

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:

**NORTH CAROLINA TOBACCO
INTERNATIONAL, LLC,

Debtor.**

Case No. 17-51077

Chapter 11

MOTION TO APPROVE COMPROMISE AND SETTLEMENT

NOW COMES John Paul H. Cournoyer, Chapter 7 Trustee for North Carolina Tobacco International, LLC, and moves the Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure as follows:

1. On October 10, 2017 (the “Petition Date”), North Carolina Tobacco International, LLC (the “Debtor”) filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code. On October 20, 2017, the Court entered an Order appointing John A. Northen as chapter 11 trustee (Doc. #51). On January 10, 2018, the Court entered an Order converting the case to chapter 7, and appointing John Paul H. Cournoyer (the “Trustee”) as chapter 7 trustee (Doc. #174).

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. On October 27, 2017, this Court entered an Order (Doc. #77) authorizing the employment of Iron Horse Auction Co., Inc. (“Iron Horse”), *nunc pro tunc* as of the Petition Date, to conduct an inventory and appraisal of the Debtor’s equipment and other assets, and to conduct a public sale of the Debtor’s assets, if and when authorized by separate motion and order, with such compensation as may be allowed by the Court after further notice and hearing.

4. Iron Horse has conducted an inventory and evaluation of the Debtor's equipment and other tangible personal property located at the Debtor's former leased premises in East Bend, NC (the "East Bend Assets"). Iron Horse provided the Trustee with an auction and marketing proposal, and estimated the aggregate value of the East Bend Assets to be approximately \$1,429,200.00.

5. Olympia Capital Corp. ("Olympia") contends that it holds ownership interests in some of the East Bend Assets, and a properly perfected security interest in the remaining East Bend Assets. The Trustee disputes these contentions.

6. RG Logistics Inc ("RG Logistics") contends that it holds ownership interests in some of the East Bend Assets. The Trustee disputes this contention.

7. MBM Holdings Intl., LLC ("MBM"), the current tenant at NCTI's former leased premises, asserts that it is entitled to a post-petition administrative expense claim in the Bankruptcy Case, for storage of the East Bend Assets and utilities at its leased premises. The Trustee disputes this contention.

8. Certain other equipment or other personal property, that was alleged to be property of NCTI (or allegedly property of one of the other Parties), was transferred and removed from the Debtor's former leased premises prior to the Petition Date (the "Removed Assets"). The location of the Removed Assets, and the entity or entities currently in possession of the Removed Assets, are unknown at this time.

9. The Trustee contends that RG Logistics was the alleged initial transferee of a portion of the Removed Assets, pursuant to a certain Joint Stipulation for Settlement dated March 31, 2017, and Bill of Sale attached thereto, and may or may not have been the alleged initial transferee of certain other Removed Assets that were not identified in the Bill of Sale. The

Trustee asserts that he is entitled to recovery of the Removed Assets under 11 U.S.C. § 548, and also contends that he is entitled to a money judgment against RG Logistics for the value of the Removed Assets. RG Logistics disputes all of these contentions.

10. Richard Garcia is the principal of RG Logistics.

11. Rolando Vazquez is the principal of MBM Holdings.

12. A mediation between the Parties was conducted on February 12, 2018, and the parties reached a settlement, the terms of which are set forth in the Settlement Agreement and Mutual Release attached hereto (the “Agreement”).¹ The Agreement is subject to the review and approval of this Court.

13. The terms of the settlement and compromise are more specifically set forth in the Agreement. However, the key provisions can be generally summarized as follows:

a. All Parties agree that the East Bend Assets are property of NCTI’s bankruptcy estate, which the Trustee may sell at public auction to be conducted by Iron Horse, subject to certain minimum reserves of 90% of the amount shown in the estimated liquidation value identified in the spreadsheet attached to the Sale Motion. However, no minimum reserve shall apply to items with an estimated orderly liquidation value of less than \$50,000.

b. All Parties (other than the Trustee and NCTI’s bankruptcy estate) waive and release any asserted ownership interest, security interest, or any other lien, encumbrance or interest of any nature, in and to the East Bend Assets or the sale proceeds of the East Bend Assets, subject to Olympia’s right to receive a share of the sale proceeds as discussed below.

