

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

<b>In re:</b>	)	
	)	
<b>SHOTWELL LANDFILL, INC.,</b>	)	<b>Case No. 13-02590-8-SWH</b>
	)	
<b>Debtor.</b>	)	<b>Chapter 11</b>
	)	

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**SECOND AMENDED CONSOLIDATED CHAPTER 11 PLAN OF LIQUIDATION  
FOR SHOTWELL LANDFILL, INC., CAPITOL RECYCLING, LLC, CAPITOL  
WASTE TRANSFER, LLC, DEBRIS REMOVAL PARTNERS, LLC, SHOTWELL  
TRANSFER STATION II, INC., AND KING’S GRADING, INC.  
AS PROPOSED BY LSCG FUND 18, LLC**

Pursuant to the provisions of Section 1123 of the Bankruptcy Code, LSCG Fund 18, LLC (“LSCG”), a secured creditor and party-in-interest in this Chapter 11 case, hereby submits its Second Amended Consolidated Chapter 11 Plan of Liquidation (the “Plan”) for Debtors Shotwell Landfill, Inc., Capitol Recycling, LLC, Capitol Waste Transfer, LLC, Debris Removal Partners, LLC, Shotwell Transfer Station II, Inc., and King’s Grading, Inc. (each a “Debtor,” and collectively, the “Debtors” or the “Affiliated Debtors”):

**I. SUMMARY OF PLAN**

This Plan is in the best interests of all Creditors of the Affiliated Debtors, including LSCG and the Creditors whose interests are represented by the Unsecured Creditors’ Committee (the “Committee”). Shotwell Landfill, Inc. (“Shotwell”) owns and operates a landfill located at 4724 Smithfield Road, Wendell, North Carolina 27591 (the “Landfill”). The Affiliated Debtors’ Creditors, including LSCG, are best served if the Landfill and all of the Affiliated Debtors’ property (collectively, the “Property”)<sup>1</sup> are managed, marketed, and liquidated pursuant to the terms set forth herein, including but not limited to the following:

(a) On the Confirmation Date, the Affiliated Debtors’ principals (including, but not necessarily limited to, David W. King, Jr.) as well as the appointed Corporate Restructuring Officer, shall be removed as officers and principals of the Affiliated Debtors as well as from the conduct of the day-to-day operation of the Landfill, and a Liquidation Trustee shall be immediately appointed to manage, market, and liquidate the Property. The Liquidation Trustee is defined herein and approved by the Committee and LSCG prior to the Confirmation Date.

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<sup>1</sup> Nothing herein suggests that LSCG has a lien on the approximate \$1,000,000.00 cash that Shotwell has in its possession.

(b) Subject to approval by the Committee and LSCG, the Liquidation Trustee shall employ such appropriate professional or professionals to operate the Landfill pending its liquidation.

(c) Within six (6) months of the Confirmation Date (or such later time as the Liquidation Trustee shall determine only after consultation and approval by LSCG and the Committee), the Liquidation Trustee shall conduct an auction of the Property, including the Landfill. Any party that wishes to be a “stalking horse bidder” shall have forty-five (45) days from the Confirmation Date to submit a bid and bidding terms to the Liquidation Trustee, LSCG, and the Committee. Any such bid submitted herein shall allocate the proposed purchase price among the Property being purchased so as to reflect the amount being bid for the Landfill and the amounts being bid for all remaining Property. If any bid is submitted and accepted by all of the Liquidation Trustee, LSCG, and the Committee, within fifty (50) days after the Confirmation Date, the Liquidation Trustee, LSCG, and the Committee shall file a joint motion seeking approval of the stalking horse bid, bidding terms, and other auction procedures. Regardless of whether a stalking horse bid is recommended by the Liquidation Trustee, LSCG, and the Committee, the Liquidation Trustee shall conduct an auction in accordance with the terms and conditions provided in this Plan, including, but not necessarily limited to, the requirement that an auction of the Property shall occur no later than six (6) months following the Confirmation Date. However, as stated above, the Liquidation Trustee, after consultation and approval by LSCG and the Committee, may delay the auction of the Property, if such delay is determined to be in the best interest of the Debtors’ Creditors.

(d) All of the Debtors’ right, title and interest in and to the Property will be transferred to the third-party purchaser(s) free and clear of any and all liens, encumbrances, or other interests with any such liens, encumbrances, or other interests to be transferred to the proceeds realized at the auction, after payment of any sale costs and closing costs.

(e) Transfer of the Property pursuant to the Plan to a third-party purchaser shall be exempt from stamp or transfer tax pursuant to Section 1146 of the Bankruptcy Code.

(f) The Liquidation Trustee shall establish a trust account at a financial institution of the Liquidation Trustee’s choosing into which the Liquidation Trustee shall distribute all Net Proceeds from the sale of the Property, any cash remaining in any of the Debtors’ accounts after title to the Landfill is transferred and all checks written from such account have cleared, any recoveries from any Adversary Proceedings, and any other amounts realized from the collection and liquidation of the Debtors’ Property;

(g) As of the Confirmation Date, all causes of action that are property of the Debtors’ estates shall be vested in and be prosecuted by the Committee. As authorized by Section 1141(b), as of the Confirmation Date, the Property vests in the Liquidation Trustee until sold pursuant to the Plan.

