

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

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In re:	:	Chapter 11
	:	
RUPARI HOLDING CORP., <i>et al.</i> , <sup>1</sup>	:	Case No. 17-10793 (KJC)
	:	(Jointly Administered)
Debtors.	:	
	:	Re: Docket Nos. 532, 564, 597
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**NOTICE OF FIRST AMENDED SUPPLEMENT TO THE FIRST  
AMENDED JOINT COMBINED DISCLOSURE STATEMENT  
AND CHAPTER 11 PLANS OF LIQUIDATION**

**PLEASE TAKE NOTICE** that, on October 16, 2017, the above-captioned debtors and debtors in possession filed the *Joint Combined Disclosure Statements and Chapter 11 Plans of Liquidation* [D.I. 532] (the “Initial Plan”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, on November 2, 2017, the Court entered the *Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Form of Ballot and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling a Plan Confirmation Hearing and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice* [Docket No. 564] (the “Interim Order”). The *First Amended Joint Combined*

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Rupari Holding Corp. (4943) and Rupari Food Services, Inc. (7933). The mailing address for the Debtors is 655 Deerfield Rd, Suite 100, PMB 325, Deerfield, IL 60015.

<sup>2</sup> Capitalized terms not otherwise defined in this Notice or in the attached exhibit shall have the meanings t given to them in the Plan.

*Disclosure Statement and Chapter 11 Plans of Liquidation* (the “Plan”) was attached as an exhibit to the Interim Order.

**PLEASE TAKE FURTHER NOTICE** that, on November 20, 2017, the Debtors filed the *Notice of Supplement to the First Amended Joint Combined Disclosure Statement and Chapter 11 Plans of Liquidation* [D.I. 597] (the “Plan Supplement”).

**PLEASE TAKE FURTHER NOTICE** that, the following parts of the plan first amended plan supplement (as may be amended, the “First Amended Plan Supplement”), are attached to this notice:<sup>3</sup>

**EXHIBIT A:** Updated Liquidating Trust Agreement

**EXHIBIT B:** Blackline of Liquidating Trust Agreement (against version filed as part of the Plan Supplement)

**EXHIBIT C:** Updated Liquidation Analysis

**EXHIBIT D:** Revised Proposed Plan Confirmation Order

**EXHIBIT E:** Blackline of Proposed Plan Confirmation Order (against version filed as part of the Plan Supplement)

**PLEASE TAKE FURTHER NOTICE** that, any Holders of Claims or Interests who would like to receive copies of any of the exhibits contained in this Plan Supplement or the First Amended Plan Supplement may do so (a) by writing to Balloting Agent by either (i) regular mail to the Balloting Agent at the following address: Donlin, Recano & Company, Inc., re: Rupari Holding Corp., *et al.*, P.O. Box 192016, Blythebourne Station, Brooklyn, NY 11219 or (ii) overnight courier or hand delivery to the Balloting Agent at the following address: Donlin, Recano & Company, Inc., re: Rupari Holding Corp., *et al.*, 6201 15th Avenue, Brooklyn, NY

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<sup>3</sup> The Plan Proponents reserve their rights, at any time prior to the Effective Date, to supplement, modify, or amend this First Amended Plan Supplement.

11219; or (b) by calling Donlin, Recano & Company, Inc. at (212) 771-1128 within the United States or Canada; or (c) by e-mailing Balloting@DonlinRecano.com. Please note that the Claims Agent is not permitted to give legal advice.

Dated: December 11, 2017  
Wilmington, Delaware

Respectfully submitted,

**DLA PIPER LLP (US)**

/s/ R. Craig Martin

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**EXHIBIT A**

**Liquidating Trust Agreement**

## **RUPARI LIQUIDATING TRUST AGREEMENT**

This RUPARI LIQUIDATING TRUST AGREEMENT (the “Liquidating Trust Agreement”) is made and entered into, as of December 31, 2017, by and among Rupari Holding Corp. and Rupari Food Services, Inc. (together, the “Settlor” or “Debtors”) and Maria Aprile Sawczuk (the “Liquidating Trustee”) of Goldstein & McClintock LLP. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Plan (as hereinafter defined).

### **RECITALS**

**WHEREAS**, on April 10, 2017, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

**WHEREAS**, by order dated December\_\_\_\_, 2017 (the “Confirmation Order”), the Bankruptcy Court confirmed the First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation (the “Plan”); and

**WHEREAS**, the Liquidating Trust is established as a liquidating trust in accordance with Treasury Regulation Section 301.7701-4(d) for the purpose of collecting, liquidating and distributing the Assets (defined below) for the benefit of the Beneficiaries in accordance with the terms of this Liquidating Trust Agreement, the Plan, and the Confirmation Order with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust; and

**WHEREAS**, pursuant to the Plan, the Settlor, the Liquidating Trustee and the Beneficiaries (defined below) are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Settlor to the Beneficiaries in satisfaction of their Allowed Claims (as defined in the Plan) followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for their beneficial interests herein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation section 301.7701-4; and

**WHEREAS**, the Trust is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to Sections 671 through 677 of the Internal Revenue Code of 1986 (as amended, the “Tax Code”); and

**WHEREAS**, under the terms of the Plan, all cash and other property of the Debtors as of the Effective Date of the Plan, and as set forth in the Plan, will be transferred and assigned to and held by the Liquidating Trust created by this Liquidating Trust Agreement so that, among other things: (i) the Assets (defined below) can be pursued and/or disposed of in an orderly and expeditious manner; (ii) objections to Claims can be pursued and Disputed Claims can be resolved; (iii) Avoidance Actions and other D&O Claims can be pursued and resolved, and (iv) Distributions can be made to the beneficiaries of the Liquidating Trust in accordance

with the Plan; and

**WHEREAS**, this Liquidating Trust is established under and pursuant to the Plan which provides for the appointment of the Liquidating Trustee to administer the Liquidating Trust for the benefit of creditors of the Debtors, and to provide administrative services relating to the implementation of the Plan; and

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

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein and in the Plan and the Confirmation Order, the Settlor and the Liquidating Trustee agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATIONS**

#### **1.1 Definitions.**

1.1.1 “Assets” shall mean the Liquidating Trust Assets as defined in the Plan, including Avoidance Actions, Causes of Action and D&O Claims not otherwise released under the Plan or acquired by the Purchaser.

1.1.2 “Available Trust Cash” shall mean the proceeds of the Assets (including Causes of Action, as such term is defined in the Plan) after paying, reserving against, or satisfying: (a) fees incurred and due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) operating and administrative expenses of the Trust, including, but not limited to, all costs, expenses, and obligations incurred by the Trustee (or professionals who may be employed by the Trustee in administering the Trust) in carrying out his or her responsibilities under this Liquidating Trust Agreement, the Plan and the Confirmation Order; and (c) any reserves provided for under the Plan.

1.1.3 “Beneficiaries” means the Holders of Allowed Claims, as defined in the Plan, whether their claims are allowed before or after the Effective Date (as defined in the Plan) of the Plan.

1.1.4 “Trust” shall mean the liquidating trust established pursuant to the terms of this Liquidating Trust Agreement, the Plan, and the Confirmation Order.

1.1.5 “Liquidating Trustee” shall mean (a) initially, the Person (as defined in the Bankruptcy Code) defined as the “Liquidating Trustee” above, and (b) any successors or replacements duly appointed under the terms of this Liquidating Trust Agreement, and is the Person referred to as the “Liquidating Trustee” in the Plan and the Confirmation Order.

1.1.6 “Liquidating Trust Agreement” shall mean this Rupari Liquidating Trust Agreement.

1.1.7 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (c) such other investments as the Bankruptcy Court may approve from time to time, or (d) demand deposits, money market account, or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, *provided, however*, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation § 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, and to the investment guidelines of section 345 of the Bankruptcy Code; *provided, further, however*, the requirement of complying with the investment guidelines of section 345 of the Bankruptcy Code may be waived by the Liquidating Trustee.

1.2 Use of Plan Definitions. All terms which are used in this Liquidating Trust Agreement but not defined herein shall have the meaning set forth in the Plan or the Confirmation Order, as appropriate.

1.3 Headings; Interpretation. The headings in this Liquidating Trust Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Liquidating Trust Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

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

## **ARTICLE II**

### **DECLARATION OF TRUST**

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

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

IN TRUST NEVERTHELESS upon the terms and subject to the conditions set forth herein and for the benefit of the holders of all Allowed Claims, as and to the extent provided in the Plan, and for the performance of and compliance with the terms hereof and of the Plan;

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

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

2.1 Creation and Name. Pursuant to the Plan, the Settlor hereby establishes and creates the Trust, on behalf of, and for the benefit of the Beneficiaries as of the effective date of the Plan (the “Trust Effective Date”). The Trust shall be known as the “Rupari Liquidating Trust,” and is the Trust referred to as the “Liquidating Trust” in the Plan. The Trustee may conduct the affairs of the Trust under the name of the “Rupari Liquidating Trust.”

2.2 Purpose of Trust. The Settlor and the Liquidating Trustee, pursuant to the Plan, the Confirmation Order and in accordance with the Bankruptcy Code, hereby create the Trust for the purpose of holding and effectuating an orderly disposition of the Assets, including, among other things: (a) investigating and, if appropriate, pursuing Causes of Action (including D&O Claims related to the Roma License) not otherwise released under the Plan, (b) administering the Assets, (c) resolving all Disputed Claims and (d) making Distributions (as defined in the Plan) from the Trust as provided for in the Plan and this Liquidating Trust Agreement and the Confirmation Order. The activities of the Trust shall be limited to those activities set forth in this Liquidating Trust Agreement and as otherwise contemplated by the Plan and the Confirmation Order.

2.3 Transfer of Assets.

- A. The Settlor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Beneficiaries, all of the Settlor’s right, title and interest in the Assets to the Trustee as of the Trust Effective Date in trust for the benefit of the Beneficiaries, pursuant to sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and Confirmation Order, free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons to the maximum extent contemplated by and permissible under section 1141(c) of the Bankruptcy Code for the uses and purposes as specified in this Liquidating Trust Agreement, the Plan and the Confirmation Order, but subject to the following liabilities: (i) all fees payable pursuant to 28 U.S.C. §1930 until such time as the Bankruptcy Court enters a final decree closing each of the Debtor’s Chapter 11 Cases (as defined in the Plan), (ii) any expenses incurred and unpaid, or to be incurred, by the Liquidating Trustee (including the payment of professionals) in the performance of his or her administrative duties in respect of winding up the Estates (as defined in the Plan) and administering the Trust, and (iii) any obligations owing pursuant to the Plan.
- B. The Liquidating Trustee shall automatically, and without need for further notice or approval of the Bankruptcy Court or the Debtors, be designated



as the representative of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code for all purposes to enforce or pursue any Cause of Action transferred to the Trust after the Trust Effective Date in accordance with the terms of this Liquidating Trust Agreement, the Plan, and the Confirmation Order. Any proceeds of a Cause of Action shall be distributed pursuant to the terms of this Liquidating Trust Agreement, the Plan and the Confirmation Order.

2.4 Securities Law. It is intended that the interests of the Beneficiaries in the Trust and the entitlements hereunder (the “Beneficial Interests”), if any, of such Beneficiaries, shall not constitute “securities.” To the extent applicable and to the extent the Beneficial Interests or any entitlements of the Beneficiaries are deemed to be “securities,” the issuance of the Beneficial Interests or the entitlements hereunder or under any Plan shall be exempt, pursuant to section 1145 of the Bankruptcy Code from Section 4(a)(2) of the Securities Act and any state and local laws requiring registration of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities Act of 1933, as amended, the Securities and Exchange Act of 1934, as amended (collectively, the “Securities Act”), the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), or the Investment Company Act of 1940, as amended (the “Investment Company Act”), then the Liquidating Trustee shall take any and all actions to comply with such registration and reporting requirements and file necessary periodic reports with the Securities and Exchange Commission. Notwithstanding the foregoing, nothing contained herein shall be deemed to preclude the Liquidating Trustee from amending this Liquidating Trust Agreement to make such changes as are deemed necessary or appropriate by the Liquidating Trustee, with the advice of counsel, to ensure that the Trust is not subject to registration and/or reporting requirement of the Securities Act, the Trust Indenture Act or the Investment Company Act, provided that such amendments do not adversely affect the Distributions to be made under the terms of this Liquidating Trust Agreement.

2.5 Appointment and Acceptance of Liquidating Trustee. The Liquidating Trustee shall be deemed to be appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Trustee accepts the Trust created by this Liquidating Trust Agreement and the grant, assignment, transfer, conveyance, and delivery to the Liquidating Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Debtors of all of their respective right, title, and interest in the Assets, upon and subject to the terms and conditions set forth in this Liquidating Trust Agreement, the Plan and the Confirmation Order. The Liquidating Trustee shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors and/or the official committee of unsecured creditors appointed in the Debtors’ Chapter 11 Cases (the “Committee”) in (a) all pending matters, including, but not limited to, motions, contested matters and adversary proceedings in the Bankruptcy Court and (b) any Cause of Action not otherwise released pursuant to the Plan pending before the Bankruptcy Court or any other court that relates to an Asset without the need for filing any motion for such relief. For the avoidance of doubt, the Liquidating Trustee may amend the caption of any pleading to substitute the Liquidating Trustee for the Debtors without further order of the Bankruptcy Court.

2.6 Further Assurances. The Debtors and other successors in interest will, on request of the Liquidating Trustee, execute and deliver such further documents and perform such further acts as may be necessary or proper to transfer to the Liquidating Trustee any portion of the Assets or to vest in the Trust the powers or property hereby conveyed. The Debtors, for themselves and their predecessors and successors, disclaim any right to any reversionary interest in any of the Assets, but nothing herein will limit the right and power of the Liquidating Trustee to abandon any Assets to the Debtors in the event the Liquidating Trustee determines it is in the best interests of the Liquidating Trust and its beneficiaries to do so.

2.7 No Reversion to Debtors. In no event shall any part of the Assets be distributed to any of the Debtors.

### **ARTICLE III**

#### **ADMINISTRATION OF THE TRUST**

3.1 Rights, Powers, and Privileges. The Liquidating Trustee shall have only the rights, powers and privileges expressly provided in this Liquidating Trust Agreement, the Plan and the Confirmation Order. Subject to the terms of this Liquidating Trust Agreement and the Plan, from and after the Effective Date, the Liquidating Trustee shall have the power to take the actions specified in this Section 3.1 and any actions reasonably incidental thereto, which the Liquidating Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, including, but not limited to:

- A. exercise all power and authority and take all actions that may be necessary to implement the Plan and enforce all provisions thereof, including, but not limited to, commencing and prosecuting all actions and proceedings (including, but not limited to, the Causes of Action (including D&O Claims)) that may be commenced and taking all actions that may be taken by any officer, director or shareholder of the Debtors with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including consummating the Plan;
- B. investigate, prosecute and/or settle or abandon any Causes of Action (including D&O Claims) not otherwise released pursuant to the Plan and transferred to the Trust;
- C. open and maintain all bank accounts, make Distributions and take other actions consistent with the Plan, including the maintenance of appropriate reserves, including, but not limited to, the Liquidating Trust Operating Reserve, the Professional Fee Carveout Reserve, and any reserve established for Disputed Claims pursuant to the terms of the Plan, in the name of the Trust;
- D. maintain the books and records of the Trust (including financial books and records), including any books and records that the Debtors transferred to the Trust;

- E. collect and liquidate all Assets transferred or to be transferred to the Trust;
- F. make a good faith valuation of the assets of the Liquidating Trust, as soon as possible after the Effective Date;
- G. take all steps reasonably necessary and practicable to terminate the corporate existence of the Debtors, including the filing of any motions or other pleadings in the Bankruptcy Court, if necessary;
- H. incur and pay reasonable and necessary expenses in connection with the implementation and consummation of the Plan;
- I. make decisions without court approval regarding the retention or engagement of professionals or other Persons, and to pay, without court approval, all reasonable fees and expenses of the Trust accruing from and after the Trust Effective Date;
- J. subject to the applicable provisions of the Plan, collect and liquidate all Assets transferred to the Trust and administer the wind down of the Debtors' affairs;
- K. prepare and file tax returns and related forms and filings on behalf of the Debtors, protest or appeal any tax assessment, and apply for or otherwise pursue any Claim (as defined in the Plan) for any tax refund, rebate or reduction;
- L. seek a determination of tax liability under section 505 of the Bankruptcy Code or otherwise and pay, or cause to be paid, from the Assets transferred to the Trust, any taxes incurred by the Liquidating Trustee and/or the Debtors before or after the Trust Effective Date;
- M. collect, or cause to be collected, any accounts receivable or other claims of the Debtors not otherwise disposed of pursuant to the Plan, including by filing proofs of claim in bankruptcy cases or other insolvency proceedings as may be necessary;
- N. invest, or cause to be invested, Cash (as defined in the Plan) as deemed appropriate by the Trustee and as consistent with sections 1.1.7 and 3.10 of this Liquidating Trust Agreement, provided, however, such investments shall be Permitted Investments;
- O. use Assets to purchase or create and carry all appropriate insurance policies, bonds or other means of assurance and protection of the Assets and pay all insurance premiums and other costs he or she deems necessary or advisable to insure the acts and omissions of the Liquidating Trustee;

- P. enter, or cause to be entered, into any agreement, or execute any document required by or consistent with the Plan and perform all of the Debtors' obligations under the Plan;
- Q. abandon, or cause to be abandoned, in any commercially reasonable manner, any Assets that the Liquidating Trustee reasonably concludes are burdensome or of inconsequential value and benefit to the Trust without any need for Bankruptcy Court approval;
- R. prepare and file the final monthly operating report for the month in which the Effective Date occurs;
- S. file, prosecute and/or settle objections to Claims filed in each of the Chapter 11 Cases;
- T. from the Effective Date, pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and, in no event later than thirty (30) Business Days after the end of the first full quarter following the Effective Date and on a quarterly basis thereafter, to file with the Court and serve upon the U.S. Trustee quarterly post-confirmation financial reports for each of the Debtors until such time as such reports are no longer required, or the Court orders otherwise, a final decree is entered closing these Cases or these Cases are converted or dismissed;
- U. take all other actions not inconsistent with the provisions of the Plan which the Liquidating Trustee deems reasonably necessary or desirable in connection with the administration and consummation of the Plan;
- V. exercise such other powers as may be vested in the Liquidating Trustee by order of the Bankruptcy Court;
- W. enter, or cause to be entered, into any litigation finance arrangement in connection with the prosecution of any Cause of Action, including a D&O Claim;
- X. make distributions of Available Trust Cash to the Beneficiaries;
- Y. seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code, Bankruptcy Rules and Local Rules; and
- Z. wind up the affairs of the Trust once all Available Trust Cash has been distributed and the affairs of the Trust have been concluded.

On and after the Trust Effective Date, the Liquidating Trustee may exercise any of the foregoing powers without any further order of the Bankruptcy Court, provided the Liquidating Trustee acts in conformity with the Plan, the Confirmation Order, this Liquidating Trust Agreement and any applicable orders of the Bankruptcy Court.

3.2 Costs. On and after the Effective Date, the Liquidating Trustee shall reserve Cash reserves from the Assets to be held in the Liquidating Trust Operating Reserve (as defined in the Plan). The Trust Expenses Reserve shall be used to pay amounts due to the Liquidating Trustee pursuant to Section 2.8 hereof and the fees and expenses of any counsel, accountant, consultant or other advisor or agent retained by the Liquidating Trustee pursuant to this Liquidating Trust Agreement as well as other expenses of the liquidation of the Debtors. In the event that amounts held in the Trust Expenses Reserve, together with any remaining Assets, are insufficient to make payments as provided in this Section 2.2, the Liquidating Trustee shall, unless reserves sufficient for such purpose have otherwise been made available from any other sources, have no obligation to make such payments.

3.3 Distributions. Pursuant to the Plan, the Liquidating Trustee shall record and account for all proceeds received upon any disposition of Assets (after deduction therefrom of appropriate reserves as provided herein and in the Plan) for distribution in accordance with the provisions of the Plan.

3.4 Transfer of Privileges. Pursuant to the Plan, on the Trust Effective Date, all the Privileges of the Debtors relating to the Assets shall be deemed transferred, assigned and delivered to the Liquidating Trust, without waiver or release, and shall vest with the Liquidating Trust. The Liquidating Trustee shall hold and be the beneficiary of all such Privileges and is entitled to assert such Privileges. No such Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtors' documents, information, or communications subject to attorney-client privileges, work product protections or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtors. The Debtors' Privileges relating to the Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement. Nothing contained herein or in the Plan Confirmation Order, nor any Professional's compliance herewith and therewith, shall constitute a breach of any Privileges of the Debtors.

3.5 Agents and Professionals. The Trustee may, but shall not be required to, retain any professionals retained by the Committee or the Debtors, including, but not limited to, Lowenstein Sandler LLP, CohnReznick LLP and such other attorneys, financial advisors, disbursing agents, accountants or other professionals and employees as the Liquidating Trustee deems appropriate in the reasonable exercise of his or her discretion, and who the Liquidating Trustee reasonably determines to have qualifications necessary to assist the Liquidating Trustee in the proper administration of the Trust. Subject to Section 7.9 of this Liquidating Trust Agreement, the Liquidating Trustee may pay the reasonable fees, costs and expenses of such Persons, in a manner to be determined by the Liquidating Trustee, out of the Assets in the ordinary course of business and without any further notice to any party or action, order or approval of the Bankruptcy Court.

3.6 Safekeeping of Assets. All Assets shall, until distributed as provided herein or in the Plan, be held in trust for the benefit of the Beneficiaries in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement. The Liquidating Trustee shall be

under no liability for interest or producing income on any moneys received hereunder and held for Distribution to the Beneficiaries, except as such interest or income shall actually be received by the Liquidating Trustee.

3.7 Limitations on Liquidating Trustee. The Liquidating Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust, and no part of the Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust.

3.8 Claims Administration. Except as specifically provided in the Plan, the Liquidating Trustee shall have the authority to: (a) file, withdraw or litigate to judgment objections to Claims; (b) settle or compromise any Disputed Claims without any further notice to any party, or any order or approval by the Bankruptcy Court; and (c) administer and adjust the claims register to reflect any settlements or compromises of a Disputed Claim, without any further notice to or action, order or approval by the Bankruptcy Court. Notwithstanding the foregoing in this Section 3.8, the Liquidating Trustee shall not have the authority to settle or compromise objections to any Professional Fee Administrative Claim (as defined in the Plan) arising before the Trust Effective Date, which shall be considered by the Bankruptcy Court upon notice as required by the applicable Bankruptcy Rules, Local Rules, and any previous orders of the Court.

3.9 Resolution of Causes of Action. Except as specifically provided in the Plan, the Liquidating Trustee shall have the authority to commence, litigate to judgment or settle any Causes of Action. The Liquidating Trustee may settle any Cause of Action without further order or approval by the Bankruptcy Court; *provided, however*, in accordance with Section 3.12 of this Liquidating Trust Agreement, the Liquidating Trustee may seek Court approval of any such settlement.

3.10 Investment. The Liquidating Trustee may only invest funds held in the Trust in Permitted Investments and, provided that the Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any of the Assets or any proceeds, revenue, or income therefrom. The Trustee may expend the Cash of the Trust: (a) as reasonably necessary to meet contingent liabilities and to maintain the value of the Assets during liquidation, (b) to pay reasonable administrative expenses (including, but not limited to, any taxes imposed on the Trust and professional fees), and (c) to satisfy other liabilities incurred by the Trust in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement (including, without limitation, the payment of any taxes).

3.11 Liquidating Trustee Action. The Liquidating Trustee shall hold, collect, conserve, protect and administer the Trust in accordance with the provisions of this Liquidating Trust Agreement, the Plan and the Confirmation Order, and pay and distribute amounts as set forth herein for the purposes set forth in this Liquidating Trust Agreement. Any good faith determination by the Liquidating Trustee as to what actions are in the best interests of the Trust shall be determinative.



3.12 Bankruptcy Court Approval of Liquidating Trustee Actions. Except as provided in the Plan, the Confirmation Order or otherwise specified in this Liquidating Trust Agreement, the Liquidating Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court for any purpose. The Liquidating Trustee shall exercise his or her business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and Distributions, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing in this Section 3.12, the Liquidating Trustee may, in his or her sole discretion, submit to the Bankruptcy Court any matter related to the Assets, the Trust, this Liquidating Trust Agreement, the Plan and the Confirmation Order, or the Debtors, including the administration and Distribution of the Assets, for which the Liquidating Trustee desires explicit approval of the Bankruptcy Court. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon a motion filed by the Liquidating Trustee. In addition, subject to Section 3.7 of this Liquidating Trust Agreement, the Liquidating Trustee shall have the authority, but not the obligation, to seek Bankruptcy Court approval to sell any Asset free and clear of any and all liens, claims, and encumbrances (to the extent any Asset is not already free and clear of any and all liens, claims, and encumbrances pursuant to the Plan or the Confirmation Order).

