

Form 604
Corporations Act 2001
Section 671B

Notice of change of interests of substantial holder

To Company Name/Scheme Costa Group Holdings Limited ("**CGC**")

ACN/ARSN ACN 151 363 129

1. Details of substantial holder (1)

Name Australian Football Holdings, LLC (established in Delaware, US) ("**AFH**"); and each person named in Annexure A and their respective related bodies corporate (each a "**Substantial Holder**" and together the "**Substantial Holders**")

ACN/ARSN (if applicable)

There was a change in the interests of the substantial holder on 22 September 2023

The previous notice was given to the company on 30 March 2023

The previous notice was dated 29 March 2023

2. Previous and present voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in when last required, and when now required, to give a substantial holding notice to the company or scheme, are as follows:

Class of securities (4)	Previous notice		Present notice	
	Person's votes	Voting power (5)	Person's votes	Voting power (5)
Fully paid ordinary shares (" Shares ")	68,976,922	14.84% (based on 464,709,793 Shares on issue)	91,181,133	19.62% (based on 464,709,793 Shares on issue)

3. Changes in relevant interests

Particulars of each change in, or change in the nature of, a relevant interest of the substantial holder or an associate in voting securities of the company or scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

Date of change	Person whose relevant interest changed	Nature of change (6)	Consideration given in relation to change (7)	Class and number of securities affected	Person's votes affected
22 September 2023	Chilli Buyer Pty Ltd (ACN 670 569 678) (" BidCo "), being an associate of the Substantial Holders	<p>Relevant interest under sections 608(1)(c) and 608(8) of the Corporations Act in 21,505,156 Shares held by Neweconomy.com.au Nominees Pty Limited (ACN 004 732 138) ("New Economy") as custodian for Driscoll's, Inc. by virtue of BidCo being the buyer under the Conditional Transfer Agreement between BidCo and Driscoll's, Inc. dated 22 September 2023, a copy of which is annexed as Annexure B.</p> <p>Relevant interest under sections 608(1)(c) and 608(8) of the Corporations Act in 69,675,977 Shares held by Citibank N.A., Hong Kong Branch – Agency & Trust ("Citi") as custodian for Australian Football Holdings, LLC (established in Delaware, US) ("AFH") by virtue of BidCo being the buyer under the Conditional Transfer Agreement between BidCo and AFH dated 22 September 2023, a copy of which is annexed as Annexure C.</p>	\$288,132,380.28 in aggregate (\$3.16 per Share)	91,181,133 Shares	91,181,133 Shares

22 September 2023	Chilli Midco Pty Ltd (ACN 670 569 392) (" MidCo ") and Chilli Parent Pty Ltd (ACN 670 567 898) (" HoldCo "), being associates of the Substantial Holders (together, with BidCo, the " Bid Group ")	Relevant interest under section 608(3) of the Corporations Act, because each of MidCo and HoldCo controls, or has voting power of more than 20% in, BidCo.	N/A – deemed relevant interests	91,181,133 Shares	91,181,133 Shares
22 September 2023	PSP Chilli Holdings, LP (established in Delaware, US) (" Costa Holdings ", being an associate of the Substantial Holders	Relevant interest under sections 608(1)(b) and (c) of the <i>Corporations Act 2001</i> (Cth) (" Corporations Act ") in 21,505,156 Shares held by New Economy as custodian for Driscoll's, Inc. under the Transaction Co-operation Agreement dated 22 September 2023, a copy of which is annexed as Annexure D (" TCA "). Relevant interest under section 608(3) of the Corporations Act, because Costa Holdings controls, or has voting power of more than 20% in, BidCo.	N/A – deemed relevant interests	91,181,133 Shares	91,181,133 Shares
22 September 2023	Each Substantial Holder	Relevant interest under section 608(3) of the Corporations Act, because each other Substantial Holder: (a) controls, or has voting power of more than 20% in, Costa Holdings; or (b) controls a Substantial Holder of the type described in (a) immediately above; or (c) controls a Substantial Holder of the type described in (b); or (d) has voting power of more than 20% in a Substantial Holder of the type described in (b) or (c) immediately above.	N/A – deemed relevant interests	21,505,156 Shares	21,505,156
22 September 2023	Varese IRR GP Inc. as general partner of Varese IRR LP (" Varese ") and Driscoll's, Inc., each of which became an associate of the parties to the TCA upon entry into that agreement	Relevant interest under sections 608(1)(b) and (c) of the Corporations Act in Shares owned by each other party under the TCA.	N/A – deemed relevant interests	Up to 91,181,133 Shares	Up to 91,181,133 ¹

