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**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

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Dated: New York, New York
July 22, 2021

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).

PLAN OF LIQUIDATION

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

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

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

ARTICLE 1

DEFINITIONS

Section 1.1 Meaning.

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

Section 1.2 Terms Not Defined in this Plan.

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

Section 1.3 Rules of Construction.

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

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

Section 1.4 Exhibits and Appendices.

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

Section 1.5 Computation of Time.

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

Section 1.6 Governing Law.

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

Section 1.7 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

defined in Bankruptcy Rule 9006(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Interestholder” shall mean a Holder of an Interest.

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

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

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

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

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

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

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

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

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

“Petition Date” shall mean September 10, 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Record Date” shall mean the Confirmation Date.

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

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

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

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

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

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

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

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

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

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

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

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

such Claim arose.

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

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

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

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

ARTICLE 2

Substantive Consolidation

Section 2.1 Plan as Substantive Consolidation Motion.

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

Section 2.2 Effect of Substantive Consolidation.

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

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

ARTICLE 3

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

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

Section 3.1 United States Trustee Fees.

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

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

Section 3.2 Administrative Claims.

Each Holder of an Allowed Administrative Claim (exclusive of United States Trustee fees and Professional Fees) shall receive a Distribution from the Senior Claims Reserve in an amount equal to the Allowed Amount of the Administrative Claim on the later of: (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. For the avoidance of doubt, Administrative Claims shall include PPP Eligible Administrative Claims.

Section 3.3 Administrative Claims Bar Date.

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

Section 3.4 Professional Fee Claims.

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

Section 3.5 Professional Fees Bar Date.

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

Section 3.6 Priority Tax Claims.

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

ARTICLE 4

Classification and Treatment of Claims and Interests

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

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

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

Section 4.1 Class 1 - Secured Claims.

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

Section 4.2 Class 2 - Priority Claims.

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

Section 4.3 Class 3 – PPP Eligible Claims.

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

Section 4.4 Class 4 – General Unsecured Claims

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

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

Section 4.5 Class 5 – Intercompany Claims.

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

Section 4.6 Class 6 – Intercompany Interests.

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

Section 4.7 Class 7 – Interests in Cosmoledo, LLC.

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

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

Section 4.8 Lease Rejection Damages Allocation.

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

Section 4.9 Reservation of Rights to Cramdown Objecting Classes.

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

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

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

Section 4.11 Claims and Expense Reconciliation Process.

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

ARTICLE 5

Means for Execution of the Plan

Section 5.1 Effective Date.

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

Section 5.2 Establishment of Reserves.

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

Section 5.3 The Liquidation Trust.

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

Section 5.4 Transfer to Estate.

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

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

Section 5.5 Dismissal of 668 Bronx Commissary.

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

Section 5.6 Termination of the Debtors.

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

Section 5.7 Plan Advisory Committee.

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

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

Section 5.8 Distribution Schedules.

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

Section 5.9 Causes of Action and Other Assets.

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

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

Section 5.10 Claims Disallowed.

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

Section 5.11 Treatment of PPP Loan

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

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

ARTICLE 6

Liquidation Trustee

Section 6.1 Liquidation Trustee.

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

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

Section 6.2 Liquidation Trustee's Duties and Powers.

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

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

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

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

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

Section 6.3 Distributions by the Liquidation Trust.

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

Section 6.4 Withholding Taxes.

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

Section 6.5 Unclaimed Distributions.

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

Section 6.6 Mailing of Distributions.

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

Section 6.7 Interest on Claims.

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

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

Section 6.8 Minimum Distributions.

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

Section 6.9 Post-Effective Date Professional Services.

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

Section 6.10 Post Confirmation Reports and Fees.

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

ARTICLE 7

Procedures for Resolving and Treating Disputed Claims

Section 7.1 Objections to Claims.

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

Section 7.2 Objections to Administrative Claims.

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

Section 7.3 Untimely Claims.

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

Section 7.4 Reserves for Disputed Claims.

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

Section 7.5 Distributions on Disputed Claims.

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

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

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

ARTICLE 8

Executory Contracts

Section 8.1 Rejection of Executory Contracts.

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

Section 8.2 Filing of Claims Under Rejected Contracts.

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

Section 8.3 Insurance

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

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

ARTICLE 9

Effect of Confirmation of the Plan

Section 9.1 Effect of Confirmation.

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

Section 9.2 Validity of Company Actions.

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

Section 9.3 No Discharge from Debts Arising Prior to Confirmation.

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

Section 9.4 Injunction Against Interference with the Plan.

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

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

Section 9.5 Exculpation.

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

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

Section 9.6 Release of Liens

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

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

Section 9.7 Releases by the Debtors

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

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

Section 9.8 Cancellation and Release of Existing Indebtedness and Liens.

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

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

Section 9.9 Provisions As to Governmental Units

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

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

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

ARTICLE 10

Conditions Precedent to Effective Date

Section 10.1 Conditions Precedent to the Effective Date.

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

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

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

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

Section 10.3 Notice of Effective Date.

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

ARTICLE 11

MISCELLANEOUS PROVISIONS

Section 11.1 Entire Agreement.

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

Section 11.2 Satisfaction of Claims and Interests.

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

Section 11.3 Headings.

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

Section 11.4 Notice.

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

The Debtors:

Mintz & Gold LLP

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

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

The Creditors' Committee:

Hahn & Hessen LLP

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

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

The Liquidation Trust:

[REDACTED]

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

Section 11.5 Revocation.

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

Section 11.6 Substantial Consummation.

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

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

Section 11.7 Reservation of Rights.

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

Section 11.8 Authorizations.

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

Section 11.9 Transaction on Business Days.

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

ARTICLE 12

RETENTION OF JURISDICTION

Section 12.1 Retention of Jurisdiction.

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

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

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

Dated: New York, New York
July 20, 2021

MINTZ & GOLD LLP

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

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COSMOLEDO, LLC

By: /s/ Jose Alcalay
Jose Alcalay, CEO

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

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

by Jose Alcalay
Jose Alcalay, CEO

EXHIBIT A

Plan Trust Agreement

[TO BE PROVIDED]