</u>	<u>Chapter 7 Liquidation</u>
1 <b>PROJECTED CASH AVAILABLE TO FUND LIQUIDATING TRUST</b>	1,533,526	1,533,526
2		
3 <b>POST-CONFIRMATION RECOVERIES:</b>		
4		
5 RECOVERIES FROM CAUSES OF ACTION (INCLUDING CHAPTER 5 RECOVERIES)	(i) 5,504,000	4,127,400
6		
7 ESTIMATED GROSS RECEIPTS (FUNDING PLUS ASSET RECOVERIES)	7,037,526	5,660,926
8		
9 SECURED CREDITOR BALANCE - CAPITAL ONE	(ii) -	(4,160,215)
10		
11 <b>LESS: PRIORITY CLAIMS TO PAID BY LIQUIDATING TRUSTEE:</b>		
12 CITY OF PHILADELPHIA PRIORITY CLAIM	(117,308)	(117,308)
13		
14 <b>LESS: LIQUIDATING TRUST ADMINISTRATIVE EXPENSES</b>		
15		
16 LIQUIDATING TRUST PROFESSIONAL FEES		
17 <i>Contingent Professional Fees- 30% of Recoveries</i>	(1,651,200)	(1,238,220)
18 <i>Non Contingency Professional Fees</i>	(400,000)	(600,000)
19 <i>Liquidating Trustee Fees</i>	(60,000)	-
20 ADDITIONAL CHAPTER 7 TRUSTEE PROFESSIONAL FEES		
21 <i>Chapter 7 Trustee Commissions - 3% of Estimated Gross Receipts</i>	-	(169,828)
22 <i>Additional US Trustee Fees - 1% of Estimated Gross Receipts</i>	(70,375)	(56,609)
23 <i>Additional Professional Fees to Get Up to Speed</i>	-	(262,500)
24		
25 RECORDS STORAGE - 2 YEARS	(11,256)	(11,256)
26		
27 TRUSTEE INSURANCE	(5,000)	(5,000)
28		
29 CAPITAL ONE ADEQUATE PROTECTION PAYMENT	(500,000)	-
30		
31 DISTRIBUTABLE PROCEEDS AFTER ALLOWED ADMINISTRATIVE, PRIORITY, 32 MISCELLANEOUS SECURED CLAIMS AND LIQUIDATING TRUST ADMINISTRATIVE EXPENSES	4,222,387	(960,010)
33		
34 <b>WATERFALL:</b>		
35		
36 REPAYMENT OF FUNDING and PROFESSIONAL FEES THROUGH CONFIRMATION (to CAPITAL ONE)	(325,000)	-
37 80% OF THE NEXT \$965,000 (to CAPITAL ONE)	(772,000)	-
38 20% OF THE NEXT \$965,000 DUE UNSECURED CREDITORS EXCEPT FOR CAPITAL ONE	(193,000)	-
39		
40 CASH AVAILABLE FOR DISTRIBUTION TO UNSECURED CREDITORS INCLUDING CAPITAL ONE	2,932,387	(960,010)
41		
42 PROJECTED UNSECURED CREDITOR CLAIMS	<b>42,000,000</b>	<b>42,000,000</b>
43		
44 ILLUSTRATIVE DISTUBTION PERCENTAGE TO GENERAL UNSECURED CREDITORS	<b>6.98%</b>	<b>-2.29%</b>

## Footnotes:

- (i) The amount set forth herein reflects an estimate of anticipated recoveries that is based solely on a preliminary analysis of potential causes of action and may not be reflective of actual recoveries or an estimate of recoveries based on a more detailed analysis.
- (ii) The analysis set forth herein is premised on the assumption that a chapter 7 trustee would not achieve a similar resolution of the Pre-Petition Secured Claim as that reflected in the Plan, which would not necessarily be the case.

