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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
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TRANSMAR COMMODITY GROUP LTD. ¹	:	
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Debtor.	:	Case No. 16-13625 (JLG)
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DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING THE PRIVATE SALE AND ASSIGNMENT OF THE DEBTOR’S POWDER BOOK FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS PURSUANT TO 11 U.S.C. §§ 105, 363 AND 365 AND FED. R. BANK. P. 2002, 6004 AND 6006 AND GRANTING RELATED RELIEF

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s taxpayer identification number are as follows: Transmar Commodity Group Ltd. (5889). The Debtor’s principal office is located at 200 South Street, 4th Floor, Morristown, NJ 07960.

Transmar Commodity Group Ltd., the above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its undersigned counsel, hereby submits this motion (the “Motion”) pursuant to 11 U.S.C. §§ 105, 363 and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006 for an order, substantially in the form attached hereto as **Exhibit A** (the “Sale Order”), authorizing the private sale and assignment of the Debtor’s Powder Book (as defined herein), free and clear of all liens, claims, encumbrances and other interests, to AMERRA Cocoa USA, LLC (“AMERRA”), pursuant to a certain Asset Purchase Agreement (the “APA”) dated May 17, 2017 by and among the Debtor and AMERRA, attached hereto as **Exhibit B**, and granting related relief. In support of the Motion, the Debtor submits the Declaration of Robert J. Frezza in Support of Debtor’s Motion For Entry of An Order Approving the Private Sale and Assignment of the Debtor’s Powder Book Free and Clear of all Liens, Claims, Encumbrances, and Other Interests Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Federal Rule of Bankruptcy Procedure 6004 and Granting Related Relief (the “Frezza Declaration”) attached hereto as **Exhibit C**), and respectfully states as follows:

PRELIMINARY STATEMENT²

During the course of this bankruptcy case, the Debtor has been winding down its business operations and attempting to maximize the value of its assets for the benefit of creditors. On May 12, 2017, the Debtor filed its motion to approve the Forward Book Sale, and a hearing to consider the bidding procedures portion of the Forward Book Sale Motion is schedule for May 31, 2017. As is discussed herein, as a result of the exigencies caused by the potential rapid decline in the value of the Debtor’s Powder Book, a subset of the Debtor’s Forward Book – the Powder Contracts – have been carved out from the Forward Book Sale process. Given the fact

² Capitalized terms not defined in the Preliminary Statement shall have the meanings ascribed to them in this Motion.

that the Debtor neither has the liquidity nor the financing necessary to continue to purchase inventory to perform under the Powder Contracts, the Debtor has determined that the best way to maximize the value of the Powder Book is to find a qualified party to purchase, and upon closing, immediately begin performing under the Powder Contracts.

After due consideration and consultation with both the Pre-Petition Lenders and the Committee, the Debtor, in its business judgment, has determined that an emergent sale of the Powder Book to AMERRA is the best opportunity to preserve the value of the Powder Book and maximize value for the Debtor's estate. The Debtor submits that the sale to AMERRA must be on an emergent basis because: (i) Counterparties to certain of the Powder Book Contracts have attempted to terminate (as discussed herein) and others have threatened to do so, which has put the value of the Powder Book at serious risk; (ii) the longer it takes to approve the Proposed Sale, the longer it takes to deliver Product to the Counterparties and the greater the likelihood that additional Counterparties will attempt to terminate, which may negatively impact the value of the Powder Book; and (iii) the APA between the Debtor and AMERRA requires the Debtor to seek an expedited sale process.

For these reasons, and for others contained herein, the Debtor seeks approval of this Motion on an expedited basis in order to enable the Debtor to preserve the value of the Powder Book.

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et. seq.* (the "Bankruptcy Code") and

Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. On December 31, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code, commencing the above-referenced chapter 11 case (the “Bankruptcy Case”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”).

5. Since the Petition Date, the Debtor has remained in possession of its assets and has continued management of its business as a debtor-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. On January 18, 2017, an official committee of unsecured creditors was appointed in the Bankruptcy Case (the “Committee”) [Docket No. 68]. No trustee or examiner has been appointed in the Bankruptcy Case.

7. The Debtor is winding down its business operations and liquidating its assets in this Bankruptcy Case.

8. A detailed description of the Debtor’s business and the facts precipitating the filing of the Debtor’s Bankruptcy Case are set forth in the Declaration of Robert J. Frezza in Support of Debtor’s Chapter 11 Petition and First Day Motions [Docket No. 4].

THE DEBTOR’S FORWARD BOOK

9. The cocoa market is notoriously volatile and impacted by weather, geopolitical and economic fluctuations, which create an atmosphere of uncertainty within the cocoa industry. As a result, in the normal course of its cocoa trading business, the Debtor routinely enters into

derivative financial instruments, including derivative contracts, forward contracts, futures contracts, repurchase agreements or combinations of the foregoing to manage its exposure.

10. As a general matter, derivative contracts are financial contracts the values of which are based on, or “derived” from, the price of a traditional security such as a stock or bond, an asset such as a commodity or currency, a market index or measures such as interest rates or currency exchange rates. The use of derivative contracts is common and customary in the Debtor’s industry, and the Debtor routinely entered into such transactions prior to the Petition Date.

11. A “forward contract” is a binding contract under which a commodity or financial instrument is bought or sold at the market price (spot price) as of today (date of making the contract), but is to be delivered on a stated future (forward) date in settlement of the contract. Stated differently, a forward contract obligates the purchaser of the contract to acquire a security or asset on a specified future date at a specified price (fixed), ratio (unfixed), or differential (unfixed) to the market price. If, on the specified date, the actual price of the security or asset is higher than the specified price in the contract, the purchaser will pay less for the asset than if the purchaser had not entered into the forward contract; if the actual price is lower than the price specified in the contract, the purchaser will pay more for the asset by virtue of having entered into the forward contract than had the purchaser not done so. Forward contracts, unlike futures contracts, are not exchange traded.³

12. Historically, the Debtor entered into forward contracts with counterparties to those contracts in the ordinary course of its business. The Debtor also utilized the futures market

³ Futures contracts provide market participants with the ability to hedge against or speculate on the expected change in the commodity price. Due to their greater liquidity and marketability, market participants often use futures contracts in conjunction with forward contracts.

to hedge or reduce existing and/or expected risks associated with fluctuations in the prices of certain cocoa products.

13. As of the Petition Date, the Debtor was a party to many forward contracts (each a "Forward Contract" and together the "Forward Contracts" or "Forward Book") to both purchase and to supply cocoa beans and cocoa products ("Product") to various counterparties (each a "Counterparty," and together, the "Counterparties"). The Forward Book consists of two (2) parts:

- (i) The Forward Sale Contracts. The Debtor is party to certain Forward Contracts pursuant to which the Debtor agrees to sell, and the Counterparty agrees to purchase, Product in certain quantities (each a "Forward Sale Contract," and together, the "Forward Sale Contracts" or "Forward Sale Book"); and
- (ii) The Forward Purchase Contracts. The Debtor is also party to certain Forward Contracts pursuant to which a Counterparty agrees to sell, and the Debtor agrees to purchase, Product in certain quantities (the "Forward Purchase Contracts").

14. Certain of the Forward Sale Contracts, as further described herein, relate to the Debtor's agreements to sell cocoa powder to third party Counterparties (each, a "Powder Contract"), while all of the Debtor's remaining Powder Contracts shall collectively be called the "Powder Book").

15. The Powder Book serves as part of the collateral of the Debtor's pre-petition lenders (the "Pre-Petition Lenders") with respect to the Pre-Petition Lenders' blanket first-priority lien on virtually all of the Debtor's assets (excluding any pledge of the equity interests in the Debtor's subsidiaries), pursuant to that certain Amended and Restated Security Agreement dated as of February 26, 2016, along with other collateral documentation.

THE FORWARD BOOK SALE MOTION

A. THE MARKETING OF THE FORWARD BOOK

16. Beginning in February 2017, the Debtor began actively marketing the Forward Book, including the Powder Book, for sale. In connection with this marketing process, in February 2017, the Debtor established a due diligence data room for potential bidders, all of which were required to execute confidentiality agreements in order to participate. In connection with this process, the Debtor contacted at least nineteen (19) separate potential strategic and/or financial bidders, including those suggested by the Pre-Petition Lenders, and to date has provided detailed information regarding the Forward Book to at least seven (7) different potential bidders, each of which has executed a confidentiality agreement, and which were provided access to the Debtor's electronic data room.

17. As a result of these marketing efforts, the Debtor received two (2) firm bids for certain contracts that are within the Forward Book, including a bid from AMERRA (the "Initial Bids").

18. The Debtor, after consulting with the Pre-Petition Lenders and the Committee, determined that the bid presented by the other of those two bidders, FCStone Merchant Services, LLC ("FCStone"), was the superior bid of the two and determined in its business judgment to designate FC Stone's bid (the "FCStone Bid") as the "stalking horse" bid for the Debtor's sale of substantially of its Forward Book (the "Forward Book Sale").

19. Notably, as part of its bid for a portion of the Forward Book, FCStone agreed to independently purchase Product and fund processing costs and other costs sufficient to bridge performance of the Debtor's obligations under certain of the Forward Contracts settling between now and the date of the Debtor's sale of the Forward Book (the "Bridge Transaction").

B. THE SERVICE AGREEMENT MOTION

20. In order to effectuate the Bridge Transaction, on March 28, 2017, the Debtor filed a motion to authorizing the Debtor to enter into a services agreement (the “Service Agreement”) with FCStone outside of the ordinary course of business [Docket No. 193] (the “Service Agreement Motion”).

21. Through the Service Agreement Motion, the Debtor sought to continue to perform under certain of its Forward Contracts in order to preserve the value of the Forward Book. In particular, given the fact that the Debtor neither has the liquidity nor the financing necessary to continue to purchase inventory, the value of certain of the Forward Contracts was at risk due to the fact that the Debtor would be unable to fulfill its obligations to acquire or supply Product during the pendency of the Proposed Sale.

22. The Bridge Transaction originally proposed by FCStone did not, however, contemplate servicing the Powder Book. As a result, the Debtor remained concerned about preserving the value of the Powder Book, as certain Counterparties to Powder Contracts were complaining about the Debtor’s failure to timely deliver cocoa powder and were threatening to terminate their contracts.

23. Prior to the hearing on the Service Agreement Motion, the Debtor received an alternative offer from TRC Cocoa LLC (“TRC”) to serve both as the counterparty to the Service Agreement and the “stalking horse” for the Forward Book Sale (the “TRC Bid”). The TRC Bid sought to service and purchase certain additional Forward Contracts of the Debtor beyond those included in the FCStone Bid, including the Powder Book.

24. Subsequently, the Debtor received revised bids from both FCStone and TRC (the “Revised Bids”).⁴ The Revised Bids both included offers to service and purchase the Powder Contracts, with FCStone giving the Debtor the option to have FCStone service the Powder Contracts as part of the Bridge Transaction.

25. After reviewing the Revised Bids and consulting with the Pre-Petition Lenders and the Committee, the Debtor, in its business judgment, determined to proceed with the revised bid from FCStone as the counterparty to the Service Agreement and to serve as the stalking horse for the Forward Book Sale.

26. The Court conducted hearings to consider the approval of the Service Agreement Motion on April 5 and 6, 2017, and on April 7, 2017, the Court entered an order granting the Service Agreement Motion [Docket No. 226].

27. Given the fact that FCStone has indicated to the Debtor that it would have substantial difficulty in acquiring the specific cocoa powder required under certain Powder Contracts, the Debtor determined not to exercise its option to have FCStone service the Powder Book.

C. THE FORWARD BOOK SALE MOTION

28. On May 12, 2017, the Debtor filed its motion to approve the Forward Book Sale, with FCStone’s revised bid serving as the “stalking horse” bid (the “Forward Book Sale Motion”). A hearing to consider the bidding procedures portion of the Forward Book Sale Motion is scheduled for May 31, 2017.

⁴ TRC’s Revised Bid disclosed that AMERRA was TRC’s proposed financial backer.

THE POWDER BOOK SALE

29. Over the past few weeks, five (5) of the Counterparties to Powder Contracts have contacted the Debtor and have purported to terminate their Powder Contracts with the Debtor. See infra at footnote 6.

30. As is set forth in detail in the APA, and as set forth in further detail here, AMERRA recently made the Debtor an offer to purchase the Powder Book from the Debtor.

31. Upon information and belief, unlike FCStone, AMERRA is currently in possession of certain specific cocoa powder necessary to fulfill certain of the Powder Contracts, which makes AMERRA uniquely qualified to purchase the Powder Book and, upon closing, to immediately begin performing under the Powder Contracts.

32. After due consideration and consultation with both the Pre-Petition Lenders and the Committee, the Debtor, in its business judgment, and in order to timely and properly service the existing Powder Book Contracts, determined that an emergent sale of the Powder Book to AMERRA was the best and most expeditious method to preserve the value of the Powder Book and maximize value for the Debtor's estate. As a result, the Debtor now seeks, on an emergent basis, approval to sell the Powder Book to AMERRA (the "Proposed Sale").

33. Further, given the fact that AMERRA is in possession of the certain specific cocoa powder necessary to fulfill certain of the Powder Contracts, the Debtor has determined, in its business judgment, not to proceed with an auction for the Powder Book. Instead, the Debtor has determined that AMERRA's proposal for the Powder Book by way of expedited private sale would likely be the best and highest offer that the Debtor will receive for the Powder Book.

THE PROPOSED SALE

34. The following is a summary of the principal terms of the APA, which is attached hereto as **Exhibit B**.⁵

- a. **Purchase Price**. In consideration for the Powder Book Contracts, the purchase price shall be: (i) the product of \$40.00 and the number of metric tons of cocoa powder that are outstanding for delivery under each Assigned Contract as set forth on Schedule 2.01(a) of the Disclosure Statement, reduced by the portion of the Cure Amount, if any, that is in excess of \$25,000 and as further adjusted pursuant to Section 2.06 of the APA (the "**Cash Amount**") and (ii) the assumption of the Assumed Liabilities. (See APA at Section 2.05.) AMERRA has delivered to the Debtor a deposit in the amount of 10% of the base amount used in determining the Cash Amount), which is being held by the Debtor's counsel (the "**Deposit**"). (See APA at Section 3.02(b)(i).) As of the date of the filing of this Motion, the Debtor anticipates recovering approximately \$255,000 as a result of the Proposed Sale, which remains subject to the reductions and adjustments as set forth in the APA.

- b. **Purchased Assets**. Subject to terms and conditions set forth in the APA, the Debtor will transfer all right, title and interest in the cocoa powder forward contracts set forth on Section 2.01(a) of the Disclosure Schedules (the "**Forward Powder Contracts**"), other than each Forward Powder Contract (i) that has been terminated (as determined by the Court) prior to the Closing and (ii) with respect to which the applicable portion of the Cure Amount (determined without regard to this clause (ii) of Section 2.01(a)) exceeds the product of \$40.00 and the number of metric tons of cocoa powder that are outstanding for delivery under such Forward Contracts (the Forward Contracts other than those described in clauses (i) and(ii), the "**Assigned Contracts**"), and all of the Debtor's rights under warranties, indemnities and similar rights against third parties to the extent related to the Forward Powder Contracts (the "**Purchased Assets**"). (See APA at Section 2.01.)