¹ Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Agreement.

c. Olympia shall be entitled to receive 45% of the sale proceeds from the sale of the East Bend Assets, after ordinary and customary costs of sale. The remaining 55% of the sale proceeds shall be paid into the bankruptcy estate free and clear of any asserted ownership interest, security interest, or any other lien, encumbrance or interest of any nature.

d. RG and MBM shall pay to the Trustee a settlement sum of \$75,000 in total ("Settlement Sum") and MBM (or its designee) shall pay an additional \$275,000 in order to purchase "as is, where is", the equipment identified on Exhibit A to the Agreement (the "MBM Equipment"). There is an "Election" provision in the Agreement, which would enable MBM to decline to purchase the MBM Equipment, and it would instead be auctioned. However, MBM would be obligated to pay any difference in the event the net sale proceeds at auction were less than \$275,000. Olympia shall be entitled to 45% of the Settlement Sum and the proceeds from the MBM Equipment, with the remaining 55% retained by the Trustee for the benefit of the estate.

e. To the extent that the Trustee recovers all or a portion of the Removed Assets, or recovers a money judgment from a transferee or subsequent transferee of the Removed Assets, Olympia shall be entitled to receive 20% of the funds obtained by the bankruptcy estate in connection with such actions, after payment of attorney's fees and costs incurred in connection with recovery of such amounts. All Parties (other than the Trustee and NCTI's bankruptcy estate) waive and release any asserted ownership interest, security interest, or any other lien, encumbrance or interest of any nature, in and to the Removed Assets or the sale

proceeds of the Removed Assets; provided, however, that Olympia retains and does not waive its right to receive a portion of the proceeds from a sale of the Removed Assets as described above.

f. Olympia shall be entitled to an allowed administrative expense claim in the amount of \$30,000, which is the amount of the retainer paid to NCTI's pre-petition counsel, which the Trustee shall promptly pay, as soon as, in his reasonable discretion, sufficient funds have been recovered to ensure that NCTI's bankruptcy estate is administratively solvent. Olympia shall be entitled to an allowed general unsecured claim in the amount of \$1,626,598.03.

g. Except for the rights set forth in the Agreement, the Trustee and the other Parties are exchanging broad releases; provided however, the Trustee and NCTI's bankruptcy estate are not under the Agreement releasing: (i) any in rem claim for recovery of the Removed Assets from any Party, (ii) any claim of any nature against any subsequent transferee of any Party with respect to the Removed Assets, or (iii) any claim of any nature with respect to any person or entity that is not a Party to the Agreement. The Agreement provides that the Order approving the Agreement shall enjoin any creditor, party in interest, or any other person or entity having a claim, right or interest against NCTI or the East Bend Assets, from commencing, continuing or enforcing any right, claim or issue against RG or MBM regarding or related to the alleged pre-petition transfer of the East Bend Assets (including the MBM Equipment) and/or the Removed Assets. The releases and this injunction language would only be effective upon the receipt by the Trustee of (i) the Settlement Sum and the MBM Purchase Price, which total

\$350,000, or (ii) if the Election is made, the Settlement Sum, the net sale proceeds of the MBM Equipment, and, if the net sale proceeds from the MBM Equipment are less than \$275,000, an additional payment from RG and MBM such that the total funds received by the Trustee from RG, MBM and/or the sale of the MBM Equipment equal \$350,000.

14. The Trustee has analyzed the proposed settlement, taking into consideration the strengths and weaknesses of the estate's claims against the other Parties, the other Parties' defenses to such claims, and the costs of further negotiation, litigation, and collection. Based on this analysis, the Trustee believes the compromise and settlement set forth herein to be in the best interests of the estate and its creditors and therefore seeks the approval of the Bankruptcy Court as to said settlement and compromise.

WHEREFORE, the Trustee prays the Court for the following relief:

1. Approve the compromise and settlement as set forth in the Agreement;
2. Grant such other relief as the Court may deem necessary and proper.

RESPECTFULLY submitted, this the 5th day of March, 2018.

NORTHEN BLUE, LLP

/s/ John Paul H. Cournoyer

John A. Northen, NCSB #6789

jan@nbfirm.com

John Paul H. Cournoyer, NCSB #42224

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Post Office Box 2208

Chapel Hill, NC 27515-2208

Telephone: 919-968-4441

Counsel for the Trustee

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is entered into effective as of February 12, 2018 (the "Effective Date"), subject to Court approval as set forth below, by and between Olympia Capital Corp. ("Olympia"), John Paul H. Cournoyer, as Chapter 7 Trustee (the "Trustee") for North Carolina Tobacco International, LLC ("NCTI"), RG Logistics Inc. ("RG Logistics"), MBM Holdings Intl., LLC ("MBM"), Richard Garcia ("Garcia"), Rolando Vazquez ("Vazquez," and collectively with Olympia, the Trustee, RG Logistics and Garcia, the "Parties"), with reference to the following facts:

