

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

Chapter 11

In re:

Case No. 20-12117 (MEW)

COSMOLEDO, LLC, *et al.*¹

Jointly Administered

Debtors.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER PURSUANT TO
SECTIONS 1129 OF THE BANKRUPTCY CODE AND RULE 3020 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE CONFIRMING
DEBTORS' CHAPTER 11 PLAN OF LIQUIDATION**

THIS MATTER having come before the Court for hearing on August 31, 2021 at 10:00 a.m. Eastern Time (the “Confirmation Hearing”) to consider confirmation of the *Debtors’ Plan of Liquidation* [ECF No. 324] (as amended by the *Notice of Filing Plan Supplement* [ECF No. 373] and the *Notice of Filing of Amendment to Plan Supplement* [ECF No. 399] and by this Order, the “Plan”),² filed by Cosmoledo, LLC (“Cosmoledo”), and its affiliated debtors and debtors in possession in the above-captioned cases (collectively the “Debtors”), in the above-captioned chapter 11 cases (the “Chapter 11 Cases”); and the Court having considered the terms of Plan, the *Amended Disclosure Statement to Accompany Plan of Liquidation Pursuant to Section 1125 of the Bankruptcy Code* [ECF No. 355] (the “Disclosure Statement”) approved by this Court for solicitation on July 21, 2021 [ECF. No. 361] (the “Disclosure Statement Approval Order”), the declarations introduced into evidence at the Confirmation

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s 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).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

Hearing, those of John Sordillo, the Debtors' financial advisor (the "Sordillo Declaration") [ECF No. 398] and the Debtors' Noticing Agent and Balloting Agent [ECF No. 393, Ex. A], the *Debtors' Memorandum of Law in Support of an Order Confirming Debtors' Chapter 11 Plan of Liquidation* [ECF No. 397] (as amended by the *Debtors' Amended Memorandum of law in Support of Confirmation* [ECF No. 400] the "Confirmation Brief"), the Plan Supplement [ECF No. 373] and the Amended Plan Supplement [ECF No. 399] (as may be further amended, the "Plan Supplement"), the statements and representations of counsel, the modifications, amendments, and additions to the Plan announced on the record by counsel for the Debtors, and the entire record of these Chapter 11 Cases, the Court makes the following findings of fact and conclusions of law:

Findings of Fact and Conclusions of Law

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. The Court's oral findings of fact and conclusions of law announced on the record at the Confirmation Hearing are incorporated by reference herein.

B. On September 10, 2021, the Debtors commenced these Chapter 11 Cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors were authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed pursuant to section 1104 of the Bankruptcy Code.

C. On September 18, 2020, the United States Trustee (the "UST") gave notice of the appointment of the Committee pursuant to 11 U.S.C. § 1102 [ECF No. 55]. The Committee's appointment was amended on September 21, 2020. [ECF No. 58].

D. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and the Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

E. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk or Court and/or its duly-appointed agent, including, without limitation, all pleadings and other documents filed, orders entered, and the evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases, including, but not limited to, the hearing to consider the adequacy of the Disclosure Statement.

F. The Debtors have satisfied the burden of proving the elements of section 1129(a) of the Bankruptcy Code by a preponderance of the evidence.

G. The Disclosure Statement, Plan, Disclosure Statement Approval Order, the ballots transmitted to voting claimants and non-voting impaired claimants (the "Ballots"), the non-voting notices transmitted to unimpaired claimants (the "Non-Voting Notices") and notice of the Confirmation Hearing (the "Confirmation Hearing Notice") have all been transmitted and served in compliance with the Disclosure Statement Approval Order, the Bankruptcy Rules, and the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), and such transmittal and service were adequate and sufficient, and no other or further notice is or shall be required.

H. Votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, Bankruptcy Rules, and the Disclosure Statement Approval Order.

I. In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtors as proponents of the Plan.

J. In addition to Administrative Claims, Priority Tax Claims, and Professional Fee Claims, which are not designated, the Plan designates seven (7) Classes of Claims and Interests. The Claims or Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims or Interests created under the Plan, and such classification does not unfairly discriminate between holders of Claims and Interests. Accordingly, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

K. Article 4 of the Plan designates Class 1 (Secured Claims) and Class 2 (Priority Claims) as unimpaired and specifies the treatment of Claims in such Classes, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

L. Article 4 of the Plan sets forth the treatment of Class 3 (PPP Eligible Claims), Class 4 (General Unsecured Claims), Class 5 (Intercompany Claims), Class 6 (Intercompany Interests), Class 7 (Interests in Cosmoledo LLC) each of which constitutes an impaired class under the Plan and specifies the treatment of Claims and Interests in such Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

M. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

N. The Plan provides adequate and proper means for the Plan's implementation, through the appointment of a Liquidation Trustee, the creation of a Liquidation Trust, for the purpose of liquidating and distributing Available Cash and other property held by the Liquidation Trust in accordance with the Plan and Liquidation Trust Agreement, and the transfer of certain assets and other property of the Debtors (the "Trust Assets"), thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

O. The selection and appointment of the Liquidation Trustee are consistent with the interests of creditors, equity security holders, and public policy, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

P. As contemplated by section 1123(b)(1) of the Bankruptcy Code, Claims and Interests in Class 3 (PPP Eligible Claims), Class 4 (General Unsecured Claims), Class 5 (Intercompany Claims), Class 6 (Intercompany Interests), Class 7 (Interests in Cosmoledo LLC) are impaired and are receiving appropriate treatment under the Plan. Claims in Class 1 (Secured Claims) and Class 2 (Priority Claims) are not impaired by the Plan.

Q. Section 8.1 of the Plan, which provides for the rejection of each Executory Contract and Unexpired Lease that, on the Effective Date, has not been (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 pursuant to sections 365, satisfies the requirements of section 1123(b) of the Bankruptcy Code.

R. Section 5.9 of the Plan, which provides for the retention and enforcement by the Liquidation Trustee of certain Causes of Action, complies with applicable bankruptcy law and accordingly, with the provisions of section 1123(b)(3) of the Bankruptcy Code.

S. Article 4 of the Plan complies with section 1123(b)(5) of the Bankruptcy Code as it modifies the rights of holders of Impaired Claims and Interests in Classes 3 through 7 and leaves unaffected the rights of holders of Unimpaired Claims in Classes 1 and 2.

T. As modified herein, the provisions of the Plan are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy

Code. The failure to specifically address a provision of the Bankruptcy Code in this Confirmation Order shall not diminish or impair the effectiveness of this Confirmation Order.

U. The Debtors, as proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

- i. The Debtors are proper debtors under section 109 of the Bankruptcy Code;
- ii. The Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court; and
- iii. The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Approval Order in transmitting the Disclosure Statement, the Plan, the Ballots, and all related documents and notices and in soliciting and tabulating votes on the Plan.

V. In accordance with section 1129(a)(3) of the Bankruptcy Code, the Debtors have proposed the Plan in good faith and not by any means forbidden by law. The Debtors' good faith is evidenced from the facts and record of these Chapter 11 Cases, the Disclosure Statement and hearing thereon, the Confirmation Brief, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest business purpose of maximizing the value of the Debtors' estates by eliminating over \$70 million in secured debt while market testing the Debtors' assets to achieve the best possible price in a sale followed by effectuating an orderly liquidation of the Debtors' estates. The Plan incorporates an agreement with the Committee, the Small Business Administration (the "SBA"), and Santander Bank, N.A. ("Santander" and, together with the SBA, the "Supporting Parties") that avoids litigation over the proceeds of the PPP Loan thereby allowing Holders of Claims to receive greater and more expeditious distributions under the Plan than they would likely receive through a chapter 7

liquidation. Further, as modified herein, the Plan's classification, indemnification, exculpation, release, and injunction provisions, including, without limitation, are proposed in good faith and are consistent with sections 1123(b)(3)(A), 1123(b)(6), 1129, and 1142 of the Bankruptcy Code.

W. Any payment made or to be made by any of the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases has been approved by, or is subject to the approval of, the Court as reasonable, satisfying section 1129(a)(4) of the Bankruptcy Code.

X. The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The Debtors disclosed the identity and affiliations of the person proposed to serve as a successor of the Debtors under the Plan, as William Henrich as the Liquidation Trustee. The appointment of the Liquidation Trustee is consistent with the interests of creditors and equity security holders and with public policy. No insider will be employed or retained by the Debtors or the Liquidation Trustee after entry of this Order, provided that the Liquidation Trustee may, in his discretion, retain José Alcalay, Trevor Buchanan, Kimberly Colon-Miller and/or Ron Ng to assist with administering the Liquidation Trust.

Y. The Plan does not provide for any changes in any regulated rates, and therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases.

Z. The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The Plan, the Disclosure Statement, the Sordillo Declaration, and the other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence, and (iii) establish that each holder of an impaired Claim or Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date,

that is not less than the amount such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

AA. As evidenced by the Voting Certification filed by the Debtors on August 23, 2021 [ECF No. 393]:

- i. Classes 1 (Secured Claims) and 2 (Priority Claims) are unimpaired by the Plan, and therefore, pursuant to 11 U.S.C. § 1126(f), are conclusively presumed to have accepted the Plan;
- ii. Class 3 (PPP Eligible Claims), and Class 4 (General Unsecured Claims) are impaired and voted to accept the Plan.
- iii. Class 5 (Intercompany Claims), Class 6 (Intercompany Interests), and Class 7 (Interests in Cosmoledo LLC) are impaired and deemed to reject the Plan.

Accordingly, the Plan has been accepted in accordance with section 1126 of the Bankruptcy Code have been because the impaired Classes entitled to vote, voted to accept the Plan.

BB. As set forth below, the requirements of 11 U.S.C. § 1129(a)(9) have been met with respect to each category of Administrative and Priority Claims:

- i Administrative Claims. The Plan provides that each Holder of an Allowed Administrative Claim (exclusive of United States Trustee fees and Professional Fees), subject to the Administrative Claims Bar Date, 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: (i) 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. Accordingly, the

requirements of 11 U.S.C. § 1129(a)(9) have been satisfied with respect to Administrative Claims.

ii Priority Tax Claims. The Plan provides that Holders 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. Accordingly, the requirements of 11 U.S.C. § 1129(a)(9) have been satisfied with respect to Priority Tax Claims.

iii Priority Claims. The Plan provides that the Debtors shall pay each holder of a Priority 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.

Accordingly, the requirements of 11 U.S.C. § 1129(a)(9) have been satisfied with respect to Priority Claims.

CC. Class 3 (PPP Eligible Claims) and Class 4 (General Unsecured Claims), Class 5 (Intercompany Claims), Class 6 (Intercompany Interests), and Class 7 (Interests in Cosmoledo LLC) are Impaired under the Plan. Classes 3 and 4 voted to accept the Plan. Classes 5, 6, 7, and 8 are deemed to reject the Plan and did not vote. At least one impaired Class voted to accept the Plan, thus the requirements of 11 U.S.C. § 1129(a)(10) have been satisfied.

DD. The Plan is a plan of liquidation. The establishment of the Liquidation Trust and the vesting of the Debtors' assets therein, as governed by the Plan and Liquidation Trust Agreement, will enable the

Liquidation Trustee to liquidate the assets of the Liquidation Trust for distribution to Holders of Allowed Claims in accordance with the terms of the Plan. The confirmation of the Plan, therefore, is not likely to be followed by any further liquidation or the need for further financial reorganization of the Debtors, except to the extent proposed in the Plan. Consequently, the requirements of 11 U.S.C. § 1129(a)(11) have been satisfied.

EE. The Plan provides for payment in full of all U.S. Trustee fees payable under 28 U.S.C. § 1930(a)(6). The Debtors or the Liquidation Trustee, on behalf of the Debtors, shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6). The Liquidation Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) based upon disbursements of the Liquidation Trust for post-Effective Date periods within the time period set forth in 28 U.S.C. 1930(a)(6). Accordingly, the requirements of 11 U.S.C. § 1129(a)(12) have been satisfied.

FF. The Debtors have no obligation to provide retiree benefits. Accordingly, 11 U.S.C. § 1129(a)(13) is not applicable.

GG. The Debtors are not required by a judicial or administrative order, or by statute, to pay any domestic support obligation. Accordingly, 11 U.S.C. § 1129(a)(14) is not applicable.

HH. The Debtors are not individuals. Accordingly, 11 U.S.C. § 1129(a)(15) is not applicable.

II. The Plan does not involve the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. Accordingly, 11 U.S.C. § 1129(a)(16) is not applicable.

JJ. The Plan, as modified herein, is in compliance with all applicable requirements under Section 1129(a) of the Bankruptcy Code other than Section 1129(a)(8) of the Bankruptcy Code. Based on the Disclosure Statement, the Debtors' Confirmation Brief, the Sordillo Declaration, and the evidence

proffered, adduced, or presented by the Debtors at or prior to the Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable as to Class 5, Class 6 and Class 7, which are each impaired and deemed to have rejected the Plan under Section 1126(g) of the Bankruptcy Code. Therefore, as modified herein, the Plan meets the standards for confirmation under Section 1129(b) of the Bankruptcy Code.

KK. The Plan is the only plan filed in the Chapter 11 Cases and, therefore, section 1129(c) of the Bankruptcy Code is not applicable to the Chapter 11 Cases.

LL. Neither the avoidance of taxes nor the avoidance of Section 5 of the Securities Act of 1933 is a principal purpose of the Plan.

MM. Based on the record before the Court in these Chapter 11 Cases, the Debtors and their directors, officers, employees, members, agents, advisors, and professionals have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order in connection with all their respective activities relating to the solicitation of acceptance or rejection of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 9.5 of the Plan, as modified below.

NN. The Court has jurisdiction under sections 1334(a) and (b) of the United States Code to approve the injunctions, releases, and exculpation provisions set forth in the Plan, and as provided for herein. As modified herein, the injunctions, releases, and exculpations set forth in the Plan and implemented by this Confirmation Order are fair and reasonable and in the best interests of the Debtors and their estates, creditors, and equity holders. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the injunctions, releases, and exculpations provided for in the Plan and

this Confirmation Order and the failure to implement the injunctions, exculpations, and releases would seriously impair the Debtors' ability to confirm the Plan. Accordingly, based upon the record of the Chapter 11 Cases, the representations of the parties, and/or the evidence proffered, adduced, and/or presented at the Confirmation Hearing, the Court finds that the injunctions, exculpations, and releases set forth in the Plan, as modified herein, are appropriate and consistent with the Bankruptcy Code and applicable law.

OO. The Debtors demonstrated that substantive consolidation of the Debtors, as provided for in the Plan, is appropriate pursuant to applicable law and is in the best interests of the Debtors' estate and creditors.

PP. Section 8.1 of the Plan, governing the assumption and rejection of executory contracts and unexpired leases, satisfies the requirements of section 365(b) of the Bankruptcy Code. The Debtors have exercised reasonable business judgment in determining to reject any remaining executory contract and unexpired lease that, on the Effective Date, has not been (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. The deadline to file proofs of claim for any damages arising from the rejection of any executory contract or unexpired lease under this Plan shall be thirty (30) days from the Effective Date.

QQ. The Debtors have shown a sound business justification for the assumption of any outstanding insurance contracts. As provided under Section 8.3, any insurance policy that constitutes an executory contract shall be assumed, or assumed and assigned, as applicable, and shall vest in and be fully enforceable by the Litigation Trustee or the other authorized representative in accordance with its terms. Assumption of any insurance policy pursuant to the Plan or otherwise shall result in the full release and satisfaction of any cure amounts or defaults, whether monetary or nonmonetary, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption.

RR. The conditions precedent to the Effective Date set forth in Section 10.1 of the Plan may be waived or modified by the Debtors as provided therein, without notice or leave or order of the Court, and without any other formal action other than proceeding to consummate the Plan.

SS. All parties have had a full and fair opportunity to litigate all issues which might have been raised, and no objections to confirmation of the Plan were filed as of the deadline for doing so under the Disclosure Statement Approval Order.

TT. The Court may, and upon the Effective Date shall, retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases, including jurisdiction over the matters set forth in Article 12 of the Plan and section 1142 of the Bankruptcy Code.

UU. All of the requirements for confirmation under 11 U.S.C. § 1129 have been satisfied. Confirmation of the Plan is in the best interests of the Debtors' estates, creditors, and all other parties in interest.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. As modified hereby, the Plan, annexed hereto as **Exhibit A**, including all exhibits attached thereto or included as in the Plan Supplement, is approved and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan and Plan Supplement, as each may be modified, are incorporated herein by reference and are an integral part of the Plan and this Confirmation Order. The Debtors are authorized to implement the provisions of and consummate the Plan and Plan Supplement without any further authorization. No further solicitation or voting is required on the Plan.