3.13 Confidentiality. The Liquidating Trustee shall, during the period that he, she or it serves in such capacity under this Liquidating Trust Agreement, after removal, incapacitation or resignation, and after dissolution of the Trust, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Assets relates or which they have become aware of in his, her or its capacity as Liquidating Trustee.

## **ARTICLE IV**

### **DISTRIBUTIONS FROM THE TRUST**

4.1 Timing of Distributions. Distributions of Available Trust Cash shall be made on a *pro rata* basis, no less frequently than once annually, such period to be measured from the Trust Effective Date (each a “Distribution Date”); *provided, however*, that the Liquidating Trustee may, (i) defer a Distribution to the next Distribution Date if the Liquidating Trustee determines, in the reasonable exercise of the Liquidating Trustee’s discretion, that the amount available for Distribution at such time is insufficient to justify the cost of effecting the Distribution (ii) make more frequent Distributions if the Liquidating Trustee determines that such interim distributions are warranted and economical; *provided further*, however, that the Liquidating Trustee may, in the reasonable exercise of the Liquidating Trustee’s discretion, cause the Trust to retain an amount of Available Trust Cash reasonably necessary to maintain the value of the Assets or to meet Trust liabilities, including retention of Cash or other property on account of Disputed Claims, and withhold such Cash from Distributions to Beneficiaries. On any date that Distributions are to be made under the terms of the Plan, the Liquidating Trustee shall reserve Cash or property equal to 100% of the Cash or property that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the

pendency of a dispute with respect thereto. Such Cash or property shall be held in trust for the benefit of the Holders of such Disputed Claims pending determination of their entitlement thereto. On the Final Distribution Date, the Liquidating Trustee shall distribute any Cash remaining in the Reserve to holders of Allowed Claims in accordance with the respective priorities set forth in the Plan. For the avoidance of doubt, no Distributions may be made unless and until all allowed administrative expense claims are paid in full in Cash as provide for in the Plan.

4.2 Distributions. Holders of Allowed Claims against the Debtors shall receive, in full and final satisfaction of such Allowed Claims, their share (as set forth in the Plan) of the Available Trust Cash after the Liquidating Trustee maintains appropriate reserves for Disputed Claims and the costs of administration of the Trust.

4.3 Location of Distributions. Distributions to the Beneficiaries shall be made (a) at the addresses set forth on the respective proofs of Claim Filed by such Holders; (ii) at the address set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related proof of Claim; or (iii) at the address reflected in the Schedules if no proof of Claim is Filed and the Liquidating Trustee has not received a written notice of a change of address. The Liquidating Trustee shall have no obligation to make any effort to determine the correct address of any Beneficiary.

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

4.4 No Interest on Claims. Interest shall not accrue on any claims held by the Beneficiaries.

4.5 Fractional Cents; De Minimis Distributions. The Liquidating Trustee shall (a) not be required to make Distributions or payments of fractions of cents, and whenever any Distribution of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole cent (up or down), with fractions equal to or greater than half a cent being rounded up, and fractions less than half a cent rounded down; and (b) not be required to make a Distribution on account of any Allowed Claim on a Distribution Date if the amount to be distributed to a Beneficiary on a particular Distribution Date is less than \$50.00. After final Distributions have been made in accordance with the terms of the Plan and this Liquidating Trust Agreement, if the amount held by the Trust becomes, in the sole discretion of the Liquidating Trustee, too small to cost-effectively make further distributions, the Liquidating Trustee may make a donation to a charitable institution.

4.6 Compliance with Tax Requirements. The Liquidating Trustee shall require each Beneficiary to provide him, her or it with a current executed Form W-9, W-8, or similar tax form



as a condition precedent to receiving a Distribution. The Liquidating Trustee shall provide advance written notice of any such requirement to each Beneficiary affected thereby. The notice shall provide each Beneficiary with a minimum of 60 days after the date of mailing of such notice to provide a current executed Form W-9, W-8, or similar tax form to the Liquidating Trustee and shall expressly state that a failure to provide such form within the stated period shall result in a forfeiture of the right to receive any Distribution, that any such Distribution shall revert to the Trust for distribution on account of other Allowed Claims and that the claim of the Beneficiary originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court. If a Beneficiary does not provide the Liquidating Trustee with a current executed Form W-9, W-8 or similar tax form within the time period specified in such notice, or such later time period agreed to by the Liquidating Trustee in writing in his or her discretion, such Beneficiary shall be deemed to have forfeited the right to receive any Distribution, any such Distribution shall revert to the Trust for distribution to other Beneficiaries and the claim originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court.

4.7 Administrative Claims. Allowed Administrative Claims (as defined in the Plan) that have not been or were not required to be paid on or before the Trust Effective Date, other than Professional Fee Administrative Claims, shall be paid in accordance with the terms of the Plan. All U.S. Trustee fees due and owing under 28 U.S.C. 1930(a)(6) from the Effective Date shall continue to accrue and be paid by the Liquidating Trustee until the Chapter 11 Cases are closed, dismissed or converted. Allowed Professional Fee Administrative Claims shall be paid in accordance with the Plan, the Confirmation Order, and any orders of the Bankruptcy Court with respect to final allowance of such Professional Fee Administrative Claims.

4.8 Distributions After Allowance or Disallowance of a Disputed Claim. Within the later of (i) seven (7) Business days after such Disputed Claim becomes an Allowed Claim and (ii) thirty (30) days after expiration of the Claims Objection Deadline, the Liquidating Trustee shall distribute to the holder thereof such amount of Available Trust Cash as the Holder of the Allowed Claim is entitled.

4.9 Undeliverable Distributions and Unclaimed Property. If the Distribution to any Beneficiary is returned as undeliverable, no additional Distributions shall be made to such Beneficiary unless and until the Liquidating Trustee is notified in writing of such Beneficiary's then-current address, at which time such Distribution shall be made without interest; *provided, however,* that unless a Beneficiary asserts a claim for an undeliverable Distribution within three (3) months after the date of such Distribution such Distribution shall be deemed an Unclaimed Distribution and all title to and beneficial interest in the Available Trust Cash represented by any such Unclaimed Distribution shall be cancelled and revert to and/or remain in the Trust automatically and without need for further order by the Bankruptcy Court (notwithstanding any applicable federal, state or other escheat, abandoned or unclaimed property laws to the contrary), and such Unclaimed Distribution shall be distributed *pro rata* to other Beneficiaries on account of their Allowed Claims. Nothing contained in this Liquidating Trust Agreement shall require the Liquidating Trustee to attempt to locate any Beneficiary. In the event that any check sent to a Beneficiary in connection with a Distribution has not been cashed within three (3) months after the Distribution Date, the Liquidating Trustee may cancel such check and such Distribution shall

be deemed an Unclaimed Distribution and all title to and beneficial interest in the Available Trust Cash represented by any such Unclaimed Distribution shall be cancelled and revert to and/or remain in the Trust automatically and without need for further order of the Bankruptcy Court (notwithstanding any applicable federal, state or other escheat, abandoned or unclaimed property laws to the contrary).

4.10 Payments Limited to Available Trust Cash. All Distributions to be made by the Liquidating Trustee to or for the benefit of any Beneficiary shall be made only from the Available Trust Cash.

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

4.12 Insurance. The Liquidating Trustee may use Available Trust Cash in the Liquidating Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Assets. The Liquidating Trustee may, but shall not be required to, obtain insurance coverage with respect to the liabilities and obligations of the Liquidating Trustee under this Liquidating Trust Agreement (in the form of an errors and omissions policy or otherwise) unless the Liquidating Trustee in his, her or its discretion determines that such insurance shall not be required.

## **ARTICLE V**

### **BENEFICIARIES**

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

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

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

5.4 Notice of Transfer of Beneficial Interest. An assignment or transfer of a beneficial interest in the Trust, whether by operation of law or otherwise, shall not be effective or

acknowledged by the Trust until appropriate notification and proof thereof, in a form satisfactory to the Liquidating Trustee in the exercise of his or her reasonable discretion, is submitted to the Liquidating Trustee by electronic mail, and the Liquidating Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of such written notification and proof of assignment or transfer. Except where a change of beneficial interest ownership occurs by operation of law, the notice shall be executed by both the transferee and the transferor. For purposes of each Distribution, the Liquidating Trustee will not recognize any transfer during the period commencing thirty (30) calendar days prior to making any Distribution. Except as otherwise provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, any transfer of a Claim, whether occurring prior to or after the Confirmation Date, shall not affect or alter the classification and treatment of such Claim under the Plan and the Confirmation Order and any such transferred Claim shall be subject to classification and treatment under the Plan as if such Claim were held by the transferor who held such Claim on the Petition Date. The Liquidating Trustee may rely, without any further investigation, upon any notification and proof of an assignment or transfer of a beneficial interest in the Trust submitted in accordance with this Section 5.4 that the Liquidating Trustee reasonably believes to be genuine.

## **ARTICLE VI**

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

6.1 Reliance. The Liquidating Trustee may absolutely and unconditionally rely, and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document that the Liquidating Trustee reasonably believes in good faith to be genuine.

6.2 Parties Dealing With the Liquidating Trustee. In the absence of actual knowledge to the contrary, any Person dealing with the Trust or the Liquidating Trustee, the Liquidating Trustee's duly designated agents and any professionals retained by the Liquidating Trustee in accordance with this Liquidating Trust Agreement (collectively, but excluding the Trust, the "Trust Parties"), shall be entitled to rely on the authority of the Trust Parties to act in connection with the Assets. There shall be no obligation on any Person dealing with the Trust Parties to inquire into the validity, expediency or propriety of any transaction by the Trust Parties.

6.3 Limited Recourse. Except as otherwise provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, any Person (including the Trust Parties) engaged in transactions with the Trust or the Liquidating Trustee shall look only to the Assets to satisfy any liability incurred in connection with carrying out the terms of this Liquidating Trust Agreement, the Plan or the Confirmation Order.

6.4 Limitation of Liability. The Trust, the Liquidating Trustee, and any professionals retained by the Liquidating Trustee, shall have no liability on account of any Claims or Interests (as defined in the Plan) except as set forth in this Liquidating Trust Agreement, the Plan or the Confirmation Order. Neither the Liquidating Trustee, his, her or its respective members, designees or professionals, or any duly designated agent or representative of the Liquidating Trustee, nor their respective employees (each a "Limited Liability Party" and collectively, the

“Limited Liability Parties”), shall be liable for the act or omission of any other Limited Liability Party. The Limited Liability Parties shall not be liable for any act taken or omission in their respective capacities other than for acts or omissions of such Limited Liability Party that has been determined, upon the entry of a final order of a court of competent jurisdiction, to constitute willful misconduct, gross negligence or fraud. The Liquidating Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a Chapter 7 trustee. Other than as set forth in the Plan or Confirmation Order, nothing in this Liquidating Trust Agreement shall be deemed to release any Beneficiary from any actions or omissions occurring prior to the Trust Effective Date.

6.5 Non-Liability for Acts of Others. The Liquidating Trustee may, in connection with the performance of his, her or its functions, and in his, her or its sole and absolute discretion, consult with his, her or its respective attorneys, accountants, financial advisors and agents. Notwithstanding such authority, the Liquidating Trustee shall not be under any obligation to consult with his, her or its respective attorneys, accountants, financial advisors or agents, and his, her or its determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or his, her or its members and/or designees, unless such determination is based on willful misconduct, gross negligence, or fraud. Nothing contained in this Liquidating Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Liquidating Trustee of any of the liabilities, obligations, or duties of the Debtors or Beneficiaries or a covenant or agreement by the Liquidating Trustee to assume or accept any such liability, obligation or duty. Any successor Liquidating Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Liquidating Trustee hereunder, and any statement or representation made by a predecessor Liquidating Trustee or his or her agents as to the Assets or as to any other fact bearing upon the prior administration of the Trust, so long as it has a good faith basis to do so. A successor Liquidating Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. A successor Liquidating Trustee shall not be liable for any act or omission of any predecessor Liquidating Trustee, nor have a duty to enforce any claims against any predecessor Liquidating Trustee on account of any such act or omission.

6.6 Indemnification. The Trust shall indemnify and hold harmless, to the fullest extent permitted by law, the Limited Liability Parties from and against and in respect to all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys’ fees, disbursements, and related expenses) which the Limited Liability Parties may incur or to which the Limited Liability Parties may become subject to in connection with any action, suit, proceeding or investigation brought by or threatened against the Limited Liability Parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Trust, the Plan, or the Confirmation Order, or the discharge of their duties under this Liquidating Trust Agreement; *provided, however*, that no such indemnification will be made to the Limited Liability Parties for actions or omissions that have been determined, upon the entry of a final order of a court of competent jurisdiction, to constitute willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud or self-dealing, or, in the case of an attorney professional and, as required under Rule 1.8(h)(1) of the Delaware Lawyers’ Rules of Professional Conduct, malpractice. This indemnification shall survive the death, dissolution, resignation, or removal, as may be

applicable, of the Limited Liability Parties, or the termination of the Trust, and shall inure to the benefit of the Limited Liability Parties' heirs and assigns.

## **ARTICLE VII**

### **SELECTION, REMOVAL AND COMPENSATION OF LIQUIDATING TRUSTEE**

7.1 Initial Liquidating Trustee. The initial Liquidating Trustee is Maria Aprile Sawczuk of Goldstein & McClintock LLP.

7.2 Fiduciary Duties of the Liquidating Trustee. The Liquidating Trustee shall act in a fiduciary capacity on behalf of the interests of all holders of Claims that will receive Distributions pursuant to the terms of the Plan.

7.3 Term of Service. The Liquidating Trustee shall serve until (a) the completion of all the Liquidating Trustee's duties, responsibilities and obligations under this Liquidating Trust Agreement, the Plan and the Confirmation Order, (b) termination of the Trust in accordance with this Liquidating Trust Agreement, the Plan and the Confirmation Order, or (c) the Liquidating Trustee's death or dissolution, incapacitation, resignation, or removal.

7.4 Removal of a Liquidating Trustee. Any Person serving as Liquidating Trustee may be removed at any time upon the determination of the Bankruptcy Court on a motion for cause shown by any party in interest. Any Liquidating Trustee so removed is entitled to payment of reasonable fees and necessary expenses accrued prior to removal, subject to the terms of this Liquidating Trust Agreement.

7.5 Resignation of Liquidating Trustee. The Liquidating Trustee may resign as Liquidating Trustee at any time by giving notice to the Bankruptcy Court; provided, however, that such resignation shall not be effective earlier than thirty (30) days after the date of such notice, unless an earlier effective date is allowed by the Court. In the event of a resignation, the resigning Liquidating Trustee shall render to any Successor Trustee a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Liquidating Trustee.

7.6 Appointment of Successor Liquidating Trustee. Upon the resignation, death, incapacity, or removal of a Liquidating Trustee, the Bankruptcy Court shall appoint a successor Liquidating Trustee to fill the vacancy so created. Any successor Liquidating Trustee so appointed shall consent to and accept in writing the terms of this Liquidating Trust Agreement and agree that the provisions of this Liquidating Trust Agreement shall be binding upon and inure to the benefit of the successor Liquidating Trustee and all of the successor Liquidating Trustee's heirs and legal and personal representatives, successors or assigns. Notwithstanding anything in this Liquidating Trust Agreement, in the event that a successor Liquidating Trustee is not appointed within 60 days of the occurrence or effectiveness, as applicable, of the prior Liquidating Trustee's resignation, death, incapacity, or removal, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Trust, shall approve a successor to serve as the Liquidating Trustee.

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

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

7.9 Compensation and Costs of Administration. The Liquidating Trustee shall be compensated on reasonable terms as determined initially by the Committee, which shall be \$427.00 per hour. The Liquidating Trustee may retain and compensate professionals and may retain Donlin Recono, or another qualified entity to act as disbursing agent (“Disbursing Agent”). The reasonable fees and actual and necessary expenses of such professionals, the Liquidating Trustee and any Disbursing Agent shall be paid by the Liquidating Trustee upon each monthly submission of a fee statement to the Liquidating Trustee, as applicable, in accordance with the following procedures:

- a) Any professionals retained by the Liquidating Trustee pursuant to this Liquidating Trust Agreement shall deliver their invoices or fee statements to the Liquidating Trustee before payment from the Assets shall be allowed.
- b) Any Disbursing Agent retained pursuant to this Agreement and the Plan shall deliver their invoices or fee statements to the Liquidating Trustee before payment from the Assets shall be allowed.
- c) The Liquidating Trustee, as applicable, shall have 15 days from the delivery of any invoice, fee statement or expense report to give notice of an objection to the invoice, fee statement or expense report to the Liquidating Trustee, professional or Disbursing Agent seeking compensation or reimbursement of expenses.
- d) All objections shall be in writing, set forth in detail the specific fees or expenses objected to and the basis for the objection. Such objections shall be served upon the Liquidating Trustee, professional or Disbursing Agent, as applicable, via electronic mail, first-class Mail, or by similar means of mail delivery.
- e) The uncontested portion of each invoice shall be paid within 20 days after its original delivery to the Liquidating Trustee.
- f) Any objection that remains unresolved 10 days after it is made shall be submitted to the Bankruptcy Court via motion or application for resolution.



## **ARTICLE VIII**

### **TRUST OBLIGATIONS**

8.1 **Reporting and Filing Requirements.** Within 30 days after December 31 of each calendar year in which the Trust shall remain in existence, the Liquidating Trustee shall file a report with the Bankruptcy Court of all Assets received by the Trust, all Available Trust Cash disbursed to Beneficiaries, all Assets held by the Trust and all fees paid, income, and expenses related to the Trust during the preceding calendar year. The Liquidating Trustee's report shall be available to any Beneficiary upon written request.

8.2 **Filing of Tax Returns.** The Liquidating Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations; *provided, however*, that the Liquidating Trustee may, in the Liquidating Trustee's reasonable discretion, determine the best way to report for tax purposes with respect to the Reserve, including (i) filing a tax election to treat any and all reserves for Disputed Claims as a disputed ownership fund ("DOF") within the meaning of Treasury Income Tax Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Trust or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report the Reserve as a DOF, the Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including, but not limited to, the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

8.3 **Preparation of Statements.** To the extent reasonably practicable, the Liquidating Trustee shall, within 75 days after the end of each calendar year, send to each Beneficiary a statement setting forth the Beneficiary's share of items of income, gain, loss, deduction, or credit, and the statement will instruct all such holders to report such items on their federal income tax returns. A final such statement shall also be sent to each Beneficiary within 75 days after the dissolution of the Trust. The Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan and Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Liquidating Trust Agreement, the Plan, and the Confirmation Order.

8.4 **Valuation of Assets.** As soon as practicable after the Trust Effective Date, the Liquidating Trustee, to the extent that he or she deems it necessary or appropriate in the reasonable exercise of his or her discretion, shall, in good faith, value the Assets, and shall apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including the Debtors, the Liquidating Trustee and the Beneficiaries) for all federal income tax purposes. The Liquidating Trustee shall be under no obligation to hire an expert to make such a valuation. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

## **ARTICLE IX**

### **MAINTENANCE OF RECORDS**

9.1 **Books and Records.** On the Effective Date, the Liquidating Trust shall: (a) take possession of all books, records, and files of the Debtors and the Estates that were not previously sold or transferred; and (b) provide for the retention and storage of such books, records and files until such time as the Liquidating Trustee determines the retention of same is no longer necessary or beneficial. The Liquidating Trustee shall further maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. Said books and records shall be open to inspection by any Beneficiary at any reasonable time during normal business hours and after reasonable advance notice. The Liquidating Trustee shall furnish to any Beneficiary upon written request an annual statement of receipts and disbursements, including a summary of all income and expenses of the Trust. All such records and documents may, but need not, be destroyed at any time in the Liquidating Trustee's discretion.

## **ARTICLE X**

### **DURATION OF TRUST**

10.1 **Duration.** The Trust shall become effective upon the Effective Date (as defined in the Plan) of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2 **Termination.** The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (i) all Disputed Claims have been resolved, (ii) all of the Assets have been liquidated, (iii) all duties and obligations of the Liquidating Trustee under this Liquidating Trust Agreement have been fulfilled, (iv) all Distributions required to be made by the Liquidating Trust under the Plan and this Liquidating Trust Agreement have been made, and (v) the Chapter 11 Cases have been closed; *provided, however*, that in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed one (1) year, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service 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 Assets.

10.3 **Continuance of Trust for Winding Up.** After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Liquidating Trustee shall continue to act as such until the Liquidating Trustee's duties have been fully performed. After the termination of the Trust, the Liquidating Trustee shall retain for a period of one year the books, records and certificates and other documents and files which shall have been created by the Liquidating Trustee. At the Liquidating Trustee's discretion, all of such records and documents, as well as any Books and Records set forth in paragraph 9.1 hereof, may, but need not, be destroyed at any time after such one year period. Except as otherwise specifically



provided herein, upon the discharge of all liabilities of the Trust and final Distributions pursuant to the Plan and the Confirmation Order, the Liquidating Trustee shall have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability contained in Sections 6.2, 6.3, 6.4, and 6.5 hereof shall apply to any actions taken by the Liquidating Trustee during the course of winding up the affairs of the Trust.

## **ARTICLE XI**

### **MISCELLANEOUS**

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

11.2 **Notices.** All notices to be given to Beneficiaries may be given by first-class Mail or similar method of mail delivery (however, neither a return receipt nor proof of delivery shall be required) to the holders at the addresses appearing on the books and records kept by the Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested (or by similar means of mail delivery, including Federal Express or United Parcel Service, that provides proof of delivery) addressed as follows:

If to the Trust/Liquidating Trustee:

Maria Aprile Sawczuk  
Goldstein & McClintock LLP  
1201 N. Orange Street, Suite 7380  
Wilmington, DE 19801-1186  
Telephone: 302-444-6710  
E-mail: [marias@restructuringshop.com](mailto:marias@restructuringshop.com)

With a copy to counsel to the Trust/Liquidating Trustee:

Lowenstein Sandler LLP  
Attn: Wojciech F. Jung  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: 212-262-6700  
E-mail: [wjungl@lowenstein.com](mailto:wjungl@lowenstein.com)

or to such other address as may from time to time be provided in a written notice by the Liquidating Trustee.

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

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

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

11.6 Plan and Confirmation Order. To the extent that the terms of this Liquidating Trust Agreement are inconsistent with the terms set forth in the Plan, then the terms of this Liquidating Trust Agreement shall govern and control (it being understood that the Liquidating Trustee is bound by any agreements made on or before the Plan confirmation date). To the extent that the terms of this Liquidating Trust Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order shall govern and control. Any immaterial effectuating provisions of the Plan, the Confirmation Order, or this Liquidating Trust Agreement may be interpreted by the Liquidating Trustee in such a manner that is consistent with the overall purpose and intent of the Plan, the Confirmation Order and this Liquidating Trust Agreement all without further Bankruptcy Court order, and the Liquidating Trustee shall have no liability for any such interpretation made based on the advice of counsel.

11.7 Intention of Parties to Establish Grantor Trust. This Liquidating Trust Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust.

11.8 Amendment. This Liquidating Trust Agreement may only be amended upon the written consent of the Liquidating Trustee or by order of the Bankruptcy Court. Any such amendment may, without notice to or the consent of any Beneficiary or the approval of the Bankruptcy Court: (i) cure any ambiguity, omission, defect, or inconsistency in this Liquidating Trust Agreement; *provided, however*, that such amendments, supplements or waivers shall not adversely affect the Distributions to any of the Beneficiaries or adversely affect the federal income tax status of the Trust as a “liquidating trust”; (ii) comply with any requirements in connection with the federal income tax status of the Trust as a “liquidating trust”; and (iii) comply with any requirements in connection with maintaining that the Trust is not subject to registration or reporting requirements of the Securities Act, the Trust Indenture Act, or the Investment Company Act. Any substantive provision of this Liquidating Trust Agreement may be amended or waived by the Liquidating Trustee with the approval of the Bankruptcy Court (upon notice and an opportunity for a hearing); *provided, however*, that no change may be made to this Liquidating Trust Agreement that would (a) adversely affect the (i) Distributions to any of the Beneficiaries, or (ii) the federal income tax status of the Trust as a “liquidating trust” or (b)

modify the stated purpose of the Trust as described in this Liquidating Trust Agreement). Notwithstanding this Section 11.9, any amendments or modifications to this Liquidating Trust Agreement shall not be inconsistent with the purpose and intention of the Trust to liquidate in an expeditious but orderly manner the Assets in accordance with Treasury Regulation Section 301.7701- 4(d).

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

**[signature page follows]**

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

Maria Aprile Sawczuk

Rupari Holding Corp.

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

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

Name: Maria Aprile Sawczuk  
Title: Liquidating Trustee

Name: Matthew Ray  
Title: Independent Director

Rupari Food Services Inc.