¹ This represents the aggregate number of Shares in which the parties to the TCA have a relevant interest. For details of the relevant interests in Shares of each other party to the TCA, see the separate substantial holding notices filed, or to be filed, by each other party on or about the date of this notice.

4. Present relevant interests

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Nature of relevant interest (6)	Class and number of securities	Person's votes
BidCo	Citi (as agent for AFH)	AFH	Relevant interest under sections 608(1)(b) and 608(1)(c) of the Corporations Act (power to control the exercise of a right to vote attached to securities and power to control the exercise of a power to dispose of securities).	69,675,977 Shares	69,675,977
BidCo	New Economy	Driscoll's, Inc.	Relevant interest under section 608(1)(b) and (c) of the Corporations Act in Shares held by New Economy as custodian for Driscoll's, Inc. under the TCA. Relevant interest under sections 608(1)(b) and 608(1)(c) of the Corporations Act (power to control the exercise of a right to vote attached to securities and power to control the exercise of a power to dispose of securities).	21,505,156 Shares	21,505,156
Each other Substantial Holder	As per the two rows above	As per the two rows above	Relevant interest under section 608(3) of the Corporations Act, because each other Substantial Holder: (a) controls, or has voting power of more than 20% in, BidCo; or (b) controls a Substantial Holder of the type described in (a) immediately above; or (c) controls a Substantial Holder of the type described in (b); or (d) has voting power of more than 20% in a Substantial Holder of the type described in (b) or (c) immediately above.	91,181,133 Shares (being the aggregate of the figures in the two rows above)	91,181,133 (being the aggregate of the figures in the two rows above)
Costa Holdings	New Economy	Driscoll's, Inc.	Relevant interest under section 608(1)(b) and (c) of the Corporations Act in Shares held by New Economy as custodian for Driscoll's, Inc. under the TCA. Relevant interest under sections 608(1)(b) and 608(1)(c) of the Corporations Act (power to control the exercise of a right to vote attached to securities and power to control the exercise of a power to dispose of securities).	21,505,156 Shares	21,505,156

5. Changes in association

The persons who have become associates (2) of, ceased to be associates of, or have changed the nature of their association (9) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Bid Group and each Substantial Holder	Bid Group is acting in concert with each Substantial Holder in respect of CGC's affairs and are therefore associates pursuant to section 12(2)(c) of the Corporations Act.

6. Addresses

The addresses of persons named in this form are as follows:

Name	Address
AFH	The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, USA
Each other Substantial Holder	See Annexure A
Neweconomy.com.au Nominees Pty Limited	Level 18, 83-85 Castlereagh Street, Sydney NSW 2000, Australia
Citi	Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB, England
Driscoll's, Inc.	345 Westridge Drive, Watsonville CA 95076, United States
Varese	750 Pandora Avenue Victoria, British Columbia V8W 0E4
Costa Holdings	One Franklin Parkway, Building 910, Suite 120, San Mateo CA 94403
Bid Group (other than Costa Holdings)	Level 4 126-130 Phillip Street, Sydney, NSW 2000, Australia

Signature

Signed on behalf of the Substantial Holders

print name Kevin Schwartz

capacity

Authorised Signatory

sign here



date 26 September 2023

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 6 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (6) Include details of:
 - (a) any relevant agreement or other circumstances because of which the change in relevant interest occurred. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (7) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included on any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown".
- (9) Give details, if appropriate, of the present association and any change in that association since the last substantial holding notice.