2. Subject to any restrictions set forth in the Plan, the Plan and Plan Supplement may be amended, modified, or supplemented by the Debtors or the Liquidation Trustee, as applicable, in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law

without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Court may otherwise direct. After the Confirmation Date, so long as such action does not materially and adversely affect the treatment or rights of Holders of Claims or Interests hereunder or under the Plan, the Debtors or the Liquidation Trustee, as applicable, may institute proceedings before this Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or this Confirmation Order with respect to such matters as may be necessary to carry out the purposes and effects of the Plan. Subject to any restrictions in the Plan, prior to the Effective Date, the Debtors, and after the Effective Date, the Liquidation Trustee, may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Court; *provided, however*, that such technical adjustments and modifications shall be filed with the Court and shall not affect the treatment or rights of Holders of Claims or Interests as they existed hereunder or under the Plan prior to any such proposed technical adjustments or modifications.

3. Any formal or informal objections pertaining to confirmation of the Plan that have not been withdrawn, waived, or settled, and all reservations of rights, are overruled on the merits.

4. The Plan shall be binding on the Debtors, any entity acquiring or receiving property or a distribution under the Plan, any Holder of a Claim against or Interest in the Debtors, including all Governmental Units, whether or not the Claim or Interest of such Holder is impaired under the Plan and whether or not the Holder of such Claim or Interest has accepted the Plan.

5. Notice of the Confirmation Hearing complied with the terms of the Disclosure Statement Approval Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

6. The solicitation of the votes on the Plan complied with the solicitation procedures in

the Disclosure Statement Approval Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

7. The classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by this Confirmation Order and by the terms of the Plan.

8. The entry of this Confirmation Order constitutes this Court's approval of the treatment of all Allowed Claims and Interests, as modified hereby, as well as a finding by this Court that such treatment is in the best interests of the Debtors, their estates, and Holders of Claims and Interests, and is fair, equitable, and reasonable *provided however, that the treatment set forth for Allowed Claims in Sections 4.1-4.7 of the Plan is hereby modified such that the provisions of the Plan stating Distributions are made in full, complete, or final satisfaction, settlement, and/or release of the underlying obligations shall not be applicable except that payment in full of an unimpaired claim shall constitute the full satisfaction of that claim.*

9. The formation, rights, powers, duties, structure, obligations and other matters pertaining to the Liquidation Trust shall be governed by the Liquidation Trust Agreement, the Plan, and this Confirmation Order. The Liquidation Trust Agreement attached hereto as Exhibit A to the Plan is approved, subject to any amendments permitted under the Plan, Liquidation Trust Agreement, and this Order.

10. William Henrich is hereby appointed as the Liquidation Trustee. The Liquidation Trustee is authorized and empowered, without further approval of this Court or any other party, to take such actions and to perform such acts as may be necessary, desirable, or appropriate to administer the Liquidation Trust in accordance with the Liquidation Trust Agreement and Plan and to execute and deliver all agreements, documents, instruments, and certificates relating thereto. The

Liquidation Trustee and/or the Liquidation Trust, as applicable, may employ and compensate, without further order of the Bankruptcy Court, professionals (including professionals previously retained by the Debtors or the Committee).

11. Pursuant to Section 6.2 of the Plan, the Liquidation Trustee shall be entitled to object to Claims or Interests. The deadline for the Liquidation Trustee to file objections shall be one (1) year following the Effective Date, or such other later date as ordered by the Court upon application of the Liquidation Trustee.

12. Notwithstanding anything to the contrary in Section 6.5 of the Plan, or in the Liquidation Trust Agreement, the Liquidation Trustee shall make reasonable efforts to locate Holders of Allowed Claims entitled to any Unclaimed Distributions and make such Distribution during the ninety (90) days following any Distribution Date.

13. On the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Trust Assets shall be transferred (and deemed transferred) by the Debtors to the Liquidation Trust free and clear of all Claims, Liens, charges, encumbrances, rights, and interests, except as explicitly set forth in the Plan and Liquidation Trust Agreement, without the need for any entity to take any further action or obtain any approval. Thereupon, the Debtors shall have no interest in the Trust Assets or the Liquidation Trust. On the Effective Date, the Liquidation Trust shall be authorized as the representative of the Debtors' estate to investigate, sue, settle, and otherwise administer the Liquidation Trust in accordance with the Liquidation Trust Agreement, the Plan, and this Order. Pursuant to the Plan, the Liquidation Trust shall have authority under Bankruptcy Rule 2004 to issue subpoenas for documents and testimony in connection with the Trust Assets. Nothing provided for in this paragraph shall affect or modify the treatment of Secured Claims set forth in Section 4.1 of the Plan.

14. The transfer of the Trust Assets shall be exempt from any stamp, real estate, transfer, reporting, sales, use or other similar tax.

15. In connection with all Causes of Action, any applicable privilege or immunity of the Debtors, including, but not limited to, any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral), shall vest in the Liquidation Trust and may be asserted or waived by the Liquidation Trustee in his sole discretion. No action taken by the Debtors in connection with establishing the Liquidation Trust shall be (or shall be deemed to be) a waiver of any privilege or immunity of the Debtors, including any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). Notwithstanding the Debtors providing any privileged information to the Liquidation Trustee, the Liquidation Trust, or any party or person associated with or retained by the Liquidation Trust, such privileged information shall remain privileged unless waived by the Liquidation Trustee.

16. As of the Effective Date, all executory contracts and unexpired leases to which the Debtors are a party and which have not expired by their own terms on or prior to the Confirmation Date, shall be deemed automatically rejected, except for the executory contracts and unexpired leases (a) previously assumed by the Debtors by Final Order of the Bankruptcy Court or (b) otherwise assumed pursuant to the Plan. This Confirmation Order constitutes an order of the Bankruptcy Court approving such rejections pursuant to sections 365 and 1123 of the Bankruptcy Code. The deadline to file proofs of claim for any damages arising from the rejection of any executory contract or unexpired lease under this Plan shall be thirty (30) days from the Effective Date.

17. As to any Governmental Unit, except to the extent that Sections 5.11 or 9.5 of the Plan applies to the specific treatment of the PPP Loan, 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 the Plan shall be construed as vesting this Court with any authority to make a determination about whether all or any part of the PPP Loan is subject to forgiveness. 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. Moreover, nothing in the Confirmation Order or the Plan shall release or exculpate any non-debtor, including any Released Parties and/or Exculpated Parties, from any liability to any domestic Governmental Unit, including but not limited to any liabilities arising under the Internal Revenue Code, the environmental laws, or the criminal laws against the Released Parties and/or Exculpated Parties, nor shall anything in this Confirmation Order or the Plan enjoin any domestic Governmental Unit from bringing any claim, suit, action or other proceeding against any non-debtor for any liability to any domestic Governmental Unit; provided however, that this paragraph shall not diminish the scope of any exculpation to which any party, including the Exculpated Parties, is entitled under section 1125(e) of the Bankruptcy Code.

18. Nothing contained in the Plan or Confirmation Order shall be deemed to determine the tax liability of any person or entity, including but not limited to the Debtors and the Liquidation

Trust, nor shall the Plan or Confirmation Order be deemed to have determined the federal tax treatment of any item, distribution, or entity, including the federal tax consequences of this Plan, nor shall any language in the Plan or Confirmation Order be deemed to expressly expand or diminish the jurisdiction of the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment under the Bankruptcy Code and 28 U.S.C. §§157, 1334.

19. Section 9.4 Injunction Against Interference With the Plan is hereby modified to state as follows:

The assets of the Debtors and of the Liquidation Trust shall be used for the satisfaction of expense obligations and the payment of Claims only in the manner set forth in this Plan and shall not be available for any other purpose. All Entities who have held, hold, or may hold Claims or Interests based upon any act, omission, transaction, or other activity of any kind or nature related to the Debtors, the Liquidation Trust, or the Debtors' chapter 11 cases that occurred prior to the Effective Date, other than as expressly provided in the Plan or the Confirmation Order, shall be precluded and permanently enjoined on and after the Effective Date from interfering with the use and distribution of the Debtors' assets in the manner contemplated by the Plan.

In addition, as of the Effective Date and subject to the occurrence of the Effective Date, except as otherwise specifically provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim that is subject to the releases and exculpations set forth in Sections 9.5 and 9.7 of the Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims, except for the receipt of the payments or distributions that are contemplated by the Plan.

20. The release, injunction and exculpation provisions contained in the Plan are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and their chapter 11 estates, and such provisions are approved by this Court as appropriate pursuant to applicable law and shall be effective and binding on all persons and entities. The release, injunctions and exculpation provisions set forth in the Plan: (a) are within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), (b), and (d); (b) are an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (c) are an integral and non-severable element of the

settlements and transactions incorporated into the Plan; (d) are under the unique circumstances of the Chapter 11 Cases, appropriate, fair, equitable, reasonable, supported by adequate consideration, and in the best interests of, the Debtors, their Estates, and the Holders of Claims; (e) are consistent with the Bankruptcy Code, including sections 105, 1123, and 1129 of the Bankruptcy Code, and other applicable law, as well as the prevailing standard for such releases, exculpations, and injunctions in the Second Circuit and this District; and (f) are expressly incorporated into this Confirmation Order.

21. Upon the Effective Date and without further order of the Court, except as expressly provided herein or in the Plan, (i) all assets and liabilities of the Debtors (with the exception of Debtor entity 688 Bronx Commissary LLC) will be deemed to be substantively consolidated and merged into the single consolidated Estate of Debtor Cosmoledo LLC, (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 substantively consolidated 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 of the Debtors of the obligations of any other Debtors 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.

22. Upon this Order becoming a Final Order, the Chapter 11 Case of 668 Bronx

Commissary LLC shall be dismissed, and any residual rights or equity interests held by any or the Debtors in that entity shall be deemed abandoned.

23. The limited substantive consolidation of the Debtors' estates approved herein shall not affect: (i) the legal and corporate structures of the Debtors, (ii) the vesting of their assets in the Liquidation Trust, (iii) the rights of the Debtors or the Liquidation Trustee to contest setoff or recoupment rights alleged by creditors on the grounds of mutuality under section 553 of the Bankruptcy Code or other applicable law, (iv) distributions out of any insurance policies or proceeds of such policies, or (v) Causes of Action.

24. Pursuant to Section 5.9 of the Plan, any and all Causes of Action other than Causes of Action against an entity that are explicitly and specifically waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Court order are reserved for and by the Liquidation Trustee.

25. Except as otherwise provided herein or in the Plan and as set forth in Article 3.3 of the Plan, all requests for payment of Administrative Claim must be filed with the Bankruptcy Court and served on the Liquidation Trustee, his counsel, and United States Trustee by the Administrative Claims Bar Date, which shall be forty-five (45) days after the Effective Date of the Plan. Holders of Administrative Claims that are required to, but do not, file and request payment of such Administrative Claim(s) by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claim against the Debtors, the Liquidation Trust, or their property and such Administrative Claims shall be deemed disallowed in full as of the Effective Date.

26. Pursuant to Section 3.5 of the Plan, on or prior to the Professional Fees Bar Date, each Professional shall file with the Court its final fee application seeking final approval of all fees

and expenses from the Petition Date through the Effective Date, except that the UST shall not be required to file its claims by the Professional Fees Bar Date. Notwithstanding anything to the contrary in Section 3.4 of the Plan, Allowed Professional Fee Claims shall be paid out of the Senior Claims Reserve.

27. Upon the Effective Date, the Creditors' Committee shall dissolve automatically, and the members thereof (solely in their capacities as Creditors' Committee members) shall be released, exculpated and discharged from all their duties relating to the Chapter 11 Cases; *provided, however*, that (A) the Creditors' Committee shall continue to exist and its Professionals shall continue to be retained and entitled to reasonable compensation, without further order of the Court, with respect to: (1) the preparation and prosecution of any final fee applications of the Creditors' Committee's Court approved Professionals and (2) all final fee applications filed with the Bankruptcy Court; and (B) the Creditors' Committee shall continue to exist and its professionals shall continue to be retained and shall continue to be entitled to reasonable compensation by the Debtors without the need for further application to the Court with respect to any appeals of this Confirmation Order (and the Court shall retain jurisdiction with respect to any disputes over the reasonableness of such fees).

28. On the Effective Date, and thereafter as may be required by law, the Debtors or the Liquidation Trustee shall pay all fees incurred pursuant to § 1930 of title 28 of the United States Code, together with interest, if any, pursuant to § 3717 of title 31 of the United States Code for each Debtor's case.

29. Notwithstanding anything to the contrary in the Plan, the Liquidation Trustee shall be required to cause the Debtors to be dissolved. Notwithstanding anything to the contrary in any operating agreement of any of the Debtors, upon the Effective Date, the board of directors of the Debtors (the "Board of Directors") shall be dissolved, and the members thereof shall be discharged

and released from their duties and obligations on behalf of the Debtors or the estates.

30. Unless otherwise extended by the Debtors, if the Effective Date does not occur on or before October 15, 2021, or if this Confirmation Order is vacated, (i) no distributions under the Plan shall be made, (ii) the Debtors and all holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, and (iii) all the Debtors' obligations with respect to the Claims and the Interests shall remain unchanged and nothing contained herein or in the Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other entity or to prejudice in any manner the rights of the Debtors or any other entity in any further proceedings involving the Debtors or otherwise.

31. As soon as practicable, but no later than ten (10) Business Days following the Effective Date, the Debtors shall file and serve notice of entry of this Confirmation Order and the Effective Date pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c) on all creditors and Interest holders, the UST, and other parties in interest, by causing notice of entry of this Confirmation Order (the "Notice of Confirmation"), to be delivered to such parties by first-class mail, postage prepaid; *provided, however*, (i) the Office of the United States Trustee; (ii) the Internal Revenue Service; (iii) New York State Department of Finance; (iv) Willkie Farr and Gallagher LLP, 787 Seventh Avenue New York, New York 10019 Attn: Paul V. Shalhoub, Esq.; counsel to the holder of Cosmoledo's equity interests; (v) Thompson Coburn Hahn & Hessen LLP, 488 Madison Avenue, New York, New York 10022, Attn: Mark Indelicato, Esq., counsel for the Committee; (vi) the United States Attorney for the Southern District of New York and (vii) all parties who have filed a notice of appearance in this case under Bankruptcy Rule 2002. that the Rule 2002 Parties may be served with the Notice of Confirmation by e-mail. The notice may include information about the Administrative

Claims Bar Date and the deadline to file any Claims arising from the rejection of any executory contracts or unexpired leases pursuant to the Plan. The notice described herein is adequate under the particular circumstances, and no other or further notice is necessary.

32. Pursuant to sections 1123(a), 1141, and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order and the Plan shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

33. Notwithstanding the possible applicability of Bankruptcy Rules 3020(e), 6004(h), 6006(d), 7062, and 9014, the terms and provisions of this Confirmation Order shall be immediately effective and enforceable upon its entry.

34. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, this Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the Chapter 11 Cases, the Plan, and the implementation of this Confirmation Order, including, without limitation, those matters set forth in Article 12 of the Plan.

35. The failure specifically to include or reference any particular provision of the Plan or any related document or agreement in this Confirmation Order shall not diminish or impair the efficacy of such provision or related document or agreement, it being the intent of the Court that the Plan, as modified herein, is confirmed in its entirety, the Plan and such related documents or agreements are approved in their entirety, and the Plan is incorporated herein by reference.

36. To the extent of any inconsistency between the provisions of the Plan and this Confirmation Order, the terms and provisions contained in this Confirmation Order shall govern. The provisions of this Confirmation Order are integrated with each other and are non-severable and mutually dependent unless expressly stated by further order of the Court.

37. Except as otherwise may be provided in the Plan or herein, notice of all subsequent

pleadings in the Chapter 11 Cases after the Effective Date shall be limited to the following parties:

(i) the U.S. Trustee; (ii) the Liquidation Trust; (iii) any party known to be directly affected by the relief sought; and (iv) any party who requests service post-Effective Date.

38. This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof

Dated: New York, New York
September 3, 2021

/s/ Michael E. Wiles
HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Plan of Liquidation

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

In re:

Chapter 11

COSMOLEDO, LLC, et al.¹

Case No. 20-12117 (MEW)

Debtors.

Jointly Administered

DEBTORS' PLAN OF LIQUIDATION

MINTZ & GOLD LLP

600 Third Avenue, 25th Floor
New York, New York 10016
Telephone: (212) 696-4848
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Attorneys for the Debtors

Dated: New York, New York
July 20, 2021

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

¹ 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).

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.

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 William Henrich. 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:

William H. Henrich

Getzler Henrich & Associates, LLC

295 Madison Avenue

20th Floor

New York, NY 10017

Telephone: (212) 697-2400

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.