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

Name: Matthew Ray  
Title: Independent Director

**EXHIBIT B**

**Blackline of Liquidating Trust Agreement**

## **RUPARI LIQUIDATING TRUST AGREEMENT**

This RUPARI LIQUIDATING TRUST AGREEMENT (the “Liquidating Trust Agreement”) is made and entered into, as of December 31, 2017, by and among Rupari Holding Corp. and Rupari Food Services, Inc. (together, the “Settlor” or “Debtors”) and Maria Aprile Sawczuk (the “Liquidating Trustee”) of Goldstein & McClintock LLLP. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Plan (as hereinafter defined).

### **RECITALS**

**WHEREAS**, on April 10, 2017, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

**WHEREAS**, by order dated December\_\_\_\_, 2017 (the “Confirmation Order”), the Bankruptcy Court confirmed the First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation (the “Plan”); and

**WHEREAS**, the Liquidating Trust is established as a liquidating trust in accordance with Treasury Regulation Section 301.7701-4(d) for the purpose of collecting, liquidating and distributing the Assets (defined below) for the benefit of the Beneficiaries in accordance with the terms of this Liquidating Trust Agreement, the Plan, and the Confirmation Order with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust; and

**WHEREAS**, pursuant to the Plan, the Settlor, the Liquidating Trustee and the Beneficiaries (defined below) are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Settlor to the Beneficiaries in satisfaction of their Allowed Claims (as defined in the Plan) followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for their beneficial interests herein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation section 301.7701-4; and

**WHEREAS**, the Trust is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to Sections 671 through 677 of the Internal Revenue Code of 1986 (as amended, the “Tax Code”); and

**WHEREAS**, under the terms of the Plan, all cash and other property of the Debtors as of the Effective Date of the Plan, and as set forth in the Plan, will be transferred and assigned to and held by the Liquidating Trust created by this Liquidating Trust Agreement so that, among other things: (i) the Assets (defined below) can be pursued and/or disposed of in an orderly and expeditious manner; (ii) objections to Claims can be pursued and Disputed Claims can be resolved; (iii) Avoidance Actions and other D&O Claims can be pursued and resolved, and (iv) Distributions can be made to the beneficiaries of the Liquidating Trust in accordance

with the Plan; and

**WHEREAS**, this Liquidating Trust is established under and pursuant to the Plan which provides for the appointment of the Liquidating Trustee to administer the Liquidating Trust for the benefit of creditors of the Debtors, and to provide administrative services relating to the implementation of the Plan; and

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

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein and in the Plan and the Confirmation Order, the Settlor and the Liquidating Trustee agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATIONS**

#### **1.1 Definitions.**

1.1.1 “Assets” shall mean the Liquidating Trust Assets as defined in the Plan, including Avoidance Actions, Causes of Action and D&O Claims not otherwise released under the Plan or acquired by the Purchaser.

1.1.2 “Available Trust Cash” shall mean the proceeds of the Assets (including Causes of Action, as such term is defined in the Plan) after paying, reserving against, or satisfying: (a) fees incurred and due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) operating and administrative expenses of the Trust, including, but not limited to, all costs, expenses, and obligations incurred by the Trustee (or professionals who may be employed by the Trustee in administering the Trust) in carrying out his or her responsibilities under this Liquidating Trust Agreement, the Plan and the Confirmation Order; and (c) any reserves provided for under the Plan.

1.1.3 “Beneficiaries” means the Holders of Allowed Claims, as defined in the Plan, whether their claims are allowed before or after the Effective Date (as defined in the Plan) of the Plan.

1.1.4 “Trust” shall mean the liquidating trust established pursuant to the terms of this Liquidating Trust Agreement, the Plan, and the Confirmation Order.

1.1.5 “Liquidating Trustee” shall mean (a) initially, the Person (as defined in the Bankruptcy Code) defined as the “Liquidating Trustee” above, and (b) any successors or replacements duly appointed under the terms of this Liquidating Trust Agreement, and is the Person referred to as the “Liquidating Trustee” in the Plan and the Confirmation Order.

1.1.6 “Liquidating Trust Agreement” shall mean this Rupari Liquidating Trust Agreement.

1.1.7 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (c) such other investments as the Bankruptcy Court may approve from time to time, or (d) demand deposits, money market account, or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, *provided, however*, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation § 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, and to the investment guidelines of section 345 of the Bankruptcy Code; *provided, further, however*, the requirement of complying with the investment guidelines of section 345 of the Bankruptcy Code may be waived by the Liquidating Trustee.

1.2 Use of Plan Definitions. All terms which are used in this Liquidating Trust Agreement but not defined herein shall have the meaning set forth in the Plan or the Confirmation Order, as appropriate.

1.3 Headings; Interpretation. The headings in this Liquidating Trust Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Liquidating Trust Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

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

## **ARTICLE II**

### **DECLARATION OF TRUST**

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

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

IN TRUST NEVERTHELESS upon the terms and subject to the conditions set forth herein and for the benefit of the holders of all Allowed Claims, as and to the extent provided in the Plan, and for the performance of and compliance with the terms hereof and of the Plan;



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

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

2.1 Creation and Name. Pursuant to the Plan, the Settlor hereby establishes and creates the Trust, on behalf of, and for the benefit of the Beneficiaries as of the effective date of the Plan (the "Trust Effective Date"). The Trust shall be known as the "Rupari Liquidating Trust," and is the Trust referred to as the "Liquidating Trust" in the Plan. The Trustee may conduct the affairs of the Trust under the name of the "Rupari Liquidating Trust."

2.2 Purpose of Trust. The Settlor and the Liquidating Trustee, pursuant to the Plan, the Confirmation Order and in accordance with the Bankruptcy Code, hereby create the Trust for the purpose of holding and effectuating an orderly disposition of the Assets, including, among other things: (a) investigating and, if appropriate, pursuing Causes of Action (including D&O Claims related to the Roma License) not otherwise released under the Plan, (b) administering the Assets, (c) resolving all Disputed Claims and (d) making Distributions (as defined in the Plan) from the Trust as provided for in the Plan and this Liquidating Trust Agreement and the Confirmation Order. The activities of the Trust shall be limited to those activities set forth in this Liquidating Trust Agreement and as otherwise contemplated by the Plan and the Confirmation Order.

2.3 Transfer of Assets.

- A. The Settlor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Beneficiaries, all of the Settlor's right, title and interest in the Assets to the Trustee as of the Trust Effective Date in trust for the benefit of the Beneficiaries, pursuant to sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and Confirmation Order, free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons to the maximum extent contemplated by and permissible under section 1141(c) of the Bankruptcy Code for the uses and purposes as specified in this Liquidating Trust Agreement, the Plan and the Confirmation Order, but subject to the following liabilities: (i) all fees payable pursuant to 28 U.S.C. §1930 until such time as the Bankruptcy Court enters a final decree closing each of the Debtor's Chapter 11 Cases (as defined in the Plan), (ii) any expenses incurred and unpaid, or to be incurred, by the Liquidating Trustee (including the payment of professionals) in the performance of his or her administrative duties in respect of winding up the Estates (as defined in the Plan) and administering the Trust, and (iii) any obligations owing pursuant to the Plan.

- B. The Liquidating Trustee shall automatically, and without need for further notice or approval of the Bankruptcy Court or the Debtors, be designated as the representative of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code for all purposes to enforce or pursue any Cause of Action transferred to the Trust after the Trust Effective Date in accordance with the terms of this Liquidating Trust Agreement, the Plan, and the Confirmation Order. Any proceeds of a Cause of Action shall be distributed pursuant to the terms of this Liquidating Trust Agreement, the Plan and the Confirmation Order.

2.4 Securities Law. It is intended that the interests of the Beneficiaries in the Trust and the entitlements hereunder (the “Beneficial Interests”), if any, of such Beneficiaries, shall not constitute “securities.” To the extent applicable and to the extent the Beneficial Interests or any entitlements of the Beneficiaries are deemed to be “securities,” the issuance of the Beneficial Interests or the entitlements hereunder or under any Plan shall be exempt, pursuant to section 1145 of the Bankruptcy Code from Section 4(a)(2) of the Securities Act and any state and local laws requiring registration of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities Act of 1933, as amended, the Securities and Exchange Act of 1934, as amended (collectively, the “Securities Act”), the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), or the Investment Company Act of 1940, as amended (the “Investment Company Act”), then the Liquidating Trustee shall take any and all actions to comply with such registration and reporting requirements and file necessary periodic reports with the Securities and Exchange Commission. Notwithstanding the foregoing, nothing contained herein shall be deemed to preclude the Liquidating Trustee from amending this Liquidating Trust Agreement to make such changes as are deemed necessary or appropriate by the Liquidating Trustee, with the advice of counsel, to ensure that the Trust is not subject to registration and/or reporting requirement of the Securities Act, the Trust Indenture Act or the Investment Company Act, provided that such amendments do not adversely affect the Distributions to be made under the terms of this Liquidating Trust Agreement.

2.5 Appointment and Acceptance of Liquidating Trustee. The Liquidating Trustee shall be deemed to be appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Trustee accepts the Trust created by this Liquidating Trust Agreement and the grant, assignment, transfer, conveyance, and delivery to the Liquidating Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Debtors of all of their respective right, title, and interest in the Assets, upon and subject to the terms and conditions set forth in this Liquidating Trust Agreement, the Plan and the Confirmation Order. The Liquidating Trustee shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors and/or the official committee of unsecured creditors appointed in the Debtors’ Chapter 11 Cases (the “Committee”) in (a) all pending matters, including, but not limited to, motions, contested matters and adversary proceedings in the Bankruptcy Court and (b) any Cause of Action not otherwise released pursuant to the Plan pending before the Bankruptcy Court or any other court that relates to an Asset without the need for filing any motion for such relief. For the avoidance of doubt, the Liquidating Trustee may amend the caption of any pleading to substitute the Liquidating Trustee for the Debtors without further order of the Bankruptcy Court.

2.6 Further Assurances. The Debtors and other successors in interest will, on request of the Liquidating Trustee, execute and deliver such further documents and perform such further acts as may be necessary or proper to transfer to the Liquidating Trustee any portion of the Assets or to vest in the Trust the powers or property hereby conveyed. The Debtors, for themselves and their predecessors and successors, disclaim any right to any reversionary interest in any of the Assets, but nothing herein will limit the right and power of the Liquidating Trustee to abandon any Assets to the Debtors in the event the Liquidating Trustee determines it is in the best interests of the Liquidating Trust and its beneficiaries to do so.

2.7 No Reversion to Debtors. In no event shall any part of the Assets be distributed to any of the Debtors.

### **ARTICLE III**

#### **ADMINISTRATION OF THE TRUST**

3.1 Rights, Powers, and Privileges. The Liquidating Trustee shall have only the rights, powers and privileges expressly provided in this Liquidating Trust Agreement, the Plan and the Confirmation Order. Subject to the terms of this Liquidating Trust Agreement, and the Plan, from and after the Effective Date, the Liquidating Trustee shall have the power to take the actions specified in this Section 3.1 and any actions reasonably incidental thereto, which the Liquidating Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, including, but not limited to:

- A. exercise all power and authority and take all actions that may be necessary to implement the Plan and enforce all provisions thereof, including, but not limited to, commencing and prosecuting all actions and proceedings (including, but not limited to, the Causes of Action (including D&O Claims)) that may be commenced and taking all actions that may be taken by any officer, director or shareholder of the Debtors with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including consummating the Plan;
- B. investigate, prosecute and/or settle or abandon any Causes of Action (including D&O Claims) not otherwise released pursuant to the Plan and transferred to the Trust;
- C. open and maintain all bank accounts, make Distributions and take other actions consistent with the Plan, including the maintenance of appropriate reserves, including, but not limited to, the Liquidating Trust Operating Reserve, the Professional Fee Carveout Reserve, and any reserve established for Disputed Claims pursuant to the terms of the Plan, in the name of the Trust;

- D. maintain the books and records of the Trust (including financial books and records), including any books and records that the Debtors transferred to the Trust;
- E. collect and liquidate all Assets transferred or to be transferred to the Trust;
- F. make a good faith valuation of the assets of the Liquidating Trust, as soon as possible after the Effective Date;
- G. take all steps reasonably necessary and practicable to terminate the corporate existence of the Debtors, including the filing of any motions or other pleadings in the Bankruptcy Court, if necessary;
- H. incur and pay reasonable and necessary expenses in connection with the implementation and consummation of the Plan;
- I. make decisions without court approval regarding the retention or engagement of professionals or other Persons, and to pay, without court approval, all reasonable fees and expenses of the Trust accruing from and after the Trust Effective Date;
- J. subject to the applicable provisions of the Plan, collect and liquidate all Assets transferred to the Trust and administer the wind down of the Debtors' affairs;
- K. prepare and file tax returns and related forms and filings on behalf of the Debtors, protest or appeal any tax assessment, and apply for or otherwise pursue any Claim (as defined in the Plan) for any tax refund, rebate or reduction;
- L. seek a determination of tax liability under section 505 of the Bankruptcy Code or otherwise and pay, or cause to be paid, from the Assets transferred to the Trust, any taxes incurred by the Liquidating Trustee and/or the Debtors before or after the Trust Effective Date;
- M. collect, or cause to be collected, any accounts receivable or other claims of the Debtors not otherwise disposed of pursuant to the Plan, including by filing proofs of claim in bankruptcy cases or other insolvency proceedings as may be necessary;
- N. invest, or cause to be invested, Cash (as defined in the Plan) as deemed appropriate by the Trustee and as consistent with sections 1.1.7 and 3.10 of this Liquidating Trust Agreement, provided, however, such investments shall be Permitted Investments;
- O. use Assets to purchase or create and carry all appropriate insurance policies, bonds or other means of assurance and protection of the Assets

and pay all insurance premiums and other costs he or she deems necessary or advisable to insure the acts and omissions of the Liquidating Trustee;

- P. enter, or cause to be entered, into any agreement, or execute any document required by or consistent with the Plan and perform all of the Debtors' obligations under the Plan;
- Q. abandon, or cause to be abandoned, in any commercially reasonable manner, any Assets that the Liquidating Trustee reasonably concludes are burdensome or of inconsequential value and benefit to the Trust without any need for Bankruptcy Court approval;
- R. prepare and file the final monthly operating report for the month in which the Effective Date occurs;
- S. file, prosecute and/or settle objections to Claims filed in each of the Chapter 11 Cases;
- T. from the Effective Date, pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and, in no event later than thirty (30) Business Days after the end of the first full quarter following the Effective Date and on a quarterly basis thereafter, to file with the Court and serve upon the U.S. Trustee quarterly post-confirmation financial reports for each of the Debtors until such time as such reports are no longer required, or the Court orders otherwise, a final decree is entered closing these Cases or these Cases are converted or dismissed;
- U. take all other actions not inconsistent with the provisions of the Plan which the Liquidating Trustee deems reasonably necessary or desirable in connection with the administration and consummation of the Plan;
- V. exercise such other powers as may be vested in the Liquidating Trustee by order of the Bankruptcy Court;
- W. enter, or cause to be entered, into any litigation finance arrangement in connection with the prosecution of any Cause of Action, including a D&O Claim;
- X. ~~W.~~ make distributions of Available Trust Cash to the Beneficiaries;
- Y. ~~X.~~ seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code, Bankruptcy Rules and Local Rules; and
- Z. ~~Y.~~ wind up the affairs of the Trust once all Available Trust Cash has been distributed and the affairs of the Trust have been concluded.

On and after the Trust Effective Date, the Liquidating Trustee may exercise any of the foregoing powers without any further order of the Bankruptcy Court, provided the Liquidating Trustee acts in conformity with the Plan, the Confirmation Order, this Liquidating Trust Agreement and any applicable orders of the Bankruptcy Court.

3.2 Costs. On and after the Effective Date, the Liquidating Trustee shall reserve Cash reserves from the Assets to be held in the Liquidating Trust Operating Reserve (as defined in the Plan). The Trust Expenses Reserve shall be used to pay amounts due to the Liquidating Trustee pursuant to Section 2.8 hereof and the fees and expenses of any counsel, accountant, consultant or other advisor or agent retained by the Liquidating Trustee pursuant to this Liquidating Trust Agreement as well as other expenses of the liquidation of the Debtors. In the event that amounts held in the Trust Expenses Reserve, together with any remaining Assets, are insufficient to make payments as provided in this Section 2.2, the Liquidating Trustee shall, unless reserves sufficient for such purpose have otherwise been made available from any other sources, have no obligation to make such payments.

3.3 Distributions. Pursuant to the Plan, the Liquidating Trustee shall record and account for all proceeds received upon any disposition of Assets (after deduction therefrom of appropriate reserves as provided herein and in the Plan) for distribution in accordance with the provisions of the Plan.

3.4 Transfer of Privileges. Pursuant to the Plan, on the Trust Effective Date, all the Privileges of the Debtors relating to the Assets shall be deemed transferred, assigned and delivered to the Liquidating Trust, without waiver or release, and shall vest with the Liquidating Trust. The Liquidating Trustee shall hold and be the beneficiary of all such Privileges and is entitled to assert such Privileges. No such Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtors' documents, information, or communications subject to attorney-client privileges, work product protections or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtors. The Debtors' Privileges relating to the Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement. Nothing contained herein or in the Plan Confirmation Order, nor any Professional's compliance herewith and therewith, shall constitute a breach of any Privileges of the Debtors.

3.5 Agents and Professionals. The Trustee may, but shall not be required to, retain any professionals retained by the Committee or the Debtors, including, but not limited to, Lowenstein Sandler LLP, CohnReznick LLP and such other attorneys, financial advisors, disbursing agents, accountants or other professionals and employees as the Liquidating Trustee deems appropriate in the reasonable exercise of his or her discretion, and who the Liquidating Trustee reasonably determines to have qualifications necessary to assist the Liquidating Trustee in the proper administration of the Trust. Subject to Section 7.9 of this Liquidating Trust Agreement, the Liquidating Trustee may pay the reasonable fees, costs and expenses of such Persons, in a manner to be determined by the Liquidating Trustee, out of the Assets in the ordinary course of business and without any further notice to any party or action, order or approval of the Bankruptcy Court.



3.6 Safekeeping of Assets. All Assets shall, until distributed as provided herein or in the Plan, be held in trust for the benefit of the Beneficiaries in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement. The Liquidating Trustee shall be under no liability for interest or producing income on any moneys received hereunder and held for Distribution to the Beneficiaries, except as such interest or income shall actually be received by the Liquidating Trustee.

3.7 Limitations on Liquidating Trustee. The Liquidating Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust, and no part of the Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust.

3.8 Claims Administration. Except as specifically provided in the Plan, the Liquidating Trustee shall have the authority to: (a) file, withdraw or litigate to judgment objections to Claims; (b) settle or compromise any Disputed Claims without any further notice to any party, or any order or approval by the Bankruptcy Court; and (c) administer and adjust the claims register to reflect any settlements or compromises of a Disputed Claim, without any further notice to or action, order or approval by the Bankruptcy Court. Notwithstanding the foregoing in this Section 3.8, the Liquidating Trustee shall not have the authority to settle or compromise objections to any Professional Fee Administrative Claim (as defined in the Plan) arising before the Trust Effective Date, which shall be considered by the Bankruptcy Court upon notice as required by the applicable Bankruptcy Rules, Local Rules, and any previous orders of the Court.

3.9 Resolution of Causes of Action. Except as specifically provided in the Plan, the Liquidating Trustee shall have the authority to commence, litigate to judgment or settle any Causes of Action. The Liquidating Trustee may settle any Cause of Action without further order or approval by the Bankruptcy Court; *provided, however*, in accordance with Section 3.12 of this Liquidating Trust Agreement, the Liquidating Trustee may seek Court approval of any such settlement.

3.10 Investment. The Liquidating Trustee may only invest funds held in the Trust in Permitted Investments and, provided that the Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any of the Assets or any proceeds, revenue, or income therefrom. The Trustee may expend the Cash of the Trust: (a) as reasonably necessary to meet contingent liabilities and to maintain the value of the Assets during liquidation, (b) to pay reasonable administrative expenses (including, but not limited to, any taxes imposed on the Trust and professional fees), and (c) to satisfy other liabilities incurred by the Trust in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement (including, without limitation, the payment of any taxes).

3.11 Liquidating Trustee Action. The Liquidating Trustee shall hold, collect, conserve, protect and administer the Trust in accordance with the provisions of this Liquidating Trust Agreement, the Plan and the Confirmation Order, and pay and distribute amounts as set forth

herein for the purposes set forth in this Liquidating Trust Agreement. Any good faith determination by the Liquidating Trustee as to what actions are in the best interests of the Trust shall be determinative.

3.12 Bankruptcy Court Approval of Liquidating Trustee Actions. Except as provided in the Plan, the Confirmation Order or otherwise specified in this Liquidating Trust Agreement, the Liquidating Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court for any purpose. The Liquidating Trustee shall exercise his or her business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and Distributions, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing in this Section 3.12, the Liquidating Trustee may, in his or her sole discretion, submit to the Bankruptcy Court any matter related to the Assets, the Trust, this Liquidating Trust Agreement, the Plan and the Confirmation Order, or the Debtors, including the administration and Distribution of the Assets, for which the Liquidating Trustee desires explicit approval of the Bankruptcy Court. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon a motion filed by the Liquidating Trustee. In addition, subject to Section 3.7 of this Liquidating Trust Agreement, the Liquidating Trustee shall have the authority, but not the obligation, to seek Bankruptcy Court approval to sell any Asset free and clear of any and all liens, claims, and encumbrances (to the extent any Asset is not already free and clear of any and all liens, claims, and encumbrances pursuant to the Plan or the Confirmation Order).

3.13 Confidentiality. The Liquidating Trustee shall, during the period that he, she or it serves in such capacity under this Liquidating Trust Agreement, after removal, incapacitation or resignation, and after dissolution of the Trust, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Assets relates or which they have become aware of in his, her or its capacity as Liquidating Trustee.

## **ARTICLE IV**

### **DISTRIBUTIONS FROM THE TRUST**

4.1 Timing of Distributions. Distributions of Available Trust Cash shall be made on a *pro rata* basis, no less frequently than once annually, such period to be measured from the Trust Effective Date (each a “Distribution Date”); *provided, however*, that the Liquidating Trustee may, (i) defer a Distribution to the next Distribution Date if the Liquidating Trustee determines, in the reasonable exercise of the Liquidating Trustee’s discretion, that the amount available for Distribution at such time is insufficient to justify the cost of effecting the Distribution (ii) make more frequent Distributions if the Liquidating Trustee determines that such interim distributions are warranted and economical; *provided further*, however, that the Liquidating Trustee may, in the reasonable exercise of the Liquidating Trustee’s discretion, cause the Trust to retain an amount of Available Trust Cash reasonably necessary to maintain the value of the Assets or to meet Trust liabilities, including retention of Cash or other property on account of Disputed Claims, and withhold such Cash from Distributions to Beneficiaries. On any date that



Distributions are to be made under the terms of the Plan, the Liquidating Trustee shall reserve Cash or property equal to 100% of the Cash or property that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto. Such Cash or property shall be held in trust for the benefit of the Holders of such Disputed Claims pending determination of their entitlement thereto. On the Final Distribution Date, the Liquidating Trustee shall distribute any Cash remaining in the Reserve to holders of Allowed Claims in accordance with the respective priorities set forth in the Plan. For the avoidance of doubt, no Distributions may be made unless and until all allowed administrative expense claims are paid in full in Cash as provide for in the Plan.

4.2 Distributions. Holders of Allowed Claims against the Debtors shall receive, in full and final satisfaction of such Allowed Claims, their share (as set forth in the Plan) of the Available Trust Cash after the Liquidating Trustee maintains appropriate reserves for Disputed Claims and the costs of administration of the Trust.

4.3 Location of Distributions. Distributions to the Beneficiaries shall be made (a) at the addresses set forth on the respective proofs of Claim Filed by such Holders; (ii) at the address set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related proof of Claim; or (iii) at the address reflected in the Schedules if no proof of Claim is Filed and the Liquidating Trustee has not received a written notice of a change of address. The Liquidating Trustee shall have no obligation to make any effort to determine the correct address of any Beneficiary.

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

4.4 No Interest on Claims. Interest shall not accrue on any claims held by the Beneficiaries.

4.5 Fractional Cents; De Minimis Distributions. The Liquidating Trustee shall (a) not be required to make Distributions or payments of fractions of cents, and whenever any Distribution of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole cent (up or down), with fractions equal to or greater than half a cent being rounded up, and fractions less than half a cent rounded down; and (b) not be required to make a Distribution on account of any Allowed Claim on a Distribution Date if the amount to be distributed to a Beneficiary on a particular Distribution Date is less than \$50.00. After final Distributions have been made in accordance with the terms of the Plan and this Liquidating Trust Agreement, if the amount held by the Trust becomes, in the sole discretion of the Liquidating Trustee, too small to cost-effectively make further distributions, the Liquidating Trustee may make a donation to a charitable institution.