(h) Each holder of an allowed Administrative Expense Claim or Tax Claim will be paid in accordance with Section 1129(9) and as provided herein.

(i) Each holder of an Allowed General Unsecured Claim will receive a Pro Rata cash distribution of any Carveout provided to General Unsecured Claims and any Net Proceeds remaining after payment of priority lienholder claims, including LSCG's Secured Claim, from the sale of any of the Property.

In addition, each holder of an Allowed General Unsecured Claim will receive a Pro Rata cash distribution of any net recovery, after payment or reimbursement of litigation fees and costs, from the Adversary Proceedings, and of any amount remaining in the Liquidation Trust after all Property has been liquidated and all litigation resolved.

(j) The amount of the Carveout to be provided to General Unsecured Creditors shall be determined as follows: If the total of the Net Proceeds resulting from the sale of all of the Property is less than \$13,000,000, there will be no Carveout for the General Unsecured Claims, and the holders of such claims will not receive any distribution from the Net Proceeds of the sale of the Property. If the Net Proceeds from the sale of the Property are greater than \$13,000,000, all Net Proceeds between \$13,000,000 and \$14,750,000 will be carved out for General Unsecured Creditors. Any Net Proceeds above \$14,750,000 will be used to pay applicable Secured Claims until such Secured Claims are paid in full. Net Proceeds in excess of the applicable Secured Claims and the Carveout will be distributed Pro Rata to the holders of Class X General Unsecured Claims. Any amounts remaining in the Liquidation Trust after payment in full of all Class I through Class X Claims and payment of all costs of administration of this bankruptcy case, including but not limited to the costs and expenses of the Liquidation Trustee and any professionals employed by him, will be paid to the Class XI Equity Interest Holders.

(k) The bar date for claimants to request allowance and payment of administrative expenses under Section 503(a) and for the Debtors' professionals to file their final fee applications under Section 330 will be thirty (30) days after the Confirmation Date. The bar date for objecting to any such request or application will be sixty (60) days after the Confirmation Date.

(l) The Committee shall have sixty (60) days after the Confirmation Date to object to any filed or scheduled claims. No distribution will be made on account of a Disputed Claim unless and until it is allowed pursuant to a Final Order. While a claim objection is pending, any proceeds that would otherwise be distributed on that claim will be held in escrow in the Liquidation Trust. The Committee will litigate, negotiate, and/or resolve any issues that arise relating to ownership of the Property or any other assets of the Debtors.

(m) Upon information and belief, the owners of the Debtors are David A. Cook and David W. King, Jr. (the "Equity Security Holders"). The Equity Security Holders shall receive a distribution only after all other costs of administration and all Allowed Secured Claims, Allowed Administrative Expense and Tax Claims, and Allowed General Unsecured Claims are paid in full.

(n) As the Property is sold, the Net Proceeds shall be deposited into the Liquidation Trust. Once all the Property has been sold, the Liquidation Trustee shall make disbursements to Creditors and Equity Security Holders in order of their respective priorities: first to Secured Creditors with an Allowed Secured Claim on the property sold (except for any Carveout provided for General Unsecured Claims in the Plan), then to holders of General Unsecured Claims, and finally to holders of Equity Security Interests.

(o) Pursuant to Section 1129(a)(4), all payments for services and costs made pursuant to the Plan are subject to the approval of the Court.

(p) Pursuant to Section 1129(a)(12), all quarterly fees and any other fees due to the Bankruptcy Administrator's office will be paid under the Plan.

## **II. DEFINITIONS**

1. "Administrative Expense Claim" shall mean any Claim (other than a Tax Claim) entitled to priority in payment under Sections 503 and 507. Administrative Expense Claims include the fees and expenses of the Debtors professionals to the extent allowed by the Court.

2. "Affiliated Debtors" shall mean the six debtors in cases pending before the Bankruptcy Court, namely, Shotwell Landfill, Inc., Capitol Recycling, LLC, Capitol Waste Transfer, LLC, Debris Removal Partners, LLC, Shotwell Transfer Station II, Inc., and King's Grading, Inc.

3. "Allowed Claim" shall mean a Claim that (a) is allowed pursuant to the Plan, (b) is scheduled by the Debtors as being undisputed, non-contingent and liquidated and as to which no timely objection is filed, or (c) is allowed or approved by final order of the Court.

4. "Bankruptcy Code" shall mean the United States Bankruptcy Code, title 11 of the United States Code, as enacted in 1978 and thereafter amended. References to "§\_\_\_\_" or "Section \_\_\_\_" herein shall refer to a section of the Bankruptcy Code, 11 U.S.C. §101, et seq.

5. "Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to Chapter 11 cases.

6. "Carveout" shall mean the carveout from any distribution to LSCG from the Net Proceeds of the sale of the Debtors' Property to be reserved for the payment of General Unsecured Claims as provided for in the Plan.