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

COSMOLEDO, LLC

By: /s/ Josè Alcalay
Josè 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: /s/ Josè Alcalay
Josè Alcalay, CEO

EXHIBIT A

Plan Trust Agreement

LIQUIDATION TRUST AGREEMENT

This Liquidation Trust Agreement (the “Liquidation Trust Agreement” or “Agreement”), dated as of [REDACTED], 2021], by and among Cosmoledo, LLC, and its affiliated debtors (collectively, the “Debtors”),² William H. Heinrich, in his capacity as the trustee (the “Liquidation Trustee”) of the Liquidation Trust (defined herein), and the Official Committee of Unsecured Creditors (the “Committee”) is executed in order to establish a Liquidation Trust (the “Liquidation Trust”) in connection with the *Debtors’ Chapter 11 Plan of Liquidation* [ECF No. 324] (as amended, the “Plan”).³ The “Debtors” or “Settlers” as used herein shall mean the debtors in these chapter 11 cases (the “Chapter 11 Cases”) as defined in footnote 2.

RECITALS

WHEREAS, on September 10, 2020, the Debtors filed voluntary petitions for relief under chapter 11 of 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”); and

WHEREAS, on September 18, 2020, the Committee was appointed by the Office of the United States Trustee for Region 2 (the “UST”). The Committee’s appointment was amended on September 21, 2020. [ECF No. 58]; and

WHEREAS, on November 2, 2020, the Bankruptcy Court entered an order approving the sale of all or substantially all of the assets of the Debtors to MK USA, LLC, and its affiliates (the “Sale”). [ECF No. 166]; and

WHEREAS, on June 10, 2021, the Debtors filed the Plan; and

WHEREAS, on July 19, 2021, the Debtors filed the Amended Disclosure Statement (the “Disclosure Statement”) [ECF No. 355]; and

WHEREAS, on August 9, 2021, the Debtors filed the Plan Supplement [ECF No. ____]; and

WHEREAS, on [____], 2021], the Bankruptcy Court entered an order confirming the Plan [ECF No. ____] (the “Confirmation Order”);

WHEREAS, on the “Effective Date” as defined in the Plan, certain assets and other property

² The “Debtors” in these chapter 11 cases, along with the last four digits of each Debtor’s 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).

³ Capitalized terms used in this Liquidation Trust Agreement and not otherwise defined shall have the meanings ascribed to them in the Plan.

of the Debtors (the “Trust Assets”) will be transferred to and held by the Liquidation Trust so that, among other things: (i) the Trust Assets can be pursued and/or disposed of in accordance with this Agreement and the Plan; (ii) objections to Claims can be pursued and/or resolved by the Liquidation Trust; and (iii) distributions can be made in accordance with the Plan and this Agreement;

WHEREAS, the Liquidation Trust is organized for the purpose of liquidating certain Trust Assets for the benefit of the holders of Allowed PPP Eligible Claims and Allowed General Unsecured Claims (together, the “Liquidation Trust Beneficiaries”) pursuant to the Plan, including, among other things, the investigation and prosecution of the Causes of Action and otherwise winding down the Debtors’ estates, with no objective or requirement to continue or engage in the conduct of the Debtors’ ordinary course of business, except to the extent reasonably necessary to effectuate the liquidating purpose of the Liquidation Trust;

WHEREAS, the Liquidation Trust is intended to be classified for U.S. federal income tax purposes as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701–4(d) and thus as a “grantor trust” within the meaning of Sections 671 through 677 of the Internal Revenue Code of 1986, as amended (the “IRC”), with the Liquidation Trust Beneficiaries treated for U.S. federal income tax purposes as the grantors and owners of their respective shares of the Trust Assets other than with respect to any assets for which the Liquidation Trustee is serving as a distribution agent on behalf of the Debtors pursuant to the Plan; and

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained in this Liquidation Trust Agreement and in the Plan, the Debtors, the Committee, and the Liquidation Trustee hereby agree as follows:

ARTICLE 1

ESTABLISHMENT OF LIQUIDATION TRUST

1.1 Establishment of Liquidation Trust; Appointment of Original Trustee and Plan Advisory Committee.

(a) Pursuant to the Plan, the Debtors hereby establish a trust which shall be known as the “Cosmoledo Liquidation Trust” on behalf of the Liquidation Trust Beneficiaries in accordance with this Liquidation Trust Agreement and the Plan. It is the intention of the Settlers that this Liquidation Trust Agreement shall constitute the governing instrument of the Liquidation Trust.

(b) The Liquidation Trustee is hereby appointed as trustee of the Liquidation Trust pursuant to the Plan and section 1123(b)(3)(B) of the Bankruptcy Code, and agrees to accept and hold the Trust Assets subject to the terms of this Liquidation Trust Agreement, the Plan, and the Confirmation Order.

(c) A plan advisory committee (the “Plan Advisory Committee”), as appointed by the Plan, shall oversee the Liquidation Trust and the activities of the Liquidation Trustee. The initial members of the Plan Advisory Committee are identified in **Exhibit A** attached hereto.

1.2 Transfer of Assets and Rights to Liquidation Trust and Liquidation Trustee.

(a) Pursuant to sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and the Confirmation Order and to the extent provided in the Plan, all of the Debtors' right, title, and interest in and to the Trust Assets shall be vested in the Liquidation Trust on the Effective Date, free and clear of all Liens, charges, Claims, encumbrances, and interests, to the maximum extent allowed under section 1141 of the Bankruptcy Code, the Plan, or the Confirmation Order for the uses and purposes specified in this Agreement.

(b) Pursuant to the Plan, on the Effective Date, the Debtors shall assign, and shall be deemed to have assigned, the Trust Assets to the Liquidation Trust without any recourse, representation or warranty, express or implied, of any type, kind, character or nature.

(c) The Liquidation Trustee shall be the exclusive administrator of the Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Debtors' consolidated Estate, appointed pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, solely for purposes of carrying out the Liquidation Trustee's duties under the Liquidation Trust Agreement. On the Effective Date, the Liquidation Trust shall stand in the shoes of the Debtors for all purposes with respect to the Trust Assets.

(d) To the extent any Trust Assets cannot be transferred to the Liquidation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Trust Assets shall be deemed to have been designated as a representative of the Debtors pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Trust Assets on behalf of the Debtors' estates.

(e) Pursuant to the confirmed Plan, the transfer of the Trust Assets shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other tax, pursuant to Section 1146(a) of the Bankruptcy Code.

1.3 Title to Trust Assets.

Transfer of the Trust Assets to the Liquidation Trust shall be made for the benefit of the Liquidation Trust Beneficiaries to the extent provided herein and under the Plan. Upon the transfer of the Trust Assets, the Liquidation Trust shall succeed to all of the right, title, and interest of the Debtors in and to the Trust Assets and the Debtors shall not have any further interest in or with respect to the Trust Assets or the Liquidation Trust, whether direct, residual, contingent or otherwise. Except as necessary to distribute or otherwise dispute of the Trust Assets and upon consultation with the Plan Advisory Committee, no part of the Trust Assets shall revert to or be distributed to any of the Debtors.

1.4 Nature and Purpose of Liquidation Trust.

(a) Purpose. The purpose of the Liquidation Trust is to: (i) to hold and effectuate an

orderly disposition of the Trust Assets; (ii) resolve Claims; (iii) prosecute Causes of Action; (iv) distribute or pay over the Trust Assets, or proceeds thereof, in accordance with this Agreement, the Plan, and Treasury Regulation 301.7701-4(d); and (v) wind-down the Debtors' Estates with no objective or requirement to engage in any trade or business. The Liquidation Trust shall engage only in activities reasonably necessary for, and consistent with, the stated purpose of the trust.

(b) Capacity of the Liquidation Trust. Notwithstanding any state or federal law to the contrary or anything herein, the Liquidation Trust shall itself have the capacity in its own right and own name, to act, or refrain from acting in any manner related to this Agreement, the Trust, the Plan or the Liquidating Trust Beneficiaries, including the right to sue and be sued and to enter into contracts. The Liquidation Trust may alone be the named movant, respondent, plaintiff or defendant in any federal or state proceedings, or contested matters, brought by or against it. The Liquidating Trust shall also have the capacity to settle or compromise any matters in its own name.

(c) Actions of Liquidation Trustee. Subject to [Section] hereof, the Liquidation Trustee shall liquidate and convert the Trust Assets to cash, and make timely distributions in accordance with [Article] of this Liquidation Trust Agreement and the Plan. The liquidation of the Trust Assets may be accomplished through the prosecution, compromise and settlement, abandonment, dismissal or assignment of any or all Claims, rights, or Causes of Action, or otherwise. As set forth in [Article] herein, none of the Liquidation Trustee, the Plan Advisory Committee or the members of the Plan Advisory Committee, shall have any liability for the outcome of any such decision except for any damages caused by, respectively, either willful misconduct, fraud, or knowing violation of law.

(d) Relationship. This Liquidation Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Liquidation Trust is not intended to be and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Liquidation Trustee, the Liquidation Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint ventures. The relationship of the Liquidation Trust Beneficiaries to the Liquidation Trust and the Liquidation Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Liquidation Trust Agreement.

1.5 Reservation of Rights Causes of Action.

No entity may rely on the absence of a specific reference in the Plan or the Plan Supplement to any Cause of Action against them as any indication that the Liquidation Trust will not pursue any and all available Causes of Action against them. The Liquidation Trust expressly reserves all rights to prosecute any and all Causes of Action against any entity, except as otherwise provided in the Plan or an order of the Bankruptcy Court. Unless a specific Cause of Action or Assigned Claim against an entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an

order of the Bankruptcy Court, the Liquidation Trust expressly reserves such Cause of Action.

ARTICLE 2

LIQUIDATION TRUST INTERESTS

2.1 Beneficial Interests in the Trust Assets.

The allocation and distribution of beneficial interests in the Trust Assets shall be accomplished as set forth herein and in the Plan.

2.2 Interests Beneficial Only.

The ownership of a beneficial interest in the Trust Assets shall not entitle any such holder to any title in or right to, or possession, management or control of, Trust Assets or to any right to request or demand a partition or division of the Trust Assets or to require an accounting, except as expressly provided herein. The interest of a Liquidation Trust Beneficiary in the Liquidation Trust is in all respects personal property, and the death, insolvency, or incapacity of any Liquidation Trust Beneficiary shall not terminate or impact the validity of this Liquidation Trust Agreement. No surviving spouse, heir, or devisee of any deceased Liquidation Trust Beneficiary shall have any right of dower, homestead, inheritance, partition or any other right, statutory or otherwise in the Trust Assets, and their sole interest shall be the rights and benefits given to the Liquidation Trust Beneficiaries under this Liquidation Trust Agreement.

2.3 No Right to Accounting.

None of the Liquidation Trust Beneficiaries, their successors, assigns, or creditors, or any other entity shall have any right to an accounting by the Liquidation Trust or Liquidation Trustee, and the Liquidation Trustee shall not be obligated to provide any accounting to any entity. Nothing in this Agreement is intended to require the Liquidation Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the Liquidation Trust or as a condition for making any advance, payment, or distribution out of the Trust Assets.

2.4 Limit on Transfers

The interests of the Liquidation Trust Beneficiaries in the Liquidation Trust shall be uncertificated and are reflected only in the records of the Liquidation Trust as maintained by the Liquidation Trustee. Such interests are not negotiable and not transferable except (a) pursuant to applicable laws of descent and distribution (in the case of a deceased individual Liquidation Trust Beneficiary) or (b) by operation of law. The Liquidation Trustee shall not be required to record any transfer which, in the Liquidation Trustee's sole discretion, may be construed to create any uncertainty or ambiguity as to the identity of the holder of the interest in the Liquidation Trust. Until a transfer is, in fact, recorded on the books and records maintained by the Liquidation Trustee for the purpose of identifying Liquidation Trust Beneficiaries, the Liquidation Trustee, whether or not in

receipt of documents of transfer or other documents relating to the transfer, may nevertheless make distributions and send communications as though he or she has no notice of any such transfer, and in so doing the Liquidation Trustee shall be fully protected and incur no liability to any purported transferee or any other entity. Neither the Liquidation Trust nor the Liquidation Trustee shall incur any liability from relying on the claims register (or information regarding reserves) previously maintained and provided by the Debtors to determine the interests of the Liquidation Trust Beneficiaries in the Liquidation Trust and the size of any reserve.

2.5 No Standing.

A Liquidation Trust Beneficiary shall not have standing to direct or to seek to direct the Liquidation Trust or Liquidation Trustee perform or omit any action or to institute any action or proceeding at law or in equity against any person upon or with respect to the Trust Assets.

2.6 Securities Law Registration.

(a) It is intended that the interests in the Trust Assets, the interests in the Liquidation Trust and any other entitlements hereunder or as provided for in the Plan (collectively, the “Liquidation Trust Interests”) shall not constitute “securities” and none of the Liquidation Trust Interests shall be certificated. To the extent the Liquidation Trust Interests are deemed to be “securities,” the issuance of such interests to the Liquidation Trust Beneficiaries under the Plan or hereunder shall be exempt from registration under the Securities Act and any applicable state or local laws requiring registration of securities.

(a) If the Liquidation Trustee determines that the Liquidation Trust is required to comply with registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or the Investment Company Act of 1940, as amended (the “Investment Company Act”), then the Liquidation Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file periodic reports with the Securities and Exchange Commission (the “SEC”). Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Liquidation Trustee from amending this Liquidation Trust Agreement to make such changes as are deemed necessary or appropriate by the Liquidation Trustee, with the advice of counsel, to ensure that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act.

ARTICLE 3

LIQUIDATION TRUSTEE

3.1 Funding and Payment of Liquidation Trust Expenses.

(a) The Liquidation Trustee shall maintain a reserve (the “Liquidation Trust Expense Fund”) in an amount as is reasonably necessary to pay the costs and expenses incurred or expected to be incurred by the Liquidation Trust and Liquidation Trustee in connection with administering the Trust Assets and performing the duties set forth in this agreement, including, without limitation, paying the fees and expenses of the Liquidation Trustee, and any attorneys, advisors, and

professionals retained by the Liquidation Trust and/or Liquidation Trustee (the “Liquidation Trust Expenses”). The amounts held in the Liquidation Trust Expense Fund shall be subject to periodic review by the Plan Advisory Committee. The Liquidation Trust Expense Fund shall be funded from Available Cash (as defined in the Plan) included in the Trust Assets and any proceeds therefrom.

3.2 Distributions to Liquidation Trust Beneficiaries.

The Liquidation Trustee shall distribute the net distributable assets of the Liquidation Trust to the Liquidation Trust Beneficiaries in accordance with the provisions of [Article] hereof and the Plan.

3.1 Tenure, Removal, and Replacement of Liquidation Trustee.

(a) The Liquidation Trustee shall serve until (i) dissolution of the Liquidation Trust; (ii) resignation and the appointment of a successor pursuant to subsection (b) below, (iii) removal pursuant to subsection (c) below, (iv) death (in the case of a Liquidation Trustee that is a natural Person), or (v) dissolution of the Liquidation Trustee, if prior to the dissolution of the Liquidation Trust (in the case of a Liquidation Trustee that is not a natural Person).

(a) The Liquidation Trustee may resign by giving not less than sixty (60) days’ prior written notice to the Plan Advisory Committee. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice, and (ii) the appointment of a successor Liquidation Trustee as provided herein and the acceptance by such successor of the appointment. If a successor Liquidation Trustee is not appointed pursuant to this Agreement or does not accept the appointment within sixty (60) days following delivery of notice of resignation, the Plan Advisory Committee may file a motion with the Bankruptcy Court, upon ten (10) business days’ notice, for the appointment of a successor Liquidation Trustee.

(b) The Liquidation Trustee may be removed for Cause (as defined in herein) by the affirmative vote of a majority of the members of the Plan Advisory Committee, which votes may be obtained in writing or at a meeting called for the purpose of removing the Liquidation Trustee. Such removal shall become effective on the date that notice of the Plan Advisory Committee’s vote to remove the Liquidation Trustee is received by the Liquidation Trustee.

(c) In the event of the death or dissolution (as applicable), resignation pursuant to [Section 3.3(b)] hereof, or removal of the Liquidation Trustee pursuant to [Section 3.3(c)] hereof, the Plan Advisory Committee may appoint a successor Liquidation Trustee, subject to the requirement that any successor Liquidation Trustee be a “United States person” within the meaning of Section 7701(a)(30) of the IRC. Such appointment shall specify the date on which such appointment shall be effective. In the event the Plan Advisory Committee cannot agree on a replacement Liquidation Trustee within sixty (60) days of the Liquidation Trustee’s death, dissolution, resignation, or removal, any member of the Plan Advisory Committee may seek appointment of a replacement Liquidation Trustee by motion, upon ten (10) business days’ notice, before the Bankruptcy Court.

