

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11

In re:

Case No. 20-12117 (MEW)

COSMOLEDO, LLC, *et al.*<sup>1</sup>

Debtors.

Jointly Administered

**AMENDED DISCLOSURE STATEMENT TO ACCOMPANY PLAN OF LIQUIDATION  
PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE**

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*Attorneys for the Debtors*

Dated: New York, New York  
July 19, 2021

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

<b>IMPORTANT INFORMATION FOR YOU TO READ</b>
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**THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR THE PURPOSE OF SOLICITING VOTES REGARDING THE PLAN OF LIQUIDATION OF COSMOLEDO, LLC, AND ITS AFFILIATED DEBTORS (THE “PLAN”). NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY PERSON OR ENTITY FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN.**

THIS DISCLOSURE STATEMENT CONTAINS “FORWARD LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS “MAY,” “EXPECT,” “BELIEVE,” “PREDICTS,” “ANTICIPATE,” “ESTIMATE” OR “CONTINUE” OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD LOOKING STATEMENTS. THE LIQUIDATION ANALYSIS AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY. THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO AND RECOVERIES BY HOLDERS OF ALLOWED CLAIMS, AND IF ALL ALLOWED CLAIMS ARE PAID IN FULL WITH INTEREST, ALLOWED INTERESTS, MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016 AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING SECURITIES OR CLAIMS OF THE DEBTORS IN THIS CASE SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

NO LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE DEBTORS URGE EACH HOLDER OF A CLAIM OR AN INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED DISTRIBUTIONS AND OTHER ACTIONS CONTEMPLATED THEREBY.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION OR WAIVER. RATHER, THIS DISCLOSURE STATEMENT SHALL CONSTITUTE A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY

PROCEEDINGS AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS. AS SUCH, THIS DISCLOSURE STATEMENT MAY NOT BE USED AGAINST THE DEBTORS IN ANY LITIGATION RELATED TO THE PLAN OR OTHERWISE.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR CAUSE OF ACTION OR PROJECTED OBJECTION TO A PARTICULAR CLAIM OR INTEREST IS, OR IS NOT, IDENTIFIED IN THIS DISCLOSURE STATEMENT, EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN A FINAL ORDER OF THE BANKRUPTCY COURT. THE DEBTORS, PRIOR TO THE EFFECTIVE DATE, OR THE LIQUIDATION TRUST, AFTER THE EFFECTIVE DATE, MAY SEEK TO INVESTIGATE, FILE AND PROSECUTE ANY CAUSES OF ACTION OR OBJECTIONS TO CLAIMS AND INTERESTS, AND MAY DO SO AFTER THE CONFIRMATION DATE OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THE DISCLOSURE STATEMENT IDENTIFIES SUCH CAUSES OF ACTION OR OBJECTIONS.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN ANTICIPATED EVENTS IN THE DEBTORS' CHAPTER 11 CASE AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN AND CONTROL FOR ALL PURPOSES. EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED, FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT. THE DEBTORS DO NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION. ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN ARE ENCOURAGED TO REVIEW THE DISCLOSURE STATEMENT AND PLAN, INCLUDING ALL EXHIBITS ATTACHED HERETO AND THERETO, IN THEIR ENTIRETY BEFORE CASTING THEIR VOTES TO ACCEPT OR REJECT THE PLAN.

THE DEBTORS' MANAGEMENT HAS REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THE DEBTORS HAVE USED THEIR REASONABLE, GOOD FAITH EFFORTS TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED (UNLESS EXPRESSLY PROVIDED HEREIN).

THE DEBTORS ARE GENERALLY MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE DATE OF

THE DISCLOSURE STATEMENT OR SUCH EARLIER DATE AS MAY BE SPECIFICALLY NOTED. THE DEBTORS HAVE NOT AUTHORIZED ANY PERSON OR ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS HAVE NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS, THE PLAN OR THE VALUE OF ITS PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN EVALUATION OF THE DEBTORS AND THEIR OWN ANALYSES OF THE TERMS OF THE PLAN IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. IMPORTANTLY, PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM IN A VOTING CLASS SHOULD REVIEW THE PLAN IN ITS ENTIRETY AND CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT AND ANY EXHIBITS HERETO.

**THE DEBTORS AND THE CREDITORS' COMMITTEE SUPPORT CONFIRMATION OF THE PLAN. THE DEBTORS URGE ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED TO ACCEPT THE PLAN.**

**THE VOTING DEADLINE IS AUGUST 18, 2021, UNLESS THE DEBTORS EXTEND THE VOTING DEADLINE.**

**TO BE COUNTED AS A VOTE TO ACCEPT OR REJECT THE PLAN, YOUR BALLOT MUST BE ACTUALLY RECEIVED ON OR BEFORE THE VOTING DEADLINE.**

PLEASE READ THIS DISCLOSURE STATEMENT CAREFULLY. THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN, WHICH IS ANNEXED TO THIS DISCLOSURE STATEMENT. THE DEBTORS BELIEVE THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS, THEIR ESTATES AND CREDITORS AND PROVIDES THE HIGHEST POSSIBLE AND MOST EXPEDITIOUS RECOVERIES TO HOLDERS OF ALLOWED CLAIMS AGAINST THE DEBTORS.

Cosmoledo, LLC (“Cosmoledo” or the “Company”), and its affiliated Debtors (collectively with Cosmoledo, the “Debtors”), respectfully submit this disclosure statement (the “Disclosure Statement”) pursuant to section 1125 of Chapter 11 of Title 11 of the United States Code, as amended (the “Bankruptcy Code”) to accompany its Plan dated June 10, 2021, which has been filed with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). A copy of the Plan is annexed as Exhibit A hereto. Capitalized terms contained in this Disclosure Statement not otherwise defined herein will have the meanings ascribed to such terms in the Plan.

## **I. DESCRIPTION OF THE DISCLOSURE STATEMENT**

### **A. Notice to Holders of Claims and Interests**

The purpose of this Disclosure Statement is to provide creditors of and holders of membership interests in the Debtors with adequate information so as to enable them to make an informed judgment concerning acceptance or rejection of the Plan. The Plan is the document that contains the exclusive and final statement of the rights with respect to the Debtors, their creditors, interest holders, and other interested parties, and sets forth what (if anything) those groups will receive and how they will receive it. The Debtors strongly recommend that all parties in interest read the Plan in its entirety. The Disclosure Statement is not a substitute for reading the Plan in full, as the Disclosure Statement simply describes the Plan in summary fashion and provides information about the Debtors and the Debtors’ Debtors’ cases under Chapter 11 of the Bankruptcy Code, as jointly administered under case number 20-12117 (MEW) (the “Case” or “Cases”). If the Bankruptcy Court confirms the Plan, it will become binding on the Debtors, their Estates, all creditors, interest holders and other interested parties.

You are also urged to read the contents of the Disclosure Statement in order to determine what rights you may have to vote on or object to the Plan and before making any decision on any such course of action. Particular attention should be directed to the provisions of the Plan affecting or impairing your rights. Please note, however, that this Disclosure Statement cannot tell you everything about your rights. For instance, this Disclosure Statement cannot and does not provide a complete description of the financial status of the Debtors, all the applicable provisions of the Bankruptcy Code, or other matters that may be deemed significant by creditors and other parties in interest. You are encouraged to consult with your lawyers and/or advisors as you review and consider the Disclosure Statement and the Plan to enable you to obtain more specific advice on how the Plan will affect you.

Holders of Claims that are impaired have the right to vote to accept or reject the Plan. Generally speaking, a claim or interest is impaired if a plan alters the legal, contractual or equitable rights of the holder of such claim or Interest. A class of creditors accepts a plan when creditors holding two-thirds in amount of such class and more than one-half in number of the claims in such class who actually cast their ballots votes to accept the Plan.

In this Case, the Plan contains five (5) Classes of Claims and two (2) Classes of Interests. The Plan does not impair Claims in Class 1 (Secured Claims) and Class 2 (Priority Claims). The Plan provides that holders of Class 3 Claims (PPP Eligible Claims), Class 4 (Unsecured Claims), Class 5 (Intercompany Claims), Class 6 (Intercompany Interests) and Class 7 (Interests in Cosmoledo LLC) are impaired. Classes 1 and 2 are not impaired under the Plan and are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Classes 5, 6, and 7 will receive no distribution under the Plan and are therefore deemed to reject the Plan.

**VOTES ON THE PLAN WILL BE SOLICITED FROM  
HOLDERS OF CLASS 3 AND CLASS 4 CLAIMS ONLY.**

IN THE OPINION OF THE DEBTORS, AND THE CREDITOR'S COMMITTEE THAT THE TREATMENT OF CREDITORS AND INTEREST HOLDERS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY THAN THAT WHICH IS LIKELY TO BE ACHIEVED UNDER ANY OTHER ALTERNATIVE FOR THE LIQUIDATION OF THE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE OR UNDER CHAPTER 7 OF THE BANKRUPTCY CODE. ACCORDINGLY, THE DEBTORS BELIEVE THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS' CREDITORS AND INTEREST HOLDERS AND RECOMMENDS THAT ALL HOLDERS OF CLASS 3 OR CLASS 4 CLAIMS VOTE TO ACCEPT THE PLAN.

**B. Solicitation Package and Voting Procedures**

The following materials are included with this Disclosure Statement:

1. A copy of the Plan;
2. A copy of an order approving the Disclosure Statement (the "Disclosure Statement Order"), which states: (a) the date by which objections to confirmation of the Plan must be served and filed, (b) the date by which all votes with respect to the Plan must be cast, (c) the date of the hearing in the Bankruptcy Court to consider confirmation of the Plan, and (d) other relevant information; and
3. A Ballot for holders of Claims in Class 3 and Class 4 to vote with respect to the Plan.

**A copy of the Plan Trust Agreement will be filed with the Bankruptcy Court no later than ten (10) Business Days prior to the hearing to consider Confirmation of the Plan and will identify the Liquidation Trustee.**

WHILE THE BANKRUPTCY COURT HAS APPROVED THE DISCLOSURE STATEMENT ON JULY 20, 2021 PURSUANT TO § 1125 OF THE BANKRUPTCY CODE, THE BANKRUPTCY COURT HAS NOT CONFIRMED THE PLAN, NOR IS THIS DISCLOSURE STATEMENT OR THE DISCLOSURE STATEMENT ORDER TO BE CONSTRUED AS APPROVAL OR ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

As stated in the Disclosure Statement Order, the Bankruptcy Court has scheduled a hearing to consider the Confirmation of the Plan for August 31, 2021 at 10:00 a.m. (the "Confirmation Hearing"). Objections to Confirmation of the Plan, if any, must be in writing and filed with the Bankruptcy Court and served, so as to be received no later than 5:00 p.m. on August 20, 2021 (the "Plan Objection Deadline"), upon the following parties:

Mintz & Gold LLP  
Counsel to the Debtors  
600 Third Avenue, 25th Floor  
New York, New York 10016  
Attn: Andrew R. Gottesman, Esq.

Gabriel Altman, Esq.  
CeCe M. Cole, Esq.

- and -

Hahn & Hessen LLP  
Counsel for the Official Committee of Unsecured Creditors  
488 Madison Avenue  
New York, New York 10022  
Attn: Mark S. Indelicato, Esq.  
Mark Power, Esq.

All Ballots with respect to the Plan must be completed in full, signed, and submitted by the Voting Deadline (defined herein) to be counted in the tabulation of the votes. Ballots may be filed electronically by visiting [www.DonlinRecano.com/clients/mk/vote](http://www.DonlinRecano.com/clients/mk/vote) and following the instructions to register and vote, or by mail addressed to the Debtors' Bankruptcy Court approved claims agent, Dolin, Recano & Company, Inc. (the "Claims Agent") at the following addresses:

If by First Class Mail:

Donlin, Recano & Company, Inc.  
Re: Cosmoledo LLC, *et al.*  
P.O. Box 199043  
Blythebourne Station  
Brooklyn, NY 11219

If by Hand Delivery or Overnight Mail:

Donlin, Recano & Company, Inc.  
Re: Cosmoledo, LLC, *et al.*  
6201 15th Avenue  
Brooklyn, New York 11219

IF A BALLOT IS DAMAGED OR LOST, OR IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, CALL OR EMAIL:

Donlin, Recano & Company, Inc.  
Re: Cosmoledo LLC, *et al.*  
Attn: Voting Department  
P.O. Box 199043  
Blythebourne Station  
Brooklyn, NY 11219  
Email: [drcvote@donlinrecano.com](mailto:drcvote@donlinrecano.com)  
Phone: 1-800-467-0821

Ballots must be submitted electronically or mailed so as to be received by the Claims Agent no later than 5:00 p.m. Eastern Time on August 18, 2021 (the "Voting Deadline").

**C. Representations/Limitations.**

NO PERSON IS AUTHORIZED BY THE DEBTORS IN CONNECTION WITH THE PLAN OR THE SOLICITATION OF VOTES THEREON TO GIVE ANY INFORMATION OR TO MAKE ANY

REPRESENTATION OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ANNEXED HERETO (INCLUDING THE PLAN) OR INCORPORATED HEREIN BY REFERENCE OR REFERRED TO HEREIN, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DEBTORS.

NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE PLAN ARE AUTHORIZED OTHER THAN AS SET FORTH HEREIN. ANY REPRESENTATIONS OR INDUCEMENTS TO SECURE YOUR ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY YOU.

THE INFORMATION CONTAINED HEREIN HAS BEEN PREPARED BY THE DEBTORS IN GOOD FAITH, BASED UPON UNAUDITED INFORMATION AVAILABLE TO THE DEBTORS AS OF THE DATE HEREOF. ALTHOUGH THE DEBTORS HAVE USED THEIR BEST EFFORTS TO ENSURE THAT SUCH INFORMATION IS ACCURATE, THE INFORMATION CONTAINED HEREIN IS UNAUDITED. THE DEBTORS BELIEVE THAT THIS DISCLOSURE STATEMENT COMPLIES WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE OF THIS DISCLOSURE STATEMENT AND THE DATE THE MATERIALS RELIED UPON IN PREPARATION OF THIS DISCLOSURE STATEMENT WERE COMPILED.

THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN, AND NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON HOLDERS OF CLAIMS AGAINST OR AN INTEREST IN THE DEBTORS.

THE DESCRIPTION OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT IS INTENDED AS A SUMMARY ONLY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN ITSELF. EACH CREDITOR AND INTEREST HOLDER IS ENCOURAGED TO READ, CONSIDER AND CAREFULLY ANALYZE THE TERMS AND PROVISIONS OF THE PLAN AND ANY EXHIBITS TO THE PLAN.

THE DEBTORS BELIEVE THAT THIS DISCLOSURE STATEMENT CONTAINS INFORMATION OF A KIND AND IN SUFFICIENT DETAIL TO ENABLE A HYPOTHETICAL REASONABLE INVESTOR TYPICAL OF HOLDERS OF CLAIMS AND INTERESTS OF RELEVANT CLASSES TO MAKE AN INFORMED JUDGMENT CONCERNING WHETHER TO VOTE FOR OR AGAINST THE PLAN. THE BANKRUPTCY COURT HAS NOT VERIFIED THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.

FAILURE BY A CREDITOR OR INTEREST HOLDER TO TIMELY CAST A BALLOT OR FILE AN OBJECTION TO CONFIRMATION OF THE PLAN IN ACCORDANCE WITH THE DISCLOSURE STATEMENT ORDER AND THE BANKRUPTCY CODE SHALL CONSTITUTE AN AGREEMENT BY SILENCE TO ACCEPT THE TERMS CONTAINED IN THE PLAN.



THIS DISCLOSURE STATEMENT AND THE PLAN PROVIDES FOR INJUNCTIVE RELIEF AS TO THE DEBTORS. THE PERMANENT INJUNCTIONS SET FORTH IN THE PLAN WILL APPLY TO HOLDERS OF ANY CLAIM, INTEREST, LIEN, ENCUMBRANCE OR DEBT, WHETHER SECURED OR UNSECURED, GRANTED PRIORITY STATUS, INCLUDING PRIORITY TAX (FEDERAL OR STATE), NON-PRIORITY UNSECURED CLAIM OR ANY INTEREST IN THE DEBTORS. CREDITORS AND INTEREST HOLDERS WILL BE BOUND BY THIS INJUNCTIVE PROVISION UNLESS CREDITORS TIMELY FILE OBJECTIONS IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THE DISCLOSURE STATEMENT ORDER OR HEREIN AND APPEAR AT THE CONFIRMATION HEARING, TO PROSECUTE ANY OBJECTION.

THE DEBTORS URGE ALL HOLDERS OF CLASS 3 AND CLASS 4 CLAIMS TO ACCEPT THE PLAN, AS THE DEBTORS BELIEVE THAT CONFIRMATION OF THE PLAN REPRESENTS THE BEST CHANCE OF THE HIGHEST RECOVERIES FOR UNSECURED CREDITORS IN THIS CASE.

## **II. BACKGROUND**

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

Cosmoledo, a Delaware limited liability company, was formed on December 21, 2010, and opened its first Store located at 1294 Third Avenue in New York City in 2012. Until recently the Company operated sixteen (16) locations (each a "Store," and collectively, the "Stores") in New York City. Each of the other Debtors in these Cases is a New York Limited Liability Company ("LLC") whose sole member is Cosmoledo.

Each Store is a "fine casual" dining concept that follows one of the following business models or combines models tailored to the anticipated market:

- Full Expression (bakery, restaurant & grab and go);
- Residential (bakery & restaurant);
- Bakery & Grab and Go; and
- Bakery, Grab and Go, & Made-to-Order (no in-Store dining).

The Debtors' production and operational costs are historically high given the nature of their business concept. The Company's trade name derives from its namesake and licensor, Eric Kayser. Mr. Kayser has long been recognized as one of the most talented artisan bakers of his generation and has built his reputation on his passion for bread, the quality of his products and his incredible skill to combine authenticity and innovation in the world of French artisanal bakeries. Maintaining these high standards demanded the highest quality ingredients, meticulous processes and state of the art equipment.

### **B. The Debtors' Corporate Structure**

On the Petition Date (defined below), the Stores, the commissary, and the fee owned real property were each owned by a separate, sole member, New York Limited Liability Company. The sole member

of each such LLC is Cosmoledo.<sup>2</sup>

Cosmoledo is also the sole member of Breadroll, LLC (“Breadroll”), which acts as the Company’s main payroll affiliate. When the Company was forced to suspend operations and furloughed much of its work force, most of those furloughed workers were direct employees of Breadroll. Only management level employees are employed by Cosmoledo.

All of the equity of Cosmoledo is held by Moussechoux, Inc. (the “Original Secured Lender”). As of the Petition Date, Original Secured Lender owned all of the outstanding preferred membership units and common units of Cosmoledo.

### **C. Prepetition Financing**

Between January 29, 2016 and February 26, 2018, Cosmoledo entered into a series of notes, payable to Original Secured Lender to fund, among other things, the Debtors’ operations and growth (each a “Prior Note,” and collectively, the “Prior Notes”). The aggregate principal amount of the Prior Notes was fifty-nine million dollars (\$59,000,000.00).

On March 6, 2019, Cosmoledo and Original Secured Lender entered into that certain Debt Purchase Agreement (the “Debt Purchase Agreement”), pursuant to which Cosmoledo exchanged the Prior Notes for eight (8) amended and restated promissory notes (each an “Amended Note,” and collectively, the “Amended Notes”). Each Amended Note was issued in the same amount as the amounts then due (including accrued and unpaid interest) under its corresponding Prior Note. Pursuant to the Debt Purchase Agreement, Cosmoledo also issued a new note to Original Secured Lender (the “New Note,” and together with the Amended Notes, the “Notes”), in the same form as the Amended Notes, in the amount of ten million dollars (\$10,000,000.00).

Pursuant to each of the Notes, the Cosmoledo was obligated to pay the unpaid principal amount due thereunder and all interest due thereon on January 28, 2020 (the “Maturity Date”). Cosmoledo and Original Secured Lender entered into a limited waiver of rights on January 28, 2020, under which Original Secured Lender agreed to temporarily waive, until February 28, 2020, Cosmoledo’s compliance with the obligation to pay all principal and interest due under the Notes on the Maturity Date (“Limited Waiver No. 1”). On February 25, 2020, the parties entered into another limited waiver, extending the Maturity Date through July 30, 2020 (“Limited Waiver No. 2”). On July 29, 2020, the parties entered into a forbearance agreement pursuant to which the Original Secured Creditor agreed to forbear from exercising remedies under the Notes through August 14, 2020 (the “Forbearance Agreement”). On August 14, 2020, the parties entered into an amended and restated Forbearance Agreement pursuant to which the Original Secured Creditor agreed to forbear from exercising remedies under the Notes through September 30, 2020 (the “Amended and Restated Forbearance Agreement”).

Cosmoledo’s outstanding obligations were secured by first-priority security interests in all of the Debtors’ accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, goods (and accessions thereto), instruments, investment property, letter of credit rights, supporting obligations, and all products and proceeds thereof (the “Collateral”). Original Secured Lender perfected its lien on the Cash Collateral (as hereinafter defined) by filing a UCC-1 financing statement filed with the Delaware Secretary of State on March 29, 2019 and entering into a limited access services agreement (the “Limited Access Service Agreement”), dated as of December 27, 2019, by and between

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<sup>2</sup> As described in more detail below, the Debtors sold the equity in 668 Bronx Commissary LLC to MK USA, LLC, as part of the Debtors’ asset sale which closed on November 2, 2020.

Cosmoledo and Santander Bank, N.A. (“Santander”). Accordingly, it is the Debtors’ position that a substantial portion of the Debtors’ cash, whether now existing or hereafter acquired, constitutes “cash collateral” of the Secured Creditor, within the meaning of Bankruptcy Code sections 363(a) and 552(b) (the “Cash Collateral”).

As of the Petition Date the outstanding amount under the Notes was approximately seventy-two million seven-hundred and forty-two thousand and four hundred eighteen dollars (\$72,742,418.00), plus fees and expenses provided for in the Notes.