7. "Claim" shall mean a duly scheduled or a timely filed claim, including, but not limited to, an application or request for allowance and payment of an Administrative Expense Claim.

8. "Class" shall mean any one of the Classes of Claims or Interests designated in Article III of the Plan.

9. "Confirmation Date" shall mean the date of entry by the Court of an order confirming the Plan at or after a hearing pursuant to Section 1129.

10. “Confirmation Hearing” shall mean the hearing conducted by the Court regarding confirmation of the Plan pursuant to Section 1129.

11. “Confirmation Order” shall mean the order of the Court confirming the Plan provided such Confirmation Order shall be a Final Order.

12. “Court” shall mean the United States Bankruptcy Court for the Eastern District of North Carolina and the presiding judge in the Debtors’ Chapter 11 cases.

13. “Creditors” shall mean all creditors of the Debtors holding claims for debts, liabilities, demand or claims of any character whatsoever.

14. “Shotwell” shall mean Shotwell Landfill, Inc.

15. “Disbursing Agent” shall mean that person, if not the Liquidation Trustee, selected by the Liquidation Trustee and approved by the Court who shall perform the duties and have the rights and obligations described herein.

16. “Disclosure Statement” shall mean the Disclosure Statement describing this Plan and prepared in accordance with Section 1125 and approved by order of the Court, to be distributed to the holders of claims whose votes with respect to this Plan are to be solicited.

17. “Disputed Claim” shall mean any Claim (a) that is scheduled by the Debtor as disputed, contingent or unliquidated, or (b) that is scheduled by the Debtor, or proof of which has been filed with the Bankruptcy Court, and with respect to which a timely objection to its allowance, in whole or in part, has been filed and which objection has not been (i) withdrawn or settled, or (ii) determined by a Final Order.

18. “Effective Date” shall be the date on which the Property has been sold and transferred to a purchaser in accordance with the confirmed Plan in exchange for a certain amount of funds.

19. “Final Decree” shall mean the order of this Court pursuant to Bankruptcy Rule 3022 closing this case.

20. “Final Order” shall mean any order of the Court, including, but not necessarily limited to, the Confirmation Order, that is not stayed by any applicable law or Court order.

21. “General Unsecured Claim” shall mean any Claim, whether or not liquidated or contingent, other than a Tax Claim, an Administrative Expense Claim, a Priority Claim, or a Secured Claim.

22. “Impaired Class” shall mean any Class of Creditors or Equity Holders who are impaired within the meaning of Section 1124 because the legal, equitable, or contractual rights to which their Claims or Interests entitle them are altered by the Plan.

23. “Interest” shall mean any equity interest in the Debtors.
24. “Landfill” shall mean the landfill located at 4724 Smithfield Road, Wendell, North Carolina 27591.
25. “Later Petition Date” shall mean December 6, 2013, the date upon which the Affiliated Debtors other than Shotwell filed their voluntary Chapter 11 petitions.
26. “Liquidation Trust” shall mean a separate, interest-bearing depository account established pursuant to this Plan, from which payments to certain Creditors shall be made.
27. “Liquidation Trustee” shall be John Northen approved by LSCG and the Committee to operate, market, and then sell the Landfill and all the Debtors’ property.
28. “Net Proceeds” shall mean proceeds remaining after payment of any sale costs (including the payment of the Liquidation Trustee’s expenses) and closing costs, Administrative Expense Claims, Tax Claims, and Secured Claims other than that of LSCG.
29. “Plan” shall mean this Chapter 11 Plan of Liquidation in its present form or as it may be amended or modified from time to time hereafter.
30. “Pro Rata” shall mean the amount of cash or property to be paid or distributed to a claimant with respect to an Allowed Claim on a particular date, not to exceed five (5) months from the Effective Date, unless (1) such distribution is related to the Net Proceeds of Adversary Proceedings; or (2) otherwise ordered by the Court, in accordance with the ratio, as of such date, of the dollar amount of the Allowed Claim of such person in the indicated class to the aggregate dollar amount of Allowed Claims in the indicated class (including, in each such calculation, the full amount of Disputed Claims in the class which have been asserted or are otherwise pending and which have not yet been allowed or otherwise disposed of).
31. “Secured Claim” shall mean the Claim of any Creditor to the extent of the value of its interest in the Debtors’ real and personal property and any other Claim that the Court determines is secured pursuant to Section 506(a).
32. “Shotwell Petition Date” shall mean April 19, 2013, the date upon which Shotwell filed its voluntary Chapter 11 petition.
33. “Tax Claim” shall mean any claim entitled to priority in treatment pursuant to Section 507(a)(8) as well as Secured Claims based on unpaid taxes.

### **III. CLASSIFICATION AND TREATMENT OF CLASSES OF CREDITORS AND EQUITY HOLDERS**

#### **1. Class I - Administrative Expense Claims**

- (A) Classification. Class I consists of all Allowed Administrative Expense Claims.

(B) Impairment. This Class will be unimpaired.

