

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

In re:

METRO AFFILIATES, INC., *et al.*,

Chapter 11  
Case No. 13-13591 (SHL)

Debtors.<sup>1</sup>

Jointly Administered

----- X

**JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR METRO AFFILIATES, INC. AND  
ITS AFFILIATED DEBTORS PROPOSED BY THE DEBTORS AND THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: March 31, 2014

AKIN GUMP STRAUSS  
HAUER & FELD LLP  
Lisa G. Beckerman  
Rachel Ehrlich Albanese  
One Bryant Park  
New York, New York 10036  
Tel: (212) 872-1000  
Fax: (212) 872-1002

FARRELL FRITZ, P.C.  
Ted A. Berkowitz  
Patrick Collins  
Robert C. Yan  
1320 RXR Plaza  
Uniondale, New York 11556  
Tel: (516) 227-0700  
Fax: (516) 227-0777

*Counsel to the Debtors and  
Debtors in Possession*

*Counsel to the Official Committee of  
Unsecured Creditors*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer identification number, are: 180 Jamaica Corp. (7630); Amboy Bus Co., Inc. (2369); Atlantic Escorts, Inc. (8870); Atlantic Express Coachways, Inc. (2867); Atlantic Express New England, Inc. (4060); Atlantic Express of California, Inc. (5595); Atlantic Express of Illinois, Inc. (5759); Atlantic Express of LA, Inc. (1639); Atlantic Express of Missouri, Inc. (3116); Atlantic Express of New Jersey, Inc. (8504); Atlantic Express of Pennsylvania, Inc. (0330); Atlantic Express Transportation Corp. (4567); Atlantic Queens Bus Corp. (0276); Atlantic Paratrans of NYC, Inc. (1114); Atlantic Paratrans, Inc. (3789); Atlantic Transit, Corp. (7142); Atlantic-Hudson, Inc. (5121); Block 7932, Inc. (3439); Brookfield Transit, Inc. (8247); Courtesy Bus Co., Inc. (5239); Fiore Bus Service, Inc. (1233); Groom Transportation, Inc. (7208); G.V.D. Leasing, Inc. (0595); James McCarty Limo Services, Inc. (8592); Jersey Business Land Co. Inc. (3850); K. Corr, Inc. (4233); Merit Transportation Corp. (8248); Metro Affiliates, Inc. (0142); Metropolitan Escort Service, Inc. (9197); Midway Leasing, Inc. (7793); R. Fiore Bus Service, Inc. (3609); Raybern Bus Service, Inc. (9412); Raybern Capital Corp. (6990); Raybern Equity Corp. (3830); Robert L. McCarthy & Son, Inc. (4617); Staten Island Bus, Inc. (6818); Temporary Transit Service, Inc. (0973); Atlantic Express of Upstate New York Inc. (1570); Transcomm, Inc. (4493); and Winsale, Inc. (2710).



**TABLE OF CONTENTS**

	<b>Page</b>
Preamble .....	1
Article I Defined Terms and Rules of Construction.....	1
1.1. Defined Terms .....	1
1.2. Other Terms .....	14
1.3. Rules of Construction .....	14
1.4. Exhibits; Supplements; Appendices; Schedules .....	14
Article II Classification of Allowed Claims and Interests.....	14
2.1. Introduction.....	14
2.2. Classification of Allowed Claims and Interests; Elimination of Classes .....	15
Article III Provisions for Treatment of Administrative Claims, Priority Tax Claims and U.S. Trustee Fees.....	15
3.1. Time for Filing Administrative Claims.....	15
3.2. Treatment of Administrative Claims .....	16
3.3. Treatment of Priority Tax Claims .....	16
3.4. U.S. Trustee Fees .....	17
3.5. Wayzata and Blue Wolf Advisor Fees and Expenses.....	17
3.6. Payment of DIP Claims .....	17
3.7. Payments of Adequate Protection to the Indenture Trustee.....	17
Article IV Provisions for Treatment of Professional Fee Claims .....	18
4.1. Time for Filing Professional Fee Claims .....	18
4.2. Treatment of Professional Fee Claims .....	18

Article V	Provision for Classification and Treatment of Claims and Interests .....	19
5.1.	Classification and Treatment of Claims and Interests .....	19
5.1.1.	Class 1 – Real Property Tax Claims .....	19
5.1.2.	Class 2 – Priority Non-Tax Claims.....	19
5.1.3.	Class 3 – Noteholders Claims .....	20
5.1.4.	Class 4 – Other Secured Claims.....	21
5.1.5.	Class 5 – General Unsecured Claims.....	22
5.1.6.	Class 6 – Insured Claims.....	23
5.1.7.	Class 7 – Interests .....	24
5.2.	Limitation on Recovery for Claims Against More Than One Debtor .....	25
Article VI	Acceptance or Rejection of the Plan; Effect of Rejection By One or More Classes of Claims .....	25
6.1.	Classes Entitled to Vote .....	25
6.2.	Cramdown and No Unfair Discrimination.....	25
Article VII	Means for Implementation of the Plan.....	26
7.1.	Substantive Consolidation for Plan Purposes Only .....	26
7.2.	Merger and Dissolution of the Debtors.....	26
7.3.	The Liquidating Trust .....	27
7.4.	Federal Income Tax Treatment of Liquidating Trust .....	31
7.5.	Setoff and Recoupment.....	32
7.6.	Noncertificated Liquidating Trust Interests .....	33
7.7.	Dissolution of the Liquidating Trust.....	33
7.8.	Securities Exempt .....	34
7.9.	Dissolution of Committee .....	34

7.10.	Oversight Committee .....	34
7.11.	Effectuating Documents; Further Transactions .....	36
7.12.	Cancellation of Existing Securities and Agreements .....	36
Article VIII	Provisions Governing Distributions.....	36
8.1.	Distribution Record Date .....	36
8.2.	Manner of Payment of Distributions.....	37
8.3.	Delivery of Distributions .....	37
8.4.	De Minimus Distributions.....	38
8.5.	No Distribution in Excess of Allowed Amount of Claim.....	38
8.6.	Allocation Between Principal and Accrued Interest.....	38
Article IX	Procedures for Disputed Claims .....	38
9.1.	Prosecution of Objections to Claims on and after the Effective Date .....	38
9.2.	Estimation of Claims.....	38
9.3.	No Distributions Pending Allowance .....	39
9.4.	Reserve for Disputed Claims .....	39
9.5.	Distributions After Allowance .....	39
9.6.	Disallowed Claims .....	39
Article X	Executory Contracts and Unexpired Leases .....	40
10.1.	Rejection, Assumption, and Assumption and Assignment of Executory Contracts and Unexpired Leases.....	40
10.2.	Cure of Defaults for Executory Contracts and Unexpired Leases .....	40
10.3.	Claims Based on Rejection of Executory Contracts and Unexpired Leases .....	41
10.4.	Reservation of Rights.....	42

Article XI	Conditions Precedent to Confirmation and the Effective Date.....	42
11.1.	Conditions Precedent to Confirmation.....	42
11.2.	Conditions Precedent to the Occurrence of the Effective Date .....	43
11.3.	Waiver of Conditions .....	43
11.4.	Notices to Bankruptcy Court .....	44
11.5.	Effect of Non-Occurrence of Conditions .....	44
Article XII	Effect of Confirmation .....	44
12.1.	Rights of Action and Reservation of Rights .....	44
12.2.	Satisfaction of Claims and Termination of Interests.....	44
12.3.	Term of Injunctions or Stays.....	45
12.4.	Releases and Injunction Related to Releases .....	46
12.5.	Compromise and Settlement of Estate Causes of Action, Claims and Controversies .....	47
12.6.	Disallowed Claims and Disallowed Interests .....	48
12.7.	Exculpation .....	48
12.8.	Injunctions.....	48
Article XIII	Modification, Revocation or Withdrawal of the Plan.....	49
13.1.	Modification of Plan .....	49
13.2.	Revocation or Withdrawal of Plan.....	49
Article XIV	Retention of Jurisdiction.....	50
14.1.	Exclusive Jurisdiction of the Bankruptcy Court .....	50
14.2.	Non-Exclusive Jurisdiction of the Bankruptcy Court.....	51
14.3.	Failure of the Bankruptcy Court to Exercise Jurisdiction.....	51
Article XV	Miscellaneous Provisions.....	51

15.1. Computation of Time .....	51
15.2. Governing Law .....	52
15.3. Withholding and Reporting Requirements .....	52
15.4. Section 1146 Exemption .....	52
15.5. Severability .....	52
15.6. Reservation of Rights.....	53
15.7. Binding Effect.....	53
15.8. No Admissions.....	53
15.9. Notices .....	53
15.10. Headings .....	54
15.11. Conflict Between Plan, Disclosure Statement, Plan Documents, and Plan Supplements.....	55
15.12. Substantial Consummation .....	55

## PREAMBLE

The Debtors and the Committee hereby jointly propose this Chapter 11 Plan of Liquidation pursuant to section 1121(a) of the Bankruptcy Code.

## ARTICLE I

### DEFINED TERMS AND RULES OF CONSTRUCTION

#### 1.1. Defined Terms.

For the purpose of the Plan, each of the terms set forth in this Article I shall have the meaning ascribed thereto below and such meaning shall be equally applicable to the singular and plural forms of the terms defined. All of the definitions and provisions contained in this Article I are and shall be regarded as integral, substantive and operative provisions of the Plan.

1.1.1. “*Administrative Claim*” shall mean any Claims for the actual and necessary cost or expense of administration of the Chapter 11 Cases or preservation of the Debtors’ Estates that is entitled to priority under sections 503(b) and 507(a)(2) and 507(b) of the Bankruptcy Code, including DIP Claims, Professional Fee Claims, U.S. Trustee Fees, Wayzata and Blue Wolf Advisor Fees and Expenses or any other Allowed Claims entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court. For the avoidance of doubt, Claims asserting priority under section 503(b)(9) of the Bankruptcy Code are included within the definition of Administrative Claim, and if Allowed, shall be paid in accordance with the Plan.

1.1.2. “*Affiliate*” shall mean “affiliate” as such term is defined in section 101(2) of the Bankruptcy Code.

1.1.3. “*Allowed*” shall mean, with respect to any Claim: (a) any Claim, proof of which is timely filed by the applicable Bar Date (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 is listed in the Schedules as of the Effective Date as not disputed, not contingent, and not unliquidated, and for which no Proof of Claim has been timely filed; or (c) any Claim allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; provided, however, that with respect to any Claim described in clauses (a) or (b) above, such Claim shall be considered Allowed only if and to the extent that with respect to any such Claim no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court or such an objection is so interposed and the Claim shall have been Allowed by a Final Order. Except for any Claim that is expressly Allowed herein, any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed, and for which no Proof of Claim has been filed, is not considered Allowed and shall be deemed expunged upon entry of the Confirmation Order without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Unless specified under the Plan, under the Bankruptcy Code, by order of the Bankruptcy Court or unless otherwise agreed to by the Plan

Proponents, Allowed Claims shall not, for any purpose under the Plan, include any interest, costs, fees or charges on such Claims from and after the Petition Date. “*Allow*” and “*Allowing*” shall have correlative meanings.

1.1.4. “*Assets*” shall mean (a) all of the Debtors’ right, title and interest in property of any nature, kind, character or description whatsoever (whether real, personal, or mixed, whether tangible and intangible (including contract rights), wherever situated and by whomever possessed), including the goodwill related thereto, including, without limitation, all property of their respective Estates pursuant to section 541 of the Bankruptcy Code, Cash, Causes of Action, equipment, inventory, tax refunds, claims of right of the Debtors under federal, state, or foreign law, the monies deposited to secure the performance of any letters of credit, contract or lease by the Debtors or any affiliate thereof; and (b) the proceeds, products, rents, and/or profits of any of the foregoing.

1.1.5. “*Avoidance Action*” shall mean any Claims, rights, defenses, or other Causes of Action arising under any section of Chapter 5 of the Bankruptcy Code, including, without limitation, sections 502, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including state fraudulent transfer laws and state fraudulent conveyance laws, whether or not prosecution of such actions has commenced as of the Confirmation Date or the Effective Date.

1.1.6. “*Ballot*” shall mean the form or forms that will be distributed along with the Disclosure Statement to Holders of Allowed Claims in Classes that are Impaired under the Plan and entitled to vote, which the holders of Impaired Claims may use to vote to accept or reject the Plan.

1.1.7. “*Bankruptcy Code*” shall mean the Bankruptcy Reform Act of 1978, as amended and in effect on the Petition Date and as set forth in Title 11 of the United States Code, as applicable to the Chapter 11 Cases.

1.1.8. “*Bankruptcy Court*” shall mean the United States Bankruptcy Court for the Southern District of New York.

1.1.9. “*Bankruptcy Rules*” shall mean the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, as amended and in effect on the Petition Date, as applicable to the Chapter 11 Cases.

1.1.10. “*Blue Wolf*” shall mean, collectively: Blue Wolf Credit Investors, LLC and PEQ Northern Investments LP.

1.1.11. “*Business Day*” shall mean any day other than a Saturday, Sunday or “legal holiday” (as such term is defined in Bankruptcy Rule 9006(a)).

1.1.12. “*Cash*” shall mean legal tender of the United States of America or the equivalent thereof.



1.1.13. “**Causes of Action**” shall mean any and all claims, rights (including to legal or equitable remedies), defenses, offsets, recoupments, actions in law or equity or otherwise, choses in action, suits, damages, debts, obligations, contracts, controversies, agreements, promises, variances, trespasses, executions, licenses, franchises accounts, reckonings, liabilities, privileges, bonds, bills, specialties, covenants, judgments, third-party claims, counterclaims and cross-claims of any nature, kind, character or description whatsoever, whether arising under the Bankruptcy Code or federal, state, common, or other law, regardless of whether such Causes of Action are known or unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or derivative, or are the subject of pending litigation or proceedings on the Confirmation Date, the Effective Date, or thereafter, including, without limitation: (a) all Avoidance Actions; (b) all other Claims in avoidance, recovery, and/or subordination; and (c) all other actions described in the Schedules or the Plan.

1.1.14. “**Chapter 11 Cases**” shall mean the cases commenced by the Debtors under Chapter 11 of the Bankruptcy Code, pending before the Bankruptcy Court and jointly administered as *In re Metro Affiliates, Inc., et al.*, Lead Case No. 13-13591 (SHL).

1.1.15. “**Claim**” shall mean a “claim” against the Debtors or their Estates, whether or not asserted or allowed, as such term is defined in section 101(5) of the Bankruptcy Code.

1.1.16. “**Claims and Noticing Agent**” shall mean Kurtzman Carson Consultants, LLC, in its capacity as the claims and noticing agent in the Chapter 11 Cases pursuant to 28 U.S.C. § 156(c).

1.1.17. “**Claims Bar Date**” shall mean April 21, 2014, the last date fixed by Final Order of the Bankruptcy Court for Persons and Entities to file Proofs of Claim in the Chapter 11 Cases, except as to Governmental Units the last date fixed by Final Order of the Bankruptcy Court to file Proofs of Claim in the Chapter 11 Cases shall mean May 17, 2014.

1.1.18. “**Claims Objection Deadline**” shall mean the deadline for filing objections to Claims as set forth in section 9.1. of the Plan.

1.1.19. “**Claims Register**” shall mean the official register of Claims maintained by the Claims and Noticing Agent.

1.1.20. “**Class**” shall mean a category of Holders of Claims or Interests as set forth in Article II of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

1.1.21. “**Collateral**” shall mean any property or interest in property of the Estate of any Debtor that is subject to an unavoidable Lien, charge or other encumbrance to secure payment or performance of a Claim.