Annexure A

This is Annexure A of 1 page (including this page) referred to in the accompanying Form 604

Signature

Signed on behalf of the Substantial Holders

its general partner

print name Kevin Schwartz

Capacity Authorised Signatory

sign here



date 26 September 2023

1. Paine Schwartz Food Chain Fund VI, L.P. (established in Cayman Islands) ("**Fund VI**") of Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands
2. Paine Schwartz Food Chain Fund VI-A, L.P. (established in Cayman Islands) ("**Fund VI-A**") of Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands
3. Paine Schwartz Food Chain Fund VI-B, L.P. (established in Delaware) ("**Fund VI-B**") of The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, USA
4. Paine Schwartz Food Chain Fund VI-C, L.P. (established in Delaware) ("**Fund VI-C**") of The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, USA
5. Paine Schwartz Food Chain Fund VI GP, L.P. (established in Cayman Islands and is the general partner of Fund VI, Fund VI-A, Fund VI-B and Fund VI-C, and is also the managing member and controller of AFH) of Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands
6. Paine Schwartz Food Chain Fund VI UGP, LLC (established in Cayman Islands and is the general partner and controller of Paine Schwartz Food Chain Fund VI GP, L.P.) of Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands
7. Kevin M. Schwartz (who is the managing member and controller of Paine Schwartz Food Chain Fund VI UGP, LLC) of c/- Paine Schwartz Partners LLC, 475 Fifth Avenue, 17th Floor, New York, NY 10017 USA
8. Angelos Dassios (who has voting power of more than 20% in Paine Schwartz Food Chain Fund VI UGP, LLC) of c/- Paine Schwartz Partners LLC, 475 Fifth Avenue, 17th Floor, New York, NY 10017 USA

Annexure B

This is Annexure B of 14 pages (including this page) referred to in the accompanying Form 604

Signature

Signed on behalf of the Substantial Holders

print name Kevin Schwartz

capacity Authorised Signatory

sign here



Date 26 September 2023

Conditional Transfer Agreement

Conditional Transfer Agreement

This Agreement is made on

22 September

2023

Parties

- 1 Driscoll's Inc. (the **Seller**).
- 2 Chilli Buyer Pty Ltd ACN 670 569 678 (the **Buyer**).

Recitals

- A The Seller is the beneficial owner or entitled to be the holder of the Sale Shares.
- B The Seller has agreed to procure the sale of the Sale Shares to the Buyer, and the Buyer has agreed to buy the Sale Shares from the Seller, on the terms of this Agreement.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ASX Settlement Operating Rules means the operating rules of the settlement facility of ASX Settlement Pty Limited (ACN 008 504 532) for the purposes of the Corporations Act.

CHESS means the Clearing House Electronic Subregister System, which provides for the electronic transfer, settlement and registration of securities in Australia.

Completion means completion of the sale and purchase of the Sale Shares under this Agreement.

Completion Date means the Implementation Date (as defined in the Scheme Implementation Agreement).

Corporations Act means the *Corporations Act 2001* (Cth).

Costa means Costa Group Holdings Limited.

Costa Shares means fully paid ordinary shares in the capital of Costa.

Costa Shareholder means a registered holder of one or more Costa Shares.

Effective when used in relation to the Scheme, means the coming into effect, under subsection 411(10) of the Corporations Act, of the order of a Court made under paragraph 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.

Promissory Note means the promissory note from Buyer set out Schedule 1 (or in a form otherwise agreed between the parties).

Purchase Consideration means the Promissory Note described in clause 4.3(b).

Record Date has the meaning given in the Scheme Implementation Agreement.

Sale Shares means 21,505,156 Costa Shares.

