

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**In re:**

**TROVERCO, INC.,**

**Debtor.**

**Chapter 11  
Case No. 17-44474-705**

**DISCLOSURE STATEMENT WITH RESPECT TO  
CHAPTER 11 PLAN OF REORGANIZATION**

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**ATTORNEYS FOR THE DEBTOR**

**Date: November 28, 2017**

## I. INTRODUCTION AND DISCLAIMER

Debtor Troverco, Inc. (the “Debtor” or “Troverco”) submits this Disclosure Statement (this “Disclosure Statement”) to holders of Claims against and Interests in the Debtor in connection with the solicitation of acceptances of the Chapter 11 Plan of Reorganization, as the same may be amended (the “Plan”), a copy of which is attached as **Exhibit 1**. Unless otherwise defined, all capitalized terms contained herein have the respective meanings assigned to them in the Plan.

This Disclosure Statement describes certain aspects of the Plan, the Chapter 11 Case, the Debtor’s reorganization and the formation of the Plan Trust. Under the Plan, holders of Allowed Claims arising under 11 U.S.C. § 503(b)(9) and arising under the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a, *et seq.*, and Allowed General Unsecured Claims will be deemed to hold Interests in the Plan Trust and (b) the Interests will be retained upon the provision of funding from Interest holders as described under the Plan. The Plan Trustee will be charged with (i) pursuing Avoidance Actions and Remaining Actions on behalf of the Beneficiaries and (ii) making distributions on account of Allowed Claims in accordance with the Plan and the Plan Trust Agreement. For a complete understanding of the Plan, you should read this Disclosure Statement and the Plan and its exhibits and schedules in their entirety.

The Debtor believes that confirmation of the Plan is in the best interests of all parties, including Creditors and the Estate. Accordingly, the Debtor urges each Creditor that is Impaired and entitled to vote with respect to the Plan, vote to accept the Plan. To be counted, a ballot containing your vote to accept or to reject the Plan must be received by the Debtor’s counsel, Eric C. Peterson, Spencer Fane LLP, by no later than 5:00 p.m. (Central Time) on or by January \_\_\_, 2018.

**NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE THAT ARE OTHER THAN AS CONTAINED IN THE DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION. ANY NON-DEBTOR REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE COURT FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.**

**THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECTED TO A CERTIFIED AUDIT. THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH GREAT EFFORT HAS BEEN TAKEN TO MAKE SURE IT FAIRLY REPRESENTS THE CURRENT POSITION OF THE DEBTOR.**

**FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND INTERESTS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ALL SUMMARIES. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE, AND ARE SUBJECT TO AND QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE APPLICABLE AGREEMENTS.**

**SECTION 1125 OF THE BANKRUPTCY CODE REQUIRES THAT THERE BE A POST-PETITION DISCLOSURE IN THE FORM OF A DISCLOSURE STATEMENT THAT PROVIDES "ADEQUATE INFORMATION" TO CREDITORS BEFORE ANYONE MAY SOLICIT ACCEPTANCES OF A CHAPTER 11 PLAN. THIS DISCLOSURE STATEMENT IS PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE SO AS TO PROVIDE "ADEQUATE INFORMATION" TO CREDITORS IN THIS PROCEEDING. CREDITORS ARE URGED TO CONSULT WITH THEIR OWN INDIVIDUAL COUNSEL OR EACH OTHER AND TO REVIEW ALL OF THE RECORDS HEREIN IN ORDER TO FULLY UNDERSTAND THE DISCLOSURES MADE, ANY PLAN FILED HEREIN AND ANY OTHER PERTINENT INFORMATION IN THIS PROCEEDING. ANY PLAN WILL BE COMPLEX, ESPECIALLY SINCE IT REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT, AND ANY INTELLIGENT JUDGMENT CONCERNING ANY PROPOSED PLAN CANNOT BE MADE WITHOUT FULLY UNDERSTANDING THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND THE FULL COMPLEXITIES OF ANY PLAN PROPOSED HEREIN. THIS DISCLOSURE STATEMENT IS NOT INTENDED TO TAKE THE PLACE OF THE PLAN. EACH CREDITOR IS URGED TO STUDY THE PLAN IN FULL AND TO CONSULT ITS COUNSEL WITH RESPECT TO THE PLAN, ITS TAX IMPLICATION(S) AND ITS EFFECT ON HIS, HER OR ITS RIGHTS.**

**AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED AS AN ADMISSION, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING.**

**IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND BECOMES EFFECTIVE, ALL HOLDERS OF CLAIMS AND INTERESTS (INCLUDING THOSE WHO REJECTED OR WHO ARE DEEMED TO HAVE REJECTED OR ACCEPTED THE PLAN AND THOSE WHO DID NOT SUBMIT BALLOTS TO ACCEPT OR TO REJECT THE PLAN) SHALL BE BOUND BY THE TERMS OF THE PLAN.**

## II. VOTING AND CONFIRMATION PROCEDURES

Under the Bankruptcy Code, Classes of Claims that are unimpaired under a Chapter 11 plan are deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan. Classes of Claims and Interests that are not entitled to receive any distribution on account of their Claims or Interests are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

Under the terms of the Plan, the holders of Allowed Claims in Classes 1, 3, 4, and 5 are entitled to vote to accept or reject the Plan.

Votes on the Plan are not being solicited from holders of claims in Class 2, which are unimpaired.

### A. Voting Procedures

If you are entitled to vote to accept or reject the Plan, a ballot is enclosed for the purpose of voting on the Plan. Please carefully follow the instructions set forth in the ballot and vote and return your ballot(s), by first class mail, hand-delivery or overnight courier, to:

<b>If by First Class Mail to:</b>  Eric C. Peterson Ryan C. Hardy <b>SPENCER FANE LLP</b> 1 North Brentwood Boulevard, 10 <sup>th</sup> Floor Saint Louis, MO 63105	<b>If by Overnight Courier or Personal Delivery:</b>  Eric C. Peterson Ryan C. Hardy <b>SPENCER FANE LLP</b> 1 North Brentwood Boulevard, 10 <sup>th</sup> Floor Saint Louis, MO 63105
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**TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED NO LATER THAN 5:00 P.M. (CENTRAL TIME) ON JANUARY \_\_\_\_, 2018 (THE "VOTING DEADLINE").**

**ANY BALLOT WHICH IS EXECUTED BUT DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN, OR WHICH BOTH THE ACCEPTANCE AND REJECTION BOX IS CHECKED, WILL BE DEEMED TO BE AN ACCEPTANCE OF THE PLAN. ANY BALLOT THAT IS EITHER UNRETURNED BY THE VOTING DEADLINE OR IS RETURNED BUT NOT EXECUTED WILL BE CONSIDERED NULL AND VOID AND WILL NOT BE COUNTED.**

If you are a holder of a Claim entitled to vote on the Plan and did not receive a ballot, received a damaged ballot or lost your ballot, or if you have any questions concerning this Disclosure Statement, the Plan or the procedures for voting on the Plan, please call counsel for the Debtor.

## **B. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing to determine whether the Plan meets the requirements for confirmation established by Section 1129 of the Bankruptcy Code. Any party-in-interest may object to confirmation of the Plan. The Bankruptcy Court has scheduled the Confirmation Hearing for January \_\_\_, 2018, at \_\_\_:00 \_\_.m. Notice of the Confirmation Hearing has, or will be, provided to all holders of Claims and Interests and other parties-in-interest (the “Confirmation Notice”).

Objections, if any, to confirmation of the Plan must: (i) be in writing; (ii) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (iii) state with particularity the basis and nature of any objection; and (iv) in accordance with Bankruptcy Rule 3020(b)(1), be Filed, together with proof of service, with the Bankruptcy Court and served on the following parties so that they are received on or by January \_\_\_, 2018 (the “Objection Deadline”): (a) counsel for the Debtor, Eric Peterson, Spencer Fane LLP, 1 North Brentwood Boulevard, 10<sup>th</sup> Floor, Saint Louis, MO 63105, [epeterson@spencerfane.com](mailto:epeterson@spencerfane.com); (b) counsel for Triple Sticks Financing and Triple Sticks Foods, David Warfield, Thompson Coburn LLP, 505 N. 7th Street, Suite 3500, Saint Louis, MO 63101, [dwarfield@thompsoncoburn.com](mailto:dwarfield@thompsoncoburn.com); (c) counsel for the Committee, Thomas R. Fawkes, Goldstein & McClintock LLLP, 111 W. Washington St., Suite 1221, Chicago, Illinois 60602, [tomf@goldmclaw.com](mailto:tomf@goldmclaw.com); and (d) Office of the United States Trustee’s Office, Carole J. Ryczek, 111 South 10<sup>th</sup> Street, Suite 6.353, Saint Louis, Missouri 63102, [Carole.Ryczek@usdoj.gov](mailto:Carole.Ryczek@usdoj.gov).