4.6 Compliance with Tax Requirements. The Liquidating Trustee shall require each Beneficiary to provide him, her or it with a current executed Form W-9, W-8, or similar tax form as a condition precedent to receiving a Distribution. The Liquidating Trustee shall provide advance written notice of any such requirement to each Beneficiary affected thereby. The notice shall provide each Beneficiary with a minimum of 60 days after the date of mailing of such notice to provide a current executed Form W-9, W-8, or similar tax form to the Liquidating Trustee and shall expressly state that a failure to provide such form within the stated period shall result in a forfeiture of the right to receive any Distribution, that any such Distribution shall revert to the Trust for distribution on account of other Allowed Claims and that the claim of the Beneficiary originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court. If a Beneficiary does not provide the Liquidating Trustee with a current executed Form W-9, W-8 or similar tax form within the time period specified in such notice, or such later time period agreed to by the Liquidating Trustee in writing in his or her discretion, such Beneficiary shall be deemed to have forfeited the right to receive any Distribution, any such Distribution shall revert to the Trust for distribution to other Beneficiaries and the claim originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court.

4.7 Administrative Claims. Allowed Administrative Claims (as defined in the Plan) that have not been or were not required to be paid on or before the Trust Effective Date, other than Professional Fee Administrative Claims, shall be paid in accordance with the terms of the Plan. All U.S. Trustee fees due and owing under 28 U.S.C. 1930(a)(6) from the Effective Date shall continue to accrue and be paid by the Liquidating Trustee until the Chapter 11 Cases are closed, dismissed or converted. Allowed Professional Fee Administrative Claims shall be paid in accordance with the Plan, the Confirmation Order, and any orders of the Bankruptcy Court with respect to final allowance of such Professional Fee Administrative Claims.

4.8 Distributions After Allowance or Disallowance of a Disputed Claim. Within the later of (i) seven (7) Business days after such Disputed Claim becomes an Allowed Claim and (ii) thirty (30) days after expiration of the Claims Objection Deadline, the Liquidating Trustee shall distribute to the holder thereof such amount of Available Trust Cash as the Holder of the Allowed Claim is entitled.

4.9 Undeliverable Distributions and Unclaimed Property. If the Distribution to any Beneficiary is returned as undeliverable, no additional Distributions shall be made to such Beneficiary unless and until the Liquidating Trustee is notified in writing of such Beneficiary's then-current address, at which time such Distribution shall be made without interest; *provided, however*, that unless a Beneficiary asserts a claim for an undeliverable Distribution within three (3) months after the date of such Distribution such Distribution shall be deemed an Unclaimed Distribution and all title to and beneficial interest in the Available Trust Cash represented by any such Unclaimed Distribution shall be cancelled and revert to and/or remain in the Trust automatically and without need for further order by the Bankruptcy Court (notwithstanding any applicable federal, state or other escheat, abandoned or unclaimed property laws to the contrary), and such Unclaimed Distribution shall be distributed *pro rata* to other Beneficiaries on account of their Allowed Claims. Nothing contained in this Liquidating Trust Agreement shall require the Liquidating Trustee to attempt to locate any Beneficiary. In the event that any check sent to a

Beneficiary in connection with a Distribution has not been cashed within three (3) months after the Distribution Date, the Liquidating Trustee may cancel such check and such Distribution shall be deemed an Unclaimed Distribution and all title to and beneficial interest in the Available Trust Cash represented by any such Unclaimed Distribution shall be cancelled and revert to and/or remain in the Trust automatically and without need for further order of the Bankruptcy Court (notwithstanding any applicable federal, state or other escheat, abandoned or unclaimed property laws to the contrary).

4.10 Payments Limited to Available Trust Cash. All Distributions to be made by the Liquidating Trustee to or for the benefit of any Beneficiary shall be made only from the Available Trust Cash.

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

4.12 Insurance. The Liquidating Trustee may use Available Trust Cash in the Liquidating Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Assets. The Liquidating Trustee may, but shall not be required to, obtain insurance coverage with respect to the liabilities and obligations of the Liquidating Trustee under this Liquidating Trust Agreement (in the form of an errors and omissions policy or otherwise) unless the Liquidating Trustee in his, her or its discretion determines that such insurance shall not be required.

## **ARTICLE V**

### **BENEFICIARIES**

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

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

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

5.4 Notice of Transfer of Beneficial Interest. An assignment or transfer of a beneficial interest in the Trust, whether by operation of law or otherwise, shall not be effective or acknowledged by the Trust until appropriate notification and proof thereof, in a form satisfactory to the Liquidating Trustee in the exercise of his or her reasonable discretion, is submitted to the Liquidating Trustee by electronic mail, and the Liquidating Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of such written notification and proof of assignment or transfer. Except where a change of beneficial interest ownership occurs by operation of law, the notice shall be executed by both the transferee and the transferor. For purposes of each Distribution, the Liquidating Trustee will not recognize any transfer during the period commencing thirty (30) calendar days prior to making any Distribution. Except as otherwise provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, any transfer of a Claim, whether occurring prior to or after the Confirmation Date, shall not affect or alter the classification and treatment of such Claim under the Plan and the Confirmation Order and any such transferred Claim shall be subject to classification and treatment under the Plan as if such Claim were held by the transferor who held such Claim on the Petition Date. The Liquidating Trustee may rely, without any further investigation, upon any notification and proof of an assignment or transfer of a beneficial interest in the Trust submitted in accordance with this Section 5.4 that the Liquidating Trustee reasonably believes to be genuine.

## **ARTICLE VI**

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

6.1 Reliance. The Liquidating Trustee may absolutely and unconditionally rely, and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document that the Liquidating Trustee reasonably believes in good faith to be genuine.

6.2 Parties Dealing With the Liquidating Trustee. In the absence of actual knowledge to the contrary, any Person dealing with the Trust or the Liquidating Trustee, the Liquidating Trustee's duly designated agents and any professionals retained by the Liquidating Trustee in accordance with this Liquidating Trust Agreement (collectively, but excluding the Trust, the "Trust Parties"), shall be entitled to rely on the authority of the Trust Parties to act in connection with the Assets. There shall be no obligation on any Person dealing with the Trust Parties to inquire into the validity, expediency or propriety of any transaction by the Trust Parties.

6.3 Limited Recourse. Except as otherwise provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, any Person (including the Trust Parties) engaged in transactions with the Trust or the Liquidating Trustee shall look only to the Assets to satisfy any liability incurred in connection with carrying out the terms of this Liquidating Trust Agreement, the Plan or the Confirmation Order.

6.4 Limitation of Liability. The Trust, the Liquidating Trustee, and any professionals retained by the Liquidating Trustee, shall have no liability on account of any Claims or Interests (as defined in the Plan) except as set forth in this Liquidating Trust Agreement, the Plan or the

Confirmation Order. ~~All payments and all Distributions made by the Liquidating Trustee under this Liquidating Trust Agreement, the Plan or the Confirmation Order shall be in full and final satisfaction, settlement, and release of and in exchange for all Claims or Interests against the Debtors.~~ Neither the Liquidating Trustee, his, her or its respective members, designees or professionals, or any duly designated agent or representative of the Liquidating Trustee, nor their respective employees (each a “Limited Liability Party” and collectively, the “Limited Liability Parties”), shall be liable for the act or omission of any other Limited Liability Party. The Limited Liability Parties shall not be liable for any act taken or omission in their respective capacities other than for acts or omissions of such Limited Liability Party that has been determined, upon the entry of a final order of a court of competent jurisdiction, to constitute willful misconduct, gross negligence or fraud. The Liquidating Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a Chapter 7 trustee. Other than as set forth in the Plan or Confirmation Order, nothing in this Liquidating Trust Agreement shall be deemed to release any Beneficiary from any actions or omissions occurring prior to the Trust Effective Date.

6.5 Non-Liability for Acts of Others. The Liquidating Trustee may, in connection with the performance of his, her or its functions, and in his, her or its sole and absolute discretion, consult with his, her or its respective attorneys, accountants, financial advisors and agents, ~~and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons, regardless of whether such advice or opinions are provided orally or in writing.~~ Notwithstanding such authority, the Liquidating Trustee shall not be under any obligation to consult with his, her or its respective attorneys, accountants, financial advisors or agents, and his, her or its determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or his, her or its members and/or designees, unless such determination is based on willful misconduct, gross negligence, or fraud. Nothing contained in this Liquidating Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Liquidating Trustee of any of the liabilities, obligations, or duties of the Debtors or Beneficiaries or a covenant or agreement by the Liquidating Trustee to assume or accept any such liability, obligation or duty. Any successor Liquidating Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Liquidating Trustee hereunder, and any statement or representation made by a predecessor Liquidating Trustee or his or her agents as to the Assets or as to any other fact bearing upon the prior administration of the Trust, so long as it has a good faith basis to do so. A successor Liquidating Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. A successor Liquidating Trustee shall not be liable for any act or omission of any predecessor Liquidating Trustee, nor have a duty to enforce any claims against any predecessor Liquidating Trustee on account of any such act or omission.

6.6 Indemnification. The Trust shall indemnify and hold harmless, to the fullest extent permitted by law, the Limited Liability Parties from and against and in respect to all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys’ fees, disbursements, and related expenses) which the Limited Liability Parties may incur or to which the Limited Liability Parties may become subject to in connection with any action, suit, proceeding or investigation brought by or threatened against the Limited Liability Parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the

implementation or administration of the Trust, the Plan, or the Confirmation Order, or the discharge of their duties under this Liquidating Trust Agreement; *provided, however*, that no such indemnification will be made to the Limited Liability Parties for actions or omissions that have been determined, upon the entry of a final order of a court of competent jurisdiction, to constitute willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud or self-dealing, or, in the case of an attorney professional and, as required under Rule 1.8(h)(1) of the Delaware Lawyers' Rules of Professional Conduct, malpractice. ~~Persons dealing with the Limited Liability Parties may only look to the Assets to satisfy any liability incurred by the Limited Liability Parties to such Person in carrying out the terms of this Liquidating Trust Agreement, and the Limited Liability Parties shall not have any personal obligation to satisfy any such liability.~~ This indemnification shall survive the death, dissolution, resignation, or removal, as may be applicable, of the Limited Liability Parties, or the termination of the Trust, and shall inure to the benefit of the Limited Liability Parties' heirs and assigns.

## **ARTICLE VII**

### **SELECTION, REMOVAL AND COMPENSATION OF LIQUIDATING TRUSTEE**

7.1 Initial Liquidating Trustee. The initial Liquidating Trustee is Maria Aprile Sawczuk of Goldstein & McClintock LLP.

7.2 Fiduciary Duties of the Liquidating Trustee. The Liquidating Trustee shall act in a fiduciary capacity on behalf of the interests of all holders of Claims that will receive Distributions pursuant to the terms of the Plan.

7.3 Term of Service. The Liquidating Trustee shall serve until (a) the completion of all the Liquidating Trustee's duties, responsibilities and obligations under this Liquidating Trust Agreement, the Plan and the Confirmation Order, (b) termination of the Trust in accordance with this Liquidating Trust Agreement, the Plan and the Confirmation Order, or (c) the Liquidating Trustee's death or dissolution, incapacitation, resignation, or removal.

7.4 Removal of a Liquidating Trustee. Any Person serving as Liquidating Trustee may be removed at any time upon the determination of the Bankruptcy Court on a motion for cause shown by any party in interest. Any Liquidating Trustee so removed is entitled to payment of reasonable fees and necessary expenses accrued prior to removal, subject to the terms of this Liquidating Trust Agreement.

7.5 Resignation of Liquidating Trustee. The Liquidating Trustee may resign as Liquidating Trustee at any time by giving notice to the Bankruptcy Court; provided, however, that such resignation shall not be effective earlier than thirty (30) days after the date of such notice, unless an earlier effective date is allowed by the Court. In the event of a resignation, the resigning Liquidating Trustee shall render to any Successor Trustee a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Liquidating Trustee.



7.6 Appointment of Successor Liquidating Trustee. Upon the resignation, death, incapacity, or removal of a Liquidating Trustee, the Bankruptcy Court shall appoint a successor Liquidating Trustee to fill the vacancy so created. Any successor Liquidating Trustee so appointed shall consent to and accept in writing the terms of this Liquidating Trust Agreement and agree that the provisions of this Liquidating Trust Agreement shall be binding upon and inure to the benefit of the successor Liquidating Trustee and all of the successor Liquidating Trustee's heirs and legal and personal representatives, successors or assigns. Notwithstanding anything in this Liquidating Trust Agreement, in the event that a successor Liquidating Trustee is not appointed within 60 days of the occurrence or effectiveness, as applicable, of the prior Liquidating Trustee's resignation, death, incapacity, or removal, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Trust, shall approve a successor to serve as the Liquidating Trustee.

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

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

7.9 Compensation and Costs of Administration. The Liquidating Trustee shall be compensated on reasonable terms as determined initially by the Committee, which shall be \$427.00 per hour. The Liquidating Trustee may retain and compensate professionals and may retain Donlin Recono, or another qualified entity to act as disbursing agent ("Disbursing Agent"). The reasonable fees and actual and necessary expenses of such professionals, the Liquidating Trustee and any Disbursing Agent shall be paid by the Liquidating Trustee upon each monthly submission of a fee statement to the Liquidating Trustee, as applicable, in accordance with the following procedures:

- a) Any professionals retained by the Liquidating Trustee pursuant to this Liquidating Trust Agreement shall deliver their invoices or fee statements to the Liquidating Trustee before payment from the Assets shall be allowed.
- b) Any Disbursing Agent retained pursuant to this Agreement and the Plan shall deliver their invoices or fee statements to the Liquidating Trustee before payment from the Assets shall be allowed.
- c) The Liquidating Trustee, as applicable, shall have 15 days from the delivery of any invoice, fee statement or expense report to give notice of an objection to the invoice, fee statement or expense report to the Liquidating Trustee, professional or Disbursing Agent seeking compensation or reimbursement of expenses.
- d) All objections shall be in writing, set forth in detail the specific fees or expenses objected to and the basis for the objection. Such objections shall be served upon the Liquidating



Trustee, professional or Disbursing Agent, as applicable, via electronic mail, first-class Mail, or by similar means of mail delivery.

- e) The uncontested portion of each invoice shall be paid within 20 days after its original delivery to the Liquidating Trustee.
- f) Any objection that remains unresolved 10 days after it is made shall be submitted to the Bankruptcy Court via motion or application for resolution.

## **ARTICLE VIII**

### **TRUST OBLIGATIONS**

8.1 Reporting and Filing Requirements. Within 30 days after December 31 of each calendar year in which the Trust shall remain in existence, the Liquidating Trustee shall file a report with the Bankruptcy Court of all Assets received by the Trust, all Available Trust Cash disbursed to Beneficiaries, all Assets held by the Trust and all fees paid, income, and expenses related to the Trust during the preceding calendar year. The Liquidating Trustee's report shall be available to any Beneficiary upon written request.

8.2 Filing of Tax Returns. The Liquidating Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations; *provided, however*, that the Liquidating Trustee may, in the Liquidating Trustee's reasonable discretion, determine the best way to report for tax purposes with respect to the Reserve, including (i) filing a tax election to treat any and all reserves for Disputed Claims as a disputed ownership fund ("DOF") within the meaning of Treasury Income Tax Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Trust or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report the Reserve as a DOF, the Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including, but not limited to, the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

8.3 Preparation of Statements. To the extent reasonably practicable, the Liquidating Trustee shall, within 75 days after the end of each calendar year, send to each Beneficiary a statement setting forth the Beneficiary's share of items of income, gain, loss, deduction, or credit, and the statement will instruct all such holders to report such items on their federal income tax returns. A final such statement shall also be sent to each Beneficiary within 75 days after the dissolution of the Trust. The Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan and Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Liquidating Trust Agreement, the Plan, and the Confirmation Order.

8.4 Valuation of Assets. As soon as practicable after the Trust Effective Date, the Liquidating Trustee, to the extent that he or she deems it necessary or appropriate in the reasonable exercise of his or her discretion, shall, in good faith, value the Assets, and shall apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties

(including the Debtors, the Liquidating Trustee and the Beneficiaries) for all federal income tax purposes. The Liquidating Trustee shall be under no obligation to hire an expert to make such a valuation. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

## **ARTICLE IX**

### **MAINTENANCE OF RECORDS**

9.1 Books and Records. On the Effective Date, the Liquidating Trust shall: (a) take possession of all books, records, and files of the Debtors and the Estates that were not previously sold or transferred; and (b) provide for the retention and storage of such books, records and files until such time as the Liquidating Trustee determines the retention of same is no longer necessary or beneficial. The Liquidating Trustee shall further maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. Said books and records shall be open to inspection by any Beneficiary at any reasonable time during normal business hours and after reasonable advance notice. The Liquidating Trustee shall furnish to any Beneficiary upon written request an annual statement of receipts and disbursements, including a summary of all income and expenses of the Trust. All such records and documents may, but need not, be destroyed at any time in the Liquidating Trustee's discretion.

## **ARTICLE X**

### **DURATION OF TRUST**

10.1 Duration. The Trust shall become effective upon the Effective Date (as defined in the Plan) of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2 Termination. The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (i) all Disputed Claims have been resolved, (ii) all of the Assets have been liquidated, (iii) all duties and obligations of the Liquidating Trustee under this Liquidating Trust Agreement have been fulfilled, (iv) all Distributions required to be made by the Liquidating Trust under the Plan and this Liquidating Trust Agreement have been made, and (v) the Chapter 11 Cases have been closed; *provided, however*, that in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed one (1) year, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service 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 Assets.

10.3 Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Liquidating Trustee shall continue to act as such until the Liquidating Trustee's duties have been fully performed. After the

termination of the Trust, the Liquidating Trustee shall retain for a period of one year the books, records and certificates and other documents and files which shall have been created by the Liquidating Trustee. At the Liquidating Trustee's discretion, all of such records and documents, as well as any Books and Records set forth in paragraph 9.1 hereof, may, but need not, be destroyed at any time after such one year period. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and final Distributions pursuant to the Plan and the Confirmation Order, the Liquidating Trustee shall have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability contained in Sections 6.2, 6.3, 6.4, and 6.5 hereof shall apply to any actions taken by the Liquidating Trustee during the course of winding up the affairs of the Trust.

## **ARTICLE XI**

### **MISCELLANEOUS**

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

11.2 Notices. All notices to be given to Beneficiaries may be given by first-class Mail or similar method of mail delivery (however, neither a return receipt nor proof of delivery shall be required) to the holders at the addresses appearing on the books and records kept by the Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested (or by similar means of mail delivery, including Federal Express or United Parcel Service, that provides proof of delivery) addressed as follows:

If to the Trust/Liquidating Trustee:

Maria Aprile Sawczuk  
Goldstein & McClintock LLLP  
1201 N. Orange Street, Suite 7380  
Wilmington, DE 19801-1186  
Telephone: 302-444-6710  
E-mail: [marias@restructuringshop.com](mailto:marias@restructuringshop.com)

With a copy to counsel to the Trust/Liquidating Trustee:

Lowenstein Sandler LLP  
Attn: Wojciech F. Jung  
1251 Avenue of the Americas  
New York, NY 10020

Telephone: 212-262-6700  
E-mail: wjungl@lowenstein.com

or to such other address as may from time to time be provided in a written notice by the Liquidating Trustee.

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

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

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

11.6 Plan and Confirmation Order. To the extent that the terms of this Liquidating Trust Agreement are inconsistent with the terms set forth in the Plan, then the terms of this Liquidating Trust Agreement shall govern and control (it being understood that the Liquidating Trustee is bound by any agreements made on or before the Plan confirmation date). To the extent that the terms of this Liquidating Trust Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order shall govern and control. Any immaterial effectuating provisions of the Plan, the Confirmation Order, or this Liquidating Trust Agreement may be interpreted by the Liquidating Trustee in such a manner that is consistent with the overall purpose and intent of the Plan, the Confirmation Order and this Liquidating Trust Agreement all without further Bankruptcy Court order, and the Liquidating Trustee shall have no liability for any such interpretation made based on the advice of counsel.

11.7 Intention of Parties to Establish Grantor Trust. This Liquidating Trust Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust.

11.8 Amendment. This Liquidating Trust Agreement may only be amended upon the written consent of the Liquidating Trustee or by order of the Bankruptcy Court. Any such amendment may, without notice to or the consent of any Beneficiary or the approval of the Bankruptcy Court: (i) cure any ambiguity, omission, defect, or inconsistency in this Liquidating Trust Agreement; *provided, however*, that such amendments, supplements or waivers shall not adversely affect the Distributions to any of the Beneficiaries or adversely affect the federal income tax status of the Trust as a “liquidating trust”; (ii) comply with any requirements in connection with the federal income tax status of the Trust as a “liquidating trust”; and (iii) comply with any requirements in connection with maintaining that the Trust is not subject to registration or reporting requirements of the Securities Act, the Trust Indenture Act, or the Investment Company

Act. Any substantive provision of this Liquidating Trust Agreement may be amended or waived by the Liquidating Trustee with the approval of the Bankruptcy Court (upon notice and an opportunity for a hearing); *provided, however*, that no change may be made to this Liquidating Trust Agreement that would (a) adversely affect the (i) Distributions to any of the Beneficiaries, or (ii) the federal income tax status of the Trust as a “liquidating trust” or (b) modify the stated purpose of the Trust as described in this Liquidating Trust Agreement). Notwithstanding this Section 11.9, any amendments or modifications to this Liquidating Trust Agreement shall not be inconsistent with the purpose and intention of the Trust to liquidate in an expeditious but orderly manner the Assets in accordance with Treasury Regulation Section 301.7701- 4(d).

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

**[signature page follows]**

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

Maria Aprile Sawczuk

Rupari Holding Corp.

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

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

Name: Maria Aprile Sawczuk  
Title: Liquidating Trustee

Name: Matthew Ray  
Title: Independent Director

Rupari Food Services Inc.

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

Name: Matthew Ray  
Title: Independent Director

<b>Summary report:</b> <b>Litéra® Change-Pro 7.5.0.195 Document comparison done on 12/11/2017</b> <b>8:25:43 AM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://ROS-IWODMSCLSTR/DBIWOV2/200884852/3	
<b>Modified DMS:</b> iw://ROS-IWODMSCLSTR/DBIWOV2/200884852/4	
<b>Changes:</b>	
<u>Add</u>	10
<del>Delete</del>	9
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	19



**EXHIBIT C**

**Updated Liquidation Analysis**

**Rupari**

Preliminary Recovery Analysis

PRIVILEGED AND CONFIDENTIAL

DRAFT - SUBJECT TO CHANGE

As of 12/9/17

**Sources of Funds:**

	Chapter 11	Chapter 7
Cash on Hand	\$ 14,435	\$ 14,435
Cure Costs Account <sup>(1)</sup>	240,813	240,813
Plan Contributions:		
Wind Point	700,000	-
Danish Crown	300,000	-
Remaining Professional Fee Carveout	18,694	18,694
Kinetic Success Fee Escrow	10,718	10,718
Retainers	35,000	35,000
Net Proceeds of Avoidance Actions	1,500,000	1,500,000
Other Estate Claims (net)	TBD	TBD
Estimated Cash at Effective Date	2,819,660	1,819,660

**Uses of Funds:**

General Administrative Expense Claims	(90,609)	(90,609)
503(b)(9) Claims	(150,204)	(150,204)
Classes 1A/1B: Miscellaneous Secured Claims		
Tax Claims	(46,164)	(46,164)
US Trustee Fees	(48,000)	(48,000)
Trust Operating Reserve	(150,000)	
Chapter 7 Professionals		(650,000)
Est. Professional Fees to Confirmation <sup>(2)</sup>	(1,357,089)	(1,680,826)
Total Other Professionals	(192,467)	(192,467)
Total Other Costs <sup>(3)</sup>	(35,000)	(35,000)
Total Admin and Priority Fees	(2,069,533)	(2,893,270)
Remaining Funds Available to Class 3B GUCs	750,127	(1,073,610)
Class 3B: Estimated General Unsecured Claims <sup>(4)</sup>	14,443,295	14,443,295
Recovery	5.19%	0.00%
Remaining Funds Available to Class 3A GUCs	-	-
Class 3B: Estimated General Unsecured Claims	\$ 65,026	\$ 65,026
Recovery	0.00%	0.00%

<sup>(1)</sup> Net of funds returned to Antares.<sup>(2)</sup> Chapter 11 scenario reflects estimated professional fee discount of \$324 thousand.<sup>(3)</sup> Includes tax preparation and the wind down of the 401K plan.<sup>(4)</sup> Includes Antares deficiency claim of \$3.8 million, net of return of reserved funds.