(C) Treatment. Allowed Administrative Expense Claims must be filed within thirty (30) days of the Confirmation Date. Allowed Administrative Expense Claims shall be paid in cash and in full, net of any retainers, on the Effective Date or upon such other mutually acceptable terms as the holders of Class I Claims, LSCG, and the Committee may agree.

2. **Class II – Tax Claims:**

(A) Classification. Class II consists of Allowed Tax Claims.

(B) Impairment. This Class will be unimpaired.

(C) Treatment. Allowed Claims in this Class will be paid in full with interest at the rate set by Internal Revenue Code §§ 6601 and 6621 on the Effective Date.

3. **Class III – Secured Claim of LSCG:**

(A) Classification. Class III consists of the Secured Claim of LSCG.

(B) Impairment. This Class will be impaired.

(C) Treatment. LSCG shall have an Allowed Secured Claim in the amount of \$13,728,012.15, plus post-petition interest and attorneys' fees and costs approved by the Court. LSCG shall retain its first priority lien on the Landfill and its other collateral, and LSCG's claim shall continue to accrue interest at the contract rate.

Within ninety days (90) of the Confirmation Date, the Debtors' Property shall be auctioned or sold and the Net Proceeds deposited into the Liquidation Trust. Upon the sale of all of the Debtors' Property, the Liquidation Trustee shall pay the Net Proceeds (minus any Carveout due to holders of Class X General Unsecured Claims as provided herein) to LSCG for application against LSCG's Allowed Secured Claim, plus any post-petition interest and allowed Section 506(b) attorneys' fees and expenses, but only that portion of the Net Proceeds that is allocable to LSCG's collateral. Any deficiency remaining after application of the Net Proceeds from the sale of its collateral to LSCG's Claim shall be treated as a General Unsecured Claim and treated in accordance with Class X.

4. **Class IV – Caterpillar Financial Services Corporation Secured Claim**

(A) Classification. Class IV consists of the Secured Claim of Caterpillar Financial Services Corporation ("CFSC") filed through two proofs of claim in the amounts of \$90,112.24 and \$60,001.76.

(B) Impairment. This Class will be impaired.



(C) Treatment. The Class IV Secured Claim of CFSC will be allowed as a Secured Claim in the total amount of \$150,114.00, plus post-petition interest and attorneys' fees and costs acceptable to LSCG. CFSC will retain its first priority lien on the 2007 VermeerG-5000 Tub Grinder (the "Grinder"), the Ford F750 Dump Truck (the "Dump Truck"), the Peterbull 357 Tractor (the "Tractor"), and two Sterling LT9513 Trucks (the "Sterling Trucks").

LSCG will purchase the Class IV Secured Claim of CFSC within thirty (30) days of the Confirmation Date, and CFSC shall transfer its Class IV Secured Claim to LSCG, including its security interest in the Grinder, the Dump Truck, the Tractor, and the Sterling Trucks. The Grinder, the Dump Truck, the Tractor, and the Sterling Trucks will be sold in conjunction with the sale of the Debtors' Property as provided herein, and the Class IV Secured Claim will be paid in full from the proceeds of the sale of the Debtors' Property on the Effective Date.

5. **Class V – Ford Motor Credit Company LLC Secured Claim**

(A) Classification. Class V consists of the Secured Claim of Ford Motor Credit Company LLC ("Ford") filed in the amount of \$36,565.52.

(B) Impairment. This Class will be unimpaired.

(C) Treatment. Ford shall retain its lien. Ford's Allowed Secured Claim shall be paid according to the terms of the original contract between Ford and Shotwell Landfill, Inc. The Liquidation Trustee shall make monthly payments to Ford in the amount of \$736.32 until January 2018, when the last monthly payment is set to be paid under the original contract. Payments to Ford shall be made on or before the 9<sup>th</sup> day of the month, with the first such payment to be made on or before the 9<sup>th</sup> day of the first month following the Confirmation Date. However, if an objection to Claim is filed, the first payment shall be made within ten (10) business days following the resolution of that objection to Claim. Ford shall be required to send monthly statements to the Liquidation Trustee showing the payment due and the application of previous payments. Additionally, contemporaneously with his first monthly payment to Ford, the Liquidation Trustee shall cure all defaults under the terms of the original contract and compensate Ford for any damages as allowed by Section 1124(2) of the Bankruptcy Code. Within five (5) days of the Confirmation Date, Ford shall provide the Liquidation Trustee with the amounts necessary to cure all defaults under the terms of the original contract and compensate Ford for any damages as allowed by Section 1124(2) of the Bankruptcy Code. Any disagreement between the Liquidation Trustee and Ford with respect to these amounts shall be resolved by the Court.

6. **Class VI – Caterpillar Financial Commercial Account Corporation Secured Claim**

(A) Classification. Class VI consists of the Secured Claim of Caterpillar Financial Commercial Account Corporation ("CFCAC") filed in the amount of \$11,085.05.

(B) Impairment. This Class will be impaired.