Conditional Transfer Agreement

Scheme means the compromise or arrangement (scheme of arrangement) under Part 5.1 of the Corporations Act between Costa and Costa Shareholders, as contemplated in the Scheme Implementation Agreement.

Scheme Implementation Agreement means the Scheme Implementation Agreement dated 22 September 2023 between Bidder and Costa.

Scheme Consideration has the meaning given in the Scheme Implementation Agreement.

Scheme Shares has the meaning given in the Scheme Implementation Agreement.

Security Interest means an interest or power (whether existing or agreed to be granted or created):

- (a) reserved in or over any interest in any property, including any retention of title; or
- (b) created or otherwise arising in or over any interest in any property under a bill of sale, mortgage, charge, lien, pledge, hypothecation, trust or power,

by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and includes any agreement to grant or create any of the above.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (v) A reference to a clause, Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this Agreement.
 - (vi) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
 - (vii) A reference to writing or written includes any method of reproducing words, figures, drawings or symbols in a visible and tangible form.
 - (viii) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

Conditional Transfer Agreement

- (ix) A reference to legislation or to a provision of legislation includes any modification or re-enactment of it, a legislative provision substituted for it and all regulations or statutory instruments issued under it.
- (x) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (xi) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (xii) A reference to any professional body includes the successors of that body.
- (xiii) A reference to dollars, \$ and A\$ is to Australian currency.
- (xiv) All references to time are to Sydney, Australia time.

2 Conditions precedent to formation of agreement

- (a) Clause 3 and the Seller's obligations to procure the sale of the Sale Shares and the Buyer's obligations to buy the Sale Shares do not come into force and effect, and will not bind the parties, unless and until both of the following conditions are satisfied:
 - (i) the Scheme becomes Effective; and
 - (ii) the Record Date has passed,(the **Conditions**).
- (b) If the Conditions are satisfied, clause 3 and the Seller's obligations to procure the sale of the Sale Shares and the Buyer's obligations to buy the Sale Shares will come into force and effect, and will bind the parties, on and from the first calendar day following satisfaction of the Conditions.

3 Sale and purchase of the Sale Shares

- (a) The Seller agrees to procure the sale of the legal and beneficial ownership in the Sale Shares free from all Security Interests and the Buyer buys the Sale Shares for the Purchase Consideration, in each case on the terms set out in this Agreement.
- (b) Title to and property in the Sale Shares remains solely with the legal holder of the Sale Shares until Completion and passes to the Buyer with effect from Completion.
- (c) Unless and until Completion occurs, the Buyer has no rights over the exercise of voting rights attached to the Sale Shares.
- (d) The parties acknowledge and agree that the Purchase Consideration is to be provided on the Completion Date by the Buyer complying with clause 4.3(b).

4 Completion

4.1 Date, time and place for Completion

Completion must take place:

- (a) on the Completion Date at the same time as Scheme Shares are transferred to the Buyer under the Scheme; and
- (b) at the offices of the Buyer's solicitors, Allens of 126 Phillip Street, Sydney NSW 2000, or at such other place as the parties may agree.

4.2 Seller's obligations on Completion

On the Completion Date, the Seller must:

- (a) deliver to the Buyer a duly executed instrument of transfer of the Sale Shares in favour of the Buyer;
- (b) unless already provided to the Buyer prior to Completion, deliver to the Buyer a copy of the holding statement(s) which disclose(s) the Seller's ownership of the Sale Shares; and
- (c) in respect of any Sale Shares that are held on Costa's CHESS-sponsored subregister, procure performance of all that is required by the ASX Settlement Operating Rules for the Sale Shares to be transferred to the Buyer.

4.3 Obligations on Buyer on Completion

On the Completion Date, the Buyer:

- (a) must duly execute the transfer form received under clause 4.2(a); and
- (b) must issue, to the Seller a Promissory Note, which has an aggregate face value equal to the Scheme Consideration multiplied by the number of Sale Shares.