**Note:** This Liquidation Analysis reflects estimates of the proceeds that might be realized through the liquidation of the Debtors in accordance with Chapter 11 and Chapter 7 of the Bankruptcy Code. This analysis is primarily based on projections of the Debtors' assets and liabilities as of November 2, 2017, unless specified otherwise, as estimated by management in conjunction with the Debtors' advisors. The Liquidation Analysis is based upon a number of estimates and assumptions that, although developed by and considered reasonable by the management of the Debtors in conjunction with the Debtors' advisors, are inherently subject to significant economic, business, governmental, regulatory, and competitive uncertainties as well as other contingencies beyond the control of the Debtors or their management. The Liquidation Analysis is also based on assumptions with regard to liquidation decisions that are subject to change. Accordingly, there can be no assurance that the values reflected in this Liquidation Analysis would be realized if the Debtors were, in fact, to undergo such a liquidation, and actual results could vary materially and adversely from those contained herein.

**EXHIBIT D**

**Revised Proposed Plan Confirmation Order**

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

	X	
	:	
In re:	:	Chapter 11
	:	
RUPARI HOLDING CORP., <i>et al.</i> , <sup>1</sup>	:	Case No. 17-10793 (KJC)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: Docket Nos. 532, 564, 642, 644, ____

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
APPROVING AND CONFIRMING FIRST AMENDED JOINT COMBINED  
DISCLOSURE STATEMENT AND CHAPTER 11 PLANS OF LIQUIDATION**

WHEREAS, Rupari Holding Corp ( “Rupari Holding”) and Rupari Food Services Inc. (“Rupari Food” and together with Rupari Holding, the “Debtors”) as debtors in the above-captioned chapter 11 cases, and the Official Committee of Unsecured Creditors (the “Creditors’ Committee” and together with the Debtors, the “Plan Proponents”), having proposed and filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) (i) the *First Amended Joint Combined Disclosure Statement and Chapter 11 Plans of Liquidation* (as the same may be further modified, amended, and/or supplemented from time to time, the “Combined Plan and Disclosure Statement,” or, individually the “Disclosure Statement” and the “Plan”) [Docket. No. \_\_\_\_],<sup>2</sup> a copy of which attached to this Plan Confirmation Order as **Exhibit A**, and (ii) the Plan Supplement, dated November 20, 2017, the First Amended Plan Supplement, dated December 11, 2017 (together, the “Plan Supplements”);

WHEREAS, on November 2, 2017, the Bankruptcy Court entered the *Order (A)*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Rupari Holding Corp. (4943) and Rupari Food Services, Inc. (7933). The mailing address for the Debtors is 655 Deerfield Rd, Suite 100 pmb 325, Deerfield, Illinois 60015, Attn: Michael Goldman.

<sup>2</sup> Capitalized terms used but not defined in this Plan Confirmation Order shall have the meanings given to them in the Plan.

*Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Form of Ballot and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling a Plan Confirmation Hearing and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice* [Docket No. 564] (the “Interim Disclosure Statement Order”), approving, among other things, the Disclosure Statement on an interim basis, the contents of the Solicitation Package, and procedures for soliciting and tabulating votes to accept or reject the Plan;

WHEREAS, the appropriate Ballots for voting on the Plan having been duly transmitted to Holders of Claims or Interests entitled to vote on the Plan as set forth in the *Declaration of Jung W. Song on Behalf of Donlin, Recano & Company, Inc. Regarding Voting and Tabulation of Ballots Accepting and Rejecting Debtors’ Joint Combined Disclosure Statements and Chapter 11 Plans of Liquidation*, dated as of [ , ] 2017 [Docket No. ] (the “Voting Certification”); the *Declaration of Michael Goldman in Support of Approval and Confirmation of First Amended Joint Combined Disclosure Statement and Chapter 11 Plans of Liquidation*, dated [ , ], 2017 [Docket. No. ] (the “Goldman Declaration”), and the *Declaration of Matthew Ray in Support of Approval and Confirmation of the First Amended Joint Combined Disclosure Statement and Chapter 11 Plans of Liquidation*, dated [ , ], 2017 [Docket. No. ] (the “Ray Declaration”), having been filed in support of approval of the Disclosure Statement and confirmation of the Plan; and responses or objections to confirmation of the Plan having been filed by (a) the United States on behalf of the Bureau of Customs and Border Protection [Docket No. 642], (b) Antares Capital LP [Docket No. 644], and (c) together with any at the Plan Confirmation Hearing objections raised (the “Objections”);

WHEREAS, the Bankruptcy Court having held a hearing on December 14, 2017, to consider approval of the Disclosure Statement of a final basis and confirmation of the Plan (the “Plan Confirmation Hearing”); and the Objections having been resolved, overruled, or withdrawn prior to or during the Plan Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor; the Bankruptcy Court hereby FINDS, DETERMINES, AND CONCLUDES that:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. Findings and Conclusions. The findings and conclusions set forth here and on the record of the Plan Confirmation Hearing constitute the Bankruptcy Court’s findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable here by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction, Venue, Core Proceeding (28 U.S.C. §§ 157(b)(2), 1334(a)). The Bankruptcy Court has jurisdiction over the Debtors’ Chapter 11 Cases under 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Approval of the Disclosure Statement and confirmation of the Plan are core proceedings under 28 U.S.C. § 157(b) and as such, the Bankruptcy Court has jurisdiction to enter a final order with respect to the Disclosure Statement and Plan. Venue is proper before the Bankruptcy Court under 28 U.S.C. §§ 1408 and 1409. The Debtors are eligible debtors under section 109 of the Bankruptcy Code. The Debtors

and the Creditors' Committee are proper Plan Proponents under section 1121(a) of the Bankruptcy Code.

C. Judicial Notice. The Bankruptcy Court takes judicial notice of the docket of the Debtors' Chapter 11 Cases maintained by the Clerk of the Court, including all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of these Chapter 11 Cases.

D. Burden of Proof. The Plan Proponents have the burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence. The Plan Proponents have met their burden with respect to each applicable element of section 1129 of the Bankruptcy Code.

E. Chapter 11 Petition. On April 10, 2017 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court. The Debtors continue as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

F. Statutory Committee of Unsecured Creditors. On April 20, 2017, the U.S. Trustee appointed the Creditors' Committee in these Chapter 11 Cases.

G. The Compromises and Settlements Embodied in the Plan are Fair, Reasonable, and in the Best Interests of the Debtors' Estates. The Plan is the result of good faith, arm's-length negotiations among the Debtors, the Creditors' Committee, WPP, Danish Crown and other parties in interest. The Plan constitutes a good faith, arm's-length compromise and settlement of all Claims or controversies relating to the rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest or any Distribution to be made or



obligation to be incurred under the Plan. Such compromises or settlements (including the Settlement and the releases and bars contemplated thereby) (i) are in the best interests of the Debtors, their Estates, and Holders of Claims and Interests, and (ii) are fair, equitable, and reasonable.

H. Adequacy of Disclosure Statement. The information contained in the Disclosure Statement contained extensive material information regarding the Debtors so that parties entitled to vote on the Plan could make informed decisions regarding the Plan. Additionally, the Disclosure Statement contains adequate information as that term is defined in section 1125(a) of the Bankruptcy Code and complies with any additional requirements of the Bankruptcy Code, the Bankruptcy Rules, and applicable nonbankruptcy law. Specifically, but without limitation, the Disclosure Statement complies with the requirements of Bankruptcy Rule 3016(c) by sufficiently describing in specific and conspicuous bold language the provisions of the Plan that provide for releases and injunctions against conduct not otherwise enjoined under the Bankruptcy Code and sufficiently identifies the persons and entities that are subject to the releases and injunctions.

### **Solicitation and Voting**

I. Transmittal and Mailing of Solicitation Materials and Notices. The Voting Certification is evidence that the transmittal and service of the Combined Plan and Disclosure Statement, the Ballots, and other solicitation materials were adequate, sufficient, and in compliance with the Interim Disclosure Statement Order, and all parties required to be given notice of the Plan Confirmation Hearing (including the deadline for filing and serving objections to confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Interim Disclosure Statement Order and in compliance with the Bankruptcy

Code, and the Bankruptcy Rules, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and such parties have had sufficient opportunity to appear and be heard. No other or further notice or re-solicitation is required. The filing and notice of the Plan Supplements was proper and in accordance with the Plan, the Bankruptcy Code, and the Bankruptcy Rules, and no other or further notice shall be required.

J. Good Faith Solicitation. Based on the record before the Bankruptcy Court in these Chapter 11 Cases, the Plan Proponents, the members of the Creditors’ Committee (solely in their capacity as members of the Creditors’ Committee), and each of their Professionals, representatives, members, officers, directors, employees, and agents have acted in “good faith” within the meaning of sections 1125(e) and 1129(a)(3) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, the Local Rules, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with all their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and, to the extent such parties are listed there, the exculpation, injunction, and release provisions in Section XII of the Plan.

K. Voting. The Voting Certification is evidence that votes to accept or reject the Plan were solicited and tabulated fairly, in good faith, and in a manner consistent with the Interim Disclosure Statement Order, the Plan, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law.

**Compliance with the Requirements of Section 1129 of the Bankruptcy Code**

L. Plan Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)).

The Plan complies with the applicable provisions of the Bankruptcy Code and, as required by Bankruptcy Rule 3016, the Plan is dated and identifies the Debtors and Creditors Committee as Plan Proponents, in satisfaction of section 1129(a)(1) of the Bankruptcy Code.

(a) Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). With the exception of the Administrative Expense Claims, Professional Fee Administrative Claims, Priority Tax Claims, and Statutory Fee Claims, which need not be classified, Sections VI and VII of the Plan classify Classes of Claims against, and Interests in, the Debtors. The Claims and Interests placed in each Class are substantially similar to the other Claims and Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and the Plan does not unfairly discriminate between Holders of Claims and Interests in each Class or between Classes. Accordingly, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) Unimpaired Classes Specified (11 U.S.C. § 1123(a)(2)). Sections VI and VII of the Plan specify that Claims in Class 1A (Secured Claims against Rupari Holding), Class 2A (Other Priority Claims against Rupari Holding), Class 1B (Secured Claims against Rupari Food), and Class 2B (Other Priority Claims against Rupari Food) (together, the “Unimpaired Classes”) are unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code and so satisfy section 1123(a)(2) of the Bankruptcy Code.

(c) Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Sections VI and VII of the Plan designate Claims or Interests in Class 3A (General Unsecured Claims against Rupari Holding), Class 4A (Intercompany Claims against Rupari Holding),

Class 5A (Existing Equity Interests in Rupari Holding), Class 3B (General Unsecured Claims against Rupari Food), Class 4B (Intercompany Claims against Rupari Food), and Class 5B (Existing Equity Interests in Rupari Food) (collectively, the “Impaired Classes”) as impaired within the meaning of section 1124 of the Bankruptcy Code and clearly specify the treatment of the Claims and Interests in those Classes, in satisfaction of section 1123(a)(3) of the Bankruptcy Code.

(d) No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment for each Claim or Interest in each respective Class, unless the Holder of a particular Claim or Interest has agreed to less favorable treatment for such Claim or Interest, in satisfaction of section 1123(a)(4) of the Bankruptcy Code.

(e) Implementation of the Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents and agreements set forth in the Plan Supplements provide adequate and proper means for the implementation of the Plan, including, without limitation, (i) the establishment of the Liquidating Trust and the appointment of the Liquidating Trustee, and (ii) the transfer and vesting of the Liquidating Trust Assets to the Liquidating Trust, to be administered in accordance with the terms of the Plan and the Liquidating Trust Agreement for the benefit of the Liquidating Trust’s beneficiaries. Accordingly, the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

(f) Non-Voting Equity Securities/Allocation of Voting Power (11 U.S.C. § 1123(a)(6)). The Plan provides for the transfer and vesting of the Liquidating Trust Assets to the Liquidating Trust, to be liquidated and distributed in accordance with the Plan and the Liquidating Trust Agreement, and the dissolution of the Debtors. The Plan does not expressly provide for the inclusion in the charter of any Debtor a provision prohibiting the issuance of

nonvoting securities because the Plan does not provide for the issuance of any securities. Therefore, the Plan satisfies the requirements set forth in section 1123(a)(6) of the Bankruptcy Code.

(g) Appointment of Liquidating Trustee (11 U.S.C. § 1123(a)(7)). Section VIII.A. of the Plan regarding the appointment of the Liquidating Trustee is consistent with the interests of creditors and interest holders and with public policy, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

(h) Earnings from Personal Services (11 U.S.C. § 1123(a)(8)). Section 1123(a)(8) of the Bankruptcy Code applies only to individual debtors and is not applicable to these Chapter 11 Cases.

(i) Impairment/Unimpairment of Classes of Claims and Interests (11 U.S.C. § 1123(b)(1)). As permitted by section 1123(b)(1) of the Bankruptcy Code, under Sections VI and VII of the Plan, Claims or Interests in the Impaired Classes are impaired and Claims or Interests in the Unimpaired Classes are unimpaired.

(j) Assumption and Rejection (11 U.S.C. § 1123(b)(2)). Section XI of the Plan governs the assumption and rejection of executory contracts and unexpired leases and meets the requirements of section 365 of the Bankruptcy Code.

(k) Settlement/Retention of Claims or Interests (11 U.S.C. § 1123(b)(3)). Section IX of the Plan provides that the prosecution and settlement of all Causes of Action, including Avoidance Actions and D&O Claims, shall be the sole responsibility and exclusive right of the Liquidating Trust. Thus, the Plan satisfies the requirements of section 1123(b)(3) of the Bankruptcy Code.

(l) Sale of Assets / Distribution of Proceeds (11 U.S.C. § 1123(b)(4)). The Debtors sold substantially all of their assets to the Purchaser, under the 363 Sale Order. Remaining assets that were not sold to the Purchaser are being transferred to and will vest in the Liquidating Trust for the benefit of the Beneficiaries of the Liquidating Trust.

(m) Modification of Rights (11 U.S.C. § 1123(b)(5)). As permitted by section 1123(b)(5) of the Bankruptcy Code, the Plan modifies the rights of Holders of Claims and Interests in Impaired Classes. The Plan leaves unaffected the rights of Holders of Claims in Unimpaired Classes.

(n) Additional Plan Provisions (11 U.S.C. § 1123(b)(6)). As permitted by section 1123(b)(6) of the Bankruptcy Code, the Plan includes other appropriate provisions not inconsistent with the applicable provisions of the Bankruptcy Code, including, without limitation, certain release, exculpation, and injunction provisions in Section XII of the Plan. Based upon the facts and circumstances of these Chapter 11 Cases, the release, exculpation, and injunction provisions in the Plan are narrowly tailored, integral consideration and critical parts of the Plan, and the Released Parties and Exculpated Parties have relied on the efficacy and conclusive effects of such releases and injunctions when making concessions and exchanging consideration in connection with the Chapter 11 Cases and the Plan. Such release, exculpation, and injunction provisions in Section XII of the Plan are (i) in exchange for the good, valuable, and reasonably equivalent consideration provided by the Released Parties and the Exculpated Parties, including the negotiation of the Settlement embodied in the Plan Term Sheet by and among the Debtors, Creditors' Committee, Danish Crown, and WPP to, among other things, provide the Plan Contribution Payments and waive any right to receive a Distribution on account of the Intercompany Claims (including the Unsecured Notes), (ii) in the best interests of

the Debtors, the Estates, and Holders of Claims and Interests, (iii) fair, equitable, and reasonable, and (iv) a bar to any of the Persons barred as set forth in the Plan asserting any Interests, Claims, or Causes of Action released under the Plan in favor of the Released Parties. Accordingly, based upon the record of these Chapter 11 Cases, the representations of the parties, and/or the evidence proffered, adduced, and/or presented at the Plan Confirmation Hearing, the Bankruptcy Court finds that the release, exculpation, and injunction provisions set forth in Section XII of the Plan are consistent with the Bankruptcy Code and applicable law and are appropriate under the circumstances.

(o) Sale of Exempt Property (11 U.S.C. § 1123(c)). The Debtors are not individuals. Accordingly, section 1123(c) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

(p) Cure of Defaults (11 U.S.C. § 1123(d)). As required by section 365(b)(1) of the Bankruptcy Code, any monetary amounts by which any executory contract or unexpired lease that may be assumed under the Plan is in default shall be satisfied by payment or provision for payment of the required cure amount, if any. Thus, the Plan complies with section 1123(d) of the Bankruptcy Code.

M. The Plan Proponents' Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and other applicable law in transmitting the Plan, the Disclosure Statement, the Ballots, and related documents and notices and in soliciting and tabulating the votes on the Plan. Accordingly, the Plan satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.



N. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Plan Proponents have proposed the Plan, including all documents necessary to effectuate the Plan, in good faith and not by any means forbidden by law, thereby satisfying the requirements of section 1129(a)(3) of the Bankruptcy Code. The Plan Proponents' good faith is evident from the facts and record of these Chapter 11 Cases, the Disclosure Statement, and the record of the Plan Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' assets and maximizing distributions to creditors. Further, the Plan's classification, exculpation, release, and injunction provisions are consistent with sections 105, 1122, 1123(b)(3)(A), 1123(b)(6), 1129, and 1142 of the Bankruptcy Code, and are integral to the Plan and supported by valuable consideration.

O. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payments made or promised by the Debtors, or a person acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, have been approved by, or are subject to approval of, the Bankruptcy Court as reasonable. Accordingly, the Plan satisfies the requirements of section 1129(a)(4) of the Bankruptcy Code.

P. Directors, Officers, and Trustees (11 U.S.C. § 1129(a)(5)). The Plan satisfies section 1129(a)(5) of the Bankruptcy Code as the identity of the Liquidating Trustee has been fully disclosed in the Plan Supplements, and the appointment of the Liquidating Trustee is consistent with the interests of Holders of Claims against, and Interests in, the Debtors and with public policy.

Q. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for any rate changes over which a governmental regulatory commission has jurisdiction. Accordingly, section 1129(a)(6) of the Bankruptcy Code is not applicable in these Chapter 11 Cases.

R. Best Interest of Creditors (11 U.S.C. § 1129(a)(7)). Each Holder of an Impaired Claim or Interest (i) has accepted the Plan, (ii) will receive or retain under the Plan on account of such Allowed Claim or Allowed Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date, or (iii) has agreed to receive less favorable treatment. Therefore, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

S. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Claims in Classes 1A, 2A, 1B, and 2B are unimpaired under the Plan and are conclusively presumed to have accepted the Plan without the solicitation of acceptances or rejections under section 1126(f) of the Bankruptcy Code. As set forth in the Voting Certification, Holders of Claims in Classes 3A and 3B voted to accept the Plan. With respect to the remaining Impaired Classes that did not vote to accept or are deemed to reject the Plan, the Plan is confirmable because it does not discriminate unfairly and is fair and equitable with respect to such Classes, as required by section 1129(b)(1) of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129(a)(8) of the Bankruptcy Code.

T. Treatment of Administrative Expense Claims and Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Claims under the Plan of the type specified in section

507(a)(1) through 507(a)(8) of the Bankruptcy Code, if any, complies with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code.

U. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).

Section 1129(a)(10) of the Bankruptcy Code is satisfied as two Impaired Classes of Claims have accepted the Plan, determined without including any acceptances of the Plan by any insider.

V. Feasibility (11 U.S.C. § 1129(a)(11)). Section 1129(a)(11) of the

Bankruptcy Code is satisfied as confirmation of the Plan is not likely to be followed by the need for further liquidation or financial reorganization of the Debtors.

W. Payment of Fees (11 U.S.C. § 1129(a)(12)). Section 1129(a)(12) of the

Bankruptcy Code is satisfied as all fees payable under section 1930 of title 28 of the United States Code have either been paid or will be paid under the Plan. As provided in the Plan, (i) any Statutory Fees from the Petition Date thorough the Effective Date shall be paid by the Debtors on the Effective Date and (ii) any Statutory Fees relating to any period of time after the Effective Date shall be paid by the Liquidating Trust and such obligation shall continue until such time as the Chapter 11 cases are closed, dismissed or converted.

X. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors

are not obligated to pay retiree benefits and, therefore, are in compliance with the requirements of section 1129(a)(13) of the Bankruptcy Code.

Y. No Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors

are not individuals and are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129(a)(14) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

Z. Debtor Is Not An Individual (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals. Accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

AA. No Applicable Non-bankruptcy Law Regarding Transfers (11 U.S.C. § 1129(a)(16)). The Debtors were moneyed, business, or commercial corporations and, accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

BB. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). No Impaired Class entitled to vote under the Plan voted to reject the Plan. No votes were submitted by any Holder of a Claim in[ Class [ ], and there are no known Holders of Claims in Class 6 [ ] ]. The Impaired Classes that are deemed to have rejected the Plan are Class 4A (Intercompany Claims against Rupari Holding), Class 5A (Existing Equity Interests in Rupari Holding), Class 4B (Intercompany Claims against Rupari Food) and Class 5B (Existing Equity Interests in Rupari Food). Based upon the evidence proffered, adduced, and presented by the Plan Proponents at the Plan Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable with respect to the aforementioned Classes as required by sections 1129(b)(1) and (b)(2) of the Bankruptcy Code, because no Holder of any Allowed Claim or Allowed Interest that is junior to such Classes will receive or retain any property under the Plan on account of such junior Claim or Interest, and no Holder of an Allowed Claim in a Class senior to such Classes is receiving more than 100% recovery on account of its Allowed Claim. Thus, the Plan may be confirmed notwithstanding that these Classes did not accept the Plan.

CC. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan being confirmed in these Chapter 11 Cases. Thus, the Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code.

DD. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

EE. Modifications of the Plan (11 U.S.C. § 1127). Any modifications made to the Plan since the solicitation thereof do not constitute changes that materially and adversely change the treatment of any Claims or Interests. Accordingly, these modifications comply in all respects with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, and none of the modifications requires additional disclosure or resolicitation of votes on the Plan. Under Bankruptcy Rule 3019(a), all Creditors that previously accepted the Plan are deemed to have accepted the Plan as modified.

FF. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

GG. Implementation. All documents necessary to implement the Plan, including, without limitation, the Liquidating Trust Agreement, and all other relevant and necessary documents have been negotiated in good faith and at arm's length and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal or state law.

HH. Preservation of Causes of Action. It is in the best interests of the Debtors, its Creditors, and Interest Holders that, except for the Causes of Action and Claims released in favor of the Released Parties under the Plan, all Causes of Action, including D&O Claims related to the Roma License, shall survive confirmation and be transferred, assigned, and vest in the Liquidating Trust free and clear of all Liens, Claims, charges or other encumbrances, and from and after the Effective Date the Liquidating Trust shall have exclusive rights, powers, and interests of the Estates to, subject to the provisions of the Plan and other Plan Documents, pursue, settle, or abandon such Causes of Action as the sole representative of the Estates under section 1123(b)(3) of the Bankruptcy Code.

II. Compromise, Settlement, Release, Exculpation, and Injunction. The Bankruptcy Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to approve the compromises, settlements, releases, exculpations and injunctions set forth in Article XII of the Plan. Based upon the record of these Chapter 11 Cases and the evidence proffered or adduced at the Plan Confirmation Hearing, the Bankruptcy Court finds that the compromises, settlements, releases, exculpations, and injunctions set forth in Article XII of the Plan are consistent with applicable law and integral components of the Plan Term Sheet and Plan.

JJ. Good Faith. The Debtors have proposed the Plan in good faith, with the legitimate and honest purposes of maximizing value to each of the Debtors' Estates for the benefit of their stakeholders. Therefore, the Plan has been proposed in good faith to achieve a result consistent with the objectives and purposes of the Bankruptcy Code and the Debtors have acted in good faith within the meaning of sections 1125(e) and 1126(e) of the Bankruptcy Code.

**ORDER**

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, DECREED, AND  
DETERMINED THAT:

1. Adequacy of the Disclosure Statement. The Disclosure Statement is approved on a final basis as containing adequate information within the meaning of section 1125 of the Bankruptcy Code and contains sufficient information of a kind necessary to satisfy the disclosure requirements of any applicable non-bankruptcy laws, rules, and regulations.

2. Solicitation and Tabulation. The solicitation and tabulation of votes on the Plan complied with the Interim Disclosure Statement Order and applicable bankruptcy law, were appropriate and satisfactory, and are approved in all respects.

3. Confirmation of the Plan. The Plan and each of its provisions, including the Plan Supplements, shall be, and hereby are, CONFIRMED under section 1129 of the Bankruptcy Code. The documents contained in the Plan Supplements are authorized and approved, and the appropriate representatives of the Estates and Liquidating Trust are authorized to execute and deliver such documents as are necessary to implement the Plan and/or to cause the Effective Date to occur. Each provision of the Plan is authorized and approved and shall have the same validity, binding effect, and enforceability as every other provision of the Plan. The terms of the Plan, as previously modified and as modified by any modifications made at the Plan Confirmation Hearing, are incorporated by reference into and are an integral part of this Plan Confirmation Order. The failure specifically to describe, include, or refer to any particular article, section, or provision of the Plan, Plan Supplements, or any related document in this Plan Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan and all related

documents be approved and confirmed in their entirety as if set forth *in haec verba* in this Plan Confirmation Order.