On September 10, 2020, Original Secured Lender sold and assigned all of its rights, title, interests and obligations to and under the Notes, along with all other documents relating thereto (including but not limited to all collateral documents executed by any of the Debtors in connection with the Notes, the Debt Purchase Agreement and the Collateral) to MK Debt, LLC, a Delaware limited liability company (“MK Debt”), an affiliate of MK USA, LLC, a Delaware limited liability company (“MK USA”).

#### **D. Events Leading to the Commencement of the Case**

The restaurant industry is facing well-documented challenges caused by the global COVID-19 pandemic. New York City restaurants have felt this acute pain since mid-March of 2020 when Governor Cuomo declared a state of emergency, which required the Debtors to cease operations.<sup>3</sup> Although restaurants have been opened in limited capacity for in-house dining, many were limited to delivery and take-out options for the majority of the year while needing to cover their full overhead. Many longstanding pillars of the industry have closed for good. The full re-opening of in-house dining has simply come too late for the Debtors.

The Company’s original business model contemplated expansion to a national footprint in a relatively short period. At its height, the Company was making products from scratch in its bakery enabled Stores and two (2) separate 20,000-square-foot and 30,000-square-foot commissaries—one (1) in the Bronx and one (1) in New Jersey. The Company had also expanded out of New York City and opened Stores in Washington, D.C. In or around early 2019, it became clear that the operational overhead and performance of the “out of town” Stores were too great a drag on the Company’s overall profitability. The Company retained professionals and formulated a restructuring strategy that included a recapitalization of Company, the reorganization of their production facilities, a reduction of their footprint and a revision to the structure of Store level management.

That strategy was implemented throughout 2019 and mostly completed in the first quarter of 2020. At approximately the same time this restructuring was nearing completion, the Debtors’ business was devastated by the global COVID-19 pandemic. The Company furloughed approximately six hundred eighty-eight hundred (688) employees and temporarily, it believed, shuttered its operations. At the time, it was anticipated that in-Store dining would resume, and the Company could reopen in June. On or about June 18, 2020, it became clear that the phased reopening of New York City, which included restaurants, would not allow sufficient operations to support the Debtors’ recovering financial situation. After analyzing the financial impact stemming from the macroeconomic factors impacting the restaurant industry, of the loss of in-Store dining revenue and the continued overhead required to sustain even limited operations (take-out and delivery), the Company determined that there was too great a risk that future operations would fail to generate sufficient capital to repay its obligations in the ordinary course of its business. Accordingly, the Debtors decided to not reopen the Stores and began seeking restructuring

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<sup>3</sup> See New York State Executive Order No. 202, dated March 7, 2020.

alternatives in mid-July.

### **E. The Debtors' Prepetition Marketing Efforts and Identification of a Stalking Horse**

Prior to the Petition Date (defined herein), the Debtors worked diligently to identify an acquirer for their assets and business for almost sixty (60) days. To that end, the Debtors prepared financial and operational materials for dissemination to potential acquirers of all the Debtors' Assets and contacted over twenty (20) likely candidates. Fourteen (14) parties evidenced an interest in conducting due diligence, and the Debtors provided each of them with a nondisclosure agreement so they could review the financial and operational materials it had prepared as well as such additional information as the parties requested. In addition, José Alcalay, the Debtors' Chief Executive Officer, made himself available to answer questions, address concerns and discuss how a sale might be structured. The Company hoped to generate sufficient funds through a sale to avoid requiring relief under the Bankruptcy Code.

Following diligence review, the Company received four (4) indications of interest. After additional diligence and discussions with the Debtors' professionals, four (4) letters of intent were received. After review and consideration of all offers, the Debtors' board of directors (the "Board") determined to move forward with the transaction proposed by MK USA, which contemplated a purchase in the context of a Chapter 11 case.

## **III. THE CHAPTER 11 CASE**

### **A. Commencement of Bankruptcy Case**

On September 10, 2020 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under the Bankruptcy Code and remained debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

On September 18, 2020, the Office of the United States Trustee for Region 2 (the "UST") appointed the Official Committee of Unsecured Creditors (the "Committee") for these Cases [ECF No.: 55]. The UST filed an Amended Notice of Appointment of Official Creditors' Committee on November 21, 2021 [ECF No.: 58]. The current members of the Committee are (i) Maison Eric Kayser Medatlantique Limited, (ii) 149 5th Corp, and (iii) S.D. Ryan Lieble. The Committee supports approval of this Disclosure Statement and the Plan.

#### **(1) The First Day Filings**

The Debtors filed, among other things, certain "first day" motions immediately upon the commencement of their Chapter 11 Cases:

(a) Motion of the Debtors Pursuant to 11 U.S.C. §§ 105(a) 363(b), 507(a) and for Entry of Interim and Final Orders (I) Authorizing (a) Payment of Prepetition Wages, Salaries, Employee Benefits, and Other Compensation, (b) Maintenance of Employee Benefit Programs, and (II) Directing Financial Institutions to Honor and

Process Checks and Transfers Related to Such Obligations (the “Wage Motion”) [ECF No.: 9].

(b) Motion of the Debtors for Entry of Interim and Final Orders Approving Stipulation with MK Debt, LLC Consenting to the use of Cash Collateral (the “Cash Collateral Motion”) [ECF No.: 11].

(c) Motion of The Debtors for An Order Pursuant To Sections 105(A), 345(B), And 363(B) And (C) Of The Bankruptcy Code Authorizing The Debtors To (I) Continue To Use Existing Cash Management System, (II) Maintain Existing Bank Accounts And Business Forms, And (III) Waive Requirements Of Section 345(B) Of The Bankruptcy Code (the “Cash Management Motion”) [ECF No.: 13].

A hearing on the first day motions was held on September 14, 2020, at which the Bankruptcy Court granted the interim relief the Debtors’ requested in each instance. The interim-basis relief became final in the instance of the Wage Motion and Cash Management Motion on October 13, 2021. The Debtors’ use of Cash Collateral was approved by the Bankruptcy Court at a hearing on October 29, 2020.

## **(2) Retention of Professionals**

The Bankruptcy Court has approved the applications for the retention of Mintz & Gold LLP, as bankruptcy counsel to the Debtors [ECF No.: 116], and of CBIZ Accounting, Tax and Advisory of New York, LLC as financial advisors and consultants to Debtors [ECF No.: 105], each *nunc pro tunc* to the Petition Date.

The Bankruptcy Court approved Donlin, Recano & Company (“DRC” or the “Claims Agent”) as the Debtors’ claims and noticing agent [ECF No.: 45], and as administrative agent [ECF No.: 250].

The Bankruptcy Court approved the applications for the retention of Hahn & Hessen LLP as bankruptcy counsel to the Committee [ECF No.: 134], and Getzler Henrich & Associates as financial advisor and consultants to the Committee [ECF No.: 139]. The Committee retentions were also approved *nunc pro tunc* to the Petition Date.

The Bankruptcy Court also authorized certain monthly compensation procedures for compensation and reimbursement of expenses of its retained professionals. Pursuant to the Court’s *Order Granting Debtors’ Motion for Order Pursuant to Bankruptcy Code Sections 105(A) And 331, Bankruptcy Rule 2016, And Local Bankruptcy Rule 2016-1 Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals* (the “Interim Compensation Order”) [ECF No.: 115], professionals file monthly fee statements and are paid 80% of their fees and 100% of their expenses if a fifteen (15) day objection period lapses without contest. If an objection to a monthly fee statement is filed, all fees and expenses are held back until a hearing on the next interim fee application by the relevant professional. The fees and expenses of all of the Debtors’ professionals, including professionals retained and paid under the Interim Compensation Order, are subject to review by the Bankruptcy Court through the interim and final fee application process.

## **(3) The Asset Sale**

Prior to the Petition Date, the Debtors, in their business judgement and following analysis and evaluation of various restructuring alternatives, determined that a sale of substantially all of its assets would maximize value to its estates. The Debtors ultimately chose MK USA as the stalking horse bidder

as a result of this process.

On September 11, 2020, the Debtors filed a Motion of the Debtors for Orders (I) Scheduling Hearing to Consider (A) Sale of Substantially All of the Debtors' Assets, Free and Clear of All Liens, Claims and Encumbrances, Subject to Higher and Better Offers and (B) Assumption and Assignment Of Leases and Executory Contracts; (II) Scheduling Hearing to Consider Approval of Stalking Horse Agreement, Related Bid Protection and Bidding Procedures for the Conduct of an Auction; (III) Fixing A Cure Claims Bar Date with Respect to the Assumption and Assignment Of Leases and Executory Contracts; (IV) Fixing Manner and Notice of Sale Hearing; (V) Authorizing the Debtors to Sell Assets, Free and Clear of All Liens, Claims and Encumbrances, Subject to Higher and Better Offers; (VI) Authorizing Assumption and Assignment Of Leases and Executory Contracts; and (VII) Granting Related Relief (the "Sale Motion") [ECF No.: 18].

The hearing to approve the Bidding Procedures (as defined in the Sale Motion), took place on September 25, 2020. On October 2, 2020, the Court Approved the Bidding Procedures (the "Bid Procedures Order") [ECF No.: 88]. Following entry of the Bid Procedures Order, the Debtors continued to negotiate with multiple potential bidders. Additionally, the Debtors entered into non-disclosure agreements with multiple parties interested in bidding at an auction. Various parties, including the Committee objected to the Sale Motion. In its objection, the Committee cited certain provisions of the Bidding Procedures it believed to be improper in the context of an auction. All objections to the Sale Motion and Bidding Procedures were resolved consensually following discussions with the various parties in interest. This included a settlement agreement by and among the Debtors, the Committee, MK Debt, and MK USA, which was formally approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019 on October 28, 2020.

Despite the best efforts of the Debtors and the Creditors' Committee, no Qualified Bids (as defined in the Bid Procedures Order) were received by October 20, 2020 (the "Bid Deadline") and the Debtors thereafter filed a *Notice of Cancellation of Auction and Designation Of Stalking Horse Bidder As The Successful Bidder* on October 22, 2020 [ECF No.: 140]. Consequently, the Debtors proceeded with a hearing to approve the sale to MK USA on October 29, 2020 (the "Sale"). On November 2, 2020, the Bankruptcy Court entered an order approving the Sale (the "Sale Order") [ECF No.: 166] pursuant to the Stalking Horse APA. The Sale closed on the same day and as contemplated in the Stalking Horse APA, the Debtors received cash sales proceeds in the amount of \$2,978,390.00.

#### **(4) Lease Rejections**

On September 11, 2020, the Debtors filed a Motion for An Order (I) Authorizing (A) Rejection of Certain Unexpired Leases of Nonresidential Real Property and (B) Abandonment of Certain Personal Property in Connection Therewith Each Effective as of a Sale Hearing And (II) Granting Related Relief (the "Rejection Motion") [ECF No.: 16]. As required by the Bid Procedures Order, the Debtors filed an Amended Notice of Filing Schedule 2.6(b) to Sale Agreement indicating the list of contracts and leases to be assumed as part of the sale [ECF No.: 128]. This notice listed one lease, the Debtors' lease of non-residential real property located at 178 Bruckner Boulevard, Bronx, New York (the "178 Bruckner Lease").

A hearing on the Rejection Motion occurred concurrently with Sale Motion, and on November 2, 2020, the Court entered an order authorizing the rejection of the non-residential real property leases related to the Stores and abandoning the furniture, fixtures, equipment and other personal property at those locations (the "Rejection Order") [ECF No.: 165]. Under the Rejection Order, the Debtors' leases were

rejected as of midnight on November 3, 2020. The only lease not rejected under the Rejection Order was the 178 Bruckner Lease, which was assumed and assigned to MK USA under the Sale Order.

### **(5) The PPP Motion**

In anticipation of reopening their Stores in June and then in September, on or about April 6, 2020, Debtor-entity Breadroll applied for a loan under the Paycheck Protection Program (“PPP”) offered by the United States Small Business Administration (the “SBA”) under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), section 7(a)(36) of the Small Business Act (the “PPP Loan”). The PPP Loan was funded on April 20, 2020 in the amount of \$6,662,292 (the “PPP Loan Proceeds”) pursuant to a Loan Agreement by and between Breadroll and Santander (the “PPP Loan Agreement”). Approximately four million four hundred fifty thousand dollars (\$4,450,000) of the PPP Loan Proceeds remained in Breadroll’s bank account on the Petition Date. Prior to the Petition Date, the Debtors used approximately two million two hundred fifty thousand dollars (\$2,250,000) from Breadroll’s bank account to fund operations in the ordinary course of business. The Debtors believe all or a portion of this amount is subject to forgiveness pursuant to the CARES Act.<sup>4</sup>

On the Petition Date, the Debtors had sufficient cash on hand to satisfy the PPP Loan and anticipated an additional cash infusion through the sale. On October 21, 2020, the Debtors filed the *Motion of The Debtors for Authorization to use Funds to Repay Certain Prepetition Obligations Guaranteed by the Small Business Administration* (the “PPP Motion”) [ECF No.: 136] to ensure compliance with the CARES Act. The Committee subsequently raised informal objections to the PPP Motion, indicating that the PPP Loan is an unsecured loan and as such, any claim arising from such loan, to the extent not forgiven, should be treated like any other unsecured claim and should share *pari passu* to any distribution. To avoid immediate and costly litigation, the Debtors, the Committee, Santander, and the SBA entered into good faith negotiations in an effort to resolve all disputes relating to the PPP Loan, the Santander Claim,<sup>5</sup> and the distribution of remaining PPP Loan proceeds pursuant to the Plan.<sup>6</sup> An agreement among the parties was ultimately reached and is memorialized in the Plan and this Disclosure Statement. The Committee, Santander, and the SBA have all agreed to support the Plan as filed. Creditors are urged to review the Plan in its entirety to ascertain all the details of the agreement, however the material terms of the agreement embodied in the Plan are as follows:

- Claims relating to costs or expenses that constitute “authorized uses” as defined under the CARES Act and additional SBA guidance, including Allowed Lease Rejection Damages Claims in an amount not to exceed the cap established by the Rejection Damages Allocation shall constitute “PPP Eligible Claims” and will receive treatment in accordance with Class 3 under the Plan.
- The Committee, Santander, and the SBA agree: (i) to support and take all reasonable steps necessary to consummate the Plan and all of the transactions necessary to confirm and substantially consummate (as such term is used in section 1127(b) of the Bankruptcy Code)

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<sup>4</sup> As of the date hereof, the Debtors have not filed an application for forgiveness as required under the PPP. The Parties reserve all of their respective rights regarding any such application.

<sup>5</sup> Santander filed proof of claim against Breadroll in the amount of \$6,688,750.10 in connection with the PPP Loan (the “Santander Claim”).

<sup>6</sup> The Committee reserves its rights to further object to the PPP Motion in the event the Plan is not approved by the Court on any and all grounds.

the Plan; (ii) to negotiate in good faith any agreement or other document (including the Plan) referenced in, or reasonably necessary or desirable to confirm and substantially consummate the Plan (collectively, the “Definitive Documentation”); (iii) to timely deliver all such Definitive Documentation such that the other Parties shall have sufficient time to review and provide comments on the same; (iv) to make all reasonable efforts to seek entry of a final order of the Bankruptcy Court confirming the Plan contemplated hereby and cause the Effective Date contemplated therein to happen; and (v) to refrain from taking any action that would interfere with, delay, or postpone the effectuation of the Plan, including the approval of the Disclosure Statement and the confirmation and consummation of the Plan, except to the extent permitted by Section 9.9 of the Plan pertaining to Governmental Units.

- The Santander Claim will be allowed as a Class 3 Claim under the Plan in the full and final amount of \$5,373,536.

Although there may be some fluctuation based on the outcome of potential claims objections by a Liquidation Trust, the Plan sets a floor for recoveries at a percentage significantly higher than potential recoveries following the outcome of litigation over the PPP Loan. Absent approval of the Plan and the agreement between the Debtors and the PPP Parties, creditors could receive a distribution as low as approximately 8%, or as high as approximately 30%, depending on the outcome of the contested PPP Motion. This estimate is based upon cash projections that do not include the cost of litigating the PPP Motion. Upon its approval, however, the Plan will provide all parties in interest with certainty regarding distributions and avoid costly litigation.

Based upon a review of outstanding Scheduled and Filed Claims, there are in excess of \$8,338,564.86 PPP Eligible Claims. There are also asserted Lease Rejection Damages Claims of approximately \$11,489,613.47. As part of the settlement of the PPP Motion, the parties have agreed that approximately 46% of these Lease Rejection Damages Claims – approximately \$5,285,222.20 – are to be treated under Class 3 as PPP Eligible Claims. This agreed percentage represents the portion of Lease Rejection Damages Claims attributable to the “Covered Period” under the PPP’s temporal spending requirement.<sup>7</sup> Accordingly, the Debtors estimate that PPP Eligible Claims eligible to be treated under Class 3 of the Plan total approximately \$13,623,787.06.<sup>8</sup>

The treatment of a PPP loan which was not utilized by its recipient would be an issue of first impression for this Court and therefore presents a higher level of risk to all parties in any litigation and uncertainty that. The Plan resolves this uncertainty and the Debtors submit that approval of the settlement of the PPP Motion and related issues, as embodied in the Plan, is consistent with applicable standards for approval of a settlement within the Second Circuit and should be approved.

Essentially, the agreement among the Debtors, the Committee, the SBA. And Santander is a settlement of the PPP Motion and the Committee’s stated objection to it. For the avoidance of doubt, the Debtors believe that this settlement falls well within the Court’s discretion to approve under Bankruptcy Rule 9019. The Second Circuit has stated that a bankruptcy court, in determining whether to approve a compromise, should not decide the numerous questions of law and fact raised by the compromise, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Liu v. Silverman (In re Liu)*, 1998 U.S. App. LEXIS 31698, at \*3 (2d Cir. Dec.

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<sup>7</sup> See 86 Fed. Reg. 3706 (January 14, 2021).

<sup>8</sup> This estimate is prior to the resolution of any Lease Rejection Damages Claims or other PPP Eligible Claims that are Disputed Claims.



18, 1998) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)); see also *Masonic Hall & Asylum Fund v. Official Comm. of Unsecured Creditors (In re Refco, Inc.)*, 2006 U.S. Dist. LEXIS 85691, at \*21-22 (S.D.N.Y. Nov. 16, 2006); *In re Ionosphere Clubs*, 156 B.R. at 426. “[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation.” *In re Purified Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). Resolution of claims through settlement furthers the goal of bankruptcy administration to liquidate estate assets as rapidly as possible “consistent with obtaining the best possible realization upon the available assets and without undue waste by needless or fruitless litigation.” *In re Carla Leather, Inc.*, 44 B.R. 457, 471 (Bankr. S.D.N.Y. 1984), *aff’d*, 50 B.R. 764 (S.D.N.Y. 1985).

In recognition of the key role that estate representatives play in maximizing a debtor’s estate, courts often accord their recommendation of a proposed compromise and settlement considerable deference. See *In re Jackson Brewing Co.*, 624 F.2d 599, 604 (5th Cir. 1980), see also *In re Purified Down Prods.*, 150 B.R. at 522; *In re Drexel Burnham Lambert Grp.*, 134 B.R. at 505. Based on the Debtors’ recommendation of the settlement as being in the best interests of the estate, a bankruptcy court should approve a proposed settlement unless it “falls below the lowest point in the range of reasonableness.” *In re W.T. Grant Co.*, 699 F.2d 599 (2d Cir.), *cert. denied, sub nom. Cosoff v. Rodman*, 464 U.S. 822 (1983). See also, *In re Purified Down Products Corp.*, 150 B.R. at 522-23 (S.D.N.Y. 1993)

In deciding whether a particular compromise falls within the “range of reasonableness,” courts consider the following factors:

- probability of success in the litigation;
- difficulties associated with collection;
- the complexity of the litigation, and the attendant expense, inconvenience, delay; and
- the paramount interests of the creditors.

See *In re Refco, Inc.*, 2006 U.S. Dist. LEXIS 85691 at \*22; *Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994) (citing *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. denied*, 506 U.S. 1088 (1993)).

The PPP Motion is a matter of first impression and represents litigation risk for all interested parties, including the Debtors and their Estates. Furthermore, any Bankruptcy Court ruling on the PPP Motion may be subject to appellate review given the importance of such decision in relation to these Cases. In summary, the compromise embodied in the Plan falls squarely within the required range of reasonableness because (a) it avoids the cost and delay involved with the litigating a matter of first impression, with long reaching ramifications, (b) it avoids risk by providing a floor for recoveries, and (c) allows for a prompt resolution of these Cases.

## **(6) The Bar Dates**

By application dated November 24, 2020, the Debtors requested that the Bankruptcy Court set certain deadlines for filing of proofs of claim against the Debtors in these Cases. By Order dated November 25, 2020, the Bankruptcy Court established January 8, 2021 at 4:00 p.m. (Eastern Time) as the Bar Date for all Claims that arose on or prior to the Petition Date and all Administrative Claims that arose prior to November 2, 2021.

In addition, the Bankruptcy Court fixed March 10, 2021 at 4:00 p.m. (Eastern Time) as the date and time for the filing of proofs of claim by governmental entities. Notice of these Bar Dates was served

on all parties on December 1, 2020. Without accounting for duplicates and claims which may be disallowed for other reasons, as of the date hereof, three hundred fifty (350) claims were filed totaling \$35,386,217.42.<sup>9</sup>

#### **IV. DESCRIPTION OF THE PLAN**

##### **A. Chapter 11 Plan Generally**

The confirmation of a chapter 11 plan is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying the holders of claims against and interests in a debtor's estate. A chapter 11 plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation. Upon confirmation, a plan becomes binding on the debtor, all of its creditors and equity holders. All prior obligations owed by a debtor to such parties are compromised and exchanged for the obligations specified in the plan. The Bankruptcy Court may confirm the plan if it independently determines that the requirements of section 1129 of the Bankruptcy Code have been satisfied. The Debtors believe that the Plan satisfies all applicable requirements of section 1129 of the Bankruptcy Code.