RECITALS

WHEREAS, on October 10, 2017 (the "Petition Date"), NCTI filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of North Carolina (the "Bankruptcy Court"), which was docketed as Case No. 17-51077 (the "Bankruptcy Case"). On October 20, 2017, the Court entered an Order appointing John A. Northen as chapter 11 trustee [Doc. #51]. On January 10, 2018, the Court entered an Order converting the case to chapter 7, and appointing John Paul H. Cournoyer as chapter 7 trustee [Doc. #174].

WHEREAS, on January 22, 2018, the Trustee filed an Amended Motion to (I) Authorize Public Sale of Equipment, Inventory and Other Tangible Personal Property and (II) Transfer Any and All Claims, Liens or Interests to Proceeds of Sale [Dkt. No. 194] (the "Sale Motion"). The Sale Motion sought authority to sell certain equipment and other personal property that is located at NCTI's former leased premises in East Bend, NC, and more particularly described in that certain spreadsheet attached to the Sale Motion (the "East Bend Assets").

WHEREAS, Olympia contends that it holds ownership interests in some of the East Bend Assets, and a properly perfected security interest in the remaining East Bend Assets. The Trustee disputes these contentions.

WHEREAS, RG Logistics contends that it holds ownership interests in some of the East Bend Assets. The Trustee disputes this contention.

WHEREAS, MBM, the current tenant at NCTI's former leased premises, asserts that it is entitled to a post-petition administrative expense claim in the Bankruptcy Case, for storage of the East Bend Assets and utilities at its leased premises. The Trustee disputes this contention.

WHEREAS, certain other equipment or other personal property, that was alleged to be property of NCTI (or allegedly property of one of the other Parties), was transferred and removed from the Debtor's former leased premises prior to the Petition Date (the "Removed Assets"). The location of the Removed Assets, and the entity or entities currently in possession of the Removed Assets, are unknown at this time.

WHEREAS, the Trustee contends that RG Logistics was the alleged initial transferee of a portion of the Removed Assets, pursuant to a certain Joint Stipulation for Settlement dated March 31, 2017, and Bill of Sale attached thereto, and may or may not have been the alleged initial transferee of certain other Removed Assets that was not identified in the Bill of Sale. The Trustee

asserts that he is entitled to recovery of the Removed Assets under 11 U.S.C. § 548, and also contends that he is entitled to a money judgment against RG Logistics for the value of the Removed Assets. RG Logistics disputes all of these contentions.

WHEREAS, Richard Garcia is the principal of RG Logistics.

WHEREAS, Rolando Vazquez is the principal of MBM Holdings.

WHEREAS, a mediation between the Parties was conducted on February 12, 2018, and this Agreement sets forth the terms of a settlement agreed to by the Parties at mediation.

WHEREAS, to avoid the costs and uncertainties of litigation, the Parties have agreed, subject to the approval of the Bankruptcy Court, to the settlement and compromise set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Parties reaffirm and incorporate the foregoing recitals into this Agreement as if restated in full herein.

2. **Approval Date.** This Agreement shall be fully binding on the Parties on the day following the date upon which the Bankruptcy Court order approving this Agreement becomes final and non-appealable (the "Approval Date").

3. **East Bend Assets.** Subject to Bankruptcy Court approval, the Parties agree as follows:

- a. All Parties agree that the East Bend Assets are property of NCTI's bankruptcy estate, which the Trustee has authority to sell and convey in accordance with the provisions herein. Except as otherwise provided for herein, all Parties (other than the Trustee and NCTI's bankruptcy estate) waive and release any asserted ownership interest, security interest, or any other lien, encumbrance or interest of any nature, in and to the East Bend Assets or the sale proceeds of the East Bend Assets; provided, however, that Olympia retains and does not waive its right to receive a portion of the proceeds from a sale of the East Bend Assets as more fully described below. The auction shall be conducted on or before ninety (90) days after the Approval Date.
- b. Except for the "MBM Equipment" (defined below), all of the East Bend Assets shall be sold by the Trustee at public sale, to be conducted by Iron Horse Auction Company ("Iron Horse"). Iron Horse shall auction the equipment subject to minimum reserves of 90% of the amount shown in the estimated liquidation value identified in the spreadsheet attached to the Sale Motion (such percentage calculated without reference to any buyers' premium paid by a winning bidder to Iron Horse); provided however, no minimum reserve shall apply to items with an estimated orderly liquidation value of less than \$50,000. Additionally, in the event