**Exhibit E**

**Proposed Members of the Plan Oversight Committee**

Robert Johnson  
Senior Vice President, Special Assets  
Capital One, N.A.  
201 St. Charles Ave., 23rd Floor  
New Orleans, LA 70170

Cathy Schappert  
Chief Financial Officer  
Arett Sales Corporation  
9285 Commerce Highway  
Pennsauken, NJ 08110

James J. Waldron  
104 South Shore Drive  
South Amboy, NJ 08879

**EXHIBIT B**

**Confirmation Notice**

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

	)	
In re:	)	Chapter 11
	)	
NSC WHOLESALE HOLDINGS LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 18-12394 (CSS)
	)	
Debtors.	)	Jointly Administered
	)	
	)	<b>Related to Docket No. 537</b>

**NOTICE OF (A) ENTRY OF ORDER CONFIRMING THE DEBTORS’  
LIQUIDATING PLAN; (B) OCCURRENCE OF EFFECTIVE DATE; AND  
(C) CERTAIN IMPORTANT DEADLINES**

**TO ALL CREDITORS, INTEREST HOLDERS, AND OTHER PARTIES IN INTEREST:**

**PLEASE TAKE NOTICE** that an order [Docket No. \_\_\_] (the “**Confirmation Order**”) confirming the *Debtors’ Combined Disclosure Statement and Plan* (as may be modified, the “**Plan**”), was entered by the Honorable Christopher S. Sontchi, United States Bankruptcy Judge, and docketed by the Clerk of the United States Bankruptcy Court for the District of Delaware (the “Court”) on July [\_\_\_], 2019. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Plan and the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that copies of the Confirmation Order, the Plan, and the related documents, are available to be viewed, at no charge, on the Debtors’ case website (<https://omningt.com/nsc>) under “Plan and Disclosure Statement Documents,” or at the Bankruptcy Court’s website (<http://www.deb.uscourts.gov>). To access the Court’s website, you will need a PACER password and login, which can be obtained at <http://www.pacer.psc.uscourts.gov>.

**PLEASE TAKE FURTHER NOTICE** that the Effective Date occurred on July [--], 2019.

**PLEASE TAKE FURTHER NOTICE** that, unless otherwise provided by the Plan, the Confirmation Order, or any other applicable order of the Bankruptcy Court, (a) all requests for payment of Administrative Expense Claims arising after December 31, 2018, other than Professional Claims, must be filed and served on the Post-Effective Date Debtors and the

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: NSC Wholesale Holdings LLC (6210); National Wholesale Liquidators of Lodi, Inc. (4301); NSC Realty Holdings LLC (4779); NSC of West Hempstead, LLC (5582); Top Key LLC (7503); BP Liquor LLC (2059); and Teara LLC (8660). The Debtors’ mailing address is 111 Hempstead Turnpike, West Hempstead, NY 11552.

Liquidating Trustee no later than [--], 2019<sup>2</sup> (the “**Post-December Administrative Expense Date**”) and (b) all requests for payment of Professional Fee Claims must be filed and served on the Post-Effective Date Debtors and the Liquidating Trustee no later than [--], 2019<sup>3</sup> or such other date established by an order of the Bankruptcy Court (the “**Professional Fee Claim Bar Date**”). Holders of Administrative Expense Claims that do not timely file and serve requests for payment of Administrative Expense Claims by the Post-December Administrative Expense Bar Date shall be forever barred from asserting such claims against the Debtors or the Post-Effective Date Debtors.

**PLEASE TAKE FURTHER NOTICE** that all Executory Contracts not assumed before the Effective Date, or subject to a pending motion to assume as of the Effective Date, are rejected pursuant to Article XII of the Plan as of the Effective Date. Any proofs of claim based upon the rejection of a Debtor’s executory contract or unexpired lease pursuant to the Plan must be filed by no later than thirty (30) days after service of this Notice. Claims arising from the rejection of an executory contract or unexpired lease that are not filed by the foregoing deadline shall be discharged and forever barred.

**PLEASE TAKE FURTHER NOTICE** that the Plan and its provisions are binding on the Debtors, the Post-Effective Date Debtors, any holder of a Claim against, or Equity Interest in, the Debtors and such Holder’s respective successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder voted to accept the Plan.

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<sup>2</sup> NTD: Insert the date that is the first business day that is at least 30 days after the Effective Date.

<sup>3</sup> NTD: Insert the date that is 45 days after the Effective Date.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
Mark Minuti (DE Bar No. 2659)  
Monique B. DiSabatino (DE Bar No. 6027)  
SAUL EWING ARNSTEIN & LEHR LLP  
1201 N. Market Street, Suite 2300  
P.O. Box 1266  
Wilmington, Delaware 19899  
Telephone: (302) 421-6840  
Facsimile: (302) 421-5873  
mark.minuti@saul.com  
monique.disabatino@saul.com

*Counsel for Debtors and Debtors-in-Possession*