**UNLESS AN OBJECTION TO PLAN CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

## **III. GENERAL INFORMATION**

### **A. Description and History of the Debtor’s Business**

#### **1. The Debtor’s Business Operations and Events Leading to the Chapter 11 Case**

The Debtor began as a franchise in 1959 under the name Lakeshire Sandwiches (which was subsequently changed to Landshire, Inc.) The Debtor specialized in freshly-prepared sandwich delivery to businesses wanting to serve quality food without the overhead that a kitchen and a cook would entail. In 1966, a driver for the company, Joseph “Jody” Trover, purchased the East St. Louis, Illinois operation and instituted a new program providing affordable lunches for students. In a four-year time span, the modest two route operation developed into a viable business.

Over time, Troverco grew to include a network of 56 distribution centers (distribution centers, depots and pods) in the Midwest and Southeast United States. This network consisted of 113 weekly routes to nearly 6,700 customers per week, with over 350,000 stops annually.

Troverco currently distributes approximately 180 stock-keeping units, or SKUs, of packaged fresh and frozen consumer goods including deli sandwiches, subs, salads, parfaits,

drinks, burritos, chicken sandwiches, hamburgers, hot dogs, sausages, snack trays and veggies trays to customers.

Troverco services a variety of store formats, including traditional chain convenience stores, independently owned convenience stores, gas station stores and other stores that carry convenience products. In addition to convenience stores, Troverco distributes to a smaller amount of military stores, drug stores, hospitals, prisons and other customers within its network. Some of the Debtor's largest customers include independent and regional convenience store chains.

Manufacturers rely on Troverco's ability to effectively and efficiently distribute products because they commonly lack the distribution capability to effectively sell and deliver their products to thousands of customers in discrete retail locations. In addition, many convenience stores either do not have their own distribution network or their distribution network is not equipped to handle products that need refrigeration, creating the need for a direct store delivery ("DSD") provider focused on fresh and refrigerated products. Troverco's customers benefit from the distribution network because they gain access to products they would otherwise not be able to access due to their small order sizes and diverse, remote locations and need for refrigeration. Without the Debtor's services, customers would be unable to carry as wide a breadth of inventory.

Troverco derives revenues from the sale of products to convenience store retailers. The products are delivered to customers using delivery vehicles running a route based network from the Debtor's distribution centers. Gross profit is generated by applying a markup to the cost of the product at the time of the sale. The Debtor's operating expenses are comprised primarily of sales personnel costs; warehouse personnel costs related to receiving, stocking and selecting product for delivery; delivery costs such as delivery personnel, truck leases and fuel; and costs relating to the rental and maintenance of distribution centers and other general and administrative costs.

a. *AdvancePierre Transaction*

Prior to 2015, Troverco was an integrated manufacturer and distributor. The Debtor manufactured Landshire-branded sandwiches that it delivered through its DSD network. In 2014, the Trover family made a strategic decision to sell a portion of the business. The Trover family believed that the Landshire manufacturing operation had reached a point in its development requiring different management skills and consequently would benefit from an owner with greater financial resources, marketing expertise and a broader strategy for the sandwich and "grab and go" food categories. In January 2015, the Debtor sold the Landshire manufacturing operation, including all of Landshire's production assets, sales resources, customer relationships and all trade names and intellectual property associated with the sandwich-making operations to AdvancePierre Foods, Inc. ("AdvancePierre"). The DSD operation was renamed Troverco, Inc.

In connection with the AdvancePierre transaction, Troverco entered into two separate agreements with AdvancePierre - a supply agreement (the "Supply Agreement") and an earn-out agreement (the "Earn-out Agreement") - under which Troverco agreed to continue purchasing the products it had previously manufactured from AdvancePierre at a set price.

The initial term of the Supply Agreement extended for three years from execution, expiring on January 30, 2018. The salient terms of the Supply Agreement included:

- i. The right for Troverco to distribute Landshire-branded products.
- ii. The right of first refusal for AdvancePierre to supply any adjacent category products Troverco wished to sell but not currently selling so long as AdvancePierre's pricing is within 110% of the competitor from which Troverco wished to purchase.
- iii. The agreement of AdvancePierre that it would not to compete directly in the DSD business or grant any other DSD provider exclusive rights to any territory in which Troverco distributed.
- iv. A fixed price for the purchase of each of the 88 Landshire-branded SKUs and a pricing mechanism to adjust the pricing in the event of cost increases to AdvancePierre.

The Earn-out Agreement provided for certain earn-out payments (which were considered additional consideration for the sale of the Landshire question) to be made by AdvancePierre to Troverco so long as Troverco met certain minimum purchase requirements thereunder. During the first year and first two semi-annual periods, Troverco met the minimum purchase requirements under the Earn-out Agreement and received the payments to which it was entitled.

b. *Prepetition Indebtedness, Capital Structure and Financial Performance*

- i. The Interests of the Debtor is owned by non-debtor Troverco Holding Company.
- ii. As of the Petition Date, the Debtor had no secured debt.
- iii. For the fiscal year ended December 31, 2016, the Debtor experienced net operating losses of approximately \$8.3 million on net revenue totaling approximately \$47 million (excluding earn out payments owing from AdvancePierre). As of December 31, 2016, the book value of the Debtor's assets totaled approximately \$5 million and its liabilities totaled approximately \$10 million.
- iv. The Debtor's unsecured trade debt (obligations to suppliers and vendors other than lessors) totaled approximately \$2.2 million.

c. *Events Leading To Commencement of the Chapter 11 Case*

When the Debtor agreed to sell the manufacturing operation to AdvancePierre, it modeled that the distribution business would lose money from an operations perspective, but that those losses would be offset by the earn-out payments.

Thereafter, the Debtor made a strategic decision to focus the DSD operations on a new fresh food program. The fresh food program reflected an effort to offer more products to increasingly health-conscious consumers. The distribution of fresh products (including salads, wraps, yogurts, cheeses, hard boiled eggs, fruit and parfaits) required operational expertise as the products have a very short shelf life once they are produced. The Debtor's fresh food program required a significant infrastructure investment in three new distribution centers. However, the fresh food program did not result in profits for the Debtor.

In 2016, the Debtor undertook a number of efforts focused on increasing route density, increasing revenue per stop and reducing cost and complexity within the Debtor's operations, including the reduction or elimination of sales of its less profitable products. The Debtor also took steps to reduce its workforce and operational costs. Despite these and other efforts, the Debtor was unable to halt losses and overcome its liquidity constraints.

The Debtor therefore took the necessary step of reorganizing through Chapter 11 to preserve and maximize the value of its business and assets, and to complete its transition and turnaround.

#### IV. THE CHAPTER 11 CASE<sup>1</sup>

As a consequence of the Debtor's commencement of the Chapter 11 Case, all actions and proceedings against the Debtor and all acts to obtain Property from the Debtor were stayed under section 362 of the Bankruptcy Code.

Through the Chapter 11 Case, the Debtor has continued to reduce its operational costs and overhead, including personnel costs, leasing expenses and other items. The Trover family has also invested in a separate entity to re-establish the lucrative sandwich manufacturing capability formerly enjoyed by Troverco. A sandwich manufacturing plant is anticipated to be up and running in January 2018. Under the Plan, that facility will provide sandwiches to Troverco at a cost of approximately \$.25 less per sandwich than Troverco otherwise could acquire sandwiches elsewhere, such as from AdvancePierre. Insofar as Troverco currently sells approximately 600,000 sandwiches per month, the net monthly profit to Troverco based on its current customer base totals as much as \$150,000 per month. Troverco intends to grow its customer base and its sales and expects sandwich sales to increase over time. Under the Plan, the Debtor intends to restructure its obligations in a manner that promotes the Debtor's business plan and complies with the applicable provisions of the Bankruptcy Code.