that the sale price for certain assets does not meet the required minimum reserve, Olympia and the Trustee may agree, in their discretion, to allow the sale of such asset to close at a price below the reserve. In the event that any of the East Bend Assets are not sold at auction pursuant to the above procedures, whether due to the failure to meet or exceed the minimum reserve prices or otherwise, then the Trustee shall remove the items or abandon same under the provisions below. No further auctions may occur after the initial auction. After the auction the successful purchaser(s) and the Trustee shall have access to the property as set forth below.

- c. RG and MBM shall pay to the Trustee a settlement sum of \$75,000 in total (“Settlement Sum”) and subject to the “Election”, MBM (or its designee) shall pay an additional \$275,000 (the “MBM Purchase Price”), in order to purchase “as is, where is”, the equipment identified on Exhibit A attached hereto (the “MBM Equipment”). The Settlement Sum of \$75,000 shall be placed in Trust with their counsel prior to the hearing to approve the Agreement. The MBM Purchase Price shall be paid to the Trustee five (5) business days prior to the commencement of the auction discussed above, unless the “Election” (defined below) is made by MBM on or prior to the order approving this Agreement becoming final and not appealable (“Sale Order”). MBM shall have the right to inspect the MBM Equipment and can elect not to acquire the MBM Equipment by advising the Trustee in writing on or before the Sale Order becomes final and non-appealable (the “Election”). If MBM exercises the Election to not close, the Trustee is authorized to sell the MBM Equipment at auction. If the Election is exercised, MBM would be liable to the Trustee to the extent that the net sale proceeds from the sale of the MBM Equipment are less than \$275,000. If the Election is not exercised, upon receipt of the MBM Purchase Price, the Trustee shall execute and deliver a Bill of Sale conveying the MBM Equipment to MBM (or its designee), “as is, where is.” Until the MBM Purchase Price has been paid or the MBM Equipment auctioned, MBM shall take reasonable steps so that no person or entity (including MBM itself) uses, moves, transfers, or otherwise disposes of the MBM Equipment, all of which shall be stored in MBM’s leased premises until the MBM Purchase Price is received by the Trustee or as otherwise provided for herein. No auction fee or charge shall apply to MBM as to the MBM Purchase Price. The MBM Equipment shall be sold to MBM free and clear of any and all claims, rights or interests. In addition to the foregoing, the Sale Order shall contain a finding that MBM is a good faith purchaser entitled to the protection of 11 U.S. C. § 363(m), that there is no collusion under 363(n) and that the estate is vested with title of the East Bend Assets. RG and MBM shall cause the Settlement Sum to be turned over to the Trustee upon entry of the final and non-appealable Sale Order and approval order hereof under Rule 9019.
- d. The sale proceeds from the sale of the East Bend Assets (including the MBM Equipment), after ordinary and customary costs of sale (which do not include the Trustee’s commission or attorney’s fees for Counsel to the Trustee), and the Settlement Sum, shall be paid 45% to Olympia and 55% to the Trustee for the benefit of the NCTI bankruptcy estate.