(C) Treatment. CFCAC shall have an Allowed Secured Claim in the total amount of \$11,085.05, plus post-petition interest and attorneys' fees and costs acceptable to LSCG. CFCAC shall be allowed to retain its first priority lien on the 1-1998 Cat D250E Articulated Truck Serial No. 5TN01600 (the "CFCAC Truck").

LSCG will purchase the Class VI Secured Claim of CFCAC within thirty (30) days of the Confirmation Date, and CFCAC shall transfer its Class VI Secured Claim to LSCG, including its security interest in the CFCAC Truck. The CFCAC Truck will be sold in conjunction with the sale of the Debtors' Property as provided herein, and the Class VI Secured Claim will be paid in full from the proceeds of the sale of the Debtors' Property on the Effective Date.

7. **Class VII – TT&E Iron & Metal, Inc. Secured Claim**

(A) Classification. Class VII consists of the Secured Claim of TT&E Iron & Metal, Inc. ("TT&E") filed in the amount of \$138,267.33.

(B) Impairment. This Class will be impaired.

(C) Treatment. TT&E shall have an Allowed Secured Claim in the total amount of \$138,267.33, plus post-petition interest and attorneys' fees and costs approved by the Court. TT&E shall be allowed to retain its lien on its collateral ("TT&E's Collateral").

TT&E's Collateral will be sold in conjunction with the sale of the Debtors' Property as provided herein, and the Class VII Secured Claim will be paid in full from the proceeds of the sale of the Debtors' Property on the Effective Date.

8. **Class VIII – North State Bank Secured Claim**

(A) Classification. Class VIII consists of the Secured Claim of North State Bank ("NSB") filed in the amount of \$13,617.13.

(B) Impairment. This Class will be impaired.

(C) Treatment. NSB shall have an Allowed Secured Claim in the total amount of \$13,617.13, plus post-petition interest and attorneys' fees and costs approved by the Court. NSB shall be allowed to retain its lien on the 1997 CAT Backhoe Loader, the 2002 Massey Ferguson Tractor, the Hamm Smooth Drum Roller, the 2000 Caterpillar Articulated Truck, the 1998 Komatsu Dozer EX12, the 2005 Komatsu Dozer, and the 1998 Komatsu Crawler (the "NSB Collateral").

LSCG will purchase the Class VIII Secured Claim of NSB within thirty (30) days of the Confirmation Date, and NSB shall transfer its Class VIII Secured Claim to LSCG, including its security interest in the NSB Collateral. The NSB Collateral will be sold in conjunction with the sale of the Debtors' Property as provided herein, and the Class VIII Secured Claim will be paid in full from the proceeds of the sale of the Debtors' Property on the Effective Date.

9. **Class IX – Small Unsecured Claims**

(A) **Classification.** Class IX consists of all Allowed Claims that are General Unsecured Claims in the Affiliated Debtors' Chapter 11 cases that are less than \$5,000.00 ("Small Unsecured Claims").

(B) **Impairment.** This Class will be impaired.

(C) **Treatment.** Each holder of an Allowed Small Unsecured Claim shall be paid in full on the Effective Date by LSCG. However, if an objection to Claim is filed, the payment shall be made within ten (10) days following the resolution of that objection to Claim.

10. **Class X – General Unsecured Claims**

(A) **Classification.** Class X consists of all Allowed Claims that are General Unsecured Claims in the Affiliated Debtors' Chapter 11 cases, including but not limited to deficiency Claims, if any, of LSCG.

(B) **Impairment.** This Class will be impaired.

(C) **Treatment.** Each holder of an allowed General Unsecured Claim shall receive a Pro Rata distribution out of the Liquidation Trust. The amount available for distribution to the holders of General Unsecured Claims depends on the total amount of Net Proceeds resulting from the sale of the Debtors' Property as follows:

- If the total of the Net Proceeds resulting from the sale of all of the Debtors' Property is less than \$13,000,000, there will be no Carveout for the General Unsecured Claims and holders of such claims will not receive any distribution from the Net Proceeds of the sale of the Property.
- If the total of the Net Proceeds resulting from the sale of all of the Debtors' Property is greater than \$13,000,000, then all Net Proceeds between \$13,000,000 and \$14,750,000 will be carved out for Pro Rata distribution to General Unsecured Creditors.

Any Net Proceeds above \$14,750,000 will be used to pay applicable Secured Claims until such Secured Claims are paid in full. Net Proceeds in excess of the applicable Secured Claims and the Carveout will be distributed Pro Rata to holders of Class X General Unsecured Claims. Any amounts remaining in the Liquidation Trust after payment in full of all Class I through Class X Claims and payment of all costs of administration of the bankruptcy cases, including but not limited to the costs and expenses of the Liquidation Trustee and any professionals employed by him, will be paid to the Class XI Equity Interest Holders.

Holders of General Unsecured Claims will also receive a Pro Rata distribution from any Net Proceeds realized from the Adversary Proceedings, and any amounts remaining in the Liquidation Trust after payment in full of all claims in Classes 1 through Class IX and payment of all costs of

administration, including the approved fees and expenses of the Liquidation Trustee and any professionals employed by the Liquidation Trustee.