(d) Immediately upon the appointment of any successor Liquidation Trustee, all rights,

powers, duties, authority, and privileges of the predecessor Liquidation Trustee under this Agreement and the Plan shall be vested in and undertaken by the successor Liquidation Trustee without any further act. The successor Liquidation Trustee shall not be responsible for any act or omission of the predecessor Liquidation Trustee.

(e) The appointment of a successor Liquidation Trustee will be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor Liquidation Trustee.

3.3 Acceptance of Appointment by Successor Liquidation Trustee.

Any successor Liquidation Trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Liquidation Trustee hereunder and thereupon the successor Liquidation Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of its predecessor in the Liquidation Trust hereunder with like effect as if originally named herein.

3.4 Role of the Liquidation Trustee.

The Liquidation Trustee shall have all powers to act in furtherance of and consistent with the purpose of the Liquidation Trust, including the power to (i) prosecute, compromise and settle, abandon, assign, or dismiss all Claims, rights, and Causes of Action transferred to the Liquidation Trust (whether such suits are brought in the name of the Liquidation Trustee or otherwise), and (ii) otherwise perform the functions and take the actions provided or permitted in this Liquidation Trust Agreement and the Plan, subject to the terms and conditions contained herein or therein, as applicable. In all circumstances, the Liquidation Trustee shall act in the best interests of the Liquidation Trust Beneficiaries and in furtherance of the purpose of the Liquidation Trust.

3.5 Authority of Liquidation Trustee.

Subject to any limitations contained in the Plan, Confirmation Order, or this Agreement, including, but not limited to, the required Plan Advisory Committee approvals set forth in [Section 4.2] herein, the Liquidation Trustee shall have the following powers and authorities on behalf of the Liquidation Trust:

- (a) hold legal title to any and all rights from the Trust Assets, including, without limitation, collecting and receiving any and all money and other property belonging to the Liquidation Trust and the right to vote any claim or interest relating to a Trust Asset in a case under the Bankruptcy Code and receive any distribution thereon;
- (b) hold, manage, sell, invest, and distribute (including, without limitation and where applicable, as a distribution agent) the Trust Assets as expressly set forth in the Plan and herein;
- (c) subject to [Section 4.3], investigate, commence, prosecute, abandon, compromise or settle the Causes of Action and enforce contracts or assert claims, defenses, offsets and privileges of the Debtors; *provided, however*, that the settlement of any Causes of Action

where a stated face amount in controversy exceeds \$500,000 shall be subject to approval of the Bankruptcy Court, on motion and following notice and a hearing pursuant to Bankruptcy Rule 9019(a), it being agreed and understood that if such claims have a face amount of \$500,000 or less, the approval of the Bankruptcy Court shall not be necessary;

- (d) subject to [Section 4.3], investigate, object to, subordinate, estimate, allow, compromise or settle any and all Claims against the Debtors without the need for Bankruptcy Court approval; *provided, however*, that the settlement of any Claim where the stated face amount in controversy exceeds \$500,000 shall be subject to approval of the Bankruptcy Court, on motion and following notice and a hearing pursuant to Bankruptcy Rule 9019(a);
- (e) protect and enforce the rights to the Trust Assets by any method including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;
- (f) obtain reasonable insurance coverage with respect to the liabilities and obligations of the Liquidation Trustee and the Plan Advisory Committee under this Liquidation Trust Agreement (in the form of an errors and omissions policy or otherwise), if the Liquidation Trustee determines that such insurance coverage is appropriate;
- (g) obtain insurance coverage with respect to real and personal property that may become assets of the Liquidation Trust, if any, if the Liquidation Trustee determines in good faith that such insurance coverage is appropriate;
- (h) subject to [Section 12.12] hereof, assert or waive any privilege or any defense on behalf of the Liquidation Trust or the Debtors, as applicable.
- (i) establish and maintain one or more reserves for Disputed Claims in accordance with this Agreement and the Plan (the “Disputed Claims Reserves”);
- (j) for U.S. federal income tax purposes (and, to the extent permitted by law, for state and local income tax purposes), if the Liquidation Trustee deems it appropriate, (i) make an election pursuant to United States Treasury Regulation section 1.468B-9 to treat any of the Disputed Claims Reserves or any other reserve of Trust Assets established by the Liquidation Trustee as a “disputed ownership fund” within the meaning of that section (an “IRC Disputed Ownership Fund”), (ii) allocate taxable income or loss to any such IRC Disputed Ownership Fund with respect to any given taxable year, and (iii) distribute assets from the applicable IRC Disputed Ownership Fund as, when, and to the extent the ownership of the subject property has been determined in accordance with the Plan;
- (k) open and maintain bank and other deposit accounts, escrows and other accounts necessary to administer the Trust Assets, calculate and implement distributions to the Liquidation Trust Beneficiaries as provided for or contemplated by the Plan, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves (including, but not limited to, the Liquidation Trust Expense Fund, the Disputed Claims Reserves);
- (l) invest the Trust Assets in accordance with [Section 3.13] hereof, incur obligations for reasonable and necessary expenses in liquidating and converting the Trust Assets to Cash, file appropriate tax returns and other reports on behalf of the Liquidation Trust, and pay taxes and other obligations owed by the Liquidation Trust (including, without limitation, paying taxes and other obligations incurred as a result of an IRC Disputed Ownership Fund out of the assets comprising such IRC Disputed Ownership Fund); *provided*,

however, that such actions are consistent with the Liquidation Trust's status as a liquidating trust within the meaning of United States Treasury Regulation section 301.7701-4(d).

- (m) examine any entity, pursuant to the provisions of the Federal Rules of Evidence, the Federal Rules of Bankruptcy Procedure, or any other applicable law or rule, including to issue subpoenas for documents and testimony in connection with the Trust Assets, including the Causes of Action, under Bankruptcy Rule 2004;
- (n) take or refrain from taking any and all other actions that the Liquidation Trustee, reasonably deems necessary or convenient for the continuation, protection and maximization of the Trust Assets or to carry out the purposes hereof;
- (o) in reliance upon the claims registers maintained in the Debtors' cases (which the Liquidation Trustee shall have the absolute right to rely on as accurate) maintain appropriate books and records (including financial books and records) to govern the liquidation and distribution of the Trust Assets;
- (p) pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and to file with the Bankruptcy Court and serve on the U.S. Trustee quarterly post-confirmation financial reports for the Liquidation Trust;
- (q) with the approval of the Plan Advisory Committee, obtain litigation financing on terms acceptable to the Liquidation Trustee and take any actions necessary in connection with such litigation financing (including without limitation granting liens on Causes of Action or the proceeds of any);
- (r) take such actions as are necessary or appropriate to close or dismiss all of the Debtors' cases;
- (s) seek a final decree closing any or all of the Chapter 11 Cases and when appropriate and to the extent practicable, cause one or more of the Debtors to be dissolved;
- (t) dissolve the Liquidation Trust in accordance with the terms of the Liquidation Trust Agreement; and
- (u) take all other actions consistent with the provisions of the Plan and this Agreement that the Liquidation Trustee deems reasonably necessary or desirable with respect to implementing the Plan.

In addition to the foregoing, the Liquidation Trustee is authorized to make decisions regarding the retention or engagement of professionals (including, without limitation, hourly or contingency counsel), employees and consultants by the Liquidation Trust, in consultation with the Plan Advisory Committee, to assist with the administration of the Liquidation Trust, reviewing and objecting to Claims, maintenance of Trust Assets, investigation and prosecution of Causes of Action, preparation of tax returns and other filings, and paying the reasonable and documented fees and expenses of such persons for the charges incurred by the Liquidation Trust or Liquidation Trustee on or after the Effective Date, in each case without any supervision of, or approval by, the Bankruptcy Court or the United States Trustee; *provided, however*, that (i) the Plan Advisory Committee's prior consent shall be required for the retention by the Liquidation Trustee of any professional or advisor whose fees are reasonably expected to exceed \$100,000 in the aggregate or who is pursuant to a contingency fee agreement and (ii) the Liquidation Trustee shall use his or her best efforts to ensure there is no unnecessary duplication of services among any of the professionals by the Liquidation Trustee and/or

the Liquidation Trust. For the avoidance of doubt, the Liquidation Trustee and/or Liquidation Trust may retain professionals and advisors previously retained by the Debtors, the Committee, or any other party in interest in the Debtors' chapter 11 cases. The Liquidation Trustee may delegate the performance of services and the fulfillment of responsibilities under this Trust Agreement to other persons reasonably acceptable to the Plan Advisory Committee. Such persons shall be entitled to be compensated and reimbursed for out-of-pocket disbursements in the same manner as the Liquidation Trustee.

3.6 Limitation of Liquidation Trustee's Authority.

The Liquidation Trustee shall, on behalf of the Liquidation Trust, hold the Liquidation Trust out as a trust in the process of liquidation and not as an investment company. Notwithstanding anything herein to the contrary, the Liquidation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation of the assets of the Liquidation Trust as are required or contemplated by applicable law, the Plan, the Confirmation Order, and this Liquidation Trust Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Liquidation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

3.7 Books and Records.

On the Effective Date, the Debtors shall transfer to the Liquidation Trust and/or such representative of the Liquidation Trust as the Liquidation Trustee may designate in writing, all of the Debtors' books and records and all other documents, data, and communications related to the Trust Assets and Claims, including those maintained in electronic format and original documents (collectively, the "Subject Books and Records"), it being understood that the Subject Books and Records shall include a complete claims register or registers. In addition, to the extent not prohibited by applicable law, the Debtors shall provide or cause to be provided to the Liquidation Trustee a general, summary description of the Subject Books and Records that the Debtors are turning over to the Liquidation Trustee, and any existing index thereof.

3.8 Inquiries into Liquidation Trustee's Authority.

In the absence of actual knowledge to the contrary, no entity dealing with the Liquidation Trust or the Liquidation Trustee shall be obligated to inquire into the authority of the Liquidation Trustee in connection with the protection, conservation, or disposition of the Trust Assets and they shall be entitled to rely on the authority of the Liquidation Trustee or any of the Liquidation Trustee's agents to act in connection with the Trust Assets. There is no obligation on any entity dealing with the Liquidation Trustee to inquire into the validity, expediency or propriety of any transaction by the Liquidation Trustee or any agent of the Liquidation Trustee.

3.9 Compensation of Liquidation Trustee.

The Liquidation Trustee shall be reimbursed for reasonable costs and expenses incurred in

accordance with [his/her] duties and compensated in accordance with the compensation schedule attached hereto as Exhibit B (as may be amended from time to time, the “Trustee Compensation Schedule”). For the avoidance of doubt, the Trustee Compensation Schedule may be modified and amended by the affirmative vote of the Plan Advisory Committee and agreement of the Liquidation Trustee, as set forth in [Section 4.3] herein.

3.10 Reliance by Liquidation Trustee.

(a) The Liquidation Trustee may absolutely and unconditionally rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Liquidation Trustee to be genuine and to have been signed or presented by the proper party or parties;

(a) The Liquidation Trustee may absolutely and unconditionally presume that any other parties purporting to give any notice of instructions in writing has been duly authorized to do so, and may rely on such notice;

(b) The Liquidation Trustee may consult with legal counsel, financial or accounting advisors, and other professionals to be selected by her and may rely, in good faith, on the advice thereof, and shall not be liable for any action taken or omitted to be taken in accordance with the advice thereof; and

(c) Entities dealing with the Liquidation Trustee or Liquidation Trust shall look only to the Trust Assets to satisfy any liability incurred by the Liquidation Trust or the Liquidation Trustee to such Entities in carrying out the terms of this Liquidation Trust Agreement, and the Liquidation Trustee shall not have any personal obligation to satisfy any such liability.

3.11 Investment and Safekeeping of Certain Trust Assets.

The Liquidation Trustee may invest the Trust Assets, only in Cash, Cash equivalents, U.S. Treasury securities, money market investments, and similar investments; *provided, however*, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

ARTICLE 4

PLAN ADVISORY COMMITTEE

4.1 Plan Advisory Committee.

There shall be an initial three (3) member Plan Advisory Committee. Upon appointment, the Plan Advisory Committee and its members shall have the rights, powers, and duties described herein. In all circumstances, the members of the Plan Advisory Committee shall act in the best interests of

all the Liquidation Trust Beneficiaries and in furtherance of the purpose of the Liquidation Trust.

4.2 Authority of Plan Advisory Committee.

The Plan Advisory Committee shall have the authority and responsibility to oversee, review, and guide the activities and performance of the Liquidation Trustee as set forth in Section of this Liquidation Trust Agreement. The Liquidation Trustee shall consult with and provide information to the Plan Advisory Committee in accordance with and pursuant to the terms of this Liquidation Trust Agreement, the Plan, and the Confirmation Order.

4.3 Required Approval of Plan Advisory Committee.

(a) Subject to section 4.3(b), the Liquidation Trustee shall obtain the approval of a majority of the members of the Plan Advisory Committee prior to taking any action regarding any of the following matters:

- (i) the abandonment of any non-Cash Trust Assets having a valuation of at least \$25,000;
- (ii) the settlement, compromise, or other resolution of any Disputed Claim, wherein the stated amount in controversy exceeds \$100,000;
- (iii) the settlement, compromise, or other resolution of any Cause of Action wherein the stated amount in controversy exceeds \$100,000;
- (iv) the adjustment of the minimum threshold values referenced in clauses (i)-(iii) above;
- (v) the modification or amendment of the Trustee Compensation Schedule, other than annual ordinary course increases in the Liquidation Trustee's hourly rate; and
- (vi) the exercise of any right or action set forth in this Liquidation Trust Agreement that expressly requires approval of the Plan Advisory Committee.

(b) Notwithstanding anything to the contrary in this Agreement, in the event the majority of the Plan Advisory Committee objects to an action proposed by the Liquidation Trustee for which the approval of the Plan Advisory Committee is required under this Agreement, or in the event that the Liquidation Trustee objects to an action proposed by the Plan Advisory Committee pursuant to this Agreement, the Liquidation Trustee and the Plan Advisory Committee shall attempt to consensually resolve such dispute and, if they are unable to do so, the matter may be resolved by the Bankruptcy Court pursuant to a motion by any party (which motion, with respect to any settlement, compromise or other resolution of a Disputed Claim or Cause of Action shall be brought and adjudicated pursuant to Bankruptcy Rule 9019).

4.4 Regular Meetings of Liquidation Trustee and Plan Advisory Committee.

Meetings of the Plan Advisory Committee are to be held with such frequency and at such place as the Plan Advisory Committee and the Liquidation Trustee may jointly agree, but in no event shall such meetings be held less frequently than quarterly.

4.5 Special Meetings of Liquidation Trustee and Plan Advisory Committee.

Special meetings of the Plan Advisory Committee may be held whenever and wherever called by the Liquidation Trustee or at least three (3) members of the Plan Advisory Committee.

4.6 Notice of, and Waiver of Notice for, Liquidation Trustee and Plan Advisory Committee.

Notice of the time and place (but not necessarily the purpose or all of the purposes) of any regular or special meeting shall be given to the members of the Plan Advisory Committee in person or by telephone, or via email or electronic mail. Notice to the members of the Plan Advisory Committee of any such special meeting shall be deemed given sufficiently in advance when (i) if given by mail, the same is deposited in the United States mail at least ten (10) calendar days before the meeting date, with postage thereon prepaid, (ii) if given by electronic mail, the same is transmitted at least three (3) Business Days prior to the convening of the meeting (to the extent reasonably possible), or (iii) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the members of the Plan Advisory Committee or to an adult member of his/her office staff or household, at least one (1) Business Day prior to the convening of the meeting. Any member of the Plan Advisory Committee may waive notice of any meeting and any adjournment thereof at any time before, during, or after it is held. Except as provided in the next sentence below, the waiver must be in writing and with the records of the Liquidation Trust. The attendance of the Liquidation Trustee or a member of the Plan Advisory Committee at a meeting shall constitute a waiver of notice of such meeting. In the event that Liquidation Trustee, in the exercise of his or her reasonable discretion, determines that an emergency meeting of the Plan Advisory Committee is necessary, such meeting may be convened upon such notice as is feasible under the circumstances.

4.7 Manner of Acting.

(a) A majority of the total number of members of the Plan Advisory Committee then in office shall constitute a quorum for the transaction of business at any meeting of the Plan Advisory Committee. The affirmative vote of a majority of the members of the Plan Advisory Committee present and entitled to vote at a meeting at which a quorum is present shall be the act of the Plan Advisory Committee except as provided otherwise in this Liquidation Trust Agreement. In the event that a vote of the Plan Advisory Committee taken at a meeting at which a quorum is present results in a tie, the vote of the Liquidation Trustee shall determine whether the proposed action is approved by the Plan Advisory Committee. The Plan Advisory Committee may take action by written consent and votes may be provided by electronic mail.