e. MBM shall preserve the East Bend Assets in its leased premises in East Bend, NC, and take reasonable steps so that no person or entity uses, moves, transfers, or otherwise disposes of the East Bend Assets pending the completion of the auction sale process. MBM shall provide access as set forth herein to the premises to the Trustee and Iron Horse in connection with the auction sale process, including but not limited to allowing access to prospective bidders to inspect the East Bend Assets and allowing access to successful bidders to remove their purchased assets after the completion of the auction. Iron Horse will be given onsite access to the premises no more than three (3) weeks before the auction is set to begin, and a typical onsite workday will be from 9 a.m. EST to 4 p.m. EST (excluding Saturdays and Sundays). Iron Horse shall provide MBM advanced notice and shall use its best efforts not to interfere or obstruct any business activity of MBM. Iron Horse shall maintain liability insurance in the amount of \$1,000,000 for the benefit of MBM regarding its employees, agents and all parties inspecting the equipment and/or attending the auction, and all buyers and agents thereof. Iron Horse will require inspection periods so that potential buyers can visit the premises to inspect the equipment. These inspection periods will occur the 3 consecutive days prior to the close of the auction, and will be scheduled from 9 a.m. EST to 4 p.m. EST. Due to the size and nature of certain of the assets to be sold, Iron Horse and prospective purchasers will need access to the premises for no more than 4 weeks post-auction, during the hours of 9 a.m. EST to 4 p.m. EST on business days, for all purchased assets to be removed. Additionally, in the event that any of the East Bend Assets remain unsold, the Trustee shall have a period of sixty (60) days after the completion of the auction to remove any remaining unsold portion of the East Bend Assets, or such assets shall be deemed abandoned to MBM (free and clear of any claim or interest) and Trustee shall provide a bill of sale to MBM (or its designee) for the abandoned property (within 3 business days thereafter). MBM shall be permitted to move, at its expense, the equipment not purchased at the auction to an area outside the production area as long as they do not damage the equipment, and provided that such area is locked and secure. The purchaser(s) of any assets having a purchase price of greater than \$10,000, and their mover(s) and agents, shall be required to provide MBM with notice prior to scheduling moving the equipment as well as proof of insurance of no less than \$500,000.00 reflecting MBM as an additional insured and provide their own materials and equipment necessary to move the purchased items. Further the purchaser(s) and/or their mover(s) shall not interfere with or obstruct any business activity of MBM. The Trustee shall within one day after the entry of an Order approving this Agreement, issue a letter to MBM stating that it is authorized to dispose of any tobacco products (*i.e.*, products containing tobacco which cannot be sold without a current government issued tobacco license) which presently are stored within or adjacent to the leased premises, provided that MBM shall be responsible for the costs of such disposition and that any such removal or destruction of such tobacco products shall be done in conformity with applicable laws and regulations.

4. **Removed Assets.** To the extent that the Trustee recovers all or a portion of the Removed Assets, or recovers a money judgment from a transferee or subsequent transferee of the Removed Assets, Olympia shall be entitled to receive 20% of the funds obtained by the bankruptcy

estate in connection with such actions, after payment of attorney's fees and costs incurred in connection with recovery of such amounts. All Parties (other than the Trustee and NCTI's bankruptcy estate) waive and release any asserted ownership interest, security interest, or any other lien, encumbrance or interest of any nature, in and to the Removed Assets or the sale proceeds of the Removed Assets; provided, however, that Olympia retains and does not waive its right to receive a portion of the proceeds from a sale of the Removed Assets as described above.

5. **Olympia Allowed Claims.**

- a. Olympia shall be entitled to an allowed administrative expense claim in the amount of \$30,000, which is the amount of the retainer paid to NCTI's pre-petition counsel, which the Trustee shall promptly pay, as soon as, in his reasonable discretion, sufficient funds have been recovered to ensure that NCTI's bankruptcy estate is administratively solvent.
- b. Olympia shall be entitled to an allowed general unsecured claim in the amount of \$1,626,598.03.

6. **Adversary Proceeding and Sanctions.** Prior to the commencement of the Bankruptcy Case, Olympia sued RG Logistics, MBM, Richard Garcia and other parties in state court in Yadkin County. In that action, Olympia obtained a preliminary injunction and posted a bond with the Yadkin County clerk in the amount of \$25,000 (the "Bond"). Olympia also obtained orders dated October 18, 2017, which awarded Olympia sanctions against RG and/or MBM in the amounts of \$6,615.00 and \$5,370.00 (the "State Court Sanctions"). Olympia subsequently removed the state court action to the Bankruptcy Court (Adversary Proceeding 17-06032). In the Bankruptcy Case, RG Logistics and MBM obtained an order granting sanctions (the "Bankruptcy Court Sanctions") [Docket 157] against Olympia related to conduct during a 30(b)(6) deposition. The amount of the Bankruptcy Court Sanctions has not been set by the Court. The Parties agree that the State Court Sanctions and the Bankruptcy Court Sanctions will be offset against each other and neither Olympia, RG, nor MBM shall seek to recover any sanctions against each other under those orders and shall request that such orders be set aside as part of this settlement. The Parties shall take necessary steps so that the Adversary Proceeding is remanded to the state court for Olympia to obtain a release of the Bond. After the Bond has been released and RG and MBM have fully complied with their obligations under this Agreement, Olympia shall file a dismissal with prejudice as to all claims against RG Logistics, MBM, and Richard Garcia. Dismissal as to all other parties to the Adversary Proceeding shall be without prejudice.