11. **Class XI - Equity Holders:**

(A) **Classification.** Class XI consists of the holders of the Interests in the Debtors, namely, David A. Cook and David W. King, Jr.

(B) **Impairment.** This Class will be impaired.

(C) **Treatment.** The members of Class XI shall not receive any distribution unless and until all Allowed Secured Claims, Allowed Administrative Expense and Tax Claims, and Allowed General Unsecured Claims have been paid in full and all approved fees and expenses of the Liquidation Trustee and any professionals employed by the Liquidation Trustee have been paid in full.

The existing Allowed Equity Interests in the Debtors shall remain the same and have the same rights and priorities as existed prior to the Shotwell Petition Date and the Later Petition Date. Specifically, the Allowed Equity Interests of David W. King, Jr. and David A. Cook shall continue to be subject to, and bound by the terms and conditions of that certain Memorandum Agreement executed as of June, 2012 (the "Memorandum Agreement"), including, without limitation, the requirement that David A. Cook shall receive a priority distribution (ahead of David W. King, Jr.) of the first \$1,350,000.00 of any payment or distribution to the Class XI Interests, unless the Memorandum Agreement is determined to be unenforceable. Such priority distribution in favor of David A. Cook shall exist irrespective of any division or allocation of assets or proceeds among the various Debtors, unless the Memorandum Agreement is determined to be unenforceable. The additional provisions of the Memorandum Agreement regarding the Allowed Equity Interests of David A. Cook and David W. King, Jr. shall remain in full force and effect, unless the Memorandum Agreement is determined to be unenforceable.

**IV. MEANS OF EXECUTION**

The primary means of execution for the Plan is the auction of the Debtors' Property, particularly the Landfill. On the Confirmation Date, the Debtors' principals as well as the appointed Corporate Restructuring Officer will be removed as officers and principals of the Debtors and as operators of the Landfill, and a Liquidation Trustee will be appointed to manage, market, and liquidate the Debtors' Property. The Liquidation Trustee will be an attorney and approved by the Committee and LSCG prior to the Confirmation Date. Subject to approval by the Committee and LSCG, the Liquidation Trustee will employ appropriate professionals to operate the Landfill until it is sold.

Post-confirmation, the Liquidation Trustee will market the Debtors' Property. The Liquidation Trustee may, in his discretion, incur marketing and advertising costs of up to \$30,000 to make the sale of the Landfill known to the waste industry and to ensure a successful auction. Within six (6) months of the Confirmation Date, the Liquidation Trustee will hold an auction to sell the Property, including the Landfill. Any party that wishes to be a stalking horse bidder shall have forty-five (45) days from the Confirmation Date to submit a bid and bidding

terms to the Liquidation Trustee, LSCG, and the Committee. Any such bid submitted herein shall allocate the proposed purchase price among the Property being purchased so as to reflect the amount being bid for the Landfill and the amounts being bid for all remaining Property. If any bid is submitted and accepted by all of the Liquidation Trustee, LSCG, and the Committee, within fifty (50) days after the Confirmation Date, LSCG and the Committee will file a joint motion seeking approval of the stalking horse bid, bidding terms, and auction procedures. Regardless of whether a stalking horse bid is recommended by both LSCG and the Committee, the Liquidation Trustee will conduct an auction in accordance with the terms provided in this Plan. The Debtors shall be required to execute any contract to sell any or all of the Property in conjunction with the Plan. Any transfer of any or all of the Property pursuant to the Plan shall be free and clear of all liens, claims and encumbrances pursuant to Sections 363 and 1123(5)(D). The Liquidation Trustee will establish a trust account at a financial institution of the Liquidation Trustee's choosing into which the Liquidation Trustee will distribute all Net Proceeds from the sale of the Property, any cash remaining in any of the Debtors' bank accounts after title to the Landfill is transferred and all checks written from such account have cleared, any Net Proceeds from any litigation brought by the Committee, and any other amounts realized from the collection and liquidation of the Debtors' Property. The Liquidation Trustee will make distributions from the Liquidation Trust in accordance with the Plan.

Net Proceeds from the sale of the Debtors' Property will first be allocated to holders of Allowed Secured Claims secured by the particular property sold in the order of the secured creditors' respective lien priorities, except that the distribution to LSCG will be subject to a carveout (the "Carveout") for General Unsecured Claims as follows:

- If the total of the Net Proceeds resulting from the sale of all of the Debtors' Property is less than \$13,000,000, there will be no Carveout for the General Unsecured Claims and holders of such claims will not receive any distribution from the Net Proceeds of the sale of Property.
- If the total of the Net Proceeds resulting from the sale of all of the Debtors' Property is greater than \$13,000,000, then all Net Proceeds between \$13,000,000 and \$14,750,000 will be carved out for Pro Rata distribution to General Unsecured Creditors. Any Net Proceeds above \$14,750,000 will be used to pay applicable Secured Claims until such Secured Claims are paid in full.