Chapter 11 of the Bankruptcy Code does not require that each holder of a claim or interest in a particular class vote in favor of a chapter 11 plan in order for the bankruptcy court to determine that the class has accepted the plan. Rather, a class of claims will be deemed to have accepted the plan if the bankruptcy court determines that the plan has been accepted by more than a majority in number and at least two-thirds in amount of those claims actually voting in such class. Only the holders of claims who actually vote will be counted as either accepting or rejecting the plan. Classes of claims or equity interests that are not "impaired" under a chapter 11 plan are conclusively presumed to have accepted the plan under § 1126(f) of the Bankruptcy Code and, thus, are not entitled to vote. Furthermore, classes that are not to receive or retain any property under the plan are conclusively deemed to have rejected the plan under § 1126(g) of the Bankruptcy Code and are also, therefore, not entitled to vote. Accordingly, only those persons who hold claims or equity interests in an impaired class that receive or retain property are entitled to vote with respect to a plan.

Here, Claims in Class 3 and Class 4 are impaired under the Plan and therefore are entitled to vote. Claims in Class 1 and Class 2 are unimpaired under the Plan and deemed to accept the Plan. Claims and Interests in Class 5, Class 6 and Class 7 will receive no distribution on account of their Claims and Interests, are impaired and are therefore deemed to reject the Plan.

##### **B. Summary of the Debtors' Plan**

The Plan provides for the liquidation of any remaining Assets and distribution thereof in accordance with the Plan on and after the Effective Date. All Assets will be transferred to a Liquidation Trust, and the Liquidation Trustee will (a) establish the Reserves, (b) make, or cause to be made, Distributions pursuant to the Plan, (c) liquidate and/or administer the Assets, (d) commence, prosecute, settle or otherwise resolve all objections to Disputed Claims, (e) assert, prosecute, continue and settle all Causes of Action, and (f) take any and all other actions not inconsistent with the terms of the Plan that are appropriate or necessary to effectuate the terms of the Plan and close the bankruptcy case.

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<sup>9</sup> Total aggregate claims filed were \$993,448,731.91, of which \$958,062,514.49 were duplicate claims filed amongst multiple debtors (inclusive of \$950,000,000 duplicate litigation claims).

**V. THE DEBTORS' EXPECTATION IS THAT ALLOWED ADMINISTRATIVE CLAIMS (INCLUDING PROFESSIONAL FEES AND UST FEES), PRIORITY CLAIMS AND PRIORITY TAX CLAIMS WILL BE PAID IN FULL**

The Plan is organized into Articles. Article 1 contains definitions and rules of interpretation of terms used in the Plan. Article 2 contains the Debtors' request for substantive consolidation and the effect of the Bankruptcy Court's approval of such substantive consolidation.

Article 3 provides for the treatment of Administrative Claims (including the fees and expenses of the Debtors' professionals) and Priority Tax Claims and the payment of fees to the United States Trustee, which are not classified pursuant to § 1123(a)(1) of the Bankruptcy Code. Article 3 further provides for a bar date by which all Administrative Claims must be filed.

Article 4 designates the Classes of Claims and Interests that must be classified pursuant to section 1123(a)(1) of the Bankruptcy Code and sets forth the treatment to be afforded such Claims and Interest in each Class.

Article 5 specifies the means by which the provisions of the Plan will be implemented and the mechanisms by which Distributions will be made to Claimants, including the implementations of the settlement between the Debtors, the Committee, Santander, and the SBA.

Article 6 provides for the appointment of the Liquidation Trustee and sets forth the rights, powers and duties of the Liquidation Trustee, who will be responsible for liquidating the Debtors' remaining Assets and winding up Estate, which includes making the Distributions under the Plan. The Plan Trust Agreement, which will be filed with the Bankruptcy Court no later than five (5) Business Days prior to the date of the Confirmation Hearing, supplements Article 6 and identifies the Liquidation Trustee.

Article 7 describes the procedures for treating and resolving Disputed Claims. Article 8 provides for the disposition of Executory Contracts under the Plan. Article 9 describes the effect of Confirmation of the Plan, including an injunction against taking certain further actions against the Debtors and an exculpation of certain parties of interest in these Cases.

Article 10 sets forth conditions precedent for the Effective Date of the Plan, which includes the fulfillment of the requirements set forth in section 1129 of the Bankruptcy Code. Finally, Articles 11 and 12 contain miscellaneous provisions regarding the terms and conditions of the Plan and the Bankruptcy Court's retention of jurisdiction over the Cases for specified purposes.

**C. Treatment of Unclassified Claims**

Article 3 provides for payment of "Unclassified Claims", including (i) fees of the United States Trustee ("UST Fees"), (ii) Administrative Claims (including Professional Fees), and (iii) Priority Tax Claims.

The Debtors will pay all outstanding amounts due to the United States Trustee upon confirmation and through the Effective Date as and when due. The Liquidation Trustee will pay the UST Fees arising from and after the Effective Date as and when due until the entry of a final decree in the Case.

Although the Debtors have continued to satisfy claims and expenses incurred in the ordinary course of business following the Petition Date, there may be certain additional asserted Administrative Claims. The largest group of Administrative Claims in these Cases are the claims for postpetition rent due under

section 365(d)(3) of the Bankruptcy Code. The Debtors estimate that there is approximately \$728,902.53 in postpetition administrative rent due. Holders of Allowed Administrative Claims will be paid in full from Available Cash on the later of: (a) the Effective Date; (b) within ten (10) days after the date such Administrative Claim becomes an Allowed Claim, or (c) on such other date as may be ordered by the Bankruptcy Court.

Professional Fees are the Claims of the Debtors' and the Committee's professionals (the "Professionals") for fees and expenses accrued during these Cases. The Professionals consist of (a) Mintz & Gold LLP, bankruptcy counsel to the Debtors; (b) CBIZ Accounting, Tax & Advisory of New York, LLC, financial advisors and consultants to the Debtors accountants; (c) Hahn & Hessen, LLP, bankruptcy counsel to the Committee; (d); Getzler Henrich & Associates LLC, financial advisor and consultant to the Committee; and (e) the Debtors' Claims Agent, Donlin, Recano Company, Inc.

All final applications for payment of Professional Fees for the period through and including the Effective Date shall be filed with the Bankruptcy Court and properly served on or before the Professional Fee Bar Date. It is estimated that Professional Fee Claims, net of amounts previously paid will aggregate approximately \$1,410,146.29.<sup>10</sup>

Holders of Allowed Professional Fee Claims will be paid in full from Available Cash on or as soon as reasonably practicable after the first Business Day following the date upon which such Professional Fee Claim becomes Allowed by a Final Order, unless such holder agrees to a different treatment of such Claim.

Priority Tax Claims consist of Claims for taxes owed by the Debtors to certain federal, state and local taxing units which are entitled to priority of payment over other claims in accordance with Section 507 of the Bankruptcy Code. Based upon the results of the Bar Date, as well as those non- contingent, liquidated and undisputed Priority Tax Claims reflected in the Schedules, there are asserted Priority Tax Claims in the aggregate amount of less than \$100,000. To the extent any or all of the asserted Priority Tax Claims are Allowed, such Claims will be paid from Available Cash in an amount equal to such Allowed Priority Tax Claim on the later of: (a) the Effective Date, (b) within ten days after the date such Priority Tax Claim becomes an Allowed Claim; or (c) on such other date as may be ordered by the Bankruptcy Court.

#### **D. Chart of Estimated Treatment of Classified Claims and Interests**

<b><u>Classified Claims/Interests</u></b>	<b><u>Treatment</u></b>	<b><u>Additional Comments</u></b>
Class 1 (Secured Claims)	Unimpaired	There is a total of \$9,074.70 filed Claims in Class 1.
Class 2 (Priority Claims)	Unimpaired	There is a total of \$70,413.29 filed Claims in Class 2.
Class 3 (PPP Eligible Claims)	Impaired	There is a total of approximately \$13,623,787.06 million of Claims in Class 3 that were filed and/or scheduled. The Debtors estimate that depending on determinations on Disputed Claims, the allowed amount of Class 3 Claims may be in the range of \$10,658,119.38 to \$13,623,787.06 million. The percentage distribution to holders

<sup>10</sup> This aggregate amount is an estimate of accrued but unpaid Professional Fee Claims as of Effective Date and does not include claims of estate professionals that were previously paid in accordance with Bankruptcy Court orders.

<b><u>Classified Claims/Interests</u></b>	<b><u>Treatment</u></b>	<b><u>Additional Comments</u></b>
		of Allowed Class 3 Claims will depend on, among other things, the amount of such claims and the outcome of objections to such claims.
Class 4 (Unsecured Claims Claims)	Impaired	There are a total of approximately \$13,243,476.68 of Claims in Class 4 that were filed and/or scheduled. The Debtors asserts that many of claims in this class are disputed and/or overstated. The Debtors estimates that depending on determinations on Disputed Claims, the allowed amount of Class 4 Claims may be in the range of \$8,463,047.42 to \$13,243,476.68 million. The percentage distribution to holders of Allowed Class 4 Claims will depend on, among other things, the amount of such claims and the outcome of objections to such claims and other litigation.
Class 5 (Intercompany Claims)	Impaired	The holders of Class 5 Claims will receive no distribution under the Plan and such Claims will be cancelled based on the Court's approval of the Debtors' substantive consolidation.
Class 6 (Intercompany Interests)	Impaired	The holders of Class 6 Interests will receive no distribution under the Plan and such Interests will be cancelled based on the Court's approval of the Debtors' substantive consolidation.
Class 7 (Interests in Cosmoledo, LLC)	Impaired	The holders of Class 7 Interests will receive no distribution under the Plan.

## **E. Classification and Treatment of Claims and Interests**

Article 4 of the Plan provides for the classification of Claims against, and Interests in, the Debtors and provides for the treatment of such Classes of Claims and Interests. The classification and the treatment of the Classes and Interests are summarized herein as follows:

### **(1) Secured Claims**

Class 1 Claims consist of Allowed Secured Claims, which are not impaired under the Plan. Secured Claims, if any, will be satisfied in full by payment of 100% of the unpaid amount of such Claim in Cash or the surrender of the collateral securing such Claim, *provided, however*, that the treatment under the Plan will be subject to the rights of any holder of a prior lien upon, and security in, said collateral. To the extent the value of the collateral securing a Secured Claim is less than the Allowed Amount, any such deficiency will be entitled to treatment as a Class 4 Unsecured Claim. Since Class 1 Claims are not impaired under the Plan, the holders thereof are conclusively presumed to have accepted the Plan in accordance with Section 1126(f) of the Bankruptcy Code and are, therefore, not entitled to vote on the Plan.

The Schedules do not reflect any non-contingent, liquidated and undisputed Secured Claims. Santander has filed claim number 154.

Claim number 154, which is distinct from the PPP Proof of Claim and unrelated to the PPP Loan, arises under an Application and Agreement for Standby Letter of Credit for the benefit of American Express Travel Related Services Company, Inc. that Cosmoledo executed on March 25, 2016. To secure the payment of its obligations to Santander pursuant to the LC Agreement, Cosmoledo granted Santander a security interest in a designated money market account on deposit with Santander, which had an original principal balance of \$50,000.00. All amounts due to Santander under the LC Agreement, including all

interest accruing thereon since October 14, 2020, are secured by the funds on deposit in the Account, which constitute cash collateral. The Debtor anticipates that payment of Santander's Class 1 Claim will be made from the pledged account and the remaining balance will be added to Available Cash. The Debtors are unaware of any other Secured Claims.

## **(2) Priority Claims**

Class 2 Claims consist of Allowed Priority Claims. Class 2 Claims will be paid in full out of Available Cash after payment of, or Reserves for, all Allowed Administrative Claims and Allowed Priority Tax Claims, on the later of: (a) the Effective Date; (b) within ten (10) days after the date such Priority Claim becomes an Allowed Claim, or (c) on such other date as may be ordered by the Bankruptcy Court.

Class 2 Claims are not impaired under the Plan. Accordingly, the holders thereof are conclusively presumed to have accepted the Plan in accordance with Section 1126(f) of the Bankruptcy Code and are not entitled to vote on the Plan.

## **(3) PPP Eligible Claims**

Class 3 consists of all Allowed PPP Eligible Claims. PPP Eligible Claims are defined under the Plan as "any Claim consisting of costs or expenses that constitute "authorized uses" as defined in the CARES Act and additional SBA guidance."

Holders of Allowed Class 3 Claims will be entitled to receive a Pro Rata Distribution of Trust Units equal to (i) the Pro Rata Distribution of Remaining Cash, plus (ii) twenty (20%) percent of the Net PPP Cash Balance after payment of, or Reserves for, all Class 1 Claims, Administrative Claims (including Professional Fee Claims), Priority Tax Claims, Class 2 Claims and the expenses of the Liquidation Trust (including but not limited to the costs of prosecuting litigations and claims objections), on the later of the later of (a) ten (10) days after the date such PPP Eligible Claim becomes an Allowed Claim; (b) at such time as there is sufficient Cash in the Liquidation Trust and the Liquidation Trustee determines to make Distributions to holders of the Beneficiaries; or (c) on such other date as may be ordered by the Bankruptcy Court. In accordance with the settlement of the PPP Motion and as provided for in the Plan, Class 3 shall receive an aggregate Distribution in an amount not less than \$3,000,000.

Class 3 Claims are impaired, and the holders thereof are entitled to vote on the Plan.

## **(4) General Unsecured Claims**

Class 4 consists of all Allowed General Unsecured Claims that are not PPP Eligible Claims. Holders of an Allowed Class 4 Claims are entitled to receive a Pro Rata Distribution of Trust Units equal to (i) the Pro Rata Distribution of Remaining Cash, less (ii) twenty (20%) percent of the Net PPP Cash Balance after payment of, or Reserves for, all Class 1 Claims, Administrative Claims (including Professional Fee Claims), Priority Tax Claims, and Class 2 Claims and the expenses of the Liquidation Trust (including but not limited to the costs of prosecuting litigations and claims objections) on the later of: (a) ten (10) days after the date such General Unsecured Claim becomes an Allowed Claim; (b) at such time as there is sufficient Cash in the Liquidation Trust and the Liquidation Trustee determines to make Distributions to holders of the Beneficiaries; or (c) on such other date as may be ordered by the Bankruptcy Court.

Class 4 Claims are impaired, and the holders thereof are entitled to vote on the Plan.

Based upon the results of the Bar Date, there have been three hundred fifty (350) Claims filed against the Debtors totaling approximately \$35,386,217.42. The Debtors and/or the Liquidation Trustee, as appropriate, will assert objections to such Claims on all available grounds, and any Claim that does not become an Allowed Claim will not receive any Distribution under the Plan.

At this time it is difficult to estimate the percentage Distribution to the holders of Allowed Claims given that the amount of fees and expenses necessary to confirm the Plan and the expenses of the Liquidation Trust are not easily estimable at this point in time, and the actual amount of the recovery to holders of Class 3 Claims and Class 4 Claims may be adjusted (upward or downward) based upon the results of the claims reconciliation process and the outcome of any Causes of Action undertaken by the Debtors and/or the Liquidation Trustee.

#### **(5) Intercompany Claims**

Class 5 consists of all Allowed Intercompany Claims.

Allowed Class 5 Claims shall be discharged, released, and extinguished as of the Effective Date, and will be of no further force or effect. No Distributions shall be made on account of any Class 5 Claims. Holders of Class 5 Claims are deemed to have rejected the Plan and are not entitled to vote.

#### **(6) Intercompany Interests**

Class 6 consists of all Allowed Intercompany Interests.

Class 6 Interests, shall be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and no Distributions shall be made on account of any Intercompany Interests. Class 6 is impaired under the Plan. Holders of Intercompany Interests are deemed to have rejected the Plan and are not entitled to vote.

#### **(7) Interests in Cosmoledo, LLC**

Class 7 consists of all Allowed Interests in Cosmoledo, LLC.

Class 7 Interests, shall be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and no Distributions shall be made on account of any Intercompany Interests. Class 7 is impaired under the Plan. Holders of Interests in Cosmoledo, LLC are deemed to have rejected the Plan and are not entitled to vote.

### **F. Substantive Consolidation**

Except as provided in Section (G) hereof, the Estates of the Debtors will be substantively consolidated upon the Effective Date. The Plan is predicated in part upon substantive consolidation of the Estates of the Debtors into one single Estate of Cosmoledo in the Confirmation Order, with the exception of 668 Bronx Commissary as detailed herein.

Pursuant to the Confirmation Order, upon the Effective Date and without further order of the Court, except as expressly provided otherwise in the Plan, (i) all assets and liabilities of the Debtors will be deemed to be merged for purposes of the Plan and Distributions to be made thereunder, (ii) the obligations of each Debtor will be deemed to be the obligation of the substantively consolidated Debtors, (iii) any Claims filed or to be filed in connection with any such obligations will be deemed Claims against the

substantively consolidated Debtors, (iv) each Claim filed in the Chapter 11 Case of any Debtor will be deemed filed against the Debtors in the consolidated Chapter 11 Cases in accordance with the substantive consolidation of the assets and liabilities of the Debtors, (v) all transfers, disbursements and distributions made by any Debtor hereunder will be deemed to be made by the substantively consolidated Debtors, and (vi) all guarantees by any Debtor of the obligations of any other Debtor shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the substantively consolidated Debtors. Holders of Allowed Claims in each Class shall be entitled to their share of assets available for distribution to such Class without regard to which Debtor was originally liable for such Claim. Notwithstanding the foregoing, such substantive consolidation shall not affect the legal and corporate structure of the Reorganized Debtors. The substantive consolidation proposed in the Plan shall not affect each Debtor's obligation to file the necessary operating reports and pay any required fees pursuant to 28 U.S.C. § 1930(a)(6). Such obligations shall continue until an order is entered closing, dismissing or converting each such Debtor's Chapter 11 Case.

The Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Debtors' Estates as set forth in the Plan. If no objection to such requested relief is timely filed and served, then the holders of Claims will be deemed to have consented to substantive consolidation and the Court may approve substantive consolidation of the Debtors' Estates in the Confirmation Order. If an objection to the substantive consolidation provided for in the Plan is timely filed and served, a hearing with respect to the substantive consolidation of the Estates and the objections thereto shall be scheduled by the Court, which hearing may coincide with the Confirmation Hearing.

### **(1) Substantive Consolidation is Appropriate**

In the Second Circuit, substantive consolidation is appropriate when: (i) "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit;" or (ii) "the affairs of the debtors are so entangled that consolidation will benefit all creditors." *In re Augie/Restivo Baking Co.*, 860 F.2d 515, 518 (2d Cir. 1988) (*internal citations omitted*). It is well accepted that substantive consolidation is a flexible concept and that a principal question is whether creditors are adversely affected by consolidation and, if so, whether the adverse effects can be eliminated. *In re Jennifer Convertibles, Inc.*, 447 B.R. 713, 724 (Bankr. S.D.N.Y. 2011). Further, the Bankruptcy Court retains the power to order less than complete consolidation. *First National Bank v. Giller*, 962 F.2d 796, 799 (8th Cir. 1992).

The Debtors believe that substantive consolidation is warranted in these Cases because, among other things, the Debtors historically operated on a consolidated basis regarding their cash management and their books and records. Indeed, many intercompany transfers between the Debtors were not recorded in their books and records as debt transactions. Typically, cash generated at each Debtor flowed up to either Cosmoledo or Breadroll, as needed. That cash was then used to pay payroll, landlords, vendors and other expenses of the Debtors as a whole. Clearly, landlords were not relying on the individual accounts from each Debtor to extend credit in the form of a lease. Many of the Debtors' leases were guaranteed by Cosmoledo and/or required a letter of credit as security. Indeed, most vendors did not name any individual Debtor as their contract counterparties, simply "Maison Kayser."

### **G. 668 Bronx Commissary, LLC**

All of the equity in Debtor 668 Bronx Commissary, LLC was sold to MK USA under the Sale Order. Accordingly, the Debtors no longer hold any interest in 668 Bronx Commissary, LLC.



The Plan shall serve as a motion for entry of an order seeking Bankruptcy Court approval of the dismissal of the Chapter 11 Case of 668 Bronx Commissary, LLC, which approval shall be provided in the Confirmation Order. Upon the Confirmation Order becoming a Final Order, the Case of 668 Bronx Commissary LLC shall be dismissed and shall not be deemed substantively consolidated with the remaining Debtors. Any Claims against that 668 Bronx Commissary, LLC shall not receive treatment in accordance with the Plan.

## **H. Bar Dates Established by the Plan**

### **(1) The Administrative Bar Date**

The Plan provides that unless previously filed and unless subject to any other Bar Date previously established by the Bar Date Order, all requests for payment of Administrative Claims (exclusive of Professional Fee Claims and Claims for UST Fees) must be Filed and served pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than **forty-five (45) days after the occurrence of the Effective Date**, or such later date as may be established by order of the Bankruptcy Court.

Holders of Administrative Claims who are required to file a request for payment of such Claims and who do not timely file such a request shall be forever barred from asserting such Claims against the Debtors, the Estates or the Assets, or against the Liquidation Trust, and the holder thereof shall be enjoined from commencing or continuing any Cause of Action, employment of process or act to collect, offset or recover such Administrative Claim, which will be deemed discharged as of the Effective Date.

### **(2) The Professional Fee Bar Date**

The Plan establishes the Professional Fee Bar Date as the date that is sixty (60) days after the occurrence of the Effective Date. All final applications for payment of Professional Fees for the period through and including the Effective Date shall be filed with the Bankruptcy Court on or before the Professional Fee Bar Date and served on the parties entitled to notice pursuant to the Bankruptcy Code, the Bankruptcy Rules the Local Bankruptcy Rules, and the Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, and any orders issued by the Bankruptcy Court.

### **(3) The Rejection Bar Date**

The Plan provides that each Person who is a party to any Executory Contract rejected pursuant to the Plan shall be entitled to File, no later than thirty (30) days following the Confirmation Date, a proof of Claim for damages, if any, alleged to arise from the rejection of such Executory Contract. A copy of the proof of claim must also be delivered to the Liquidation Trustee. The failure of such entity to file a proof of Claim within the period prescribed herein shall forever bar such Person from asserting any Claim for damages arising from the rejection of such Executory Contract. The filing of any such proof of Claim shall be without prejudice to any and all rights the Liquidation Trustee may have to object to the allowance

## **I. Means for Implementation of the Plan**

### **(1) The Liquidation Trust**

Upon Confirmation of the Plan, a Liquidation Trust shall be formed with the powers, rights and responsibilities to be carried out by a Liquidation Trustee. All of the Debtors' Assets shall vest in the

Liquidation Trust as of the Effective Date in accordance with the Confirmation Order.