⁵ To the extent that there are any discrepancies between this summary and the APA, the terms and language of the APA shall govern. Unless defined herein, capitalized terms used in this summary shall have the meaning ascribed to them in the APA.

- c. Assumed Liabilities. Subject to terms and conditions set forth in the APA, AMERRA shall assume and agree to pay, perform and discharge when due all liabilities and obligations of the Debtor arising out of or relating to the Assigned Contracts, including the Cure Amount relating to the Assigned Contracts. (See APA at Section 2.03.) To effectuate the assumption of the Assumed Liabilities by AMERRA hereunder, AMERRA and Debtor shall execute and deliver at or before the Closing the Assignment and Assumption Agreement. (See APA at Exhibit B.)

- d. Representations and Warranties. The Debtor has represented and warranted that, subject to approval by the Court, it has the requisite legal authority to sell and assign the Purchased Assets to AMERRA, and that all of the other representations and warranties provided under the APA are true and correct as detailed more fully in Article IV of the APA. AMERRA has represented and warranted that it is a limited liability company duly formed under the laws of the State of Delaware, and subject to satisfaction of the conditions and requirements under the APA, has the requisite power, authority, and financial capability to consummate the transactions contemplated hereunder, and that all of the other representations and warranties provided under the APA are true and correct as detailed more fully in Article V of the APA. (See APA at Art. IV.)

- e. Termination Rights. The APA may be terminated at any time prior to the Closing Date by mutual consent, or by either party if a permanent injunction or other order is entered that prevents the consummation of the transactions contemplated thereunder, upon the voluntary or involuntary dismissal of the Bankruptcy Case or the conversion into a case under chapter 7 of the Bankruptcy Code or a chapter 7 or chapter 11 trustee or examiner is appointed, if there has been a material breach of any of the representations, warranties, covenant or other agreements set forth in the APA by the other party that would give rise to the failure of any conditions to Closing as set forth in Article VII, or the failure of any such condition to Closing, which breach or failure is not curable or is not cured by the Drop Dead Date, and as more fully detailed in Article IX of the APA. (See APA at Section 10.01.)

ASSUMPTION AND ASSIGNMENT OF POWDER CONTRACTS

35. In connection with the Proposed Sale, the Debtor seeks authority under 11 U.S.C. § 365 to (a) assume and assign the Powder Contracts to AMERRA, and (b) execute and deliver to AMERRA such documents or other instruments as may be necessary to assign and transfer the Powder Book.

36. The Debtor believes that there will be no cure amounts associated with the Powder Contracts; nonetheless, the Debtor seeks to implement the following Assumption and Assignment Procedures (the “Assumption and Assignment Procedures”) with respect to the Proposed Sale:

- a. Assumption and Assignment Notice. Simultaneously with the filing of this Motion, the Debtor shall file with the Court, serve on the Notice Parties (as defined herein), including each Counterparty to the Powder Contracts, and cause to be published on the Debtor’s claims agent’s (Donlin Recano) website (<https://www.donlinrecano.com/Clients/tcg/Index>), the Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit D**, which will: (i) identify all of the Powder Contracts; (ii) list the Debtor’s good faith calculation of the cure costs with respect to each Powder Contract; (iii) expressly state that assumption or assignment of a Powder Contract is subject to Court approval; and (iv) prominently display the deadline to file objections to the assumption, assignment and sale of the Powder Contracts (the “Proposed Assumed Contracts Notice”).
- b. Objection Recipients. Any Counterparty that wishes to object to the assumption and assignment of a Powder Contract to AMERRA must file with the Court and serve its objection on: (a) counsel for the Debtor, Riker Danzig Scherer Hyland & Perretti, LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962 (Attn: Joseph L. Schwartz, Esq.); (b) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (c) counsel to AMERRA, Sidley Austin LLP (Attn: Lee S. Attanasio, Esq.); (d) counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders, Stroock & Stroock & Lavan LLP (Attn: Andrew P. DeNatale, Esq.) and (e) counsel to the

Committee, Tarter Krinsky & Drogin LLP (Attn: Rocco Cavaliere, Esq.) (the foregoing parties, the “Objection Recipients”).

c. Cure Objections.

- (1) Cure Objection Deadline. Any Counterparty to a Powder Contract that wishes to object to the proposed assumption, assignment and sale of that Powder Contract, the subject of which objection is the Debtor’s proposed costs to cure any outstanding monetary defaults then existing (“Cure Costs”) under such contract (each, a “Cure Objection”), shall file with the Court and serve on the Objection Recipients its Cure Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **May 26, 2017 at 4:00 p.m. (prevailing Eastern Time)**.
- (2) Resolution of Cure Objections. The Debtor and a Counterparty that has filed a Cure Objection shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the hearing to consider approval of the Proposed Sale (the “Sale Hearing”), the amount to be paid or reserved with respect to such objection shall be determined by the Court at the Sale Hearing. The Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. All other objections to the proposed assumption and assignment of the Debtor’s right, title, and interest in, to, and under any Powder Contract will be heard at the Sale Hearing.
- (3) Adjourned Cure Objections. If a timely Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtor’s discretion, after consulting with AMERRA, be adjourned with the Court’s consent (an “Adjourned Cure Objection”) to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the Proposed Sale; provided that, the Debtor maintains a cash reserve equal to the Cure Costs the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Powder Contract. Upon resolution of an Adjourned Cure Objection and the payment of the

applicable Cure Costs, if any, the applicable Powder Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to AMERRA, as of the closing date of the Proposed Sale.

- (4) Failure to File Timely Cure Objection.⁶ If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Powder Contract (unless such Counterparty has timely filed an Adequate Assurance Objection with respect to the Powder Contract) to AMERRA and shall be forever barred from asserting any objection with regard to such assumption, assignment and sale. Further, in the event no objections are filed and served, the Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Powder Contract under 11 U.S.C. § 365(b), notwithstanding anything to the contrary in any Powder Contract, or any other document, and the Counterparty to the Powder Contract shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such Powder Contract against the Debtor or AMERRA, or the property of the Debtor or AMERRA.

d. Adequate Assurance Objections.

- (1) Adequate Assurance Information. Upon request, the Debtor shall provide Counterparties with information to demonstrate that AMERRA is able to fulfill all obligations in connection with the Powder Contracts so as to satisfy the requirement of providing adequate assurance of future performance, as contemplated by section 365 of the Bankruptcy Code (the “Adequate Assurance Information”). In particular, the Debtor shall provide the Adequate Assurance Information to a Counterparty to a Powder

⁶ Five (5) counterparties to certain of the Powder Contracts—Clasen Quality Chocolates, Inc.; Tootsie Roll Industries; Tate & Lyle; R.M. Palmer Company; and The Benjamin P. Forbes Company – have sent post-petition notices to the Debtor attempting to cancel their Powder Contracts with the Debtor. Copies of such notices are attached as Exhibit 1 to the Frezza Declaration. The Debtor has advised these Counterparties that such purported terminations are improper and ineffective. The Debtor seeks to assign these Powder Contracts in accordance with this Sale Motion. Any written objection to this assignment, if any, by these or other Counterparties, shall be addressed at the Sale Hearing. The Debtor reserves any and all rights against such Counterparties to seek damages arising from their actions.

Contract upon (x) receipt of a written request (e-mail to Debtor's counsel is acceptable) for Adequate Assurance Information and (y) confirmation in writing to the Debtor's counsel (e-mail is acceptable) of the Counterparty's agreement to keep such Adequate Assurance Information strictly confidential and use it solely for the purpose of evaluating whether AMERRA has provided adequate assurance of future performance under the implicated Powder Contracts.

- (2) Adequate Assurance Objection Deadline. Any Counterparty to a Powder Contract that wishes to object to the proposed assumption, assignment and sale of the Powder Contract, the subject of which objection is AMERRA's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection") shall file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **May 26, 2017, at 4:00 p.m. (prevailing Eastern Time)**; provided that, if the Sale Hearing is adjourned to a later date, the Adequate Assurance Objection Deadline shall be at 5:00 p.m. (prevailing Eastern Time) two (2) days prior to the Sale Hearing.
- (3) Resolution of Adequate Assurance Objections. The Debtor and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance by AMERRA shall be determined by the Court at the Sale Hearing.
- (4) Failure to File Timely Adequate Assurance Objection. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Powder Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Powder Contract) to AMERRA and forever shall be barred from asserting any objection with regard to such assumption,

assignment, and sale. Further, in the event no objections are filed and served, AMERRA shall be deemed to have provided adequate assurance of future performance with respect to the applicable Powder Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Powder Contract, or any other document.

e. Other Objections by Counterparties.

- (1) Objection Deadline. Any Counterparty to a Powder Contract that wishes to file an objection (other than a Cure Objection or an Adequate Assurance Objection) to the proposed assumption, assignment and sale of the Forward Powder Contract (an “Other Sale Objection”), shall file with the Court and serve on the Objection Recipients its Other Sale Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **May 26, 2017 at 4:00 p.m. (prevailing Eastern Time)**.
- (2) Failure to File Timely Other Sale Objection. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Other Sale Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Powder Contract (unless the Counterparty has filed a timely Cure Objection or Adequate Assurance Objection with respect to the Forward Contract) to AMERRA and shall be forever barred from asserting any objection with regard to such assumption, assignment and sale.

- f. Reservation of Rights. The inclusion of a Powder Contract on the Assumption and Assignment Notice shall not constitute or be deemed a determination or admission by the Debtor that such contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Costs are due (all rights with respect thereto being expressly reserved). The Debtor reserves all of its rights, claims, and causes of action with respect to each Powder Contract or other document listed on the Assumption and Assignment Notice. The Debtor’s inclusion of any Powder Contract on the Assumption and Assignment Notice shall not be a guarantee

that such contract ultimately will be assumed and assigned and sold.

37. The Debtor submits that the foregoing Assumption and Assignment procedures and deadlines are fair and reasonable, and will provide sufficient notice to the non-debtor Counterparties to the Powder Contracts.

RELIEF REQUESTED AND BASIS THEREOF

38. Through the Motion, the Debtor respectfully requests authority, pursuant to 11 U.S.C. §§ 105, 363 and 365 and Fed. R. Bank. P. 6004, to sell the Purchased Assets free and clear of liens, claims and encumbrances, with all such liens, claims and encumbrances to attach to the sale proceeds to the same extent and in the same priority as existing as of the Petition Date. Given the exigencies, which include: (i) the fact that Counterparties to certain of the Powder Book Contracts have attempted to terminate and others have threatened to do so; (ii) the longer it takes to approve the Proposed Sale, the longer it takes to deliver Product to the Counterparties and the greater the likelihood that additional Counterparties will attempt to terminate; and (iii) the APA between the Debtor and AMERRA requires the Debtor to seek an expedited sale process, the Debtor also respectfully requests a waiver of the fourteen-day (14) stay in Fed. R. Bank. P. 6004(h).

ARGUMENT

A. Approval of the Proposed Sale.

39. Section 363 of the Bankruptcy Code authorizes a debtor in possession to “use, sell, or lease, other than in the ordinary course of business, property of the estate,” after notice and a hearing. 11 U.S.C. § 363(b)(1). Courts interpreting section 363(b) have held that transactions should be approved when they are supported by sound business reasons. See

Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003).

40. “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). When a valid business justification exists, the law vests the debtor’s decision to use property out of the ordinary course of business with a strong presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

41. The Court also may grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

42. Here, the Debtor submits that it has articulated clear business justifications for consummating the Proposed Sale. The Debtor actively marketed the Powder Book, and as a result of those marketing efforts and the good faith negotiations with AMERRA that followed, the Debtor has secured a sale of the Powder Book for a price that will generate immediate cash for the benefit of the Debtor’s estate and creditors. The Proposed Sale provides the Debtor with an opportunity to immediately maximize the value of the Powder Book, and thus the Debtor believes that the Proposed Sale represents the highest and/or best value available for the Powder

Book, particularly in light of the limited market for this specialized asset and the targeted marketing efforts by the Debtor.

43. Moreover, Bankruptcy Rule 6004(f)(1) explicitly permits a debtor to enter into transactions outside of the ordinary course of business through private sales. Various courts have approved private sales where the benefit of the private sale outweighs the delay and expense of conducting a public auction. See In re Hawker Beechcraft Inc., Case No. 12-11873 (Bankr. S.D.N.Y. Nov. 29, 2012) (authorizing private sale under Rule 6004(f)(1) where public auction would require estate to incur substantial additional costs but would result in no additional value to the estate). See also In re Christian Bros. Institute, Case No. 11-22820 (Bankr. S.D.N.Y. Nov. 7, 2012); In re Waterscape Resort, LLC, Case No. 10-11593 (Bankr. S.D.N.Y. May 31, 2011); In re Wellman, Inc., Case No. 08-10595 (Bankr. S.D.N.Y. Oct. 6, 2009); In re Delta Air Lines, Inc., Case No. 05-17923 (Bankr. S.D.N.Y. Nov. 29, 2005).

44. In fact, the Guidelines for the Conduct of Asset Sales (the “Guidelines”) established by the Bankruptcy Court for the Southern District of New York explicitly state that they do not “express a preference for public over private sales as a means to maximize the sale price” of assets sold. See Guidelines, p. 2 n.2.

45. The Guidelines require disclosure of certain “Extraordinary Provisions” pertaining to the conduct of assets sale, which ordinarily would not be approved without good cause shown and reasonable notice. The following Extraordinary Provision is implicated in the Proposed Sale:

- a. Private Sale/No Competitive Bidding: The Debtor seeks to sell the Powder Book via a private sale because the Debtor does not believe, in its business judgment, that a third party would submit a bid that is better for the estate than the current offer. With respect to the Powder Book, the benefit of a private sale outweighs the cost of a public auction. The

Powder Book, along with the rest of the Forward Book, was marketed by the Debtor, and AMERRA has agreed to immediately pay a fair and reasonable price – a price that exceeds FCStone’s and TRC’s bids for the Powder Book. An auction would merely delay the sale process, which, in turn, would severely jeopardize the value of the Powder Book because the Debtor would continue to be unable to obtain inventory to perform under the Forward Powder Contracts prior to such an auction, thereby increasing the likelihood that Counterparties would continue to attempt to cancel. In addition, the Debtor understands that AMERRA is in possession of specialized inventory that will enable it to immediately fulfill certain of the Powder Contracts.

B. Sale of the Purchased Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests.

46. Under section 363(f) of the Bankruptcy Code, a debtor may sell property “free and clear of any interest in such property of an entity other than the estate.” 11 U.S.C. § 363(f).

In particular, that section authorizes a debtor to sell property free and clear if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); see also In re Gen. Bearing Corp., 136 B.R. 361, 366 (Bankr. S.D.N.Y. 1992) (listing requirements). Because section 363(f) of the Bankruptcy Code is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the assets “free and clear” of interests. See In re Kellstrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions is met, the debtor has the authority to conduct the sale free and clear of all

liens.”) (citing Citicorp Homeowners Servs., Inc., v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988)); In re Dundee Equity Corp., No. 89-B-10233, 1992 WL 53743, at *4 (Bankr. S.D.N.Y. March 6, 1992) (“Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); see also Michigan Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (“[T]he sale free and clear of the interest concerned can occur if any one of the conditions of section 363(f) have been met.”).