Net Proceeds in excess of the applicable Secured Claims and the Carveout will be distributed Pro Rata to holders of Class X General Unsecured Claims. Any amounts remaining in the Liquidation Trust after payment in full of all Class I through Class X Claims and payment of all costs of administration of the bankruptcy cases, including but not limited to the costs and expenses of the Liquidation Trustee and any professionals employed by him, will be paid to the Equity Interest Holders as provided in Class XI.

As of the Confirmation Date, all claims and causes of action that are property of the estate shall vest with the Committee to be prosecuted and pursued by the Committee for the benefit of the Estate. Such causes of action include but are not limited to article 5 and other bankruptcy causes of action and any state-law tort claims against the Debtors' present or former officers and directors, including but not limited to David W. King, Jr., based on such officer or director's acts

or omissions that negatively impacted the Debtors and their estates, including but not limited to claims for breach of fiduciary duty and breach of loyalty (the “Adversary Proceedings”). Any Net Proceeds received from the Adversary Proceedings, after deduction of attorneys’ fees and expenses, will be deposited into the Liquidation Trust and distributed by the Liquidation Trustee Pro Rata to the holders of Allowed General Unsecured Claims.

## **V: OBJECTIONS TO CLAIMS**

The bar date for creditors to file General Unsecured Claims against Shotwell was August 19, 2013 and for government creditors to file General Unsecured Claims against Shotwell was October 16, 2013. The bar date for creditors to file General Unsecured Claims against the Affiliated Debtors other than Shotwell was April 14, 2014 and for government creditors to file General Unsecured Claims against the Affiliated Debtors other than Shotwell was June 4, 2014. The bar date for claimants to request allowance and payment of administrative expenses under Section 503(a) and for the Debtors’ professionals to file their final fee applications under Section 330 will be thirty (30) days after the Confirmation Date. All claim objections shall be the Committee’s responsibility, and any party in interest shall have sixty (60) days following the Confirmation Date within which to file any objections to Claims. After such time, an objection may be filed only with leave of the Court. Unless objected to, all Claims shall be allowed as follows: (a) the amount of the Claim as of the Shotwell Petition Date or the Later Petition Date as shown on any proof of claim filed on or before the Claims Bar Date; or (b) if no proof of claim has been filed within such time, the amount of claim as of the Shotwell Petition Date or the Later Petition Date as set forth in the Debtors’ Schedules as amended and filed in this case.

## **VI. PROVISIONS GOVERNING DISTRIBUTIONS**

1. Delivery of Distributions in General. Distributions to holders of Allowed Claims shall be made by the Liquidation Trustee: (i) at the addresses set forth in the proofs of claim filed by such holders; (ii) at the addresses set forth in any written notices of address change submitted by such holders to the Court; or (iii) at such other address as the Court may order.

2. Distribution Dates. Distributions to holders of Allowed Claims in Classes I, II, IV, V, VI, VII, VIII, and IX shall be made on the Effective Date. Distributions to holders of Allowed Claims in Classes III, X, and XI shall be made at the discretion of the Liquidation Trustee after all the Debtors’ Property is sold and the Net Proceeds of such sale or sales have been deposited into the account maintained by the Liquidation Trustee, no later than five (5) months from the Effective Date, unless (1) such distribution is related to the Net Proceeds of Adversary Proceedings; or (2) otherwise ordered by the Court.

Within ten (10) days after the Court enters a Final Order allowing a Disputed Claim, the holder thereof shall receive the treatment and distribution to which such holder is entitled under the Plan to the extent such Disputed Claim is allowed.

3. Undeliverable Distributions. If the Liquidation Trustee is unable to make a payment or distribution to the holder of an Allowed Claim under the Plan for lack of a current address for the holder or otherwise, they shall file with the Bankruptcy Court the name and, if known, the last

known address of the holder and the reason for the inability to make payment, and if, after passage of thirty (30) days and after any additional effort to locate the holder that the Bankruptcy Court may direct, the payment or distribution still cannot be made, then the payment or distribution and any further payment or distribution to the holder shall be retained by the Debtors and the Claim shall be deemed satisfied to the same extent as if payment or distribution had been made to the holder of the Claim.

## **VII. ASSUMPTION/REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

All executory contracts and leases of the Debtors shall be deemed rejected on the Effective Date. A Claim for damages against the Debtors arising from the Debtors' rejection of any Executory Contract pursuant to the Plan or by order of the Bankruptcy Court shall be forever barred and shall not be enforceable against the Debtors or their property or interest in property and no holder of any such Claim shall participate in any distribution under the Plan with respect to that Claim unless a proof of Claim is served on the Debtors and filed with the Bankruptcy Court before thirty (30) days after the Confirmation Date, unless the Bankruptcy Court has ordered otherwise, and said Proof of Claim is determined to be an Allowed Claim, either because no timely objection is filed or because the Bankruptcy Court allowed the Claim once a timely objection was filed.

## **VIII. ACCEPTANCE OR REJECTION OF PLAN; EFFECT OF REJECTION BY AN IMPAIRED CLASS**

1. Impaired Classes Entitled to Vote Separately. Only impaired Classes are entitled to vote to accept or reject the Plan.