1.1.22. “**Committee**” shall mean the Official Committee of Unsecured

Creditors appointed by the U.S. Trustee in the Chapter 11 Cases, as constituted from time to time, in its official capacity and as representative of Holders of General Unsecured Claims with respect to the Chapter 11 Cases, but does not mean the members of the Committee in their individual capacities.

1.1.23. “**Committee Members**” shall mean each member of the Committee, in each case, solely in its capacity as such.

1.1.24. “**Confirmation Date**” shall mean the date on which the Confirmation Order is entered on the docket of the Chapter 11 Cases.

1.1.25. “**Confirmation Hearing**” shall mean the hearing held by the Bankruptcy Court, pursuant to section 1128 of the Bankruptcy Code, to consider the confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.1.26. “**Confirmation Objection Deadline**” shall mean the date set forth in an order of the Bankruptcy Court by which a party in interest must file an objection to confirmation of the Plan.

1.1.27. “**Confirmation Order**” shall mean an order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.1.28. “**Consummation Account**” shall mean an account to be established by the Debtors on the Effective Date which shall be funded from any and all Cash on hand.

1.1.29. “**Creditor**” shall mean any Holder of a Claim against the Debtors, their respective Estates, Assets or properties as defined in section 102(2) of the Bankruptcy Code.

1.1.30. “**Creditor Releasing Parties**” shall mean all Holders of Claims that vote to accept the Plan and who voluntarily elect on their respective Ballots not to opt-out to the granting of the releases set forth in section 12.4.2. of the Plan. For the avoidance of doubt, a Holder’s decision whether or not to grant the releases set forth in section 12.4.2. of the Plan shall not affect such Holder’s right to receive a distribution under the Plan, if any.

1.1.31. “**Cure Obligations**” shall mean all: (a) amounts (or such other amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) required to cure any monetary defaults; and (b) other obligations required to cure any non-monetary defaults under any Executory Contract or Unexpired Lease that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

1.1.32. “**Debtors**” shall mean, collectively: 180 Jamaica Corp.; Amboy Bus Co., Inc.; Atlantic Escorts, Inc.; Atlantic Express Coachways, Inc.; Atlantic Express New England, Inc.; Atlantic Express of California, Inc.; Atlantic Express of Illinois, Inc.; Atlantic Express of LA, Inc.; Atlantic Express of Missouri, Inc.; Atlantic Express of New Jersey, Inc.; Atlantic Express of Pennsylvania, Inc.; Atlantic Express Transportation Corp.; Atlantic Queens

Bus Corp.; Atlantic Paratrans of NYC, Inc.; Atlantic Paratrans, Inc.; Atlantic Transit, Corp.; Atlantic-Hudson, Inc.; Block 7932, Inc.; Brookfield Transit, Inc.; Courtesy Bus Co., Inc.; Fiore Bus Service, Inc.; Groom Transportation, Inc.; G.V.D. Leasing, Inc.; James McCarty Limo Services, Inc.; Jersey Business Land Co. Inc.; K. Corr, Inc.; Merit Transportation Corp.; Metro Affiliates, Inc.; Metropolitan Escort Service, Inc.; Midway Leasing, Inc.; R. Fiore Bus Service, Inc.; Raybern Bus Service, Inc.; Raybern Capital Corp.; Raybern Equity Corp.; Robert L. McCarthy & Son, Inc.; Staten Island Bus, Inc.; Temporary Transit Service, Inc.; Atlantic Express of Upstate New York Inc.; Transcomm, Inc.; and Winsale, Inc.

1.1.33. “**DIP Claim**” shall mean a Claim arising under the DIP Credit Facility, including Supplemental Loans.

1.1.34. “**DIP Credit Facility**” shall mean the credit facility pursuant to that certain Ratification and Amendment Agreement, dated as of November 6, 2013, as amended or modified from time to time.

1.1.35. “**Disallowed**” shall mean, with respect to any Claim or Interest, any Claim or Interest that has been disallowed by a Final Order.

1.1.36. “**Disclosure Statement**” shall mean the disclosure statement relating to the Plan, as amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

1.1.37. “**Disputed Claim**” shall mean a Claim against the Debtors that is not an Allowed Claim or a Disallowed Claim. For the avoidance of doubt, any Claim, in whole or in part, that is subject to a pending motion objecting to the Allowance of such Claim shall be considered a Disputed Claim in its entirety until that motion has been resolved by Final Order of the Bankruptcy Court.

1.1.38. “**Disputed Claims Reserve**” shall mean the account maintained by the Liquidating Trustee for the payment of Disputed Claims that may become Allowed Claims after the Effective Date as provided in section 9.4. of the Plan.

1.1.39. “**Distribution Record Date**” shall mean the record date for the purpose of determining Holders of Allowed Claims entitled to receive distributions under the Plan and Liquidating Trust Documents on account of Allowed Claims which record date shall be the Effective Date or such other date as may be designated in the Confirmation Order.

1.1.40. “**Effective Date**” shall mean the first Business Day upon which each of the conditions in Article XI of the Plan has been satisfied, or, if permitted, waived, pursuant to section 11.3. of the Plan, and on which no stay of the Confirmation Order is in effect.

1.1.41. “**Entity**” shall mean an “entity” as such term is defined in section 101(15) of the Bankruptcy Code.

1.1.42. “**Estate**” shall mean the estate of any Debtor created by section 541 of the Bankruptcy Code.

1.1.43. “**Estate Cause of Action**” shall mean any Cause of Action belonging to any Debtor, its Estate or any Entity authorized to act on behalf of any Debtor or its Estate, including, without limitation, any Avoidance Action.

1.1.44. “**Exculpated Parties**” shall mean the Debtors, the Committee, the Noteholders, the Indenture Trustee, Wells Fargo, Wayzata (including its Affiliates and managed funds), Blue Wolf (including its Affiliates and managed funds), the lenders under the DIP Credit Facility, and Related Persons of any of the foregoing.

1.1.45. “**Executory Contract**” shall mean a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

1.1.46. “**Final DIP Order**” shall mean the Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Debtors to Obtain Interim Post-Petition Secured Financing with Priority over Certain Existing Secured Indebtedness and with Administrative Superpriority, (II) Granting Liens, (III) Authorizing the Debtors to Use Cash Collateral and Providing for Adequate Protection, (IV) Modifying the Automatic Stay and (V) Scheduling a Final Hearing entered by the Bankruptcy Court on December 4, 2013, as amended by subsequent orders of the Bankruptcy Court.

1.1.47. “**Final Order**” shall mean, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction which shall not have been reversed, vacated, stayed, modified or amended and as to which (a) the time to appeal, seek reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, petition for certiorari, or move for a new trial, reargument or rehearing shall have expired; (b) no appeal, no writ of certiorari, new trial, motion for reconsideration under Rule 59(b) and 59(e) of the Federal Rules of Civil Procedure, reargument or rehearing is pending; and (c) the order has become conclusive of all matters adjudicated and is in full force and effect; provided, however, that the possibility that a motion under section 502(j) of the Bankruptcy Code, or Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Final Order.

1.1.48. “**General Unsecured Claim**” shall mean a Claim, which is not an Administrative Claim, Priority Tax Claim, Professional Fee Claim, Real Property Tax Claim, Priority Non-Tax Claim, the Noteholders Secured Claims, the Noteholders Deficiency Claims, Other Secured Claim, or Insured Claim.

1.1.49. “**Governmental Unit**” shall mean a “governmental unit” as such term is defined in section 101(27) of the Bankruptcy Code.

1.1.50. “**Holder**” shall mean an Entity holding a Claim against, or an

Interest in, any of the Debtors.

1.1.51. “*Impaired*” shall mean, with respect to any Claim, Interest, or Class of Claims or Interests, “impaired” within the meaning of section 1124 of the Bankruptcy Code.

1.1.52. “*Indemnified OC Parties*” shall have the meaning ascribed to such term in section 7.10.4. of the Plan.

1.1.53. “*Indenture*” shall mean that certain indenture dated as of October 19, 2009, as amended and supplemented, among Atlantic Express Transportation Corp., as issuer, The Bank of New York Mellon, as indenture trustee and collateral agent, and the Guarantors named therein, pursuant to which the Notes were issued.

1.1.54. “*Indenture Trustee*” shall mean The Bank of New York Mellon, as indenture trustee and collateral agent for the Notes.

1.1.55. “*Initial Administrative Claim Bar Date*” shall mean April 21, 2014, the date established by order of the Bankruptcy Court, dated March 17, 2014, for the filing of Claims related to certain administrative expenses, as such term is used in section 503(b) of the Bankruptcy Code, arising from the Petition Date through February 28, 2014 incurred in connection with the Chapter 11 Cases, other than Professional Fee Claims.

1.1.56. “*Insider*” shall mean an “insider” as such term is defined in section 101(31) of the Bankruptcy Code.

1.1.57. “*Insured Claim*” shall mean a Claim against any of the Debtors, their respective Estates, Assets or properties arising from any incident or occurrence that is covered by an applicable and available insurance policy maintained by or for the benefit of any of the Debtors.

1.1.58. “*Insured Deficiency Claim*” shall have the meaning ascribed to such term in section 5.1.6. of the Plan.

1.1.59. “*Intercompany Claim*” shall mean a Claim held by a Debtor against any other Debtor or an Affiliate.

1.1.60. “*Interests*” shall mean any interest, equity, or share in the Debtors, including all options, warrants, or other rights to obtain such an interest or share in such Debtor, or other instrument evidencing an ownership interest in such Debtor, whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, including any Claim subject to subordination under section 510(b) of the Bankruptcy Code arising therefrom.

1.1.61. “*IRS*” shall mean the Internal Revenue Service of the United States of America.

1.1.62. “**Judicial Liens**” shall mean any and all “judicial liens” as such term is defined in section 101(36) of the Bankruptcy Code.

1.1.63. “**Liens**” shall mean, collectively, any and all (a) “liens” as such term is defined in section 101(37) of the Bankruptcy Code, (b) Statutory Liens and (c) Judicial Liens.

1.1.64. “**Liquidating Trust**” shall mean the liquidating trust described in section 7.3. of the Plan to be formed pursuant to the terms of the Plan and the Liquidating Trust Documents.

1.1.65. “**Liquidating Trust Agreement**” shall mean the agreement governing the Liquidating Trust, which shall be in form and substance reasonably acceptable to the Debtors, the Committee, the Indenture Trustee and Wayzata, each in the exercise of its sole and absolute discretion, and which shall be filed as part of the Plan Supplement.

1.1.66. “**Liquidating Trust Assets**” shall mean (a) any and all Estate Causes of Action and the proceeds thereof; (b) the Other GUC Escrow and the proceeds thereof; (c) the Other Liquidating Trust Fund Escrow and the proceeds thereof; and (d) any and all Unencumbered Assets and the proceeds thereof.

1.1.67. “**Liquidating Trust Distribution**” shall mean the distributions of Cash (or other property) to be made by the Liquidating Trustee from the Other GUC Escrow and the Other Liquidating Trust Fund Escrow, as applicable, and as and when specified, and otherwise subject to and in accordance with the terms of the Plan and the Liquidating Trust Documents.

1.1.68. “**Liquidating Trust Documents**” shall mean the Liquidating Trust Agreement and any other documents or instruments concerning or relating to the Liquidating Trust, and which shall be filed as part of the Plan Supplement.

1.1.69. “**Liquidating Trust Recoveries**” shall mean, at any time, the amount of Cash or other consideration recovered, obtained, received or otherwise paid to the Liquidating Trustee (or other Person acting on behalf of the Liquidating Trust) in connection with, arising from, or related to any commenced, asserted, pending, or threatened Estate Cause of Action, regardless of whether such Estate Cause of Action is actually commenced or asserted, including, without limitation, any judgment, settlement or other disposition of any nature, kind, character or description whatsoever of an Estate Cause of Action.

1.1.70. “**Liquidating Trustee**” shall mean the Entity to be granted the authority and charged with the responsibilities of the “Liquidating Trustee” under the Liquidating Trust Documents.

1.1.71. “**Management**” shall mean any present or former director, officer, or Insider of any Debtor (or any predecessor thereof).

1.1.72. “**Noteholders**” shall mean, collectively, the holders of the Notes.

1.1.73. “**Noteholders Claims**” shall mean, collectively, the Noteholders Secured Claims and the Noteholders Deficiency Claims.

1.1.74. “**Noteholders Deficiency Claims**” shall mean any unsecured Claim that may arise from the value of the Collateral subject to the Liens in favor of the Indenture Trustee being less than the aggregate outstanding amount of principal, interest, costs, fees and expenses due and owing under the Notes.

1.1.75. “**Noteholders Secured Claims**” shall mean any and all Claims in respect of, or in connection with, the aggregate outstanding amount of principal, interest, costs, fees and expenses due and owing under the Notes, up to the value of the Collateral securing such Claims.

1.1.76. “**Notes**” shall mean the (a) New Senior Secured Notes issued by Atlantic Express Transportation Corp. on October 19, 2009 in the original principal amount of \$90 million pursuant to the Indenture, and (b) the Senior Secured PIK Notes issued by Atlantic Express Transportation Corp. in the aggregate principal amount of \$65,423,638 as payments-in-kind of installments of interest issued pursuant to the Indenture. Notes in the aggregate principal amount of \$155,423,638 are outstanding as of the Petition Date.

1.1.77. “**Other GUC Escrow**” shall mean that certain non-interest bearing escrow account held at U.S. Bank National Association funded with \$1,000,000 in Cash deposited by the Debtors in accordance with the Final DIP Order, as amended. For the avoidance of doubt, no party, including Wells Fargo, the Indenture Trustee and the Noteholders, other than the Liquidating Trustee, Holders of Allowed Priority Non-Tax Claims, Holders of Allowed General Unsecured Claims, or Holders of Allowed Insured Deficiency Claims, shall have any Liens or Claims against the funds in the Other GUC Escrow. For the further avoidance of doubt, the Other GUC Escrow shall not include the Other Liquidating Trust Fund Escrow.

1.1.78. “**Other GUC Escrow Distribution**” shall mean the distributions of Cash (or other property) to be made by the Liquidating Trustee from the Other GUC Escrow, as and when specified, and otherwise subject to and in accordance with the terms of the Liquidating Trust Documents. For the avoidance of doubt, Other GUC Escrow Distributions shall not include Other Liquidating Trust Fund Distributions.

1.1.79. “**Other Liquidating Trust Funds**” shall mean, at any time, the Liquidating Trust Recoveries and the proceeds of any and all Unencumbered Assets.

1.1.80. “**Other Liquidating Trust Fund Distribution**” shall mean the distributions of Cash (or other property) to be made by the Liquidating Trustee from Other Liquidating Trust Funds, as and when specified, and otherwise subject to and in accordance with the terms of the Liquidating Trust Documents. For the avoidance of doubt, Other Liquidating Trust Funds shall not include Other GUC Escrow Distributions.

1.1.81. “**Other Liquidating Trust Fund Escrow**” shall mean that certain escrow account to be established by the Liquidating Trustee on the Effective Date and funded from the Other Liquidating Trust Funds. For the avoidance of doubt, the Other Liquidating Trust Fund Escrow shall not include the Other GUC Escrow.

1.1.82. “**Other Secured Claim**” shall mean a Claim, other than the DIP Claims, including the Supplemental Loans, the Noteholders Secured Claims, a Real Property Tax Claim, or any Claims in respect of, or in connection with Statutory Liens or Judicial Liens against any of the Assets owned by any of the Debtors, (a) for which the Holder has the right to look to certain specified Collateral for satisfaction of its Claim, and (b) against any of the Debtors to the extent such Claim is secured by a valid lien, security interest, or other interest in property in which any of the Debtors has an interest, that has been perfected properly as required by applicable law and is not otherwise avoidable by the Debtors or any other Entity, but only to the extent of the value of the Debtors’ interests in such property determined in accordance with section 506(a) of the Bankruptcy Code, or, in the event that such Claim is subject to setoff under section 553 of the Bankruptcy Code, to the extent of such setoff.