7. **Releases.**

- a. Except with respect to the obligations and rights created by this Agreement, Olympia, in respect of the mutual promises and other consideration recited in this Agreement, hereby releases the Trustee, NCTI's bankruptcy estate, RG Logistics, MBM, Richard Garcia, and Rolando Vazquez, of and from any obligations, liabilities, causes of action, damages, claims, and demands of any kind whatsoever, at law or in equity, direct or indirect, known or unknown, discovered or undiscovered, which arose or accrued on or before the Effective Date. The release of RG Logistics, MBM, Richard Garcia and Rolando Vazquez shall only be effective upon the receipt by the Trustee of (i) the Settlement Sum and the MBM

Purchase Price, which total \$350,000, or (ii) if the Election is made, the Settlement Sum, the net sale proceeds of the MBM Equipment, and, if the net sale proceeds from the MBM Equipment are less than \$275,000, an additional payment from RG and MBM such that the total funds received by the Trustee from RG, MBM and/or the sale of the MBM Equipment equal \$350,000.

- b. Except with respect to the obligations and rights created by this Agreement, RG Logistics, MBM, Richard Garcia, and Rolando Vazquez, in respect of the mutual promises and other consideration recited in this Agreement, hereby release the Trustee, NCTI's bankruptcy estate, and Olympia, of and from any obligations, liabilities, causes of action, damages, claims, and demands of any kind whatsoever, at law or in equity, direct or indirect, known or unknown, discovered or undiscovered, which arose or accrued on or before the Effective Date.
- c. Except with respect to the obligations and rights created by this Agreement, the Trustee, on behalf of NCTI's bankruptcy estate and in respect of the mutual promises and other consideration recited in this Agreement, hereby releases Olympia, RG Logistics, MBM, Richard Garcia, and Rolando Vazquez, of and from any obligations, liabilities, causes of action, damages, claims, and demands of any kind whatsoever, at law or in equity, direct or indirect, known or unknown, discovered or undiscovered, which arose or accrued on or before the Effective Date; provided however, and notwithstanding the foregoing or any other provision in this Agreement, the Trustee and NCTI's bankruptcy estate are not under this Agreement releasing: (i) (i) any in rem claim for recovery of the Removed Assets from any Party, (ii) any claim of any nature against any subsequent transferee of any Party with respect to the Removed Assets, or (iii) any claim of any nature with respect to any person or entity that is not a Party to this Agreement. The release of Olympia shall be effective upon approval of this Agreement by the Bankruptcy Court. The release of RG Logistics, MBM, Richard Garcia and Rolando Vazquez shall only be effective upon the receipt by the Trustee of (i) the Settlement Sum and the MBM Purchase Price, which total \$350,000, or (ii) if the Election is made, the Settlement Sum, the net sale proceeds of the MBM Equipment, and, if the net sale proceeds from the MBM Equipment are less than \$275,000, an additional payment from RG and MBM such that the total funds received by the Trustee from RG, MBM and/or the sale of the MBM Equipment equal \$350,000.
- d. The Order approving this Agreement shall enjoin any creditor, party in interest, or any other person or entity having a claim, right or interest against NCTI or the East Bend Assets, from commencing, continuing or enforcing any right, claim or issue against RG or MBM regarding or related to the alleged pre-petition transfer of the East Bend Assets (including the MBM Equipment) and/or the Removed Assets; provided, however, this provision is inapplicable to the Trustee and the NCTI bankruptcy estate, whose waiver and release shall be governed by the terms set forth above. This injunction shall not relate to the obligations in the Agreement and shall only be effective upon the receipt by the Trustee of (i) the Settlement Sum and the MBM Purchase Price, which total \$350,000, or (ii) if the Election is made, the Settlement Sum, the net sale proceeds of the MBM Equipment, and, if the net sale

proceeds from the MBM Equipment are less than \$275,000, an additional payment from RG and MBM such that the total funds received by the Trustee from RG, MBM and/or the sale of the MBM Equipment equal \$350,000.

8. **Court Approval.** All of the provisions, obligations and releases herein are expressly contingent upon approval by the Bankruptcy Court. The Trustee agrees to file and prosecute appropriate papers with the Bankruptcy Court promptly following the execution of this Agreement to obtain Bankruptcy Court approval. In the event that the Bankruptcy Court denies approval of this Agreement, this Agreement will have no force and effect except for the provisions of this paragraph.

9. **No Third Party Beneficiaries.** This Agreement shall not be construed in any manner whatsoever to constitute a contract for the benefit of any person or entity not a Party to this Agreement.