##### A. Relevant Chapter 11 Filings

**1. First-Day Motions.** In an effort to minimize the impact of the commencement of the Chapter 11 Case on the Debtor's operations and to facilitate the administration of the Chapter 11 Case, the Debtor filed various motions and applications on the first day of the Chapter 11 Case. These "first-day motions" requested relief that is typical for Chapter 11 cases, including,

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<sup>1</sup>Section IV of the Disclosure Statement is only a summary of the Chapter 11 Case. For a full list of motions and pleadings filed, Debtor refers parties-in-interest to the docket of the Chapter 11 Case, which can be accessed through the Bankruptcy Court's PACER system (account required) at [ecf.moeb.uscourts.gov](http://ecf.moeb.uscourts.gov).



among other things: (i) authority to continue using the Debtor's existing cash management system; (ii) authorizing payment of certain pre-petition taxes and fees and authorizing financial institutions to process and cash related checks and transfers; (iii) authorizing payment of compensation and benefits owed to the Debtor's employees; (iv) authority to provide utilities with adequate assurance; and (v) authorizing the Debtor to continue prepetition insurance coverage. All of these first-day motions were approved by the Bankruptcy Court.

**2. Retention of Professionals.** The Debtor filed applications requesting approval by the Bankruptcy Court of its retention of various Professional firms it has been utilizing throughout the Chapter 11 Case, including: (i) Cullen and Dykman LLP and Spencer Fane LLP, as bankruptcy counsel; and (ii) 321 Capital Partners as financial advisor and investment banker. The Bankruptcy Court entered orders approving the retention of these Professionals.

**3. Schedules.** The Debtor filed its Schedules and Statement of Financial Affairs on July 31, 2017. The meeting of creditors under Section 341(a) of the Bankruptcy Code was held on August 3, 2017 in Saint Louis, Missouri, at which representatives of the Debtor were available to be questioned by Creditors, Creditors' representatives and a representative from the Office of the United States Trustee. Creditors are expressly referred to the Schedules, as amended from time to time as necessary, which are on file in the Chapter 11 Case, for the purpose of becoming fully informed as to the assets, liabilities and financial affairs of the Debtor as of the Petition Date.

**4. DIP Credit Facility.** On September 8, 2017, the Court approved, on an interim basis, Debtor-in-Possession financing of up to \$500,000 to be supplied by Triple Sticks. Triple Sticks is an entity formed by members of the Trover family, including Interest holders who are also Insiders of the Debtor. On September 29, 2017 an amended interim order was entered by the Court, which permitted interim financing to be increased to \$750,000. The Court granted final approval of the DIP Credit Facility in the amount of up to \$1.5 million, on October 17, 2017 ("DIP Credit Facility"). Pursuant to the DIP Credit Facility and DIP Order, Triple Sticks holds a senior secured position in and to substantially all assets of the Debtor. The DIP Credit Facility and the DIP Order provide for certain carve-outs for payment of post-petition costs of administering the Estate.

## **B. Committee Participation in the Chapter 11 Case**

Pursuant to Section 1102(a) of the Bankruptcy Code, on July 18, 2017, the U.S. Trustee appointed the Committee, which is comprised of the following Creditors—Ryder Transportation Services, TSW Foods, LLC, and Hormel Financial Services Corporation. The Committee retained Goldstein & McClintock LLLP as its counsel and Protiviti Inc. as its financial advisor.

Since the appointment of the Committee, the Committee has taken an active role in the Chapter 11 Case. Consistent with its duties under Section 1103 of the Bankruptcy Code, the Committee: (i) consulted with the Debtor on the administration of the Chapter 11 Case; (ii) investigated the acts, conduct, assets, liabilities and financial condition of Debtor, the operation of its business and matters relevant to the Chapter 11 Case; (iii) reviewed and negotiated changes and modifications to the DIP Order; and (iv) participated in formulating the Plan and the Disclosure Statement.

## V. FINANCIAL INFORMATION

### A. Assets

Substantially all operating assets of the Debtor will be vested in the Reorganized Debtor on the Effective Date. The assets generally consist of all of the Debtor's present and future assets, including without limitation Cash, accounts, equipment, machinery, fixtures, inventory and general intangibles.

#### 1. Plan Trust Assets / Excluded Assets.

Assets not vesting in the Reorganized Debtor shall vest in the Plan Trust on the Effective Date. Assets vesting in the Plan Trust include (a) any non-released Avoidance Actions; (b) the Remaining Actions; (c) the Plan Note; (d) the Trover Guaranty; and (e) all funds paid by the Reorganized Debtor to the Plan Trust pursuant to the Plan.

The Debtor believes the Plan Trustee may be able to pursue non-released Avoidance Actions and the Remaining Actions against various entities, including, without limitation, recipients of pre-petition preferential transfers, and any entities that were or may have been engaged in contractual breaches or tortious conduct with respect to the Debtor or its operations, whether pre or post-Petition Date. These categories include:

a. Avoidance Actions. The Debtor believes that the Plan Trustee may be able to pursue non-released Avoidance Actions. The Schedules indicate that the Debtor made at least \$13 million in transfers to non-Insiders in the 90 days prior to the Petition Date, a certain subset of which may be recoverable as preferential and/or fraudulent transfers.

b. The Remaining Actions. The Plan Trustee may assert other Claims belonging to the Debtor and the Estate, including, without limitation, Claims for breach of contract, tort, Claims arising under the Bankruptcy Code, or other federal or state law.

c. Plan Note. The Plan Trust will also hold the Plan Note in the principal amount of \$1 million. The Plan Note will be payable by the Reorganized Debtor within five (5) years of the first Excess Cash Flow payment. The Reorganized Debtor will pay 100 percent of Excess Cash Flow to the Plan Trust in satisfaction of the Plan Note, on a quarterly basis, until funds aggregating a total equal to all Class 1 and Allowed Section 503(b)(9) Claims have been paid. Thereafter, and continuing until the fifth anniversary of the Reorganized Debtor's first payment of Excess Cash Flow to the Plan Trust ("Note Term"), the Reorganized Debtor shall pay 50 percent of Excess Cash Flow on a quarterly basis in satisfaction of the Plan Note, unless Class 4 (non-Insider General Unsecured Claims) are earlier paid in full. If at the end of the Note Term payments by the Reorganized Debtor to the Plan Trust aggregate less than \$1 million, then the Plan Trust can recover any shortfall from Joseph Trover, personally, by way of the Trover Guaranty and/or from the assets of the Reorganized Debtor, based on the first-priority security interest being granted to the Plan Trustee to secure repayment of the Plan Trust Note.

## **B. Liabilities**

### **1. Administrative Claims.**

a. The Debtor's Professionals. As of the anticipated Confirmation Date, the Debtor's Professionals will not make any Claims on the Trust Assets.

b. The Committee's Professionals. As of the anticipated Confirmation Date, the Debtor and the Committee believe that the Committee's Professionals will be owed an undetermined amount with respect to accrued but unpaid Fee Claims.

c. Allowed Section 503(b)(9) Claims. Allowed Section 503(b)(9) Claims total approximately \$692,887.20, including (i) AdvancePierre Foods, Inc. (Claim No. 12-1) in the Allowed amount of \$380,062.20; (ii) Hormel Financial Services (Claim No. 28-1) in the Allowed amount of \$84,908.74; (iii) Taylor Farms Tennessee, Inc. (Claim No. 103-1) in the Allowed amount of \$90,000; (iv) Taylor Farms Texas, Inc. (Claim No. 104-1) in the Allowed Amount of \$25,000; and (v) TSW Foods LLC (Claim No. 48-1) in the Allowed amount of \$87,916.80. Twenty five percent (25%) of the allowed amount (up to \$173,221.80) shall be paid from the Class 6 Contribution on a Pro Rata basis on the Effective Date (the "Exit Payment").

d. Ordinary Course Administrative Claims. There are other Administrative Claims arising in connection with the ongoing operations of the Debtor, and incurred in the ordinary course of the Debtor's business. The Reorganized Debtor shall pay the Ordinary Course Administrative Claims as and when due in the ordinary course of its business post-confirmation. Approximately \$275,000 of the Class 6 Contribution shall be held in reserve to support timely payments of Ordinary Course Administrative Claims. Ordinary Course Administrative Claims vary but are anticipated to total approximately \$600,000 as of a projected Effective Date of January 30, 2018.

e. Tax Claims. Priority Tax Claims are not classified under the Plan. Except to the extent that the holder of an Allowed Priority Tax Claim agrees otherwise, each holder of an Allowed Priority Tax Claim shall receive in respect of such Allowed Claim either (i) the full amount of the Allowed Priority Tax Claim in Cash on the later of (a) the Effective Date or (b) the date on which such Priority Tax Claim becomes an Allowed Claim. Unless otherwise provided by an order of the Bankruptcy Court, no fees or penalties of any kind shall be paid to the holders of Priority Tax Claims. Priority Tax Claims shall consist of Claims of Governmental Units that are or may be entitled to priority treatment pursuant to Section 507(a)(8) of the Bankruptcy Code and shall consist of, without limitation: (a) Alabama Department of Revenue (Claim No. 12-1, \$23,640); (b) Louisiana Department of Revenue (Claim No. 18-1, \$1,524); (c) Mississippi Department of Revenue (Claim No. 98-1, \$4,105); and (d) Internal Revenue Service (Claim Nos. 4-1 and 4-2, \$6,400 and \$200, respectively).

f. There are no known non-tax priority claims, such as for unpaid pre-Petition Date wages or commissions, or for unpaid contributions to retirement plans.