1.1.83. “**Oversight Committee**” shall mean the committee consisting of the Unsecured Creditors’ Designees and Wayzata’s Designee.

1.1.84. “**Person**” shall mean a “person” as such term is defined in section 101(41) of the Bankruptcy Code.

1.1.85. “**Petition Date**” shall mean November 4, 2013, the date on which each of the Debtors filed their respective voluntary petition under Chapter 11 of the Bankruptcy Code.

1.1.86. “**Plan**” shall mean this Joint Chapter 11 Plan of Liquidation for Metro Affiliates, Inc. and Its Affiliated Debtors Proposed by the Debtors and the Official Committee of Unsecured Creditors, including all exhibits, supplements (including the Plan Supplement), appendices and schedules to any of the foregoing, as any of them may be amended, supplemented or modified from time to time.

1.1.87. “**Plan Documents**” shall mean the documents that aid in effectuating the Plan as specifically identified as such herein and filed with the Bankruptcy Court as specified in section 1.4. of the Plan, all of which shall be in form and substance reasonably acceptable to the Debtors, the Committee, the Indenture Trustee and Wayzata, each in the exercise of its sole and absolute discretion.

1.1.88. “**Plan Proponents**” shall mean, collectively, the Debtors and the Committee.

1.1.89. “**Plan Supplement**” shall mean, collectively, the documents, agreements, instruments, schedules and exhibits and forms thereof specified in the Plan to be filed as “Plan Supplements”, as each such document, agreement, instrument, schedule and



exhibit and forms thereof may be altered, restated, amended, modified or replaced from time to time, including subsequent to the filing of any of the foregoing, all of which shall be in form and substance reasonably acceptable to the Debtors, the Committee, the Indenture Trustee and Wayzata, each in the exercise of its sole and absolute discretion. The Plan Proponents (subject to the Indenture Trustee and Wayzata's consent) shall, unless otherwise provided under the Plan, be free to modify any documents, agreements, instruments, schedules and exhibits and forms thereof without further filings or notice to any party.

1.1.90. **"Priority Tax Claim"** shall mean any Claim against any of the Debtors that is entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

1.1.91. **"Priority Non-Tax Claim"** shall mean any Claim against any of the Debtors that is entitled to priority in accordance with section 507 of the Bankruptcy Code other than an Administrative Claim or a Priority Tax Claim.

1.1.92. **"Pro Rata"** shall mean with respect to any monetary distribution on account of any Allowed Claim in any Class, the ratio of (a) the amount of such Allowed Claim to (b) the sum of (i) all Allowed Claims in such Class and (ii) the aggregate maximum allowable amount of all Disputed Claims in such Class for which any reserve must be established under the Plan.

1.1.93. **"Professional Fee Claim"** shall mean any Claim for fees, commissions, costs and reimbursement of expenses incurred in the Chapter 11 Cases through the Effective Date by any Professional Person (within the meaning of sections 327, 328, 330, 331, 363, 503(b) or 1103 of the Bankruptcy Code or otherwise), retained under an order of the Bankruptcy Court, which fees, commissions, costs, and expenses shall have been awarded by Final Order of the Bankruptcy Court pursuant to sections 330 or 503(b) of the Bankruptcy Code.

1.1.94. **"Professional Fee Claims Bar Date"** shall mean the date that is sixty (60) days after the Effective Date or such later date as may be established by order of the Bankruptcy Court.

1.1.95. **"Professional Fee Escrow"** shall mean that certain non-interest bearing escrow account established pursuant to the Final DIP Order which will be funded on or before the Effective Date for the payment of all Allowed Professional Fee Claims.

1.1.96. **"Professional Person"** shall mean any Person retained or to be compensated for services rendered or costs incurred by either the Debtors or the Committee on or after the Petition Date and on or prior to the Effective Date of the Plan pursuant to sections 327, 328, 330, 331, 363, 503(b) or 1103 of the Bankruptcy Code.

1.1.97. **"Proof of Claim"** shall mean a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

1.1.98. **"Real Property Tax Claim"** shall mean any Claim arising from taxes secured by a Lien on the Debtors' real property.

1.1.99. “**Related Persons**” shall mean, with respect to any Person, such Person’s predecessors, successors, assigns and present Affiliates (whether by operation of law or otherwise) and each of their respective present or former members, managers, partners, equity-holders, officers, directors, employees, representatives, advisors (whether engaged prior to or subsequent to the Petition Date), attorneys (whether engaged prior to or subsequent to the Petition Date), agents, and professionals (whether engaged prior to or subsequent to the Petition Date), all of the foregoing solely acting in such capacity, and any Person claiming by or through any of them.

1.1.100. “**Released Parties**” shall mean the Noteholders, the Indenture Trustee, Wells Fargo, Wayzata (including its Affiliates and managed funds), Blue Wolf (including its Affiliates and managed funds), the lenders under the DIP Credit Facility and Related Persons of any of the foregoing, and each of the Debtors’ current and former members, managers, officers, directors, attorneys (whether engaged prior to or subsequent to the Petition Date) and Rothschild, Inc. as financial advisor to the Debtors.

1.1.101. “**Scheduled**” shall mean, with respect to any Claim or Interest, that such Claim or Interest is listed on the Schedules.

1.1.102. “**Schedules**” shall mean, collectively, the schedules of assets and liabilities, the list of holders of Interests, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs filed by the Debtors in the Chapter 11 Cases, as the same may have been or may be amended, supplemented, or modified from time to time through the Confirmation Date in accordance with Bankruptcy Rule 1009.

1.1.103. “**Seventh Amendment to the Ratification Agreement**” shall mean that certain Amendment No. 7 to Ratification and Amendment Agreement by and among the Agent, the Lenders and the Borrowers (each as defined therein) and executed as of February 28, 2014.

1.1.104. “**Statutory Liens**” shall mean any and all “statutory liens” as such term is defined in section 101(53) of the Bankruptcy Code.

1.1.105. “**Supplemental Administrative Claim Bar Date**” shall mean the first Business Day that is thirty (30) days after entry of the Confirmation Order or such later date as may be established by an order of the Bankruptcy Court.

1.1.106. “**Supplemental Loans**” shall mean \$8 million in principal amount of supplemental loans outstanding on the Petition Date plus all accrued interest, including payment-in-kind interest, from and after the Petition Date, which Supplemental Loans may have been repaid (in whole or in part) in accordance with the Seventh Amendment to the Ratification Agreement.

1.1.107. “**Unclaimed Property**” shall have the meaning ascribed to such term in section 8.3. of the Plan.

1.1.108. “*Unencumbered Assets*” shall mean Assets owned by any of the Debtors which are not subject to valid, enforceable and perfected Liens.

1.1.109. “*Unexpired Lease*” shall mean a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

1.1.110. “*Unimpaired*” shall mean, with respect to any Claim, Interest, or Class of Claims or Interests, not Impaired.

1.1.111. “*Unsecured Creditors’ Designees*” shall mean the two (2) Persons designated by the Committee to serve as members of the Oversight Committee from and after the Effective Date and any successor to such Person selected by the Committee Members.

1.1.112. “*U.S. Trustee*” shall mean the Office of the United States Trustee for Region 2.

1.1.113. “*U.S. Trustee Fees*” shall mean all fees and charges assessed against the Estate under section 1930 of title 28 of the United States Code, and interest, if any, for delinquent quarterly fees pursuant to section 3717 of title 31 of the United States Code.

1.1.114. “*Wayzata*” shall mean, collectively: Wayzata Investment Partners LLC; Wayzata Opportunities Fund, LLC; Wayzata Opportunities Fund II, L.P.; Wayzata Recovery Fund LLP; Wayzata Opportunities Fund Offshore, L.P.; and Wayzata Opportunities Fund Offshore II, L.P., and each current and former employee, officer, partner, member or manager of any of the foregoing, each in their capacity as such.

1.1.115. “*Wayzata and Blue Wolf Advisor Fees and Expenses*” shall mean the reasonable and documented fees, out-of-pocket costs, expenses, disbursements and charges incurred by Wayzata, Blue Wolf and their respective advisors in connection with the Chapter 11 Cases up to and including the Effective Date, which shall not exceed \$250,000 for Wayzata and its advisors, and \$25,000 for Blue Wolf and its advisors.

1.1.116. “*Wayzata’s Designee*” shall mean [REDACTED] or any other Person designated in the Plan Supplement by Wayzata, in the exercise of their sole and absolute discretion, to serve as a member of the Oversight Committee from and after the Effective Date and any successor to such Person designated by Wayzata, in the exercise of their sole and absolute discretion.

1.1.117. “*Wells Fargo*” shall mean Wells Fargo Bank, National Association, successor by merger to Wachovia Bank, NA.

1.2. **Other Terms.**

A term that is used in the Plan and not defined herein, but that is defined in the Bankruptcy Code or in the Bankruptcy Rules, shall have the meaning set forth therein. Any reference contained in the Plan to a particular exhibit, paragraph or article shall be deemed to be a reference to an exhibit, paragraph or article of the Plan.

1.3. **Rules of Construction.**

In the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and the neutral gender. Unless otherwise stated, the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular article, section, subsection, clause, paragraph or portion contained herein. The rules of construction set forth in section 102 of the Bankruptcy Code shall be applicable to all of the provisions of the Plan. Without limiting the foregoing, as used in the Plan, the words “includes” and “including” are without limitation.

1.4. **Exhibits; Supplements; Appendices; Schedules.**

All exhibits, supplements (including the Plan Supplement), appendices and schedules to the Plan, as well as the Plan Documents, are incorporated into, and are a part of, the Plan by reference as if set forth in full herein. All Plan Documents shall be filed with the Bankruptcy Court no later than ten (10) days prior to the Confirmation Objection Deadline, in form and substance reasonably acceptable to the Debtors and the Committee, each in the exercise of its sole and absolute discretion, and shall be available on the Debtors’ website at [www.kcellc.net/metro](http://www.kcellc.net/metro). To the extent any exhibit, schedule or Plan Supplement is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the Plan shall control.

## ARTICLE II

### CLASSIFICATION OF ALLOWED CLAIMS AND INTERESTS

2.1. **Introduction.**

The Plan is premised upon the substantive consolidation of the Debtors, as set forth in more detail in section 7.1. of the Plan, for all purposes under the Plan, including voting, determining which Claims and Interests will be entitled to vote to accept or reject the Plan, confirmation of the Plan, the cancellation of Intercompany Claims and Interests and the distribution of Assets, interests and other property under the terms of the Plan. Based on the substantive consolidation of the Debtors under the Plan, Intercompany Claims shall not be classified and no distribution shall be made in respect of Intercompany Claims.

2.2. **Classification of Allowed Claims and Interests; Elimination of Classes.**

A Claim is placed in a particular Class only to the extent that the Claim falls within the description of that Class and is placed in a different Class to the extent that the remainder of the Claim falls within the description of a different Class. In addition, a Claim placed in a particular Class is entitled to a distribution under the Plan only to the extent that the Claim is Allowed. Any Class of Claims that is not occupied as of the date of the Confirmation Hearing of the Plan by an Allowed Claim, or a Claim temporarily Allowed under Bankruptcy Rule 3018, and for which, on the Effective Date, there are no Disputed Claims in such Class pending, shall be deemed deleted from the Plan for all purposes.

Claims, other than Administrative Claims, Priority Tax Claims, Professional Fee Claims, and Claims arising under the DIP Credit Facility shall be classified for all purposes, including voting, confirmation and distribution as follows:

<b><u>Class</u></b>	<b><u>Claim</u></b>	<b><u>Status</u></b>	<b><u>Voting Rights</u></b>
1	Real Property Tax Claims	Unimpaired	Deemed to Accept
2	Priority Non-Tax Claims	Impaired	Entitled to Vote
3	Noteholders Claims	Impaired	Entitled to Vote
4	Other Secured Claims	Unimpaired	Deemed to Accept
5	General Unsecured Claims	Impaired	Entitled to Vote
6	Insured Claims	Impaired	Entitled to Vote
7	Interests	Impaired	Deemed to Reject

**ARTICLE III**

**PROVISIONS FOR TREATMENT OF ADMINISTRATIVE CLAIMS,  
PRIORITY TAX CLAIMS AND U.S. TRUSTEE FEES**

3.1. **Time for Filing Administrative Claims.**

Except for (a) Claims arising under the DIP Credit Facility, (b) professionals requesting compensation or reimbursement for Professional Fee Claims, (c) Wayzata and Blue Wolf Advisor Fees and Expenses, and (d) U.S. Trustee Fees, unless previously filed or paid, requests for payment of Administrative Claims must be filed with the Bankruptcy Court and served on the Plan Proponents and the Liquidating Trustee and their respective counsel, if any, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than the Administrative Claim Bar Date or the Supplemental Administrative Claim Bar Date, as applicable, or such later date established by the Bankruptcy Court with notice to the Plan Proponents and the Liquidating Trustee.

Holders of Administrative Claims who are required to file a request for payment of such Administrative Claims and who do not file such a request for payment in accordance with this section 3.1. of the Plan shall be (a) forever barred and estopped from asserting such Administrative Claims against the Debtors, their respective Estates, Assets or properties, and (b)

forever enjoined from commencing or continuing any action to collect, offset, recoup or otherwise recover such Administrative Claims against the Debtors, their respective Estates, Assets or properties. Such Administrative Claims shall be deemed forever compromised, settled, and released as of the Effective Date.

3.2. **Treatment of Administrative Claims.**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims are not designated as a Class of Claims for purposes of the Plan.

Subject to the Administrative Claims Bar Date, and except to the extent that a Holder of an Allowed Administrative Claim has been paid on account of such Allowed Administrative Claim prior to the Effective Date of the Plan or agrees to different treatment, each Holder of an Allowed Administrative Claim shall receive, in full and final satisfaction, settlement, release, and compromise of its Allowed Administrative Claim, a distribution of Cash from the Consummation Account in an amount that is equal to such Allowed Administrative Claim, without interest, on or as soon as reasonably practicable after the latest to occur of: (a) the Effective Date; (b) the first Business Day after the date that is ten (10) Business Days after the date such Administrative Claim becomes an Allowed Administrative Claim; and (c) the date or dates agreed to by the Debtors and the Holder of the Allowed Administrative Claim. All distributions on account of Allowed Administrative Claims from the Consummation Account shall be made by the Debtors; provided, however, that to the extent of any shortfall from Cash available in the Consummation Account to pay Administrative Claims included in the Budget or such other amounts to be paid from the Consummation Account as set forth in the Plan, such shortfall shall be paid from proceeds from the sale of Collateral securing the Allowed Noteholders Claims.

3.3. **Treatment of Priority Tax Claims.**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Priority Tax Claims are not designated as a Class of Claims for purposes of the Plan.

Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid on account of such Allowed Priority Tax Claim prior to the Effective Date of the Plan or agrees to different treatment, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement, release, and compromise of its Allowed Priority Tax Claim, a distribution of Cash from the Consummation Account in an amount that is equal to such Allowed Priority Tax Claim, without interest, on or as soon as reasonably practicable after the latest to occur of: (a) the Effective Date; (b) the first Business Day after the date that is ten (10) Business Days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim; and (c) the date or dates agreed to by the Liquidating Trustee and the Holder of the Allowed Priority Tax Claim. All distributions on account of Allowed Priority Tax Claims from the Consummation Account shall be made by the Debtors.