10. **No Admission of Wrongdoing.** Neither this Agreement nor any of its provisions, nor any correspondence, motions or other document related to the negotiation, drafting or approval of this Agreement, shall constitute an admission by any Party for purposes of any litigation by or between the Parties.

11. **Entire Agreement; Amendments; No Waiver.** This Agreement contains the entire agreement and understanding between the Parties pertaining to the subject matter of this Agreement and supersedes and replaces all prior negotiations, agreements and proposed agreements, written or oral. No amendments, modifications, waivers or terminations of this Agreement shall be binding unless executed in writing by the parties to be bound thereby. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision herein (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

12. **Interpretation.** Each of the Parties acknowledges and agrees that it has been given the opportunity to independently review this Agreement with legal counsel and has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. This Agreement shall be deemed to have been drafted jointly by the Parties and shall be construed accordingly; and no provision hereof shall be construed or interpreted for or against any of the Parties.

13. **Headings and Captions.** Headings or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

14. **Definitions.** The words “and” and “or” shall be both conjunctive and disjunctive. The words “any” and “all” shall each mean “any and all.” Terms which are defined in the singular shall have the same meaning ascribed to them if used in the plural and vice versa.

15. **Authority.** The individuals signing this Agreement on behalf of the Parties represent and warrant that they are duly authorized and fully competent to do so.

16. **Governing Law and Choice of Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of North Carolina. The Parties hereto consent to the exclusive personal and subject matter jurisdiction of and venue in the United States Bankruptcy Court for the Middle District of North Carolina for all disputes arising out of or relating to this Agreement, and to the entry of final orders by the Bankruptcy Court. Any such disputes shall be brought only in the United States Bankruptcy Court for the Middle District of North Carolina, which Court shall retain exclusive jurisdiction to enforce the terms of this Agreement.

17. **Execution in Counterparts.** This Agreement may be executed by the Parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Any executed copy of this Agreement delivered by electronic mail or facsimile shall be deemed to be binding to the same extent as an original executed copy of this Agreement.

18. **Further Action.** Each of the Parties agrees to execute and deliver such other documents and instruments and to take such further action as may be reasonably necessary to carry out fully the intent and purposes of this Agreement.

19. **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

20. **Notices.** All notices required or permitted under this Agreement and all requests for approvals, consents, and waivers thereunder must be in writing and must be delivered by a method providing for proof of delivery (including express courier if receipt is acknowledged by the recipient) and will be deemed delivered when actually received. Fax and email delivery methods may constitute written notice. Any notice or request will be delivered to the addresses specified below:

If to the Trustee:

John Paul H. Courmoyer
Northen Blue, LLP
1414 Raleigh Rd, Suite 435
Chapel Hill, NC 27517
Phone: 919-968-4441
Fax: 919-942-6603
Email: jpc@nbfirm.com

If to Olympia:

c/o Will Esser
Parker Poe Adams & Bernstein LLP
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Phone: 704.335.9507
Fax: 704.335.4706
Email: willesser@parkerpoe.com

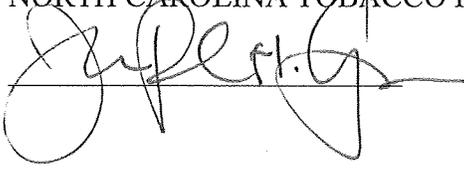
If to RG Logistics, MBM, Richard Garcia or Rolando Vazquez:

c/o Keith Diamond
Keith D. Diamond, P.A.
3440 Hollywood Blvd., Suite 415
Hollywood, FL 33021
Phone: 954.618.1008
Fax: 954.306.0811
Email: keithdiamond2@aol.com

21. **Fees and Expenses.** Each Party will pay its own attorneys' fees and expenses associated with the disputes, disagreements, contract rights and legal obligations related to the settlement documented under this Agreement.

WHEREFORE, the Parties have caused this Agreement to be duly executed and delivered as of the date first written above.

JOHN PAUL H. COURNOYER, AS CHAPTER 7 TRUSTEE
FOR THE BANKRUPTCY ESTATE OF
NORTH CAROLINA TOBACCO INTERNATIONAL LLC



OLYMPIA CAPITAL CORP.

By: _____

Its: _____

RG LOGISTICS INC.