(b) Any or all of the members of the Plan Advisory Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. The Liquidation Trustee

or any member of the Plan Advisory Committee participating in a meeting by this means is deemed to be present in person at the meeting. Voting may be conducted by electronic mail or individual electronic or other written communications.

(c) Any member of the Plan Advisory Committee who is present and entitled to vote at a meeting of the Plan Advisory Committee when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Plan Advisory Committee unless: (i) such member of the Plan Advisory Committee objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business at the meeting; or (ii) he/she delivers written notice (including by electronic transmission) of his/her dissent or abstention to the Plan Advisory Committee before the meeting takes place. The right of dissent or abstention is not available to any member of the Plan Advisory Committee who votes in favor of the action taken.

(d) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each member of the Plan Advisory Committee shall report to the Plan Advisory Committee any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue), other than in their capacity as a Liquidation Trust Beneficiary. A member who has or who may have a conflict of interest shall be deemed to be a "conflicted member" who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to such matter or issue shall be undertaken only by members of the Plan Advisory Committee who are not "conflicted members."

4.8 Plan Advisory Committee's Action Without a Meeting.

Any action required or permitted to be taken by the Plan Advisory Committee at a meeting may be taken without a meeting if the action is taken by written consent of the Plan Advisory Committee. Written consent may be obtained via email, and the Liquidation Trustee's failure to receive objections from members of the Plan Advisory Committee within three (3) business days after written (including facsimile or electronic) notice is provided to the Plan Advisory Committee of a proposed action shall be deemed an approval of such member of the Plan Advisory Committee for purposes of this Section 4.8.

4.9 Tenure, Removal, and Replacement of Plan Advisory Committee Members.

The authority of the Plan Advisory Committee members shall be effective as of the Effective Date and shall remain and continue in full force and effect until the Liquidation Trust is terminated in accordance with [Article ____] hereof. The service of the Plan Advisory Committee members shall be subject to the following:

(a) The Plan Advisory Committee members will serve until (i) death (in the case of a member that is a natural Person) or dissolution (in the case of a member that is not a natural Person),

(ii) resignation pursuant to subsection (b) below, (iii) removal pursuant to subsection below or (iv) dissolution of the Liquidating Trust.

(b) A Plan Advisory Committee member may resign at any time by providing a written notice of resignation to the remaining members of the Plan Advisory Committee. Any Plan Advisory Committee member who resigns shall continue to serve until the earlier of (i) the appointment of his or her successor, and (ii) sixty (60) days after the delivery of such written notice.

(c) A Plan Advisory Committee Member may be removed by the majority vote of the other members of the Plan Advisory Committee, written resolution of which shall be delivered to the removed member; *provided, however*, that such removal may only be made for Cause. For purposes of this [Section 4.9(c)], "Cause" shall be defined as: (i) such member's theft or embezzlement or attempted theft or embezzlement of money or tangible or intangible assets or property; (ii) such member's violation of any law (whether foreign or domestic), which results in a felony indictment or similar judicial proceeding; (iii) such member's willful misconduct, fraud, or knowing violation of law in the performance of his or her duties; or (iv) such member's failure or inability to perform any of his or her other material duties under this Liquidation Trust Agreement (including the regular attendance at meetings).

(d) In the event of a vacancy on the Plan Advisory Committee due to the removal, resignation, death or dissolution of a Plan Advisory Committee member, a new member may be appointed to fill such position by a majority of the remaining members of the Plan Advisory Committee. The Plan Advisory Committee shall use reasonable best efforts to ensure that there are no fewer than three (3) members on the Plan Advisory Committee at any given time.

(e) Immediately upon the appointment of any successor member of the Plan Advisory Committee, all rights, powers, duties, authority, and privileges of the predecessor member of the Plan Advisory Committee under this Agreement and the Plan shall be vested in and undertaken by the successor member of the Plan Advisory Committee without any further act. In addition, the successor member of the Plan Advisory Committee shall not be responsible for any act or omission of the predecessor member of the Plan Advisory Committee. Any successor member of the Plan Advisory Committee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations set forth herein.

(f) The resignation, death, dissolution, removal, or appointment of a new member of the Plan Advisory Committee shall be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice shall include the name, address, and telephone number of the successor member of the Plan Advisory Committee.

4.10 Reimbursement for Expenses of Plan Advisory Committee.

Each member of the Plan Advisory Committee shall be entitled to receive reimbursement by the Liquidation Trust for any reasonable, out-of-pocket expenses incurred by such member in fulfilling his/her duties hereunder. The Plan Advisory Committee members shall not be entitled to (i)

reimbursement of expenses incurred relating to their own attorneys or professionals or (ii) compensation for the performance of such member's duties hereunder.

4.11 Limitation of Plan Advisory Committee's Authority.

Notwithstanding anything herein to the contrary, the Plan Advisory Committee members shall not (i) be authorized to engage in any trade or business in their capacity as Plan Advisory Committee members (it being understood that members of the Plan Advisory Committee may be businesses and not individuals); (ii) take any action inconsistent with the orderly liquidation of the assets of the Liquidation Trust as is required or contemplated by applicable law, this Liquidation Trust Agreement, the Confirmation Order, or the Plan; or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Liquidation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

ARTICLE 5

TAX MATTERS

5.1 Tax Reporting.

(a) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Liquidation Trustee of a private letter ruling if the Liquidation Trustee requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidation Trustee) and this [Article 5.1], the Liquidation Trust shall be treated as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) and thus as a "grantor trust" within the meaning of Sections 671 through 679 of the IRC, and all parties to the Liquidation Trust (including, without limitation, the Liquidation Trustee, the Debtors, and the Liquidation Trust Beneficiaries) shall report consistently therewith for U.S. federal income tax purposes. Accordingly, for U.S. federal income tax purposes, the Trust Assets shall be treated by all parties as having been distributed (subject to any obligations or limitations relating to such assets) by the Debtors to the Liquidation Trust Beneficiaries (other than any assets allocable to any IRC Disputed Ownership Fund) pursuant to the Plan. Accordingly, the Liquidation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Trust Assets (subject to any obligations or limitations relating to such assets, and other than any assets allocable to any IRC Disputed Ownership Fund). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local tax purposes.

(b) As soon as practicable after the Effective Date, (i) the Liquidation Trustee shall make a good faith valuation as of the Effective Date of all Trust Assets, which shall be used consistently by all parties to the Liquidation Trust Agreement and Liquidation Trust Beneficiaries for all U.S. federal income tax purposes, and (ii) the Liquidation Trustee shall make such valuation available from time to time to all parties to the Liquidation Trust Agreement, to the extent relevant to such parties for tax purposes.

(c) The Liquidation Trustee shall file returns for the Liquidation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with this Article 5. The Liquidation Trustee shall, in its discretion, make any applicable tax elections on behalf of the Liquidation Trust. The Liquidation Trustee shall annually send to each Liquidation Trust Beneficiary a separate statement setting forth such Liquidation Trust Beneficiary's share of items of income, gain, loss, deduction, or credit, in accordance with applicable Treasury Regulations and Rev. Proc. 94-45, 1994-2 C. B. 684, file (or cause to be filed) any other statements, returns (including any information returns) or disclosures relating to the Liquidation Trust that is required by any governmental authority or applicable law, and pay taxes, if any, properly payable by the Liquidation Trust.

(d) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidation Trustee of a private letter ruling if the Liquidation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidation Trustee), the Liquidation Trustee may (i) timely elect to treat any Trust Assets allocable to, or on account of, any reserve of Trust Assets established by the Liquidation Trustee, as a "disputed ownership fund" governed by Treasury Regulation Section 1.468B-9, and (ii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties to the Liquidation Trust Agreement shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

(e) The Liquidation Trustee may request an expedited determination of taxes of the Liquidation Trust, including, but not limited to, any IRC Disputed Ownership Fund, under Section 505(b) of the Bankruptcy Code for all tax returns filed for, or on behalf of, the Liquidation Trust for all taxable periods through the dissolution of the Liquidation Trust.

5.2 Trust Taxable Income; Allocations.

(a) Subject to Section 5.2(c) hereof, all Liquidation Trust earnings shall be taxable to the Liquidation Trust Beneficiaries.

(b) Subject to Section 5.2(c) hereof, allocations of Liquidation Trust taxable income shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed if, immediately prior to such deemed distribution, the Liquidation Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Liquidation Trust Beneficiaries, taking into account all prior and concurrent distributions from the Liquidation Trust (including all distributions held in any IRC Disputed Ownership Fund). Similarly, taxable loss of the Liquidation Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the Liquidation Trust. The tax book value of the Trust Assets for this purpose shall equal their fair market value upon the Effective Date, adjusted in either case in accordance with tax accounting principles prescribed by the IRC, the regulations and other applicable administrative and judicial authorities and pronouncements.

(c) The Liquidation Trustee shall be responsible for causing the Liquidation Trust to pay,

out of the Trust Assets, any taxes imposed on the Liquidation Trustor its assets, including any IRC Disputed Ownership Fund (in the latter instance, first out of any Cash allocable to, or on account of, the IRC Disputed Ownership Fund to which such tax relates), including any income that may arise upon the distribution of the assets from the applicable IRC Disputed Ownership Fund. In the event, and to the extent, any Cash on account of a Disputed Claim is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or on account of such Claim such that such portion of the taxes is paid (in whole or in part) from other available Cash, such other Cash sources shall be (i) reimbursed from any subsequent Cash amounts on account of such Claim, or (ii) to the extent such Claim has subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidation Trustee as a result of the resolution of such Claim.

5.3 Withholding.

The Liquidation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the IRC or any provision of any foreign, state, or local tax law with respect to any payment or distribution by the Liquidation Trust to or any amounts received or earned by the Liquidation Trust distributable or allocable to the Liquidation Trust Beneficiaries (including beneficiaries that are not “United States persons” within the meaning of the IRC). The Liquidation Trustee may impact any withholding with respect to a Liquidation Trust Beneficiary by reducing the amount currently or subsequently distributable to such beneficiary by the amount withheld. All such amounts withheld from distributions and paid to the appropriate taxing authority shall be treated as amounts distributed to such Liquidation Trust Beneficiaries for all purposes of this Liquidation Trust Agreement.

ARTICLE 6

DISTRIBUTIONS

6.1 Distributions to Holders of Allowed Administrative Claims.

Pursuant to the Plan, Confirmation Order and this Agreement (including without limitation Article 5), after reserving for amounts necessary to maintain the Senior Claims Reserves and the Liquidation Trust Expense Fund, the Liquidation Trustee shall distribute to each holder of an Allowed Administrative Claim, the full amount of such Allowed Claim from the Disputed Claims Reserves in accordance with Section 3.2 of the Plan. The Liquidation Trustee may withhold from amounts distributable to any holder of an Allowed Administrative Claim any and all amounts, determined in the Liquidation Trustee’s reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.2 Distributions to Holders of Professional Fees Claims.

Pursuant to the Plan, Confirmation Order and this Agreement (including without limitation Article 5), after reserving for amounts necessary to maintain the Disputed Claims Reserves and the Liquidation Trust Expense Fund, the Liquidation Trustee shall distribute to each holder of an Allowed Professional Fee Claim, the full amount of such Allowed Claim from the Senior Claims

Reserve in accordance with Section 3.4 of the Plan. The Liquidation Trustee may withhold from amounts distributable to any holder of an Allowed Professional Fee Claim any and all amounts, determined in the Liquidation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.3 Distributions To Priority Tax Claims.

Pursuant to the Plan, Confirmation Order and this Agreement (including without limitation Article 5), after reserving for amounts necessary to maintain the Disputed Claims Reserves and the Liquidation Trust Expense Fund, the Liquidation Trustee shall distribute to each holder of an Allowed Priority Tax Claim, the full amount of such Allowed Claim from the Senior Claims Reserve in accordance with Section 3.6 of the Plan. The Liquidation Trustee may withhold from amounts distributable to any holder of an Allowed Priority Tax Claim any and all amounts, determined in the Liquidation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.4 Distributions to Holders of Allowed 503(b)(9) and Claims.

Pursuant to the Plan, Confirmation Order and this Agreement (including without limitation Article 5), after reserving for amounts necessary to maintain the Disputed Claims Reserves and the Liquidation Trust Expense Fund, the Liquidation Trustee shall distribute to each holder of an Allowed 503(b)(9) Claim the full amount of its Allowed Administrative Claim from the Senior Claims Reserve after funding the Liquidation Trust Expense Fund as soon as is practicable after such 503(b)(9) Claim being Allowed as an Administrative Claim. The Liquidation Trustee may withhold from amounts distributable to any holder of an Allowed 503(b)(9) Claim any and all amounts, determined in the Liquidation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.5 Distributions to Holders of Allowed Secured Claims.

Pursuant to the Plan and this Agreement (including without limitation Article 5), after reserving for amounts necessary to maintain the Disputed Claims Reserves and the Liquidation Trust Expense Fund, the Liquidation Trustee shall distribute to each holder of an Allowed Secured Claim full amount of such Allowed Secured Claim from the Senior Claims Reserve as soon as is practicable after such Claim being Allowed as an Secured Claim (to the extent not previously distributed by the Debtors), The Liquidation Trustee may withhold from amounts distributable to any holder of an Allowed Secured Claim any and all amounts, determined in the Liquidation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.6 Distributions to Holders of Allowed Priority Claims
(other than Priority Tax Claims)

Pursuant to the Plan and this Agreement (including without limitation Article 5), after reserving for amounts necessary to maintain the Disputed Claims Reserves and the Liquidation Trust

Expense Fund, the Liquidation Trustee shall distribute to each holder of an Allowed Priority Claim full amount of such Claim as soon as is practicable after such Claim being Allowed as a Priority Claim (to the extent not previously distributed by the Debtors). The Liquidation Trustee may withhold from amounts distributable to any holder of an Allowed Secured Claim any and all amounts, determined in the Liquidation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.7 Distributions to Liquidation Trust Beneficiaries.

Pursuant to the Plan and this Agreement (including without limitation Article 5), after reserving for amounts necessary to maintain the Disputed Claims Reserves and the Liquidation Trust Expense Fund, the Liquidation Trustee shall make distributions to the Liquidation Trust Beneficiaries as soon as practicable after the Effective Date. The Liquidation Trustee may withhold from amounts distributable to any holder of an interest in the Trust any and all amounts, determined in the Liquidation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.8 Delivery of Distributions.

Distributions to holders of Allowed Claims shall be made: (i) at the addresses set forth in the Proofs of Claim Filed by such holders, (ii) at the addresses set forth in any written notices of address change filed with the Bankruptcy Court and delivered to the Liquidation Trustee, (iii) the addresses set forth in any transfer of Claim properly filed with the Bankruptcy Court, or (iv) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no Proof of Claim has been Filed and the Liquidation Trustee has not received a written notice of a change of address.

6.9 No De Minimis Distributions.

Other than in the Final Distribution, no distribution in an amount of less than \$50.00 shall be required to be made on account of any Allowed Claim.

6.10 Distribution Record Date.

No less than five (5) business days prior to the date of any Distribution, the Liquidation Trustee shall examine the books and records of the Liquidation Trust to verify the identity of the holders of interests in the Liquidation Trust (each such day being the "Distribution Record Date"). As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed for purposes of determining whether a holder of such a Claim or Interest is a record holder entitled to distributions under the Plan, and there shall be no further changes in the record holders or the permitted designees of any such Claims or Interests. The Liquidation Trust shall have no obligation to recognize any transfer or designation of such Claims or Interests occurring after the close of business on the Distribution Record Date.

6.11 Date of Distributions.

The Liquidation Trustee, after consultation with the Plan Advisory Committee, shall from time to time determine distribution dates of Trust Assets; *provided, however*, that the Liquidation Trust shall retain such amounts as necessary or appropriate to maintain the Disputed Claims Reserve and the Liquidation Trust Expense Fund. Subject to and in accordance with [Section 5.3] hereof, the Liquidation Trustee may withhold from amounts distributable to any entity any and all amounts, determined in the Liquidation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement; *provided that* the Liquidation Trustee shall not be required to make a distribution if the aggregate, net amount of unrestricted Cash available for distribution is sufficiently small in amount as to make the distribution impracticable as reasonably determined by the Liquidation Trustee, after consultation with the Plan Advisory Committee.

6.12 Disbursing Agent.

The Liquidation Trust, or its duly appointed agent or designee, shall be the Disbursing Agent for all distributions to made under this Liquidation Trust Agreement.