Any Claim or demand for a penalty relating to any Priority Tax Claim (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be

Disallowed, and the Holder of a Priority Tax Claim shall not assess or attempt to collect such penalty from the Debtors, their respective Estates, Assets or properties; provided, however, that the foregoing provision shall not apply to the IRS.

3.4. **U.S. Trustee Fees.**

To the extent not already paid, the Debtors shall pay the U.S. Trustee Fees due and owing before the Effective Date. On and after the Effective Date, the Liquidating Trustee shall pay the U.S. Trustee Fees as they become due and owing until the earliest to occur of: (a) the Bankruptcy Court enters an order of final decree closing the Chapter 11 Cases; (b) the Bankruptcy Court enters an order converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; and (c) the Bankruptcy Court enters an order dismissing the Chapter 11 Cases.

3.5. **Wayzata and Blue Wolf Advisor Fees and Expenses.**

On the Effective Date, in full and complete settlement, release, and discharge of their Allowed Administrative Claims pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code, the Debtors shall promptly and indefeasibly pay in full in Cash (pursuant to section 1129(a)(4) of the Bankruptcy Code or otherwise) from the Consummation Account the Wayzata and Blue Wolf Advisor Fees and Expenses, provided, however, that all amounts due under the Supplemental Loans (including any interest accrued thereon) shall be paid in full prior to any payments on account of the Wayzata and Blue Wolf Advisor Fees and Expenses. All amounts distributed and paid on account of the Wayzata and Blue Wolf Advisor Fees and Expenses shall not be subject to setoff, recoupment, reduction or allocation of any kind and shall not require the filing or approval of any retention applications or fee applications in the Chapter 11 Cases.

3.6. **Payment of DIP Claims.**

There are no outstanding amounts owed by the Debtors to Wells Fargo under the DIP Credit Facility, other than with respect to the Supplemental Loans. To the extent any DIP Claims remain unpaid as of the Effective Date, such unpaid amounts shall be paid by the Debtors to Wells Fargo, as agent, in Cash on the Effective Date from the Consummation Account. Such payment shall be in full and final satisfaction, settlement and release of all DIP Claims, including the Supplemental Loans.

3.7. **Payments of Adequate Protection to the Indenture Trustee.**

All adequate protection payments received by the Indenture Trustee from the Debtors pursuant to the Final DIP Order are final, and shall not be subject to challenge of any kind from any party.

## ARTICLE IV

### PROVISIONS FOR TREATMENT OF PROFESSIONAL FEE CLAIMS

#### 4.1. Time for Filing Professional Fee Claims.

All applications for final allowance of compensation and reimbursement of Professional Fee Claims shall be filed with the Bankruptcy Court and served on (a) the Debtors (b) counsel to the Debtors (c) counsel to the Committee, (d) the Liquidating Trustee and counsel to the Liquidating Trustee, if any, and (e) the U.S. Trustee on or before the Professional Fee Claims Bar Date, and will be subject to the authorization and approval of the Bankruptcy Court.

Holders of Professional Fee Claims who do not file such Professional Fee Claims in accordance with this section 4.1. of the Plan shall be (a) forever barred and estopped from asserting such Professional Fee Claims against the Debtors, their respective Estates, Assets or properties, and (b) forever enjoined commencing or continuing any action to collect, offset, recoup or otherwise recover such Professional Fee Claims against the Debtors, their respective Estates, Assets or properties.

#### 4.2. Treatment of Professional Fee Claims.

In accordance with section 1123(a)(1) of the Bankruptcy Code, Professional Fee Claims are not designated as a Class of Claims for purposes of the Plan.

Except to the extent that a Holder of an Allowed Professional Fee Claim has been paid on account of such Allowed Professional Fee Claim prior to the Effective Date of the Plan or agrees to different treatment, each Holder of an Allowed Professional Fee Claim shall receive, in full and final satisfaction, settlement, release, and compromise of its Allowed Professional Fee Claim, Cash from the Professional Fee Escrow in an amount that is equal to such Allowed Professional Fee Claim, without interest, on or as soon as reasonably practicable after the latest to occur of: (a) the Effective Date; and (b) three (3) Business Days after the date the Bankruptcy Court enters a Final Order Allowing such Professional Fee Claim. On the Effective Date, the Debtors will fund the Professional Fee Escrow such that it contains sufficient Cash to pay all of the unpaid fees and expenses of all Holders of Professional Fee Claims in accordance with the Budget and subject to the Aggregate Cap (each as defined in the DIP Credit Facility). All payments on account of Allowed Professional Fee Claims shall be made by the Debtors solely from the Professional Fee Escrow; provided, however, that to the extent of any shortfall from Cash available in the Professional Fee Escrow to pay such budgeted fees and expenses of Holders of Professional Fee Claims, such shortfall shall be paid from proceeds from the sale of Collateral securing the Allowed Noteholders Claims.



## ARTICLE V

### PROVISION FOR CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

#### 5.1. Classification and Treatment of Claims and Interests.

##### 5.1.1. *Class 1 – Real Property Tax Claims.*

- (a) Classification. Class 1 shall consist of the Allowed Real Property Tax Claims.
- (b) Treatment. Except to the extent that a Holder of an Allowed Real Property Tax Claim has been paid on account of such Allowed Real Property Tax Claim prior to the Effective Date of the Plan or agrees to different treatment, each Holder of an Allowed Real Property Tax Claim shall receive, in full and final satisfaction, settlement, release, and compromise of its Allowed Real Property Tax Claim, a distribution of Cash from the Consummation Account in an amount that is equal to such Allowed Real Property Tax Claim, without interest, on or as soon as reasonably practicable after the latest to occur of: (i) the Effective Date; (ii) the first Business Day after the date that is ten (10) Business Days after the date such Real Property Tax Claim becomes an Allowed Real Property Tax Claim; and (iii) the date or dates agreed to by the Debtors and the Holder of the Allowed Real Property Tax Claim. All distributions on account of Allowed Real Property Tax Claims from the Consummation Account shall be made by the Debtors.

Any Claim or demand for a penalty relating to any Real Property Tax Claim (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be Disallowed, and the Holder of a Real Property Tax Claim shall not assess or attempt to collect such penalty from the Debtors, their respective Estates, Assets or properties; provided, however, that the foregoing provision shall not apply to the IRS.

- (c) Voting. Class 1 is Unimpaired. Holders of Class 1 Claims will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Claims will not be entitled to vote to accept or reject the Plan.

##### 5.1.2. *Class 2 – Priority Non-Tax Claims.*

- (a) Classification. Class 2 shall consist of Allowed Priority Non-Tax

Claims.

- (b) Treatment. Except to the extent that a Holder of an Allowed Priority Non-Tax Claim has been paid on account of such Allowed Priority Non-Tax Claim prior to the Effective Date of the Plan or agrees to different treatment, each Holder of an Allowed Priority Non-Tax Claim shall receive, in full and final satisfaction, settlement, release, and compromise of its Allowed Priority Non-Tax Claim, a distribution of Cash or such other treatment as may be agreed from the Other GUC Escrow, and if the Other GUC Escrow is exhausted, the proceeds of any and all other Liquidating Trust Assets not allocated to the Allowed Noteholders Claims, after reserving for the unpaid reasonable fees and expenses incurred by the Liquidating Trustee, and any professionals retained by the Liquidating Trustee, in an amount that is equal to such Allowed Priority Non-Tax Claim, without interest, on or as soon as reasonably practicable after the latest to occur of: (i) the Effective Date; (ii) the first Business Day after the date that is ten (10) Business Days after the date such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim; and (iii) the date or dates agreed to by the Liquidating Trustee and the Holder of the Allowed Priority Non-Tax Claim.
- (c) Voting. Class 2 is Impaired. The Holders of Class 2 Claims will be entitled to vote to accept or reject the Plan.

5.1.3. ***Class 3 – Noteholders Claims.***

- (a) Classification. Class 3 shall consist of the Allowed Noteholders Claims.
- (b) Treatment. The Noteholders Secured Claims are Allowed in the aggregate amount of [§], for purposes of voting on the Plan, without avoidance, setoff, subordination, any defenses, counterclaims, or any other reduction of any kind. The Noteholders Deficiency Claims are Allowed in the aggregate amount of [§], for purposes of voting on the Plan. On the Effective Date, in full and final satisfaction, settlement, release, and compromise of the Allowed Noteholders Claims, the Holders of the Allowed Noteholders Claims shall be entitled to receive:
- (i) Proceeds from the sale or other disposition of Collateral subject to the Indenture Trustee's Liens to the extent not already paid, less proceeds necessary to fund (1) budgeted Allowed Administrative Claims and (2) budgeted Allowed Professional Fee Claims (subject to the applicable cap set

forth in the Seventh Amendment to the Ratification Agreement) to the extent of any shortfall from Cash available in the Professional Fee Escrow to pay such Allowed Professional Fee Claims; and

- (ii) A right to seventy percent (70%) of the proceeds, if any, in the Other Liquidating Trust Fund Escrow, less the payment of the reasonable fees and expenses of the Liquidating Trust, including those of the Liquidating Trustee and any and all professionals retained by the Liquidating Trustee, incurred in connection with (1) the litigation of Estate Causes of Action or (2) the sale or other disposition of Unencumbered Assets.

Subject to the occurrence of the Effective Date, the Holders of the Allowed Noteholders Claims waive the right to receive any distributions from the Other GUC Escrow on account of the Allowed Noteholders Claims.

In no event shall the Holders of the Allowed Noteholders Claims be entitled to receive more than one hundred percent (100%) of the Allowed Amount of such Claims.

- (c) Voting. Class 3 is Impaired. The Holders of Class 3 Claims will be entitled to vote to accept or reject the Plan.

5.1.4. ***Class 4 – Other Secured Claims.***

- (a) Classification. Class 4 shall consist of Allowed Other Secured Claims.
- (b) Treatment. On the Effective Date, or as soon thereafter as is reasonably practicable, each Holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction, settlement, release, and compromise of its Allowed Other Secured Claim, one of the following treatments: (i) reinstatement of any such Allowed Other Secured Claim pursuant to section 1124 of the Bankruptcy Code; (ii) the payment of such Holder's Allowed Other Secured Claim in full in Cash from the proceeds of the sale or other disposition of such Collateral to the extent not already distributed pursuant to an order of the Bankruptcy Court; (iii) the surrender by the Debtors or the Liquidating Trustee, as applicable, to the Holder or Holders of any Allowed Other Secured Claim of the property securing such Allowed Other Secured Claim; or (iv) such other distributions as shall be necessary to satisfy the requirements of chapter 11 of the Bankruptcy Code. In no event shall the Holder of

any Allowed Other Secured Claim receive more than the value of the Collateral securing such Claim.

- (c) Voting. Class 4 is Unimpaired. Holders of Class 4 Claims will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 4 Claims will not be entitled to vote to accept or reject the Plan.

5.1.5. *Class 5 – General Unsecured Claims.*

- (a) Classification. Class 5 shall consist of Allowed General Unsecured Claims.

- (b) Treatment.

- (i) *Other GUC Escrow*. Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to different treatment, on the Effective Date, or as soon thereafter as is reasonably practicable, and after reserving in full for all Disputed Claims, and the payment of the reasonable fees and expenses incurred by the Liquidating Trustee, and any professionals retained by the Liquidating Trustee in connection with the Chapter 11 Cases on and after the Effective Date, each Holder of an Allowed General Unsecured Claim (including Holders of Allowed Insured Deficiency Claims, as applicable) shall receive on account of its Allowed General Unsecured Claim (or Allowed Insured Deficiency Claim, as applicable) its Pro Rata share of funds from the Other GUC Escrow after satisfaction of all Allowed Priority Non-Tax Claims. For the avoidance of doubt, subject to the occurrence of the Effective Date, the Holders of the Allowed Noteholders Claims waive the right to receive any distributions on account of the Allowed Noteholders Claims from the Other GUC Escrow.

- (ii) *Other Liquidating Trust Escrow*. Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to different treatment, on the Effective Date, or as soon thereafter as is reasonably practicable, and after reserving in full for all Disputed Claims, each Holder of an Allowed General Unsecured Claim (including Holders of Allowed Insured Deficiency Claims, as applicable) shall also be entitled to receive on account of its Allowed General Unsecured Claim (or Allowed Insured Deficiency Claim, as applicable), a right to its Pro Rata share of thirty percent (30%) of the proceeds, if any, in the Other Liquidating

Trust Fund Escrow, less the payment of the reasonable fees and expenses of the Liquidating Trust, including those of the Liquidating Trustee and any and all professionals retained by the Liquidating Trustee, incurred in connection with (1) the litigation of Estate Causes of Action or (2) the sale or other disposition of Unencumbered Assets and after satisfaction of all Allowed Priority Non-Tax Claims.

- (iii) In no event shall any Holder of an Allowed General Unsecured Claim (or any Holder of an Allowed Insured Deficiency Claim, as applicable) be entitled to receive more than one hundred percent (100%) of the Allowed Amount of its respective Allowed General Unsecured Claim (or Allowed Insured Deficiency Claim, as applicable).
  - (iv) Each Holder of an Allowed General Unsecured Claim (including the Holders of the Allowed Noteholders Deficiency Claims and Holders of Allowed Insured Deficiency Claims, as the case may be) receiving, or entitled to receive, or waiving the right to receive any distribution under the Plan on account of its Allowed General Unsecured Claim (or the Allowed Noteholders Deficiency Claims or Allowed Insured Deficiency Claim, as the case may be), shall be in full and final satisfaction, settlement, release, and compromise of its Claim, regardless of whether there are available proceeds for Other GUC Escrow Distributions or Other Liquidating Trust Fund Distributions to be made to such Holders.
- (c) Voting. Class 5 is Impaired. Holders of Class 5 Claims will be entitled to vote to accept or reject the Plan.

5.1.6. ***Class 6 – Insured Claims.***

- (a) Classification. Class 6 shall consist of Insured Claims.
- (b) Treatment. Except to the extent that a Holder of an Allowed Insured Claim agrees to different treatment, or unless otherwise provided by an order of the Bankruptcy Court directing such Holder's participation in any alternative dispute resolution process, on the Effective Date, or as soon thereafter as is reasonably practicable, each Holder of an Allowed Insured Claim shall receive on account of its Allowed Insured Claim relief from the automatic stay under section 362 of the Bankruptcy Code for the sole and limited purpose of permitting such Holder to seek its full recovery,

if any as determined by an order or judgment by a court of competent jurisdiction or under a settlement or compromise of such Holder's Allowed Insured Claim, on account of its Allowed Insured Claim, from the applicable and available insurance policies maintained by or for the benefit of any of the Debtors.

In the event there are no applicable or available insurance policies, or proceeds from applicable and available insurance policies have been exhausted or are otherwise insufficient to pay in full a Holder's recovery, if any as determined by an order or judgment by a court of competent jurisdiction or under a settlement or compromise of such Holder's Allowed Insured Claim, on account of its Allowed Insured Claim, then such Holder shall be entitled to an Allowed Claim equal to the amount of the Allowed Insured Claim less the amount of available proceeds to pay such Allowed Insured Claim from the applicable and available insurance policies maintained by or for the benefit of any of the Debtors (the "Insured Deficiency Claim"). Such Holder's Insured Deficiency Claim shall be treated as an Allowed General Unsecured Claim in Class 5 of the Plan and shall be entitled to receive its Pro Rata Share of the distributions from the Liquidating Trust Distributions as set forth in the Plan in the same manner as other Holders of Allowed General Unsecured Claims in Class 5 of the Plan. In no event shall any Holder of an Allowed Insured Deficiency Claim be entitled to receive more than one hundred percent (100%) of the Allowed Amount of their respective Allowed Insured Deficiency Claim.