By: _____

Its: _____

MBM HOLDINGS INTL., LLC

By: _____

Its: _____

RICHARD GARCIA, INDIVIDUALLY

ROLANDO VAZQUEZ, INDIVIDUALLY

JOHN PAUL H. COURNOYER, AS CHAPTER 7 TRUSTEE
FOR THE BANKRUPTCY ESTATE OF
NORTH CAROLINA TOBACCO INTERNATIONAL LLC

OLYMPIA CAPITAL CORP.

By: Yon

Its: Young Park

RG LOGISTICS INC.

By: _____

Its: _____

MBM HOLDINGS INTL., LLC

By: _____

Its: _____

RICHARD GARCIA, INDIVIDUALLY

ROLANDO VAZQUEZ, INDIVIDUALLY

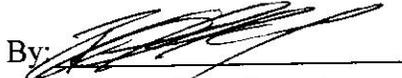
JOHN PAUL H. COURNOYER, AS CHAPTER 7 TRUSTEE
FOR THE BANKRUPTCY ESTATE OF
NORTH CAROLINA TOBACCO INTERNATIONAL LLC

OLYMPIA CAPITAL CORP.

By: _____

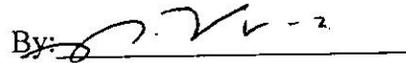
Its: _____

RG LOGISTICS INC.

By:  _____

Its: President

MBM HOLDINGS INTL., LLC

By:  _____

Its: MANAGER

RICHARD GARCIA, INDIVIDUALLY

 _____

ROLANDO VAZQUEZ, INDIVIDUALLY

 _____

EXHIBIT A

Line	Description	Model	Serial No.
#2 (PKG) (100mm Box)	HLP Packer	HLP-2	807001000002/08
#2 (PKG) (100mm Box)	MTS Wrapper	100mm Box	807003000011/2008
#2 (PKG) (100mm Box)	MTS Boxer	100mm Box	807004000002/2008
#2 (PKG) (100mm Box)	Marden Edwards OVRWRP	B125/SF8	1927
#2 (MKG) (100mm Cigar)	Mark 9-5 VE Rod Maker	Mark 9-5	80020600029/2008
#2 (MKG) (100mm Cigar)	MTS Max-S Tipping Unit	Max-S	80010200051/2008
#2 (MKG) (100mm Cigar)	MTS Tray Filler	HCF-80	800115000009/2008
Air System	Quincy Air Compressor	QSI-245I	BU1101240103
Air System	Air Dryer	DFE-43A/C	061005129
Reclaim	Tingey Tobacco Reclaimer	Tingey II	N/A
Reclaim	DCE Dust Collector	UMA154G5AD	89-1777/2
	(14) Cigarette Tray Carts w/ Trays		

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:

**NORTH CAROLINA TOBACCO
INTERNATIONAL, LLC,

Debtors.**

Case No. 17-51077

Chapter 7

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing by automatic electronic noticing to the email address of record for the following parties:

William P. Miller Bankruptcy Administrator	Richard Steele Wright Counsel for Debtor
William L. Esser, IV Counsel for Olympia Capital Group	Stuart Hale Russell Counsel for Edward L. VanDeventer, Jr.
John A. Willardson Counsel for Edward VanDeventer, Jr., Kenneth Hauser, Robert Dotson	Grover Gray Wilson Counsel for Edward VanDeventer, Jr., Kenneth Hauser, Robert Dotson
Rayford K. Adams III. Keith D. Diamond Alan J. Perlman Counsel for RG Logistics, Inc. and MBM Holdings International, LLC	Lauren E. Bohdan Counsel for East Bend Partners, LLC
Paul A. Fanning Counsel for Ward and Smith PA	Jill Christine Walters Counsel for Alliance One Specialty Products, LLC

And via U.S. Mail to the following:

Alamo Heights Financial Inc. Attn: Ryan Kim 6 Pointe Drive, Suite 150 Brea, CA 92821	North Ridge Group Inc. Attn: Managing Agent 1234 Wilshire Blvd., Suite 419 Los Angeles, CA 90017
Tobacco Logistics, LLC Attn: Corporation Service Company, Registered Agent 2711 Centerville Road, Suite 400 Wilmington, Delaware 19808	Richard Garcia c/o Keith D. Diamond Keith D. Diamond, P.A. 3440 Hollywood Blvd., Suite 415 Hollywood, FL 33021
Rolando Vazquez c/o Keith D. Diamond Keith D. Diamond, P.A. 3440 Hollywood Blvd., Suite 415 Hollywood, FL 33021	

This the 5th day of March, 2018.

/s/ John Paul H. Cournoyer
Counsel for the Trustee