The powers, rights, and responsibilities of the Liquidation Trustee include the authority and responsibility to: (a) receive, manage, invest, supervise, and protect the Assets; pay taxes or other obligations incurred by the Estate and/or the Liquidation Trust; (c) retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals and consultants to advise and assist in the administration, prosecution and distribution of the Assets; (d) calculate and implement distributions of the Assets; (e) prosecute, compromise, and settle all Claims and Causes of Action vested in the Estate and, subsequently the Liquidation Trust, including any litigation commenced prior to the Petition Date; and (f) undertake all administrative functions of the Case through and including entry of a final decree closing the Case.

All costs and expenses associated with the administration of the Estate and the Liquidation Trust, including reasonable professional costs related to the prosecution of objections to Disputed Claims and prosecution of the Causes of Action, and reasonable compensation for the Liquidation Trustee and any professionals retained by the Liquidation Trustee, will be the responsibility of and shall be paid by the Estate or the Liquidation Trust, as appropriate, from Available Cash. The Liquidation Trustee shall take possession of the Debtors' books and records and shall be entitled to the Debtors' attorney-client privilege.

## **(2) Appointment of the Liquidation Trustee**

The Liquidation Trustee shall be disclosed in the Plan Supplement.

On the Effective Date, the Liquidation Trustee will be deemed "the representative of the Estate" as contemplated by section 1123(b)(3)(B) of the Bankruptcy Code and will have those powers and duties set forth in sections 323, 704(1), 704(2), 704(5), 704(9), 1106(a)(6) and 1106(a)(7) of the Bankruptcy Code. The Liquidation Trustee shall act for the Liquidation Trust in a fiduciary capacity with duties applicable to those owed by a board of directors, subject to the Plan provisions. The Liquidation Trustee will be advised by a Plan Advisory Committee. For the purposes of the Plan and the Chapter 11 Cases, the Liquidation Trustee shall be considered a successor to the Debtors and/or an estate representative appointed pursuant to section 1123(b)(3) of the Bankruptcy Code.

The Liquidation Trust will be bonded for the funds held in the Liquidation Trust, and such bond will be cancelable on thirty (30) days' prior written notice to the United States Trustee. The Liquidation Trustee may resign his position on thirty (30) days' notice to the Debtors and its counsel, and the Office of the United States Trustee. Upon resignation, the Debtors will name a successor Liquidation Trustee.

The salient terms of the Liquidation Trustee's employment, including the Liquidation Trustee's duties and compensation (which compensation shall be negotiated by the Liquidation Trustee and the Debtors, to the extent not set forth in the Plan) shall be set forth in the Confirmation Order and the Plan Trust Agreement, which shall be attached to the Plan Supplement.

Any decision made or not made, or action, taken or not taken, by the Liquidation Trustee with the approval of the Bankruptcy Court shall be deemed to have been made, not made, taken, or not taken, as applicable, by the Liquidation Trustee without gross negligence or willful misconduct.

## **(3) Rights and Powers of the Liquidation Trustee**

The duties and powers of the Liquidation Trustee shall include the following, but in all cases shall be consistent with the terms of the Plan:

(a) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken by an officer, director, or member of the Debtors with like effect as if authorized, exercised, and taken by unanimous action of such officers, directors, and members, including, without limitation, amendment of the certificate of formation, by-laws and dissolution of the Debtors;

(b) To maintain the Debtors' books and records, maintain accounts, make distributions, and take other actions consistent with the Plan and the implementation hereof;

(c) Subject to the applicable provisions of the Plan, to collect and liquidate all assets of the Liquidation Trust pursuant to the Plan and to administer the winding up of the affairs of the Debtors;

(d) To incur any reasonable and necessary expenses in connection with the liquidation and conversion of the assets of the Liquidation Trust to Cash;

(e) To object to, compromise or settle any Claims and enter into any agreement or execute any document required by or consistent with the Plan relating to any Claims, including prior to objection, without supervision or approval of the Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Court, and the guidelines and requirements of the United States Trustee for the Southern District of New York, other than those restrictions expressly imposed by the Plan or the Confirmation Order, and/or to seek Court approval for any Claims settlements made;

(f) To make decisions, without further Court approval, regarding the retention or engagement of professionals, employees, and consultants by the Liquidation Trustee and to pay the fees and charges incurred by the Liquidation Trust on or after the Effective Date for fees and other expenses of professionals, disbursements, expenses, or related support services relating to the winding down of the Debtors and implementation of the Plan;

(g) To file tax returns on behalf of the Debtors and the Liquidation Trust;

(h) To collect any claims of the Debtors or the Liquidation Trust not otherwise disposed of pursuant to the Plan;

(i) To invest Cash in accordance with section 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Court and as deemed appropriate by the Liquidation Trustee;

(j) Except as otherwise provided herein, to enter into any agreement or execute any document required by or consistent with the Plan and perform all of the Debtors' obligations thereunder;

(k) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of its choice, any assets, if it

concludes that they are of no benefit to the Liquidation Trust;

(l) To implement and/or enforce all provisions of the Plan;

(m) To take all other actions not inconsistent with the provisions of the Plan which the Liquidation Trustee deems reasonably necessary or desirable with respect to administering the Plan; and

(n) To collect and liquidate all assets of the Liquidation Trust, including Causes of Action, pursuant to the Plan and administer the winding up of the affairs of the Debtors, including, but not limited to, causing the dissolution of the Debtors and closing the Chapter 11 Case.

Additional detail of the rights and responsibilities of the Liquidation Trustee and the terms of the Liquidation Trust will be set forth in the Plan Trust Agreement, which will be attached to the Plan Supplement.

#### **J. Plan Distributions and Claim Reconciliation.**

The Liquidation Trustee will make all Distributions under the Plan and may utilize the assistance of any outside parties or professionals to do so to the extent the Liquidation Trustee deems it to be necessary or desirable. The Liquidation Trustee will be exculpated from liability for any errors or omissions made with respect to Distributions under the Plan, except for liability for any errors or omissions arising from his own gross negligence or willful misconduct.

All Distributions will be made to the holders of Claims at the address listed on their respective proofs of Claim Filed with the Bankruptcy Court or, if no proof of Claim was Filed, at the address listed on the Schedules. The Liquidation Trustee will take only reasonable steps to ascertain the most current address of the holder of any Claims whose distribution check was returned as undeliverable. No Distribution of less than \$25 will be made by the Liquidation Trustee to any holder of an Allowed Claim.

The Liquidation Trust will be entitled, but will have no obligation, to deduct any federal, state or local withholding taxes from any Distribution made as reasonably appropriate. All Persons holding Allowed Claims will be required to provide any information reasonably requested to affect the withholding of such taxes, including, without limitation, delivering to the Liquidation Trustee a properly executed Form W-9 or equivalent, and the Liquidation Trustee may withhold any Distribution absent the provision of such information or further order of the Bankruptcy Court.

Any property so withheld will then be paid by the Liquidation Trustee to the appropriate authority. The Liquidation Trustee may be required to identify, by tax identification number, each holder of a Claim that receives a Distribution pursuant to the Plan. To ensure that the Liquidation Trust has a tax identification number for each holder of a Claim, Claimants will be sent a Form W-9 (or may download one at [www.irs.com](http://www.irs.com)). Claimants must return the completed and signed Form W-9 to the Liquidation Trustee at the address set forth in the Plan Trust Agreement or the Plan Supplement.

If a Claimant does not return the completed Form W-9 to the Liquidation Trustee, the Liquidation Trust will be allowed to retain Distributions to such Claimant until the appropriate tax identification information is provided. The Liquidation Trust will provide two notices to each Claimant of its obligation

to submit an IRS Form W-9 or equivalent to the Liquidation Trustee. If the Claimant does not provide a Form W-9 or equivalent to the Liquidation Trustee within 90 days after the second notice, then such Claimant's Claim(s) will be deemed forfeited and expunged and the holder of such Claim(s) will be removed from the Distribution Schedule and will receive no further Distributions under this Plan.

Unclaimed Distributions (including Distributions made by checks which fail to be negotiated) will be retained by the Liquidation Trust and held in trust for the beneficial holders of respective Allowed Claims entitled thereto for a period of ninety (90) days after the respective Distribution Date. Any Distribution remaining unclaimed ninety (90) days after the respective Distribution Date will be canceled (by a stop payment order or otherwise), the Claim(s) relating to such Distributions(s) will be deemed forfeited and expunged and the holder of such Claim will be removed from the Distribution Schedule and will receive no further Distributions under this Plan.

The Liquidation Trust will have the right, within the first two hundred seventy (270) days following the Effective Date, or during such additional time requested for cause shown and authorized by Final Order, to object to any and all Claims. Unless otherwise ordered by the Bankruptcy Court or agreed to by written stipulation approved by a Final Order, or until the objection thereto is withdrawn, the Liquidation Trust may litigate the merits of each Disputed Claim until determined by Final Order. Any Claim for which no objection has been filed within the time fixed therefor will be deemed an Allowed Claim in such amount as is set forth in a proof of Claim Filed with the Bankruptcy Court, or if no proof of Claim was Filed, as listed in the Schedules and not identified as disputed, contingent or unliquidated. The Liquidation Trustee and the holder of any Disputed Claim may enter into a written settlement agreement to compromise such Claim, which agreement will become effective upon entry of a Final Order approving the terms thereof.

#### **K. Preservation of Causes of Action**

The Liquidation Trustee, on behalf of the Liquidation Trust, will retain, and may exclusively enforce, any and all such claims, rights or Causes of Action, whether arising before or after the Petition Date, to the extent of any Claims and Causes of Action not sold pursuant to the Sale or released under the Plan or otherwise. The Liquidation Trustee, on behalf of the Liquidation Trust, will have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all such claims, rights and Causes of Action, and will not be required to seek Bankruptcy Court approval. The Liquidation Trustee will stand in the shoes of the Debtors and the Estate and may take such actions in their name without the need to intervene in, amend any pending actions or obtain any further order of the Bankruptcy Court.

The Liquidation Trustee will be authorized to exercise and perform the rights, powers and duties held by the Estate, including without limitation the authority under Section 1123(b)(3) of the Bankruptcy Code to provide for the settlement, adjustment, retention and enforcement of Claims and Interests of the Estate, including, but not limited to all Causes of Action.

#### **L. Treatment of Executory Contracts**

Any executory contracts and unexpired leases that have not previously been assumed and assigned or rejected under section 365 of the Bankruptcy Code will be rejected pursuant to the Plan.

As set forth herein and in the Plan, each counterparty to a rejected contract will be entitled to file, no later than thirty (30) days following the Effective Date, a proof of claim for any damages arising from

the rejection of the contract pursuant to section 365 of the Bankruptcy Code. The failure of the counterparty to a rejected contract to file a proof of claim within the proscribed time period will forever bar such person from asserting any Claim for rejection damages. The filing of any such proof of claim on account of rejection damages will not preclude the Liquidation Trustee from objecting to such Claim if the Liquidation Trustee deems such an objection to be appropriate.

### **M. Effect of Confirmation of the Plan**

Article 9 of the Plan details the effect of the Confirmation of the Plan. The Confirmation Order will be the final determination of the rights of all Claimants and Interest Holders to participate in the Distributions under the Plan, whether or not (a) a proof of Claim or interest is Filed or deemed Filed under section 501 of the Bankruptcy Code, (b) such Claim is an Allowed Claim, or such Interest is deemed an Allowed Interest, or (c) the holder of such Claim or Interest has accepted the Plan. Since the Plan contemplates the liquidation of Assets of the Debtors, the Debtors will not receive a discharge pursuant to section 1141(d) of the Bankruptcy Code.

#### **(1) Injunction**

On the Effective Date of the Plan, except as otherwise provided in the Plan or the Confirmation Order, all Persons shall be deemed to be bound by the terms of the Plan, including holders of Claims or Interests not listed on the Schedules, or listed on the Schedules as disputed, unliquidated or contingent, who did not file proofs of Claim or Interest by the applicable Bar Date, and, to the extent permitted under section 1141(d)(3) of the Bankruptcy Code, will be prohibited from:

(a) commencing or continuing any suit, action or other proceeding of any kind or nature or employing any process against the Debtors, the Estate, the Assets, the Liquidation Trust, the Liquidation Trustee or any direct or indirect successor to the Debtors, or to interfere with the consummation or implementation of this Plan, or the Distributions to be made hereunder;

(b) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree or order against a Debtors, its Estate, the Assets, the Liquidation Trust, the Liquidation Trustee, or any direct or indirect successor in interest to a Debtors, or any assets or property of such successor;

(c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien against the Debtors, the Estate, the Assets, the Liquidation Trust, the Liquidation Trustee, or any direct or indirect successor in interest to a Debtors, or any assets or property of such successor, other than as contemplated by the Plan;

(d) except as provided herein, asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due the Debtors, the Estate, the Assets, the Liquidation Trust, the Liquidation Trustee or any direct or

indirect successor in interest to the Debtors, or any assets or property of such successor; and

(e) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan.

## **(2) Exculpation**

From and after the Effective Date, to the extent permitted under section 1125(e) of the Bankruptcy Code, the Debtors, the Estate, the officers, directors and members of the Debtors, the Liquidation Trust, the Liquidation Trustee, and the Debtors', Liquidation Trust's, and the Liquidation Trustee's Professionals shall neither have nor incur any liability to any Person for any act taken or omitted to be taken in connection with the Case, including the formulation, preparation, dissemination, implementation, confirmation or approval of the Plan, any Exhibits thereto, the Disclosure Statement or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan; *provided, however*, that the foregoing provisions (a) shall not affect the liability of any Person that otherwise would result from any such act or omission to the extent that act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct and (b) shall not abrogate any applicable disciplinary rules. Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Notwithstanding any other provision of the Plan, neither any Holder of a Claim or Interest, nor any other party in interest, shall have any right of action against the Exculpated Parties for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for such Persons' fraud, gross negligence or willful misconduct.

## **(3) Debtor Releases**

Under the Plan, the Debtors, the Liquidation Trust and each of their respective successors, assigns and Professionals will release the Debtors, the Committee, the Estates, the officers, directors and members of the Debtors, and each of their respective Professionals from any Claims based on or relating to:

- (a) the Debtors or the Chapter 11 Cases;
- (b) the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Liquidation Trust;
- (c) the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan;
- (d) the business or contractual arrangements between any Debtor and any Released Party;
- (e) the Debtors' in or out-of-court restructuring efforts, business determinations and intercompany transactions including, without limitation, prepetition restructuring efforts and marketing of the Debtors' Assets, the sale to MK USA, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement);

(f) any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement; or

(g) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; *provided* that any right to enforce the Plan and Confirmation Order is not so released.

Entry of the Confirmation Order shall constitute approval of the releases contained herein, and further, shall constitute the Bankruptcy Court's finding that the releases contained each release described in Section 9.7 of the Plan is: (1) in exchange for the good and valuable consideration provided by the Released Parties, (2) a good faith settlement and compromise of such Claims; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or Liquidation Trust or their respective estates asserting any claim, Cause of Action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

## **VI. MISCELLANEOUS PROVISIONS OF THE PLAN**

Under the Plan, the Bankruptcy Court will retain jurisdiction over the Cases after the Confirmation Date and until the Cases are closed. For example, the Bankruptcy Court will, among other things, (a) hear and determine all objections to Claims and Interests, (b) any and all controversies, suits and disputes (c) hear and determine all applications for compensation by the Professionals, (d) preside over any adversary proceedings, and (e) enforce the provisions of the Plan.

## **VII. CONFIRMATION AND CONSUMMATION PROCEDURES**

### **A. Overview**

If all classes of claims and equity interests accept a chapter 11 plan, a bankruptcy court may confirm the plan if it independently determines that the requirements of section 1129(a) of the Bankruptcy Code have been satisfied. Section 1129(a) sets forth the requirements for confirmation of a plan and, among other things, requires that a plan meet the "best interests of creditors" test and be "feasible." The "best interests" test generally requires that the value of the consideration to be distributed to the holders of claims or equity interests under a plan may not be less than those parties would receive if the debtor was liquidated pursuant to a hypothetical liquidation occurring under Chapter 7 of the Bankruptcy Code. Under the "feasibility" requirement, a bankruptcy court generally must find that there is a reasonable probability that the debtor will be able to meet its obligations under its plan without the need for further financial reorganization. Here, the Debtors believe that the Plan satisfies all the applicable requirements of section 1129(a) of the Bankruptcy Code, including, in particular, the best interests of creditors' test and the feasibility requirement. A Liquidation Analysis is attached as **Exhibit B** hereto.

The Bankruptcy Code does not require that each holder of a claim or equity interest in a particular class vote in favor of a plan for the bankruptcy court to determine that the class has accepted the plan. Rather, a class of creditors will be determined to have accepted the plan if the bankruptcy court determines that the plan has been accepted by a majority in number and two-thirds in amount of those claims actually



voting in such class. Similarly, a class of equity security holders will have accepted the plan if the bankruptcy court determines that the plan has been accepted by holders of two-thirds of the number of shares actually voting in such class.

In addition, classes of claims or equity interests that are not “impaired” under a plan are conclusively presumed to have accepted the plan and thus are not entitled to vote. Furthermore, classes that are to receive no distribution and retain no property under the plan are conclusively deemed to have rejected the plan. Accordingly, acceptances of a plan will generally be solicited only from those persons who hold claims or equity interests in an impaired class.

Acceptances of a plan will generally be solicited only from those persons who hold claims or equity interests in an impaired class. A class is “impaired” if the legal, equitable, or contractual rights associated with the claims or equity interests of that class are modified in any way under the plan. Modification for purposes of determining impairment, however, does not include curing defaults and reinstating maturity on the effective date of the plan. **Here, Class 3 Claims and Class 4 Claims are the only impaired Claims under the Plan entitled to vote on the Plan.**

The bankruptcy court also may confirm a Chapter 11 plan even though fewer than all the classes of impaired claims and equity interests accept such plan. For a Chapter 11 plan to be confirmed despite its rejection by a class of impaired claims or equity interests, the plan must be accepted by at least one class of impaired claims (determined without counting the vote of insiders) and the proponent of the plan must show, among other things, that the plan does not “discriminate unfairly” and that the plan is “fair and equitable” with respect to each impaired class of claims or equity interests that has not accepted the plan.

Under section 1129(b) of the Bankruptcy Code, a plan is “fair and equitable” as to a rejecting class of claims or equity interests if, among other things, the plan provides: (a) with respect to secured claims, that each such holder will receive or retain on account of its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; and (b) with respect to unsecured claims and equity interests, that the holder of any claim or equity interest that is junior to the claims or equity interests of such class will not receive or retain on account of such junior claim or equity interest any property from the estate, unless the senior class receives property having a value equal to the full amount of its allowed claim.

A plan does not “discriminate unfairly” against a rejecting class of claims or equity interests if (a) the relative value of the recovery of such class under the plan does not differ materially from that of any class (or classes) of similarly situated claims or equity interests, and no senior class of claims or equity interests is to receive more than 100% of the amount of the claims or equity interest in such class.

Here, the Plan has been structured so that it will satisfy the foregoing requirements as to any rejecting class of Claims or Interests, and can therefore be confirmed, if necessary, over the objection of any (but not all) classes of Claims or Interests.

## **B. Confirmation of the Plan**

### **(1) Elements of Section 1129 of the Bankruptcy Code**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the conditions to confirmation under section 1129 of the Bankruptcy Code are satisfied.

Such conditions include the following:

- (a) The Plan complies with the applicable provisions of the Bankruptcy Code.
- (b) The Debtors have complied with the applicable provisions of the Bankruptcy Code.
- (c) The Plan has been proposed in good faith and not by any means proscribed by law.
- (d) Any payment made or promised by the Debtors or by an entity issuing securities or acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Case, or in connection with the Plan and incident to the Case, has been disclosed to the Bankruptcy Court; and any such payment made before the Confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.
- (e) With respect to each impaired class of Claims or Interests, each holder of an impaired Claim or impaired Interest either has accepted the Plan or will receive or retain under the Plan, on account of the Claims or Interests held by such entity, property of a value, as of the applicable consummation date under the Plan, that is not less than the amount that such entity would receive or retain if the Debtors were liquidated on such date under Chapter 7 of the Bankruptcy Code.
- (f) In the event that the Debtors does move to confirm the Plan consensually, each class of Claims or Interests entitled to vote has either accepted the Plan or is not impaired under the Plan.
- (g) Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Administrative Claims and Priority Claims will be paid in full on the applicable consummation date and that Priority Tax Claims will be paid in full, in cash, on the applicable consummation date or as soon as practicable thereafter.
- (h) At least one impaired class of Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such class. Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any other successor to the Debtors under the Plan unless such liquidation or reorganization is proposed in the Plan.
- (i) All fees payable under section 1930 of Title 28, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

The Debtors believe that the Plan will satisfy all the statutory provisions of Chapter 11 of the Bankruptcy Code, that the Debtors have complied or will have complied with all of the provisions of the Bankruptcy Code, and that the Plan is being proposed and will be submitted to the Bankruptcy Court in good faith.

## **(2) Acceptance**

A Class of Claims will have accepted the Plan if the Plan is accepted, with reference to a class of Claims, by at least two-thirds in amount and more than one-half in number of the Allowed Claims of each such class of Claims.

## **(3) Best-Interests Test**

With respect to each impaired class of holders of Claims and Interests, confirmation of the Plan requires that each such holder either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the applicable consummation date under the Plan, that is not less than the value such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

To determine what holders of Claims and Interests of each impaired class would receive if the Debtors were liquidated under Chapter 7, the Bankruptcy Court must determine the proceeds that would be generated from the liquidation of the properties and interests in property of the Debtors in a Chapter 7 liquidation. As more fully discussed below, Secured Claims are entitled to payment from the liquidation of the collateral securing such claims, up to the value of such collateral. Proceeds which would be available for satisfaction of other Claims against and Interests in the Debtors and would consist of the proceeds generated by liquidation of *unencumbered* property, portion of property or interests in property held by the Debtors. Included in such property could be the cash held by the Debtors at the time of the commencement of the liquidation case. Those available proceeds would be reduced by the costs and expenses of the liquidation and by such additional administration and priority claims that may result from the termination of the business of the Debtors and the use of Chapter 7 for the purposes of liquidation.