**2. Claims Protected by PACA (Class 1).** Class 1 consists of the Allowed PACA Claims of the Taylor Farm Entities in the amount of \$50,000. Using funds from the Class 6 Contribution, on the Effective Date, the Reorganized Debtor shall pay to the holders of Allowed Class 1—PACA Claims a sum equal to 25 percent of their Allowed Class 1—PACA Claims. The remaining 75 percent of Allowed Class 1—PACA Claims shall be paid by the Plan Trust following the Effective Date of the Plan using the Excess Cash Flow Payments and other funds that may become available to the Plan Trust after the Effective Date. **In exchange for the Taylor Farms Entities' acceptance of the foreground PACA claim reduction and payments over time, the Taylor Farms Entities shall be released from all Avoidance Actions, and the same shall be deemed fully and finally released as of the Effective Date.** Class 1—PACA Claims is Impaired and entitled to vote.

**3. Convenience Class (Class 2).** Class 2 consists of Convenience Class Claims. Holders of Class 2 Claims will receive \$500 in Cash on the Effective Date in full satisfaction of their Allowed Claims. Any holder of an Allowed Claim of more than \$500 may elect to reduce its claim to \$500 and receive \$500 in Cash on the Effective Date in full satisfaction of its Allowed Claim. The aggregate of Class 2 Claims is approximately \$28,978.31. Class 2—Convenience Class Claims is not Impaired and is not entitled to vote.

**4. DIP Lender Claim (Class 3).** Class 3 consists of the Allowed DIP Lender Claim in the principal amount of \$1.5 million. On the Effective Date, the DIP Lender will subordinate its Allowed DIP Lender Claim to the Plan Trust. After the Effective Date, the Reorganized Debtor shall make monthly interest-only payments to the DIP Lender at the rate of three percent (3%) per annum. The Reorganized Debtor shall make no principal reduction payments to the DIP Lender until the earlier to occur of (a) payment in full of all Allowed Non-Insider Claims or (b) expiration of the Excess Cash Flow Commitment, whichever occurs first. **In exchange for its subordination and other modifications to its rights under the DIP Order, and the Class 6 Contribution, Joseph Trover and the DIP Lender shall be released from all Avoidance Actions, and the same shall be deemed fully and finally released as of the Effective Date.** Class 3—DIP Lender Claim is Impaired and entitled to vote.

**5. General Unsecured Claims (Class 4).** Non-Insider General Unsecured Claims in Class 4 total approximately \$1.6 million, based upon the Schedules and the proofs of Claim filed. Such proofs of Claim are the subject of review, objection and/or any determination if there are appropriate objections. After all Allowed Unclassified and Section 503(b)(9) Claims have been paid in full, the holders of Allowed General Unsecured Claims shall receive Pro Rata payments from the Plan Trust throughout the Excess Cash Flow Commitment. No fees or penalties of any kind shall be paid to the holders of Allowed General Unsecured Claims. Class 4—General Unsecured Claims is Impaired and entitled to vote.

**6. Subordinated Insider Claims (Class 5).** Class 5 consists of Subordinated Insider Claims, which total approximately \$2.2 million. The holders of Class 5 Claims shall receive no payment on account of their Allowed Class 5 Claims until all Allowed Unclassified Claims and all Allowed Non-Insider Claims have been paid in full. Thereafter, the Reorganized Debtor shall make Pro Rata payments to holders of Allowed Class 5 Claims in such amounts and on such timeframe as the Reorganized Debtor and the Class 5 Claimants may agree. **In exchange for its subordination and other modifications to their rights to equal and/or Pro**

**Rata payment, the holders of Class 5 Claims shall be released from all Avoidance Actions, and the same shall be deemed fully and finally released as of the Effective Date.** Class 5—Subordinated Insider Claims is Impaired and entitled to vote.

**7. Interests (Class 6).** Class 6 consists of the Interests in the Debtor of Trover Holding Company. Trover Holding Company shall retain its Interest in the Reorganized Debtor after the Effective Date. On the Effective Date and as consideration supporting retention of 100% equity interests in the Reorganized Debtor, Trover Holding Company shall make the Class 6 Contribution in the amount of \$550,000, the proceeds of which will be used to (a) make all payments due on the Effective Date to holders of Allowed Priority Tax Claims and Class 2 Claims; (b) fund the Exit Payment; (c) fund the Plan Trust Fee Reserve Payment; and (d) such other purposes deemed necessary by the Reorganized Debtor. **In exchange for the Class 6 Contribution and other consideration set forth in the Plan, Trover Holding Company, and its officers, directors, members, shareholders, managers, executives, employees and owners shall be released from Avoidance Actions, and the same shall be deemed fully and finally released as of the Effective Date.** Class 6 is Impaired. For purposes of the Plan, Class 6 is presumed to have rejected the Plan and is not entitled to vote to accept or reject this Plan.

## VI. PLAN OF REORGANIZATION

### A. Objectives of the Plan

The primary objective of the Plan is to maximize value to all Creditor groups on a fair and equitable basis under the priorities established by the Bankruptcy Code and applicable law.

The Debtor believes that the Plan provides holders of Allowed Claims with a substantially greater recovery than the recovery they would receive without approval of the Plan, or upon conversion of the Chapter 11 Case to liquidation under Chapter 7.

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statements of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtor and will be binding upon all holders of Claims against and Interests in Debtor upon the Confirmation Date. In the event of any conflict between this Disclosure Statement, on the one hand, and the Plan or any other operative document, on the other hand, the terms of the Plan and such other operative documents, including, without limitation, the Plan Trust Agreement, are controlling.

### B. Overview of Chapter 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of itself, its Creditors and its Interest holders. Another goal of Chapter 11 is to promote equality of treatment

for similarly situated Creditors and similarly situated Interest holders with respect to the distribution of a debtor's assets.

In addition, Chapter 11 may be used to effectuate an orderly liquidation of a debtor's business and assets. In contrast to a Chapter 7 liquidation, in which a trustee is appointed to conduct the liquidation and wind down of the estate, in a Chapter 11 liquidation, a debtor or its designee remains in possession of the estate.

The commencement of a Chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of a debtor as of the filing date. The Bankruptcy Code contemplates that a debtor, through its pre-bankruptcy management, will continue to operate its business in the ordinary course and remain in possession of its Property during the case and while it seeks to negotiate and implement a plan. Any activities that are not within the ordinary course of a debtor's business must be approved by the bankruptcy court before they are undertaken.

The consummation of a plan is the principal objective of a Chapter 11 case. A plan sets forth the means for satisfying Claims against and Interests in a debtor. Confirmation of a plan by the bankruptcy court makes the plan binding upon a debtor, any person or entity acquiring Property under the plan and any Creditor of or holder of Interests in a debtor, whether or not such Creditor or holder of Interests: (i) is Impaired under or has accepted the plan; or (ii) receives or retains any Property under the plan. Subject to certain limited exceptions and other than as provided in the plan itself or the confirmation order, the confirmation order discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes them for the obligations specified under the confirmed plan.

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

**1. Application of Class 6 Contribution.** As set forth more fully above, the proceeds from the Class 6 Distribution shall (a) make all payments due on the Effective Date to holders of Priority Tax Claims and Class 2 Claims; (b) fund the Exit Payment; (c) fund the Plan Trust Fee Reserve Payment; and (d) such other purposes deemed necessary by the Reorganized Debtor.