- (c) Voting. Class 6 is Impaired. Holders of Class 6 Claims will be entitled to vote to accept or reject the Plan.

5.1.7. ***Class 7 – Interests.***

- (a) Classification. Class 7 shall consist of Interests.
- (b) Treatment. On the Effective Date, all Interests shall be deemed canceled, released, and extinguished, and will be of no further force or effect. Holders of Interests will not receive any Other GUC Escrow Distribution or Other Liquidating Trust Fund Distribution, or be entitled to retain any property or interest in property, on account of such Interests. Holders of Interests shall not be required to surrender their certificates or other instruments evidencing ownership of such Interests.
- (c) Voting. Class 7 is Impaired. Holders of Class 7 Interests will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 7

Interests will not be entitled to vote to accept or reject the Plan.

5.2. **Limitation on Recovery for Claims Against More Than One Debtor.**

A Holder of a Claim asserted against more than one (1) Debtor but arising under the same facts shall receive not more than one distribution hereunder on account of such Holder's Allowed Claim and shall be enjoined from seeking any further distribution.

**ARTICLE VI**

**ACCEPTANCE OR REJECTION OF THE PLAN;  
EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS**

6.1. **Classes Entitled to Vote.**

Holders of the Allowed Priority Non-Tax Claims (Class 2), Allowed Noteholders Claims (Class 3), Allowed General Unsecured Claims (Class 5), and Allowed Insured Claims (Class 6) are entitled to vote to accept or reject the Plan. Any Holder of a Claim that has been objected to may file a motion pursuant to Bankruptcy Rule 3018 for an order temporarily allowing such Claim solely for purposes of voting to accept or reject the Plan in accordance with the procedures to be set forth in the order approving the Disclosure Statement, including any deadlines set forth therein. Holders of Allowed Real Property Tax Claims (Class 1) and Allowed Other Secured Claims (Class 4) are deemed to have accepted the Plan. Holders of Interests (Class 7) are deemed to have rejected the Plan.

The Plan Proponents have requested that the Bankruptcy Court adopt a presumption that if no Holder of a Claim in a Class of Claims eligible to vote in a particular Class timely submits a timely Ballot to accept or reject the Plan, then the applicable Class will be deemed to have accepted the Plan. Accordingly, if any Holder of a Claim in Class 3 or Class 5 does not wish such a presumption to apply with respect to any Class for which such Holder holds a Claim, then the Holder should timely submit a Ballot accepting or rejecting the Plan for any such Class.

6.2. **Cramdown and No Unfair Discrimination.**

In the event that any Impaired Class of Claims or Interests rejects this Plan or is deemed to have rejected the Plan, the Plan Proponents 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 Class, in which case the Plan shall constitute a motion for such relief.

## ARTICLE VII

### MEANS FOR IMPLEMENTATION OF THE PLAN

#### 7.1. **Substantive Consolidation for Plan Purposes Only.**

Entry of the Confirmation Order shall constitute the approval, pursuant to sections 105(a) and 1123(a) of the Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of the Estates of the Debtors for purposes of confirming and consummating the Plan, including, but not limited to, voting, confirmation, and distribution. Accordingly, (a) no distributions shall be made under the Plan or Liquidating Trust Documents on account of the Intercompany Claims, if any, among the Debtors, (b) the Assets and liabilities of the Debtors will be deemed to be the Assets and liabilities of a single, consolidated entity, (c) each and every Claim filed or to be filed in the Chapter 11 Cases against any Debtor shall be considered filed against the consolidated Debtors and shall be considered one Claim against and obligation of the consolidated Debtors on and after the Effective Date, (d) all joint obligations of two or more Debtors, and all multiple Claims against such entities on account of such joint obligations, are considered a single Claim against the consolidated Debtors, and (e) all guaranties by any of the Debtors of the obligations of any Debtor arising prior to the Effective Date shall be deemed eliminated under the Plan so that any Claim against any Debtor and any guaranty thereof executed by any other Debtor and any joint and several liability of any of the Debtors shall be deemed to be one obligation of the deemed consolidated Debtors.

Such deemed consolidation, however, shall not (other than for purposes related to funding distributions under the Plan) affect (a) the legal and organizational structure of the Debtors, (b) executory contracts or unexpired leases that were entered into during the Chapter 11 Cases or that have been or will assumed or rejected, (c) any agreements entered into by the Liquidating Trust on the Effective Date, and (d) the Debtors' or Liquidating Trust's ability to subordinate or otherwise challenge Claims on an entity-by-entity basis. Moreover, the Plan Proponents reserve the right to seek confirmation of the Plan on an entity-by-entity basis.

In the event the Bankruptcy Court authorizes the Plan Proponents to substantively consolidate less than all of the Debtors' Estates: (a) the Plan shall be treated as a separate plan of liquidation for each Debtor not substantively consolidated and (b) the Plan Proponents shall not be required to resolicit votes with respect to the Plan.

#### 7.2. **Merger and Dissolution of the Debtors.**

Following the occurrence of the Effective Date, the Debtors shall be dissolved and such dissolution shall be effective as of the date the Debtors complete performance of their obligations under the Plan pursuant to the Confirmation Order without any further action by the Holders of Interests or directors of any of the Debtors, unless applicable law requires otherwise. As soon as reasonably practicable after the Effective Date, and after making all distributions required under the Plan from the Consummation Account and collecting and distributing all proceeds from the Debtors' remaining Assets other than those transferred to the Liquidating Trust, the Debtors shall file appropriate documentation in the applicable jurisdiction(s)



evidencing such dissolution, including, but not limited to, filing certificates of dissolution and any and all outstanding and final tax returns, and shall take all other reasonable and necessary action in order to carry out such dissolution in accordance with the terms of the Plan. Effective automatically as of the Effective Date, and without the necessity of any other or further act, instrument or Bankruptcy Court order, the Chapter 11 Cases shall be closed, except for Lead Case No. 13-13591.

7.3. **The Liquidating Trust.**

7.3.1. ***Establishment of the Liquidating Trust.***

On or before the Effective Date, the Debtors, on their own behalf and on behalf of the beneficiaries of the Plan, shall execute the Liquidating Trust Documents, in form and substance reasonably acceptable to the Debtors and the Committee, each in the exercise of its sole and absolute discretion, and all other reasonable and necessary steps shall be taken to establish the Liquidating Trust.

7.3.2. ***Purpose of the Liquidating Trust.***

The Liquidating Trust shall be established for the sole purpose of liquidating and distributing its assets, with no objective to continue or engage in the conduct of a trade or business. It is intended that the Liquidating Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d).

7.3.3. ***Liquidating Trust Assets.***

The Liquidating Trust shall consist of the Liquidating Trust Assets and the proceeds thereof. On the Effective Date, the Debtors shall transfer all of the Liquidating Trust Assets to the Liquidating Trust free and clear of all Liens, Claims, Interests and encumbrances. Title to all other assets shall remain vested with the Debtors, subject to the Liens, Claims, Interests and encumbrances on such assets that existed just prior to the Effective Date.

7.3.4. ***Governance of Liquidating Trust.***

The Liquidating Trust shall be governed and administered by the Liquidating Trustee subject to the terms of the Plan and the Liquidating Trust Documents including the rights of the Oversight Committee. The Liquidating Trustee shall direct all litigation brought on behalf of the Liquidating Trust.

After consultation with the Debtors and Wayzata, the Liquidating Trustee shall be appointed by the Committee pursuant to the terms of the Liquidating Trust Documents.

7.3.5. ***Role and Authority of the Liquidating Trustee.***

In furtherance of and consistent with the purpose of the Liquidating Trust and the Plan, the Liquidating Trustee shall, subject to the terms of the Plan and the Liquidating Trust

Documents, (a) have the power and authority to hold, manage, sell, and distribute the Liquidating Trust Assets to the Holders of Allowed Claims, (b) hold the Liquidating Trust Assets for the benefit of the holders of Allowed Claims, (c) have the power and authority to hold, manage, sell, and distribute Cash or non-Cash Liquidating Trust Assets obtained through the exercise of its power and authority, (d) subject to section 7.10. of the Plan, have the power and authority to threaten, assert, prosecute and resolve, in the names of the Debtors and/or the name of the Liquidating Trust, the Estate Causes of Action, (e) have the power and authority to perform such other functions as are provided in the Plan and Liquidating Trust Documents, (f) represent the interest and account of the Debtors before any taxing authority in all matters, including, but not limited to, any action, suit, proceeding, or audit, (g) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan; (h) have the power and authority to administer the closure of the Chapter 11 Cases.

The Liquidating Trustee shall be responsible for all decisions and duties with respect to the Liquidating Trust and the Liquidating Trust Assets, subject to the terms of the Plan and the Liquidating Trust Documents. In all circumstances, the Liquidating Trustee shall act in the best interests of all beneficiaries of the Liquidating Trust and in furtherance of the purpose of the Liquidating Trust.

On and after the Effective Date, any confidentiality obligations, attorney-client privilege, work-product privilege or other privilege or immunity attaching to any documents or communications shall vest in the Liquidating Trustee and its representatives, and the Liquidating Trustee and its representatives shall not otherwise waive such confidentiality, privilege or immunity without prior notice and a hearing before the Bankruptcy Court. The Debtors are authorized to take all actions they deem necessary to effectuate the transfer of such privilege, and any documents or communications that would otherwise be protected from discovery by virtue of any applicable privilege or immunity shall remain so protected. The Confirmation Order shall provide that the Liquidating Trustee's receipt of transferred privileges shall be without waiver in recognition of the joint and/or successorship interest in prosecuting claims on behalf of the Debtors' Estates. If any privileged documents are inadvertently produced to third parties, such production shall not be deemed to destroy any privilege or be deemed a waiver of any confidentiality protections afforded to such privileged documents.

#### 7.3.6. *Liquidating Trust Accounts.*

The Liquidating Trustee shall deposit and maintain any and all funds of the Other GUC Escrow in a segregated account for distribution solely in accordance with section 7.3.9. of the Plan and the Liquidating Trust Documents.

The Liquidating Trustee shall deposit and maintain any and all proceeds of Other Liquidating Trust Funds in a segregated account for distribution solely in accordance with section 7.3.10. of the Plan and the Liquidating Trust Documents. Except as otherwise provided in sections 7.3.8. and 7.3.10. of the Plan, in no event shall the Liquidating Trust be permitted to spend any Other Liquidating Trust Funds for any purpose, including, but not limited to, the payment of professional fees, costs and expenses, which payment shall be made solely from the Other GUC Escrow.

7.3.7. ***Cash.***

The Liquidating Trustee may invest Cash (including any earnings thereon or proceeds therefrom) as permitted by section 345 of the Bankruptcy Code, provided, however, that such investments are investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings, or other controlling authorities.

7.3.8. ***Fees, Costs and Expenses of the Liquidating Trust.***

(a) Any and all fees, costs and expenses of the Liquidating Trust, including those of the Liquidating Trustee and any and all professionals retained by the Liquidating Trustee in connection with the Chapter 11 Cases shall be paid solely out of the Other GUC Escrow; provided, however, that any and all reasonable fees, costs and expenses of the Liquidating Trust, including those of the Liquidating Trustee and any and all professionals retained by the Liquidating Trustee, incurred in connection with (i) the litigation of Estate Causes of Action or (ii) the sale or other disposition of Unencumbered Assets shall be paid solely out of the Other Liquidating Trust Fund Escrow.

(b) The Liquidating Trustee shall be entitled to reasonable compensation subject to the terms and provisions of the Liquidating Trust Documents.

(c) The Liquidating Trustee may retain and reasonably compensate professionals to assist it in its duties as Liquidating Trustee on such ordinary and customary and commercially reasonable terms as the Liquidating Trustee deems appropriate without Bankruptcy Court approval. The Liquidating Trustee may retain any Professional Person who represented parties in the Chapter 11 Cases or may choose to retain other professionals. Any and all reasonable fees, costs and expenses of these professionals shall be paid solely out of the Other GUC Escrow; provided, however, that any and all reasonable fees, costs and expenses of such professionals incurred in connection with (i) the litigation of Estate Causes of Action or (ii) the sale or other disposition of Unencumbered Assets shall be paid solely out of the Other Liquidating Trust Fund Escrow.

7.3.9. ***Distribution of Other GUC Escrow Funds.***

The Liquidating Trustee shall distribute Other GUC Escrow Funds in the following order:

(a) First, distributions of Other GUC Escrow Funds shall be made to compensate and reimburse the reasonable fees, costs and expenses incurred by the Liquidating Trustee and any professionals retained by the Liquidating Trustee in connection with the Chapter 11 Cases on and after the Effective Date.

(b) Second, following the distributions set forth in section 7.3.9.(a) of the Plan, distributions of the balance, if any, of Other GUC Escrow Funds shall be made on a Pro

Rata basis to Holders of Allowed Priority Non-Tax Claims.

(c) Third, following the distributions set forth in sections 7.3.9.(a) and 7.3.9.(b) of the Plan, distributions of the balance, if any, of Other GUC Escrow Funds shall be made on a Pro Rata basis to Holders of Allowed General Unsecured Claims and Holders of Allowed Insured Deficiency Claims; provided, however, that Holders of the Allowed Noteholders Deficiency Claims shall not receive any distributions of Other GUC Escrow Funds in accordance with the Plan.

7.3.10. ***Distribution of Other Liquidating Trust Funds.***

The Liquidating Trustee shall distribute Other Liquidating Trust Funds as soon as reasonably practicable, in the following manner:

(a) Seventy percent (70%) of the proceeds, if any, in the Other Liquidating Trust Fund Escrow, less the payment of any and all reasonable fees and expenses of the Liquidating Trust, including those of the Liquidating Trustee and any and all professionals retained by the Liquidating Trustee, incurred in connection with (i) the litigation of Estate Causes of Action or (ii) the sale or other disposition of Unencumbered Assets, shall be made to the Holders of the Allowed Noteholders Claims.

(b) Thirty percent (30%) of the proceeds, if any, in the Other Liquidating Trust Fund Escrow, less the payment of the reasonable fees and expenses of the Liquidating Trust, including those of the Liquidating Trustee and any and all professionals retained by the Liquidating Trustee, incurred in connection with (i) the litigation of Estate Causes of Action or (ii) the sale or other disposition of Unencumbered Assets, shall be made first to Holders of Allowed Priority Non-Tax Claims as provided under section 5.1.2.(b) of the Plan with any remaining proceeds distributed to Holders of Allowed General Unsecured Claims and Holders of Allowed Insured Deficiency Claims on a Pro Rata basis.

7.3.11. ***Withholding.***

The Liquidating Trustee may withhold from amounts otherwise distributable to any Person and pay to the appropriate tax authority all amounts required to be withheld pursuant to the U.S. federal tax law or any provision of any non-U.S., state or local tax law with respect to any payment or distribution to the holders of interests in the Liquidating Trust. All such amounts withheld and paid to the appropriate tax authority shall be treated as amounts distributed to such holders of interests in the Liquidating Trust for all purposes of the Liquidating Trust Agreement. Entities entitled to receive distributions from the Liquidating Trust shall provide such information and take such steps as the Liquidating Trustee may reasonably require to ensure compliance with such withholding and reporting requirements, and to enable the Liquidating Trustee, as applicable, to obtain the certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law.

7.3.12. ***Time of Liquidating Trust Distributions.***

Distributions under the Plan by the Liquidating Trustee shall be made when reasonably practicable and in the sole and absolute discretion of the Liquidating Trustee.