47. The Debtor submits that the sale of the Purchased Assets to AMERRA free and clear of all liens, claims, encumbrances and other interests is appropriate under section 363(f) of the Bankruptcy Code. The Debtor proposes to sell the Purchased Assets in a commercially reasonable manner and believes that the value of the proceeds from such sale fairly reflect the value of the Powder Book.

48. Importantly, the Debtor has consulted with the Pre-Petition Lenders and the Committee, and, prior to filing this Motion, has circulated a copy of this Motion and the APA to counsel for the Agent for the Pre-Petition Lenders and counsel for the Committee.

49. As a result, any entity holding interests in the Purchased Assets have received notice of this Motion and the hearing with respect thereto. Accordingly, all parties in interest will be given sufficient opportunity to object to the relief requested herein. Failure to object should be deemed consent. See Futuresource LLC v. Reuters Ltd., 312 F.3d 281, 285–86 (7th Cir. 2002) (“It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in

the bankrupt's assets had to execute a formal consent before they could be sold." (internal citations omitted)).

50. Further, any party with an interest in the Purchased Assets shall have a corresponding security interest in the sale proceeds received by the Debtor. See MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89, 94 (2d Cir. 1988) ("It has long been recognized that when a debtor's assets are disposed of free and clear of third-party interests, the third party is adequately protected if his interest is assertable against the proceeds of the disposition.").

51. For these reasons, the Debtor submits that it will demonstrate satisfaction of one (1) or more of the requirements of section 363(f) of the Bankruptcy Code at the Sale Hearing.

C. AMERRA Is a Good Faith Purchaser Entitled to the Protections of Section 363(m) of the Bankruptcy Code.

52. Section 363(m) provides that "[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith. . . ." 11 U.S.C. § 363(m).

53. The Bankruptcy Code does not define "good faith," but courts generally find that where there is no evidence of fraud, impropriety or collusion, a purchaser that purchases in "good faith," "for value," and "without notice of adverse claims," and that conducts itself with integrity in the course of sales proceedings is a good faith purchaser. Bay Harbour Mgmt., L.C. v. Lehman Bros. Holdings Inc. (In re Lehman Bros. Holdings, Inc.), 415 B.R. 77, 83-84 (Bankr. S.D.N.Y. 2009); see also Mark Bell Furniture Warehouse, Inc. v. D.M. Reid Assocs. (In re Mark Bell Furniture Warehouse, Inc.), 992 F.2d 7, 8 (1st Cir. 1993); Hardage v. Herring Nat'l Bank, 837 F.2d 1319, 1323 (5th Cir. 1988); In re Abbotts Dairies, Inc., 788 F.2d 143, 147 (3d Cir. 1986).

54. The Proposed Sale is a product of extensive, arm's length negotiations between the Debtor and AMERRA. AMERRA is unaffiliated with the Debtor and is not an "insider" of the Debtor within the meaning of section 101(31) of the Bankruptcy Code, and will not be controlled by, or acting on behalf of, any insider of the Debtor. Further, the Debtor is not aware of any fraud or collusion in the terms of the Proposed Sale.

55. Accordingly, the Debtor requests that the Court find that AMERRA is a "good faith" buyer for purposes of section 363(m) with respect to the Powder Book.

D. Assumption and Assignment of the Powder Contracts.

56. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). A debtor's decision to assume an executory contract or unexpired lease must be an exercise of its sound business judgment for the court to approve the assumption under section 365(a) of the Bankruptcy Code. See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.), 78 F.3d 18, 25 (2d Cir. 1996); Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993).

57. Further, section 365(k) of the Bankruptcy Code provides that assignment by a debtor to a third party assignee of a contract or lease "relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment." 11 U.S.C. § 365(k). Therefore, upon the closing of the Proposed Sale, the Debtor will be relieved of its obligations under the Powder Contracts, thereby further decreasing the obligations of the estate and creating value for creditors.

58. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under contracts that will be assumed must be cured or that adequate assurance be provided to the counterparties that such defaults will be promptly cured.

59. In addition, pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2)(B). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr D.N.J. 1988) (internal citations omitted); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (holding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. See In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance when prospective assignee of lease had financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; in the leasing context, chief consideration with respect to adequate assurance is whether rent will be paid).

60. Additionally, in general, a debtor may assume and assign an executory contract over the objection of a counterparty. See generally In re Adelpia Commc'ns Corp., 359 B.R. 65, 73 (Bankr. S.D.N.Y. 2007).

61. To the extent that defaults exist under the Powder Contracts, the Debtor and/or AMERRA, as set forth in the APA, will cure or provide adequate assurance of cure of such defaults within the meaning of section 365(b)(1)(A) of the Bankruptcy Code.

62. Further, the Debtor will be prepared to proffer testimony or present evidence to demonstrate AMERRA's financial credibility, experience in the industry and willingness and ability to perform under the Powder Contracts. Therefore, the Sale Hearing will provide the Court and other interested parties with an opportunity to evaluate and if necessary, challenge the ability of AMERRA to provide adequate assurance of future performance under the Powder Contracts.

63. For these reasons, the Debtor submits that it meets all of the requirements of section 365 of the Bankruptcy Code necessary to assume and assign the Powder Contracts.

E. Waiver of Fourteen-Day Stay Pursuant to Fed. R. Bank. P. 6004(h)

64. Pursuant to Fed. R. Bankr. P. 6004(h) ("Rule 6004"), unless the Bankruptcy Court orders otherwise, all orders authorizing the sale of a debtor's property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen (14) days after entry of the order.

65. The purpose of Rule 6004(h) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(g) (predesignated as subsection (h) by the 2005 Bankruptcy Reform Act).

66. Although Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the fourteen (14) day stay, bankruptcy commentators have suggested that the period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. See 10 Collier on Bankruptcy ¶ 6004.09 (15th ed. Rev. 2003). This Court has approved requests to

waive the stay so long as there is a “business need” for such waiver. See In re Grand Prix Assoc., Inc., Case No. 09-16545 (DHS), 2009 WL 1850966 at *8 (Bankr. D.N.J. Jun. 26, 2009).

67. Here, AMERRA is willing to immediately close on the purchase of the Purchased Assets. Waiving the fourteen (14) day stay is necessary to maintain the value of the Purchased Assets, which is at risk due to the fact that the Debtor is unable to fulfill its obligations during the pendency of the Proposed Sale. Additionally, it would be helpful to resolve the Proposed Sale in advance of or by no later than the hearing to consider the bidding procedures portion of the Forward Book Sale Motion, currently scheduled for May 31, 2017, so that it can be determined whether the Powder Book must be added to the Forward Book sale process. Therefore, the Debtor requests that the Bankruptcy Court disregard the fourteen day (14) period under Rule 6004(h) in the consummation of the Trustee’s sale of the Purchased Assets.

NOTICE

68. Pursuant to Bankruptcy Rules 2002 and 6004, Local Bankruptcy Rule 9013-1(b), and the Guidelines, notice of this motion shall be given to: (a) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (b) Sidley Austin LLP, as counsel to AMERRA (Attn: Lee S. Attanasio, Esq.); (c) all Counterparties to the Powder Contracts; (d) all parties who have made an offer on the Powder Book or expressed an interest in making an offer on the Powder Book; (e) Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq.); (f) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere, Esq.); and (g) all taxing authorities that have jurisdiction over the Powder Book; (h) all known persons holding a lien on any of the Forward Powder Contracts; and (i) all entities that have requested notice under Bankruptcy Rule 2002 (collectively, the “Notice Parties”).

69. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is required.

NO PRIOR REQUEST

70. No previous request of the relief sought herein has been made by the Debtor to this or any other court.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the Debtor respectfully requests entry of an order, substantially in the form submitted herewith, granting the Motion and such other further relief as the Court deems just and equitable.

Dated: May 17, 2017
New York, New York

KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP

By: /s/ Tracy L. Klestadt
Tracy Klestadt

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Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
TRANSMAR COMMODITY GROUP LTD. ¹	:	
	:	
Debtor.	:	Case No. 16-13625(JLG)
	:	
	:	
	:	
-----	X	

ORDER APPROVING THE PRIVATE SALE AND ASSIGNMENT OF THE DEBTOR’S POWDER BOOK FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS PURSUANT TO 11 U.S.C. §§ 105, 363, AND 365 AND 365 AND FED. R. BANK. P. 6004 AND GRANTING RELATED RELIEF

Upon consideration of the motion dated May 17, 2017 (the “Sale Motion”), of Transmar Commodity Group Ltd. (the “Debtor”), as debtor-in-possession, for an order (the “Order”), *inter alia*, pursuant to 11 U.S.C. §§ 105, 363, and 365 and Federal Rule of Bankruptcy Procedure 2002, 6004 and 6006 for an order authorizing the private sale and assignment of certain of the Debtor’s Powder Book Contracts² (the “Assigned Contracts”) and all of the Debtor’s rights under warranties, indemnities, and similar rights against third parties to the extent related to the Assigned Contracts (the “Purchased Assets”), free and clear of all liens, claims and encumbrances, and other interests, to AMERRA Cocoa USA, LLC (“AMERRA”), pursuant to the Asset Purchase Agreement (the “APA”) dated May 17, 2017, by and among the Debtor and AMERRA, and granting related relief; and a hearing on the Sale Motion having been held on May __, 2017 (the “Sale Hearing”); and the Court having considered the Sale Motion, all

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s taxpayer identification number is as follows: Transmar Commodity Group Ltd. (5889). The Debtor’s principal office is located at 200 South Street, 4th Floor, Morristown, NJ 07960.

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Sale Motion.

responses filed thereto, if any, as well as any evidence presented at the hearing; and the Court having jurisdiction to consider and determine the Sale Motion in accordance with 28 U.S.C. §§ 157 and 1334; and due notice of the Sale Motion having been provided, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor; the Court hereby finds and determines the following:

General

A. The Court has jurisdiction to consider the Sale Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334. The Sale Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in the Court under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Sale Motion are 11 U.S.C. §§ 105, 363 and 365 and Fed. R. Bankr. P. 2002, 6004 and 6006.

C. As evidenced by the certificates of service filed with the Court, and based on the representations of counsel at the Sale Hearing; (i) proper, timely, and sufficient notice of the Motion for an Order Shortening Time with Respect to the Sale Motion (the “Motion to Shorten Time”), the Sale Motion, and the transactions contemplated therein (including the assumption and assignment of the Assigned Contracts) and the Sale Hearing has been provided in accordance with Sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006; (ii) such notice was good and sufficient under the particular circumstances; and (iii) no other or further notice of the Motion to Shorten Time, the Sale Motion, the transactions contemplated therein (including the assumption and assignment of the Assigned Contracts) or the Sale Hearing and the entry of this Order is required.

D. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including, but not limited to: (a) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (b) Sidley

Austin LLP, as counsel to AMERRA (Attn: Lee S. Attanasio, Esq.); (c) all Counterparties to the Powder Contracts; (d) all parties who have made an offer on the Powder Book or expressed an interest in making an offer on the Powder Book; (e) Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq.); (f) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere, Esq.); and (g) all taxing authorities that have jurisdiction over the Powder Contracts; (h) all known persons holding a lien on any of the Powder Contracts; and (i) all entities who have requested notice under Bankruptcy Rule 2002.

The Bankruptcy Case

E. On December 31, 2016, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. While it is winding down its business operations and liquidating its assets, the Debtor continues to operate its business and manage its assets as a debtor-in-possession under 11 U.S.C. §§ 1107(a) and 1108.

The Marketing Process for the Forward Book

F. Beginning in February 2017, the Debtor began actively marketing the Forward Book for sale. In connection with this marketing process, in February 2017, the Debtor established a due diligence data room for potential bidders, all of which were required to execute confidentiality agreements in order to participate. In connection with this process, the Debtor contacted at least nineteen (19) separate potential strategic and/or financial bidders, including those suggested by the Pre-Petition Lenders, thereafter provided detailed information regarding the Forward Book to at least seven (7) different potential bidders, each of which executed a confidentiality agreement, and which were provided access to the Debtor's electronic data room.

G. As a result of these marketing efforts, the Debtor received two (2) firm bids for certain contracts that are within the Forward Book including a bid from AMERRA (the “Initial Bids”).

H. The Debtor, after consulting with the Pre-Petition Lenders, determined that the bid presented by the other bidder, FCStone Merchant Services, LLC (“FCStone”), was the superior bid of the two and determined in its business judgment to designate FC Stone’s bid (the “FCStone Bid”) as the “stalking horse” bid for the Debtor’s sale of substantially of its Forward Book (the “Forward Book Sale”).

I. Notably, as part of its bid for a portion of the Forward Book, FCStone agreed to independently purchase Product and fund processing costs and other costs sufficient to bridge performance of the Debtor’s obligations under certain of the Forward Contracts settling between now and the date of the Debtor’s sale of the Forward Book (the “Bridge Transaction”).

J. In order to effectuate the Bridge Transaction, on March 28, 2017, the Debtor filed a motion to authorizing the Debtor to enter into a services agreement (the “Service Agreement”) with FCStone outside of the ordinary course of business [Docket No 193] (the “Service Agreement Motion”).

K. Through the Service Agreement Motion, the Debtor sought to continue to perform under certain of its Forward Contracts in order to preserve the value of the Forward Book. In particular, given the fact that the Debtor neither has the liquidity nor the financing necessary to continue to purchase inventory, the value of certain of the Forward Contracts was at risk due to the fact that the Debtor would be unable to fulfill its obligations to acquire or supply Product during the pendency of the Proposed Sale.

L. The Bridge Transaction originally proposed by FCStone did not, however, contemplate servicing the Powder Book. As a result, the Debtor remained concerned about preserving the value of the Powder Book, as certain Counterparties to Powder Contracts were complaining about the Debtor's failure to timely deliver cocoa powder and were threatening to terminate their contracts.

M. Prior to the hearing on the Service Agreement Motion, the Debtor received an alternative offer from TRC Cocoa LLC ("TRC") to serve both as the counterparty to the Service Agreement and the "stalking horse" for the Forward Book Sale (the "TRC Bid"). The TRC Bid sought to service and purchase certain additional Forward Contracts of the Debtor beyond those included in the FCStone Bid, including the Powder Book.

N. Subsequently, the Debtor received revised bids from both FCStone and TRC (the "Revised Bids"). The Revised Bids both included offers to service and purchase the Powder Contracts with FCStone giving the Debtor the option to have FCStone service the Powder Contracts as part of the Bridge Transaction.

O. After reviewing the Revised Bids and consulting with the Pre-Petition Lenders, the Debtor, in its business judgment, determined to proceed with the revised bid from FCStone as the counterparty to the Service Agreement and to serve as the stalking horse for the Forward Book Sale.

P. On April 7, 2017, the Court entered an order granting the Service Agreement Motion [Docket No. 226].

Q. After due consideration and consultation with the Pre-Petition Lenders and Committee, the Debtor decided in its business judgment that it would not to exercise its option to have FCStone service or purchase the Powder Book.