**2. Supply Agreement.** On the Effective Date, Triple Sticks Foods and the Debtor shall have entered into the Supply Contract.

**3. Subordination of Allowed DIP Lender Claim.** On the Effective Date, the DIP Lender will hold a senior secured Claim of \$1.5 million (or \$1.75 million if additional DIP borrowings are authorized) by the Bankruptcy Code. The DIP Lender will subordinate its Allowed DIP Lender Claim to the Plan Trust. After the Effective Date, the Reorganized Debtor shall make monthly interest-only payments to the DIP Lender at the rate of three percent (3%) per annum. The Reorganized Debtor shall make no principal reduction payments to the DIP Lender until the earlier to occur of (a) payment in full of all Allowed Non-Insider Claims or (b) expiration of the Excess Cash Flow Commitment, whichever occurs first.

**4. Subordination of Subordinated Insider Claims.** In order to eliminate the substantial dilution of Allowed Unclassified Claims and Allowed Non-Insider Claims, Subordinated Insider Claims totaling over \$2 million shall be subordinated to all other Claims.

The holders of Subordinated Insider Claims shall receive no payment on account of their Allowed Class 5 Claims until all Allowed Unclassified Claims and all Allowed Non-Insider Claims have been paid in full.

**5. Payment of Excess Cash Flows.** Commencing on April 30, 2018 and continuing on the 30<sup>th</sup> day of each July, October, and January thereafter, the Reorganized Debtor will pay to the Plan Trust the PACA/503(b)(9) Excess Cash Flow Payments until the sum of such payments equals the PACA/503(b)(9) Allowed Claim Amount. Thereafter, and on the same schedule, the Reorganized Debtor shall pay to the Plan Trust Class 4 Excess Cash Flow Payments. The Reorganized Debtor shall calculate and provide to the Plan Trustee the basis for calculation of Excess Cash Flow Payments and shall supply to the Plan Trustee any documents or information reasonably requested by the Plan Trustee for purposes of verifying such calculation. The principal balance of the Plan Note shall be reduced by (a) the Plan Trust Fee Reserve Payment; (b) the PACA/503(b)(9) Excess Cash Flow Payments; (c) the Class 4 Excess Cash Flow Payments; and (d) the proceeds, net of expenses of any recoveries realized by the Plan Trust from the Remaining Actions. To the extent that the Note Term expires before Allowed Class 4 Claims have been paid in full, the difference will be discharged; provided, however, that at the expiration of the Note Term, if the Plan Note has not been satisfied in full, the Reorganized Debtor or Joseph Trover under the Trover Guaranty, shall tender to the Plan Trust all remaining amounts due and owing.

**6. Vesting of Plan Trust Assets.** On or before the Effective Date, the Debtor (or to the extent applicable, the Committee) shall convey and transfer to the Plan Trustee on behalf of the Plan Trust, the Plan Trust Fee Reserve Payment, the Plan Trust Note and Trover Guaranty. Thereafter, the Reorganized Debtor shall transfer to the Plan Trust all Excess Cash Flow Payments as required pursuant to the Plan. Such transfers shall be made free and clear of all Liens, Claims and encumbrances. The Plan Trust shall receive the Trust Assets and the proceeds thereof. No later than the Effective Date, pending the receipt of any necessary approvals and consents, any documents necessary to effectuate such transfers shall be fully executed and delivered to the Plan Trust. Pending delivery of such documents to the Plan Trust and subject to any necessary regulatory approvals and/or servicing consents, the Plan Trustee, in its sole discretion, may take actions as are necessary to protect the Plan Trust's interests pursuant to the terms of the Plan Trust Agreement.

**7. Vesting of Operating Assets.** On the Effective Date, all operating assets of the Debtor shall be vested in the Reorganized Debtor. Such assets include all of the Debtor's present and future assets, including without limitation Cash, accounts, equipment, machinery, fixtures, inventory and general intangibles, including contract and lease rights.

**8. Plan Trust Administration.** The Beneficiaries of the Plan Trust may appoint a Plan Trustee. The Plan Trustee, with such oversight as the Plan Trust and its Beneficiaries might require via a Trust Advisory Board, will administer the Plan Trust from and after the Effective Date. To the extent they conflict, the Plan and Confirmation Order will control over the Plan Trust Agreement, and the Confirmation Order will control over the Plan.

**9. Termination of the Committee.** The Committee will terminate automatically upon the Effective Date. Upon termination of the Committee, the Committee will be dissolved

and its members shall be deemed released of their duties and responsibilities in connection with the Chapter 11 Case or the Plan and its implementation. The retention or employment of the Committee's Professionals will terminate, except for ministerial duties or any duties imposed pursuant to the Plan (including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

**10. Case Administration.** From and after the Effective Date and continuing through the date that a final decree closing the Chapter 11 Case is entered pursuant to Section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Plan Trustee will possess the rights of the Debtor for all matters arising in, arising under or related to the Chapter 11 Case as set forth in the Plan. In addition to, and without limiting the generality of the foregoing, for all matters arising in, arising under or related to the Chapter 11 Case, the Plan Trustee will: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtor (including, without limitation, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing to commence non-released Avoidance Actions and the Remaining Actions; and (vi) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in the Chapter 11 Case.

**11. Trust Advisory Board.** For purposes of implementation of the Plan, the Trust Advisory Board shall be created on or before the Effective Date and shall be comprised of the members of the Committee. The Trust Advisory Board shall exercise such rights and duties as are set forth in the Plan Trust Agreement. Each member of the Trust Advisory Board shall serve until the earlier of: (i) his or her death or resignation; (ii) his or her removal pursuant to the Plan Trust Agreement; and (iii) the termination of the Plan Trust. Plan Trust Advisory Board members shall not be compensated, but are entitled to have their reasonable expenses reimbursed by the Plan Trust.

**12. Trust Professionals.** Upon the Effective Date, the Plan Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deem necessary upon approval of the Trust Advisory Board and in accordance with the Plan Trust Agreement without approval of employment or fees by the Bankruptcy Court. The Professionals retained by the Plan Trustee are not required to be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in the Chapter 11 Case.

**13. INJUNCTION.** Except as otherwise provided in the Plan or an order of the Bankruptcy Court, on and after the Confirmation Date, all Persons who have held, hold or may hold Claims against or Interests in the Debtor are, with respect to any such Claims or Interests, permanently enjoined, from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Plan Trust, the Plan Trustee or the Released Parties, or any of their Property, or any direct or indirect transferee of any Property of, or direct or indirect successor-in-interest to, any of the foregoing Persons; (b) enforcing, levying,



attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree or order against the Debtor, the Plan Trust, the Plan Trustee, or the Released Parties, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor-in-interest to, any of the foregoing Persons; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Plan Trust, the Plan Trustee, or the Released Parties, or any direct or indirect transferee of any Property of, or direct or indirect successor-in-interest to, any of the foregoing Persons; (d) asserting any right of setoff or subrogation of any kind, directly or indirectly, against any obligation due the Debtor, the Plan Trust, the Plan Trustee, or the Released Parties, or any of their Property, or any direct or indirect transferee of any property of, or successor-in-interest to, any of the foregoing Persons; and (e) taking any actions in any place and in any manner whatsoever that do not conform to or comply with the provisions of the Plan.

**14. Term of Bankruptcy Injunction or Stays.** Except as otherwise provided in the Plan and Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under Section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, will remain in full force and effect through the imposition of the injunction set forth in the Plan.

**15. Exculpation.** Except as otherwise provided by the Plan or the Confirmation Order, on the Effective Date, the Debtor, the Committee, the members of the Committee in their representative capacities, and/or any of such parties' respective current or former members, officers, directors, employees, advisors, attorneys, business consultants, representatives, financial advisors, investment bankers, fund managers or agents and any of such parties' successors and assigns shall be deemed released by each of them against the other for any act or omission in connection with, or arising out of, the Chapter 11 Case, except for acts or omissions which constitute willful misconduct, gross negligence, breach of fiduciary duty, or intentional fraud, and all such Persons, in all respects, shall be entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities in connection with the Chapter 11 Case and under the Plan.