The costs of liquidation under Chapter 7 of the Bankruptcy Code would include the fees payable to a trustee in bankruptcy, and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage, plus any unpaid expenses incurred by the Debtors during the Case, such as compensation for attorneys, financial advisors, accountants and costs that are allowed in the Chapter 7 proceedings. In addition, Claims would arise by reason of the breach or rejection of obligations incurred and executory contracts entered into or assumed by the Debtors during the pendency of the Case.

The foregoing types of Claims and such other Claims which may arise in the liquidation or result from the pending case would be paid, in full, from the liquidation proceeds before the balance of those proceeds would be made available to pay unsecured Claims arising on or before the Petition Date.

To determine if the Plan is in the best interests of each impaired class, the present value of the distributions from the proceeds of the liquidation of the properties and interests in property of the Debtors (net of the amounts attributable to the aforesaid claims) is then compared with the present value offered to such classes of Claims and Interests under the Plan.

In applying the “best interests” test, it is possible that Claims and Interests in the Chapter 7 Case may not be classified according to the seniority of such Claims and Interests as provided in the Plan. In the absence of a contrary determination by the Bankruptcy Court, all Unsecured Claims arising on or before the Petition Date that have the same rights upon liquidation would be treated as one class for the purposes of determining the potential distribution of the liquidation proceeds resulting from the Chapter 7 Case. The distributions from the liquidation proceeds would be calculated ratably according to the amount of the Claim held by each creditor. Therefore, creditors who claim to be third-party beneficiaries of any contractual subordination provisions might have to seek to enforce such contractual subordination

provisions in the Bankruptcy Court or otherwise. The Debtors believe that the most likely outcome of liquidation proceedings under Chapter 7 would be the application of the rule of absolute priority of distributions. Under that rule, no junior creditor receives any distribution until all senior creditors are paid in full with interest, and no stockholder receives any distribution until all creditors are paid in full with interest.

After consideration of the effects that a Chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Case, including: (i) the increased costs and expenses of a liquidation under Chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee; and (ii) the substantial increases in Claims which would be satisfied on a priority basis or on parity with creditors in the Case, the Debtors have determined that confirmation of the Plan will provide each holder of a Claim or Interest with a greater recovery than it would receive pursuant to liquidation of the Debtors under Chapter 7 of the Bankruptcy Code. This is largely because the Original Secured Creditor held a lien on all assets of the Company, including the cash. Therefore, any potential recovery for unsecured Claims would be speculative, at best, and depend on a Trustee's success in avoiding those liens. Through the Chapter 11 Cases the liens were released and an additional \$3,000,000 in cash was generated through the Sale. Considering the cash position of the Debtors on the Petition Date, the Plan provides unsecured creditors with a distribution far in excess of what could have been achieved in a Chapter 7 case, even were a trustee to be successful in eliminating the Original Secured Creditor's liens.

#### **(4) Feasibility**

The Bankruptcy Code requires that confirmation of a Plan is not likely to be followed by liquidation or the need for further financial reorganization. Since the Plan is a liquidating plan, pursuant to which distributions will be made only to the extent of existing assets or future recoveries, the Debtors believe the Plan is feasible.

#### **(5) No Unfair Discrimination**

A chapter 11 plan "does not discriminate unfairly" if (a) the legal rights of a non- accepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to the legal rights of the non-accepting class, and (b) no class receives payments in excess of that which it is legally entitled to receive for its Claims or Interests. The Debtors believe that under the Plan all impaired Classes of Claims and Interests are treated in a manner that is consistent with the treatment of other Classes of Claims and Interests that are similarly situated, if any, and no Class of Claims or Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims and Allowed Interests in such Class. Accordingly, the Debtors believe the Plan does not discriminate unfairly as to any impaired Class of Claims or Interests. To the contrary, the Plan provide an enhanced recovery for Class 3 Claims while eliminating the potential for a far lower recovery for Class 4 Claims. Importantly, Distributions proposed under the Plan are the product of arm's-length negotiations among the Committee, the SBA, Santander and the Debtors.

#### **(6) Fair and Equitable Test**

The Bankruptcy Code establishes different "fair and equitable" tests for secured creditors, unsecured creditors and holders of equity interests as follows. The following is a brief overview of the relevant tests:

(a) ***Secured Creditors.*** (i) (x) The holders of such Claims retain liens securing such Claims, whether the property subject to such liens is retained by the Debtors or transferred to another entity, to the extent of the allowed amount of such Claims; and (y) each holder of a Claim of such Class receive on account of such Claim deferred cash payments totaling at least the allowed amount of such Claim, of a value, as of the effective date of the Plan, of at least the value of such holder's interest in the estate's interest in such property; or (ii) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing such Claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or (iii) for the realization by such holder of the indubitable equivalent of such claims.

(b) ***Unsecured Creditors.*** Either (i) each impaired unsecured creditor receives or retains under the Plan property of a value equal to the amount of its Allowed Claim or (ii) the holders of Claims and Interests that are junior to the Claims of the dissenting Class will not receive any property under the plan, subject to the applicability of the judicial doctrine of contributing new value.

(c) ***Holders of Interests.*** Either (i) each holder of an equity (or membership) interest will receive or retain under the plan property of a value equal to the greater of (x) the fixed liquidation preference or redemption price, if any, of such equity position or (y) the value of the equity position or (ii) the holders of interests that are junior to the equity position will not receive any property under the plan, subject to the applicability of the judicial doctrine of contributing new value.

Claims held by Secured Creditors will be paid in full under the Plan and holders of Interests will receive no Distribution under the plan. Accordingly, the Plan satisfies each portion of the fair and equitable test.

## **VIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Debtors have alternatives to the Plan, including, without limitation, the conversion of the Chapter 11 Case to a Case under Chapter 7 of the Bankruptcy Code and subsequent liquidation of the Debtors by a Chapter 7 trustee. After studying these alternatives, the Debtors have concluded that the Plan is the best alternative and will maximize recoveries of holders of Claims and Interests. The following discussion provides a summary of the analysis supporting its conclusion that a Chapter 7 liquidation of the Debtors or an alternative Chapter 11 plan for the Debtors will not provide higher value to holders of Claims and Interests.

### **A. Liquidation Under Chapter 7 of the Bankruptcy Code**

If no Chapter 11 plan can be confirmed, the Case may be converted to a Case under Chapter 7, in which event a trustee would be elected or appointed to liquidate the properties and interests in property of the Debtors for distribution to its creditors in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that liquidation under Chapter 7 would result in smaller distributions being made to creditors than those provided for under the Plan because of the increased costs and expenses of a liquidation under Chapter 7 arising from fees payable to a trustee for bankruptcy and professional advisors to such trustee and the substantial increases in claims which would have to be satisfied on a priority basis

or on parity with creditors in the Case, as well as the absence of any agreement among the Debtors and the PPP Parties, which only exists under the Plan structure. As stated, the Plan provides a recovery to Class 4 Claims that could be considerably lower absent such an agreement. The Plan, as filed, eliminates this possibility and still provides a greater recovery than could have been achieved without it.

Accordingly, the Debtors have determined that confirmation of the Plan will provide each holder of a Claim or Interest with a greater recovery than it would receive pursuant to liquidation of the Debtors under Chapter 7.

## **B. Alternative Chapter 11 Plans**

If the Plan is not confirmed, any other party in interest could undertake to formulate a different Chapter 11 plan. With respect to an alternative Chapter 11 plan, the Debtors have examined various other alternatives in connection with the process involved in the formulation and development of the Plan. The Debtors believe that the Plan, as described herein, enables holders of Claims to realize the best recoveries under the present circumstances.

## **IX. CONCLUSION**

The Debtors believe that the Plan is in the best interest of all holders of Claims and Interests and urges all holders of impaired Class 3 Claims and Class 4 Claims to vote to accept the Plan and to evidence such acceptance by returning their ballots in accordance with the instructions accompanying the Disclosure Statement.

Dated: July 19, 2021

<p><b>MINTZ &amp; GOLD LLP</b></p> <p>By: <u>/s/ Andrew R. Gottesman</u> Andrew R. Gottesman, Esq.</p> <p>600 Third Avenue, 25th Floor New York, New York 10016 Telephone: (212) 696-4848 Facsimile: (212) 696-1231 <a href="mailto:gottesman@mintzandgold.com">gottesman@mintzandgold.com</a></p> <p><i>Counsel for Cosmoledo, LLC, and its affiliated Debtors</i></p>	<p><b>COSMOLEDO, LLC</b></p> <p>By: <u>/s/ Josè Alcalay</u> Josè Alcalay, CEO</p> <p><b>BREADROLL, LLC</b>  <b>NYC 1294 THIRD AVENUE BAKERY, LLC</b>  <b>1377 SIXTH AVENUE BAKERY, LLC</b>  <b>1400 BROADWAY BAKERY, LLC</b>  <b>1535 THIRD AVENUE BAKERY, LLC</b>  <b>178 BRUCKNER COMMISSARY, LLC</b>  <b>1800 BROADWAY BAKERY, LLC</b>  <b>210 JORALEMON BAKERY, LLC</b>  <b>2161 BROADWAY BAKERY, LLC</b>  <b>300 MADISON AVENUE BAKERY, LLC,</b>  <b>339 SEVENTH AVENUE BAKERY, LLC</b>  <b>370 LEXINGTON AVENUE BAKERY, LLC</b>  <b>400 FIFTH AVENUE BAKERY, LLC</b></p>
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	<p> <b>55 HUDSON YARDS BAKERY, LLC</b>  <b>575 LEXINGTON AVENUE BAKERY, LLC</b>  <b>685 THIRD AVENUE BAKERY, LLC</b>  <b>688 BRONX COMMISSARY, LLC</b>  <b>787 SEVENTH AVENUE BAKERY, LLC</b>  <b>8 WEST BAKERY LLC</b>  <b>921 BROADWAY BAKERY, LLC</b>  <b>95 BROAD COMMISSARY, LLC</b> </p> <p> By: <u>Cosmoledo, LLC</u>  sole member of each of the foregoing </p> <p> By <u>/s/ Josè Alcalay</u>  Josè Alcalay, CEO </p>
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**Exhibit A**

Proposed Plan of Liquidation



**THIS PLAN IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE COURT. THE INFORMATION IN THIS PLAN IS SUBJECT TO CHANGE. THIS PLAN IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

Chapter 11

COSMOLEDO, LLC, et al.<sup>1</sup>

Case No. 20-12117 (MEW)

Debtors.

Jointly Administered

**DEBTORS' PLAN OF LIQUIDATION**

**MINTZ & GOLD LLP**

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*Attorneys for the Debtors*

Dated: New York, New York  
July 22, 2021

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, include: Cosmoledo, LLC (6787); Breadroll, LLC, (3279); 688 Bronx Commissary, LLC (6515); 95 Broad Commissary, LLC (2335); 178 Bruckner Commissary, LLC (2581); 8 West Bakery, LLC (6421); NYC 1294 Third Ave Bakery, LLC (2001); 921 Broadway Bakery, LLC (2352); 1800 Broadway Bakery, LLC (8939); 1535 Third Avenue Bakery, LLC (1011); 2161 Broadway Bakery, LLC (2767); 210 Joralemon Bakery, LLC (4779); 1377 Sixth Avenue Bakery, LLC (9717); 400 Fifth Avenue Bakery, LLC (6378); 1400 Broadway Bakery, LLC (8529); 575 Lexington Avenue Bakery, LLC (9884); 685 Third Avenue Bakery, LLC (9613); 370 Lexington Avenue Bakery, LLC (0672); 787 Seventh Avenue Bakery, LLC (6846); 339 Seventh Avenue Bakery, LLC (1406); and 55 Hudson Yards Bakery, LLC (7583).

## **PLAN OF LIQUIDATION**

Cosmoledo, LLC (“Cosmoledo”), and its affiliated debtors (collectively, the “Debtors”), propose the following plan of liquidation (the “Plan”) pursuant to section 1121(a) of the Bankruptcy Code (defined herein) for the resolution of the outstanding claims against and membership interests in the Debtors. The Debtors’ cases have been consolidated for procedural purposes only and are being jointly administered pursuant to the *Order Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure for Entry of an Order Directing the Joint Administration of the Chapter 11 Cases for Procedural Purposes Only* (the “Joint Administration Order”) [ECF No.: 22]. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (defined herein), distributed contemporaneously with the Plan, which includes a discussion of the Debtors’ history, business, results of operations, historical financial information, properties, and a summary analysis of the Plan.

**ALL HOLDERS OF CLAIMS AND INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

### **ARTICLE 1**

#### **DEFINITIONS**

##### **Section 1.1   Meaning.**

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

## **Section 1.2 Terms Not Defined in this Plan.**

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

## **Section 1.3 Rules of Construction.**

The rules of construction set forth in section 102 of the Bankruptcy Code shall be applicable to all of the provisions of this Plan. Without in any way limiting the foregoing, for purposes of the Plan, unless otherwise provided herein: (a) the words “includes” and “including” are without limitation; (b) any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or Exhibit Filed or to be Filed means such document or Exhibit, as it may have been or may be amended, modified or supplemented pursuant to the Plan, Confirmation Order or otherwise; (d) any reference to an entity as a holder of a Claim or Interest includes that entity’s successors, assigns and affiliates; (e) all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to the Plan; (f) the words “herein,” “hereunder” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; and (h) subject to the provisions of any contract, articles or certificates of incorporation, bylaws, codes of regulation, similar constituent documents, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the rights and obligations arising under the Plan will be

governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules.

#### **Section 1.4 Exhibits and Appendices.**

All Exhibits and appendices to the Plan (collectively, the “Exhibits”) are incorporated into the Plan by reference and are a part of this Plan as if set forth in full herein.

#### **Section 1.5 Computation of Time.**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006 shall apply.

#### **Section 1.6 Governing Law.**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control).

#### **Section 1.7 Definitions.**

“*503(b)(9) Claim*” shall mean any Claim against the Debtors pursuant to section 503(b)(9) of the Bankruptcy Code, for the value of goods received by the Debtors in the twenty (20) days immediately prior to the Petition Date.

“*688 Bronx Commissary*” shall mean Debtor 688 Bronx Commissary, LLC (20-12119).

“*Administrative Claim*” shall mean any Claim against the Debtors for costs or expenses of administration of the Cases pursuant to sections 327, 328, 364(c)(1), 365, 503(b), 507(a) and (b) or 1114(e)(2) of the Bankruptcy Code, as applicable, including (i) the actual and necessary costs and

expenses incurred on or after the Petition Date and prior to the Effective Date of preserving the Estates and operating the business of the Debtors, (ii) Professional Fee Claims, (iii) 503(b)(9) Claims (if any), (iv) any fees or charges assessed against the Estate under 28 U.S.C. §§ 1911 through 1930; and (v) any Allowed Claim that is to be treated as an Administrative Claim pursuant to a Final Order of the Bankruptcy Court.

*“Administrative Claim Bar Date”* shall mean the deadline for filing requests for payment of Administrative Claims (other than Professional Fee Claims), which shall be, as applicable, (i) with respect to any Administrative Claims (other than 503(b)(9) Claims) that arose during the period from the Petition Date through November 2, 2020, the Administrative Bar Date shall be January 8, 2021 as set forth in the Bar Date Order, (ii) with respect to Administrative Claims (other than 503(b)(9) Claims) arising after November 2, 2020, the Administrative Bar Date shall be the date set forth in Section 3.3 of the Plan, and (iii) with respect to any 503(b)(9) Claims, the Administrative Bar Date shall be the General Bar Date.

*“Allowed”* or *“Allowed Amount”* or *“Allowed Claim”* shall mean (a) when referring to a Claim (i) the amount of a Claim listed on the Schedules and not designated in the Schedules as either disputed, contingent or unliquidated and is not otherwise a Disputed Claim, (ii) filed with the Bankruptcy Court on or before the applicable Bar Date and as to which no objection to the allowance thereof has been interposed, (iii) as to which any objection has been interposed, to the extent such Claim has been allowed by a Final Order, or (iv) any Claim specifically identified in this Plan as an Allowed Claim or in any contract, instrument or other agreement entered into prior to the Effective Date if approved by the Bankruptcy Court pursuant to a Final Order; *provided, however*, that except as otherwise specified in the Plan or any Final Order, and except for any Claim that is Secured by property of a value in excess of the principal amount of such Claims, the amount of an Allowed

Claim shall not include interest on such Claim from and after the Petition Date; *and provided further* that for purposes of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of any Claim that the Debtors may hold against the Holder thereof, to the extent such Claim may be offset, recouped, or otherwise reduced under applicable law; and (b) when referring to an Interest, such Interest registered in the membership interest register or any similar register or schedule maintained by or on behalf of a Debtors as of the Record Date and not timely objected to or that is allowed by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Court. Notwithstanding anything to the contrary herein, no Claim of any entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such entity pays in full the amount that it owes such Debtor. For the avoidance of doubt: (x) a Proof of Claim Filed after the Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-filed Claim; and (y) the Debtors may affirmatively deem Unimpaired Claims as Allowed Claims to the same extent such Claims would be allowed under applicable non-bankruptcy law.

“*Assets*” shall mean all of the Debtors’ property, rights and interest that are property of the Estates pursuant to section 541 of the Bankruptcy Code.

“*Available Cash*” shall mean all Cash of the Debtors as of the Confirmation Date and any other Cash that may be realized by the Liquidation Trust from any source, together with any interest earned thereon.

“*Avoidance Actions*” shall mean any and all actual or potential Causes of Action to avoid a transfer of property or an obligation incurred by the Debtors pursuant to Chapter Five of the

Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

“*Ballot*” shall mean the form distributed to Holders of Claims and Interests on which is to be indicated whether such Holder accepts or rejects the Plan and (when applicable) any election for treatment of such Claim or Interest under the Plan.

“*Bankruptcy Code*” shall mean Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et. seq.*, now in effect or as hereinafter amended as applicable to the Cases.

“*Bankruptcy Court*” shall mean the United States Bankruptcy Court for the Southern District of New York and any appellate court of competent jurisdiction over any matter or proceeding arising in or relating to the Plan or these Cases.

“*Bankruptcy Rules*” shall mean, collectively, the Federal Rules of Bankruptcy Procedure, as now in effect or hereafter amended.

“*Bar Date*” shall mean, as applicable, (i) the General Bar Date, (ii) the Administrative Claim Bar Date, (iii) the Governmental Bar Date, and (iv) any other further date by which Claims must be, or must have been, filed in these Cases as established by any order of the Bankruptcy Court, including the Bar Date Order and the Confirmation Order.

“*Bar Date Order*” shall mean any order of the Bankruptcy Court establishing Bar Dates for Filing Claims in the Cases, including the *Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [ECF No.: 182] entered on November 25, 2020, as the same may be amended, modified, or supplemented.

“*Beneficiaries*” shall mean the Holders of Allowed Claims after having received beneficial interests in the Liquidating Trust.

“*Business Day*” shall mean any day, other than a Saturday, Sunday or “legal holiday” as

defined in Bankruptcy Rule 9006(a).

“*CARES Act*” shall mean the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020).

“*Cases*” shall mean the Debtors’ Cases under Chapter 11 of the Bankruptcy Code, as jointly administered under case number 20-12117 (MEW) pursuant to the Joint Administration Order.

“*Cash*” shall mean lawful currency of the United States of America (U.S. dollars) and cash equivalents including regular checks, certified checks, bank checks, wire transfers, and other readily marketable direct obligations of the United States of America and certificates of deposit issued by banks.

“*Causes of Action*” shall mean any and all rights, Claims, actions, counter-claims, third party claims, controversy, demand, right, indemnity, contribution, reimbursement, guarantee, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license, or any other causes of action relating to the foregoing, known or unknown, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, disputed or undisputed, direct or indirect, whether arising before, on or after the Petition Date, that the Debtors have or may have against any third party as of the Confirmation Date,

“*Claim*” shall have the meaning given to such term in section 101(5) of the Bankruptcy Code.

“*Claimant*” shall mean the Holder of any Claim.

“*Class*” shall mean any category of Claims or Interests as specified in Article III of the Plan.

“*Committee*” shall mean the Official Committee of Unsecured Creditors as appointed in these Cases pursuant to the *Amended Notice of Appointment of Official Committee of Unsecured*



*Creditors* [ECF No.: 58] filed on September 21, 2020.

“*Confirmation Date*” shall mean the date of entry by the Bankruptcy Court of the Confirmation Order on its docket within the meaning of Bankruptcy Rules 5003 and 9021.

“*Confirmation Hearing*” shall mean the hearing to be held by the Bankruptcy Court in connection with confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

“*Confirmation Notice*” shall mean a notice filed by the Debtors and served upon all interested parties on the Confirmation Date, or as reasonably practicable thereafter, in accordance with the Confirmation Order.

“*Confirmation Order*” shall mean an order of the Bankruptcy Court confirming the Plan in accordance with section 1129 of the Bankruptcy Code.

“*Cosmoledo*” shall mean Debtor Cosmoledo, LLC (20-12117).

“*Debtors*” shall have the meaning set forth in the introductory paragraph of the Plan and includes collectively: Cosmoledo, LLC (20-12117); Breadroll, LLC, (20-12118); 688 Bronx Commissary, LLC (20-12119); 95 Broad Commissary, LLC (20-12120); 178 Bruckner Commissary, LLC (20-12121); 8 West Bakery, LLC (20-12122); NYC 1294 Third Ave Bakery, LLC (20-12123); 921 Broadway Bakery, LLC (20-12124); 1800 Broadway Bakery, LLC (20-12125); 1535 Third Avenue Bakery, LLC (20-12126); 2161 Broadway Bakery, LLC (20-12127); 210 Joralemon Bakery, LLC (20-12128); 1377 Sixth Avenue Bakery, LLC (20-12129); 400 Fifth Avenue Bakery, LLC (20-12130); 1400 Broadway Bakery, LLC (20-12131); 575 Lexington Avenue Bakery, LLC (20-12132); 685 Third Avenue Bakery, LLC (20-12133); 370 Lexington Avenue Bakery, LLC (20-12134); 787 Seventh Avenue Bakery, LLC (20-12135); 339 Seventh Avenue Bakery, LLC (20-12136); and 55 Hudson Yards Bakery, LLC (20-12137).