7.4. **Federal Income Tax Treatment of Liquidating Trust.**

7.4.1. ***Liquidating Trust Assets Treated as Owned By Certain Creditors.***

For all federal income tax purposes, all parties (including the Debtors, the Liquidating Trustee, the Holders of Priority Non-Tax Claims, the Holders of the Noteholders Claims, the Holders of General Unsecured Claims, and the Holders of Insured Deficiency Claims) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust for the benefit of the Holders of Allowed Claims, whether Allowed on or after the Effective Date, as (a) a transfer of the Liquidating Trust Assets directly to the Holders of Allowed Claims in satisfaction of such Claims against the Debtors and, to the extent Liquidating Trust Assets are allocable to Disputed Claims, to the Disputed Claims Reserve, followed by (b) the transfer by such Holders to the Liquidating Trust of the Liquidating Trust Assets (other than the Liquidating Trust Assets allocable to the Disputed Claims Reserve) in exchange for beneficial interests in the Liquidating Trust. Accordingly, the Holders of such Claims shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the Liquidating Trust Assets.

7.4.2. ***Tax Reporting.***

(a) The Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this section 7.4.2. of the Plan. The Liquidating Trustee shall also annually send to each record Holder of a beneficial interest a separate statement setting forth the Holder's share of items of income, gain, loss, deduction, or credit and shall instruct all such Holders to report such items on their federal income tax returns or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns. The Liquidating Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit.

(b) Allocations of Liquidating Trust taxable income among the Holders of the Noteholders Claims, the Holders of Priority Non-Tax Claims, the Holders of General Unsecured Claims, and the Holders of Insured Deficiency Claims (other than taxable income allocable to the Disputed Claims Reserve) shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described herein) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of its other assets (valued for this purpose at their tax book value, and other than assets allocable to the Disputed Claims Reserve) to the holders of the Liquidating Trust interests, taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately

after a liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for this purpose shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the Treasury Regulations and other applicable administrative and judicial authorities and pronouncements.

(c) As soon as possible after the Effective Date, the Liquidating Trustee shall make or cause to be made a good faith valuation of the Liquidating Trust Assets. Such valuation shall be made available from time to time, to the extent relevant, and used consistently by all parties (including the Debtors, the Liquidating Trustee, the Holders of Priority Non-Tax Claims, the Holders of the Noteholders Claims, the Holders of General Unsecured Claims, and the Holders of Insured Deficiency Claims) for all federal income tax purposes.

(d) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (i) timely elect to treat any Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9, and (ii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Debtors, the Liquidating Trustee, the Holder of the Noteholders Claims, the Holders of Priority Non-Tax Claims, the Holders of General Unsecured Claims, and the Holders of Insured Deficiency Claims) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

(e) The Liquidating Trustee shall be responsible for payment, out of the Liquidating Trust Assets, of any U.S. federal, state, local, or non-U.S. taxes imposed on the trust or its assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such U.S. federal, state, local, or non-U.S. taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

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

#### 7.5. **Setoff and Recoupment.**

The Liquidating Trustee may, but shall not be required to, pursuant to and to the extent permitted by applicable law, setoff or recoup against any Claim asserted against any Debtor or its Estate, and the payments or other distributions to be made pursuant to the Plan and

Liquidating Trust Documents in respect of such Claim, any Claims, rights, or Cause of Action of any nature whatsoever that the Debtors or the Liquidating Trust may have against the Holder of such Claim pursuant to the Bankruptcy Code or applicable non-bankruptcy law; provided, however, that the Liquidating Trustee shall give the Holders of such Claim notice of the proposed setoff or recoupment and the Holder of such Claim does not object to the proposed setoff or recoupment within thirty (30) days; provided further that if an objection is timely raised to a proposed setoff or recoupment, the Liquidating Trustee may seek relief from the Bankruptcy Court to effectuate the setoff or recoupment; and provided further that neither the failure to effect a setoff or recoupment, nor the allowance of any Claim hereunder shall constitute a waiver, abandonment or release by the Liquidating Trustee of any such Claims, rights and Causes of Action that the Debtors or the Liquidating Trustee, may have against the Holder of such Claim.

**7.6. Noncertificated Liquidating Trust Interests.**

The beneficial interests in the Liquidating Trust shall not be certificated, except as otherwise provided in the Liquidating Trust Documents.

**7.7. Dissolution of the Liquidating Trust.**

The Liquidating Trustee and the Liquidating Trust shall be discharged or dissolved, as the case may be, at such time as (a) all Liquidating Trust Assets have been liquidated; (b) all distributions required to be made by the Liquidating Trustee under the Plan have been made; and (c) the Liquidating Trust is otherwise fully administered. In no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six (6) month period prior to the fifth (5th) anniversary (and, in the case of any extension, within six (6) months prior to the end of such extension), determines that a fixed period extension (not to exceed three (3) years together with any prior extensions, without a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets or the dissolution of the Debtors.

If at any time the Liquidating Trustee determines, in reliance upon such professionals as the Liquidating Trustee may retain, that the expense of administering the Liquidating Trust so as to make a final distribution to its beneficiaries is likely to exceed the value of the assets remaining in the Liquidating Trust, the Liquidating Trustee may apply to the Bankruptcy Court for authority to (a) reserve any amount necessary to dissolve the Liquidating Trust, (b) donate any balance to a charitable organization (i) described in section 501(c)(3) of the U.S. Internal Revenue Code, (ii) exempt from United States federal income tax under section 501(a) of the U.S. Internal Revenue Code, (iii) not a "private foundation", as defined in section 509(a) of the U.S. Internal Revenue Code, and (iv) that is unrelated to the Debtors, the Liquidating Trust, and any insider of the Liquidating Trustee, and (c) dissolve the Liquidating Trust.

7.8. **Securities Exempt.**

The issuance of the beneficial interests in the Liquidating Trust satisfies the requirements of section 1145 of the Bankruptcy Code and, therefore, such issuance is exempt from registration under the Securities Act of 1933, as amended, and any state or local law requiring registration.

7.9. **Dissolution of Committee.**

On the Effective Date, the Committee shall dissolve automatically and its members shall be deemed released and discharged from all rights, duties, responsibilities, liabilities, and obligations arising from, in connection with, or related to the Chapter 11 Cases, and the retention or employment of the Committee's attorneys, accountants and other agents, if any, authorized by order of the Bankruptcy Court, shall terminate; provided, however, that the Committee may appear at the hearing to consider applications for final allowances of compensation and reimbursement of expenses and prosecute any objections to such applications, if appropriate.

7.10. **Oversight Committee.**

7.10.1. ***Rights, Obligations and Duties of Oversight Committee.***

On the Effective Date, the Oversight Committee shall be formed, which committee shall consist of three (3) members, the Unsecured Creditors' Designees and Wayzata's Designee. Members of the Oversight Committee shall serve in such capacity without compensation. The Oversight Committee shall oversee the administration and implementation of the Plan and the liquidation and distribution of the Liquidating Trust Assets in accordance with the Plan and the Liquidating Trust Documents (except that Wayzata's Designee shall have no oversight powers or duties with respect to the Other GUC Escrow or the allowance or disallowance of General Unsecured Claims, Insured Deficiency Claims or Priority Non-Tax Claims), including the settlement of any Estate Causes of Action upon receiving a proposal of settlement from the Liquidating Trustee. The Liquidating Trustee shall produce such periodic reports as requested by the Oversight Committee with respect to the status of the distributions to Holders of Allowed General Unsecured Claims or the Allowed Noteholders Deficiency Claims. Oversight Committee decisions shall be made with unanimous written approval. In the event of a dispute, the dispute shall be resolved by the Bankruptcy Court upon motion of any Oversight Committee member or the Liquidating Trustee. The Oversight Committee shall have the following rights, obligations and duties:

(a) Approve the Liquidating Trustee's selection of, as well as the terms governing the engagement of, professionals to be engaged by the Liquidating Trust on behalf of the Liquidating Trust, who may have been previously engaged by the Debtors or the Committee, and establish retainer terms, conditions and budgets;

(b) Appear in Bankruptcy Court, as necessary;



(c) Seek an order terminating an Oversight Committee member and approving a replacement selected in a manner consistent with the original selection of such Oversight Committee member in the event the other member of the Oversight Committee determines there is cause to do so;

(d) Articulate the Oversight Committee's position in the event the Liquidating Trustee brings a dispute with the Oversight Committee to the Bankruptcy Court for resolution, or the Oversight Committee concludes it should bring a dispute with the Liquidating Trustee to the Bankruptcy Court for resolution;

(e) Approve the settlement of Estate Causes of Action where the amount originally sought to be recovered exceeds of \$25,000; it hereby being understood that the Liquidating Trustee shall have discretion to approve the settlement of Estate Causes of Action up to \$25,000; and

(f) For the Unsecured Creditors' Designees, approve the settlement of objections to General Unsecured Claims, Insured Deficiency Claims and Priority Non-Tax Claims where the face amount of the General Unsecured Claim or the Insured Deficiency Claim exceeds \$100,000 or where the face amount of the Priority Non-Tax Claims exceeds \$10,000.

7.10.2. ***Disputes Between Oversight Committee and Liquidating Trustee.***

Any disputes between and among the Oversight Committee, its members and the Liquidating Trustee shall be resolved by the Bankruptcy Court, if so requested upon motion by any of such parties.

7.10.3. ***Liability of Members of the Oversight Committee.***

Subject to any applicable law, the members of the Oversight Committee shall not be liable for any act done or omitted by any member in such capacity, while acting in good faith and in the exercise of business judgment. Members of the Oversight Committee shall not be liable in any event except for gross negligence or willful misconduct in the performance of their duties hereunder.

7.10.4. ***Indemnification of Members of the Oversight Committee.***

Except as otherwise set forth in this Plan and to the extent permitted by applicable law, the members of the Oversight Committee in the performance of their duties hereunder (the "Indemnified OC Parties") shall be defended, held harmless and indemnified from time to time by the Liquidating Trust to the extent such duties relate to the Liquidating Trust (and not any other Person) against any and all losses, Claims, costs, expenses and liabilities to which such Indemnified OC Parties may be subject by reason of such Indemnified OC Party's execution of duties pursuant to the discretion, power and authority conferred on such Indemnified OC Party by this Plan or the Confirmation Order; provided, however, that the indemnification obligations arising pursuant to this section 7.10.4. of the Plan shall not indemnify the Indemnified OC Parties for any actions taken by such Indemnified OC Parties which constitute fraud, gross

negligence or intentional breach of the Plan or the Confirmation Order. Satisfaction of any obligation of the Liquidating Trust, arising pursuant to the terms of this section 7.10.4. of the Plan shall be payable solely from the Liquidating Trust Assets, including, if available, any insurance maintained by the Liquidating Trust.

7.10.5. *Dissolution of Oversight Committee.*

Upon dissolution of the Liquidating Trust, the Oversight Committee shall be dissolved automatically and its members shall be deemed released and discharged from all rights, duties, responsibilities, liabilities, and obligations arising from, in connection with, or related to the Liquidating Trust.

7.11. **Effectuating Documents; Further Transactions.**

Any officer of Metro Affiliates, Inc., or any applicable Debtor or the Liquidating Trustee shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions contained herein.

7.12. **Cancellation of Existing Securities and Agreements.**

Except for purposes of evidencing a right to distributions under the Plan and Liquidating Trust Documents, on the Effective Date, all notes, including the Notes, shares of stock, warrants, agreements and other documents evidencing Claims or rights of any Holder of a Claim against or Interest in any of the Debtors and any agreements or guarantees related thereto shall be cancelled, terminated, deemed null and void and satisfied; provided, however, that notwithstanding anything else in the Plan, the Indenture shall continue in effect for the limited purpose of (a) allowing the Noteholders to receive distributions from the Indenture Trustee on account of the Noteholders Claims pursuant to section 8.3. of the Plan, and (b) allowing the Indenture Trustee to exercise its charging lien against such distribution for payment of the reasonable, documented and unpaid fees and expenses of the Indenture Trustee.

## ARTICLE VIII

### PROVISIONS GOVERNING DISTRIBUTIONS

8.1. **Distribution Record Date.**

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their agents shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Interests. The Liquidating Trustee shall have no obligation to recognize any transfer of any Claims or Interests occurring on or after the Distribution Record Date. The Liquidating Trustee shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Distribution

Record Date.

8.2. **Manner of Payment of Distributions.**

At the option of the Liquidating Trustee, any Cash payment to be made under the Plan and Liquidating Trust Documents may be made by check or wire transfer or as otherwise required or provided in applicable agreements. Cash payments made pursuant to the Plan and Liquidating Trust Documents in the form of checks issued by the Liquidating Trustee shall be null and void if not cashed within ninety (90) days of the date of issuance of such check. Requests for the reissuance of any check shall be made directly to the Liquidating Trustee in writing by the Holder of the Allowed Claim to whom such check was originally issued and within the ninety (90) days after the date of issuance of such check. If no request is made as provided in the preceding sentence, Claims in respect of such voided check shall be forever barred.

8.3. **Delivery of Distributions.**

Except as otherwise provided in the Plan, subject to Bankruptcy Rule 9010, all distributions to a Holder of an Allowed Claim shall be made at the address of such Holder as set forth on (a) the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents, as applicable, unless the Debtors have been notified in writing of a change in address, including, but not limited to, by the filing of a Proof of Claim by such Holder that contains an address for such Holder different from the address reflected on the Schedules for such Holder, (b) on the Proof of Claim filed such Holder, (c) in any notice of assignment filed with the Bankruptcy Court with respect to such Claim pursuant to Bankruptcy Rule 3001(e), or (d) in any notice served by such Holder giving details of a change of address; provided, however, that the initial distribution to Holders of Noteholders Claims shall be made to the Indenture Trustee. Following surrender of the Notes to the Indenture Trustee for cancellation, the Indenture Trustee shall distribute such funds to the Noteholders as of the Distribution Record Date, less any amounts necessary to pay the reasonable, documented, outstanding fees and expenses, if any, of the Indenture Trustee. Each Noteholder shall provide the Liquidating Trustee with information sufficient to register such Noteholder's deficiency claim and thereafter be entitled to receive any further distribution on account of such Claim directly from the Liquidating Trustee.

In the event that any distribution to a Holder is returned as undeliverable, no distribution shall be made to such Holder unless the Debtors or the Liquidating Trustee, as applicable, is notified in writing of such Holder's then current address within ninety (90) days after such distribution was returned as undeliverable. If written notice is provided within the ninety (90) days, then the Disbursing Agent shall make such distribution to such Holder without interest. If written notice is not provided within the ninety (90) days, then such distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code ("Unclaimed Property") and all unclaimed property or interest in property shall revert to the Liquidating Trust for distribution to the Holder of other Allowed Claims. The Claim of the Holder originally entitled to such Unclaimed Property or interest in property shall be forever barred.

8.4. **De Minimus Distributions.**

The Liquidating Trustee shall not be required to make distributions on account of any Allowed Claim (a) if the aggregate amount of all distributions authorized to be made on such date is less than one hundred thousand dollars (\$100,000), in which case such distributions shall be deferred to the next distribution date, or (b) if the amount to be distributed to that Holder on the particular distribution date is less than twenty dollars (\$20), unless such distribution constitutes the final distribution to such Holder.

8.5. **No Distribution in Excess of Allowed Amount of Claim.**

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any distributions, which individually or in the aggregate, exceed the Allowed amount of such Claim.

8.6. **Allocation Between Principal and Accrued Interest.**

Distributions in respect of Allowed Claims shall be allocated first to the principal amount (as determined for federal income tax purposes) of such Claims, and then, to the extent the consideration exceeds the principal amount of such Claims, to any portion of such Claims for accrued but unpaid interest.