R. On May 12, 2017, the Debtor filed its motion to approve the Forward Book Sale, with FC Stone's revised bid serving as the "stalking horse" bid (the "Forward Book Sale Motion"). A hearing to consider the bidding procedures portion of the Forward Book Sale Motion is scheduled for May 31, 2017.

The Powder Book Sale

S. Recently, five (5) of the Counterparties to Powder Contracts have contacted the Debtor and have purported to terminate their Powder Contracts with the Debtor.

T. As is set forth in detail in the APA, and as set forth in further detail here, AMERRA recently made the Debtor an offer to purchase the Powder Book from the Debtor.

U. Upon information and belief, unlike FCStone, AMERRA is currently in possession of certain specific cocoa powder necessary to fulfill certain of the Powder Contracts, which makes AMERRA uniquely qualified to purchase the Powder Book and, upon closing, to immediately begin performing under the Powder Contracts.

V. After due consideration and consultation with both the Pre-Petition Lenders and the Committee, the Debtor, in its business judgment, determined that an emergent sale of the Powder Book to AMERRA was the best opportunity to preserve the value of the Powder Book and maximize value for the Debtor's estate.

W. Further, given the fact that AMERRA is in possession of the certain specific cocoa powder necessary to fulfill certain of the Powder Contracts, the Debtor has determined, in its business judgment, not to proceed with an auction for the Powder Book. Instead, the Debtor has determined that AMERRA's proposal for the Powder Book by way of private sale would likely be the best and highest offer that the Debtor will receive for the Powder Book.

X. Given all of the circumstances of this Bankruptcy Case and the adequacy and fair value of the purchase price under the APA, the Sale to AMERRA on the terms and subject to the conditions set forth in the APA constitutes a reasonable and sound exercise of the Debtor's business judgment and should be approved.

Y. The consummation of the transaction is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitations, 11 U.S.C. §§ 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) and all applicable requirements of such sections have been complied with in respect of the transaction.

The Sale of the Purchased Assets to AMERRA

Z. The transactions effectuating, and the terms and conditions governing, the sale of the Purchased Assets to AMERRA are embodied in the APA, which is attached to the Sale Motion as **Exhibit B**.

AA. The APA contemplates that the sale of the Purchased Assets shall be free and clear of all liens, claims, interests and other encumbrances within the meaning of 11 U.S.C. §363(f).

BB. AMERRA's obligation to consummate the transactions contemplated in the APA is subject to the specific conditions outlined the APA, including the condition of Court approval. As of the date of entry of this Order, there has been no failure of any condition under the APA to AMERRA's obligation to consummate the Sale.

CC. The APA was negotiated, proposed, and entered into by and between AMERRA and the Debtor without collusion, in good faith, and from arm's length bargaining positions. Neither the Debtor nor AMERRA has engaged in any conduct that would cause or permit the application of 11 U.S.C. § 363(n) to the sale, including having the APA voided.

DD. AMERRA is a good faith purchaser in accordance with 11 U.S.C. § 363(m) and, as such, AMERRA is entitled to all of the protections afforded thereby. Absent a stay of the effectiveness of this Order, if any, AMERRA will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transaction under the APA, including the assumption and assignment of the Assigned Contracts, at any time after the expiration of any stay of this Order, whether pursuant to Bankruptcy Rule 6004(g) or otherwise.

EE. The Assigned Contracts to be assumed and assigned to AMERRA are valid and binding, in full force and effect, and enforceable in accordance with their terms (as modified by any updated delivery schedule agreed upon by the Counterparty thereto and either the Debtor or AMERRA), and are property of the Debtor's estate pursuant to 11 U.S.C. § 541(a) of the Bankruptcy Code, and AMERRA shall have all of the rights of the Debtor thereunder.

FF. The terms and conditions of the APA: (i) are fair and reasonable; (ii) valid, binding and enforceable; (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative; and (iv) constitute reasonably equivalent value and fair consideration for the Purchased Assets.

GG. The transactions contemplated by the APA will, upon consummation thereof (the "Closing"), (i) be a legal, valid, and effective transfer of the Purchased Assets to AMERRA with no further action required on the part of the Debtor and (ii) vest AMERRA with good title to the Purchased Assets free and clear of all liens, claims and encumbrances within the meaning of 11 U.S.C. § 363(1).

HH. The relief sought in the Sale Motion, including approval of the APA and consummation of the transactions contemplated thereof is in the best interests of the Debtor, its

bankruptcy estate, creditors, and all parties in interest. The Proposed Sale must be approved and consummated promptly in order to preserve the viability of the Purchased Assets.

II. The Debtor has good and marketable title to the Purchased Assets and, upon entry of this Order, will have all the corporate or organizational power and authority necessary to consummate the transactions contemplated by the APA.

JJ. The Debtor has demonstrated good, sound and sufficient business purpose and justification, and it is a reasonable exercise of its business judgment, to: (i) sell the Purchased Assets on the terms and conditions set forth in the APA; (ii) assume and assign the Assigned Contracts to AMERRA; and (iii) consummate all transactions contemplated by the APA, and the sale, assumption and assignment of the Purchased Assets is in the best interests of the Debtor, its estate and its creditors.

KK. The provisions of 11 U.S.C. §§ 363 and 365 of the Bankruptcy Code have been complied with and are applicable to the sale of the Purchased Assets.

LL. The Debtor may consummate the transactions and transfer the Purchased Assets free and clear of all liens, claims and encumbrances, because one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. All liens, claims or encumbrances against the Purchased Assets shall attach to the sale proceeds with the same validity, enforceability, priority, force and effect that they now have as against the Purchased Assets.

MM. AMERRA or the Debtor, as applicable under the terms of the APA, has: (i) cured, or has provided adequate assurance of cure, of all defaults under the Assigned Contracts, if any, existing before the date of this Order, within the meaning of 11 U.S.C. § 365(b)(1)(A) and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default before the date of this Order under the

Assigned Contracts, if any, within the meaning of 11 U.S.C. § 365(b)(1)(B), and AMERRA has provided adequate assurance of its future performance of and under the Assigned Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(C).

ACCORDINGLY, THE COURT HEREBY ORDERS THAT:

General Provisions

1. The findings of fact entered above and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014. To the extent that any finding of fact shall later be determined to be a conclusion of law, it shall be so deemed, and to the extent that any conclusion of law shall later be determined to be a finding of fact, it shall be so deemed.

2. The Sale Motion is granted in its entirety on the terms and conditions set forth herein.

3. All parties in interest have had the opportunity to object to the relief requested by the Debtor in the Sale Motion, and to the extent that objections to the Sale Motion or the relief requested therein have not been withdrawn, waived or settled, such objections and all reservations of right included therein, are overruled on the merits. The parties who did not object, or who withdrew their objections, to the Sale Motion, are deemed to have consented to the relief set forth therein.

Approval of the APA

4. The APA and all of the terms and conditions contained therein are approved in its entirety. The APA is fully enforceable by the parties thereto in accordance with and subject to its terms and conditions. The Debtor is hereby authorized to perform each of its covenants and

undertakings and to take such action as may be necessary to effectuate the terms of this Order and as provided in the APA.

5. The sale of the Purchased Assets and the terms and conditions contemplated by the APA, including, without limitation, the closing of the transactions contemplated by the APA, are hereby approved pursuant to 11 U.S.C. §§ 105(a), 363(b) and (f), and 365.

6. The Debtor and AMERRA are authorized and directed, pursuant to 11 U.S.C. §§ 105(a), 363(b) and 365, to perform all of their obligations pursuant to the APA and to execute such other documents and take such other actions as are necessary to effectuate the transactions contemplated by the APA.

Transfer of the Purchased Assets to AMERRA

7. Except as expressly provided in the APA, pursuant to 11 U.S.C. §§ 105(a), 363(1) and 365, upon the Closing, the Purchased Assets shall be sold, transferred or otherwise assigned to AMERRA free and clear of all liens, claims and encumbrances with all such liens, claims and encumbrances to attach to the proceeds of the sale in the order of their priority, and with the same validity, priority, force and effect which they now have as against the Purchased Assets.

8. No bulk sale or any similar law of any state, including but not limited to N.J.S.A. 54:32B-22(c) and N.J.S.A. 54:50-38, apply in any way to the sale and transfer of the Purchased Assets hereunder.

Assumption and Assignment of the Assigned Contracts

9. The Debtor is authorized pursuant to 11 U.S.C. § 365(a) to assume and assign the Assigned Contracts set forth on Section 2.01(a) of the Disclosure Schedules delivered in connection with the APA, including but not limited to the Assigned Contracts with Clasen Quality Chocolates, Inc., Tootsie Roll Industries, Tate & Lyle, R.M. Palmer Company, and The Benjamin P. Forbes Company.

10. Pursuant to 11 U.S.C. §§ 105(a) and 365, the Debtor's assumption and assignment of the Assigned Contracts to AMERRA, on the terms contained in the APA, is approved, and the requirements of 11 U.S.C. § 365(b)(1) with respect thereto are deemed satisfied. The assignment by the Debtor of the Assigned Contracts to AMERRA pursuant to 11 U.S.C. § 365(f) is binding on the Counterparties to those contracts.

11. Upon Closing pursuant to the APA, the Assigned Contracts shall be transferred to, and, notwithstanding any prior notice of termination by any counterparty to any Assigned Contract, shall be and remain in full force and effect for the benefit of, AMERRA in accordance with their terms, notwithstanding any provision in the Assigned Contracts (including, without limitation, those described in 11 U.S.C. § 365(b)(2) and (1)) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to 11 U.S.C. § 365(k), the Debtor is hereby relieved from any further obligation or liability for any breach of the Assigned Contracts.

12. The Cure Amounts set forth in: (i) the relevant Cure Notice or (ii) any stipulation entered into between the Debtor and the nondebtor party to an Assumed Contract, as applicable, shall be controlling notwithstanding anything to the contrary in any Assumed Contract or other document, and the nondebtor party to each Assumed Contract shall be forever barred from asserting any other claim arising prior to the date of entry of this Order against either the Debtor or AMERRA.

13. The failure of the Debtor or AMERRA to enforce any term or condition of any Assumed Contract shall not constitute a waiver of such term or condition or of the Debtor's or AMERRA's rights to enforce every term and condition of the Assigned Contracts.

Miscellaneous Provisions

14. The consideration to be paid by AMERRA for the Purchased Assets under the APA is fair and reasonable and may not be avoided under 11 U.S.C. § 363(n).

15. This Order: (a) is and shall be effective as a determination that, upon the Closing, except as expressly provided in the APA, liens, claims and encumbrances existing as to the Purchased Assets prior to the date of entry of this Order have been unconditionally released, discharged and terminated in each case as to the Purchased Assets and (b) is and shall be binding upon and shall govern acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities, who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that AMERRA is the assignee of the Purchased Assets free and clear of liens, claims and encumbrances.

16. Except as otherwise provided in the APA or in this Order, consummation of the transactions in the APA will not subject AMERRA to any debts, liabilities, obligations, commitments, responsibilities or claims of any kind or nature whatsoever by reason of assignment of the Assigned Contracts, including, without limitation, based on any theory of successor or transferee liability.

17. The APA and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written document signed by the parties in accordance with the terms thereof without further order of the Court; provided, however, that the Agent for the Pre-Petition Lenders receives notice of any such modification, amendment or supplement, and that any such modification, amendment or supplement is neither material nor changes the economic substance of the transactions contemplated hereby.

18. AMERRA, as a purchaser in good faith, shall be entitled to the protections of 11 U.S.C. § 363(m).

19. The provisions of this Order are self-executing and each and every federal, state, and local governmental agency or department is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

20. The Court shall retain exclusive jurisdiction: (a) to enforce and implement the terms and provisions of the APA and each of the agreements, documents and instruments executed therewith; (b) to resolve any disputes, controversies or claims arising out of or relating to the APA; and (c) to interpret, implement and enforce the provisions of this Order.

21. The terms of this Order and the APA shall be binding on and inure to the benefit of the Debtor, AMERRA and all other parties in interest, and any successors of the Debtor, AMERRA and the Debtor's creditors, including any trustee or examiner appointed in this or any subsequent proceeding.

22. The failure to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of that provision, it being the intent of the Court and the parties that the APA be authorized in its entirety.

23. Any conflict between the terms and provisions of this Order and the APA shall be resolved in favor of this Order.

24. Notwithstanding the possible applicability of Fed. R. Bankr. P. 6004(h), 6006(d), 7062 and 9014, the terms and conditions of this Order shall be effective immediately and enforceable upon its entry, and no automatic stay of execution shall apply to this Order. The Debtor and AMERRA are authorized to close immediately upon entry of this Order.

Dated: New York, New York
May __, 2017

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

ASSET PURCHASE AGREEMENT

between

TRANSMAR COMMODITY GROUP LTD.
Seller

and

AMERRA COCOA USA, LLC
Buyer

dated as of

May 17, 2017

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EXHIBIT

Exhibit A Assignment and Assumption Agreement

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of May17, 2017, is entered into by and between Transmar Commodity Group Ltd., a New York corporation (“**Seller**”) and AMERRA Cocoa USA, LLC, a Delaware limited liability company (“**Buyer**”).

RECITALS

WHEREAS, on December 31, 2016, Seller filed a voluntary petition for bankruptcy commencing a case (the “**Bankruptcy Case**”) under chapter 11 of title 11 of the United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*, the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”);

WHEREAS, prior to such filing, Seller was a full service cocoa trading and cocoa product supplier to the international confectionary industry (the “**Business**”); and

WHEREAS, subject to the terms and conditions set forth herein, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, the Purchased Assets, in a sale authorized by the Bankruptcy Court free and clear of all liens, claims and encumbrances pursuant to sections 105, 363 and 365 of the Bankruptcy Code;

WHEREAS, the transactions contemplated by this Agreement will be subject to the approval of the Bankruptcy Court and will be consummated only pursuant to a Sale Order (as defined herein) to be entered in the Bankruptcy Case and other applicable provisions of the Bankruptcy Code;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this **Article I**:

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Assigned Contracts**” has the meaning set forth in Section 2.01(a).

“**Assignment and Assumption Agreement**” has the meaning set forth in Section 3.02(a)(i).

“**Assumed Liabilities**” has the meaning set forth in Section 2.03.

“**Base Price**” has the meaning set forth in Section 2.05.

“**Bankruptcy Case**” has the meaning set forth in the recitals.

“**Bankruptcy Code**” has the meaning set forth in the recitals.

“**Bankruptcy Court**” has the meaning set forth in the recitals.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure.

“**Benefit Plan**” means each benefit, retirement, employment, consulting, compensation, incentive, bonus, stock option, restricted stock, stock appreciation right, phantom equity, change in control, severance, vacation, paid time off, welfare and fringe-benefit agreement, plan, policy and program in effect and covering one or more employees or former employees of the Business, current or former directors of the Business or the beneficiaries or dependents of any such Persons, and is maintained, sponsored, contributed to, or required to be contributed to by Seller, or under which Seller has any material liability for premiums or benefits.

“**Business**” has the meaning set forth in the recitals.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York, United States are authorized or required by Law to be closed for business.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Closing Certificate**” has the meaning set forth in Section 7.03(d).

“**Cash Amount**” has the meaning set forth in Section 2.05.