*“Disallowed”* shall mean, with respect any Claim against the Debtors, a Claim that (i) has been disallowed under this Plan by a Final Order of the Bankruptcy Court or pursuant to a settlement, or (ii) is Scheduled at zero (\$0) dollars, or (iii) identified as contingent, disputed, or unliquidated on the Debtors’ Schedules and to which an applicable Bar Date has been established but no Proof of Claim has been timely filed or deemed timely filed by the Bankruptcy Court.

*“Disclosure Statement”* shall mean the disclosure statement (including all Exhibits and Schedules thereto or referenced therein) that relates to the Plan and has been prepared and distributed by the Debtors, as Plan proponent, and as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified, or supplemented.

*“Disputed Claim”* shall mean any Claim (i) as to which an objection has been timely filed as of the Effective Date or any later deadline fixed by the Plan or the Bankruptcy Court, and (ii) which objection has not been withdrawn and is not the subject of a Final Order allowing or disallowing such Claim.

*“Disputed Claims Reserve”* shall mean a reserve of Available Cash and Remaining PPP Cash, as appropriate, established to satisfy Disputed Claims to the extent such Disputed Claims become Allowed Claims.

*“Distribution”* shall mean any initial or periodic payment or transfer of consideration to the Holders of Allowed Claims in accordance with the Plan.

*“Distribution Date”* shall mean the date on which Distributions are made including by mail or otherwise.

*“Distribution Schedules”* shall mean any list(s) of all Claims filed in these Cases or listed on the Schedules, whether or not Allowed.

*“Effective Date”* shall mean the date determined by the Debtors in consultation with the

Committee for the consummation of the Plan, or as soon as reasonably practicable after all conditions to the Effective Date have been met or waived in accordance with Articles 9 and 10 of the Plan.

*“Estate” or “Estates”* shall mean each Debtor’s estate created pursuant to section 541 of the Bankruptcy Code.

*“Excess Reserves”* shall mean the amount of outstanding funds in the Reserves after all obligations to be paid out of such Reserves have been satisfied in full.

*“Exculpated Parties”* shall mean the Debtors, the Committee, the Estates, and the officers, directors, and members of the foregoing, and each of their respective Professionals.

*“Executory Contracts”* shall mean any contract or unexpired lease to which a Debtor is a party, which is capable of being assumed or rejected pursuant to section 365 of the Bankruptcy Code, including any modifications, amendments, addenda, or supplements thereto or restatements thereof.

*“Exhibit” or “Exhibits”* shall have the meaning set forth in Section 1.4 of the Plan.

*“File,” “Filed” or “Filing”* shall mean file, filed or filing with the Bankruptcy Court or its authorized designee in these Cases in accordance with the Bankruptcy Rules and Local Rules as applicable.

*“Final Order”* shall mean an order or judgment of the Bankruptcy Court or another court of competent jurisdiction in connection with the one or more of these Cases, which order or judgment has not been reversed, stayed, modified, amended or vacated, and (i) the time to appeal from, or to seek review or rehearing of, has expired, (ii) no appeal, review, certiorari or rehearing is pending, and (iii) the order has become conclusive as to all matters adjudicated therefor and is in full force and effect.

*“Forgiveness Application”* means a Paycheck Protection Program Loan Forgiveness Application submitted by the Debtors on forms, and in accordance with the procedures, published by the SBA.

*“General Bar Date”* shall mean January 8, 2021 at 4:00 p.m. (Eastern Time) as set forth in the Bar Date Order.

*“General Unsecured Claim”* shall mean any Claim against the Debtors, other than an Administrative Claim, Priority Tax Claim, Priority Claim, Secured Claim, or PPP Eligible Claim, including any Claims resulting from the Debtors’ prior use of the PPP Loan for which the Debtors seek forgiveness pursuant to the CARES Act and which Claims are not ultimately forgiven by the SBA following submission of a Forgiveness Application.

*“General Unsecured Claims Pool”* shall mean all Allowed Class 4 General Unsecured Claims.

*“Governmental Bar Date”* shall mean March 10, 2021 at 4:00 p.m. (Eastern Time) as set forth in the Bar Date Order.

*“Governmental Unit”* shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

*“Holder”* shall mean any Person holding a Claim or Interest, as applicable.

*“Intercompany Claim”* shall mean any Claim held by a Debtor against another Debtor.

*“Intercompany Interest”* shall mean an Interest in one Debtor held by another Debtor.

*“Interest”* shall mean any ownership interest in any of the Debtors.

*“Interestholder”* shall mean a Holder of an Interest.

*“Lease Rejection Damages Allocation”* shall mean the allocation of Lease Rejection Damages Claims as provided in Section 4.8 of the Plan.

*“Lease Rejection Damages Claims”* shall mean all Claims for damages arising from the rejection of any unexpired lease pursuant to section 502(b)(6) of the Bankruptcy Code.

*“Lien”* shall mean as set forth in section 101(37) of the Bankruptcy Code.

*“Liquidation Trust”* shall mean that certain trust to be formed in accordance with the Plan to administer the Assets upon the Effective Date, as more fully set forth in Article 5 hereof and the Plan Trust Agreement.

*“Liquidation Trustee”* shall mean the Person designated to serve as trustee of the Liquidation Trust in accordance with the terms of the Plan.

*“Local Rules”* shall mean Local Bankruptcy Rules for the Southern District of New York.

*“Net PPP Cash Balance”* shall mean Remaining PPP Cash less an amount equal to the Pro Rata Distribution of Remaining Cash to Holders of Class 3 PPP Eligible Claims.

*“Notice of Effective Date”* shall mean as set forth in Section 10.3 of the Plan.

*“Person”* shall mean any individual, firm, corporation, partnership, limited liability company, business trust, joint stock company, trust, estate, unincorporated association, Governmental Unit, joint venture, or other entity of whatever nature.

*“Petition Date”* shall mean September 10, 2020.

*“Plan”* shall have the meaning set forth in the introductory paragraph of the Plan, including all Exhibits attached hereto or referenced herein, as the same may be amended, modified, or supplemented.

*“Plan Advisory Committee”* shall have the meaning as set forth in Section 5.7 of the Plan.

*“Plan Expense Reserve”* shall mean a reserve of Available Cash established in accordance with Section 5.2 of the Plan sufficient to fund all costs and expenses of the Liquidation Trust (including but not limited to fees and expenses of Professionals) in administering the post-

Confirmation Estate, liquidating all Estate Assets, and funding all amounts necessary to otherwise wind down the post-Confirmation Estate and close these Cases.

*“Plan Supplement”* shall mean the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (as may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed by the Debtors no later than five (5) days before the Voting Deadline or such later date as may be approved by the Court on notice to all parties in interest, including the following, as applicable: (i) the identity and terms of compensation of the Liquidating Trustee; and (ii) any other necessary documentation related to any transactions contemplated by this Plan.

*“Plan Trust Agreement”* shall mean the agreement governing the rights and responsibilities of the Liquidation Trustee and the Liquidation Trust, including any and all modifications, amendments, addenda, or supplements thereto or restatements thereof.

*“PPP”* shall mean the Paycheck Protection Program offered by the CARES Act and section 7(a)(36) of the Small Business Act

*“PPP Administrative Claims”* shall mean PPP Eligible Claims entitled to administrative expense treatment under § 503(b) of the Bankruptcy Code.

*“PPP Eligible Claims”* shall mean any Claim consisting of costs or expenses that constitute “authorized uses” as defined in the CARES Act and additional SBA guidance; *provided, however*, any Claims resulting from the Debtors’ prior use of the PPP Loan for which the Debtors seek forgiveness pursuant to the CARES Act and which Claims are not ultimately forgiven by the SBA following the submission of the Debtors’ Forgiveness Application shall be deemed General Unsecured Claims.

*“PPP Loan”* shall mean the loan in the amount of \$6,662,292 provided pursuant to the PPP and CARES Act and funded on April 20, 2020 pursuant to the PPP Loan Agreement.

*“PPP Loan Agreement”* shall mean that certain Loan Agreement dated April 17, 2020 by and between Breadroll LLC and Santander, made in accordance with the PPP and CARES Act.

*“PPP Proof of Claim”* means the proof of claim filed in these cases by Santander on June 6, 2021 and assigned claim number 147 asserting an unsecured claim in the amount of \$6,662,292.00 owed under the PPP Loan made pursuant to the PPP Loan Agreement.

*“Priority Claim”* shall mean any Claim against the Debtors entitled to priority in accordance with section 507(a) of the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim.

*“Priority Tax Claim”* shall mean any Claim against one or more of the Debtors entitled to priority under section 507(a)(8) of the Bankruptcy Code.

*“Professionals”* shall mean professionals retained in these Cases to be compensated by a Final Order pursuant to sections 327, 328, 330, 503(b) and/or 1103 of the Bankruptcy Code or retained by the Plan Advisory Committee or Liquidation Trustee on behalf of the Liquidation Trust on or after the Effective Date.

*“Professional Fees”* shall mean all fees, costs and expenses of Professionals incurred during the administration of the Cases up to and including the Effective Date, which fees, costs, and expenses shall have been awarded by Final Order pursuant to sections 330 or 503(b) of the Bankruptcy Code.

*“Professional Fee Claim Bar Date”* shall mean 4:00 p.m. (Eastern Time) on the date that is sixty (60) days after the Effective Date and as set forth in Section 3.5 of the Plan.

*“Professional Fee Claim”* shall mean a Claim for any and all fees and expenses of

Professionals or any other Person to the extent Allowed pursuant to sections 327, 328, 330, 331, 363 or 503(b) of the Bankruptcy Code.

*“Proof of Claim”* shall mean a proof of Claim against any of the Debtors Filed in accordance with section 501 of the Bankruptcy Code.

*“Pro Rata”* shall mean the proportion that the Allowed Claim in a particular Class or Classes, as appropriate, bears to the aggregate amount of all Claims (including Disputed Claims until allowed or disallowed) in such Class.

*“Pro Rata Distribution of Remaining Cash”* shall mean the proportionate Pro Rata Distribution of Remaining Cash to Holders of Allowed Class 3 PPP Eligible and Class 4 General Unsecured Claims.

*“Record Date”* shall mean the Confirmation Date.

*“Released Parties”* shall mean the Debtors, the Committee, the Estates, the officers, directors, and members of the foregoing, and each of their respective Professionals.

*“Reserves”* shall mean the (i) Senior Claims Reserve, (ii) Disputed Claims Reserve, and (iii) Plan Expense Reserve.

*“Remaining Cash”* shall mean the net balance of Available Cash after payment of and Reserves for (i) Administrative Claims, (ii) Professional Fee Claims, (iii) Priority Tax Claims, (iv) Allowed Class 1 Secured Claims, (v) Allowed Class 2 Priority Claims, (vi) claims constituting fees and any applicable interest due and payable to the United States Trustee pursuant to 28 U.S.C. § 1930; (vii) the Disputed Claims Reserve, and (viii) the Plan Expense Reserve.

*“Remaining PPP Cash”* shall mean the portion of Remaining Cash utilized to satisfy PPP Eligible Claims.

*“Sale Agreement”* shall mean the amended Asset Purchase Agreement by and among



Cosmoledo LLC, Each of the Other Sellers Party Hereto and MK USA, LLC, dated September 10, 2020 [ECF No.: 26], and approved by the Bankruptcy Court pursuant to the Sale Order.

“*Sale Order*” shall mean the *Order (A) Approving the Sale of Substantially All of the Debtors’ Assets, Free and Clear of All Liens, Claims and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [ECF No.: 166] entered on November 2, 2021.

“*Santander*” shall mean Santander Bank, N.A.

“*SBA*” shall mean the United States Small Business Administration.

“*Scheduled*” shall mean, with respect to any Claim against the Debtors, the status, priority, and amount, if any, of such Claim as set forth in the Schedules.

“*Schedules*” shall mean the Schedules of Assets and Liabilities [ECF Nos.: 142-43] Filed by the Debtors in these Cases pursuant to Bankruptcy Rule 1007, as may be amended, modified, or supplemented from time to time.

“*Secured Claim*” shall mean a Claim against one or more of the Debtors to the extent such Claim is secured by a valid Lien, security interest, or other interest in property in which the Debtors have an interest, that has been properly perfected as required by applicable law and is not otherwise avoidable by the Debtors as debtor-in-possession or any other Person, but only to the extent of the value of that Debtors’ interests in such property (i) as agreed to by the Holder of such Claim and the Debtors, or (ii) as determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code, subject to any setoff right of the Holder of such Claim under section 553 of the Bankruptcy Code, plus, to the extent that such Secured Claim is secured by property the value of which is greater than the amount of such Claim, shall include interest on such Claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which

such Claim arose.

“*Senior Claims Reserve*” shall mean a reserve of Available Cash established to satisfy (i) Administrative Claims, (ii) Professional Fee Claims, (iii) Priority Tax Claims, and (iv) Claims constituting fees and any applicable interest due and payable to the United States Trustee pursuant to 28 U.S.C. § 1930.

“*Trust Units*” shall mean a Claimant’s share of beneficial interests in the Liquidation Trust on account of an Allowed Claim.

“*United States Trustee*” shall mean any and all representatives and employees of the Office of the United States Trustee for the Southern District of New York.

“*Voting Deadline*” shall mean the deadline established by order of the Bankruptcy Court for receipt of Ballots voting to accept or reject the Plan.

## **ARTICLE 2**

### **Substantive Consolidation**

#### **Section 2.1 Plan as Substantive Consolidation Motion.**

The Plan shall serve as a motion by the Debtors seeking entry of an order substantively consolidating all of the Estates of all of the Debtors into the single consolidated Estate of Debtor Cosmoledo LLC for all purposes associated with Confirmation and further consummation of the Plan; *provided, however*, that Debtor 688 Bronx Commissary shall not be deemed substantively consolidated and shall be treated in accordance with Section 5.5 of the Plan.

#### **Section 2.2 Effect of Substantive Consolidation.**

Entry of the Confirmation Order shall constitute approval by the Bankruptcy Court of the substantive consolidation of the Debtors and their respective Estates for all purposes relating to the Plan. On the Effective Date, the Debtors shall be deemed a single consolidated Estate such that all

Assets and liabilities of the Debtors shall be combined into the single post-Confirmation Estate of Cosmoledo, all guaranteed obligations of any Debtor of another Debtor shall be eliminated, and any Claim with respect to any guarantee thereof by any other Debtor shall be treated as a single obligation of Cosmoledo. Moreover, (i) no Distribution shall be made under the Plan on account of any Intercompany Claim or Intercompany Interest except to the extent necessary to achieve the substantive consolidation provided for herein, (ii) every Claim that is timely Filed or to be Filed in these Cases against any of the Debtors shall be deemed Filed against the consolidated Estate of Cosmoledo, and (iii) substantive consolidation as provided herein shall not be deemed to constitute a default under any applicable agreement with the Debtors, including all Executory Contracts and unexpired leases, and shall not form the basis for any damages or other Causes of Action against the Debtors or create any cure obligations as of the Confirmation Date. Nothing in this Section 2.2 shall be construed to consolidate any claim that is to be treated under two separate classes under Article 4 into one claim. For the avoidance of doubt, any Holder of multiple Allowed Claims against more than one Debtor prior to Confirmation shall be (i) entitled to one Allowed Claim against Cosmoledo of the same priority and equal to the aggregate amount of the underlying Allowed Claims, and (ii) deemed Allowed only once as if such Claim were against Cosmoledo only.

### **ARTICLE 3**

#### **Provision for the Payment of United States Trustee Fees, Treatment of Administrative Claims and Priority Tax Claims**

Pursuant to § 1123(a)(1) of the Bankruptcy Code, United States Trustee fees, Administrative Claims (including Professional Fee Claims) and Priority Tax Claims are not classified under the Plan. All such Claims are treated separately upon the terms set forth in this Article 3.

##### **Section 3.1 United States Trustee Fees.**

All fees and any applicable interest due and payable to the United States Trustee, pursuant

to 28 U.S.C. § 1930, shall be paid in full from Available Cash on the Effective Date. All fees and any applicable interest payable pursuant to 28 U.S.C. § 1930 after the Effective Date will be paid from the Plan Expense Reserve.

### **Section 3.2 Administrative Claims.**

Each Holder of an Allowed Administrative Claim (exclusive of United States Trustee fees and Professional Fees) shall receive a Distribution from the Senior Claims Reserve in an amount equal to the Allowed Amount of the Administrative Claim on the later of: (ii) the Effective Date; (ii) within ten (10) days after the date such Administrative Claim becomes an Allowed Claim; (iii) on such other date as agreed upon by the Holder of such Administrative Claim; or (iv) on such other date as may be ordered by the Bankruptcy Court. For the avoidance of doubt, Administrative Claims shall include PPP Eligible Administrative Claims.

### **Section 3.3 Administrative Claims Bar Date.**

Unless required to be Filed in accordance with the Bar Date Order, all requests for payment of Administrative Claims (exclusive of Professional Fee Claims and Claims for United States Trustee fees) arising after November 2, 2020 must be Filed and served pursuant to the procedures specified in the Plan, Confirmation Order, and the Confirmation Notice, but in no event later than forty-five (45) days after the occurrence of the Effective Date or such later date as may be established by order of the Bankruptcy Court. Holders of Administrative Claims required to file a request for payment of such Claims and who do not timely file such a request shall be forever barred from asserting such Claims against the Debtors, the Estate, or the Assets, or against the Liquidation Trust, and the holder thereof shall be permanently enjoined from commencing or continuing any Cause of Action, employment of process or act to collect, offset or recover such Administrative Claim.

### **Section 3.4 Professional Fee Claims.**

Professional Fees Claims shall be paid in full from the Senior Claims Reserve on, or as soon as reasonably practicable after, the first Business Day following the date upon which such Professional Fee Claim becomes Allowed by a Final Order. In the event any Professional Fee Claims constitute Disputed Claims as of the Effective Date, the Liquidation Trustee shall hold and maintain Available Cash in the Disputed Claims Reserve an amount equal to the amount asserted by such Professional Fee Claim until such dispute is resolved consensually or by order of the Bankruptcy Court.

### **Section 3.5 Professional Fees Bar Date.**

All final applications for payment of Professional Fees for the period through and including the Effective Date shall be Filed with the Bankruptcy Court on or before the date that is sixty (60) days following the Effective Date. All final applications for Professional Fees must be served on the parties entitled to notice and otherwise pursuant to the Bankruptcy Code, the Bankruptcy Rules the Local Rules, and the Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, and any orders issued by the Bankruptcy Court.

### **Section 3.6 Priority Tax Claims.**

Each holder of an Allowed Priority Tax Claim shall receive from the Senior Claims Reserve an amount equal to the Allowed Amount of such Priority Tax Claim on the later of (i) the Effective Date, (ii) within ten (10) days after the date such Priority Tax Claim becomes an Allowed Claim, or (iii) on such other date as agreed upon by the Holder of such Priority Tax Claim; or (iv) on such other date as may be ordered by the Bankruptcy Court.

## **ARTICLE 4**

### **Classification and Treatment of Claims and Interests**

A Claim is in a particular Class only to the extent such Claim falls within the description of

that Class and is in a different Class to the extent that the remainder of the Claim falls within the description of such different Class. In addition, a Claim or Interest is in a particular Class only to the extent that the Claim or Interest is an Allowed Claim or Interest. The Classes under the Plan are as follows:

<u>Class</u>	<u>Description</u>	<u>Impaired/Unimpaired</u>	<u>Voting Status</u>
Class 1	Secured Claims	Unimpaired	Not entitled to Vote (Deemed to accept)
Class 2	Priority Claims	Unimpaired	Not entitled to Vote (Deemed to accept)
Class 3	PPP Eligible Claims	Impaired	Entitled to Vote
Class 4	Unsecured Claims	Impaired	Entitled to Vote
Class 5	Intercompany Claims	Impaired	Not entitled to Vote (Deemed to reject)
Class 6	Intercompany Interests	Impaired	Not entitled to Vote (Deemed to reject)
Class 7	Interests in Cosmoledo LLC	Impaired	Not entitled to Vote (Deemed to reject)

#### **Section 4.1 Class 1 - Secured Claims.**

- (a) *Classification:* Class 1 consists of Secured Claims.
- (b) *Treatment:* Unless the Holder of an Allowed Secured Claim agrees to receive other less favorable treatment, each holder of an Allowed Claim in Class 1 shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Claim, (i) 100% of the unpaid amount of such Allowed Secured Claim from Available Cash, or (ii) the surrender of the specific collateral securing such Secured Claim to the holder(s) thereof to the extent of the Allowed Secured Claim Claim(s), *provided, however*, that the treatment hereunder shall be subject to the rights of any Holder of a prior lien upon, and security in, said collateral. To the extent the value of the collateral securing a Secured Claim is less than the Allowed Amount, any such deficiency shall be entitled to treatment as a Class 4 General Unsecured Claim hereunder.
- (c) *Voting:* Class 1 is not impaired under the Plan. The holders of Class 1 Claims are conclusively presumed to have accepted the Plan in accordance with § 1126(f) of the Bankruptcy Code and are, therefore, not entitled to vote on the Plan.

## **Section 4.2 Class 2 - Priority Claims.**

- (a) *Classification:* Class 2 consists of Priority Claims.
- (b) *Treatment:* Unless the Holder of an Allowed Priority Claim agrees to receive other less favorable treatment, each Holder of an Allowed Class 2 Priority Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Claim, Available Cash equal to the payment of 100% of the Allowed Priority Claim, after payment of, and Reserves for, all Administrative Claims Priority Tax Claims, and Class 1 Claims, on the later of: (i) the Effective Date; (ii) within ten (10) days after the date such Priority Claim becomes an Allowed Claim; or (iii) on such other date as may be ordered by the Bankruptcy Court.
- (c) *Voting:* Class 2 Claims are not impaired under the Plan. The Holders of Class 2 Claims are conclusively presumed to have accepted the Plan in accordance with § 1126(f) of the Bankruptcy Code and are, therefore, not entitled to vote on the Plan.