4. Compromise of Controversies. For the reasons stated, the Plan constitutes a good faith, arm's-length compromise and settlement of all Claims or controversies relating to the rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest or any Distribution to be made or obligation to be incurred under the Plan, and the entry of this Plan Confirmation Order constitutes approval of all such compromises and settlements.

5. Objections. All Objections, responses to, and statements and comments, if any, in opposition to or inconsistent with the Plan, other than those withdrawn with prejudice in their entirety prior to, or on the record at, the Plan Confirmation Hearing, shall be, and hereby are, OVERRULED and DENIED in their entirety. All withdrawn objections are deemed withdrawn with prejudice.

6. Settlement. Confirmation of the Plan shall constitute approval of the Settlement under Bankruptcy Rule 9019.

7. Binding Effect. On the Effective Date, and effective as of the Effective Date, the Plan shall be binding upon the Debtors, the Liquidating Trust, and all present and former Holders of Claims against and Interests in the Debtors, and their respective Related Persons, regardless of whether any such Holder of a Claim or Interest voted or failed to vote to accept or reject the Plan and regardless of whether any such Holder of a Claim or Interest is entitled to receive any Distribution under the Plan. On the Effective Date, after giving effect to the transactions that are to occur on or before the Effective Date, the Plan shall be deemed to be substantially consummated within the meaning set forth in section 1101 and under section 1127(b) of the Bankruptcy Code.



8. Liquidating Trust.

(a) On the Effective Date, the Liquidating Trust will be established according to the terms of the Plan and the Liquidating Trust Agreement. Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to and shall vest in the Liquidating Trust free and clear of all Liens and Claims without any further action of any of the Debtors or any officers, directors, members, partners, employees, agents, advisors, or representatives of the Debtors or the Liquidating Trustee.

(b) Under section 1141 of the Bankruptcy Code, as of the Effective Date, all Liquidating Trust Assets shall vest in the Liquidating Trust and all Assets dealt with in the Plan shall be free and clear of all Claims and Liens, except as otherwise specifically provided in any of the Plan Documents or in this Plan Confirmation Order. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtors will have no further interest in, or with respect to, the Liquidating Trust Assets or the Liquidating Trust.

(c) For federal income tax purposes, Beneficiaries of the Liquidating Trust's shall be treated as if they had received a distribution from the Estates of an undivided interest in each of the Liquidating Trust Assets (to the extent of the value of their respective share in the applicable assets) and then contributed such interests to the Liquidating Trust, and the applicable Liquidating Trust's Beneficiaries will be treated as the grantors and owners thereof.

(d) Maria Aprile Sawczuk of Goldstein & McClintock LLP is appointed as the Liquidating Trustee. The Liquidating Trustee shall have such powers, duties, and responsibilities as is provided for in the Plan and the Liquidating Trust Agreement and shall be compensated in accordance with the Plan and the Liquidating Trust Agreement.

(e) From and after the Effective Date, prosecution and settlement of all Causes of Action and objections to Claims shall be the sole responsibility of the Liquidating Trust under the Plan, the Liquidating Trust Agreement, and this Plan Confirmation Order. From and after the Effective Date, the Liquidating Trust shall have exclusive rights, powers, and interests of the Estates, subject to the Plan Documents, to pursue, settle or abandon such Causes of Action and Claims objections as the sole representative of the Estates under section 1123(b)(3) of the Bankruptcy Code. All Causes of Action and Claims objections that are not expressly released or waived under the Plan are reserved and preserved and vest in the Liquidating Trust in accordance with the Plan. No Person may rely on the absence of a specific reference in the Plan, the Plan Supplements, the Disclosure Statement, this Plan Confirmation Order, or any other document, to any Cause of Action or Claim objection against it as any indication that the Debtors or Liquidating Trustee will not pursue any and all available Causes of Action or Claims objection against such Person. The Liquidating Trustee expressly reserves all Causes of Action and Claims objections, except for any Cause of Action and Claims objection against any Person that is expressly released or waived under the Plan and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action or Claims objections upon, after, or as a consequence of confirmation or consummation of the Plan.

9. General Authorizations. The Debtors and the Liquidating Trustee are authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements and/or documents, and take such acts and actions as may be reasonably necessary or appropriate to effectuate, implement,

consummate, and/or further evidence the terms and conditions of the Plan and any transactions described in or contemplated by the Plan. The Debtors or Liquidating Trustee, as applicable, may, and all Holders of Allowed Claims or Interests receiving Distributions according to the Plan, at the request or direction of the Debtors or Liquidating Trustee, as applicable, shall from time to time prepare, execute, and deliver any agreements, documents, instruments, or notices, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan. Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under the Plan that would otherwise require approval of the members, managers, or other owners, direct or indirect, of the Debtors shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) according to applicable law, without any further vote, consent, approval, authorization, or other action by such members, managers, or other owners of the Debtors or notice to, order of, or hearing before, the Bankruptcy Court.

10. Compensation and Reimbursement Claims. All Professionals (including the Compromising Professionals and including any applications of members of the Committee for expense reimbursement) seeking Bankruptcy Court approval of allowance and payment of Professional Fee Administrative Claims shall (i) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred in the Chapter 11 Cases by the date that is thirty (30) days after the Effective Date and (ii) to the extent the application is for professionals fees and expenses incurred prior to June 15, 2017, will be paid, from the Professional Fee Carveout, (iii) any remaining professional fees and expenses, including, but not limited to those arising after June 15, 2017, will be paid by the Estates, either by the Debtors or the Liquidating Trustee, as applicable. Any Professional Fee Administrative

Claim that is not timely asserted in accordance herewith and with Section V.A. of the Plan shall be deemed disallowed under the Plan and shall be forever barred against the Debtors, the Estates, the Liquidating Trust, or any of their Assets or property, and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup, or recover such Claim.

11. Payment of Allowed Professional Fee Administrative Claims on the Effective Date. On the Effective Date, the Liquidating Trustee is authorized and shall make payments, in accordance with the terms of the Plan, on all unpaid, outstanding Professional fees approved by this Court either through the interim compensation procedures or by separate order of this Court ("Effective Date Fees"). The Debtors shall provide the amounts to be paid on account of the Effective Date Fees to the Liquidating Trustee on or before the Effective Date. In the event that there are insufficient funds to satisfy the Effective Date Fees in full on the Effective Date, the Liquidating Trustee shall pay each professional its pro rata share of the Effective Date Fees until such time as the requisite funds become available, and then, within five (5) Business Days of such availability. Notwithstanding anything in this paragraph 12, the Trust Operating Reserve set forth in the Liquidation Analysis in the amount of \$150,000 shall not be used to pay the Effective Date Fees.

12. Administrative Expense Claims. To be eligible to receive Distributions under the Plan on account of an Administrative Expense Claim that is not otherwise Allowed by the Plan, (a) a request for payment of an Administrative Expense Claim incurred during the before the Initial Administrative Expense Claim must have been filed on or before the Initial Administrative Expense Claim Bar Date, and (b) a request for payment of an Administrative Expense Claim incurred during the Second Administrative Expense Claim Period must have

been or be Filed on or before the Second Administrative Expense Claim Bar Date. Any Administrative Expense Claim that is not timely asserted in accordance herewith and with Section V.A. of the Plan shall be deemed disallowed under the Plan and shall be forever barred against the Debtors, the Estates, the Liquidating Trust, or any of their Assets or property, and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup, or recover such Claim.

13. Assumed and Rejected Contracts and Leases. On the Effective Date, all Executory Contracts not previously assumed and/or assigned (including in connection with the 363 Sale and under the 363 Sale Order), not subject to a pending motion to assume and/or assign or reject as of the Effective Date, or not rejected before the Effective Date, shall be deemed rejected.

14. Rejection Damages. All damages arising from the rejection under the Plan of an executory contract or unexpired lease must be filed with the Claims Agent by no later than thirty (30) days after the earlier of the Effective Date or the date provided in any other applicable Order of the Bankruptcy Court. Any proofs of Claim with respect to a claim for rejection damages not filed within such time shall be forever barred from assertion against the Debtors, the Estates, the Liquidating Trust, the Liquidating Trust Assets, and their property and such Persons holding such Claims will not receive and be barred from receiving any Distributions on account of such untimely claims asserting rejection damages, absent further order of the Bankruptcy Court. All rejection damages Claims will be treated as General Unsecured Claims under the Plan and, to the extent they are deemed Allowed General Unsecured Claims, will receive the treatment afforded Allowed General Unsecured Claims against the applicable Debtor.

15. Claims Objections. Following the Effective Date, the Liquidating Trust shall be vested with any and all rights and defenses the Debtors had with respect to any Claim or Interest immediately prior to the Effective Date. The Liquidating Trustee, and any other party in interest to the extent permitted under section 502(a) of the Bankruptcy Code, shall file and serve any objection to any Claim no later than the date that is one hundred and eighty (180) days after the Effective Date (the “Claims Objection Deadline”); *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court from time to time upon motion and notice by the Liquidating Trustee for cause.

16. Distributions; Reserves. The provisions of the Plan governing distributions, reserves, and procedures for resolving and treating Disputed Claims under the Plan are approved and found to be fair and reasonable.

17. Consents and Approvals. This Plan Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any State, Commonwealth, or any other governmental authority with respect to the implementation or consummation of the Plan and any other acts that may be necessary or appropriate for the implementation or consummation of the Plan.

18. Release of Liens. Except as otherwise provided in the Plan, or in any contract, instrument, release, or other agreement or document created under the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, hypothecation, or other security interests against any property of the Estates shall be deemed fully released and discharged without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated notices, schedules, or statements typically filed in accordance with the Uniform Commercial Code or other applicable law. The Plan and/or this

Plan Confirmation Order may be filed or recorded as further notice and evidence of all such releases and discharges.

19. Cancellation of Documents. On the Effective Date, except to the extent otherwise provided in the Combined Plan and Disclosure Statement, any and all notes, instruments, debentures, certificates and other documents evidencing Claims against and Interests in the Debtors shall be deemed automatically extinguished, cancelled, and of no further effect with the Debtors having no continuing obligations thereunder, and shall be deemed rejected and terminated.

20. Injunction to Protect Estate and Settling Parties' Assets. From and after the Effective Date, all Persons and Entities who have held, hold, or may hold Claims or rights giving rise to any equitable relief against the Assets or any Interests in the Debtors arising prior to the Effective Date are permanently enjoined from taking any of the following actions against the Estates, the Liquidating Trust, the Liquidating Trustee, or any of their respective property or assets (collectively, the "Estate Assets"), or the WPP Group or Danish Crown or any of their respective property or assets (collectively, the "Settling Parties' Assets") on account of any such Claims or Interests: (a) commencing or continuing, in any manner or in any place, any action or proceeding seeking to collect or to recover in any manner against, or assert control or dominion over, the Estate Assets or the Settling Parties' Assets; (b) enforcing, attaching, collecting, or recovering in any manner against the Estate Assets or the Settling Parties' Assets, any judgment, award, decree or order; (c) creating, perfecting, or enforcing any Lien or encumbrance against the Estate Assets Settling Parties' Assets; and (d) asserting a setoff unless such setoff was formally asserted in a timely Filed proof of claim or in a pleading Filed with the Bankruptcy Court prior to entry of the Plan Confirmation Order or right of subrogation of any

kind against any debt, liability, or obligation due to the Debtors, except as otherwise set forth in Section X.I. of this Combined Plan and Disclosure Statement; *provided, however*, that such Persons and Entities shall not be precluded from exercising their rights under and consistent with the terms of this Combined Plan and Disclosure Statement, the Plan Confirmation Order, or the Liquidating Trust Agreement.

21. Injunction Against Interference with the Plan. All Holders of Claims and Interests, and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the Debtors', Creditors' Committee's, the Liquidating Trust's, the Liquidating Trustee's, and their respective affiliates', employees', advisors', officers', directors', members', managers', and agents' implementation or Consummation of the Combined Plan and Disclosure Statement.

22. Term of Injunctions and Stays. Unless otherwise provided in the Plan, Disclosure Statement, or this Plan Confirmation Order, all injunctions or stays provided for under sections 105 or 362 of the Bankruptcy Code arising under or entered during the Chapter 11 Cases, or otherwise, and in existence on the Plan Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay and to the extent consistent with the terms and provisions of the Plan or this Plan Confirmation Order, as applicable.

23. Debtor Releases. As of the Effective Date, for good and valuable consideration, the Released Parties are deemed released by the Debtors and the Estates of and from any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities (other than the rights of the Debtors to enforce this Combined Plan and



Disclosure Statement, and the contracts, instruments, releases, and other agreement or documents delivered hereunder, and liabilities arising after the Effective Date in the ordinary course of business), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that are based in whole or part on any act omission, transaction, event, or other occurrences, whether direct or derivative, taking place on or prior to the Effective Date in connection with, or related to, the Debtors, the Estates, the Prepetition Credit Documents, the 363 Sale Documents, the Chapter 11 Cases, and this Combined Plan and Disclosure Statement, other than with respect to Claims, Causes of Action or liabilities arising out of or relating to any act or omission of a Released Party determined in a Final Order of a court of competent jurisdiction to constitute actual fraud, willful misconduct, or gross negligence. Notwithstanding the foregoing, nothing in this Plan or the Plan Confirmation Order shall release any D&O Claims arising on or before the Petition Date. In addition, the UFCW International Union-Industry Pension Fund filed proofs of claim for withdrawal liability against the Debtors, jointly and severally, pursuant to Title IV of ERISA in the estimated amount of \$2,752,548 (the “National Pension Fund Withdrawal Liability”). For the avoidance of doubt, all other trades or businesses under common control (within the meaning of Title IV of ERISA) with any Debtor are not released from the National Pension Fund Withdrawal Liability. For the avoidance of doubt, nothing contained in Article XII.E.I., the Plan, or this Plan Confirmation Order, shall be deemed to grant the Debtors a discharge.

24. Exculpation. The Exculpated Parties shall not have or incur any liability for any Claim, action, proceeding, Cause of Action, Avoidance Action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, or right to

payment arising or accruing on or after the Petition Date, or with respect to actions prior to the Petition Date related to the decision to initiate these Chapter 11 Cases, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, Disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to one another or to any Claim Holder or Interest Holder, or any other party in interest, or any of their respective agents, employees, representatives, advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of the Chapter 11 Cases, the negotiation, solicitation, Filing, and confirmation of this Combined Plan and Disclosure Statement, the pursuit of confirmation of this Combined Plan and Disclosure Statement, the Consummation of this Combined Plan and Disclosure Statement, the administration of this Combined Plan and Disclosure Statement, or the property to be liquidated and/or distributed under this Combined Plan and Disclosure Statement, except for their willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under this Combined Plan and Disclosure Statement.

25. Defenses. Notwithstanding anything to the contrary in the Plan or in this Plan Confirmation Order, none of the releases, discharges, injunctions and other benefits granted to the Released Parties, in their respective capacities as Released Parties, shall prohibit the Holder of any Claim from asserting any defense, including, without limitation, set-off or recoupment, to any Cause of Action asserted by or through the Debtors or the Liquidating Trustee, or their respective successors or assigns, and all defenses are hereby preserved.

26. Setoffs. Except as otherwise provided herein, the Debtors and Liquidating Trustee, as applicable, retain the right to reduce any Claim by way of setoff in accordance with the Debtors' books and records. Rights of a setoff of any Entity or Person are preserved for the purpose of asserting such rights as a defense to any Claims or Causes of Action of the Debtors, their Estates, or the Liquidating Trustee and regardless of whether such Entity or Person is the Holder of an Allowed Claim.

27. Consolidation Under Local Rule 1017-3. The Plan does not provide for the substantive consolidation of the Estates within the meaning of Local Rule 1017-3. Each estate will be separately administered in accordance with the terms of the Plan.

28. Payment of Statutory Fees. As provided in the Plan, (a) any Statutory Fees relating to any period of time after the Effective Date shall be paid by the Liquidating Trust and such obligation shall continue until such time as the Chapter 11 cases are closed, dismissed or converted. The obligation to pay Statutory Fees shall continue until such time as the Chapter 11 Cases are closed, dismissed, or converted. The Debtors shall file all monthly operating reports for periods covering pre-Effective Date periods on or about the Effective Date. The Liquidating Trustee shall file all post-confirmation reports until such time as the Chapter 11 Cases are closed.

29. Exemptions Under Sections 1145 and 1146. Under section 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Liquidating Trust under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. In accordance with section 1146(a) of the Bankruptcy Code, the making or delivery of any instrument or transfer from a Debtor to the Liquidating Trust, or to any other Person under the Plan, shall not be subject to

any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and all applicable state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the forgoing instruments or other documents without the payment of any such tax or governmental assessment.

30. Resolution of Objections.

a. Antares Capital LP [Docket No. 644]: With respect to the Administrative Agent's (as defined in the 363 Sale Order) Claims on behalf and for the benefit of the Prepetition Senior Secured Lenders (the "Antares Claims"), and for the avoidance of doubt:

i. The Antares Claims include secured claims (the "Antares Secured Claim") in amounts received by Administrative Agent under the Final Cash Collateral Order (as defined in the 363 Sale Order) and the proceeds from the sale approved by the 363 Sale Order (the "Sale Proceeds"). The Antares Secured Claim is an Allowed Secured Claim. The Debtors are maintaining a claims reserve under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Reserve") and a general administrative claims reserve (the "General Administrative Claims Reserve," collectively with the 503(b)(9) Reserve, the "Reserves") that are funded entirely by the Sale Proceeds. In full and complete satisfaction of the remainder of the Antares Secured Claim and in full and complete satisfaction of all of the Debtors' and the Estates' claims against Administrative Agent or the Prepetition Senior Secured Lenders under the Final Cash Collateral Order and the 363 Sale Order, Administrative Agent shall receive

the balance of the Reserves after the Allowed Initial Administrative Expense Claims are satisfied by no later than the Effective Date and the Administrative Agent and the Prepetition Senior Secured Lenders shall be deemed to be released by the Debtors' and the Estates' of and from any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities for all such amounts received by the Administrative Agent; *provided, however*, that on the Effective Date, a reserve for General Administrative Expense Claims in the amount of \$50,000 (the "Pre-Closing Administrative Reserve"), shall be created, which shall be funded from the General Administrative Claims Reserve. The Pre-Closing Administrative Reserve shall only cover Allowed General Administrative Expense Claims arising between the Petition Date and June 14, 2017 (the "Pre-Closing General Administrative Expense Claims"). No later than three (3) months following the Effective Date, and provided that no Pre-Closing General Administrative Expense Claims are asserted on or before the Second Administrative Claims Bar Date, the Pre-Closing Administrative Reserve shall be remitted to the Administrative Agent in full; *provided, however*, that if the Pre-Closing Administrative Reserve shall exceed the face amount of any Pre-Closing General Administrative Expense Claims asserted on or before the Second Administrative Claims Bar Date, then Administrative Agent shall receive the balance of the Pre-Closing Administrative Reserve; *provided further, however*, that Administrative Agent shall be provided the balance of the Pre-Closing Administrative Reserve after the Allowed Pre-Closing General Administrative

Expense Claims are satisfied by no later than three (3) business days after such satisfaction.

ii. The Antares Claims also include unsecured claims for \$4,311,908.38 (the “Antares Unsecured Claim”) due to the deficiency claims held by Administrative Agent on behalf and for the benefit of the Prepetition Senior Secured Lenders related to the Prepetition Senior Secured Credit Facility. The Antares Unsecured Claim includes both an Allowed Class 3A Claim and an Allowed Class 3B Claim. For the avoidance of doubt, Administrative Agent and the Prepetition Senior Secured Lenders have not waived the Antares Unsecured Claim and are entitled to receive distributions regarding the same.

31. Preparation and Filing of Tax Returns. The Liquidating Trust shall be responsible for filing preparing all federal, state, and local tax returns for the Liquidating Trust. The Liquidating Trust shall be responsible for preparing the 2017 federal, state, and local tax returns on behalf of the Debtors.

32. Documents and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby authorized to accept any and all documents and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan and this Plan Confirmation Order.

33. Conditions to Effective Date. The Plan shall not become effective unless and until the conditions set forth in Section XIII.B. of the Plan have been satisfied or waived under Section XIII.E. of the Plan.

34. Dissolution of the Creditors’ Committee. Upon the occurrence of the Effective Date, the Creditors’ Committee shall dissolve automatically, whereupon its members,

professionals, and agents shall be released from any duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code, except with respect to (a) obligations arising under confidentiality agreements, which shall remain in full force and effect, (b) prosecuting applications for payment of fees and reimbursement of expenses of Professionals or attending to any other issues related to applications for payment of fees and reimbursement of expenses of Professionals, (c) any motions or motions for other actions seeking enforcement of implementation of the provisions of the Combined Plan and Disclosure Statement, and (d) prosecuting or participating in any appeal of this Plan Confirmation Order or any request for reconsideration thereof.

35. Dissolution of the Debtors. Immediately following the transfer of all of the Debtors' and the Estates' property under the terms of the Plan, on the Effective Date, the Debtors' members, directors, managers, and officers and any remaining employees shall be deemed to have resigned and the Debtors shall be deemed dissolved for all purposes and of no further legal existence under any applicable state or federal law, without the need to take any further action or file any plan of dissolution, notice, or application with the Secretary of State of the Delaware or any other authority.

36. Retention of Jurisdiction. Without limitation, the Bankruptcy Court shall retain and have exclusive jurisdiction over any matters arising under the Bankruptcy Code, arising in or related to the Chapter 11 Cases or the Combined Plan and Disclosure Statement, or that relates to the matters set forth in Section XIV of the Plan.

37. Conflicts Between Plan Confirmation Order and Plan. The provisions of this Plan Confirmation Order and the Combined Plan and Disclosure Statement shall be construed in a manner consistent with each other so as to effect the purpose of each; provided,

however, that if there is determined to be any inconsistency between any Combined Plan and Disclosure Statement provision and any provision of this Plan Confirmation Order that cannot be reconciled, then solely to the extent of such inconsistency, the provisions of this Plan Confirmation Order shall govern and any provision of this Plan Confirmation Order shall be deemed a modification of the Combined Plan and Disclosure Statement and shall control and take precedence.

38. Effect of Plan Confirmation Order on Other Orders. Unless expressly provided for by this Plan Confirmation Order, nothing in the Combined Plan and Disclosure Statement or this Plan Confirmation Order shall affect any orders entered in the Chapter 11 Cases under sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rule 9019, including the 363 Sale Order and the order approving the Roma Settlement Agreement 9019 Motion (the “Roma Settlement Order”), and the terms of the Combined Plan and Disclosure Statement and this Plan Confirmation Order shall be interpreted consistent with the 363 Sale Order and the Roma Settlement Order. The consideration provided by the Purchaser under or in connection with the 363 Sale Documents and the Roma Settlement Order is the only consideration to be provided by the Purchaser under or in connection with the Plan.

39. Applicable Non-bankruptcy Law. In accordance with sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Plan Confirmation Order, the Plan, and related documents or any amendments or modifications to the Plan shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

40. No Waiver. The failure to specifically include any particular provision of the Combined Plan and Disclosure Statement in this Plan Confirmation Order will not diminish



the effectiveness of such provision or constitute a waiver thereof, it being the intent of this Bankruptcy Court that the Plan is confirmed in its entirety and incorporated by this reference.

41. Final Order; Effective Date. This Plan Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 6006(d), or 7062, this Plan Confirmation Order shall be effective and enforceable immediately upon its entry.

Dated: December \_\_\_\_, 2017  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**The Combined Plan and Disclosure Statement**

**[intentionally omitted]**

**EXHIBIT E**

**Blackline of Revised Proposed Plan Confirmation Order**

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

	X	
	:	
In re:	:	Chapter 11
	:	
RUPARI HOLDING CORP., <i>et al.</i> , <sup>1</sup>	:	Case No. 17-10793 (KJC)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: Docket Nos. 532, 564, <u>642, 644</u> , ____

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
APPROVING AND CONFIRMING FIRST AMENDED JOINT COMBINED  
DISCLOSURE STATEMENT AND CHAPTER 11 PLANS OF LIQUIDATION**

WHEREAS, Rupari Holding Corp ( “Rupari Holding”) and Rupari Food Services Inc. (“Rupari Food” and together with Rupari Holding, the “Debtors”) as debtors in the above-captioned chapter 11 cases, and the Official Committee of Unsecured Creditors (the “Creditors’ Committee” and together with the Debtors, the “Plan Proponents”), having proposed and filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) (i) the *First Amended Joint Combined Disclosure Statement and Chapter 11 Plans of Liquidation* (as the same may be further modified, amended, and/or supplemented from time to time, the “Combined Plan and Disclosure Statement,” or, individually the “Disclosure Statement” and the “Plan”) [Docket. No. ~~532~~       ],<sup>2</sup> a copy of which attached to this Plan Confirmation Order as **Exhibit A**, and (ii) the Plan Supplement, dated November 20, 2017-~~as~~

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Rupari Holding Corp. (4943) and Rupari Food Services, Inc. (7933). The mailing address for the Debtors is 655 Deerfield Rd, Suite 100 pmb 325, Deerfield, Illinois 60015, Attn: Michael Goldman.