2. Acceptance by an Impaired Class of Creditors. Consistent with Section 1126(c) and except as provided in Section 1126(e), an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of holders of Allowed Claims in that Class who have timely and properly voted to accept or reject the Plan.

3. Holders of Impaired Claims Entitled to Vote. Each holder of an impaired claim shall be entitled to vote if:

(A) Such Claim has been filed against the Debtors in a liquidated amount or has been listed on the Debtors' bankruptcy schedules other than as contingent, unliquidated or disputed, and as to which no proof of claim has been filed. Except as otherwise provided herein, the Claim shall be allowed solely for the purpose of voting on the Plan in the amount in which such Claim has been filed by the holder or scheduled by the Debtors, and

(B) Such Claim has been filed by the holder or scheduled by the Debtors and is the subject of an objection, but is temporarily allowed for voting purposes by order of the Court in accordance with Bankruptcy Rule 3018.



4. Confirmation Hearing. The Court will set a hearing on the confirmation of the Plan to determine whether the Plan has been accepted by the requisite number of creditors and whether the other requirements for confirmation of the Plan have been satisfied.

5. Acceptances Necessary to Confirm the Plan. At the Confirmation Hearing on the Plan, the Court shall determine, among other things, whether the Plan has been accepted by each Impaired Class. Under Section 1126 of the Bankruptcy Code, an Impaired Class of Creditors is deemed to accept the Plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number vote to accept the Plan. Further, unless there is unanimous acceptance of the Plan by those voting in an Impaired Class, the Court must also determine that each member of such Class will receive property with a value, as of the Effective Date of the Plan, that is not less than the amount that such member would receive or retain if the Debtors' assets were liquidated as of the Effective Date of the Plan under Chapter 7 of the Bankruptcy Code.

6. Confirmation of Plan Without Necessary Acceptances. The Bankruptcy Code provides that the Plan may be confirmed even if it is not accepted by all Impaired Classes. In order to be confirmed without acceptances of all Impaired Classes, the Court must find that at least one Impaired Class has accepted the Plan without regard to the acceptances of insiders, and the Plan does not discriminate unfairly against, and is otherwise fair and equitable, to each Impaired Class that votes against the Plan. In the event that any Impaired Class votes against the Plan, LSCG hereby requests and moves the Court for confirmation of the Plan under the cram-down provisions outlined below and Section 1129(b). In connection therewith, LSCG shall be allowed to modify the proposed treatment of the Allowed Claims in any Impaired Class that votes against the Plan consistent with Section 1129(b)(2)(A).

#### **IX. "CRAM-DOWN" FOR IMPAIRED CLASS NOT ACCEPTING THE PLAN**

In respect to any Impaired Class that does not accept the Plan, LSCG asks the Court to find that the Plan does not discriminate unfairly and is fair and equitable in respect to such Impaired Class and to confirm the Plan without acceptance by such Impaired Class.

#### **X. RETENTION OF JURISDICTION**

The Court shall retain jurisdiction of the cases after confirmation of the Plan pursuant to and for the purposes of Sections 105(a) and 1127, including without limitation, the following:

1. to determine any and all objections to the allowance of Claims and/or Interests;
2. to determine any and all applications by the Debtors' professionals for allowance of compensation and reimbursement of expenses for periods prior to or after the Confirmation Date, including compensation due to the Liquidation Trustee and all professionals employed by the Liquidation Trustee;
3. to determine all controversies and disputes arising under or in connection with the Plan;



4. to determine any Adversary Proceedings and any contested matters pending on the Confirmation Date;

5. to enforce performance of the Plan, including, but not limited to, payments and transfers of property in accordance with the provisions of the Plan;

6. to determine all disputes regarding property of the Debtors' estates;

7. to establish and adjust procedures for the orderly administration of the Debtors' estates;

8. to enter orders approving auction and bidding procedures or sales of the Landfill and the Property; and

9. to determine such other matters and for such other purposes as may be provided for in the Confirmation Order.

#### **XI. MISCELLANEOUS PROVISIONS**

1. Survival of Terms. The covenants, representations and agreements made in this Plan shall survive the Confirmation Date and the transactions contemplated herein.

2. Successors Bound. Upon entry of the Confirmation Order, this Plan shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of LSCG, the Committee, the Debtors, and the other holders of Claims and Interests.

3. Controlling Law. This Plan shall be read and construed and take effect in all respects in accordance with the Bankruptcy Code, the Bankruptcy Rules, and applicable case law.

4. No Transfer Tax Liability. In accordance with Section 1146, transfer of the Property under the Plan shall not be subject to a stamp tax or other similar tax on property transfers.

5. Quarterly Fees. All quarterly fees shall be paid as required by the Local Rules of the Court.

Respectfully submitted, this the 25<sup>th</sup> day of August, 2014.

LSCG Fund 18, LLC

By: /s/ Luke Dixon  
Luke Dixon, Member  
LS Capital Group. LCC  
Special Member of LSCG Fund 18, LLC

/s/ Thomas W. Waldrep, Jr.  
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