**16. Quarterly Reports.** The Plan Trustee will prepare and provide to the Trust Advisory Board and file with the Bankruptcy Court a report within 30 days after the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Plan Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Plan Trust Assets. As used in this section, "calendar quarter" will mean a three month period of time, and the first calendar quarter will commence on the first day of the first month immediately following the occurrence of the Effective Date.

## **VII. STATUS AND EXISTENCE OF EXECUTORY CONTRACTS AND OTHER LITIGATION**

### **A. Executory Contracts**

**1. Assumption of Unexpired Leases and Executory Contracts.** Pursuant to Sections 365 and 1123 of the Bankruptcy Code, each executory contract and unexpired lease to which the Debtor is a party shall be deemed automatically assumed by the Debtor effective as of the Effective Date, except for any executory contract or unexpired lease that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered before the Effective Date or is the subject of a motion to reject pending on the Effective Date.

**2. Rejection Damages Bar Date.** All proofs of Claim with respect to Claims arising from the rejection of executory contracts or unexpired leases shall be filed on or by the Rejection Damages Bar Date. Unless otherwise permitted by Final Order, any holder of such a Claim that does not File a timely Claim in accordance with this paragraph shall be forever barred from asserting such Claim against the Debtor or the Estate.

## **B. Litigation**

**1. The Plan Trust's Authority to Prosecute Causes of Action.** Upon creation, the Plan Trust will be vested with all right, title, and interest in any Avoidance Actions and Remaining Actions belonging to the Debtor and any proceeds from such Avoidance Actions and Remaining Actions, whether from insurance or from any other source. Pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, the Plan Trustee shall have full and exclusive authority, without need for any Bankruptcy Court approval, but subject to the terms of the Plan Trust Agreement and, as applicable, the consent of the Trust Advisory Board, to prosecute Avoidance Actions and the Remaining Actions. The Plan Trustee may commence or continue, in any appropriate court or tribunal, any suit or other proceeding for the enforcement of such causes of action, and, if deemed appropriate by the Plan Trustee, to compromise, settle or abandon such litigation with, as applicable, the consent of the Trust Advisory Board.

The failure of the Debtor to specifically list any Avoidance Action, Remaining Action, right of action, suit or proceeding in the Schedules, the Disclosure Statement, or in the Plan does not, and will not be deemed to, constitute a waiver or release by the Debtor of such Avoidance Action, Remaining Action, right of action, suit or proceeding, and the Plan Trustee will retain the right to pursue them in its discretion, and, therefore, no preclusion doctrine, such as collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise) or laches will apply to such Avoidance Action, Remaining Action, right of action, suit or proceeding upon or after Confirmation or consummation of the Plan. Further, recovery of any proceeds of such Avoidance Action, Remaining Action, right of action, suit or proceeding will be deemed "for the benefit of the Estate" as contemplated by Section 550 of the Bankruptcy Code.

**2. Possible Unknown Claims.** The Plan Trustee may have Avoidance Actions and Remaining Actions against third parties that are unknown at this time. The Plan Trustee will be empowered to investigate the Debtor's relationship with such other third parties for the purpose of evaluating potential additional litigation claims.

The recoveries, if any, from any litigation brought by the Plan Trustee will depend on many factors, which cannot be predicted at this time. The Plan Trustee may, upon approval of the Trust Advisory Board, elect not to pursue certain Avoidance Actions and/or Remaining

Actions, because the Plan Trustee deems such pursuit not to be in the best interest of the Estate or the Plan Trust.

### **C. Objections to Claims**

1. Objections to Claims shall be Filed with the Bankruptcy Court and served upon each affected Creditor no later than 120 days after the Effective Date; provided, however, that this deadline may be extended by the Bankruptcy Court upon motion of the Plan Trustee, with notice to the Post-Effective Date Limited Notice List. Notwithstanding the foregoing and except as otherwise provided in the Plan, unless an order of the Bankruptcy Court specifically provides for a later date, any proof of Claim Filed after the Confirmation Date shall be automatically disallowed as a late-Filed Claim, without any action by the Plan Trustee, unless and until the party Filing such Claim obtains an order of the Bankruptcy Court, upon notice to the Plan Trustee and the Post-Effective Date Limited Notice List, that permits the late Filing of the Claim. In the event any proof of Claim is permitted to be Filed after the Confirmation Date, the Plan Trustee shall have 120 days from the date of such order to object to such Claim, which deadline may be extended by the Bankruptcy Court upon motion of the Plan Trustee, with notice to the Post-Effective Date Limited Notice List. Late-filed Claims are deemed to be prejudicial and shall not be allowed except as otherwise set forth herein.

Objections to Claims that are based upon the rejection of an executory contract or unexpired lease shall be Filed with the Bankruptcy Court and served upon each affected Creditor no later than 120 days after the later of (a) the date that such proof of Claim is Filed and (b) the Effective Date, unless extended by order of the Bankruptcy Court.

## **VIII. CONFIRMATION AND CONSUMMATION PROCEDURE**

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the requirements of Chapter 11 and the Bankruptcy Code, including, among other things, that: (i) the Plan has properly classified Claims and Interests; (ii) the Plan complies with applicable provisions of the Bankruptcy Code; (iii) Debtor has complied with applicable provisions of the Bankruptcy Code; (iv) the Debtor has proposed the Plan in good faith and not by any means forbidden by law; (v) the Plan has been accepted by the requisite votes of all Classes of Creditors (except to the extent that “cramdown” is available under Section 1129(b) of the Bankruptcy Code); (vi) the Plan is in the “best interests” of all holders of Claims or Interests in an Impaired Class; (vii) the Plan is “feasible” in that confirmation of the Plan is not likely to be followed by the liquidation or need for further restructuring of the Debtor, unless the Plan contemplates liquidation; and (viii) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Confirmation Date.

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

### **A. Solicitation of Votes**

Under the Bankruptcy Code, only Classes of Claims and Interests that are Impaired under the plan are entitled to vote to accept or reject the Plan. A Class is Impaired if the legal, equitable or contractual rights to which the holders of Claims or Interests are entitled are

modified, other than by curing defaults and reinstating the debt. Under Sections 1126(f) and (g) of the Bankruptcy Code, Classes of Claims and Interests that are not Impaired are conclusively presumed to have accepted the Plan and are not entitled to vote on the Plan, and classes of Claims and Interests whose holders will receive or retain no property under the Plan are deemed to have rejected a plan and are not entitled to vote on a plan. Creditors who hold disputed or disallowed Claims are not entitled to vote to accept or reject the Plan.

Under the Plan, the holders of Allowed Claims in each Impaired Class are entitled to vote to accept or reject the Plan. This Disclosure Statement and an appropriate ballot are being distributed to all holders of Claims who are entitled to vote on the Plan.

A Class of Claims accepts the Plan if both of the following occur: (1) the holders of more than one-half of the Allowed Claims in the Class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds in dollar amount of the Allowed Claims in the Class, who vote, cast their votes to accept the Plan.

A Class of Interests accepts the Plan if the holders of at least two-thirds in amount of the Allowed Interests in the Class, who vote, cast their votes to accept the Plan.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

Any ballot that is properly completed, executed and timely returned but does not indicate an acceptance or rejection of the Plan, or indicates both an acceptance and a rejection of the Plan, will be deemed to be a vote to accept the Plan. Whenever a Creditor casts more than one ballot voting the same Claim before the Voting Deadline, the last ballot received before the Voting Deadline is deemed to reflect the voter's intent and will therefore supersede any prior ballots. Creditors must vote all of their Claims within a particular Class under the Plan either to accept or reject the Plan and may not split their vote, and thus a ballot that partially accepts and partially rejects the Plan will not be counted.

## **B. The Confirmation Hearing**

The Confirmation Hearing is scheduled for January \_\_\_, 2018 at \_\_\_:00 \_\_.m. before the Bankruptcy Court at 111 S. 10<sup>th</sup> Street, Saint Louis, Missouri 63102. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of Section 1129 of the Bankruptcy Code. Prior to the Confirmation Hearing, the Debtor will submit a report to the Bankruptcy Court reflecting the votes received with respect to the acceptance or rejection of the Plan by the parties entitled to vote.

Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan. Any objection to confirmation of the Plan must be made in writing and Filed with the Bankruptcy Court and served on all required parties on or before the January \_\_\_, 2018 (the "Objection Deadline"). Unless an objection to confirmation of the Plan is Filed on or by the Objection Deadline, it may not be considered by the Bankruptcy Court.