“**Closing**” has the meaning set forth in Section 3.01.

“**Closing Date**” has the meaning set forth in Section 3.01.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidentiality Agreement**” means the Confidentiality Agreement, dated on or about February 28, 2017, between Buyer and Seller.

“**Contracts**” means all legally binding written contracts, leases, mortgages, licenses, instruments, notes, commitments, undertakings, indentures and other agreements.

“**Cure Amount**” means all amounts, costs and expenses required to cure all defaults under the Assigned Contracts so that they may be sold and assigned to Buyer pursuant to section 365(b)(1) of the Bankruptcy Code.

“**Data Room**” means the electronic documentation site made available by or on behalf of Seller in connection with the transactions contemplated by this Agreement to which access was given to Buyer, its Affiliates, and their Representatives.

“**Deposit**” has the meaning set forth in Section 3.02(b)(i).

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

“**Dollars or \$**” means the lawful currency of the United States.

“**Drop Dead Date**” has the meaning set forth in Section 10.01(b)(i).

“**Encumbrance**” means any Lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

“**Excluded Assets**” has the meaning set forth in Section 2.02.

“**Excluded Liabilities**” has the meaning set forth in Section 2.04.

“**Forward Contracts**” has the meaning set forth in Section 2.01(a).

“**GAAP**” means United States generally accepted accounting principles in effect from time to time.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world: (a) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights, including all applications and registrations, and works of authorship, whether or not copyrightable; (c) trade secrets and confidential know-how; (d) patents and patent applications;

(e) websites and internet domain name registrations; and (f) all other intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing.

“**Knowledge of Seller**” or “**Seller’s Knowledge**” or any other similar knowledge qualification, means the actual knowledge of those persons listed on Section 1.01(a) of the Disclosure Schedules.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Lien**” means any charge against or interest in property to secure payment of a debt (as such term is defined in section 101(12) of the Bankruptcy Code) or performance of an obligation.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is materially adverse to the ability of Seller to consummate the transactions contemplated hereby; *provided, however,* that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Business operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (vi) any matter of which Buyer is aware on the date hereof; (vii) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof; (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Seller and the Business; (ix) any natural or man-made disaster or acts of God; (x) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded); or (xi) the financial condition or operations of Seller or Seller’s chapter 11 petition and the Bankruptcy Case.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations and consents required to be obtained from Governmental Authorities.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Purchased Assets**” has the meaning set forth in Section 2.01.

“**Purchase Price**” has the meaning set forth in Section 2.05.

“**Receivables**” means, any and all accounts receivable, notes, book debts and other amounts due or accruing to Seller as of the Closing, and any security, claim, remedy or other right related to any of the foregoing.

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Sale Order**” has the meaning set forth in Section 9.01(a).

“**Sale Motion**” has the meaning set forth in Section 9.01(a).

“**Seller**” has the meaning set forth in the preamble.

“**Seller Closing Certificate**” has the meaning set forth in Section 7.02(d)Section 7.02(d).

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Transaction Documents**” means this Agreement, the Assignment and Assumption Agreement and the other agreements, instruments and documents required to be delivered at the Closing.

ARTICLE II PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, and pursuant to sections 105, 363 and 365 of the Bankruptcy Code, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all Encumbrances, all of Seller’s right, title and interest in, to and under the following assets, properties and rights of Seller, to the extent that such assets, properties and rights exist as of the Closing Date (collectively, the “**Purchased Assets**”):

- (a) all of the cocoa powder forward Contracts set forth on Section 2.01(a) of the Disclosure Schedules (collectively, the “**Forward Contracts**”), other than each Forward Contract (i) that has been terminated prior to the Closing; and (ii) with respect to which the applicable portion of the Cure Amount (determined without

regard to this clause (ii) of Section 2.01(a)) exceeds the product of \$40.00 and the number of metric tons of cocoa powder that are outstanding for delivery under such Forward Contract (the Forward Contracts other than those described in clauses (i) and (ii), the “**Assigned Contracts**”); and

(b) all of Seller’s rights under warranties, indemnities and all similar rights against third parties to the extent related to any of the Assigned Contracts.

For purposes of this Agreement, a Forward Contract shall be treated as terminated only if (x) the counterparty thereto has delivered a notice of termination with respect to such Forward Contract, and Seller and Buyer agree in writing before Closing that such Forward Contract has been duly terminated, or (y) the Bankruptcy Court has determined as part of the Sale Order that such Forward Contract (1) has been duly terminated in accordance with its own terms and the applicable provisions of the Bankruptcy Code or (2) may not be otherwise assigned to or enforced after the Closing by Buyer.

Section 2.02 Excluded Assets. Other than the Purchased Assets subject to Section 2.01, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (the “**Excluded Assets**”). Excluded Assets include the following assets and properties of Seller:

- (a) all cash and cash equivalents, bank accounts and securities of Seller;
- (b) all inventory;
- (c) all Contracts that are not Assigned Contracts;
- (d) all Receivables, including any Receivables arising under or associated with the Assigned Contracts;
- (e) all membership and other equity interests in any Person;
- (f) all Intellectual Property;
- (g) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee benefit-related files or records, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain;
- (h) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
- (i) all Benefit Plans and trusts or other assets attributable thereto;

(j) all Tax assets (including duty and Tax refunds and prepayments) of Seller or any of its Affiliates;

(k) all rights to any action, suit or claim of any nature available to or being pursued by Seller other than those relating to enforcement of the Purchased Assets, whether arising by way of counterclaim or otherwise; and

(l) the rights which accrue or will accrue to Seller under the Transaction Documents.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge when due the following liabilities and obligations of Seller (collectively, the “**Assumed Liabilities**”):

(a) all liabilities and obligations arising under the Assigned Contracts on and after the Closing; and

(b) the Cure Amount.

Section 2.04 Excluded Liabilities. Buyer shall not assume and shall not be responsible to pay, perform or discharge any liabilities or obligations of the Seller (other than the Assumed Liabilities pursuant to Section 2.03 hereof), including, but not limited to, any of the following liabilities or obligations of Seller (collectively, the “**Excluded Liabilities**”):

(a) any liabilities or obligations relating to or arising out of the Excluded Assets;

(b) any liabilities or obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period ending on or prior to the Closing Date and (ii) any other Taxes of Seller (other than Taxes allocated to Buyer under Section 6.07) for any taxable period;

(c) any liabilities or obligations of Seller relating to or arising out of (i) the employment, or termination of employment, of any employee prior to the Closing, or (ii) workers’ compensation claims of any employee which relate to events occurring prior to the Closing Date; and

(d) any liabilities or obligations of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others.

Section 2.05 Consideration. The aggregate consideration for the sale and transfer of the Purchased Assets shall be the product of \$40.00 and the number of metric tons of cocoa powder that are outstanding for delivery under each Assigned Contract as set forth on Schedule

2.01(a) of the Disclosure Schedules (the “**Base Price**”), reduced by the portion of the Cure Amount, if any, that is in excess of \$25,000, and as further adjusted pursuant to Section 2.06 (the Base Price as so reduced and adjusted, the “**Cash Amount**”), plus the assumption of the Assumed Liabilities (together with the Cash Amount, the “**Purchase Price**”). The Cash Amount shall be paid by wire transfer of immediately available funds, to an account that is designated in writing by Seller to Buyer no later than two (2) Business Days prior to the Closing Date.

Section 2.06 Adjustment to Cash Amount. If a Forward Contract has been terminated prior to the Closing, the Base Price shall be reduced by the product of \$40.00 and the number of metric tons of cocoa powder that are outstanding for delivery under such Forward Contract. If the tonnage under an Assigned Contract has been reduced or increased prior to the Closing, the Base Price shall be reduced or increased, as the case may be, by the product of \$40.00 and the number of metric tons of cocoa powder subject to such reduction or increase.

Section 2.07 Cure Payments. Not later than five (5) Business Days prior to the Closing Date, Seller shall deliver to Buyer a detailed calculation of the Cure Amount determined with and without regard to clause (ii) of Section 2.01(a).

ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of Riker Danzig Scherer Hyland & Perretti LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, New Jersey, on the second Business Day after all of the conditions to Closing set forth in ARTICLE VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “**Closing Date**”.

Section 3.02 Closing Deliverables.

- (a) At the Closing, Seller shall deliver to Buyer the following:
 - (i) an assignment and assumption agreement in the form of **Exhibit A** hereto (the “**Assignment and Assumption Agreement**”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;
 - (ii) the Seller Closing Certificate;
 - (iii) a copy of the Sale Order entered by the Bankruptcy Court; and

(iv) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) the Cash Amount, less the 10% of the Base Price deposited with or for the benefit of Seller upon the signing of this Agreement (the “**Deposit**”) by wire transfer of immediately available funds, to be held in escrow by Seller’s counsel;

(ii) the Assignment and Assumption Agreement duly executed by Buyer;

(iii) the Buyer Closing Certificate; and

(iv) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE IV are true and correct as of the date hereof.

Section 4.01 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of New York and, subject to any necessary authority from the Bankruptcy Court, has all necessary corporate power and authority to own the assets now owned by it and to carry on the Business as currently conducted. Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not have a Material Adverse Effect.

Section 4.02 Authority of Seller. Subject to any necessary authority from the Bankruptcy Court, Seller has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Subject to the entry of the Sale Order, the execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. Subject to the entry of the Sale Order, this Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and

delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Subject to the entry of the Sale Order, when each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.03 No Conflicts; Consents. Subject to the entry of the Sale Order, the execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Seller; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; or (c) except as set forth in Section 4.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any Assigned Contract; except in the case of clause (b), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect. Subject to the entry of the Sale Order, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.04 Assigned Contracts. Except as set forth on Section 4.04 of the Disclosure Schedules, Seller is not in breach of, or default under, any Assigned Contract.

Section 4.05 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 4.05(a) of the Disclosure Schedules, there are no actions, suits, claims, investigations or other legal proceedings pending or, to Seller's Knowledge, threatened against or by Seller relating to or affecting the Purchased Assets or the Assumed Liabilities, which if determined adversely to Seller would result in a Material Adverse Effect.

(b) Except as set forth in Section 4.05(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Purchased Assets which would have a Material Adverse Effect.

Section 4.06 Compliance With Laws. Except as set forth in Section 4.06 of the Disclosure Schedules, Seller is in compliance with all Laws applicable to the ownership and use of the Purchased Assets, except where the failure to be in compliance would not have a Material Adverse Effect.

Section 4.07 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

Section 4.08 No Other Representations and Warranties. Except for the representations and warranties contained in this Article IV (including the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Purchased Assets furnished or made available to Buyer and its Representatives (including any information, documents or material made available to Buyer in the Data Room, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Purchased Assets, or any representation or warranty arising from statute or otherwise in law.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date hereof.

Section 5.01 Organization and Authority of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Delaware.

Section 5.02 Authority of Buyer. Buyer has all necessary power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due

authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Buyer; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby and thereby.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

Section 5.05 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately-available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

Section 5.06 Solvency. Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 5.07 Legal Proceedings. There are no actions, suits, claims, investigations or other legal proceedings pending or, to Buyer's knowledge, threatened against or by Buyer or any

Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 5.08 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the Purchased Assets, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in Article IV of this Agreement (including related portions of the Disclosure Schedules); and (b) neither Seller nor any other Person has made any representation or warranty as to Seller, the Business, the Purchased Assets or this Agreement, except as expressly set forth in Article IV of this Agreement (including the related portions of the Disclosure Schedules). Without limiting the foregoing, Buyer acknowledges that the Purchased Assets are conveyed “as is”, “where is” and “with all faults” and that all warranties of merchantability or fitness for a particular purpose are disclaimed.

ARTICLE VI COVENANTS

Section 6.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement, or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), or required by the Bankruptcy Code or ordered by the Bankruptcy Court, Seller shall (a) conduct the Business in the ordinary course of business; and (b) use commercially reasonable efforts to maintain and preserve intact the Purchased Assets.

Section 6.02 Access to Information. From the date hereof until the Closing, Seller shall (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the Assigned Contracts and other related documents and data; (b) furnish Buyer and its Representatives with such data and information related to the Purchased Assets as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the Purchased Assets; *provided, however*, that any such investigation shall be conducted during normal business hours upon reasonable advance notice to Seller, under the supervision of Seller’s personnel and in such a manner as not to interfere with the conduct of the Business or any other businesses of Seller. All requests by Buyer for access pursuant to this Section 6.02 shall be submitted or directed exclusively to Seller’s Chief Restructuring Officer or such other individuals as Seller may designate in writing from time to time. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to disclose any information to Buyer if such disclosure would, in Seller’s sole discretion: (x) cause significant competitive harm to Seller and its businesses, including the Business, if the transactions contemplated by this Agreement are not consummated; (y) jeopardize any attorney-client or other privilege; or (z) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the date of this Agreement. Prior to the Closing, without the prior written consent of Seller, which may not be unreasonably withheld or delayed,

Buyer shall not contact any suppliers to, or customers of, the Business. Buyer shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement with respect to any access or information provided pursuant to this Section 6.02.

Section 6.03 Confidentiality. Buyer acknowledges and agrees that the Confidentiality Agreement remains in full force and effect, provided that after the Closing, the prohibitions in the Confidentiality Agreement shall not apply to any information obtained by Buyer in connection with the Purchased Assets or the transactions contemplated by this Agreement.

Section 6.04 Governmental Approvals. Each party hereto shall, as promptly as possible, use its reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

Section 6.05 Closing Conditions. From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII hereof.

Section 6.06 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) The Bankruptcy Court shall have entered the Sale Order consistent with the requirements of Section 9.01, and none of the counterparties to the Assigned

Contracts shall have sought to appeal the Sale Order, which shall be in full force and effect on the Closing Date. On the Closing Date there shall be no Governmental Order staying, reversing, modifying, vacating or amending the Sale Order, and there shall be no preliminary or permanent injunction or other Governmental Order of any court or Government Authority declaring this Agreement invalid or unenforceable in any material respect or otherwise preventing the transactions contemplated herein from being consummated.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in ARTICLE IV shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect.

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(a).

(d) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied (the "**Seller Closing Certificate**").

(e) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

Section 7.03 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in Article V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Seller the Cash Amount, duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(b).

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied (the "**Buyer Closing Certificate**").

(e) Seller shall have received a certificate of a manager of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the managers of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(f) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(g) Buyer shall, consistent with section 365(b)(1)(A) of the Bankruptcy Code, but subject to its rights otherwise provided under this Agreement, have paid and/or provided for a reservation of funds sufficient to pay the Cure Amount.

(h) The Cure Amount (determined without regard to clause (ii) of Section 2.01(a)) shall not exceed the Purchase Price.

ARTICLE VIII SURVIVAL

Section 8.01 Survival. The representations and warranties contained herein shall not survive the Closing. None of the covenants or other agreements contained in this Agreement shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

ARTICLE IX BANKRUPTCY COURT MATTERS

Section 9.01 Submission to Bankruptcy Court of the Sale Order.