<sup>2</sup> Capitalized terms used but not defined in this Plan Confirmation Order shall have the meanings given to them in the Plan.

~~the same may be amended, modified, and/or supplemented from time to time, the “Plan Supplement, the First Amended Plan Supplement, dated December 11, 2017 (together, the “Plan Supplements”);~~

WHEREAS, on November 2, 2017, the Bankruptcy Court entered the *Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Form of Ballot and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling a Plan Confirmation Hearing and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice* [Docket No. 564] (the “Interim Disclosure Statement Order”), approving, among other things, the Disclosure Statement on an interim basis, the contents of the Solicitation Package, and procedures for soliciting and tabulating votes to accept or reject the Plan;

WHEREAS, the appropriate Ballots for voting on the Plan having been duly transmitted to Holders of Claims or Interests entitled to vote on the Plan as set forth in the *Declaration of Jung W. Song on Behalf of Donlin, Recano & Company, Inc. Regarding Voting and Tabulation of Ballots Accepting and Rejecting Debtors’ Joint Combined Disclosure Statements and Chapter 11 Plans of Liquidation*, dated as of [ , ] 2017 [Docket No. ] (the “Voting Certification”); the *Declaration of Michael Goldman in Support of Approval and Confirmation of First Amended Joint Combined Disclosure Statement and Chapter 11 Plans of Liquidation*, dated [ , ], 2017 [Docket. No. ] (the “Goldman Declaration”), and the *Declaration of Matthew Ray in Support of Approval and Confirmation of the First Amended Joint Combined Disclosure Statement and Chapter 11 Plans of Liquidation*, dated [ , ], 2017 [Docket. No. ] (the “Ray Declaration”), having been filed in support of approval of the

Disclosure Statement and confirmation of the Plan; and responses or objections to confirmation of the Plan having been filed by ~~[redacted]~~, ~~and~~ (a) the United States on behalf of the Bureau of Customs and Border Protection [Docket No. 642], (b) Antares Capital LP [Docket No. 644], and (c) together with any at the Plan Confirmation Hearing objections raised (~~defined below~~) (the “Objections”);

WHEREAS, the Bankruptcy Court having held a hearing on December 14, 2017, to consider approval of the Disclosure Statement of a final basis and confirmation of the Plan (the “Plan Confirmation Hearing”); and the Objections having been resolved, overruled, or withdrawn prior to or during the Plan Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor; the Bankruptcy Court hereby FINDS, DETERMINES, AND CONCLUDES that:

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. Findings and Conclusions. The findings and conclusions set forth here and on the record of the Plan Confirmation Hearing constitute the Bankruptcy Court’s findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable here by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction, Venue, Core Proceeding (28 U.S.C. §§ 157(b)(2), 1334(a)). The Bankruptcy Court has jurisdiction over the Debtors’ Chapter 11 Cases under 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Approval of the

Disclosure Statement and confirmation of the Plan are core proceedings under 28 U.S.C. § 157(b) and as such, the Bankruptcy Court has jurisdiction to enter a final order with respect to the Disclosure Statement and Plan. Venue is proper before the Bankruptcy Court under 28 U.S.C. §§ 1408 and 1409. The Debtors are eligible debtors under section 109 of the Bankruptcy Code. The Debtors and the Creditors' Committee are proper ~~plan proponents~~[Plan Proponents](#) under section 1121(a) of the Bankruptcy Code.

C. Judicial Notice. The Bankruptcy Court takes judicial notice of the docket of the Debtors' Chapter 11 Cases maintained by the Clerk of the Court, including all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of these Chapter 11 Cases.

D. Burden of Proof. The Plan Proponents have the burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence. The Plan Proponents have met their burden with respect to each applicable element of section 1129 of the Bankruptcy Code.

E. Chapter 11 Petition. On April 10, 2017 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court. The Debtors continue as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

F. Statutory Committee of Unsecured Creditors. On April 20, 2017, the U.S. Trustee appointed the Creditors' Committee in these Chapter 11 Cases.

G. The Compromises and Settlements Embodied in the Plan are Fair, Reasonable, and in the Best Interests of the Debtors' Estates. The Plan is the result of good

faith, arm's-length negotiations among the Debtors, the Creditors' Committee, WPP, Danish Crown and other parties in interest. The Plan constitutes a good faith, arm's-length compromise and settlement of all Claims or controversies relating to the rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest or any Distribution to be made or obligation to be incurred under the Plan. Such compromises or settlements [\(including the Settlement and the releases and bars contemplated thereby\)](#) (i) are in the best interests of the Debtors, their Estates, and Holders of Claims and Interests, and (ii) are fair, equitable, and reasonable.

H. Adequacy of Disclosure Statement. The information contained in the Disclosure Statement contained extensive material information regarding the Debtors so that parties entitled to vote on the Plan could make informed decisions regarding the Plan. Additionally, the Disclosure Statement contains adequate information as that term is defined in section 1125(a) of the Bankruptcy Code and complies with any additional requirements of the Bankruptcy Code, the Bankruptcy Rules, and applicable nonbankruptcy law. Specifically, but without limitation, the Disclosure Statement complies with the requirements of Bankruptcy Rule 3016(c) by sufficiently describing in specific and conspicuous bold language the provisions of the Plan that provide for releases and injunctions against conduct not otherwise enjoined under the Bankruptcy Code and sufficiently identifies the persons and entities that are subject to the releases and injunctions.

### **Solicitation and Voting**

I. Transmittal and Mailing of Solicitation Materials and Notices. The Voting Certification is evidence that the transmittal and service of the Combined Plan and Disclosure Statement, the Ballots, and other solicitation materials were adequate, sufficient, and



in compliance with the Interim Disclosure Statement Order, and all parties required to be given notice of the Plan Confirmation Hearing (including the deadline for filing and serving objections to confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Interim Disclosure Statement Order and in compliance with the Bankruptcy Code, and the Bankruptcy Rules, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and such parties have had sufficient opportunity to appear and be heard. No other or further notice or re-solicitation is required. The filing and notice of the Plan ~~Supplement~~Supplements was proper and in accordance with the Plan, the Bankruptcy Code, and the Bankruptcy Rules, and no other or further notice shall be required.

J. Good Faith Solicitation. Based on the record before the Bankruptcy Court in these Chapter 11 Cases, the ~~Debtors, the Creditors’ Committee,~~Plan Proponents, the members of the Creditors’ Committee (solely in their capacity as members of the Creditors’ Committee), and each of their Professionals, representatives, members, officers, directors, employees, and agents have acted in “good faith” within the meaning of sections 1125(e) and 1129(a)(3) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, the Local Rules, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with all their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and, to the extent such parties are listed there, the exculpation, injunction, and release provisions in Section XII of the Plan.

K. Voting. The Voting Certification is evidence that votes to accept or reject the Plan were solicited and tabulated fairly, in good faith, and in a manner consistent with the Interim Disclosure Statement Order, the Plan, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law.

**Compliance with the Requirements of Section 1129 of the Bankruptcy Code**

L. Plan Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)).

The Plan complies with the applicable provisions of the Bankruptcy Code and, as required by Bankruptcy Rule 3016, the Plan is dated and identifies the Debtors and Creditors Committee as ~~plan proponents~~ [Plan Proponents](#), in satisfaction of section 1129(a)(1) of the Bankruptcy Code.

(a) Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). With the exception of the Administrative Expense Claims, Professional Fee Administrative Claims, Priority Tax Claims, and Statutory Fee Claims, which need not be classified, Sections VI and VII of the Plan classify Classes of Claims against, and Interests in, the Debtors. The Claims and Interests placed in each Class are substantially similar to the other Claims and Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and the Plan does not unfairly discriminate between Holders of Claims and Interests in each Class or between Classes. Accordingly, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) Unimpaired Classes Specified (11 U.S.C. § 1123(a)(2)). Sections VI and VII of the Plan specify that Claims in Class 1A (Secured Claims against Rupari Holding), Class 2A (Other Priority Claims against Rupari Holding), Class 1B (Secured Claims against Rupari Food), and Class 2B (Other Priority Claims against Rupari Food) (together, the

“Unimpaired Classes”) are unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code and so satisfy section 1123(a)(2) of the Bankruptcy Code.

(c) Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).

Sections VI and VII of the Plan designate Claims or Interests in Class 3A (General Unsecured Claims against Rupari Holding), Class 4A (Intercompany Claims against Rupari Holding), Class 5A (Existing Equity Interests in Rupari Holding), Class 3B (General Unsecured Claims against Rupari Food), Class 4B (Intercompany Claims against Rupari Food), and Class 5B (Existing Equity Interests in Rupari Food) (collectively, the “Impaired Classes”) as impaired within the meaning of section 1124 of the Bankruptcy Code and clearly specify the treatment of the Claims and Interests in those Classes, in satisfaction of section 1123(a)(3) of the Bankruptcy Code.

(d) No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment for each Claim or Interest in each respective Class, unless the Holder of a particular Claim or Interest has agreed to less favorable treatment for such Claim or Interest, in satisfaction of section 1123(a)(4) of the Bankruptcy Code.

(e) Implementation of the Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents and agreements set forth in the Plan ~~Supplement~~Supplements provide adequate and proper means for the implementation of the Plan, including, without limitation, (i) the establishment of the Liquidating Trust and the appointment of the Liquidating Trustee, and (ii) the transfer and vesting of the Liquidating Trust Assets to the Liquidating Trust, to be administered in accordance with the terms of the Plan and the Liquidating Trust Agreement for the benefit of the Liquidating Trust’s beneficiaries. Accordingly, the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

(f) Non-Voting Equity Securities/Allocation of Voting Power (11 U.S.C. § 1123(a)(6)). The Plan provides for the transfer and vesting of the Liquidating Trust Assets to the Liquidating Trust, to be liquidated and distributed in accordance with the Plan and the Liquidating Trust Agreement, and the dissolution of the Debtors. The Plan does not expressly provide for the inclusion in the charter of any Debtor a provision prohibiting the issuance of nonvoting securities because the Plan does not provide for the issuance of any securities. Therefore, the Plan satisfies the requirements set forth in section 1123(a)(6) of the Bankruptcy Code.

(g) Appointment of Liquidating Trustee (11 U.S.C. § 1123(a)(7)). Section VIII.A. of the Plan regarding the appointment of the Liquidating Trustee is consistent with the interests of creditors and interest holders and with public policy, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

(h) Earnings from Personal Services (11 U.S.C. § 1123(a)(8)). Section 1123(a)(8) of the Bankruptcy Code applies only to individual debtors and is not applicable to these Chapter 11 Cases.

(i) Impairment/Unimpairment of Classes of Claims and Interests (11 U.S.C. § 1123(b)(1)). As permitted by section 1123(b)(1) of the Bankruptcy Code, under Sections VI and VII of the Plan, Claims or Interests in the Impaired Classes are impaired and Claims or Interests in the Unimpaired Classes are unimpaired.

(j) Assumption and Rejection (11 U.S.C. § 1123(b)(2)). Section XI of the Plan governs the assumption and rejection of executory contracts and unexpired leases and meets the requirements of section 365 of the Bankruptcy Code.

(k) Settlement/Retention of Claims or Interests (11 U.S.C. § 1123(b)(3)).

Section IX of the Plan provides that the prosecution and settlement of all Causes of Action, including Avoidance Actions and D&O Claims, shall be the sole responsibility and exclusive right of the Liquidating Trust. Thus, the Plan satisfies the requirements of section 1123(b)(3) of the Bankruptcy Code.

(l) Sale of Assets / Distribution of Proceeds (11 U.S.C. § 1123(b)(4)).

The Debtors sold substantially all of their assets to the Purchaser, under the 363 Sale Order. Remaining assets that were not sold to the Purchaser are being transferred to and will vest in the Liquidating Trust for the benefit of the Beneficiaries of the Liquidating Trust.

(m) Modification of Rights (11 U.S.C. § 1123(b)(5)). As permitted by section 1123(b)(5) of the Bankruptcy Code, the Plan modifies the rights of Holders of Claims and Interests in Impaired Classes. The Plan leaves unaffected the rights of Holders of Claims in Unimpaired Classes.

(n) Additional Plan Provisions (11 U.S.C. § 1123(b)(6)). As permitted by section 1123(b)(6) of the Bankruptcy Code, the Plan includes other appropriate provisions not inconsistent with the applicable provisions of the Bankruptcy Code, including, without limitation, certain release, exculpation, and injunction provisions in Section XII of the Plan. Based upon the facts and circumstances of these Chapter 11 Cases, the release, exculpation, and injunction provisions in the Plan are narrowly tailored, integral consideration and critical parts of the Plan, and the Released Parties and Exculpated Parties have relied on the efficacy and conclusive effects of such releases and injunctions when making concessions and exchanging consideration in connection with the Chapter 11 Cases and the Plan. Such release, exculpation, and injunction provisions in Section XII of the Plan are (i) in exchange for the

good, valuable, and reasonably equivalent consideration provided by the Released Parties and the Exculpated Parties, including the negotiation of the Settlement embodied in the Plan Term Sheet by and among the Debtors, Creditors' Committee, Danish Crown, and WPP to, among other things, provide the Plan Contribution Payments and waive any right to receive a Distribution on account of the Intercompany Claims (including the Unsecured Notes), (ii) in the best interests of the Debtors, the Estates, and ~~Creditors~~Holders of Claims and Interests, (iii) fair, equitable, and reasonable, and (iv) a bar to any of the ~~releasing parties~~Persons barred as set forth in the Plan asserting any Interests, Claims, or Causes of Action released under ~~such release~~the Plan in favor of the Released Parties. Accordingly, based upon the record of these Chapter 11 Cases, the representations of the parties, and/or the evidence proffered, adduced, and/or presented at the Plan Confirmation Hearing, the Bankruptcy Court finds that the release, exculpation, and injunction provisions set forth in Section XII of the Plan are consistent with the Bankruptcy Code and applicable law and are appropriate under the circumstances.

(o) Sale of Exempt Property (11 U.S.C. § 1123(c)). The Debtors are not individuals. Accordingly, section 1123(c) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

(p) Cure of Defaults (11 U.S.C. § 1123(d)). As required by section 365(b)(1) of the Bankruptcy Code, any monetary amounts by which any executory contract or unexpired lease that may be assumed under the Plan is in default shall be satisfied by payment or provision for payment of the required cure amount, if any. Thus, the Plan complies with section 1123(d) of the Bankruptcy Code.

M. The Plan Proponents' Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The ~~Debtors and the Creditors Committee, as plan proponents,~~Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and other applicable law in transmitting the Plan, the Disclosure Statement, the Ballots, and related documents and notices and in soliciting and tabulating the votes on the Plan. Accordingly, the Plan satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.

N. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The ~~Debtors and the Creditors Committee~~Plan Proponents have proposed the Plan, including all documents necessary to effectuate the Plan, in good faith and not by any means forbidden by law, thereby satisfying the requirements of section 1129(a)(3) of the Bankruptcy Code. The ~~Debtors' and the Creditors Committee's~~Plan Proponents' good faith is evident from the facts and record of these Chapter 11 Cases, the Disclosure Statement, and the record of the Plan Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' assets and maximizing distributions to creditors. Further, the Plan's classification, exculpation, release, and injunction provisions are consistent with sections 105, 1122, 1123(b)(3)(A), 1123(b)(6), 1129, and 1142 of the Bankruptcy Code, and are integral to the Plan and supported by valuable consideration.

O. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payments made or promised by the Debtors, or a person acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, have been approved by, or

are subject to approval of, the Bankruptcy Court as reasonable. Accordingly, the Plan satisfies the requirements of section 1129(a)(4) of the Bankruptcy Code.

P. Directors, Officers, and Trustees (11 U.S.C. § 1129(a)(5)). The Plan satisfies section 1129(a)(5) of the Bankruptcy Code as the identity of the Liquidating Trustee has been fully disclosed in the Plan ~~Supplement~~[Supplements](#), and the appointment of the Liquidating Trustee is consistent with the interests of Holders of Claims against, and Interests in, the Debtors and with public policy.

Q. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for any rate changes over which a governmental regulatory commission has jurisdiction. Accordingly, section 1129(a)(6) of the Bankruptcy Code is not applicable in these Chapter 11 Cases.

R. Best Interest of Creditors (11 U.S.C. § 1129(a)(7)). Each Holder of an Impaired Claim or Interest (i) has accepted the Plan, (ii) will receive or retain under the Plan on account of such Allowed Claim or Allowed Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date, or (iii) has agreed to receive less favorable treatment. Therefore, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

S. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Claims in Classes 1A, 2A, 1B, and 2B are unimpaired under the Plan and are conclusively presumed to have accepted the Plan without the solicitation of acceptances or rejections under section 1126(f) of the Bankruptcy Code. As set forth in the Voting Certification, Holders of Claims in Classes 3A and 3B voted to accept the Plan. With respect to the remaining Impaired Classes



that did not vote to accept or are deemed to reject the Plan, the Plan is confirmable because it does not discriminate unfairly and is fair and equitable with respect to such Classes, as required by section 1129(b)(1) of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129(a)(8) of the Bankruptcy Code.

T. Treatment of Administrative Expense Claims and Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Claims under the Plan of the type specified in section 507(a)(1) through 507(a)(8) of the Bankruptcy Code, if any, complies with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code.

U. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)). Section 1129(a)(10) of the Bankruptcy Code is satisfied as two Impaired Classes of Claims have accepted the Plan, determined without including any acceptances of the Plan by any insider.

V. Feasibility (11 U.S.C. § 1129(a)(11)). Section 1129(a)(11) of the Bankruptcy Code is satisfied as confirmation of the Plan is not likely to be followed by the need for further liquidation or financial reorganization of the Debtors.

W. Payment of Fees (11 U.S.C. § 1129(a)(12)). Section 1129(a)(12) of the Bankruptcy Code is satisfied as all fees payable under section 1930 of title 28 of the United States Code have either been paid or will be paid under the Plan. As provided in the Plan, (i) any Statutory Fees from the Petition Date thorough the Effective Date shall be paid by the Debtors on the Effective Date and (ii) any Statutory Fees relating to any period of time after the Effective Date shall be paid by the Liquidating Trust and such obligation shall continue until such time as the Chapter 11 cases are closed, dismissed or converted.

X. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors are not obligated to pay retiree benefits and, therefore, are in compliance with the requirements of section 1129(a)(13) of the Bankruptcy Code.

Y. No Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors are not individuals and are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129(a)(14) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

Z. Debtor Is Not An Individual (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals. Accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

AA. No Applicable Non-bankruptcy Law Regarding Transfers (11 U.S.C. § 1129(a)(16)). The Debtors were moneyed, business, or commercial corporations and, accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

BB. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). No Impaired Class entitled to vote under the Plan voted to reject the Plan. No votes were submitted by any Holder of a Claim in[ Class [ ], and there are no known Holders of Claims in Class 6 [ ] ]. The Impaired Classes that are deemed to have rejected the Plan are Class 4A (Intercompany Claims against Rupari Holding), Class 5A (Existing Equity Interests in Rupari Holding), Class 4B (Intercompany Claims against Rupari Food) and Class 5B (Existing Equity Interests in Rupari Food). Based upon the evidence proffered, adduced, and presented by the ~~Debtors~~Plan Proponents at the Plan Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable with respect to the aforementioned Classes as required by

sections 1129(b)(1) and (b)(2) of the Bankruptcy Code, because no Holder of any Allowed Claim or Allowed Interest that is junior to such Classes will receive or retain any property under the Plan on account of such junior Claim or Interest, and no Holder of an Allowed Claim in a Class senior to such Classes is receiving more than 100% recovery on account of its Allowed Claim. Thus, the Plan may be confirmed notwithstanding that these Classes did not accept the Plan.

CC. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan being confirmed in these Chapter 11 Cases. Thus, the Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code.

DD. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

EE. Modifications of the Plan (11 U.S.C. § 1127). Any modifications made to the Plan since the solicitation thereof do not constitute changes that materially and adversely change the treatment of any Claims or Interests. Accordingly, these modifications comply in all respects with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, and none of the modifications requires additional disclosure or resolicitation of votes on the Plan. Under Bankruptcy Rule 3019(a), all Creditors that previously accepted the Plan are deemed to have accepted the Plan as modified.

FF. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

GG. Implementation. All documents necessary to implement the Plan, including, without limitation, the Liquidating Trust Agreement, and all other relevant and necessary documents have been negotiated in good faith and at arm's length and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal or state law.

HH. Preservation of Causes of Action. It is in the best interests of the Debtors, its Creditors, and Interest Holders that, except for the Causes of Action and Claims released in favor of the Released Parties under the Plan, all Causes of Action, including D&O Claims related to the Roma License, shall survive confirmation and be transferred, assigned, and vest in the Liquidating Trust free and clear of all Liens, Claims, charges or other encumbrances, and from and after the Effective Date the Liquidating Trust shall have exclusive rights, powers, and interests of the Estates to, subject to the provisions of the Plan and other Plan Documents, pursue, settle, or, ~~subject to the Plan,~~ abandon such Causes of Action as the sole representative of the Estates under section 1123(b)(3) of the Bankruptcy Code.

II. Compromise, Settlement, Release, Exculpation, and Injunction. The Bankruptcy Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to approve the compromises, settlements, releases, exculpations and injunctions set forth in Article XII of the Plan. Based upon the record of these Chapter 11 Cases and the evidence proffered or adduced at the Plan Confirmation Hearing, the Bankruptcy Court finds that the compromises, settlements, releases, exculpations, and injunctions set forth in Article XII of the Plan are consistent with applicable law and integral components of the Plan Term Sheet and Plan.

JJ. Good Faith. The Debtors have proposed the Plan in good faith, with the legitimate and honest purposes of maximizing value to each of the Debtors' Estates for the benefit of their stakeholders. Therefore, the Plan has been proposed in good faith to achieve a result consistent with the objectives and purposes of the Bankruptcy Code and the Debtors have acted in good faith within the meaning of sections 1125(e) and 1126(e) of the Bankruptcy Code.

**ORDER**

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, DECREED,  
AND DETERMINED THAT:

1. Adequacy of the Disclosure Statement. The Disclosure Statement is approved on a final basis as containing adequate information within the meaning of section 1125 of the Bankruptcy Code and contains sufficient information of a kind necessary to satisfy the disclosure requirements of any applicable non-bankruptcy laws, rules, and regulations.

2. Solicitation and Tabulation. The solicitation and tabulation of votes on the Plan complied with the Interim Disclosure Statement Order and applicable bankruptcy law, were appropriate and satisfactory, and are approved in all respects.

3. Confirmation of the Plan. The Plan and each of its provisions, including the Plan ~~Supplement~~Supplements, shall be, and hereby are, CONFIRMED under section 1129 of the Bankruptcy Code. The documents contained in the Plan ~~Supplement~~Supplements are authorized and approved, and the appropriate representatives of the Estates and Liquidating Trust are authorized to execute and deliver such documents as are necessary to implement the Plan and/or to cause the Effective Date to occur. Each provision of the Plan is authorized and approved and shall have the same validity, binding effect, and enforceability as every other

provision of the Plan. The terms of the Plan, as previously modified and as modified by any modifications made at the Plan Confirmation Hearing, are incorporated by reference into and are an integral part of this Plan Confirmation Order. The failure specifically to describe, include, or refer to any particular article, section, or provision of the Plan, Plan ~~Supplement~~[Supplements](#), or any related document in this Plan Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan and all related documents be approved and confirmed in their entirety as if set forth *in haec verba* in this Plan Confirmation Order.

4. Compromise of Controversies. For the reasons stated, the Plan constitutes a good faith, arm's-length compromise and settlement of all Claims or controversies relating to the rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest or any Distribution to be made or obligation to be incurred under the Plan, and the entry of this Plan Confirmation Order constitutes approval of all such compromises and settlements.

5. Objections. All Objections, responses to, and statements and comments, if any, in opposition to or inconsistent with the Plan, other than those withdrawn with prejudice in their entirety prior to, or on the record at, the Plan Confirmation Hearing, shall be, and hereby are, OVERRULED and DENIED in their entirety. All withdrawn objections are deemed withdrawn with prejudice.