## C. Confirmation

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the applicable requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation are that the Plan: (i) has been accepted by all Impaired Classes of Claims and Interests or, if rejected by an Impaired Class, that the plan “does not discriminate unfairly” and is “fair and equitable” as to such Class; (ii) is feasible; and (iii) is in the “best interests” of Creditors and Interest holders that are Impaired under the Plan and that vote, or are deemed, to reject the Plan.

### 1. Unfair Discrimination and Fair and Equitable Tests

To obtain confirmation of the Plan over the objection of a Class of Claims or Interests that rejects the Plan, the Debtor must be demonstrated that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each such non-accepting Class. In order for the Plan to be found to be “fair and equitable” and thus subject to confirmation by “cramdown” under Section 1129(b) of the Bankruptcy Code, the Debtor must demonstrate:

a. For a Class of Unsecured Creditors: That either: (i) each Impaired unsecured Creditor receives or retains, under the Plan, Property of a value equal to the amount of its Allowed Claim; or (ii) the holders of Claims and Interests that are junior to the Claims of the dissenting Class will not receive any Property under the Plan on account of such junior Claims.

b. For a Class of Interests: That either: (i) each holder of an Interest will receive or retain, under the Plan, Property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest; or (ii) the holder of an Interest that is junior to the non-accepting Class will not receive or retain any Property under the Plan.

The Debtor requests confirmation of the Plan under Section 1129(b) of the Bankruptcy Code, notwithstanding the rejection of the Plan by any Class. The Debtor believes that the Plan may be confirmed pursuant to the above-described “cramdown” provisions over the dissent of a non-consenting Class in view of the terms of the Plan. The Debtor believes that the treatment under the Plan of the holders of Interests in each Class satisfies the “fair and equitable” test because there are no Classes junior to a non-accepting Class that will receive or retain any property under the Plan on account of the pre-petition Claims of such Class. In addition, the Debtor does not believe that the Plan unfairly discriminates against any Class.

### 2. Best Interests Test

With respect to each Impaired Class of Claims and Interests, confirmation of the Plan requires that each holder of a Claim or Interest either: (i) accept the Plan; or (ii) receive or retain under the Plan Property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy

Code. The Debtor believes that holders of Impaired Claims and Interests in each Impaired Class under the Plan would receive significantly less under a Chapter 7 liquidation than under the Plan.

To calculate the probable distribution to holders of each Impaired Class of Claims and Interests if the Debtor was liquidated under Chapter 7, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from the Debtor's assets in a Chapter 7 case under the Bankruptcy Code. This "liquidation value" would consist primarily of the proceeds from a forced sale of the estate assets by a Chapter 7 trustee.

The amount of liquidation value available to Unsecured Creditors would be reduced by: (i) the Allowed PACA Claims, which have been asserted by the Taylor Farms Entities in the aggregate amount of not less than \$130,000); (ii) the Allowed DIP Lender Claim in the amount of at least \$1.5 million; (iii) the costs and expenses of liquidation; (iv) other administrative expenses and costs of the Chapter 11 Case including, among other things, Fee Claims; (v) the Allowed Section 503(b)(9) Claims (asserted in the amount of approximately \$757,000); and (vi) breach of lease claims asserted by counterparties to leases and contracts assumed post-Petition Date during the Chapter 11 Case (such as Hogan and Ryder). Costs of liquidation under Chapter 7 would include the compensation of a trustee, as well as that of counsel and other Professionals retained by the Chapter 7 trustee, asset disposition expenses and commissions and all unpaid expenses incurred until the liquidation is completed.

Attached as **Exhibit 2** is the Debtor's liquidation analysis summary indicating the Debtor's estimate of recoveries from liquidation of its assets in a Chapter 7 case.

The Debtor believes that the Plan meets the "best interests of creditors" test of Section 1129(a)(7) of the Bankruptcy Code. The Debtor believes that the members of each non-Insider Impaired Class will receive significantly greater value under the Plan than they would in a Chapter 7 liquidation proceeding due to: (i) the value of the Plan Note and Trover Guaranty as well as the voluntary subordination of the DIP Lender's security interests to the Plan Note; (ii) the value the Plan Trustee will bring to the Estate in reconciling overstated and invalid Claims and from Avoidance Actions and Remaining Actions; and (iii) avoiding the additional expenses associated with conversion to a Chapter 7 case.

Attached as **Exhibit 3** are proformas indicating the Debtor's estimated payments of Excess Cash Flow under the Plan. Such projections are not binding on the Debtor and are subject to events and circumstances that may not be presently foreseeable. Rather, such projections reflect the Debtor's informal best estimate of its future performance and its ability to generate Excess Cash Flow under the Plan.

Although it is possible that a Chapter 7 trustee will vigorously pursue objections to Claims and Avoidance Actions and the Remaining Actions, the Debtor submits this is highly speculative because the pursuit of such litigation is not a precondition to the appointment of a Chapter 7 trustee, and the Chapter 7 trustee may ultimately choose not to challenge Claims or to pursue certain Avoidance Actions and Remaining Actions.

The Debtor submits that a significant distinction between the Plan and converting the Chapter 11 Case to Chapter 7 is the substantial Chapter 7 administrative costs that will result

from such conversion. Pursuant to Section 326 of the Bankruptcy Code, the statutory Chapter 7 trustee fee (the “Chapter 7 Trustee Fee”) can be as high as 25 percent of the first \$5,000 disbursed; 10 percent on any amount disbursed in excess of \$5,000 but not in excess of \$50,000; five percent (5%) on any amount disbursed in excess of \$50,000 but not in excess of \$1,000,000; and reasonable compensation not to exceed three percent (3%) on any amounts in excess of \$1,000,000. Any such Chapter 7 Trustee Fee will directly reduce any recovery for creditors. Moreover, conversion of the Chapter 11 Case to Chapter 7 could result in breaches of administrative trucking leases, among other things, resulting in significant additional Chapter 11 Administrative Claims.

A Chapter 7 trustee will likely also retain professionals for purposes similar to those retained by the Plan Trustee, but will do so without the added benefit of the Plan Note, DIP lien subordinations, Class 6 Contribution, Trover Guaranty, Initial Excess Cash Flow Payment, Excess Cash Flow payments over a five (5) year period, the enhanced margins available to the Debtor under the Supply Agreement, and voluntary insider Claim subordinations of over \$2 million (Class 5). The Chapter 7 trustee and his or her Professionals may also be unfamiliar with the Debtor’s operations and the Chapter 11 Case. Accordingly, the Chapter 7 trustee and his or her Professionals may be required to devote considerable time reviewing the Debtor’s books and records and the events of the Chapter 11 Case occurring prior to the conversion to Chapter 7. Given this reality, the Debtor submits that the fees of a Chapter 7 trustee’s professionals will likely exceed the fees of the Plan Trustee’s Professionals, and recoveries for creditors will be *de minimis* if they exist at all. The Debtor submits that it is reasonably likely that in a Chapter 7 liquidation, funds sufficient even to pay all Administrative Claims may not be recovered, resulting in the possibility of no distributions to general unsecured creditors at all.

The rates of Professionals retained by the Chapter 7 trustee, on the one hand, and the Plan Trustee, on the other hand, may vary. For instance, one group of Professionals may have higher rates than a group of other Professionals. Assuming that both groups of Professionals are equally efficient in their approach and effectiveness in the results obtained, this factor may increase the cost of administration.<sup>2</sup>

The Debtor believes that the Plan will provide a recovery that is far greater than the amount each Creditor would receive under a Chapter 7 liquidation. The Plan Trustee will retain professionals, but given the added expense of the Chapter 7 trustee’s professionals to become generally familiar with Debtor’s Estate, the Committee submits that the fees of any professionals of the Plan Trustee should be less than the professional fees of a Chapter 7 trustee. Accordingly, the Plan meets the “best interests” test.

### **3. Feasibility**

Pursuant to Section 1129(a)(11) of the Bankruptcy Code, the Plan may be confirmed only if “confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan.” The feasibility requirement is intended generally to avoid confirmation of unsupported visions and

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<sup>2</sup>Given that the Professional groups have not been – and, in fact, cannot be – identified at this time, it remains impossible to fully evaluate this issue for purposes of voting on the Plan.

promises of a reorganizing debtor. Feasibility does not require a guaranty of success, but rather that the Plan offers a reasonable prospect or assurance of success.