(a) As promptly as practicable following the execution of this Agreement, Seller shall seek the approval from the Bankruptcy Court of a motion on an expedited basis pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code (the “**Sale Motion**”) seeking entry of an order of the Bankruptcy Court (the “**Sale Order**”), which shall contain, among other terms acceptable to Buyer and Seller, the following provisions:

(i) that the terms and conditions of the sale of the Purchased Assets to Buyer as set forth herein are approved;

(ii) that the sale of the Purchased Assets to Buyer is free and clear, pursuant to section 363(f) of the Bankruptcy Code, of any and all liabilities and liens of any type or nature whatsoever, other than for Assumed Liabilities, and that all claims of Encumbrances including the pre-petition and post-petition claims of any secured creditors of Seller or creditors of Seller whose claims could act as a Lien against the Purchased Assets, are transferred and shall attach to the proceeds of the sale;

(iii) that Seller has good and marketable title to the Purchased Assets and has the authority to transfer the Purchased Assets to Buyer;

(iv) that the Purchase Price constitutes fair value for the Purchased Assets;

(v) that Buyer acted in good faith in all respects and that Buyer and its assignees and designees are entitled to the protections of section 363(m) of the Bankruptcy Code;

(vi) that notice of the transactions contemplated hereby was good and sufficient and was provided timely to all parties in interest in the Bankruptcy Case who are entitled or required to receive notice pursuant to the Bankruptcy Code,

the Bankruptcy Rules, the local rules of the Bankruptcy Court, or other applicable law;

(vii) that Seller is authorized to assume and assign to Buyer each of the Assigned Contracts pursuant to section 365 of the Bankruptcy Code; *provided, however,* that Buyer shall have sole responsibility for paying the Cure Amount, if any;

(viii) that Seller is authorized and directed to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;

(ix) that the Assigned Contracts are valid Contracts, enforceable on their terms (as modified by any updated delivery schedule agreed upon by the counterparty thereto and both Seller and Buyer), and Buyer shall have all of the rights of Seller thereunder;

(x) that the sale process conducted by Seller and/or its agent was non-collusive, fair and reasonable and was conducted in good faith;

(xi) that Buyer and Seller did not engage in any conduct that would allow the transactions contemplated by this Agreement to be set aside pursuant to section 363(n) of the Bankruptcy Code;

(xii) that the Sale Order is binding upon any successors to Seller, including any chapter 7 or liquidating trustee that may be appointed in the Bankruptcy Case;

(xiii) that the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer shall not apply to such sale; and

(xiv) that, notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, the Sale Order shall be effective immediately upon entry, and the Seller and the Buyer are authorized to close immediately upon entry of the Sale Order.

(b) Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order, including furnishing financial affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. In the event the entry of the Sale Order shall be appealed, each party shall use their respective commercially reasonable efforts to defend against such appeal.

(c) Seller shall use its reasonable best efforts to obtain approval of the Sale Order as soon as practicable.

(d) In the event that an appeal is taken, or a stay pending appeal or application for reconsideration is requested from the Sale Order, Seller shall promptly notify Buyer of such appeal or stay request and shall provide Buyer within two (2) Business Days a copy of the relevant notice of appeal or order of stay or application for reconsideration. Seller shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from either of such orders or application for reconsideration.

Section 9.02 Notice of Sale. Seller shall take such steps as are necessary to notify all Persons and parties in interest (including creditors and the counterparties to the Assigned Contracts) required to receive notice in accordance with applicable Law (including, to the extent applicable, Bankruptcy Rules 2002, 3016, 3017 and 6004 and any local rules or orders of the Bankruptcy Court) and any bidding procedures order on all Persons (including creditors and the counterparties to the Assigned Contracts) required to receive notice under applicable Law.

ARTICLE X TERMINATION

Section 10.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure cannot be cured by Seller within 16 days after the Bankruptcy Court enters the Sale Order approving and authorizing the sale of the Purchased Assets to Buyer (as may be extended by written agreement between the parties) (the “**Drop Dead Date**”); or

(ii) any of the conditions set forth in Section 7.02 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Seller by written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer

pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure cannot be cured by Buyer by the Drop Dead Date; or

(ii) any of the conditions set forth in Section 7.03 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited;

(ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable;

(iii) the Sale Order ceases to be in full force and effect, or is revoked, rescinded, vacated, materially modified, reversed or stayed, or otherwise rendered ineffective by a court of competent jurisdiction; or

(iv) the Bankruptcy Case is dismissed or converted into a case under chapter 7 of the Bankruptcy Code or a chapter 7 or chapter 11 trustee or an examiner with expanded powers is appointed for the Seller.

Section 10.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this ARTICLE X, Section 6.04 and ARTICLE XI hereof;

(b) that in the event that the termination occurs pursuant to Section 10.01(a), Section 10.01(b), or Section 10.01(d), Buyer shall be refunded the Deposit within two Business Days of such termination; and

(c) that nothing herein shall relieve any party hereto from liability for any intentional breach of any provision hereof.

ARTICLE XI MISCELLANEOUS

Section 11.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated

hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 11.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.02):

If to Seller: 200 South Street, 4th Floor
Morristown, New Jersey 07920
Facsimile: 855-405-0544
E-mail: bfrezza@deloitte.com
Attention: Chief Restructuring Officer

with a copy to: Riker Danzig Scherer Hyland & Perretti LLP
Headquarters Plaza, One Speedwell Avenue
P.O. Box 1981
Facsimile: 973-451-8668
E-mail: jnavarino@riker.com
jschwartz@riker.com
Attention: Jason D. Navarino, Esq.
Joseph L. Schwartz, Esq.

If to Buyer: AMERRA Cocoa USA, LLC
1185 Avenue of the Americas, 17th Floor
Facsimile: 212-764-2240
E-mail: nobler@amerracapital.com
Attention: Managing Director

with a copy to: Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Facsimile: 212-839-5599
E-mail: lattanasio@sidley.com
Attention: Lee S. Attanasio, Esq.

Section 11.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and

“hereunder” refer to this Agreement as a whole. Whenever the masculine is used in this Agreement, the same shall include the feminine and whenever the feminine is used herein, the same shall include the masculine, where appropriate. Whenever the singular is used in this Agreement, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 11.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 11.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 11.06 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 11.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 11.08 No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or

equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 11.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto, provided that any material amendment, modification, or supplement to this Agreement shall also require approval by the Bankruptcy Court by way of the Sale Order or a modification thereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 11.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction).

(b) Any legal suit, action or proceeding arising out of or based upon this agreement, the other transaction documents or the transactions contemplated hereby or thereby may be instituted in the Bankruptcy Court (or, if such court declines jurisdiction, the United States District Court for the Southern District of New York or the courts of the State of New York sitting in New York County (Manhattan), and any appellate court with jurisdiction over appeals taken therefrom), and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES

AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.10(c).

Section 11.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 11.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 11.13 Non-recourse. This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other Representative of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim, action, suit or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

TRANSMAR COMMODITY GROUP LTD.

By: 

Name: Peter G. Johnson

Title: Chairman, President, and Chief
Executing Officer

AMERRA COCOA USA, LLC

By: _____

Name: Nancy Obler

Title: Managing Director

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

TRANSMAR COMMODITY GROUP LTD.

By: _____
Name: Peter G. Johnson
Title: Chairman, President, and Chief
Executing Officer

AMERRA COCOA USA, LLC

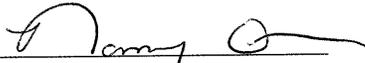
By:  _____
Name: Nancy Obler
Title: Managing Director

EXHIBIT A
Assignment and Assumption Agreement

This Assignment and Assumption Agreement (the “**Agreement**”), effective as of [DATE] (the “**Effective Date**”), is by and between Transmar Commodity Group Ltd., a New York corporation (“**Seller**”), and AMERRA Cocoa USA, LLC, a Delaware limited liability (“**Buyer**”).

WHEREAS, Seller is the debtor and debtor-in-possession in a Chapter 11 case now pending before the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”); and

WHEREAS, Seller and Buyer have entered into a certain Asset Purchase Agreement, dated as of [DATE] (the “**Purchase Agreement**”), pursuant to which, among other things, Seller has agreed to assign all of its right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement), and Buyer has agreed to assume the Assumed Liabilities (as defined in the Purchase Agreement) of Seller pursuant to Sections 363 and 365 of the United States Bankruptcy Code; and

WHEREAS, the Bankruptcy Court has entered an order (the “**Sale Order**”) approving the assignment of the Purchased Assets and the assumption of the Assumed Liabilities on the terms and conditions set forth in the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Purchase Agreement.
2. Assignment and Assumption. Seller hereby sells, assigns, grants, conveys and transfers to Buyer all of Seller’s right, title and interest in and to the Purchased Assets. Buyer hereby accepts such assignment and assumes all of Seller’s duties and obligations under the Assumed Liabilities of Seller.
3. Terms of the Purchase Agreement. The terms of the Purchase Agreement, including, but not limited to, the representations, warranties, covenants, and agreements relating to the Purchased Assets and Assumed Liabilities are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, and agreements contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement or the Sale Order and the terms hereof, the terms of the Purchase Agreement or the Sale Order shall govern.
4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction).

5. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

TRANSMAR COMMODITY GROUP LTD.

By: _____
Name: Peter G. Johnson
Title: Chairman, President, and Chief
Executing Officer

AMERRA COCOA USA, LLC

By: _____
Name: Nancy Obler
Title: Managing Director

Section 1.01(a)
Seller's Knowledge

Peter G. Johnson
Timothy Johnson

Section 2.01(a)
Assigned Contracts

Counterparty	Product Description	Contract Number	Metric Tons
Clasen	NATPW ECP300	S006529	-50.49
Clasen	NATPW	S007488	-686.55
Clasen	ALKPW 400-25	S006529	-38.40
Clasen	ALFTPW 400-50	S006529	-18.87
Clasen	ALFTPW 400LB	S006529	-21.16
Clasen	ALKPW 400KG	S006529	-36.00
Clasen	ALKPW 400LB	S006529	-17.24
Clasen	NATPW	S008693	-680.40
Clasen	ALKPW 535-KG	S006529	-18.00
Clasen	ALKPW 535KG	S007488	-18.03
Total			-1,585.12
Forbes	NATPW	S007487	-166.02
Forbes	MAALPW RED	S007925	-110.04
Forbes	MAALPW RED	S007926	-226.80
Forbes	NATPW	S008564	-680.40
Forbes	MAALPW RED25K	S007925	-0.05
Total			-1,183.31
IFP	NATPW ECP300	S006448	-21.10
IFP	NATPW	S007845	-350.11
IFP	ALKPW	S008964	-64.46
IFP	NATPW 100-11	S007845	-535.86
Total			-971.53
KERRY	NTRAPW FP 2	S005986	-25.31
KERRY	NATPW ECP300	S006426	-66.18
Total			-91.49
Mother Jungle	ECORPW	S009103	-18.00
Total			-18.00
Oakleaf	NATPW	S007709	-404.54
Total			-404.54
R.M. Palmer	NATPW ECP300	S006357	-126.71
R.M. Palmer	ALKPW	S007486	-62.92
R.M. Palmer	NATPW	S008452	-163.30
R.M. Palmer	NATPW ECP	S006357	-18.80
R.M. Palmer	NATPW	S008965	-342.92
Total			-714.65
Sensory Effects	NATPW	S008196	-386.63
Total			-386.63
Tate and Lyle	NATPW	S008563	-338.85
Tate and Lyle	MAALPW RED	S008966	-49.90

Total			-388.75
Tootsie Roll	NATPW	S006981	-304.82
Tootsie Roll	NATPW	S007717	-95.26
Tootsie Roll	NATPW	S008474	-95.26
Tootsie Roll	NATPW NEW	S006528	-8.35
Tootsie Roll	NATPW	S008562	-133.36
Total			-637.04

Total **-6,381.04**

Section 4.03
No Conflicts; Consents.

Several of the Assigned Contracts contain language that would prevent their assignment to Buyer without the consent of the applicable counterparty. Pursuant to section 365(f) of the Bankruptcy Code, however, those provisions are unenforceable on account of the Bankruptcy Case.

**Section 4.04
Assigned Contracts**

Seller has not made timely deliveries with respect to the following Assigned Contracts:

Counterparty	Product Description	Contract Number	Metric Tons
Clasen	NATPW ECP300	S006529	-50.49
Clasen	NATPW	S007488	-686.55
Clasen	ALKPW 400-25	S006529	-38.40
Clasen	ALFTPW 400-50	S006529	-18.87
Clasen	ALFTPW 400LB	S006529	-21.16
Clasen	ALKPW 400KG	S006529	-36.00
Clasen	ALKPW 400LB	S006529	-17.24
Clasen	ALKPW 535-KG	S006529	-18.00
Clasen	ALKPW 535KG	S007488	-18.03
Total			-904.74
Forbes	NATPW	S007487	-166.02
Forbes	MAALPW RED	S007925	-110.04
Forbes	MAALPW RED	S007926	-226.80
Forbes	NATPW	S008564	-680.40
Forbes	MAALPW RED25K	S007925	-0.05
Total			-1,183.31
IFP	NATPW ECP300	S006448	-21.10
IFP	NATPW	S007845	-350.11
IFP	ALKPW	S008964	-64.46
IFP	NATPW 100-11	S007845	-535.86
Total			-971.53
KERRY	NTRAPW FP 2	S005986	-25.31
KERRY	NATPW ECP300	S006426	-66.18
Total			-91.49
Mother Jungle	ECORPW	S009103	-18.00
Total			-18.00
Oakleaf	NATPW	S007709	-404.54
Total			-404.54
R.M. Palmer	NATPW ECP300	S006357	-126.71
R.M. Palmer	ALKPW	S007486	-62.92
R.M. Palmer	NATPW	S008452	-163.30
R.M. Palmer	NATPW ECP	S006357	-18.80
Total			-371.73
Sensory Effects	NATPW	S008196	-386.63
Total			-386.63
Tate and Lyle	NATPW	S008563	-338.85
Tate and Lyle	MAALPW RED	S008966	-49.90
Total			-388.75
Tootsie Roll	NATPW	S006981	-304.82
Tootsie Roll	NATPW	S007717	-95.26

Tootsie Roll	NATPW	S008474	-95.26
Tootsie Roll	NATPW NEW	S006528	-8.35
Total			-503.69
Total			-5,224.41

Section 4.05(a)
Legal Proceedings

Seller is currently involved in the Bankruptcy Case.

Clasen Quality Chocolates, Inc., Tootsie Roll Industries, Tate & Lyle, R.M. Palmer Company, and The Benjamin P. Forbes Company have sent cancelation notices to Seller with respect to certain of the Assigned Contracts. Seller disputes the basis for such cancelation notices.

Section 4.05(b)
Governmental Orders

None.

Section 4.06
Compliance With Laws

None.