6.13 Delivery of Distributions

In the event that any distribution to any Liquidation Trust Beneficiary is returned as undeliverable, no further distributions shall be made to such holder or such permitted designee unless and until the Liquidation Trustee is notified in writing of such holder's or permitted designee's, as applicable, then-current address, at which time all currently-due, missed distributions shall be made to such holder as soon as reasonably practicable thereafter without interest. Nothing herein shall require the Liquidation Trustee to attempt to locate holders or permitted designees, as applicable, of undeliverable distributions and, if located, assist such holders or permitted designees, as applicable, in complying with the Plan.

6.14 Time Bar to Cash Payments.

Checks issued by the Liquidation Trust to the Liquidation Trust Beneficiaries shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Thereafter, the amount represented by such voided check shall irrevocably revert to the Liquidation Trust and any Claim on account of the Liquidation Trust Interest in respect of such voided check shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary. Requests for re-issuance of any check shall be made to the Liquidation Trustee by the Liquidation Trust Beneficiary to whom such check was originally issued, subject to [Section 6.7 hereof].

6.15 Manner of Payment or Distribution.

All payments made by the Liquidation Trust shall be payable in Cash, and the Liquidation Trustee shall distribute such Cash by wire, check, or such other method as the Liquidation Trustee deems appropriate under the circumstances.

6.16 Setoffs and Recoupments.

The Liquidation Trust may, but shall not be required to, set off or recoup against any Allowed Claim, and any distribution to be made on account of such Allowed Claim, any and all claims, rights, and Causes of Action of any nature whatsoever that the Debtors or the Liquidation Trust may have (as successor to the Debtors) against the holder of such Allowed Claim pursuant to the Bankruptcy Code or applicable non-bankruptcy law; *provided that* neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidation Trust of any claims, rights, or Causes of Action the Liquidation Trust may possess against the holder of such Claim.

6.17 Withholding and Reporting Requirements.

(a) In connection with the Plan, any party issuing any instrument or making any distribution described in the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. In the case of a non-Cash distribution that is subject to withholding, the distributing party may withhold an appropriate portion of such distributed property and either (i) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax), or (ii) pay the withholding tax using its own funds and retain such withheld property. Any amounts withheld pursuant to the preceding sentence shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding the foregoing, any entity that receives a distribution hereunder shall have responsibility for any taxes imposed by any governmental unit, including, without limitation, income, withholding, and other taxes, on account of such distribution. The Liquidation Trustee shall have the right, but not the obligation, to not make a distribution until such recipient has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

(b) Any party entitled to receive any property as an issuance or distribution hereunder shall, upon request, deliver to the Liquidation Trust an appropriate Form W-9 or (if the payee is a foreign entity) Form W-8. If such request is made by the Liquidation Trustee and the holder fails to comply before the date that is one hundred and twenty (120) days after the request is made the amount of such distribution shall irrevocably revert to the applicable Liquidation Trust and any Claim or Liquidation Trust Interest in respect of such distribution shall be discharged and forever barred from assertion against the Liquidation Trust or the Trust Assets.

ARTICLE 7

PROCEDURES FOR DISPUTED CLAIMS

7.1 Objections to Claims.

Except as otherwise set forth in the Plan or this Agreement, from and after the Effective Date, the Liquidation Trustee shall have the authority to object to all Claims or Interests pursuant to applicable procedures established by, or grounds set forth in, the Bankruptcy Code, the Bankruptcy Rules, the Liquidation Trust Agreement and the Plan. The deadline within which objections to Claims or Interests may be filed shall be one (1) year from the Effective Date; *provided, however*, that such deadline may be extended from time to time upon application to and approval by the Bankruptcy Court.

7.2 Resolution of Disputed Claims.

Except as otherwise set forth in the Plan or this Agreement, on and after the Effective Date, the Liquidation Trustee shall have the exclusive authority to object to, compromise, settle, otherwise resolve, or withdraw any objections to Claims. Pursuant to Bankruptcy Rule 9019(b), the Liquidation Trustee may settle any Disputed Claims (or aggregate of Claims if held by a single creditor), without notice, a hearing or Bankruptcy Court approval unless the amount in controversy for such Disputed Claim exceeds one hundred thousand dollars (\$100,000).

7.3 Estimation of Claims.

The Liquidation Trustee may (a) determine, resolve and otherwise adjudicate all contingent, unliquidated, and Disputed Claims in the Bankruptcy Court and (b) at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtors previously objected to such Claim. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Liquidation Trustee may pursue supplementary proceedings to object to the allowance of such Claim.

7.4 No Distributions Pending Allowance.

No payment or distribution provided under the Plan or hereunder shall be made on account of such Claim unless and until (and only to the extent that) such Claim becomes an Allowed Claim.

7.5 Interest.

To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, the

holder of such Claim shall not be entitled to any interest that accrued thereon from and after the Effective Date.

7.6 Insured Claims.

If any portion of an Allowed Claim is an Insured Claim, no distributions under the Plan or hereunder shall be made on account of such Allowed Claim until the holder of such Allowed Claim has exhausted all remedies with respect to any applicable insurance policies.

7.7 Disputed Claims Reserves.

(a) From and after the Effective Date, the Liquidation Trustee shall establish and maintain one or more Disputed Claims Reserves for the benefit of the holders of such Disputed Claims, including any Cash and any other Trust Assets allocable to such Disputed Claim, determined based on (i) the asserted amount of such Disputed Claim, (ii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Liquidation Trustee, (iii) such other amount as may be determined by the Court, or (iv) with respect to an unliquidated Claim, such amount deemed appropriate by the Liquidation Trustee in her reasonable discretion (in each case, net of any taxes imposed on, or with respect to, the applicable Disputed Claims Reserve as relates to such Disputed Claim, including in connection with such distributions). The Liquidation Trustee shall remove funds from the applicable Disputed Claims Reserve as such Disputed Claims are resolved, which funds shall be distributed as set forth in the Plan.

(b) Any taxes incurred by the Liquidation Trust with respect to assets allocable to, or on account of, a Disputed Claim (including any taxes that would be incurred upon a distribution of such assets as a result of the resolution of the Disputed Claim) will be netted against the amounts otherwise distributable from the applicable Disputed Claim Reserve in respect of, or as a result of the resolution of, such Claim. No assets allocable to, or on account of, a Disputed Claim will be released from the applicable Disputed Claim Reserve until such time as the Cash otherwise distributable as a result of the resolution of such Claim is sufficient to pay any taxes incurred or that would be incurred upon the distribution.

ARTICLE 8

STANDARD OF CARE; EXCULPATION; INDEMNIFICATION

8.1 Standard of Care; Exculpation.

(a) To the fullest extent permitted by applicable law, none of the Liquidation Trustee, the Plan Advisory Committee members, or their respective members, officers, employees, directors, advisors or professionals (collectively, the “Covered Parties”), shall be liable for any damages arising out of the creation, operation or termination of the Liquidation Trust, including actions taken or omitted in fulfillment of duties with respect to the Liquidation Trust arising out of the discharge of the powers and duties conferred upon them by the Plan, this Trust Agreement or any Order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or by applicable law, except to the extent such actions or omissions are determined by a Final Order to have arisen out of willful

misconduct, intentional fraud, or knowing violation of law as determined by a Final Order; *provided, that* in no event will any such party be liable for indirect, punitive, incidental, exemplary, consequential or special damages (including but not limited to lost profits) under any circumstances. In performing duties under this Agreement, the Liquidation Trustee and the Plan Advisory Committeemembers shall have no liability for any action taken in accordance with the advice of counsel, accountants, appraisers and other professionals by the Plan Advisory Committee (or its members), the Liquidation Trustee or the Liquidation Trust; *provided, however*, that neither the Liquidation Trustee nor the Plan Advisory Committee members shall be under any obligation to consult with attorneys, accountants, financial advisors, or agents, and a good faith determination not to consult with attorneys, accountants, financial advisors, or other agents shall not result in the imposition of liability on the Liquidation Trustee or the Plan Advisory Committee members. None of the provisions of this Liquidation Trust Agreement shall require the Liquidation Trustee or the members of the Plan Advisory Committee to expend or risk their own funds or otherwise incur personal financial liability in the performance of any of their duties hereunder or in the exercise of any of their rights and powers. Notwithstanding the foregoing, nothing in this Section shall relieve the Covered Parties from any liability for any actions or omissions arising out of their willful misconduct, fraud, or knowing violation of law; *provided that* in no event will any such entity be liable for punitive, exemplary, consequential, or special damages under any circumstances.

(b) All of the Covered Parties shall be, and hereby are, exculpated by all entities, including but not limited to the Liquidation Trust Beneficiaries and any other holders of Allowed Claims, from any and all claims, Causes of Action and other assertions of liability arising out of the discharge of the powers and duties conferred upon them by the Plan, this Trust Agreement or any Order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or by applicable law, except for actions or omissions that are determined by a Final Order to have arisen out of willful misconduct, intentional fraud, or knowing violation of law. No entity shall have, or be permitted to pursue, any Claim or Cause of Action against any of the Covered Parties for making payments in accordance with the Trust Agreement, the Plan, or any Order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan or for implementing any other provision of the Plan. The Covered Parties shall not be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any entity in connection with the creation, operation, or termination of the Liquidation Trust to the fullest extent permitted under applicable law and all Entities claiming against the Liquidation Trustee or the Plan Advisory Committee members, or otherwise asserting claims of any nature in connection with affairs of the Liquidation Trust, shall look solely to the Trust Assets for satisfaction of any such claims, except to the extent of such party's willful misconduct, intentional fraud, or knowing violation of law as determined by a Final Order.

(c) Except as specifically provided herein, nothing contained in this Liquidation Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Liquidation Trustee or the Plan Advisory Committee members of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by the Liquidation Trustee or the Plan Advisory Committee members to assume or accept any such liability, obligation or duty.

8.2 Fiduciary Duties.

To the extent that, at law or in equity, the Liquidation Trustee or any member of Plan Advisory Committee has duties (including fiduciary duties) and liabilities relating hereto, to the Liquidation Trust, to the Liquidation Trust Beneficiaries, or to any other party in interest, it is hereby understood and agreed by the parties that such duties and liabilities are eliminated to the fullest extent permitted by applicable law, and replaced by the duties and liabilities expressly set forth in this Liquidation Trust Agreement with respect to the Liquidation Trustee and the Plan Advisory Committee.

8.3 Indemnification of Liquidation Trustee and Plan Advisory Committee.

(a) To the fullest extent permitted by law, the Liquidation Trust, to the extent of its assets legally available for that purpose, shall defend, indemnify and hold harmless the Liquidation Trustee and the Plan Advisory Committee members and each of their directors, members, employers, affiliates, shareholders, partners, officers, agents, employees, attorneys, advisors, and other professionals (collectively, the “Indemnified Persons”) from and against any and all losses, costs, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or damages of any kind, type or nature, whether arising in tort, contract or otherwise or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Liquidation Trust, except to the extent that the loss, cost, damage, expense or liability resulted primarily and directly from the Indemnified Person’s willful misconduct, intentional fraud, or knowing violation of law as determined by a Final Order. The Liquidation Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including, without limitation, the costs of investigating, preparing, defending or settling such action) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Liquidation Trust. Any action taken or omitted to be taken by the Liquidation Trustee or the Plan Advisory Committee will conclusively be deemed not to constitute willful misconduct, intentional fraud, or knowing violation of law, provided, however, that the Liquidation Trustee shall not be obligated to comply with a direction of the Plan Advisory Committee, whether or not express, which would result in a change of the distribution or any other material provisions of the Plan.

(b) Any Indemnified Person may waive the benefits of indemnification under this [Section 8.3], but only by an instrument in writing executed by such Indemnified Person.

(c) The rights to indemnification under this [Section 8.3] are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity and common law rights to indemnification or contribution. Nothing in this [Section 8.3] will impact the rights or obligations of any entity (or the limitations on those rights or obligations) under this Liquidation Trust Agreement, or any other agreement or instrument to which that entity is a party.

8.4 Other Activities

The entity serving as the Liquidation Trustee, other than in their capacity as such, shall be

entitled to perform services for and be employed by third parties.

8.5 No Liability for Acts of Others

Except as expressly provided in this Agreement, the Plan or the Confirmation Order, neither the Liquidation Trust nor the Liquidation Trustee shall assume any of the liabilities, obligations or duties of the Debtors or the Liquidation Trust Beneficiaries. The Liquidation Trustee may accept and rely upon any accounting made by or on behalf of the Debtors and any statement or representation made by the Debtors or its agents and professionals as to the assets comprising the Trust Assets or the Disputed Claims Reserve or as to any other fact bearing upon the creation of the Liquidation Trust, so long as it has a good faith basis to do so. Any successor Liquidation Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Liquidation Trustee, and any statement or representation made by a predecessor Liquidation Trustee or its agents as to the assets comprising the Trust Assets, the Disputed Claims Reserves or as to any other fact bearing upon the prior administration of the Liquidation Trust, so long as it has a good faith basis to do so. The Liquidation Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. The Liquidation Trustee or successor Liquidation Trustee shall not be liable for any act or omission of any predecessor Liquidation Trustee, nor have a duty to enforce any claims against any predecessor Liquidation Trustee on account of any such act or omission.

The foregoing exculpation and indemnity in respect of any Covered Party or Indemnified Person shall survive the termination of such entity from the capacity for which they are indemnified and/or exculpated and shall inure to the benefit of their heirs and assigns.

ARTICLE 9

TERM; TERMINATION OF LIQUIDATION TRUST

9.1 Term; Termination of Liquidation Trust.

(a) The Liquidation Trustee shall be discharged, the Liquidation Trust shall be dissolved, and the Allowed Claims and beneficial interests in the Liquidation Trust shall be cancelled or terminated, as applicable, at such time as (x) the Liquidation Trustee, in consultation with the Plan Advisory Committee, determines that the administration of the Liquidation Trust is not likely to yield sufficient additional proceeds to justify further pursuit of the Causes of Action, and (y) all distributions required to be made by the Liquidation Trustee under the Plan and this Agreement have been made. The Liquidation Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Liquidation Trust, (ii) donate any balance to a charitable organization (A) described in Section 501(c)(3) of the IRC, (B) exempt from U.S. federal income tax under Section 501(a) of the IRC, and (C) that is not a “private foundation”, as defined in Section 509(a) of the IRC, and (iii) dissolve the Liquidation Trust. Upon receipt of such authority from the Bankruptcy Court, the Liquidation Trustee shall notify each Liquidation Trust Beneficiary.

(b) The term of the Liquidation Trust shall end no later than the fifth (5th) anniversary

of the Effective Date (the “Initial Liquidation Trust Term”); *provided, however*, that the Liquidation Trustee may, subject to the further provisions of this Section, extend the term of the Liquidation Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Trust Assets as follows: within the six (6) month period prior to the termination of the Initial Liquidation Trust Term, the Liquidation Trustee may file a notice of intent to extend the term of the Liquidation Trust with the Bankruptcy Court and, upon approval of the Bankruptcy Court of such extension request following notice and a hearing, the term of the Liquidation Trust shall be so extended. The Liquidation Trust may file one or more such extension notices, each notice to be filed within the six (6) month period prior to the termination of the extended term of the Liquidation Trust (all such extensions, collectively, are referred to herein as the “Supplemental Liquidation Trust Term”).

9.2 Continuance of Trust for Winding Up.

After the termination of the Liquidation Trust and for the purpose of litigation and winding up the affairs of the Liquidation Trust, the Liquidation Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining assets of the Liquidation Trust, the Liquidation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Liquidation Trust Expenses, until such time as the winding up of the Liquidation Trust is completed. Upon the dissolution of the Liquidation Trust and the completion of the winding up of the assets, liabilities and affairs of the Liquidation Trust the Liquidation Trustee file a certificate of cancellation to terminate the Liquidation Trust. Except as otherwise specifically provided herein, upon the termination of the Liquidation Trust, the Plan Advisory Committee shall have no further duties or obligations hereunder. After the dissolution of the Liquidation Trust, the Liquidation Trustee shall retain the books, records and files that shall have been created by the Liquidation Trustee for a period of six months and thereafter may in her sole discretion, destroy all of such records and documents as the Liquidation Trustee deems appropriate (unless such records and documents are necessary to fulfill any of the Liquidation Trustee’s residual obligations, if any pursuant to this Agreement). The Liquidation Trustee may allocate and reserve (or pre-pay) sufficient funds to cover the costs of storage and destruction of such records. The Liquidation Trustee may, but shall not be required, to seek and obtain Bankruptcy Court approval to destroy records at or about the time of dissolution.