Attached as Exhibits 3 and 4 are the Debtor's operating projections for the first year following the Effective Date, including the Debtor's anticipated timeframe for making Excess Cash Flow payments and operating projections throughout the Note Term.

The assumptions underlying the projections are sound. Among other things, the projections are premised on the Debtor's long operating history. They are also supported the substantial reduction in operating costs achieved during the Chapter 11 Case as well as by the advantageous Supply Agreement. Pursuant to the Supply Agreement, Triple Sticks Foods shall supply the Reorganized Debtor, at cost, substantially all of the sandwich products acquired and sold by the Debtor to its DSD customers. Pre-Petition Date, the Debtor's primary sandwich supplier, AdvancePierre, supplied sandwiches at cost plus an average of approximately \$.35 per sandwich. The savings per sandwich to the Reorganized Debtor is significant. The Debtor sells approximately 600,000 sandwiches per month. At an increased margin captured by the Reorganized Debtor of an estimated \$.25, the Reortganized Debtor's monthly profitability will be enhanced by as much as \$125,000 per month (\$1.3 million per year).

Moreover, the Reorganized Debtor's capital structure under the Plan is advantageous. It will require minimal long term debt service of three percent (3%) interest per year on the DIP Lender Claim, with no payments on principal. The Plan Note requires payments only of Excess Cash Flow, meaning that there is no pre-determined monthly payment required, and payments are required when and only when cash from operations minus depreciation is positive.

The Debtor is aware of no general economic conditions that threaten the feasibility of the Plan.

The Debtor will benefit from the continuity of existing management, which will stay in place from and after the Effective Date. Such management, including Joseph Trover, is critical to the Reorganized Debtor's success. Joseph Trover's support throughout the Chapter 11 Case and the Plan process has been unwavering, both through his substantial financial commitment through his various entities—Trover Holding Company and Triple Sticks—and his "sweat" equity.

## **IX. TAX CONSEQUENCES**

The Debtor is not qualified to advise Creditors of the specific respective tax impact on each of them as a result of treatment provided in the Plan and therefore makes no representation as to that.

THERE ARE MANY FACTORS THAT WILL DETERMINE THE TAX CONSEQUENCE TO EACH HOLDER OF A GENERAL UNSECURED CLAIM. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CHAPTER 11 CASES, UNCERTAIN. THEREFORE, IT IS IMPORTANT THAT EACH HOLDER OF A GENERAL UNSECURED CLAIM OBTAIN HIS, HER OR ITS OWN PROFESSIONAL TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH HOLDER OF A GENERAL UNSECURED CLAIM AS A RESULT OF THE PLAN.



## **X. RISK FACTORS**

Holders of Claims against and Interests in the Debtor should read and consider carefully the information set forth below, as well as other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. This information, however, should not be regarded as necessarily setting forth the only potential risks involved in connection with the Plan and its implementation.

### **A. Failure To Satisfy Vote Requirement**

In the event that sufficient votes accepting the Plan are not received and, as a result, the Debtor is unable to confirm the Plan as proposed, the Debtor will assess the alternatives available to it, including: (i) amending the Plan; (ii) selling substantially all of the Debtor's assets pursuant to Section 363 of the Bankruptcy Code; or (iii) converting the Chapter 11 Case to Chapter 7 liquidation proceedings. There is substantial risk that these alternatives will result in less favorable treatment of Claims and interests than that provided in the Plan.

### **B. Non-Consensual Confirmation**

In the event any Impaired Class of Claims does not accept the Plan, the Bankruptcy Court may nevertheless confirm such Plan at the Debtor's request if at least one Impaired Class of Claims has accepted the Plan (with such acceptances being determined without including the vote of any Insider in such Class), and, as to each Impaired Class that has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such dissenting Impaired Class(es). The Debtor believes that the Plan satisfies these requirements, although there can be no assurances that the Bankruptcy Court will make the findings necessary to reach this result.

### **C. Risk of Non-Occurrence of the Effective Date**

Although the Debtor believes that if the Plan is confirmed, the Effective Date will occur soon after the Confirmation Date of the Plan, there can be no assurance that all conditions to the occurrence of the Effective Date will occur. In the event the Effective Date does not occur, the Debtor will assess the alternatives available at that time.

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

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims against, and interests in, the Debtor. The Bankruptcy Code also provides that, except for certain Claims classified for administrative convenience, the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtor believes that all Claims and interests have been appropriately classified in the Plan.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest of a particular Class unless the holder of a particular Claim or Interest agrees to

a less favorable treatment of its Claim or Interest. The Debtor believes that the Plan treats each Claim or Interest in a given Class equally, thus satisfying this requirement.

To the extent that the Bankruptcy Court finds that the Plan does not satisfy these requirements, the Bankruptcy Court could deny confirmation of the Plan. Issues or disputes relating to classification and/or treatment could result in a delay in the confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

**E. Amount of Allowed Claims**

The total amount of all Claims filed in the Chapter 11 Case may materially exceed the estimated amounts of Allowed Claims assumed in the development of the Plan and in the valuation estimates provided above. The actual amount of all Allowed Claims in any Class may differ significantly from the estimates provided in this Disclosure Statement. Accordingly, the amount and timing of the distributions that will ultimately be received by any particular holder of an Allowed Claim in any Class may be materially and adversely affected if the estimates are exceeded as to any Class.

**F. Operational Risk**

The Debtor projects that its operations, coupled with the Plan Note, DIP lien subordinations, Triple Sticks Supply Agreement, and other considerations, will result in a meaningful return to creditors, operations forecasts are annexed hereto as Exhibits 3 and 4. Such forecasts do not guaranty future performance and may not be predictive of actual results. Business interruptions or other events or circumstances may arise that prevent the success of the Reorganized Debtor. The same would result in a corresponding impact on the Debtor's profitability and on the Reorganized Debtor's going concern value and ability to pay allowed claims or otherwise satisfy the Plan Trust Note.

**XI. ALTERNATIVES TO CONFIRMATION AND  
CONSUMMATION OF THE PLAN**

The Debtor believes that the Plan affords holders of Claims and Interests the potential for the greatest recovery and, therefore, is in the best interests of such holders.

If, however, the requisite acceptances are not received, or the Plan is not confirmed and/or consummated, the theoretical alternatives include:

**A. Section 363 of the Bankruptcy Code Sale**

If the Plan is not confirmed, the Debtor may seek to sell its assets as a going concern pursuant to Section 363 of the Bankruptcy Code to preserve the value of its operations and the jobs of its employees. In that event, it is anticipated that the DIP Lender may seek to credit bid up to the full amount of the Allowed DIP Lender Claim of \$1.5 million (or \$1.75 million) and to assume certain of the Ordinary Course Administrative Claims. In that event, it is possible that relatively little or no Cash would be realized by the Estate.

The Debtor engaged, pre-Petition Date and during the Chapter 11 Case, 321 Capital Partners, LLC to determine whether an investor, buyer, or lender was interested in extending capital or acquiring the Debtor or its operations. Ultimately, no buyer, investor, or lender was identified. The Debtor is not aware of, and has received no offers from prospective purchasers. Consequently, the Debtor submits that in any sale, there may be no bidders offering more than the outstanding balance of the DIP Credit Facility and debt assumptions noted above.

Following such a sale, the Chapter 11 Case would likely convert to a liquidation proceeding under Chapter 7 of the Bankruptcy Code.

## **B. Chapter 7 Liquidation of the Debtor**

If the Plan is not confirmed, the Debtor may be forced to liquidate under Chapter 7 of the Bankruptcy Code, pursuant to which a Chapter 7 trustee would be appointed to liquidate the Debtor's remaining assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective holders of Claims against or Interests in the Debtor. Please see the statements set forth in the "Best Interest Tests" section for further analysis of the impact of a liquidation under Chapter 7 of the Bankruptcy Code. In a Chapter 7 liquidation, creditor recoveries may be dependent on the proceeds of Avoidance Actions.

## **XII. CONCLUSION**

The Debtor submits that under the Plan, holders of Allowed Non-Insider Claims stand to receive a meaningful and potentially even a full recovery on their Claims, while at the same time avoiding the additional fees and expenses that would be incurred upon conversion to Chapter 7. Therefore, the Debtor believes that the distributions provided for in the Plan are fair and equitable, and Debtor strongly recommends acceptance of the Plan.

If you are eligible to vote on the Plan, please do so now by completing and returning the enclosed ballot.

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