## ARTICLE IX

### PROCEDURES FOR DISPUTED CLAIMS

9.1. **Prosecution of Objections to Claims on and after the Effective Date.**

On and after the Effective Date, only the Liquidating Trust shall be entitled to object to, settle, compromise, withdraw or litigate objections to, or request the estimation of Claims against the Debtors, their respective Estates, Assets or properties; provided, however, that only the Debtors shall be entitled to object to, settle, compromise, withdraw or litigate objections to Administrative Claims or any other Claims to be paid from the Consummation Account.

Objections and requests for estimation shall be served on the respective Holder of the Claim and filed with the Bankruptcy Court on or before the "Claims Objection Deadline", which shall be the date that is the later of (a) one hundred eighty (180) days after the Effective Date and (b) such other date as may be fixed by the Bankruptcy Court upon a motion filed by the Liquidating Trust. Any fees, costs or expenses incurred by the Liquidating Trustee in objecting to Claims shall be borne by the Liquidating Trust out of the Other GUC Escrow. On the Effective Date, all outstanding objections to and requests for estimation of Claims will vest in the Liquidating Trust.

9.2. **Estimation of Claims.**

The Liquidating Trustee or the Debtors, as applicable, may, at any time, request

that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Liquidating Trustee previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount will 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 such Claim, the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

9.3. **No Distributions Pending Allowance.**

Notwithstanding any other provision in the Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that all or a portion of a Disputed Claim is disallowed, the Holder of such Disputed Claim shall not receive any distribution on account of the portion of such Disputed Claim that is Disallowed and any property withheld pending the resolution of such Disputed Claim shall be reallocated Pro Rata to the Holders of Allowed Claims in the same Class.

9.4. **Reserve for Disputed Claims.**

The Liquidating Trustee shall establish appropriate reserves for Disputed Claims by withholding one hundred percent (100%) of the distributions to which the Holders of such Disputed Claims would be entitled to under the Plan and Liquidating Trust Documents if such Disputed Claims were Allowed Claims.

9.5. **Distributions After Allowance.**

To the extent that a Disputed Claim becomes an Allowed Claim, distribution (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan, Confirmation Order, and the Liquidating Trust Documents. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan and Liquidating Trust Documents.

9.6. **Disallowed Claims.**

Any Claim held by an Entity against whom any Debtor or the Liquidating Trustee has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, 550, 551 and/or 553 of the Bankruptcy Code, shall be deemed a Disallowed Claim pursuant to section 502(d) of the Bankruptcy Code and the Holder of such Claim shall not

be entitled to vote to accept or reject the Plan. Claims that are deemed Disallowed Claims pursuant to this section 9.6. of the Plan shall continue to be Disallowed Claims for all purposes until such Cause of Action has been settled or resolved by Final Order and any sums due to the Debtors or the Liquidating Trust from such party have been paid.

## ARTICLE X

### EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### 10.1. **Rejection, Assumption, and Assumption and Assignment of Executory Contracts and Unexpired Leases.**

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed or assumed and assigned with the approval of the Bankruptcy Court shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (a) is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (b) is subject to a pending motion to assume such Executory Contract or Unexpired Lease as of the Effective Date; (c) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (d) is an insurance policy. For the avoidance of doubt, the provisions of the Plan shall not diminish or impair in any manner the enforceability and/or coverage of any insurance policy maintained by or for the benefit of any of the Debtors.

Subject to the occurrence of the Effective Date, entry of the Confirmation Order by the Bankruptcy Court shall constitute (a) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption or assumption and assignment of the Executory Contracts and Unexpired Leases assumed or assumed and assigned pursuant to section [10.1.] of the Plan, (b) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts and Unexpired Leases rejected pursuant to section 9.1 of the Plan, and (c) a finding by the Bankruptcy Court that each such assumption, assumption and assignment, or rejection is in the best interest of the Debtors, their respective Estates, Assets and properties, and all parties in interest in the Chapter 11 Cases.

#### 10.2. **Cure of Defaults for Executory Contracts and Unexpired Leases.**

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Obligation in Cash on the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (a) the amount of the Cure Obligation, (b) the ability of the Debtors' Estates or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (c) any other matter pertaining to assumption, the Cure Obligations required by section 365(b)(1) of the Bankruptcy Code shall be satisfied following the entry of a Final Order or orders resolving the dispute and approving the

assumption; provided that prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidating Trustee, may settle any dispute regarding the amount of any Cure Cost without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

At least fourteen (14) days before the Confirmation Hearing, the Debtors shall cause notice of proposed assumption and proposed Cure Obligations to be sent to applicable counterparties. Any objection by such counterparty must be filed, served, and actually received by the Debtors not later than fourteen (14) days after service of notice of the Debtors' proposed assumption and associated Cure Obligations. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or Cure Obligation.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Obligations, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of assumption and/or assignment. Anything in the Schedules and any Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed and assigned shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

### **10.3. Claims Based on Rejection of Executory Contracts and Unexpired Leases.**

Unless otherwise provided by an order of the Bankruptcy Court, any Claim against the Debtors arising out of the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan, must be filed in the form of a Proof of Claim with the Bankruptcy Court and served on the Debtors and the Liquidating Trustee, as applicable, no later than thirty (30) days after the later of service of (a) notice of entry of an order approving the rejection of such Executory Contract or Unexpired Lease, and (b) notice of occurrence of the Effective Date. Any such Claims not filed within such time shall be forever barred from assertion against the Debtors, their respective Estates, Assets or properties.

Holders of Claims arising out of the rejection of Executory Contracts or Unexpired Leases for which Proofs of Claim were not timely filed as set forth in this section 10.3. of the Plan shall not: (a) be treated as a Creditor with respect to such Claim; (b) be permitted to vote to accept or reject the Plan on account of any Claim arising out of such rejection; or (c) participate in any distribution in the Chapter 11 Cases on account of such Claim, and any Claim arising out of the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, their respective Estates, Assets or properties, the Liquidating Trust, or the Liquidating Trustee for any of the foregoing without the need for any objection by the Debtors or the Liquidating Trustee, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed forever compromised, settled, and released, notwithstanding anything in the Schedules or a Proof

of Claim to the contrary. All Allowed Claims arising out of the rejection of the Executory Contract or Unexpired Lease shall be classified as Allowed General Unsecured Claims against the appropriate Debtor, except as otherwise provided by order of the Bankruptcy Court.

**10.4. Reservation of Rights.**

Nothing contained in the Plan, including this section 10.4. of the Plan, shall constitute a waiver of any Claim, right or Cause of Action that the Debtors or the Liquidating Trust, as the case may be, may hold against the insurer under any policy of insurance or insurance agreement.

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors' Estates have any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Liquidating Trustee, as applicable, shall have ninety (90) days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

**ARTICLE XI**

**CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE**

**11.1. Conditions Precedent to Confirmation.**

The Plan will not be confirmed, and the Confirmation Order will not be entered, until and unless each of the following conditions has occurred or has been waived in accordance with the terms of the Plan:

(a) the Confirmation Order shall be in form and substance reasonably acceptable to the Debtors, the Committee, the Indenture Trustee and Wayzata, each in the exercise of its sole and absolute discretion;

(b) the Confirmation Order shall, among other things, provide that all transfers of property by the Debtors: (i) to the Liquidating Trust (1) are or shall be legal, valid, and effective transfers of property, (2) vest or shall vest the Liquidating Trust with good title to such property free and clear of all Liens; Claims, Interests and encumbrances, except as otherwise provided in the Plan or Confirmation Order, (3) do not and shall not constitute voidable transfers under the Bankruptcy Code or under applicable non-bankruptcy law, (4) shall be exempt from any transfer, sales, stamp or other similar tax (which exemption shall also apply to the transfers by the Liquidating Trust), and (5) do not and shall not subject the Liquidating Trustee or Holders of Claims to any liability by reason of such transfer under the Bankruptcy Code or under applicable non-bankruptcy law, including, but not limited to, any laws affecting successor or transferee liability; and (ii) to Holders of Claims under the Plan are for good and valuable consideration;



(c) all of the Plan Documents, including, but not limited to, the Liquidating Trust Documents, shall be in form and substance reasonably acceptable to the Debtors, the Committee, the Indenture Trustee and Wayzata, each in the exercise of its sole and absolute discretion;

(d) the Confirmation Order shall authorize the appointment of all parties appointed under or in accordance with the Plan, including, but not limited to, the establishment and funding of the Other GUC Escrow, the establishment of the Liquidating Trust and the appointment of the Liquidating Trustee, and direct such parties to perform their obligations under such documents; and

(e) the Confirmation Order shall order, find, and decree that the Plan complies with all applicable provisions of the Bankruptcy Code, including that the Plan was proposed in good faith.

**11.2. Conditions Precedent to the Occurrence of the Effective Date.**

The Effective Date of the Plan shall occur unless and until each of the following conditions has occurred or has been waived in accordance with the terms of the Plan:

(a) the Confirmation Order shall have been entered, shall have become a Final Order, and shall be in form and substance reasonably acceptable to the Debtors, the Committee, the Indenture Trustee and Wayzata, each in the exercise of its sole and absolute discretion;

(b) the Liquidating Trust Assets shall have been transferred to the Liquidating Trust in accordance with section 7.3.3. of the Plan;

(c) all of the Plan Documents, including, but not limited to, the Liquidating Trust Documents, shall be in form and substance reasonably acceptable to the Debtors, the Committee, the Indenture Trustee and Wayzata, each in the exercise of its sole and absolute discretion, and shall have been executed and delivered by the parties thereto;

(d) All DIP Claims, including the Supplemental Loans, shall have been indefeasibly paid in full in Cash and shall not be subject to any recharacterization, subordination, setoff, recoupment, reduction or allocation of any kind;

(e) the Wayzata and Blue Wolf Advisor Fees and Expenses shall have been indefeasibly paid in full in Cash; and

(f) the Liquidating Trustee shall have received all funds held in the Other GUC Escrow.

**11.3. Waiver of Conditions.**

Except as to those conditions precedent to (a) the confirmation of the Plan

(section 11.1 of the Plan) and (b) the occurrence of the Effective Date (section 11.2. of the Plan) which require the acceptance or consent of the Indenture Trustee and Wayzata, the Debtors and the Committee, each in the exercise of its sole and absolute discretion, may mutually agree to waive, in whole or in part, any of the conditions to the confirmation or the occurrence of the Effective Date of the Plan or modify or extend the time for satisfying any such condition.

11.4. **Notices to Bankruptcy Court.**

The Debtors shall notify the Bankruptcy Court in writing promptly after the Effective Date that the Effective Date has occurred by filing a notice on the docket of the Chapter 11 Cases.

11.5. **Effect of Non-Occurrence of Conditions.**

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or Claims against or Interests in the Debtors; (b) prejudice in any manner the rights of the Debtors' Estates, any Holders, or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking by the Debtors or their respective Estates, any Holders, or any other Entity in any respect.

## ARTICLE XII

### EFFECT OF CONFIRMATION

12.1. **Rights of Action and Reservation of Rights.**

Except as otherwise provided in the Plan or the Confirmation Order, all Causes of Action of the Debtors shall survive confirmation of the Plan, and the Liquidating Trustee shall reserve, retain and may, subject to section 7.10. of the Plan, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) all Estate Causes of Action. Except as otherwise expressly set forth herein, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver, the relinquishment of, a bar or limitation by any estoppel or res judicata, or otherwise prejudice, any right or Causes of Action that the Debtors may have or which the Liquidating Trustee may choose to assert under any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, but not limited to, any and all Claims against any Entity, to the extent such Entity asserts a cross-claim, counterclaim and/or Claim for setoff which seeks affirmative relief against any of the Debtors, their officers, directors or representatives. On and after the Effective Date, subject to section 7.10. of the Plan, the Liquidating Trustee shall be deemed the appointed and authorized representative to, and may pursue, litigate, compromise, settle, transfer or assign any such rights, claims, Causes of Action, suits or proceedings as appropriate.

12.2. **Satisfaction of Claims and Termination of Interests.**

Subject to the occurrence of the Effective Date and except as otherwise provided

in the Plan or the Confirmation Order, as of the Effective Date, (a) the distributions and rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for and in full and final satisfaction, settlement, release, and compromise of all Claims against the Debtors, and in full and final satisfaction, settlement, release, and compromise of all Interests and the termination of Interests in the Debtors, their respective Estates, Assets or properties, and (b) any interest accrued on Claims against the Debtors, their respective Estates, Assets and properties from and after the Petition Date shall be cancelled. Accordingly, except as otherwise provided in the Plan or the Confirmation Order, confirmation of the Plan shall, as of the Effective Date, satisfy, terminate and cancel all Claims against the Debtors, their respective Estates, Assets and properties and Interests and all other rights of equity security holders in the Debtors, their respective Estates, Assets and properties.

Subject to the occurrence of the Effective Date and except as otherwise provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities shall be precluded from asserting against the Debtors, their respective Estates and Assets, the Liquidating Trust, or their respective successors or property, any other or further Claims, debts, rights, Causes of Action, liabilities or Interests based upon any act, omission, transaction or other activity of any kind or nature that occurred prior to the Petition Date.

No Entity holding a Claim may receive any payment from, or seek recourse or recovery against, any Assets that are to be distributed under the Plan, other than Assets required to be distributed to that Entity in accordance with the Plan.

### 12.3. **Term of Injunctions or Stays.**

Except as otherwise provided in the Plan or the Confirmation Order, on and after the Effective Date, all Entities that hold, have held, or may hold a Claim or other debt, right, Cause of Action or liability against the Debtors or an Interest or other right of an equity security holder that is terminated pursuant to the provisions of the Plan, are permanently enjoined from taking any of the following actions on account of, or on the basis of, such Claims, debts or liabilities, or terminated Interest or rights (other than actions brought to enforce any rights or obligations under the Plan or the Confirmation Order): (a) commencing or continuing any action or other proceeding against the Debtors or the Liquidating Trust, as applicable, or their respective property; (b) enforcing, attaching, collecting or recovering any judgment, award, decree or order against the Debtors or the Liquidating Trust, as applicable, or their respective property; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtors or the Liquidating Trust, as applicable, or their respective property; (d) asserting any setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due the Debtors or the Liquidating Trust, as applicable, or their respective property; and (e) commencing or continuing any judicial or administrative proceeding, in any forum, that does not comply with or is inconsistent with the provisions of the Plan.

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 until the Effective Date.

12.4. **Releases.**

12.4.1. *Releases By the Debtors.*

Except as otherwise provided in the Plan or the Confirmation Order, on and after the Effective Date, the Debtors, on their own behalf and on behalf of their respective Estates and any Entity seeking to exercise the rights of the Debtors' Estates (including, but not limited to, the Liquidating Trustee on behalf of the Liquidating Trust, any trustee or Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code or any of their predecessors or successors (including any trustee or other estate representative appointed in these Chapter 11 Cases or any successor cases)), shall be deemed to release unconditionally the Released Parties and their respective property from any and all Claims, debts, obligations, rights, suits, judgments, damages, actions, causes of action, remedies, and liabilities of any nature whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing as of the Effective Date or thereafter arising, at law, in equity, or otherwise, that the Debtors would have been legally entitled to assert in its own right (whether individually or collectively) or that any Holder of a Claim against or Interest in the Debtors, or any other Entity would have been legally entitled to assert on behalf of the Debtors or their respective Estates, based in whole or in part upon any act or omission, transaction, agreement, event, or other occurrence taking place or existing on or prior to the Effective Date in connection with, arising from, or related to in any way to the Debtors, their respective Estates, Assets or properties, the Plan, or these Chapter 11 Cases; **provided, however,** that the foregoing releases by the Debtors shall not operate to waive or release any Claims or Causes of Action of any Debtor or their respective Estate against a Released Party (a) arising under any contractual obligation owed to the Debtors that is entered into or assumed pursuant to the Plan or (b) which results from any act or omission that is judicially determined pursuant to a Final Order to have resulted from such Released Party's fraud, willful misconduct or gross negligence.