## **Section 4.3 Class 3 – PPP Eligible Claims.**

- (a) *Classification:* Class 3 consists of all PPP Eligible Claims that are not PPP Eligible Administrative Claims.
- (b) *Treatment:* Unless the Holder of an Allowed Class 3 Claim agrees to receive other less favorable treatment, each Holder of an Allowed Class 3 Claim shall receive, in full satisfaction, settlement, release, and discharge of its Allowed Class 3 Claim, its Pro Rata Distribution from the sum of Trust Units equal to: (i) the Pro Rata Distribution of Remaining Cash, **plus** (ii) twenty (20%) percent of the Net PPP Cash Balance; *provided, however*, that such treatment under the Plan shall equal an aggregate Distribution to Class 3 in an amount not less than \$3,000,000.00. Distributions on account of Trust Units owned by Holders of Allowed Class 3 Claims shall be made on (i) the date that the Liquidation Trustee determines is appropriate to make Distributions to Holders of Class 3 Claims; or (ii) such other date as may be ordered by the Bankruptcy Court. Fractional Trust Units shall not be issued and allowed Class 3 Claims will be rounded up or down to the nearest whole Trust Unit.
- (c) *Voting:* Class 3 Claims are impaired under the Plan and the Holders thereof are entitled to vote on the Plan.

## **Section 4.4 Class 4 – General Unsecured Claims**

- (a) *Classification:* Class 4 consists of all General Unsecured Claims that are not PPP Eligible Claims.

- (b) *Treatment:* Unless the Holder of an Allowed Class 4 Claim agrees to receive other less favorable treatment, each Holder of an Allowed Class 4 Claim shall receive, in full satisfaction, settlement, release, and discharge of its Allowed Class 4 Claim, its Pro Rata Distribution from the sum of Trust Units equal to: (i) the Pro Rata Distribution of Remaining Cash, less (ii) twenty (20%) percent of the Net PPP Cash Balance. Distributions on account of Trust Units owned by Holders of Allowed Class 4 Claims shall be made on (i) the date that the Liquidation Trustee determines is appropriate to make Distributions to Holders of Class 4 Claims, or (ii) such other date as may be ordered by the Bankruptcy Court. Fractional Trust Units shall not be issued and allowed Class 4 Claims will be rounded up or down to the nearest whole Trust Unit.
- (c) *Voting:* Class 4 Claims are impaired under the Plan and the Holders thereof are entitled to vote on the Plan.

**Section 4.5 Class 5 – Intercompany Claims.**

- (a) *Classification:* Class 5 consists of all Intercompany Claims.
- (b) *Treatment:* Unless otherwise provided for under the Plan, each Allowed Class 5 Claim shall be discharged, released, and extinguished as of the Effective Date, and will be of no further force or effect, and no Distributions shall be made on account of any such Intercompany Claims.
- (c) *Voting:* Class 5 is impaired under the Plan. Holders of Intercompany Claims are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Such Holders are not entitled to vote to accept or reject the Plan.

**Section 4.6 Class 6 – Intercompany Interests.**

- (a) *Classification:* Class 6 consists of all Intercompany Interests.
- (b) *Treatment:* Unless otherwise provided for under the Plan, all Class 6 Intercompany Interests shall be cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and no Distributions shall be made on account of any Intercompany Interests.
- (c) *Voting:* Class 6 is impaired under the Plan. Holders of Intercompany Interests are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Such Holders are not entitled to vote to accept or reject the Plan.

**Section 4.7 Class 7 – Interests in Cosmoledo, LLC.**

- (a) *Classification:* Class 7 consists of all Interests in Cosmoledo, LLC.



- (b) *Treatment:* Unless otherwise provided for under the Plan, all Class 7 Interests in Cosmoledo shall be cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and no Distributions shall be made on account of any such Interests.
- (c) *Voting:* Class 7 is impaired under the Plan. Holders of Interests in Cosmoledo, LLC are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Such Holders are not entitled to vote to accept or reject the Plan.

#### **Section 4.8 Lease Rejection Damages Allocation.**

For purposes of Distributions, each Lease Rejection Damages Claim shall be classified partially as a Class 3 PPP Eligible Claim and partially as a Class 4 General Unsecured Claim and shall receive separate Distributions as provided in Sections 4.3 and 4.4 as a Holder of a Claim in each Class in the respective amounts of (i) forty-six (46%) percent of such Lease Rejection Damages Claim payable as a Class 3 Claim, and (ii) fifty-four (54%) percent payable as a Class 4 Claim. For voting and Plan confirmation purposes, Holders of Lease Rejection Damages Claims shall be deemed Class 4 General Unsecured Claimants and shall be entitled to vote only once on account of such Lease Rejection Damages Claim.

#### **Section 4.9 Reservation of Rights to Cramdown Objecting Classes.**

The Debtors reserve the right to seek a cramdown any Class of Claims that does not vote to confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

#### **Section 4.10 Reservation of Rights to Object to Claims or Interests.**

The Debtors have not reviewed the validity or amount of any Claims and Interests and except as otherwise set forth herein. Accordingly, all rights to amend the Debtors' Schedules and to object to any Claims or Interests on any grounds are reserved in favor of the Debtors (and the Litigation Trustee upon appointment on the Effective Date as provided herein), notwithstanding the right of the Holder of such Claim or Interest to vote on the Plan.

#### **Section 4.11 Claims and Expense Reconciliation Process.**

Any increase in administrative and post-Effective Date expenses, and conversely any decrease in such obligations or liabilities (which may include but is not limited to any Excess Reserves), shall inure solely to the Holders of Class 4 Claims, and shall not alter the Distribution to Holders of Class 3 Eligible PPP Claims.

## **ARTICLE 5**

### **Means for Execution of the Plan**

#### **Section 5.1    Effective Date.**

The Effective Date shall not occur until all conditions for the Effective Date as set forth in Section 10.1 of the Plan have been satisfied or otherwise waived in accordance with the terms of the Plan. Upon occurrence of the Effective Date, the Debtors shall File the Notice of Effective Date as set forth in Section 10.3 of the Plan.

#### **Section 5.2    Establishment of Reserves.**

Not later than fifteen (15) days after the Effective Date, the Liquidation Trustee shall establish and fund the Reserves.

#### **Section 5.3    The Liquidation Trust.**

On the Effective Date the Liquidation Trustee shall be appointed as provided in Section 6.1 of the Plan, shall execute the Plan Trust Agreement, and shall take all necessary steps to establish the Liquidation Trust. All matters and actions under the Plan that would otherwise require approval of the officer(s) or director(s) of the Debtors shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the board of the Debtors.

#### **Section 5.4    Transfer to Estate.**

On the Effective Date, all of the Debtors' Assets shall be transferred to and vest in the

Liquidation Trust free and clear of all Liens, claims, and encumbrances, without further order of the Bankruptcy Court or action by the Liquidation Trustee or the Debtors.

**Section 5.5 Dismissal of 668 Bronx Commissary.**

Upon the Confirmation Order becoming a Final Order, the Case of 688 Bronx Commissary LLC shall be dismissed and shall not be deemed substantively consolidated with the remaining Debtors as provided in Section 2.1 of the Plan.

**Section 5.6 Termination of the Debtors.**

As soon as practicable after the Effective Date, the Liquidation Trustee shall cause the remaining Debtors to be dissolved in accordance with applicable state law; *provided, however*, that pursuant to section 1124(b) of the Bankruptcy Code, the Liquidation Trustee shall be authorized to file the Debtors' final tax returns, if any, and shall be authorized to file and shall file with the official public office for keeping corporate records in the each of the Debtors' state of incorporation a certificate of dissolution or equivalent document. Such a certificate of dissolution may be executed by the Litigation Trustee without the need for any action or approval by any other party.

**Section 5.7 Plan Advisory Committee.**

The Committee shall continue in existence until the Effective Date. As of the Effective Date, the Committee shall dissolve and shall be reconstituted as the Plan Advisory Committee and shall be comprised of one or more members as determined by the Committee no later than three (3) Business Days prior to the Effective Date. Any members of the Committee who are not members of the Plan Advisory Committee shall be released and discharged of and from all further authority, duties, responsibilities, and obligations relating to and arising from their service as members of the Committee. Following all Distributions and other payments being made in accordance with the Plan and all outstanding Disputed Claims resolved, the Plan Advisory Committee shall be dissolved, and

the members thereof shall be released and discharged of and from all further authority, duties, responsibilities, and obligations relating to and arising from their service as members of the Plan Advisory Committee. The Liquidating Trustee shall consult with the Plan Advisory Committee on an as-needed basis, but in no event less than bi-annually in connection with the current status of the Estate and wind down process including, among other things, the timing and amount of Distributions. Nothing set forth herein shall prohibit or limit the Liquidating Trustee's ability to consult with creditor representatives other than the members of the Plan Advisory Committee.

#### **Section 5.8     Distribution Schedules.**

The Debtors shall deliver to the Liquidation Trustee the Distribution Schedules on the Record Date or as soon as practical after the Effective Date and shall provide to the Liquidation Trustee any records or other information necessary or required to reconcile Claims, prosecute Causes of Action, and procure a final decree and close the Case. The Distribution Schedules shall consist of all Claims as of the Record Date and shall include (a) the name and address of all holders of Claims, as they are listed on any proof of Claim Filed, or, where no proof of Claim was Filed, as listed on the Schedules, (b) the respective amount of the Claims as indicated on any proof of Claim Filed and the amount of the Claim as listed on the Schedules, and (c) the current status of such Claim, whether disputed, unliquidated, contingent, Allowed (by Order or otherwise), and any other information reasonably related to the reconciliation of such Claim. The Liquidation Trustee and all Professionals shall have the absolute right to rely upon such records as of the Record Date and shall bear no liability for any errors in such records, or Distributions made on account of such records.

#### **Section 5.9     Causes of Action and Other Assets.**

Except as may have been previously released by any party, all Causes of Action are fully reserved, preserved and shall be transferred to and retained exclusively by the Liquidation Trust

pursuant to § 1123(b)(3) of the Bankruptcy Code. Following the transfer of the Assets pursuant to Section 5.3 hereof, the Liquidation Trustee shall have full authority to commence all Causes of Action through and including the last date by which such claims may be asserted pursuant to the Plan, the Bankruptcy Code, and applicable law. The Liquidation Trustee may continue any and all pending Causes of Action, and assert, prosecute, and settle any Causes of Action on behalf of the Liquidation Trust in accordance with the terms of the Plan.

#### **Section 5.10 Claims Disallowed.**

Except to the extent otherwise agreed to by the Debtors or the Liquidation Trustee, as applicable, any Claim held by an entity from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, as determined by a Final Order, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Cause of Action against that entity have been settled or a Final Order with respect thereto has been entered and all sums due, if any, to the Debtors or Litigation Trust by that Entity have been turned over or paid to the Debtors or Liquidating Trust, as applicable. In addition, all Scheduled Claims that are Scheduled at zero (\$0) dollars or identified on the Debtors' Schedules as contingent, disputed, or unliquidated and to which an applicable Bar Date has been established but no Proof of Claim has been timely filed or deemed timely filed by the Bankruptcy Court shall be deemed Disallowed as of the Effective Date.

#### **Section 5.11 Treatment of PPP Loan**

The Debtors will make their best efforts to file the Forgiveness Application seeking forgiveness of a portion of the PPP on or prior to the Effective Date, The Forgiveness Application

will be reviewed and evaluated by Santander Bank with a recommendation to the SBA, and in accordance with applicable law, including, without limitation, the CARES Act and the guidance and procedures established by the SBA under the PPP program. The determination of the SBA with respect to whether, and how much, of the PPP Loan is forgiven, shall be binding, to the extent provided under the CARES Act, on the Debtors and their estates. Nothing in the Plan, the Confirmation Order or any Plan Document shall be construed as limiting the rights of the Debtor and the Liquidation Trust with respect to the Forgiveness Application. The Claim set forth in PPP Proof of Claim is an Allowed General Unsecured Claim 4.

## **ARTICLE 6**

### **Liquidation Trustee**

#### **Section 6.1    Liquidation Trustee.**

The Liquidation Trustee shall be [REDACTED]. On the Effective Date, the Liquidation Trustee shall be deemed “the representative of the Estate” as contemplated by § 1123(b)(3)(B) of the Bankruptcy Code and shall have those powers and duties set forth in §§ 323, 704(1), 704(2), 704(5), 704(9), 1106(a)(6) and 1106(a)(7) of the Bankruptcy Code as well as the powers and duties set forth in the Plan Trust Agreement. For the avoidance of doubt, upon the Effective Date, the Liquidation Trustee shall be deemed elected and appointed by all requisite action under applicable law as the sole board member, board-appointed officer, shareholder-appointed director, and manager for each of the Debtors for all purposes and in all respects, with all necessary and appropriate power to act for, on behalf of, and in the name of each of the Debtors. The Liquidation Trustee will be bonded for the funds held by the Liquidation Trust, and such bond will be cancelable upon thirty (30) days’ prior written notice to the Plan Advisory Committee and the United States Trustee. The Liquidation Trustee may resign his position on thirty (30) days’ notice to the Plan Advisory

Committee and its counsel, and the Office of the United States Trustee. Upon resignation, the Plan Advisory Committee will name a successor Liquidation Trustee within ten (10) Business Days thereafter subject to the availability of the Plan Advisory Committee. The salient terms of the Liquidation Trustee's employment, including the Liquidation Trustee's duties and compensation (which compensation shall be negotiated between the Liquidation Trustee and the Debtors in consultation with the Committee), to the extent not set forth in the Plan, shall be set forth in the Plan Trust Agreement and Confirmation Order. The Liquidation Trustee shall act for and on behalf of the Liquidation Trust in a fiduciary capacity and in consultation with the Plan Advisory Committee subject to the provisions hereof. The Liquidation Trust shall be considered a successor to the Debtors and/or an estate representative appointed pursuant to Section 1123(b)(3) of the Bankruptcy Code. Any decision made, or not made, or action, taken or not taken, by the Liquidation Trustee with the approval of the Bankruptcy Court shall be deemed to have been made, not made, taken, or not taken, as applicable, by the Liquidation Trustee without gross negligence or willful misconduct.

## **Section 6.2    Liquidation Trustee's Duties and Powers.**

The duties and powers of the Liquidation Trustee shall include the following, but in all cases shall be consistent with the terms of the Plan and Confirmation Order:

- (a) To exercise all power and authority that may be or could have been exercised, commence or continue all proceedings that may be or could have been commenced or continued, and take all actions that may be or could have been taken by an officer, director, or member of the Debtors with like effect as if authorized, exercised, and taken by unanimous action of such officers, directors, and members, including, without limitation, amendment of the certificate of formation, bylaws and dissolution of the Debtors;
- (b) To maintain the Debtors' books and records, maintain accounts, make Distributions, and take other actions consistent with the Plan and the implementation hereof;
- (c) Subject to the applicable provisions of the Plan, to collect and liquidate all Assets of the Liquidation Trust, including Causes of Action, pursuant to the

Plan and to administer the winding-up of the affairs of post-Confirmation Debtor's Estate;

- (d) To incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Assets of the Liquidation Trust to Cash;
- (e) To object to, compromise or settle any Claims and enter into any agreement or execute any document required by or consistent with the Plan relating to any Claims, and/or to seek Court approval for any Claims settlements made;
- (f) To make decisions, without further Court approval, regarding the retention or engagement of Professionals, employees, and consultants for the Liquidation Trust and to pay the fees and charges incurred by the Liquidation Trust on or after the Effective Date for fees and other expenses of Professionals, disbursements, expenses, or related support services relating to the winding down of the post-Confirmation Debtor's Estate and implementation of the Plan;
- (g) To file tax returns on behalf of the Debtors and the Liquidation Trust as appropriate;
- (h) To pursue any Causes of Action or other Claims of the Debtors, the post-Confirmation Debtor, or the Liquidation Trust not otherwise disposed of pursuant to the Plan;
- (i) To assert any and all of the Debtors' rights under the Sale Agreement and Sale Order;
- (j) To invest Assets in accordance with the provisions set forth in the Plan Trust Agreement;
- (k) Except as otherwise provided herein, to enter into any agreement or execute any document required by or consistent with the Plan and perform all of the Debtors' obligations thereunder;
- (l) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of its choice, any Assets, if the Liquidation Trustee concludes that such assets are of no reasonable benefit to the Liquidation Trust;
- (m) To implement and/or enforce all provisions of the Plan;
- (n) To take all other actions not inconsistent with the provisions of the Plan which the Liquidation Trustee deems reasonably necessary or desirable with respect to administering the Plan; and



- (o) To take all other actions necessary to wind up of the affairs of the Debtors and post-Confirmation Debtor, including, but not limited to, causing the dissolution of the Debtors and closing the Cases.

### **Section 6.3 Distributions by the Liquidation Trust.**

The Liquidation Trustee shall make all Distributions under the Plan and may utilize the assistance of any outside parties and Professionals to make Distributions under this Plan to the extent necessary or desirable to do so. The Liquidation Trustee shall provide notice to the Plan Advisory Committee of all Distributions made pursuant to the Plan and the timing of such Distributions. The Liquidation Trustee shall be exculpated from liability for any errors or omissions made with respect to Distributions under this Plan, including any errors arising from the Debtors' Distribution Schedules, except for liability for any errors or omissions arising from his or her own gross negligence or willful misconduct.

### **Section 6.4 Withholding Taxes.**

The Liquidation Trustee shall be entitled, but shall have no obligation, to deduct any federal, state, or local withholding taxes from any Distribution made, as reasonably appropriate. All Persons holding Allowed Claims shall be required to provide any and all information reasonably requested to affect the withholding of such taxes, including, without limitation, delivering to the Liquidation Trustee a properly executed Form W-9 or equivalent, and the Liquidation Trustee may withhold any Distribution absent the provision of such information or further Order of the Court. The Liquidation Trustee shall provide two notices to each Claimant of its obligation to submit an IRS Form W-9 or equivalent to the Liquidation Trust. If the Claimant does not provide a Form W-9 or equivalent to the Liquidation Trustee within ninety (90) days after the second notice is sent to the Claimant, then such Claimant's Claim(s) shall be deemed forfeited and expunged and the Holder of such Claim(s) shall be removed from the Distribution Schedule and shall receive no further Distributions under this Plan.

### **Section 6.5 Unclaimed Distributions.**

Unclaimed Distributions (including Distributions made by checks which fail to be negotiated) shall be retained by the Liquidation Trust and held for the Beneficiaries entitled thereto for a period of ninety (90) days after the Distribution Date. Any Distribution remaining unclaimed ninety (90) days after the respective Distribution Date shall be cancelled (by a stop payment order or otherwise) and the Claim(s) relating to such Distributions(s) shall be deemed forfeited and expunged and the Holder of such Claim shall be removed from the Distribution Schedule and shall receive no further Distributions under this Plan. Any unclaimed Distributions shall be utilized to satisfy Class 4 General Unsecured Claims or donated to charity as deemed appropriate by Liquidation Trustee in consultation with the Plan Advisory Committee.

### **Section 6.6 Mailing of Distributions.**

All Distributions shall be made to the Holders of Claims utilizing the information listed on their respective proofs of Claim Filed with the Bankruptcy Court or, if no proof of Claim was Filed, at the address listed on the Schedules. The Liquidation Trust shall take only reasonable steps to ascertain the most current address of the Holder of any Claims whose Distribution check was returned as undeliverable.

### **Section 6.7 Interest on Claims.**

Post-petition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a Final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. To the extent that any Allowed Claim entitled to a Distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution shall, to the extent permitted by applicable

law, be allocated for federal income tax purposes to the principal amount of the Allowed Claim first and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to the portion of such Allowed Claim representing accrued but unpaid interest.

**Section 6.8 Minimum Distributions.**

No Distribution of less than \$25.00 shall be made by the Liquidation Trust to any Holder of an Allowed Claim.

**Section 6.9 Post-Effective Date Professional Services.**

The Professionals may, from time to time, provide professional services following the Effective Date. Such services shall be paid from the Liquidation Trust within ten (10) Business Days after submission of a bill to the Liquidation Trustee, provided that no objection to the payment is asserted by the Liquidation Trust or Plan Advisory Committee within such period. If an objection is asserted and remains unresolved, the Professionals may file an application for allowance with the Bankruptcy Court and such fees will be paid as may be fixed by Final Order of the Bankruptcy Court. Nothing herein shall be construed as prohibiting the Liquidation Trustee or Plan Advisory Committee from entering into consulting agreements with former employees of the Debtors to assist with carrying out the purpose of the Liquidation Trust.

**Section 6.10 Post Confirmation Reports and Fees.**

The Liquidation Trustee shall be responsible for (a) the timely Filing of all required post-confirmation quarterly reports with the United States Trustee and the Bankruptcy Court and (b) payment of all post-confirmation fees and any interest thereon charged or assessed against the Estate under 28 U.S.C. § 1930 and 31 U.S.C. § 3717 from the Assets.

**ARTICLE 7**

**Procedures for Resolving and Treating Disputed Claims**

### **Section 7.1     Objections to Claims.**

The Debtors have the right prior to the Effective Date, and the Liquidation Trustee has the right from and after the Effective Date, to object to and otherwise contest any Claims other than the PPP Proof of Claim. The Liquidation Trustee shall have the right to assert such objections within the first 270 days following the Effective Date, or during such additional period as requested for cause shown and authorized by order of the Bankruptcy Court. Any Claim for which no objection has been filed within the time fixed therefor (including any extensions of objection deadlines) shall be deemed an Allowed Claim in such amount as is set forth in a Proof of Claim timely Filed with the Bankruptcy Court, or if no proof of Claim was Filed, as listed in the Schedules, and not identified as disputed, contingent, or unliquidated. The Liquidation Trustee and the Holder of any Claim may enter into a written settlement agreement to compromise any Claim, which agreement shall become effective pursuant to the terms of the Section 7.6 of the Plan or upon entry of a Final Order approving the terms thereof, as applicable.

### **Section 7.2     Objections to Administrative Claims.**

The Liquidation Trustee shall file objections to Administrative Claims (other than Professional Fee Claims and United States Trustee fees) and serve any objections upon such Claimants by the later of (i) 180 days after the Effective Date, or (ii) such other period of limitation as may be specifically fixed by order of the Bankruptcy Court for objecting to Administrative Claims.