ARTICLE 10

AMENDMENT AND WAIVER

10.1 Amendment and Waiver.

(a) Subject to approval of the Plan Advisory Committee upon majority vote, the Liquidation Trustee may amend, supplement or waive any provision of, this Liquidation Trust Agreement, without approval of the Bankruptcy Court or the consent of any Liquidation Trust Beneficiary or any other party: (i) to cure any ambiguity, omission, defect or inconsistency in this Liquidation Trust Agreement provided that such amendments, supplements or waivers shall not contravene or otherwise be inconsistent with the terms of the Plan, Cash Collateral Order or the

Confirmation Order, adversely affect the distributions to be made or other rights under this Liquidation Trust Agreement to any of the Liquidation Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Liquidation Trust as a “liquidating trust”; (ii) to comply with any requirements in connection with the U.S. federal income tax status of the Liquidation Trust as a “liquidating trust”; (iii) to comply with any requirements in connection with maintaining that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act or the Investment Company Act; (iv) to make the Liquidation Trust a reporting entity and, in such event, to comply with any requirements of the Exchange Act or the Investment Company Act; and (v) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Liquidation Trust Agreement.

(b) Any substantive provision of this Liquidation Trust Agreement may be amended or waived by the Liquidation Trustee, subject to approval of the Plan Advisory Committee, without approval of the Bankruptcy Court or the consent of any Liquidation Trust Beneficiary; *provided, however*, that no change may be made to this Liquidation Trust Agreement that contravenes or is otherwise inconsistent with the terms of the Plan or the Confirmation Order, or would adversely affect the distributions to be made under this Liquidation Trust Agreement to any of the Liquidation Trust Beneficiaries in any material respect, or adversely affect the U.S. federal income tax status of the Liquidation Trust as a “liquidating trust.” Notwithstanding this Section 10.1, any amendments to this Liquidation Trust Agreement shall not be inconsistent with the purpose and intention of the Liquidation Trust to liquidate in an expeditious but orderly manner the Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d).

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish a Liquidating Trust.

This Liquidation Trust Agreement is intended to create a “liquidating trust” for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Liquidation Trust Agreement may be amended in accordance with Section 10.1 hereof to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

11.2 Reimbursement of Trust Litigation Costs.

If the Liquidation Trustee or the Liquidation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Liquidation Trust Agreement or the enforcement thereof, the Liquidation Trustee or the Liquidation Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses and fees, including attorneys’ fees, from the non-prevailing party incurred in connection with such dispute or enforcement action. To the extent that the Liquidation Trust has advanced such amounts, the Liquidation Trust may recover such amounts from the non-prevailing party.

11.3 No Bond.

The Liquidation Trustee shall not be required to post any bond or surety or other security for the performance of her duties unless otherwise ordered by the Bankruptcy Court and, in the event the Liquidation Trustee is so otherwise ordered, all reasonable costs and expenses of procuring any such bond or surety shall be borne by the Liquidation Trust.

11.4 Laws as to Construction.

This Liquidation Trust Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

11.5 Jurisdiction.

Without limiting any entity's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, (i) the Bankruptcy Court shall have jurisdiction to enforce the terms of this Liquidation Trust Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Liquidation Trust Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court and the parties, including the Liquidation Trust Beneficiaries and any holders of Claims hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

11.6 Severability.

If any provision of this Liquidation Trust Agreement or the application thereof to any entity or circumstance shall be finally determined by a court of competent jurisdiction to be invalid, or unenforceable to any extent, the remainder of this Liquidation Trust Agreement, or the application of such provision to Entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Liquidation Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

11.7 Notices.

All notices, requests or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the Liquidation Trustee to:

William H. Henrich
Getzler Henrich & Associates, LLC
295 Madison Avenue
20th Floor
New York, NY 10017

With a copy to:

If to the Plan Advisory Committee to:

Mark I. Indelicato, Esq
Thompson Coburn Han & Hessen LLP
488 Madison Avenue
New York, New York 10022

All notices shall be effective and shall be deemed delivered: (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic mail on the date of receipt; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, electronic mail address, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

11.8 Fiscal Year.

The fiscal year of the Liquidation Trust will begin on the first day of January and end on the last day of December of each year.

11.9 Headings.

The section headings contained in this Liquidation Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidation Trust Agreement or of any term or provision hereof.

11.10 Counterparts.

This Liquidation Trust Agreement may be executed in any number of counterparts, each of

which shall be deemed to be an original instrument, but all together shall constitute one agreement.

11.11 Confidentiality.

The Liquidation Trustee and each successor trustee and any member of the Plan Advisory Committee (each a “Covered Person”) shall, during the period that they serve in such capacity under this Liquidation Trust Agreement and following either the termination of this Liquidation Trust Agreement or such individual’s removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, nonpublic information of or pertaining to any entity to which any of the assets of the Liquidation Trust relates or of which it has become aware in its capacity (the “Information”), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required to and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.12 Preservation of Privilege.

(a) In connection with the Causes of Action, any applicable privilege or immunity of the Debtors, including, but not limited to, any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral), and all defenses, claims, counterclaims, and rights of setoff or recoupment shall vest in the Liquidation Trust and may be asserted by the Liquidation Trustee. Nothing in herein nor any action taken by the Debtors in connection with this Agreement shall be (or shall be deemed to be) a waiver of any privilege or immunity of the Debtors, including any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). Notwithstanding the Debtors’ providing any privileged information to the Liquidation Trustee, the Liquidation Trust, or any party or person associated with the Liquidation Trust, such privileged information shall remain privileged. Notwithstanding the foregoing, the Liquidation Trustee may waive any privilege on behalf of the Liquidation Trust or the Debtors, as applicable.

(b) The Liquidation Trustee will seek to preserve and protect all applicable privileges and work-product relating to the Assigned Claims, including but not limited to, any attorney-client privilege, work-product privilege, or common interest privilege attaching to any documents or communications (whether written or oral).

11.13 Plan and Confirmation Order.

The terms of this Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order. In the event of any direct conflict or inconsistency between any provision of this Agreement, on the one hand, and the provisions of the Confirmation Order, on the other hand, the provisions of the Confirmation Order shall govern and control. In the event of any direct conflict or inconsistency between any provision of this Agreement, on the one hand, and the

provisions of the Plan, on the other hand, the provisions of the Plan shall govern and control, except with respect to the administration and structure of the Liquidation Trust, for which the Liquidation Trust Agreement shall govern and control.

11.14 Actions Taken on a Day Other than a Business Day.

In the event that any payment or act hereunder or under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date.

11.15 Meanings of Other Terms.

Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words herein and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision of this Agreement. The use in this Agreement of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

11.16 Entire Agreement.

This Liquidation Trust Agreement (including the Recitals), the Confirmation Order, the Plan, the Plan Support Agreement and the Final Cash Collateral Order constitute the entire agreement by and among the parties hereto with respect to the subject matter hereof, and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Liquidation Trust Agreement, the Plan, the Plan Support Agreement and the Final Cash Collateral Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder or thereunder. Except as otherwise specifically provided herein, in the Confirmation Order, or in the Plan, nothing in this Liquidation Trust Agreement is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Liquidation Trust Agreement.

Remainder Of This Page Intentionally Left Blank

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Liquidation Trust Agreement or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

DEBTORS:

By:

Title:

COMMITTEE:

By:

Title:

LIQUIDATION TRUSTEE:

By: William Henrich

Title:

Exhibit A To Liquidation Trust Agreement

Initial Members of Plan Advisory Committee

Exhibit B to the Liquidation Trust Agreement

Liquidation Trustee Compensation Schedule

(a) In consideration for the services of the Liquidation Trustee under this Agreement, the Liquidation Trustee shall receive the following compensation: an hourly fee of \$_____ or such other standard rate in effect for the Liquidation Trustee as of the date when services are rendered. The Liquidation Trustee shall also be entitled to fees incurred drafting, reviewing, revising, negotiating, and executing of this Agreement, the Confirmation Order, and any related documents prior to the Effective Date. The Liquidation Trustee's fees, together with reimbursement of any expenses, shall be payable beginning on the Effective Date and continuing thereafter on a monthly basis until the Liquidation Trustee is discharged.

(b) In the event of the resignation, termination or death of the Liquidation Trustee, compensation accrued through the effective date of such resignation, termination or death shall be promptly paid.

Getzler Henrich & Associates LLC
295 Madison Avenue
20th Floor
New York, NY 10017
T: 212.697.2400
F: 212.697.4812
www.getzlerhenrich.com

GetzlerHenrich
MANAGEMENT & FINANCIAL CONSULTANTS

August 23, 2021

Cosmoledo, LLC

Thank you for choosing to retain the services of Getzler Henrich & Associates LLC ("Getzler Henrich"). We appreciate the opportunity to work with you to act as Liquidating Trustee of the assets in the Trust established in Cosmoledo, LLC and its Affiliated Debtors'¹ Chapter 11 Plan of Liquidation approved by the Bankruptcy Court.

OUR FIRM

Getzler Henrich & Associates is one of the oldest and most respected names in middle market corporate restructuring, assisting companies around the world with an approach that emphasizes rapid, pragmatic decision making and implementation. Over the past fifty plus years, Getzler Henrich has developed a strong track record, assisting both underperforming and healthy companies in the middle market. We have a demonstrated ability to generate realistic solutions to challenges confronting companies and their creditors, and to helping business improve their operations and maximize company value/stakeholder recovery. Engagements have spanned across a broad spectrum of industries. Executing solutions with speed, competence and integrity, we adapt our approach to the precise needs of each individual client and make practical proposals to address specific issues.

SCOPE OF WORK

We understand you desire Getzler Henrich to provide William Henrich to serve in the post-Chapter 11 confirmation role of Liquidating Trustee, the scope of work to be as defined in the Liquidating Trust Agreement to which Getzler Henrich's engagement letter is an exhibit. The Trust may retain Getzler Henrich to provide personnel to support the Trustee's efforts to execute his responsibilities.

¹ The "Debtors" in these chapter 11 cases, along with the last four digits of each Debtor's 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)..

COST

Consulting Fees will be billed on an hourly basis; our standard hourly rates are as follows:

Principal / Managing Director	\$575 - \$725
Director / Specialists	\$475 - \$695
Associate Professionals	\$175 - \$475

We will invoice Consulting Fees plus out-of-pocket expenses on a monthly basis; out-of-pocket expenses include, but are not limited to coach travel, meals, local transportation, lodging, parking, telephone calls, delivery services, and photocopying.

Getzler Henrich will strive to perform services in a most expeditious and comprehensive fashion, which will be dependent in part on the quality, sophistication and availability of data, existing systems, personnel, processes, and reporting. Travel time, net of normal commutation and productive work time, is billed at 50% of the hourly rate. Hourly rates are revised periodically. We will notify you of any such changes to our rates. Note that we do not provide assurance regarding the outcome of our work and our fees will not be contingent on the results of such work.

OUR PEOPLE

Assignments are always managed with a proactive, results-oriented approach. We believe that in order to provide valuable guidance and advice to our clients, our people must have first-hand experience running a business. Therefore, prior to joining the firm, each team leader at Getzler Henrich has gained valuable experience managing companies, ranging from top executive positions at middle market companies to senior management positions at major divisions of multinationals.

As aforementioned, William Henrich will serve as Liquidating Trustee and utilize additional Getzler Henrich professionals as appropriate and required. Mr. Henrich's background follows below:

William H. Henrich, "Bill" co-chairman of Getzler Henrich, one of the leading corporate restructuring firms in the U.S. focused on middle market companies. The restructuring industry publication "*Workouts and Turnarounds*" has named Getzler Henrich one of the Top US Turnaround firms for many consecutive years. With nearly forty years of experience, including more than 400 engagements, in turnaround and crisis management, loan workout, bankruptcy consulting and performance improvement, specific areas of expertise include:

- Operational restructuring, improving business operations, management practices, cash flow, and profitability
- Financial restructuring, negotiating and implementing corporate finance solutions including debt restructuring, refinancing, and distressed mergers and acquisitions
- Evaluating/crafting company operations, business plans, and financial projections
- Guiding companies through workout, turnaround and Chapter 11 processes and maximizing their value and recovery for stakeholders, including as CRO, interim CEO. Independent Board Director and Liquidation Trustee

- Advising secured and unsecured creditors during Chapter 11 bankruptcy proceedings, including developing plans of reorganization and providing bankruptcy forensic analysis to support litigation

Prior to joining Getzler Henrich, Mr. Henrich was managing director and founder of the New York practice of a prominent middle-market corporate restructuring firm. He also served in Arthur Andersen's corporate recovery services group. In 1982, Mr. Henrich started Andersen's New York restructuring and bankruptcy practice and was a member of the core Partner group responsible for establishing policy and directing the practice nationwide. Mr. Henrich also held senior executive finance, operational and sales/marketing positions with Arrow Electronics, the world's largest electronics distribution company. His efforts helped the company significantly reduce operating costs, improve market penetration and increase profitability.

Mr. Henrich has served as Independent Board member for Brooklyn Boulders, Hussey Copper, Vision Group Holdings, Emtec Inc., Custom Ecology Inc., Empire CLS, National Label Company, Coyne Textile Service and Daticon Inc. Mr. Henrich also currently serves as the Trustee of the Insys Pharmaceutical Liquidation Trust and previously served in a similar role for Isolux Corsan; he was the Sole Managing Member of Direct Access Group to direct its efforts to maximize value for stakeholders.

In September 2018, Mr. Henrich was inducted into the Turnaround Management Association's Hall of Fame. This prestigious honor is bestowed every five years by the TMA to recognize those unique restructuring practitioners who, through their individual contributions, have increased the stature, visibility, and respect of the turnaround and restructuring industry and have made a lasting and positive impact to the industry.

Mr. Henrich is a former president and current advisory board member of the Turnaround Management Association's New York chapter, current TMA Global executive board member and Corporate Secretary, current executive board member of the American Bankruptcy Institute ("ABI"), former editorial advisory board member of ABF Journal, member of the Association of Corporate Growth and frequently lectures and writes on turnaround and bankruptcy issues. Mr. Henrich also served as Co-Chairman of the ABI's Bankruptcy Reform Commission Governance Committee. A certified public accountant, he also holds a master's degree in business administration from Harvard Business School and a bachelor's degree from Baruch College, City University of New York.

TERMS OF ENGAGEMENT

The Standard Terms and Conditions annexed hereto as Annex I are incorporated by reference herein as if set forth in full herein and shall govern this engagement, except to the extent inconsistent with or superseded by the express terms of this letter.

This Engagement Letter contains the entire agreement among the parties relating to the subject herein. Any modification or other changes to the terms contained herein, including Annex I, must be in writing and signed by the parties hereto to be enforceable.

If the foregoing is in accordance with our understanding, please sign the attached copy and forward it to our office. In addition, the retainer (waived in this instance) and future

payments may be wired to Getzler Henrich & Associates LLC c/o JP Morgan Chase Bank,
account # 733687336, routing/ABA # 021 0000 21.

Sincerest regards,

GETZLER HENRICH & ASSOCIATES LLC



By: _____ Dated: _____
William H. Henrich
Co-Chairman

AGREED TO AND ACCEPTED BY:

Cosmoledo, LLC and its Affiliated Debtors

Accepted by: _____

Dated: _____

Print Name: _____

Title: _____

ANNEX I
Terms and Conditions

1. Access to Company Personnel and Information.

(a) The Company agrees to make available to Getzler Henrich all of the Company's financial and operational information and data as requested by Getzler Henrich (all such information so furnished being the "Information") and agrees to permit discussions with Company personnel that Getzler Henrich reasonably requests in connection with the services performed by Getzler Henrich under this Agreement. The Company will provide Getzler Henrich with full access to all Company personnel, books, and records, including those of the Company's attorneys (subject to such safeguards as may be necessary to preserve applicable attorney client privileged communications) and other agents and third party representatives. The Company represents and warrants to Getzler Henrich that, except as disclosed to Getzler Henrich in writing, all Information provided or made available to Getzler Henrich by the Company, its directors, officers, employees, representatives, attorneys and agents at any time shall, to the best of the Company's knowledge: a) be complete and correct in all material respects; and b) not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements not misleading in light of the circumstances under which such statements are made. The Company agrees that it shall notify Getzler Henrich if it learns subsequently that any Information provided or made available to Getzler Henrich in accordance with this Agreement is incorrect, inaccurate, or otherwise should not be relied upon.

(b) The Company recognizes and confirms that Getzler Henrich (a) will use and rely primarily on the Information and on information available from generally recognized public sources in performing the services contemplated hereby without having independently verified any of the same and (b) does not assume responsibility for accurateness or completeness of the Information and such other information and (c) will not make an appraisal of any of the assets or liabilities of the Company. The Company agrees that Getzler Henrich shall have no duty to verify independently the reliability, accuracy or completeness of any Information or other information. The Company also agrees that Getzler Henrich shall incur no liability to the Company or any individual or other entity that may arise if any Information or other information proves to be unreliable, inaccurate or incomplete.