Without limiting the generality of the foregoing paragraph, to the extent permitted by law, the Debtors and any successors-in-interest of the Debtors shall waive all rights under any statutory provision purporting to limit the scope or effect of a general release, whether due to lack of knowledge or otherwise.

12.4.2. *Releases By Holders of Claims.*

To the fullest extent permissible under applicable law, and except as otherwise provided in the Plan or the Confirmation Order, on and after the Effective Date, the Creditor Releasing Parties shall be deemed to release unconditionally the Released Parties and their respective property from any and all Claims, debts, obligations, rights, suits, judgments, damages, actions, causes of action, remedies, and liabilities of any nature whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, at law, in equity, or otherwise, they hold that are in connection with any of the Debtors, their respective Estates, Assets or properties, the Plan, or these Chapter 11 Cases; **provided, however,** that the foregoing

releases by the Creditor Releasing Parties shall not operate to waive or release any Released Party on account of liability that is judicially determined pursuant to a Final Order to have resulted from such Released Party's fraud, willful misconduct or gross negligence.

To the extent a Holder of a Claim votes to accept the Plan, and does not otherwise opt out, such Holder of a Claim shall be bound by the releases set forth in this section 12.4.2. of the Plan. To the extent a Holder of a Claim either (i) votes to reject the Plan, (ii) does not vote on the Plan or (iii) votes to accept the Plan but opts out, such Holder of a Claim shall not be bound by the releases set forth in this section 12.4.2. of the Plan unless such Holder of a Claim specifically opts to accept the releases in this section 12.4.2. of the Plan.

12.4.3. *No Waiver of Estate Causes of Action.*

All Estate Causes of Action, except for Estate Causes of Action against Released Parties, are expressly reserved and shall not be subject to the releases set forth in sections 12.4.1. or 12.4.2. of the Plan.

12.5. **Compromise and Settlement of Estate Causes of Action, Claims and Controversies.**

On and after the Effective Date, the Liquidating Trustee shall be authorized, subject to the Plan (including the rights granted to the Oversight Committee in this Plan), and the Liquidating Trust Documents, to compromise and settle Estate Causes of Action, Claims and controversies without review or approval by the Bankruptcy Court or any other party in interest. Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution, and other benefits provided under the Plan, unless otherwise provided in the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan.

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 Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their respective Estates, Creditors, and other parties in interest, and are fair, equitable, and within the range of reasonableness. For the avoidance of doubt, entry of the Confirmation Order shall constitute (a) the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases provided in sections 12.4.1. and 12.4.2. of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and (b) the Bankruptcy Court's finding that the release provided in sections 12.4.1. and 12.4.2. of the Plan is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good-faith settlement and compromise of the Claims released by sections 12.4.1. and 12.4.2. of the Plan; (iii) in the best interests of the Debtors' Estates and all Holders of Claims and Interests; (iv) fair, equitable, and reasonable; (v) given and made after due notice and opportunity for hearing; and (vi) a bar to any of the Debtors, their respective Estates, and any Entity seeking to exercise the

rights of the Debtors' Estates (including, but not limited to, the Liquidating Trustee on behalf of the Liquidating Trust, or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code), and Creditor Releasing Parties from asserting any Claim or Cause of Action released by sections 12.4.1. and 12.4.2. of the Plan, as applicable.

**12.6. Disallowed Claims and Disallowed Interests.**

On and after the Effective Date, the Debtors and the Liquidating Trust shall be fully and finally discharged of any and all liability or obligation on a Disallowed Claim or a disallowed Interest, and any order disallowing a Claim or an Interest which is not a Final Order as of the Effective Date solely because of an Entity's right to move for reconsideration of such order pursuant to section 502 of the Bankruptcy Code or Bankruptcy Rule 3008 shall nevertheless become and be deemed to be a Final Order on the Effective Date.

**12.7. Exculpation.**

**Pursuant to section 1125(e) of the Bankruptcy Code, the Exculpated Parties shall not be liable for any Cause of Action arising in connection with or out of the administration of the Chapter 11 Cases, pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct as determined by Final Order of the Bankruptcy Court. The Confirmation Order shall enjoin all Holders of Claims and Interests from asserting or prosecuting any Claim or Cause of Action against the Released Parties as to which such Entity has been exculpated from liability pursuant to the preceding sentence.**

**12.8. Injunctions.**

**As of the Effective Date, except as otherwise expressly provided in the Plan or the Confirmation Order, all Entities who have been, are, or may be Holders of Claims against or Interests in the Debtors shall be permanently, forever and completely stayed, restrained, prohibited, barred and enjoined from:**

**(a) taking any of the following actions against or affecting the Debtors, the Estates or the Assets, the Liquidating Trust or the Liquidating Trustee with respect to such Claims or Interests (other than actions brought to enforce any rights or obligations under the Plan or the Confirmation Order):**

**(i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including all suits, actions, and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);**

**(ii) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order;**

(iii) **creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance; and**

(iv) **asserting any setoff, right of subrogation or recoupment of any kind; and**

(b) **asserting, or otherwise proceeding against any of the Released Parties as to, any claims or Causes of Action released under sections 12.4.1. and 12.4.2. of the Plan.**

### **ARTICLE XIII**

#### **MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN**

##### **13.1. Modification of Plan.**

The Plan Proponents reserve the right to alter, amend or modify the Plan pursuant to section 1127 of the Bankruptcy Code at any time prior to the Confirmation Date. After such time and prior to substantial consummation of the Plan, the Plan Proponents may, so long as the treatment of Holders of Claims against or Interests in the Debtors under the Plan is not materially adversely affected, institute proceedings in Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002 or as the Bankruptcy Court shall otherwise order.

On and after the Effective Date, the Debtors or the Liquidating Trustee may, upon notice to the U.S. Trustee, the Oversight Committee, the Indenture Trustee and the Noteholders, and upon order of the Bankruptcy Court, amend or modify the Plan, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan; provided, however, that such amendment, modification, remedy or reconciliation does not materially and adversely affect the treatment of Holders of Claims against or Interests in the Debtors under the Plan.

##### **13.2. Revocation or Withdrawal of Plan.**

The Plan Proponents reserve the right to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, at any time prior to the Confirmation Date. If the Plan Proponents revoke or withdraw the Plan prior to the Effective Date, then the Plan shall be deemed null and void in all respects, and nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims by or Claims against or Interests in the Debtors; (b) prejudice in any manner the rights of the Debtors or their respective Estates, any Holders, or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking by the Debtors or their respective Estates, any Holders, or any other Entity in any respect.

## ARTICLE XIV

### RETENTION OF JURISDICTION

#### 14.1. Exclusive Jurisdiction of the Bankruptcy Court.

On and after the Effective Date, to the fullest extent permitted by law, and except as otherwise provided in the Plan, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising in, arising under, or related to the Chapter 11 Cases, or that relate to any of the following:

(a) To hear and determine any pending applications for the assumption or rejection of Executory Contracts or Unexpired Leases, and the resulting allowance of Claims against the Debtors.

(b) To determine any adversary proceedings, applications, contested matters and other litigated matters pending on the Effective Date.

(c) To ensure that distributions to Holders of Allowed Claims are accomplished as provided in the Plan.

(d) To hear and determine objections to or requests for estimation of Claims against the Debtors, including any objections to the classification of any Claims, and to allow, disallow and/or estimate Claims, in whole or in part.

(e) 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.

(f) To issue any appropriate orders in aid of execution of the Plan.

(g) To enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Plan and the Chapter 11 Cases.

(h) To recover all Assets of the Debtors and property of the Estates, wherever located.

(i) To hear and determine any applications to modify the Plan, to cure any defect or omission or to reconcile any inconsistency in the Plan or in any order of the Bankruptcy Court, including, but not limited to, the Confirmation Order.

(j) To hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes and tax benefits and similar or related matters with respect to the Debtors or their respective Estates arising prior to the Effective Date or relating to the period of administration of the Chapter 11 Cases, including, but not limited to, matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code.



(k) To hear and determine all applications for compensation and reimbursement of expenses of professionals under sections 327, 328, 330, 331, 363 and 503(b) of the Bankruptcy Code.

(l) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, the Disclosure Statement, the Confirmation Order, Plan Documents, Plan Supplements, and the Liquidation Trust Documents.

(m) To hear and determine other issues presented or arising under the Plan.

(n) To hear and determine other issues related to the Plan to the extent not inconsistent with the Bankruptcy Code.

(o) To resolve any dispute between the Liquidating Trustee and the Oversight Committee.

(p) To hear and determine any dispute or suit regarding setoff or recoupment.

(q) To enter a final decree closing the Chapter 11 Cases.

14.2. **Non-Exclusive Jurisdiction of the Bankruptcy Court.**

On and after the Effective Date, to the fullest extent permitted by law, and except as otherwise provided in the Plan, the Bankruptcy Court will retain non-exclusive jurisdiction to hear and determine any actions commenced on or after the Effective Date by the Liquidating Trustee, including, but not limited to, Avoidance Actions or other Causes of Action, or objections to Claims.

14.3. **Failure of the Bankruptcy Court to Exercise Jurisdiction.**

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Case, including with respect to the matters set forth above in this Article XIV, this Article XIV shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

15.1. **Computation of Time.**

In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply. If any payment, distribution, act or deadline under the Plan is required to be made or performed or occurs on a date that is not a Business Day, then the making of such payment, distribution, or the

performance of such act, or the occurrence of such deadline may be completed on the next succeeding Business Day.

**15.2. Governing Law.**

Except to the extent the Bankruptcy Code, the Bankruptcy Rules, or other federal laws are applicable, the laws of the State of New York shall govern the construction and implementation of the Plan and all rights and obligations arising under the Plan.

**15.3. Withholding and Reporting Requirements.**

In connection with the Plan and all instruments issued in connection therewith and distributions thereon, the Debtors and the Liquidating Trustee, as applicable, shall comply with all withholding, reporting, certification and information requirements imposed by any federal, state, local or foreign taxing authority and all distributions hereunder shall, to the extent applicable, be subject to any such withholding, reporting, certification and information requirements. All such amounts withheld and paid to the appropriate tax authority shall be treated as amounts distributed to such holders of interests in the Liquidating Trust for all purposes of the Liquidating Trust Agreement. Entities entitled to receive distributions hereunder shall provide such information and take such steps as the Debtors and the Liquidating Trustee, as applicable, may reasonably require to ensure compliance with such withholding and reporting requirements, and to enable the Debtors and the Liquidating Trustee, as applicable, to obtain the certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law.

**15.4. Section 1146 Exemption.**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of any security under the Plan; or the execution, delivery, or recording of an instrument of transfer pursuant to, in implementation of or as contemplated by the Plan; or the vesting, transfer, or sale of any property of the Debtors pursuant to, in implementation of or as contemplated by the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles, or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local government officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**15.5. Severability.**

In the event that any provision of the Plan is determined to be unenforceable, such determination shall not limit or affect the enforceability and operative effect of any other provisions of the Plan. To the extent that any provision of the Plan would, by its inclusion in the Plan, prevent or preclude the Bankruptcy Court from entering the Confirmation Order, the

Bankruptcy Court, on the request of the Debtors, may modify or amend such provision, in whole or in part, as necessary to cure any defect or remove any impediment to the Confirmation of the Plan existing by reason of such provision; provided, however, that such modification shall not be effected except in compliance with section 13.1. of the Plan.

15.6. **Reservation of Rights.**

If the Plan is not confirmed or does not become effective for any reason, the rights of all parties in interest in the Chapter 11 Cases are and shall be reserved in full.

15.7. **Binding Effect.**

The provisions of the Plan shall bind all Holders of Claims against and Interests in the Debtors, whether or not they have accepted the Plan, and shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Holder.

15.8. **No Admissions.**

The Plan shall not constitute or be construed as an admission of any fact or liability, stipulation, or waiver, but rather as a statement made in settlement negotiations. The Plan shall not be admissible in any non-bankruptcy proceeding nor shall it be construed to be conclusive advice on tax, securities, and other legal effects of the Plan as to Holders of Claims against and Interests in, the Debtors or their Affiliates.

15.9. **Notices.**

Any notices, requests, and demands required or permitted to be provided under the Plan, in order to be effective, shall be in writing and, unless otherwise expressly provided in the Plan, 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 follows:

**If to the Debtors:**

Metro Affiliates, Inc., et al.  
7 North Street  
Staten Island, NY 10302  
Attn: Nathan Schlenker

with a copy to

Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, NY 10036  
Attn: Lisa G. Beckerman, Esq.  
Rachel Ehrlich Albanese, Esq.

Tel: (212) 872-1000  
Fax: (212) 872-1002

**If to the Committee:**

Farrell Fritz, P.C.  
1320 RXR Plaza  
Uniondale, NY 11556  
Attn: Ted A. Berkowitz, Esq.  
Patrick Collins, Esq.  
Tel: (516) 227-0700  
Fax: (516) 227-0777

**If to the Indenture Trustee:**

The Bank of New York Mellon  
101 Barclay Street – 8W  
New York, NY 10007  
Attn: David Kerr

with a copy to

Carter Ledyard & Milburn LLP  
2 Wall Street  
New York, NY 10005  
Attn: James Gadsden, Esq.  
Tel: (212) 732-3200  
Fax: (212) 732-3232

**If to the Liquidating Trustee:**

[TBD]

Notice recipients identified in this section 15.9. of the Plan may, from time to time, change their address for future notices by delivering written notice of the change of address, which 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, to the Plan Proponents; provided, however, that the method, manner and form of notices, requests, and demands required or permitted to be provided under the Plan shall not be affected.

15.10. **Headings.**

The headings and sub-headings used in the Plan are inserted for convenience and for reference purposes only, and neither constitutes a portion of the Plan nor affects the construction of the provisions of the Plan in any manner.

15.11. **Conflict Between Plan, Disclosure Statement,  
Plan Documents, and Plan Supplements.**

In the event of any conflict between the terms and provisions in the Plan and the terms and provisions in the Disclosure Statement, any Plan Document or any document in the Plan Supplement, the terms and provisions in the Plan shall control and govern.

15.12. **Substantial Consummation.**

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101(2) and 1127(b) of the Bankruptcy Code.

[SIGNATURES ON NEXT PAGE]

Respectfully submitted,

Dated: March 31, 2014

**METRO AFFILIATES, INC., et al.**  
Debtors and Debtors in Possession

By:                   /s/ DRAFT                    
Name: Nathan W. Schlenker  
Title:

-and-

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

By:                   /s/ DRAFT                    
Name: Jean Claude Calixte  
Title: Chairperson  
Local 1181-1061  
Amalgamated Transit Union

Prepared by:

AKIN GUMP STRAUSS HAUER & FELD LLP  
Lisa G. Beckerman  
Rachel Ehrlich Albanese  
One Bryant Park  
New York, NY 10036  
Tel: (212) 872-1000  
Fax: (212) 872-1002

*Counsel to the Debtors and Debtors in Possession*

-and-

FARRELL FRITZ, P.C.  
Ted A. Berkowitz  
Patrick Collins  
Robert C. Yan  
1320 RXR Plaza  
Uniondale, NY 11556  
Tel: (516) 227-0700  
Fax: (516) 227-0777

*Counsel to the Official Committee of Unsecured Creditors*