Exhibit C

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP
Tracy L. Klestadt
Joseph C. Corneau
200 West 41st Street, 17th Floor
New York, New York 10036
Telephone: (212) 972-3000
Facsimile: (212) 972-2245

-and-

RIKER DANZIG SCHERER HYLAND & PERRETTI LLP
Joseph L. Schwartz (admitted *pro hac vice*)
Tara J. Schellhorn
Rachel F. Gillen (admitted *pro hac vice*)
Headquarters Plaza, One Speedwell Avenue
Morristown, New Jersey 07960
Telephone: (973) 538-0800
Facsimile: (973) 538-1984

Attorneys for the Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
In re	:	Chapter 11
	:	
TRANSMAR COMMODITY GROUP LTD. ¹	:	
	:	
Debtor.	:	Case No. 16-13625 (JLG)
	:	
	:	
-----	X	

**DECLARATION OF ROBERT J. FREZZA IN SUPPORT OF DEBTOR'S
MOTION FOR ENTRY OF AN ORDER APPROVING THE PRIVATE SALE AND
ASSIGNMENT OF THE DEBTOR'S POWDER BOOK FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTSPURSUANT TO 11
U.S.C. §§ 105, 363 AND 365 AND FED. R. BANK. P. 2002, 6004 AND 6006 AND
GRANTING RELATED RELIEF**

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor's taxpayer identification number are as follows: Transmar Commodity Group Ltd. (5889). The Debtor's principal office is located at 200 South Street, 4th Floor, Morristown, NJ 07960.

I, Robert J. Frezza, declare, pursuant to section 1746 of title 28 of the United States Code, that:

1. I am a Managing Director with Deloitte CRG (“Deloitte”). I have more than 30 years of experience providing financial advisory services to clients across numerous industries in the United States and Europe.

2. I was engaged to serve as Chief Restructuring Officer by Transmar Commodity Group Ltd., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”) shortly before the Debtor’s bankruptcy filing. In performing the duties of Chief Restructuring Officer, I have become familiar with the Debtor’s business history, its corporate and capital structures, its business operations and financial affairs and its books and records.

3. I submit the Declaration in support of the Debtor’s motion for entry of an order authorizing the private sale and assignment of the Debtor’s Powder Book (as defined herein), free and clear of all liens, claims, encumbrances and other interests, to AMERRA Cocoa USA, LLC (“AMERRA”), pursuant to a certain Asset Purchase Agreement (the “APA”)² dated May 17, 2017 by and among the Debtor and AMERRA (the “Sale Motion”).

THE DEBTOR’S FORWARD BOOK

4. Historically, the Debtor entered into forward contracts with counterparties to those contracts in the ordinary course of its business. The Debtor also utilized the futures market to hedge or reduce existing and/or expected risks associated with fluctuations in the prices of certain cocoa products.

5. As of the Petition Date, the Debtor was a party to many forward contracts (each a “Forward Contract” and together the “Forward Contracts” or “Forward Book”) to both purchase

² Capitalized terms not defined herein shall have the meaning ascribed to them in the APA.

and to supply cocoa beans and cocoa products (“Product”) to various counterparties (each a “Counterparty,” and together, the “Counterparties”). The Forward Book consists of two (2) parts:

- (i) The Forward Sale Contracts. The Debtor is party to certain Forward Contracts pursuant to which the Debtor agrees to sell, and the Counterparty agrees to purchase, Product in certain quantities (each a “Forward Sale Contract,” and together, the “Forward Sale Contracts” or “Forward Sale Book”); and
- (ii) The Forward Purchase Contracts. The Debtor is also party to certain Forward Contracts pursuant to which a Counterparty agrees to sell, and the Debtor agrees to purchase, Product in certain quantities (the “Forward Purchase Contracts”).

6. Certain of the Forward Sale Contracts, as further described herein, relate to the Debtor’s agreement to sell cocoa powder to third party Counterparties (each, a “Powder Contract”, while all of the Debtor’s remaining Powder Contracts shall collectively be called the “Powder Book”).

7. The Powder Book serves as part of the collateral of the Debtor’s pre-petition lenders (the “Pre-Petition Lenders”) with respect to the Pre-Petition Lenders’ blanket first-priority lien on virtually all of the Debtor’s assets (excluding any pledge of the equity interests in the Debtor’s subsidiaries), pursuant to that certain Amended and Restated Security Agreement dated as of February 26, 2016, along with other collateral documentation.

THE POWDER BOOK SALE

8. As is set forth in detail in the APA, and as set forth in further detail here, AMERRA recently made the Debtor an offer to purchase the Powder Book from the Debtor.

9. Upon information and belief, unlike FCStone, AMERRA is currently in possession of certain specific cocoa powder necessary to fulfill certain of the Powder Contracts, which makes AMERRA uniquely qualified to purchase the Powder Book and, upon closing, to immediately begin performing under the Powder Contracts.

10. After due consideration and consultation with both the Pre-Petition Lenders and the Committee, the Debtor, in its business judgment, and in order to timely and properly service the existing Powder Book Contracts, determined that an emergent sale of the Powder Book to AMERRA was the best and most expeditious method to preserve the value of the Powder Book and maximize value for the Debtor's estate. As a result, the Debtor now seeks, on an emergent basis, approval to sell the Powder Book to AMERRA.

11. Further, given the fact that AMERRA is in possession of the certain specific cocoa powder necessary to fulfill certain of the Powder Contracts, the Debtor has determined, in its business judgment, not to proceed with an auction for the Powder Book. Instead, the Debtor has determined that AMERRA's proposal for the Powder Book by way of expedited private sale would likely be the best and highest offer that the Debtor will receive for the Powder Book.

ATTEMPTED CANCELLATION NOTICES

12. Five (5) Counterparties to certain of the Powder Contracts – Clasen Quality Chocolates, Inc.; Tootsie Roll Industries; Tate & Lyle; R.M. Palmer Company; and The Benjamin P. Forbes Company – have sent post-petition notices to the Debtor attempting to cancel their Powder Contracts with the Debtor, copies of which are attached hereto as **Exhibit 1**. The Debtor has advised these Counterparties that such purported terminations are improper and ineffective. The Debtor seeks to assign these Powder Contracts in accordance with this Sale Motion.

[Remainder of page intentionally left blank]

I hereby certify, under penalty of perjury, that the foregoing factual statements made by me are true.

Executed on May 17, 2017

/s/ Robert J. Frezza

Robert J. Frezza, Chief Restructuring Officer
Transmar Commodity Group, Ltd.

Exhibit 1



You Can Count on Us

February 14, 2017

Peter G. Johnson – CEO (peter.g.johnson@transmargroup.com)
Transmar Commodity Group, Ltd.
200 South Street, 4th Floor
Morristown, NJ 07960

Re: Termination of Purchase Orders and Deliveries

Dear Peter:

In light of (i) past failures by Transmar Commodity Group, Ltd. to timely deliver product and quantities purchased by Clasen Quality Chocolate, Inc., and (ii) recent communications from Peter Johnson acknowledging that Transmar lacks both the necessary inventory and financing necessary to timely supply all of the product and quantities committed to Clasen, I regret to inform you that, effective immediately, Clasen is terminating all outstanding purchase balances with Transmar effective immediately. Please note that Clasen reserves all of its rights and defenses under all contracts with Transmar, including claims related to Transmar's past failures to timely deliver product and quantity ordered by Clasen.

It is our hope that in the future, once Transmar regains and demonstrates the ability to reliably deliver the products and quantities needed by Clasen, that we may do business again.

Thank you,

A handwritten signature in black ink, appearing to read "Don Hallett", with a large, sweeping flourish extending to the right.

Don Hallett
Executive Vice President of Administration
Clasen Quality Chocolate, Inc.

Gillen, Rachel

From: Gillen, Rachel
Sent: Tuesday, May 16, 2017 3:57 PM
To: Gillen, Rachel
Subject: FW: Tootsie Roll contracts

From: Ellisor, Patrick [<mailto:pellisor@tootsie-roll.com>]
Sent: Tuesday, April 18, 2017 10:47 AM
To: Frezza, Bob (US - Parsippany) <bfrezza@deloitte.com>
Cc: Patrick Burke (Patburke42@aol.com) <Patburke42@aol.com>
Subject: Tootsie Roll contracts

Bob,

Hello; I am responsible for the purchasing of cocoa powder for Tootsie Roll Industries. I asked Patrick Burke for a contact at Transmar, and he referred me to you.

Please be advised that Tootsie Roll Industries has purchased cocoa powder to replace the volume that was booked with Transmar, and we now consider the Transmar contracts to be cancelled.

Could you please confirm on behalf of Transmar that the contracts are cancelled?

Thank you & best regards,

Pat Ellisor
Co-Director, Purchasing
Tootsie Roll Industries
773-884-8901

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

v.E.1

Confidentiality notice: This e-mail contains information that is privileged and confidential and subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. You are prohibited from copying, distributing or otherwise using this information if you are not the intended recipient. If you have received this e-mail in error, please notify us immediately by return e-mail and delete this e-mail and all attachments from your system. Thank You.

Gillen, Rachel

From: Gillen, Rachel
Sent: Tuesday, May 16, 2017 4:01 PM
To: Gillen, Rachel
Subject: FW: PO 4410032199

From: patburke42@aol.com [<mailto:patburke42@aol.com>]
Sent: Monday, April 24, 2017 5:10 PM
To: Steinway, Jon (US - Parsippany) <josteinway@deloitte.com>; Frezza, Bob (US - Parsippany) <bfrezza@deloitte.com>;
peter.g.johnson@transmargroup.com; dale.grider@transmargroup.com
Subject: Fwd: PO 4410032199

fyi,

Lets talk tomorrow. I was busy today.

Let me know what time is best.

Patrick Burke
Industrial Commodity Sourcing
Phone: 847-650-8326
Patburke42@aol.com

-----Original Message-----

From: Hudec, Thomas <Thomas.Hudec@tateandlyle.com>
To: Hoversen, James T. <James.Hoversen@tateandlyle.com>; dale.grider <dale.grider@transmargroup.com>
Cc: patburke42 <patburke42@aol.com>; Grimm, Tonya <Tonya.Grimm@tateandlyle.com>
Sent: Mon, Apr 24, 2017 4:07 pm
Subject: RE: PO 4410032199

Hi Pat,

Due to the lack of response and inability to supply we are canceling all outstanding PO's.

Thanks!
Tom

From: Hoversen, James T.
Sent: April 19, 2017 5:28 PM
To: dale.grider@transmargroup.com
Cc: Hudec, Thomas; patburke42@aol.com; Grimm, Tonya
Subject: RE: PO 4410032199
Importance: High

Hello,

Please advise on the below request.

Thanks!

James

From: Hoversen, James T.
Sent: Wednesday, April 12, 2017 9:22 AM
To: dale.grider@transmargroup.com
Cc: Hudec, Thomas; patburke42@aol.com; Grimm, Tonya
Subject: PO 4410032199
Importance: High

Hi Dale,

I hope that you are well. We have PO 4410032199 scheduled to deliver on 5/12. We have yet to see preship samples for this material. Can you please send pre-shipment samples asap as we would like to pull forward this delivery for 4/20.

James Hoversen
Operational Procurement Manager
Specialty Food Ingredients, Food Systems Americas
Tate & Lyle
1631 S. Prairie Drive, Sycamore, IL 60178
Office: 815-748-8701, Mobile: 815-901-8464
James.Hoversen@TateandLyle.com

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April 24, 2017

VIA CERTIFIED RETURN RECEIPT USPS

Mr. Peter Johnson
Transmar Commodity Group, Ltd.
200 South Street, 4th Floor
Morristown, NJ 07960

Re: Termination of CMA-1 Contracts (identified below), Between R.M. Palmer Company ("R.M. Palmer") and Transmar Commodity Group, Ltd. ("Transmar")

Dear Mr. Johnson:

Please be advised that R.M. Palmer hereby terminates the CMA-1A Contracts by and between Transmar and R.M. Palmer (together with the Standard 1-A Contract of the Cocoa Merchants Association of America and all amendments, addenda and attachments thereto, the "Contract"), effective as of this date. Under the Contract, Transmar was obligated to make deliveries of cocoa powder to R.M. Palmer from January 2017 through December 2018 in quantities, and at the price, specified in the Contract.

CMA-1A Contracts listed below with the origin dates and current status as of this date:

SOO6357	September 05, 2014, Open balance	362,162 pounds
	ECP 300 Natural Powder	
SOO7486	March 16, 2015, Open balance	155,900 pounds
	ECP 535 Alkalized Powder	
SOO8452	August 08, 2016, Open balance	360,000 pounds
	ECP 300 Natural Powder	
SOO8965	October 13, 2016, Open balance	750,000 pounds
	ECP 300 Natural Powder	

All balances include missed deliveries and future deliveries.

The Contract is subject to the terms and conditions of the Standard 1-A Contract of The Cocoa Merchants' Association of America, Inc. (the "CMAA Contract"). Section 12 of the CMAA Contract provides, in relevant part, that in the event that a party to any contract files for bankruptcy protection, the "contract shall be forthwith closed at the market price then current for similar goods for delivery at the time named in the contract."

As you know, on December 31, 2016 (the "Petition Date"), Transmar filed a voluntary bankruptcy petition in the United States Bankruptcy Court for the Southern District of New York. Since the Petition Date, Transmar has failed to perform its obligations under the Contract and has missed the following deliveries:

March 21, 2017	ECP-300
April 06, 2017	ECP-300
April 13, 2017	ECP-300
April 4, 2017	ECP-300
March 16, 2017	ECP-535
April 19, 2017	ECP-535

Due to this unexpected burden, R. M. Palmer was forced to contract our supply requirements with alternate sources in order to ensure the continued supply of powder to Palmer preventing devastating production stoppage.

The continuing supply of the cocoa is critical to enable R.M. Palmer to satisfy its customer orders and perform other obligations in a timely manner. As a result, R.M. Palmer will continue to sustain damages if the Contract is not immediately terminated.

Accordingly, R.M. Palmer is exercising its rights to terminate all current and forward commodity contracts pursuant to Section 12 of the CMAA and section 556 of the United States Bankruptcy Code (the "Bankruptcy Code"). R.M. Palmer reserves all rights and remedies under the Contract to the extent that the exercise of such rights and remedies is consistent with the provisions of the Bankruptcy Code.

Very truly yours,



Mark E Schlott
Executive VP of Operations/COO



Gillen, Rachel

From: Gillen, Rachel
Sent: Tuesday, May 16, 2017 4:18 PM
To: Gillen, Rachel
Subject: FW: Transmar

From: Keith Geringer [<mailto:kgeringer@forbeschocolate.com>]
Sent: Friday, April 28, 2017 12:04 PM
To: Frezza, Bob (US - Parsippany) <bfrezza@deloitte.com>; peter.b.johnson@transmargroup.com
Cc: peter.b.johnson@icloud.com
Subject: FW: Transmar

Bob and Pete,

I am writing to confirm the discussion I had with Bob yesterday. As you know, Forbes Chocolate has not received any of its scheduled cocoa powder shipments since Transmar filed for bankruptcy. Transmar's failure to ship cocoa powder as required under the five contracts with Forbes (i.e., S007487, S007925, S007926, S008564 and S006975 (collectively, the "Contracts")) has forced Forbes to search for and cover the requirements of the Contracts from alternative sources. If Forbes did not cover, it would have breached agreements with its own customers, and Transmar would have been responsible for additional consequential damages.

Accordingly, as I discussed with Bob yesterday, Forbes has exercised its rights to cover under the UCC. Our cover was done in good faith and should mitigate any damages from Transmar's breach and failure to perform. Because Forbes was forced to cover, no additional shipments are required from Transmar. Moreover, because of the breach and the required cover, Forbes would reject any future shipments from Transmar and would also object to any assumption and assignment of the Contracts.