2. Confidential Information.

(a) Getzler Henrich shall not publicly disclose the Confidential Information. Further, Getzler Henrich will use the Confidential Information only for the purpose of providing services to the Company pursuant to this Agreement. "Confidential Information" shall consist only of information that is necessary for Getzler Henrich to perform its services under this Agreement, and that is: (i) disclosed to Getzler Henrich by the Company, its directors, officers, employees, representatives and agents; (ii) acquired by Getzler Henrich from any inspection of the Company's property in connection with this Agreement; or (iii) information produced by Getzler Henrich, from Confidential Information, in connection with performing services to the Company under this Agreement.

(b) Confidential Information shall not include information that is: (i) now or subsequently becomes generally known or available by publication, commercial or otherwise, through no fault of Getzler Henrich, its employees, agents, or independent contractors; (ii) already known by Getzler Henrich at the time of the disclosure, provided that such information did not come from a source known by Getzler Henrich to be bound by a confidentiality agreement with the Company, or from a source that was otherwise prohibited from disclosing such information under a contractual, legal or fiduciary obligation; (iii) becomes available to Getzler Henrich on a non-confidential basis from a source other than the Company, provided that, to Getzler Henrich's knowledge, the source was not prohibited from disclosing such information to Getzler Henrich under a contractual, legal or fiduciary obligation to the Company; (iv) independently developed by Getzler Henrich, its employees, agents, or independent contractors primarily from information that is not Confidential Information; (v) information that the Company and Getzler Henrich agree, in writing, may be disclosed; (vi) information that is or should be reasonably expected to be disclosed as part of Getzler Henrich's services to the Company; or (vii) information that Getzler Henrich reasonably believes, upon advice of its attorneys, must be disclosed pursuant to applicable law, or regulatory or administrative process, including stock exchange rules.

(c) Getzler Henrich may disclose Confidential Information: (i) to third parties in connection with the performance of its services under this Agreement; or (ii) in connection with any dispute between Getzler Henrich and Company under, concerning or arising out of this Agreement. If Getzler Henrich receives any request by order, subpoena, or other legal process to produce any Confidential Information, then unless otherwise prohibited by law or process, if practicable Getzler Henrich will seek to provide the Company with timely notice of such request. At the Company's request and expense, and unless otherwise prohibited by law or against a recommendation by Getzler Henrich's counsel, and without relinquishing or modifying Getzler Henrich's authority to disclose information under the terms of this Agreement, Getzler Henrich will cooperate reasonably with the Company in actions that the Company deems necessary or appropriate under the circumstances to protect the confidentiality of the Confidential Information.

(d) Getzler Henrich may disclose the Company's name for purposes of internal marketing materials only and will not otherwise disclose Confidential Information as contemplated under this Section 2.

3. No Third-Party Beneficiaries; Use of Work Product. Except as provided with respect to indemnification and exculpation, there are no third-party beneficiaries of this Agreement. The Company acknowledges that in connection with its engagement Getzler Henrich is acting as an independent contractor with duties owing solely to Company. The Company acknowledges that all information, whether written or oral, created, prepared, or compiled by Getzler Henrich in connection with this Agreement is intended solely for the benefit and use of the Company provided, however that Getzler Henrich acknowledges and agrees that Company shall utilize Getzler Henrich's work in negotiations with Company's creditors. No other individual or entity shall be entitled to rely on such information for any purpose. Company agrees that such information shall not be reproduced, disseminated, quoted or referred to at any time or in any manner other than to the Company's board of directors or managers, officers, employees, representatives, attorneys, and other agents who have a need to receive such information, except upon Getzler Henrich's prior written consent. Without limiting the foregoing, the Company shall not (and shall not authorize any other individual or entity to) use Getzler Henrich's name or to make available to third parties any information created, prepared, or compiled by Getzler Henrich under this Agreement for any reason, including obtaining or extending credit, offering or selling securities or other assets, or in any representations to third parties without Getzler Henrich's prior written consent. It is also expressly agreed that notwithstanding the above restrictions upon the Company's dissemination and use of information and work product, Getzler Henrich shall have no responsibility or liability relating directly or indirectly to such disclosure (whether authorized or unauthorized) by the Company concerning any information created, prepared, or compiled, in whole or in part, by Getzler Henrich pursuant to this Agreement, which may be disclosed only after prior written approval by Getzler Henrich or as required by applicable law, or regulatory or administrative process, including stock exchange rules. The foregoing provisions shall not be construed or interpreted to prohibit references to Getzler Henrich's engagement under this Agreement in required public filings or court documents.



4. Future Performance.

(a) The services to the Company under this Agreement may include the preparation of recommendations, projections, and other forward-looking statements. The Company acknowledges that numerous factors may affect the Company's actual financial and operational results, and that these results may materially and adversely differ from the recommendations and projections prepared, in whole or in part, by Getzler Henrich.

(b) Getzler Henrich does not provide assurance regarding the outcome of its engagement and its fees are not contingent on the results of its engagement.

5. Independent Contractor Status. Getzler Henrich is an independent contractor under this Agreement, and accordingly, this Agreement shall not be an employment agreement. No one on behalf of any Getzler Henrich Party (as defined below), nor any employees, agents, or independent contractors thereof, shall be considered to be a director, officer, member, manager, partner, control person, employee, representative, agent, or insider of the Company, unless expressly agreed to in a writing signed by Company and Getzler Henrich. Getzler Henrich will have exclusive control over the management and operation of Getzler Henrich, including hiring and paying the wages or other compensation of its personnel. The Getzler Henrich personnel that provide services to the Company under this Agreement may also provide services to other past, present or future Getzler Henrich clients. In addition, like other advisory firms, Getzler Henrich may utilize the services of qualified independent project employees, who work under our direct supervision for us on an ad hoc basis as temporary employees, to assist Getzler Henrich with its performance of its services pursuant to this Agreement. This arrangement enables us to reduce our overhead and provide cost-effective services to our clients, who benefit from this saving by our reasonable rate structure.

6. Appointment as Officer and/or Director. Getzler Henrich understands that the Company's officers and directors are covered by appropriate D&O insurance policies. Should the Company with the consent of Getzler Henrich elect a Getzler Henrich Party as an officer or director, the Company shall prior to the effectiveness of such election name such Getzler Henrich Party and Getzler Henrich as additional insureds under these policies and under all such other policies that the Company may purchase during Getzler Henrich's engagement. The Company further agrees to provide evidence of this coverage as soon as it is in place. It is mutually understood that naming such Getzler Henrich representative as an officer or director of the Company, that such Getzler Henrich representative will remain at all times an employee of Getzler Henrich and not become an employee of the Company and will be compensated solely by Getzler Henrich. Upon any cancellation or non-renewal of the D&O policy, then the Company shall exercise their rights to extend the claim period for a one-year "discovery period" and shall exercise such rights and pay such premiums required thereunder.

7. No Fiduciary Relationship. Other than with respect to appointment(s) of a Getzler Henrich Party as an officer and/or director of Company in writing (and then only with respect to such Getzler Henrich Party), nothing in this Agreement is intended to create, or shall be deemed or construed to create a fiduciary relationship between: (a) the Company, including without limitation, the Company's directors, officers, members, managers partners, control persons, shareholders, employees, representatives, agents, or creditors (collectively, the "Company parties" and each a "Company Party"), on the one hand; and (b) Getzler Henrich, Getzler Henrich's affiliates, and the respective directors, officers, members, managers, partners, control persons, shareholders, employees, representatives, independent contractors, attorneys, agents, successors or assigns of Getzler Henrich or Getzler Henrich affiliates (collectively, the "Getzler Henrich Parties," and each a "Getzler Henrich Party") on the other hand.

8. Indemnity by Company.

(a) The Company agrees to indemnify and hold harmless Getzler Henrich and each other Getzler Henrich Party from and against, and Company agrees that no Getzler Henrich Party shall have any liability to the Company or

any other Company Party for, any losses, claims, damages, obligations, penalties, judgments, awards, settlements, liabilities, costs, expenses and disbursements (including reasonable attorneys' fees and expenses, investigation fees and expenses and court and litigation costs) of any kind or nature whatsoever, known or unknown, foreseen or unforeseen, contingent or otherwise arising out of or in any way, directly or indirectly, related to (i) Company's actions or failures to act (including statements or omissions made, or information provided, by it or its agents) or (ii) actions or failures to act by an Getzler Henrich Party with Company's consent or in reliance on Company's actions or failures to act, or (B) otherwise related to or arising out of any services rendered by Getzler Henrich or any Getzler Henrich Party pursuant to this Agreement or other services rendered at the request of Company (including service by an Getzler Henrich Party as an officer, director or in any other capacity with Company or any of its affiliates), including costs arising out of any dispute whether or not Getzler Henrich or any other Getzler Henrich Party is a party to such dispute and including any claim brought by, on behalf of or in the name of Company (collectively, "Covered Losses"); provided, however, that this indemnity and exculpation shall not apply where a court of competent jurisdiction has found by a final judgment (not subject to further appeal) that such Covered Losses resulted primarily from willful misconduct on the part of Getzler Henrich in the performance of its services under this Agreement. The Company also agrees to pay Getzler Henrich a fee at Getzler Henrich's regular hourly rates for it or any other Getzler Henrich Party preparing for, or testifying in, any legal proceedings. If multiple claims are brought against any Getzler Henrich Party in any action with respect to at least one of which indemnification is permitted under applicable law and provided for under this agreement, the Company agrees that any judgment, arbitration award or other monetary award shall be conclusively deemed to be based on claims as to which indemnification is provided for and permitted. The Company's obligations hereunder shall be in addition to any rights that any Getzler Henrich Party may have at common law or otherwise. Solely for the purpose of enforcing this agreement, the Company hereby consents to personal jurisdiction and to service and venue in any court in which any claim which is subject to this agreement is brought by or against any Getzler Henrich Party.

(b) If any action, suit, proceeding or investigation or similar item is commenced as to which a Getzler Henrich Party is entitled to indemnification hereunder, it shall notify Company with reasonable promptness; provided, however, that any failure to so notify Company shall not relieve Company from its obligations hereunder (except to the extent Company is materially and adversely affected by such failure to be given notice). Getzler Henrich shall have the right to retain counsel of its own choice to represent it, and Company shall pay the reasonable fees, expenses and disbursements of such counsel; and such counsel shall to the extent consistent with its professional responsibilities cooperate with Company and any counsel designated by Company. Company shall not without written prior consent of Getzler Henrich, settle or compromise any claim against Getzler Henrich, or permit a default or consent to the entry of any judgment in respect thereof, unless such settlement, compromise or consent includes as an unconditional term thereof, the giving by the claimant to Getzler Henrich of an unconditional release from all liability in respect of such claim.

(c) In order to provide for just and equitable contribution, if a claim for indemnification pursuant to this Indemnification Agreement is made but is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for the indemnification in such case, then Company, on the one hand, and Getzler Henrich, on the other hand, shall contribute to the Covered Losses to which the Indemnified Parties may be subject in accordance with the relative benefits received by Company, on the one hand, and Getzler Henrich, on the other hand, and also the relative fault of Company, on the one hand, and Getzler Henrich, on the other hand, in connection with the statements, acts or omissions which resulted in such Covered Losses and the relevant equitable considerations shall also be considered. Notwithstanding the foregoing, Getzler Henrich shall not be obligated to contribute any amount hereunder that exceeds that amount of fees previously received by Getzler Henrich from Company.

(d) Neither termination nor completion of the engagement of Getzler Henrich or of this Agreement shall affect these indemnification provisions which shall remain operative and in full force and effect and shall be binding upon any successors or assigns of Company. Each Getzler Henrich Party is an express third party beneficiary of the provisions of this Section 8.

9. Non-Solicitation. For a period of twenty four (24) months after the later of: (a) the completion of all services to be provided by Getzler Henrich under this Agreement; or (b) termination of this Agreement, the Company, including any affiliates thereof, shall not, directly or indirectly, hire, employ, retain or utilize (other than through Getzler Henrich) the services of any current or former employee of Getzler Henrich or independent contractor who provided services under this Agreement at any time without the prior written consent of Getzler Henrich. The Company agrees and acknowledges that the Getzler Henrich's remedy at law for any breach of the provisions of this Section would be inadequate and that for any breach of such provisions Getzler Henrich will, in addition to such other remedies as may be available to it at law or in equity, be entitled to injunctive relief and to enforce its rights by an action for specific performance to the extent permitted by law.

10. Joint and Several Liability; Setoff. If the Company consists of one or more entities, then the Company's obligations under this Agreement shall be joint and several obligations of each entity comprising the "Company." Without limiting any other remedy that may be available to Getzler Henrich under this Agreement or applicable law, where the "Company" under this Agreement consists of more than one entity, then Getzler Henrich shall have against each such entity a right of setoff (notwithstanding any lack of mutuality) under which Getzler Henrich may set off against any claim against Getzler Henrich by any entity comprising the Company group, all of the claims that Getzler Henrich may have against any or all of the other entities that comprise the Company.

11. Limitation of Liability. No Getzler Henrich Party shall be liable to the Company, or any party asserting claims on behalf of the Company, except for direct damages found in a final determination to be the direct result of the bad faith, self-dealing, intentional misconduct or gross negligence of such Getzler Henrich Party. The Getzler Henrich Parties shall

not be liable for incidental or consequential damages under any circumstances, even if they have been advised of the possibility of such damages. The Getzler Henrich Parties aggregate liability, whether in tort, contract or otherwise, is limited to the amount of fees paid for services on this engagement (the "Liability Cap"). The Liability Cap is the total limit of the Getzler Henrich Parties for any and all claims or demands by anyone with respect to this Agreement, or the services provided hereunder, and the Liability Cap shall be allocated among all such claimants, as appropriate.

12. Attorneys' Fees and Expenses. The Company shall pay all costs and expenses, including reasonable attorneys' fees and expenses, incurred by Getzler Henrich to enforce this Agreement, including, but not limited to any indemnity provision of this Agreement. This obligation to pay Getzler Henrich's reasonable attorneys' fees and expenses shall apply whether such fees and expenses are incurred during trial or appeal, or in arbitration, a bankruptcy case, or otherwise. If so required, Getzler Henrich shall additionally be entitled to reimbursement of reasonable legal expenses associated with any required court approval of this Agreement or enforcement of provisions of this Agreement, including, but not limited to, fee applications and the defense of any objections thereto. Company shall reimburse Getzler Henrich for all such expenses upon presentation of the invoice for the same supported by appropriate documentation.

13. Consent; Entire Agreement. In any instance under this Agreement where a party's consent is permitted or required to be given, such consent shall not be withheld unreasonably. This Agreement contains the entire Agreement of the parties with respect to its subject matter, and supersedes all prior agreements and understandings between the Company and Getzler Henrich with respect to such subject matter. The parties agree that all terms of their agreement and understanding are embodied in this Agreement, and as modified or supplemented from time to time, but only if such modification or supplement is both: (i) in writing, and (ii) signed by all parties. To the extent that any services outside the scope of this engagement are required or requested, the extent of these services, and the additional compensation to be paid to Getzler Henrich for such services, shall be agreed upon prior to Getzler Henrich beginning to perform such services.

14. Choice of Law/Forum. The validity, interpretation and enforcement of this Agreement, matters arising out of or related to this Agreement or its making, performance or breach, and related matters shall be governed by the internal laws of the State of New York (without reference to choice of law doctrine). Any legal action or proceeding concerning the validity, interpretation and enforcement of this Agreement, matters arising out of or related to this Agreement or its making, performance or breach, or related matters shall be brought exclusively in the courts of the State of New York in the County of New York or of the United States of America for the Southern District of New York, and all parties consent to the exclusive jurisdiction of those courts, waiving any objection to the propriety or convenience of such venues. GETZLER HENRICH HEREBY AGREES, AND THE COMPANY HEREBY AGREES ON ITS OWN BEHALF, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF EACH OTHER COMPANY PARTY, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTER-CLAIM OR ACTION IN CONNECTION WITH, RELATING TO OR ARISING OUT OF GETZLER HENRICH'S ENGAGEMENT, GETZLER HENRICH'S PERFORMANCE THEREOF, OR THIS AGREEMENT.

15. Multiple Originals. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. This Agreement may be executed by facsimile signatures or signatures forwarded via email.

16. Termination. Either the Company or Getzler Henrich can terminate this agreement upon written notice, except for Sections 1 thru 3 and 6 thru 12, which shall survive any termination. Outstanding amounts due Getzler Henrich, if any, will be paid promptly upon receipt of a final invoice that will be provided immediately upon notice of termination by the Company.