~~6. Satisfaction of Claims. To the fullest extent provided under section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in this Plan Confirmation Order or in the Plan, the Distributions, rights, and treatment that are provided in the Plan shall be in full and final satisfaction and settlement, as of the Effective Date, of all~~

~~Claims and Interests, including any assertions for interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities or obligations of, Liens on, rights against, and Interests in, the Estates, the Debtors, or any of the Debtors' assets or properties, including Claims, demands, liabilities, and equitable relief that arose before the Effective Date, any contingent or non-contingent liability on account of representations made or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (i) a Proof of Claim or Interest based upon such Claim, debt, right, or Interest is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) a Claim or Interest based upon such Claim, debt, right, or Interest is Allowed under section 502 of the Bankruptcy Code, (iii) the Holder of such a Claim or Interest has accepted the Plan or has failed to vote to accept or reject the Plan, or (iv) the Holder of a Claim or Interest is entitled to a Distribution under the Plan, regardless of whether any property shall have been or is to be distributed or retained under the Plan on account of such Claims and Interests. This Plan Confirmation Order shall be a judicial determination of the satisfaction of all Claims and Interests subject to the Effective Date occurring, except as otherwise expressly provided in this Plan Confirmation Order or in the Plan, *provided, however,* that the Plan is a liquidating plan and, as provided in section 1141(d)(3) of the Bankruptcy Code, the confirmation of a plan does not discharge a debtor if the plan provides for the liquidation of all or substantially all of the property of the estate.~~

6. ~~7.~~ Settlement. Confirmation of the Plan shall constitute approval of the Settlement under Bankruptcy Rule 9019.

7. ~~8.~~ Binding Effect. On the Effective Date, and effective as of the Effective Date, the Plan shall be binding upon the Debtors, the Liquidating Trust, and all present and former Holders of Claims against and Interests in the Debtors, and their respective Related Persons, regardless of whether any such Holder of a Claim or Interest voted or failed to vote to accept or reject the Plan and regardless of whether any such Holder of a Claim or Interest is entitled to receive any Distribution under the Plan. On the Effective Date, after giving effect to the transactions that are to occur on or before the Effective Date, the Plan shall be deemed to be substantially consummated within the meaning set forth in section 1101 and under section 1127(b) of the Bankruptcy Code.

8. ~~9.~~ Liquidating Trust.

(a) On the Effective Date, the Liquidating Trust will be established according to the terms of the Plan and the Liquidating Trust Agreement. Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to and shall vest in the Liquidating Trust free and clear of all Liens and Claims without any further action of any of the Debtors or any officers, directors, members, partners, employees, agents, advisors, or representatives of the Debtors or the Liquidating Trustee.

(b) Under section 1141 of the Bankruptcy Code, as of the Effective Date, all Liquidating Trust Assets shall vest in the Liquidating Trust and all Assets dealt with in the Plan shall be free and clear of all Claims and Liens, except as otherwise specifically provided in any of the Plan Documents or in this Plan Confirmation Order. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtors will have no further interest in, or with respect to, the Liquidating Trust Assets or the Liquidating Trust.



(c) For federal income tax purposes, Beneficiaries of the Liquidating Trust's shall be treated as if they had received a distribution from the Estates of an undivided interest in each of the Liquidating Trust Assets (to the extent of the value of their respective share in the applicable assets) and then contributed such interests to the Liquidating Trust, and the applicable Liquidating Trust's Beneficiaries will be treated as the grantors and owners thereof.

(d) Maria Aprile Sawczuk of Goldstein & McClintock LLP is appointed as the Liquidating Trustee. The Liquidating Trustee shall have such powers, duties, and responsibilities as is provided for in the Plan and the Liquidating Trust Agreement and shall be compensated in accordance with the Plan and the Liquidating Trust Agreement.

(e) From and after the Effective Date, prosecution and settlement of all Causes of Action and objections to Claims shall be the sole responsibility of the Liquidating Trust under the Plan, the Liquidating Trust Agreement, and this Plan Confirmation Order. From and after the Effective Date, the Liquidating Trust shall have exclusive rights, powers, and interests of the Estates ~~to pursue, settle or~~, subject to the Plan, Documents, to pursue, settle or abandon such Causes of Action and Claims objections as the sole representative of the Estates under section 1123(b)(3) of the Bankruptcy Code. All Causes of Action and Claims objections that are not expressly released or waived under the Plan are reserved and preserved and vest in the Liquidating Trust in accordance with the Plan. No Person may rely on the absence of a specific reference in the Plan, the Plan ~~Supplement~~Supplements, the Disclosure Statement, this Plan Confirmation Order, or any other document, to any Cause of Action or Claim objection against it as any indication that the Debtors or Liquidating Trustee will not pursue any and all available Causes of Action or Claims objection against such Person. The

Liquidating Trustee expressly reserves all Causes of Action and Claims objections, except for any Cause of Action and Claims objection against any Person that is expressly released or waived under the Plan and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action or Claims objections upon, after, or as a consequence of confirmation or consummation of the Plan.

9. ~~10.~~ General Authorizations. The Debtors and the Liquidating Trustee are authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements and/or documents, and take such acts and actions as may be reasonably necessary or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of the Plan and any transactions described in or contemplated by the Plan. The Debtors or Liquidating Trustee, as applicable, may, and all Holders of Allowed Claims or Interests receiving Distributions according to the Plan, at the request or direction of the Debtors or Liquidating Trustee, as applicable, shall from time to time prepare, execute, and deliver any agreements, documents, instruments, or notices, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan. Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under the Plan that would otherwise require approval of the members, managers, or other owners, direct or indirect, of the Debtors shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) according to applicable law, without any further vote, consent, approval, authorization, or other action by such members, managers, or other owners of the Debtors or notice to, order of, or hearing before, the Bankruptcy Court.

10. ~~11.~~ Compensation and Reimbursement Claims. All Professionals (including the Compromising Professionals and including any applications of members of the Committee for expense reimbursement) seeking Bankruptcy Court approval of allowance and payment of Professional Fee Administrative Claims shall (i) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred in the Chapter 11 Cases by the date that is thirty (30) days after the Effective Date and (ii) to the extent the application is for professionals fees and expenses incurred prior to June 15, 2017, will be paid, from the Professional Fee Carveout, (iii) any remaining professional fees and expenses, including, but not limited to those arising after June 15, 2017, will be paid by the Estates, either by the Debtors or the Liquidating Trustee, as applicable. Any Professional Fee Administrative Claim that is not timely asserted in accordance herewith and with Section V.A. of the Plan shall be deemed disallowed under the Plan and shall be forever barred against the Debtors, the Estates, the Liquidating Trust, or any of their Assets or property, and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup, or recover such Claim.

11. ~~12.~~ Payment of Allowed Professional Fee Administrative Claims on the Effective Date. On the Effective Date, the Liquidating Trustee is authorized and shall make payments, in accordance with the terms of the Plan, on all unpaid, outstanding Professional fees approved by this Court either through the interim compensation procedures or by separate order of this Court (“Effective Date Fees”). The Debtors shall provide the amounts to be paid on account of the Effective Date Fees to the Liquidating Trustee on or before the Effective Date. In the event that there are insufficient funds to satisfy the Effective Date Fees

in full on the Effective Date, the Liquidating Trustee shall pay each professional its pro rata share of the Effective Date Fees until such time as the requisite funds become available, and then, within five (5) Business Days of such availability. Notwithstanding anything in this paragraph 12, the Trust Operating Reserve set forth in the Liquidation Analysis in the amount of \$150,000 shall not be used to pay the Effective Date Fees.

12. ~~13.~~ Administrative Expense Claims. To be eligible to receive Distributions under the Plan on account of an Administrative Expense Claim that is not otherwise Allowed by the Plan, (a) a request for payment of an Administrative Expense Claim incurred during the before the Initial Administrative Expense Claim must have been filed on or before the Initial Administrative Expense Claim Bar Date, and (b) a request for payment of an Administrative Expense Claim incurred during the Second Administrative Expense Claim Period must have been or be Filed on or before the Second Administrative Expense Claim Bar Date. Any Administrative Expense Claim that is not timely asserted in accordance herewith and with Section V.A. of the Plan shall be deemed disallowed under the Plan and shall be forever barred against the Debtors, the Estates, the Liquidating Trust, or any of their Assets or property, and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup, or recover such Claim.

13. ~~14.~~ Assumed and Rejected Contracts and Leases. On the Effective Date, all Executory Contracts not previously assumed and/or assigned (including in connection with the 363 Sale and under the 363 Sale Order), not subject to a pending motion to assume and/or assign or reject as of the Effective Date, or not rejected before the Effective Date, shall be deemed rejected.

14. ~~15.~~ Rejection Damages. All damages arising from the rejection under the Plan of an executory contract or unexpired lease must be filed with the Claims Agent by no later than thirty (30) days after the earlier of the Effective Date or the date provided in any other applicable Order of the Bankruptcy Court. Any proofs of Claim with respect to a claim for rejection damages not filed within such time shall be forever barred from assertion against the Debtors, the Estates, the Liquidating Trust, the Liquidating Trust Assets, and their property and such Persons holding such Claims will not receive and be barred from receiving any Distributions on account of such untimely claims asserting rejection damages, absent further order of the Bankruptcy Court. All rejection damages Claims will be treated as General Unsecured Claims under the Plan and, to the extent they are deemed Allowed General Unsecured Claims, will receive the treatment afforded Allowed General Unsecured Claims against the applicable Debtor.

15. ~~16.~~ Claims Objections. Following the Effective Date, the Liquidating Trust shall be vested with any and all rights and defenses the Debtors had with respect to any Claim or Interest immediately prior to the Effective Date. The Liquidating Trustee, and any other party in interest to the extent permitted under section 502(a) of the Bankruptcy Code, shall file and serve any objection to any Claim no later than the date that is one hundred and eighty (180) days after the Effective Date (the “Claims Objection Deadline”); *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court from time to time upon motion and notice by the Liquidating Trustee for cause.

16. ~~17.~~ Distributions; Reserves. The provisions of the Plan governing distributions, reserves, and procedures for resolving and treating Disputed Claims under the Plan are approved and found to be fair and reasonable.

17. ~~18.~~ Consents and Approvals. This Plan Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any State, Commonwealth, or any other governmental authority with respect to the implementation or consummation of the Plan and any other acts that may be necessary or appropriate for the implementation or consummation of the Plan.

18. ~~19.~~ Release of Liens. Except as otherwise provided in the Plan, or in any contract, instrument, release, or other agreement or document created under the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, hypothecation, or other security interests against any property of the Estates shall be deemed fully released and discharged without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated notices, schedules, or statements typically filed in accordance with the Uniform Commercial Code or other applicable law. The Plan and/or this Plan Confirmation Order may be filed or recorded as further notice and evidence of all such releases and discharges.

19. ~~20.~~ Cancellation of Documents. On the Effective Date, except to the extent otherwise provided in the Combined Plan and Disclosure Statement, any and all notes, instruments, debentures, certificates and other documents evidencing Claims against and Interests in the Debtors shall be deemed automatically extinguished, cancelled, and of no further effect with the Debtors having no continuing obligations thereunder, and shall be deemed rejected and terminated.

20. ~~21.~~ Injunction to Protect Estate and Settling Parties' Assets. From and after the Effective Date, all Persons and Entities who have held, hold, or may hold Claims or rights giving rise to any equitable relief against the Assets or any Interests in the Debtors

arising prior to the Effective Date are permanently enjoined from taking any of the following actions against the Estates, the Liquidating Trust, the Liquidating Trustee, or any of their respective property or assets (collectively, the “Estate Assets”), or the WPP Group or Danish Crown or any of their respective property or assets (collectively, the “Settling Parties’ Assets”) on account of any such Claims or Interests: (a) commencing or continuing, in any manner or in any place, any action or proceeding seeking to collect or to recover in any manner against, or assert control or dominion over, the Estate Assets or the Settling Parties’ Assets; (b) enforcing, attaching, collecting, or recovering in any manner against the Estate Assets or the Settling Parties’ Assets, any judgment, award, decree or order; (c) creating, perfecting, or enforcing any Lien or encumbrance against the Estate Assets Settling Parties’ Assets; and (d) asserting a setoff unless such setoff was formally asserted in a timely Filed proof of claim or in a pleading Filed with the Bankruptcy Court prior to entry of the Plan Confirmation Order or right of subrogation of any kind against any debt, liability, or obligation due to the Debtors, except as otherwise set forth in Section X.I. of this Combined Plan and Disclosure Statement; *provided, however*, that such Persons and Entities shall not be precluded from exercising their rights under and consistent with the terms of this Combined Plan and Disclosure Statement, the Plan Confirmation Order, or the Liquidating Trust Agreement.

21. ~~22.~~ Injunction Against Interference with the Plan. All Holders of Claims and Interests, and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the Debtors’, Creditors’ Committee’s, the Liquidating Trust’s, the Liquidating Trustee’s, and their respective affiliates’, employees’, advisors’, officers’,

directors', members', managers', and agents' implementation or Consummation of the Combined Plan and Disclosure Statement.

22. ~~23.~~ Term of Injunctions and Stays. Unless otherwise provided in the Plan, Disclosure Statement, or this Plan Confirmation Order, all injunctions or stays provided for under sections 105 or 362 of the Bankruptcy Code arising under or entered during the Chapter 11 Cases, or otherwise, and in existence on the Plan Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay and to the extent consistent with the terms and provisions of the Plan or this Plan Confirmation Order, as applicable.

23. ~~24.~~ Debtor Releases. ~~Except as may otherwise be expressly provided in this Combined Plan and Disclosure Statement, as~~ As of the Effective Date, for good and valuable consideration, ~~to the fullest extent permitted under applicable law,~~ the Released Parties are deemed released by the Debtors and the Estates of and from any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities (other than the rights of the Debtors to enforce this Combined Plan and Disclosure Statement, and the contracts, instruments, releases, and other agreement or documents delivered hereunder, and liabilities arising after the Effective Date in the ordinary course of business), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that are based in whole or part on any act omission, transaction, event, or other occurrences, whether direct or derivative, taking place on or prior to the Effective Date in connection with, or related to, the Debtors, the Estates, the Prepetition Credit Documents, the 363 Sale Documents, the Chapter 11 Cases, and this Combined Plan and Disclosure



Statement, other than with respect to Claims, Causes of Action or liabilities arising out of or relating to any act or omission of a Released Party ~~that constitutes~~ determined in a Final Order of a court of competent jurisdiction to constitute actual fraud, willful misconduct, or gross negligence. Notwithstanding the foregoing, nothing in this Plan or the Plan Confirmation Order shall release any D&O Claims arising on or before the Petition Date. In addition, the UFCW International Union-Industry Pension Fund filed proofs of claim for withdrawal liability against the Debtors, jointly and severally, pursuant to Title IV of ERISA in the estimated amount of \$2,752,548 (the “National Pension Fund Withdrawal Liability”). For the avoidance of doubt, all other trades or businesses under common control (within the meaning of Title IV of ERISA) with any Debtor are not released from the National Pension Fund Withdrawal Liability. For the avoidance of doubt, nothing contained in Article XII.E.I., the Plan, or this Plan Confirmation Order, shall be deemed to grant the Debtors a discharge.

24. ~~25.~~ Exculpation. The Exculpated Parties shall not have or incur any liability for any Claim, action, proceeding, Cause of Action, Avoidance Action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, or right to payment arising or accruing on or after the Petition Date, or with respect to actions prior to the Petition Date related to the decision to initiate these Chapter 11 Cases, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, Disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to one another or to any Claim Holder or Interest Holder, or any other party in interest, or any of their respective agents, employees, representatives, advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of the

Chapter 11 Cases, the negotiation, solicitation, Filing, and confirmation of this Combined Plan and Disclosure Statement, the pursuit of confirmation of this Combined Plan and Disclosure Statement, the Consummation of this Combined Plan and Disclosure Statement, the administration of this Combined Plan and Disclosure Statement, or the property to be liquidated and/or distributed under this Combined Plan and Disclosure Statement, except for their willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under this Combined Plan and Disclosure Statement.

25. ~~26.~~ Defenses. Notwithstanding anything to the contrary in the Plan or in this Plan Confirmation Order, none of the releases, discharges, injunctions and other benefits granted to the Released Parties, in their respective capacities as Released Parties, shall prohibit the Holder of any Claim from asserting any defense, including, without limitation, set-off or recoupment, to any Cause of Action asserted by or through the Debtors or the Liquidating Trustee, or their respective successors or assigns, and all defenses are hereby preserved.

26. ~~27.~~ Setoffs. Except as otherwise provided herein, the Debtors and Liquidating Trustee, as applicable, retain the right to reduce any Claim by way of setoff in accordance with the Debtors' books and records. Rights of a setoff of any Entity or Person are preserved for the purpose of asserting such rights as a defense to any Claims or Causes of Action of the Debtors, their Estates, or the Liquidating Trustee and regardless of whether such Entity or Person is the Holder of an Allowed Claim.

27. ~~28.~~ Consolidation Under Local Rule 1017-3. The Plan does not provide for the substantive consolidation of the Estates within the meaning of Local Rule 1017-3.

Each estate will be separately administered in accordance with the terms of the Plan.

28. ~~29.~~ Payment of Statutory Fees. As provided in the Plan, (a) any Statutory Fees relating to any period of time after the Effective Date shall be paid by the Liquidating Trust and such obligation shall continue until such time as the Chapter 11 cases are closed, dismissed or converted. The obligation to pay Statutory Fees shall continue until such time as the Chapter 11 Cases are closed, dismissed, or converted. The Debtors shall file all monthly operating reports for periods covering pre-Effective Date periods on or about the Effective Date. The Liquidating Trustee shall file all post-confirmation reports until such time as the Chapter ~~Chapter~~ 11 Cases are closed.

29. ~~30.~~ Exemptions Under Sections 1145 and 1146. Under section 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Liquidating Trust under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. In accordance with section 1146(a) of the Bankruptcy Code, the making or delivery of any instrument or transfer from a Debtor to the Liquidating Trust, or to any other Person under the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and all applicable state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the forgoing instruments or other documents without the payment of any such tax or governmental assessment.

30. Resolution of Objections.

a. Antares Capital LP [Docket No. 644]: With respect to the Administrative Agent's (as defined in the 363 Sale Order) Claims on behalf and for the benefit of the Prepetition Senior Secured Lenders (the "Antares Claims"), and for the avoidance of doubt:

i. The Antares Claims include secured claims (the "Antares Secured Claim") in amounts received by Administrative Agent under the Final Cash Collateral Order (as defined in the 363 Sale Order) and the proceeds from the sale approved by the 363 Sale Order (the "Sale Proceeds"). The Antares Secured Claim is an Allowed Secured Claim. The Debtors are maintaining a claims reserve under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Reserve") and a general administrative claims reserve (the "General Administrative Claims Reserve," collectively with the 503(b)(9) Reserve, the "Reserves") that are funded entirely by the Sale Proceeds. In full and complete satisfaction of the remainder of the Antares Secured Claim and in full and complete satisfaction of all of the Debtors' and the Estates' claims against Administrative Agent or the Prepetition Senior Secured Lenders under the Final Cash Collateral Order and the 363 Sale Order, Administrative Agent shall receive the balance of the Reserves after the Allowed Initial Administrative Expense Claims are satisfied by no later than the Effective Date and the Administrative Agent and the Prepetition Senior Secured Lenders shall be deemed to be released by the Debtors' and the Estates' of and from any Claims,

obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities for all such amounts received by the Administrative Agent; provided, however, that on the Effective Date, a reserve for General Administrative Expense Claims in the amount of \$50,000 (the "Pre-Closing Administrative Reserve"), shall be created, which shall be funded from the General Administrative Claims Reserve. The Pre-Closing Administrative Reserve shall only cover Allowed General Administrative Expense Claims arising between the Petition Date and June 14, 2017 (the "Pre-Closing General Administrative Expense Claims"). No later than three (3) months following the Effective Date, and provided that no Pre-Closing General Administrative Expense Claims are asserted on or before the Second Administrative Claims Bar Date, the Pre-Closing Administrative Reserve shall be remitted to the Administrative Agent in full; provided, however, that if the Pre-Closing Administrative Reserve shall exceed the face amount of any Pre-Closing General Administrative Expense Claims asserted on or before the Second Administrative Claims Bar Date, then Administrative Agent shall receive the balance of the Pre-Closing Administrative Reserve; provided further, however, that Administrative Agent shall be provided the balance of the Pre-Closing Administrative Reserve after the Allowed Pre-Closing General Administrative Expense Claims are satisfied by no later than three (3) business days after such satisfaction.

ii. The Antares Claims also include unsecured claims for \$4,311,908.38 (the "Antares Unsecured Claim") due to the deficiency claims held by Administrative Agent on behalf and for the benefit of the Prepetition

Senior Secured Lenders related to the Prepetition Senior Secured Credit Facility. The Antares Unsecured Claim includes both an Allowed Class 3A Claim and an Allowed Class 3B Claim. For the avoidance of doubt, Administrative Agent and the Prepetition Senior Secured Lenders have not waived the Antares Unsecured Claim and are entitled to receive distributions regarding the same.

31. Preparation and Filing of Tax Returns. The Liquidating Trust shall be responsible for filing preparing all federal, state, and local tax returns for the Liquidating Trust. The Liquidating Trust shall be responsible for preparing the 2017 federal, state, and local tax returns on behalf of the Debtors.

32. Documents and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby authorized to accept any and all documents and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan and this Plan Confirmation Order.

33. Conditions to Effective Date. The Plan shall not become effective unless and until the conditions set forth in Section XIII.B. of the Plan have been satisfied or waived under Section XIII.E. of the Plan.

34. Dissolution of the Creditors' Committee. Upon the occurrence of the Effective Date, the Creditors' Committee shall dissolve automatically, whereupon its members, professionals, and agents shall be released from any duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code, except with respect to (a) obligations arising under confidentiality agreements, which shall remain in full force and effect, (b) prosecuting applications for payment of fees and reimbursement of expenses of Professionals or attending to any other issues related to applications for payment of fees and reimbursement of expenses

of Professionals, (c) any motions or motions for other actions seeking enforcement of implementation of the provisions of the Combined Plan and Disclosure Statement, and (d) prosecuting or participating in any appeal of this Plan Confirmation Order or any request for reconsideration thereof.

35. Dissolution of the Debtors. Immediately following the transfer of all of the Debtors' and the Estates' property under the terms of the Plan, on the Effective Date, the Debtors' members, directors, managers, and officers and any remaining employees shall be deemed to have resigned and the Debtors shall be deemed dissolved for all purposes and of no further legal existence under any applicable state or federal law, without the need to take any further action or file any plan of dissolution, notice, or application with the Secretary of State of the Delaware or any other authority.

36. Retention of Jurisdiction. Without limitation, the Bankruptcy Court shall retain and have exclusive jurisdiction over any matters arising under the Bankruptcy Code, arising in or related to the Chapter 11 Cases or the Combined Plan and Disclosure Statement, or that relates to the matters set forth in Section XIV of the Plan.

37. Conflicts Between Plan Confirmation Order and Plan. The provisions of this Plan Confirmation Order and the Combined Plan and Disclosure Statement shall be construed in a manner consistent with each other so as to effect the purpose of each; provided, however, that if there is determined to be any inconsistency between any Combined Plan and Disclosure Statement provision and any provision of this Plan Confirmation Order that cannot be reconciled, then solely to the extent of such inconsistency, the provisions of this Plan Confirmation Order shall govern and any provision of this Plan Confirmation Order

shall be deemed a modification of the Combined Plan and Disclosure Statement and shall control and take precedence.

38. Effect of Plan Confirmation Order on Other Orders. Unless expressly provided for by this Plan Confirmation Order, nothing in the Combined Plan and Disclosure Statement or this Plan Confirmation Order shall affect any orders entered in the Chapter 11 Cases under sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rule 9019, including the 363 Sale Order and the order approving the Roma Settlement Agreement 9019 Motion (the “Roma Settlement Order”), and the terms of the Combined Plan and Disclosure Statement and this Plan Confirmation Order shall be interpreted consistent with the 363 Sale Order and the Roma Settlement Order. The consideration provided by the Purchaser under or in connection with the 363 Sale Documents and the Roma Settlement Order is the only consideration to be provided by the Purchaser under or in connection with the Plan.

39. Applicable Non-bankruptcy Law. In accordance with sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Plan Confirmation Order, the Plan, and related documents or any amendments or modifications to the Plan shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

40. No Waiver. The failure to specifically include any particular provision of the Combined Plan and Disclosure Statement in this Plan Confirmation Order will not diminish the effectiveness of such provision or constitute a waiver thereof, it being the intent of this Bankruptcy Court that the Plan is confirmed in its entirety and incorporated by this reference.



41. Final Order; Effective Date. This Plan Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 6006(d), or 7062, this Plan Confirmation Order shall be effective and enforceable immediately upon its entry.

Dated: December, 2017  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**The Combined Plan and Disclosure Statement**

**[\[intentionally omitted\]](#)**

<b>Summary report:</b> <b>Litéra® Change-Pro TDC 7.5.0.155 Document comparison done on</b> <b>12/11/2017 6:35:14 PM</b>	
<b>Style name:</b> DLA Piper	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://EASTDMS/EAST/148237753/6	
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<del>Delete</del>	59
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<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	129