### **Section 7.3     Untimely Claims.**

Any Claim Filed after the applicable Bar Date, other than Claims for fees payable to the United States Trustee, shall be deemed Disallowed and expunged without any further action required by the Liquidation Trustee.

#### **Section 7.4 Reserves for Disputed Claims.**

When any Distribution is to be made to a Holder of a Disputed Claim, the Liquidation Trustee shall hold such Distribution on account of such Disputed Claims in the Disputed Claim Reserve. The amount of Available Cash withheld shall be either (a) an amount agreed upon by the Liquidation Trustee and the Holder of the Disputed Claim, or (b) the amount that would have been Distributed to the Holder of such Disputed Claim on the basis of the amount claimed in such Claimant's Proof of Claim.

#### **Section 7.5 Distributions on Disputed Claims.**

No Distributions shall be made on account of a Disputed Claim, whether the Claim is disputed in whole or in part. In accordance with Article 3 of the Plan or soon as reasonably practicable after a Disputed Claim becomes an Allowed Claim, the Liquidation Trustee shall make a Distribution on account of such Allowed Claim from the Disputed Claims Reserve. Any funds in the Disputed Claims Reserve attributable to such Disputed Claim to the extent not Allowed shall constitute Excess Reserves and shall be utilized to satisfy Class 4 General Unsecured Claims.

#### **Section 7.6 Compromise and Settlement of Claims and Retained Causes of Action.**

Pursuant to Bankruptcy Rule 9019(b), the Liquidating Trustee may settle any Disputed Claims without notice, a hearing, or Bankruptcy Court approval unless the amount in controversy for such Disputed Claim exceeds fifty thousand (\$50,000) dollars. Pursuant to Bankruptcy Rule 9019(b), the Liquidating Trustee may settle any retained Causes of Action without notice, a hearing, or Bankruptcy Court approval unless the amount in controversy for such Cause of Action unless such amount in controversy exceeds fifty thousand (\$50,000) dollars.

### **ARTICLE 8**

## **Executory Contracts**

### **Section 8.1 Rejection of Executory Contracts.**

Pursuant to section 365 of the Bankruptcy Code, all Executory Contracts that were not (i) specifically assumed, assumed, and assigned (whether pursuant to the Sale Agreement or otherwise), (ii) subject to a pending motion to assume as of the Confirmation Date, or (iii) rejected prior to the Confirmation Date shall be deemed rejected as of the Confirmation Date.

### **Section 8.2 Filing of Claims Under Rejected Contracts.**

All parties to any Executory Contract that is deemed rejected pursuant to the Plan shall File, no later than thirty (30) days following the Confirmation Date, a proof of Claim for damages, if any, alleged to arise from the rejection of such Lease or Executory Contract. Lease Rejection Damages Claims shall be afforded treatment as provided in Sections 4.3, 4.4, and 4.8 of the Plan. A copy of the Proof of Claim resulting from the rejection of any Executory Contract of lease must also be served upon the Liquidation Trustee. The failure of such Person to file and serve a Proof of Claim within the period prescribed herein shall forever bar such Person from asserting any Claim for damages arising from the rejection of such lease or Executory Contract. The filing of any such Proof of Claim shall be without prejudice to any and all rights of the Liquidation Trustee to object to the allowance thereof.

### **Section 8.3 Insurance**

To the extent any of the Debtors' insurance policies or agreements are considered executory contracts, then, notwithstanding anything contained in this Section 8.3 to the contrary, the Plan will constitute a motion to assume such insurance policies and agreements, and, subject to the occurrence of the Effective Date, the entry of the Confirmation Order will constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy

Court that each such assumption is in the best interest of the Debtors, their respective Estates and all parties in interest in the Bankruptcy Cases. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective Date, no payments are required to cure any defaults of any Debtor existing as of the Confirmation Date with respect to each such insurance policy or agreement.

## **ARTICLE 9**

### **Effect of Confirmation of the Plan**

#### **Section 9.1 Effect of Confirmation.**

The Confirmation Order (and any subsequent Final Orders) shall be binding as a final determination as to the rights of all Holders of Claims and Interests to participate in the Distributions under the Plan, regardless of whether or not (a) a Proof of Claim or interest is Filed or deemed Filed under section 501 of the Bankruptcy Code, (b) such Claim is an Allowed Claim, or such Interest is deemed an Allowed Interest, or (c) the Holder of such Claim or Interest has accepted the Plan

#### **Section 9.2 Validity of Company Actions.**

Entry of the Confirmation Order by the Bankruptcy Court shall constitute due authorization (a) required for the full validity, enforceability and effectiveness of the Plan and all transactions provided for in the Plan, notwithstanding any provisions of law which would otherwise require the approval of such transactions by the members or other constituents of the Debtors, and (b) for the Debtors' officers, directors or managers to take any and all actions and execute, deliver and file all agreements, certificates, notices and other documents necessary or appropriate to consummate the transactions provided for in this Plan.

#### **Section 9.3 No Discharge from Debts Arising Prior to Confirmation.**

The Debtors shall not receive a discharge pursuant to section 1141 of the Bankruptcy Code.

#### **Section 9.4 Injunction Against Interference with the Plan.**

On the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, all Persons who are bound by this Plan, including Holders of Claims or Interests (i) listed on the Schedules, (ii) not listed on the Schedules, (iii) listed on the Schedules as disputed, unliquidated or contingent, (iv) who filed proofs of Claim or Interest by the applicable Bar Date, or (v) who did not file proofs of Claim or Interest by the applicable Bar Date, are hereby enjoined and prevented from:

- (a) commencing or continuing any suit, action or other proceeding of any kind or nature or employing any process against the Debtors, the Estate, the Assets, the Liquidation Trust, the Liquidation Trustee or any direct or indirect successor to the Debtors, or to interfere with the consummation or implementation of this Plan, or the Distributions to be made hereunder,
- (b) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree or order against a Debtors, its Estate, the Assets, the Liquidation Trust, the Liquidation Trustee, or any direct or indirect successor in interest to a Debtors, or any assets or property of such successor,
- (c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien against the Debtors, the Estate, the Assets, the Liquidation Trust, the Liquidation Trustee, or any direct or indirect successor in interest to a Debtors, or any assets or property of such successor, other than as contemplated by the Plan,
- (d) except as provided herein, asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due the Debtors, the Estate, the Assets, the Liquidation Trust, the Liquidation Trustee or any direct or indirect successor in interest to the Debtors, or any assets or property of such successor, and
- (e) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan.

#### **Section 9.5 Exculpation.**

To the extent permitted under section 1125(e) of the Bankruptcy Code, the Exculpated Parties shall neither have nor incur any liability to any Person for any act taken or omitted, or to be taken, in connection with the Case, including the formulation, preparation, dissemination,



confirmation or approval of the Plan, any Exhibits thereto, the Disclosure Statement or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan; *provided, however*, that the foregoing provisions (a) shall not affect the liability of any Person that otherwise would result from any such act or omission to the extent that act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct and (b) shall not abrogate any applicable attorney disciplinary rules. Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Notwithstanding any other provision of the Plan, neither any Holder of a Claim or Interest, nor any other party in interest, shall have any right of action against the Exculpated Parties for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for such Persons' fraud, gross negligence or willful misconduct.

#### **Section 9.6     Release of Liens**

Except as otherwise provided in the Plan, the Plan Supplement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date and required to be satisfied pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert automatically to the applicable Debtor and its successors and assigns. Any Holder of such Secured Claim (and the applicable agents

for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be reasonably requested by the Liquidation Trustee to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

#### **Section 9.7     Releases by the Debtors**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Released Parties are deemed released and discharged by each and all of the Debtors, on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of any of the Debtors or their Estates or Beneficiaries, as applicable, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors or their Estates, Beneficiaries or any of their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in-

or-out-of-court restructuring efforts, business determinations and intercompany transactions including, without limitation, prepetition restructuring efforts and marketing of the Debtors' Assets, the Sale to MK USA, LLC, these Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Disclosure Statement, the Plan (including, for the avoidance of doubt, any Plan Supplement), or any transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the Filing of these Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation, administration and implementation of the Plan, including the Distribution of Assets under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; *provided that* any right to enforce the Plan and Confirmation Order is not so released. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Section 9.7 by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Section 9.7 is: (1) in exchange for the good and valuable consideration provided by the Released Parties, (2) a good-faith settlement and compromise of such Claims; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors or Liquidation Trust or their respective Estates asserting any claim, Cause of Action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

#### **Section 9.8 Cancellation and Release of Existing Indebtedness and Liens.**

Except as may otherwise be provided in this Plan, on the Effective Date, all credit agreements, promissory notes, mortgages, security agreements, guaranties, invoices, contracts,

agreements, and any other documents or instruments evidencing Claims against the Debtors, together with any and all Liens securing same, shall be cancelled, discharged, and released without further act or action by any Person under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors thereunder shall be deemed cancelled, discharged, and released. To the extent deemed necessary or advisable by the Litigation Trustee, any Holder of a Claim shall promptly provide the Litigation Trustee with an appropriate instrument of cancellation, discharge, or release, as the case may be, in suitable form for recording wherever necessary to evidence such cancellation, discharge, or release, including the cancellation, discharge, or release of any Lien securing such Claim.

#### **Section 9.9 Provisions As to Governmental Units**

Except to the extent that Section 9.5 of this Plan applies to the specific treatment under this Plan of the PPP Loan advanced to the Debtors, nothing in the Plan, the Confirmation Order, or other plan documents shall release or exculpate any non-debtor from any liability to any Governmental Unit arising out of or relating to the PPP Loan or the Forgiveness Application. Nothing in the Plan, the Confirmation Order, or other plan documents enjoins any Governmental Unit from bringing any claim, suit, action, or other proceeding against any non-debtor for any liability arising out of or relating to the PPP Loan or the Forgiveness Application.

Nothing in the Plan, the Confirmation Order, or other plan documents shall be construed as determining, construing, or limiting any right, obligation, or term of any (i) loan, (ii) loan documents, or (iii) law governing any loan, provided under the Cares Act or the PPP, other than the specific treatment under this Plan of the PPP Loan advanced to the Debtors. Nothing in this Plan shall be construed as vesting in this Court any authority to make a determination about whether all or any part of the PPP Loan is subject to forgiveness.

In accordance with 11 U.S.C. § 1141, nothing in the Plan or Confirmation Order provides a discharge to the Debtors or the Liquidating Trust from any liability to a Governmental Unit arising out of or relating to the PPP Loan or the Forgiveness Application.

## **ARTICLE 10**

### **Conditions Precedent to Effective Date**

#### **Section 10.1 Conditions Precedent to the Effective Date.**

The Effective Date shall not occur, and the Plan shall not be consummated, unless and until the following conditions have been satisfied or duly waived pursuant to this Section: (i) the Bankruptcy Court shall have approved this Plan and entered the Confirmation Order in form and substance satisfactory to the Debtors and the Committee approving and authorizing the Debtors to take all actions necessary or appropriate to implement the Plan; (ii) no stay of the Confirmation Order shall then be in effect; (iii) the Plan and all Exhibits to the Plan shall not have been materially amended, altered or modified from the Plan as confirmed by the Confirmation Order, unless such material amendment, alteration or modification has been made in accordance with Section 1127 of the Bankruptcy Code, (iv) all other documents, necessary for the implementation of the Plan shall be in form and substance satisfactory to the Debtors and the Committee shall have been duly executed and delivered to the by the parties thereto; and (v) the Plan Supplement, if required, shall have been filed with the Bankruptcy Court.

#### **Section 10.2 Effect of Non-Occurrence of Conditions to the Effective Date.**

If any of the conditions to the Effective Date are not satisfied or otherwise waived by the Debtors in consultation with the Committee, then upon motion of the Debtors and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the Filing of such motion, the

Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section, the Plan shall be null and void in all respects.

**Section 10.3 Notice of Effective Date.**

On the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall file with the Bankruptcy Court the Notice of Effective Date, which shall constitute appropriate and adequate notice that this Plan has become effective. A courtesy copy of the Notice of Effective Date shall be sent by first class mail, postage prepaid (or at the Debtors' option, by courier, through the ECF noticing system or by electronic mail) to those Persons who have filed with the Bankruptcy Court requests for notices pursuant to Bankruptcy Rule 2002.

**ARTICLE 11**

**MISCELLANEOUS PROVISIONS**

**Section 11.1 Entire Agreement.**

This Plan and the Confirmation Order, including any Exhibits to this Plan, sets forth the entire agreement and understanding among the parties hereto relating to the subject matter hereof and supersedes all prior discussions and documents. No party shall be bound by any terms, conditions, definitions, warrants, understandings, or representations with respect to the Plan other than as are expressly provided for herein. Should any provision in the Plan be determined to be unenforceable by the Bankruptcy Court or other Court of competent jurisdiction, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan. The duties, rights and obligations of any Person or entity named or referred to in the Plan shall be binding upon, inure to the benefit of and shall be the responsibility of, the successors and assigns of such person or entity.

### **Section 11.2 Satisfaction of Claims and Interests.**

Upon Confirmation of the Plan, the Debtors and the Estates shall be conclusively determined to have no liability to the Holder of any Claim or Interest that is not deemed Allowed, and liability shall only be to the extent provided for in the Plan with respect to the Holder of any Allowed Claim or Interest. This provision shall not be construed as a release of any Claim a Claimant may have against a third party on account of its Claim.

### **Section 11.3 Headings.**

The headings of the Articles, paragraphs and sections of this Plan are inserted for convenience only and shall not affect the interpretation hereof. This Plan, including any Exhibits and other attachments hereto, shall constitute the entire Plan, subject to amendment or modification solely as provided herein. Article 1 of this Plan is and shall be regarded as an integral, substantive, and operative part of the Plan.

### **Section 11.4 Notice.**

Any notice described in or required by the terms of this Plan shall be deemed to have been properly given: (a) if mailed, five (5) days after the date of mailing; (b) if sent via facsimile, on the date of the transmission confirmation; or (c) if sent by overnight mail carrier service, on the date of receipt, to:

The Debtors:

#### **Mintz & Gold LLP**

600 Third Avenue, 25th Floor  
New York, New York 10016  
Telephone: (212) 696-4848  
Facsimile: (212) 696-1231

Andrew R. Gottesman, Esq.  
Gabriel Altman, Esq.  
CeCe M. Cole, Esq.

The Creditors' Committee:

**Hahn & Hessen LLP**

488 Madison Avenue, 15th Floor  
New York, New York 10022  
Telephone: (212) 478-7200  
Facsimile: (212) 478-7400

Mark S. Indelicato, Esq.  
Mark T. Power, Esq.  
Jacob T. Schwartz, Esq.

The Liquidation Trust:

[REDACTED]

or to such other address as the recipient may give written notice in accordance with the provisions of this section of the Plan.

**Section 11.5 Revocation.**

The Debtors reserves the right, in consultation with the Creditors' Committee, to revoke and withdraw this Plan at any time prior to the Confirmation Date. If the Plan is revoked or withdrawn, it shall be deemed null and void, and in such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtors or any other entity, or to prejudice in any manner, the rights of the Debtors or any entity in any further proceeding involving the Debtors.

**Section 11.6 Substantial Consummation.**

The Plan will be deemed substantially consummated, as such term is used in § 1101(2) of the Bankruptcy Code, upon the commencement of Distributions to all Classes of Claims under this Plan and to Holders of Allowed Administrative Claims. Following such substantial consummation, any appeal, rehearing or other post-Confirmation motion of any nature with respect to this Plan or



the Confirmation Order except as specifically provided herein or therein shall be rendered moot and no longer justiciable.

**Section 11.7 Reservation of Rights.**

In the event that this Plan is not confirmed or that the Effective Date does not occur, the rights of all parties in interest in the Cases shall be reserved in full.

**Section 11.8 Authorizations.**

The Debtors are authorized, empowered, and directed to execute such documents and take any and all other action as may be necessary or required in order to effectuate the terms of this Plan.

**Section 11.9 Transaction on Business Days.**

If the Effective Date or any other date on which a transaction or Distribution may occur hereunder shall fall on a day that is not a Business Day, the transaction or Distribution shall instead take place on the next Business Day.

**ARTICLE 12**

**RETENTION OF JURISDICTION**

**Section 12.1 Retention of Jurisdiction.**

The Bankruptcy Court shall retain jurisdiction of this proceeding under the provisions of the Bankruptcy Code, including, without limitation, section 1142(b) thereof and of the Bankruptcy Rules, to ensure that the intent and the purpose of the Plan is carried out and given effect. Without limitation by reason of specification, the Bankruptcy Court shall retain jurisdiction for the following purposes:

- (a) To consider any modification of the Plan pursuant to § 1127 of the Bankruptcy Code and/or any modification of the Plan after substantial consummation thereof;
- (b) To hear and to determine:

- (i) any and all controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of the Plan and all other contracts, instruments, releases and other agreements or documents adopted in connection with the Sale Agreement, the Plan, or the Liquidation Trust Agreement;
- (ii) any and all controversies, suits, and disputes, if any, as may arise between or among the holders of any Claim or Interest and the Debtors or the Liquidation Trustee, including objections to Claims;
- (iii) any and all Claims and Causes of Action which may exist on behalf of the Debtors;
- (iv) any and all pending applications, motions, adversary proceedings and litigated matters;
- (v) any matters relating to the assumption, assumption and assignment or rejection of any Executory Contract;
- (vi) any issues related to any matters adjudicated in the Chapter 11 Cases;
- (vii) any applications involving the Debtors that may be pending on the Effective Date or instituted by the Liquidation Trust after the Effective Date; provided that the Liquidation Trust shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- (viii) enforce the releases, exculpations and injunctions contained in the Plan;
- (ix) resolve any cases, controversies, suits, or disputes with respect to any release, exculpation, or other provisions contained in the Plan and enter such orders or take such other actions as may be necessary or appropriate to implement or enforce all such releases, injunctions, and other provisions; and
- (x) enter an order closing this Chapter 11 case.

Dated: New York, New York  
July 20, 2021

**MINTZ & GOLD LLP**

By: /s/ Andrew R. Gottesman  
Andrew R. Gottesman, Esq.

600 Third Avenue, 25th Floor  
New York, New York 10016  
Telephone: (212) 696-4848  
Facsimile: (212) 696-1231  
gottesman@mintzandgold.com

*Counsel for Cosmoledo, LLC,  
and its affiliated Debtors*

**COSMOLEDO, LLC**

By: /s/ Jose Alcalay  
Jose Alcalay, CEO

**BREADROLL, LLC  
NYC 1294 THIRD AVENUE BAKERY, LLC  
1377 SIXTH AVENUE BAKERY, LLC  
1400 BROADWAY BAKERY, LLC  
1535 THIRD AVENUE BAKERY, LLC  
178 BRUCKNER COMMISSARY, LLC  
1800 BROADWAY BAKERY, LLC  
210 JORALEMON BAKERY, LLC  
2161 BROADWAY BAKERY, LLC  
300 MADISON AVENUE BAKERY, LLC,  
339 SEVENTH AVENUE BAKERY, LLC  
370 LEXINGTON AVENUE BAKERY, LLC  
400 FIFTH AVENUE BAKERY, LLC  
55 HUDSON YARDS BAKERY, LLC  
575 LEXINGTON AVENUE BAKERY, LLC  
685 THIRD AVENUE BAKERY, LLC  
688 BRONX COMMISSARY, LLC  
787 SEVENTH AVENUE BAKERY, LLC  
8 WEST BAKERY LLC  
921 BROADWAY BAKERY, LLC  
95 BROAD COMMISSARY, LLC**

By: Cosmoledo, LLC  
sole member of each of the foregoing

by Jose Alcalay  
Jose Alcalay, CEO

**EXHIBIT A**

**Plan Trust Agreement**

**[TO BE PROVIDED]**



**Exhibit B**

Liquidation Analysis

Cosmoledo, LLC, et al.		Hypothetical Chapter 7 Liquidation Analysis		Chapter 11 Plan	
Description	Balance As of May 31, 2021	High	Low	High	Low
Current Assets:					
Cash and cash equivalents	\$ 8,824,527.63	\$ 8,824,527.63	\$ 8,824,527.63	\$ 8,824,527.63	\$ 8,824,527.63
Total Current Assets	8,824,527.63	8,824,527.63	8,824,527.63	8,824,527.63	8,824,527.63
Deposits (Potential Offsets to Estimated Unsecured Claims)	67,495.68	-	-	-	-
Total Other Assets	67,495.68	-	-	-	-
Assets Available for Distribution	\$ 8,892,023.31	\$ 8,824,527.63	\$ 8,824,527.63	\$ 8,824,527.63	\$ 8,824,527.63
Estimated Liquidation and Wind Down Costs					
Chapter 7 professional and admin expenses		\$ (250,000)	\$ (250,000)	\$ -	\$ -
SBP PPP Loan Dispute Expenses		(350,000)	(350,000)	-	-
Chapter 11 plan administration expenses		-	-	(250,000)	(250,000)
Chapter 11 professional and administrative fees		(1,410,146)	(1,410,146)	(1,410,146)	(1,410,146)
Available to Administrative Claims		6,814,381	6,814,381	7,164,381	7,164,381
Priority Tax Claims		(79,488)	(79,488)	(79,488)	(79,488)
SBA PPP Loan (1)		-	(6,688,756)	-	-
Landlord Admin Claims		(728,903)	(728,903)	(728,903)	(728,903)
Available to General Unsecured Creditors		6,005,991	(682,765)	6,355,991	6,355,991
Available to General Unsecured Creditors		\$ 6,005,991	\$ -	\$ 6,355,991	\$ 6,355,991
Estimated Unsecured Claims (2)		\$26,799,768	\$20,111,012		
Recovery %		22.4%	0.0%		
			Cash Available to Class 3	3,258,398	3,258,398
			Class 3	10,658,119	12,308,567
			Recovery %	30.6%	26.5%
			Cash Available to Class 4	3,097,593	3,097,593
			Class 4	10,314,510	13,243,477
			Recovery %	30.0%	23.4%
				20,972,629	25,552,044
(1) Assumes High - the SBA Claim is treated as a general unsecured claim Low - the SBA Claim is paid in full before general unsecured claims					
(2) Assumes settlement in principal, subject to court approval, of the Leible Class Action Litigation claim. In the event of a Hypothetical Chapter 7 Liquidation that settlement may not occur.					