In an effort to have clarity about the status the Contracts and to avoid unnecessary legal costs associated with a nonconsensual termination, we are asking that Transmar confirm that the Contracts between the parties are terminated by mutual agreement and that no further shipments will be required.

Regards,
Keith

Keith A. Geringer
President
The Benjamin P. Forbes Company
800 Ken Mar Industrial Parkway
Broadview Heights, Ohio 44147
440-838-4400 x205
Fax 440-838-4438

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Exhibit D

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP
Tracy L. Klestadt
Joseph C. Corneau
200 West 41st Street, 17th Floor
New York, New York 10036
Telephone: (212) 972-3000
Facsimile: (212) 972-2245

-and-

RIKER DANZIG SCHERER HYLAND & PERRETTI LLP
Joseph L. Schwartz (admitted *pro hac vice*)
Tara J. Schellhorn
Rachel F. Gillen (admitted *pro hac vice*)
Headquarters Plaza, One Speedwell Avenue
Morristown, New Jersey 07960
Telephone: (973) 538-0800
Facsimile: (973) 538-1984

Attorneys for the Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
TRANSMAR COMMODITY GROUP LTD. ¹	:	
	:	
Debtor.	:	Case No. 16-13625 (JLG)
	:	
	:	
-----	x	

**NOTICE OF POTENTIAL ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS IN CONNECTION
WITH THE SALE AND ASSIGNMENT OF THE DEBTOR'S POWDER BOOK**

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor's taxpayer identification number are as follows: Transmar Commodity Group Ltd. (5889). The Debtor's principal office is located at 200 South Street, 4th Floor, Morristown, NJ 07960.

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On May 17, 2017, Transmar Commodity Group Ltd. the debtor in the above-captioned case (the “**Debtor**”) filed with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) a motion (the “**Sale Motion**”) for the entry of an order authorizing the private sale and assignment of the Debtor’s Powder Book², free and clear of all liens, claims, encumbrances and other interests, to AMERRA Cocoa USA, LLC (“**AMERRA**”) (the “**Proposed Sale**”), along with a motion to shorten time with respect to the Sale Motion.

2. The hearing on the Proposed Sale (the “**Sale Hearing**”) will take place on **May 31, 2017 at 2:00 p.m.** before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, in the Bankruptcy Court, located at One Bowling Green, New York, NY 10004.

3. In connection with the Proposed Sale, and in accordance with the Assumption and Assignment Procedures set forth in the Sale Motion, the Debtor will seek to assume and assign the Powder Contracts (as defined in the Motion) and execute and deliver to AMERRA such documents or other instruments as may be necessary to assign and transfer the Powder Contracts. Each of the Powder Contracts are identified on the Contracts Schedule attached hereto as **Schedule 1** (the “**Proposed Assumed Contracts Notice**”). The cure costs (the “**Cure Costs**”) under the Powder Contracts, if any, that the Debtor believes is required to be paid to the applicable counterparty (the “**Counterparty**”) to each of the Powder Contracts to cure any monetary defaults under such contracts pursuant to 11 U.S.C. §§ 365(b)(1)(A) and (B) is set forth on the Proposed Assumed Contracts Notice.

4. Cure Objections.

- a) Cure Objection Deadline. Any Counterparty to a Powder Contract that wishes to object to the proposed assumption, assignment, and sale of that Powder Contract, the subject of which objection is the Debtor’s proposed Cure Costs to cure any outstanding monetary defaults then existing under such contract (each, a “Cure Objection”) shall file with the Court and serve its Cure Objection on (i) the attorneys for the Debtor, Riker Danzig Scherer Hyland & Perretti, LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962 (Attn: Joseph L. Schwartz, Esq.); (ii) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (iii) counsel to AMERRA, Sidley Austin LLP (Attn: Lee S. Attanasio, Esq.); (iv) Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq.); and (vi) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere, Esq.) (the foregoing parties, the “Objection Recipients”) by **May 26, 2017, at 4:00 p.m. (prevailing Eastern Time)** (the “Cure Objection Deadline”). Any Cure Objection

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Sale Motion.

must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof.

- b) Resolution of Cure Objections. The Sale Motion requires that the Debtor and a Counterparty that has filed a Cure Objection first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined by the Court at the Sale Hearing. The Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph.³
- c) Adjournment of Cure Objections. If a timely Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtor's discretion, after consulting with AMERRA, be adjourned (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Proposed Sale, provided that, the Debtor maintain a cash reserve equal to the Cure Costs the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Powder Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable Cure Costs, if any, the applicable Powder Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to AMERRA, as of the closing date of the Proposed Sale.
- d) Failure to File Timely Cure Objection. **If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Powder Contract (unless such Counterparty has timely filed an Adequate Assurance Objection (as hereinafter defined) with respect to the Powder Contract) to AMERRA and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale. Further, in the event no objections are timely filed and served, the Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Powder Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Powder Contract, or any other document, and the Counterparty to the Powder Contract shall be deemed to have consented to the Cure**

³ All other Sale Objections to the proposed assumption and assignment of the Debtor's right, title, and interest in, to, and under a Powder Contract, if it is ultimately designated as a contract to be assumed or assigned by AMERRA, will be heard at the Sale Hearing.

Costs and shall be forever barred from asserting any other claims related to such Powder Contract against the Debtors or AMERRA, or the property of any of them.

6. Adequate Assurance.

- a) Adequate Assurance Information. Upon request, the Debtor shall provide Counterparties with information to demonstrate that AMERRA is able to fulfill all obligations in connection with the Powder Contracts so as to satisfy the requirement of providing adequate assurance of future performance, as contemplated by section 365 of the Bankruptcy Code (the "Adequate Assurance Information"). In particular, the Debtor shall provide the Adequate Assurance Information to a Counterparty to a Powder Contract upon (x) receipt of a written request (e-mail to Debtor's counsel is acceptable) for Adequate Assurance Information and (y) confirmation in writing to the Debtor's counsel (e-mail is acceptable) of the Counterparty's agreement to keep such Adequate Assurance Information strictly confidential and use it solely for the purpose of evaluating whether AMERRA has provided adequate assurance of future performance under the implicated Powder Contracts.
- b) Adequate Assurance Objection Deadline. Any Counterparty to a Powder Contract that wishes to object to the proposed assumption, assignment and sale of the Powder Contract, the subject of which objection is AMERRA's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection") shall file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **May 26, 2017, at 4:00 p.m. (prevailing Eastern Time)**; provided that, if the Sale Hearing is adjourned to a later date, the Adequate Assurance Objection Deadline shall be at 5:00 p.m. (prevailing Eastern Time) two (2) days prior to the Sale Hearing.
- c) Resolution of Adequate Assurance Objections. The Sale Motion requires that the Debtor and a Counterparty that has filed an Adequate Assurance Objection first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance by AMERRA shall be determined by the Court at the Sale Hearing.
- d) Failure to File Timely Adequate Assurance Objection. **If a Counterparty fails to timely file with the Court and serve on**

the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Powder Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Powder Contract) to AMERRA and forever shall be barred from asserting any objection with regard to such assumption, assignment, and sale. Further, in the event no objections are filed and served, AMERRA shall be deemed to have provided adequate assurance of future performance with respect to the applicable Powder Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Powder Contract, or any other document.

7. Sale Objections by Counterparties.

- a) Sale Objection Deadline. Any Counterparty to a Powder Contract that wishes to file a Sale Objection (other than a Cure Objection or an Adequate Assurance Objection) to the proposed assumption, assignment and sale of the Powder Contract shall file with the Court and serve on the Objection Recipients its Sale Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than the Sale Objection Deadline of **May 26, 2017 at 4:00 p.m. (prevailing Eastern Time)**.
- b) Failure of Counterparties to File Timely Sale Objection. **If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Sale Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Powder Contract (unless the Counterparty has filed a timely Cure Objection or Adequate Assurance Objection with respect to the Powder Contract) to AMERRA and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale.**

8. The inclusion of a Powder Contract or Cure Costs on the Proposed Assumed Contracts Notice shall not constitute or be deemed a determination or admission by the Debtor, AMERRA, or any other party in interest that such contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Costs are due (all rights with respect thereto being expressly reserved). The Debtor reserves all of its rights, claims, and causes of action with respect to each Powder Contract or other document listed on the Proposed Assumed Contracts Notice. The Presumed Assumed Contracts Notice shall be without prejudice to AMERRA's rights, if any, under the Asset Purchase Agreement (the "APA"), to subsequently exclude any Powder Contract from the assumption or assignment prior to the closing of the Proposed Sale.

9. The Debtor's assumption and/or assignment of the Powder Contracts is subject to approval by the Bankruptcy Court and consummation of the Proposed Sale. Absent consummation of the Proposed Sale and entry of a Sale Order approving the assumption and assignment of the Powder Contracts, the Powder Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtor.

10. A copy of the Sale Motion may be obtained free of charge at the website dedicated to the Debtor's chapter 11 case maintained by its claims and noticing agent and administrative advisor, Donlin Recano (donlinrecano.com/Clients/tcg/Index). Copies are also available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, located at One Bowling Green, New York, NY 10004, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.nysb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

[Remainder of page intentionally left blank]

Dated: May 17, 2017
New York, New York

KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP

By: /s/ Tracy L. Klestadt
Tracy Klestadt
Tracy L. Klestadt
Joseph C. Corneau
200 West 41st Street, 17th Floor
New York, New York 10036
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- and -

RIKER DANZIG SCHERER HYLAND &
PERRETTI LLP
Joseph L. Schwartz (admitted *pro hac vice*)
Tara J. Schellhorn
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Facsimile: (973) 538-1984
Email: jschwartz@riker.com
tschellhorn@riker.com
rgillen@riker.com

Attorneys for the Debtor and
Debtor-in-Possession

Schedule 1

Schedule 1

NAME OF DEBTOR PARTY TO AGREEMENT	NAME OF COUNTERPARTY	ADDRESS	TITLE OF CONTRACT	CONTRACT NUMBER	PROPOSED CURE AMOUNT
Transmar Commodity Group Ltd.	Clasen Quality Coatings	5126 W. Terrace Drive Suite 100, Madison, WI 52718 USA	Cocoa Powder Sales Contract	S006529	\$0.00
Transmar Commodity Group Ltd.	Clasen Quality Coatings	5126 W. Terrace Drive Suite 100, Madison, WI 52718 USA	Cocoa Powder Sales Contract	S007488	\$0.00
Transmar Commodity Group Ltd.	Clasen Quality Coatings	5126 W. Terrace Drive Suite 100, Madison, WI 52718 USA	Cocoa Powder Sales Contract	S008693	\$0.00
Transmar Commodity Group Ltd.	The Benjamin P. Forbes Company	800 Ken Mar Industrial Parkway Broadview Hts, OH 44147 USA	Cocoa Powder Sales Contract	S007487	\$0.00
Transmar Commodity Group Ltd.	The Benjamin P. Forbes Company	800 Ken Mar Industrial Parkway Broadview Hts, OH 44147 USA	Cocoa Powder Sales Contract	S007925	\$0.00
Transmar Commodity Group Ltd.	The Benjamin P. Forbes Company	800 Ken Mar Industrial Parkway Broadview Hts, OH 44147 USA	Cocoa Powder Sales Contract	S007926	\$0.00
Transmar Commodity Group Ltd.	The Benjamin P. Forbes Company	800 Ken Mar Industrial Parkway Broadview Hts, OH 44147 USA	Cocoa Powder Sales Contract	S008564	\$0.00
Transmar Commodity Group Ltd.	International Food Products	150 Larkin Williams Industrial Court, Fenton, MO 63026 USA	Cocoa Powder Sales Contract	S006448	\$0.00
Transmar Commodity Group Ltd.	International Food Products	150 Larkin Williams Industrial Court, Fenton, MO 63026 USA	Cocoa Powder Sales Contract	S007845	\$0.00
Transmar Commodity Group Ltd.	International Food Products	150 Larkin Williams Industrial Court, Fenton, MO 63026 USA	Cocoa Powder Sales Contract	S008964	\$0.00
Transmar Commodity Group Ltd.	Kerry Ingredients & Flavours	Affton Plant, Box Number 696477 San Antonio, TX 78269 USA	Cocoa Powder Sales Contract	S005986	\$0.00
Transmar Commodity Group Ltd.	Kerry Ingredients & Flavours	Affton Plant, Box Number 696477 San Antonio, TX 78269 USA	Cocoa Powder Sales Contract	S006426	\$0.00
Transmar Commodity Group Ltd.	Mother Jungle Herbs	P.O. Box 8297, Temecula, CA 92589 USA	Cocoa Powder Sales Contract	S009103	\$0.00
Transmar Commodity Group Ltd.	Oak Leaf Confections	440 Comstock Road Scarborough, ON M1L 2M6 Canada	Cocoa Powder Sales Contract	S007709	\$0.00
Transmar Commodity Group Ltd.	R.M. Palmer	77 Second Avenue West Reading, PA 19611 USA	Cocoa Powder Sales Contract	S006357	\$0.00
Transmar Commodity Group Ltd.	R.M. Palmer	77 Second Avenue West Reading, PA 19611 USA	Cocoa Powder Sales Contract	S007486	\$0.00
Transmar Commodity Group Ltd.	R.M. Palmer	77 Second Avenue West Reading, PA 19611 USA	Cocoa Powder Sales Contract	S008452	\$0.00
Transmar Commodity Group Ltd.	R.M. Palmer	77 Second Avenue West Reading, PA 19611 USA	Cocoa Powder Sales Contract	S008965	\$0.00
Transmar Commodity Group Ltd.	SensoryEffects Flavor Systems	231 Rock Industrial Park Drive, Bridgeton, MO US	Cocoa Powder Sales Contract	S008196	\$0.00
Transmar Commodity Group Ltd.	Tate & Lyle	540 Prairie Stone Parkway, Hoffman Estates, IL 60192 USA	Cocoa Powder Sales Contract	S008563	\$0.00
Transmar Commodity Group Ltd.	Tate & Lyle	540 Prairie Stone Parkway, Hoffman Estates, IL 60192 USA	Cocoa Powder Sales Contract	S008966	\$0.00
Transmar Commodity Group Ltd.	Tootsie Roll Industries, LLC	7401 South Cicero Avenue, Chicago, IL 60629 USA	Cocoa Powder Sales Contract	S006981	\$0.00
Transmar Commodity Group Ltd.	Tootsie Roll Industries, LLC	7401 South Cicero Avenue, Chicago, IL 60629 USA	Cocoa Powder Sales Contract	S007717	\$0.00
Transmar Commodity Group Ltd.	Tootsie Roll Industries, LLC	7401 South Cicero Avenue, Chicago, IL 60629 USA	Cocoa Powder Sales Contract	S008474	\$0.00
Transmar Commodity Group Ltd.	Tootsie Roll Industries, LLC	7401 South Cicero Avenue, Chicago, IL 60629 USA	Cocoa Powder Sales Contract	S006528	\$0.00
Transmar Commodity Group Ltd.	Tootsie Roll Industries, LLC	7401 South Cicero Avenue, Chicago, IL 60629 USA	Cocoa Powder Sales Contract	S008562	\$0.00