4.4 Interdependency

- (a) The obligations of the parties under clauses 4.2 and 4.3 are interdependent.
- (b) If any action referred to in clause 4.2 or 4.3 does not take place on the Completion Date then Completion will not have occurred and, without prejudice to any rights available to any party as a consequence:
 - (i) there is no obligation on any party to perform any of its obligations under clause 4.2 or 4.3; and
 - (ii) to the extent such actions have already been undertaken, the parties must do everything reasonably required to reverse those actions.

4.5 Foreign resident capital gains withholding

- (a) If the Buyer is required to make any withholding, deduction or payment for or on account of Tax (including under Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**)) or by any Government Agency in respect of the acquisition of Costa Shares from the Scheme Participants, the Buyer:
 - (i) must pay or procure the payment of the full amount of the withholding or deduction, or make or procure the making of the payment, to the appropriate Government Agency under applicable law; and
 - (ii) will not be required to pay any additional amount and will be deemed for all purposes to have paid the full and final amount of the Purchase Consideration (or other payment) required under this document.
- (b) The Buyer acknowledges and agrees that it will not withhold or deduct any Subdivision 14-D amounts under clause 4.5(a) where it receives a declaration in accordance with the requirements of sections 14-210(3) and 14-225 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) that covers, at least, the period between (and including) the date of this document and the Completion Date (**Seller Declaration**) from the Seller prior to the Completion Date and, if the Completion Date is more than six months after the date of this document, a further Seller Declaration (provided, in each case, the Buyer does not know any Seller Declaration to be false).

5 Power of attorney

Subject to Completion occurring in accordance with this Agreement, the Seller appoints the Buyer to be its attorney from the Completion Date in respect of the Sale Shares until the Sale Shares are registered in the name of the Buyer. Under this power of attorney, the Buyer may do in the name of the Seller and on its behalf everything necessary to:

- (a) transfer the Sale Shares;
- (b) exercise any rights, including rights to appoint a proxy or representative and voting rights, attending to the Sale Shares;
- (c) receive any dividend or other entitlement paid or credited to the Seller in respect of the Sale Shares; and
- (d) do any other act or thing in respect of the Sale Shares.

The Seller declares that all acts and things done by the Buyer in exercising powers under this power of attorney will be as good and valid as if they had been done by the Seller and agrees to ratify and confirm whatever the Buyer does in exercising power under this power of attorney.

6 Representations and warranties

6.1 Mutual representations and warranties

Each party represents and warrants to each other party that each of the following statements is true and correct as at the date of this Agreement and as at Completion.

- (a) **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation; and
- (b) **(Power)** It has the power to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement and to carry on its business as now conducted or contemplated.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement.
- (d) **(Documents binding)** Its obligations under this Agreement are valid and binding obligations on it enforceable in accordance with their terms, subject to any necessary stamping and registration.
- (e) **(Transactions permitted)** The execution and performance by it of this Agreement and each transaction contemplated under this Agreement did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a government or governmental authority or agency binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document or agreement which is binding on it or its assets.

6.2 Additional representations and warranties by the Seller

In addition, the Seller represents and warrants to the Buyer that each of the following statements is true and correct as at the date of this Agreement and as at Completion.

- (a) **(Power to sell)** The Seller has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms and no person has a conflicting right, whether contingent or otherwise, to purchase or to be offered for

Conditional Transfer Agreement

purchase all of its Sale Shares, or any of them, and there is no restriction on the transfer of its Sale Shares to the Buyer on the terms of this Agreement.

- (b) **(Title)** The Seller is the beneficial owner or entitled to be the holder of the Sale Shares and at Completion the Buyer will acquire full legal and beneficial ownership of the Sale Shares free from all Security Interests and any other third party rights over the Sale Shares, and there is no agreement to give or create any Security Interest over the Sale Shares.
- (c) **(Equal ranking)** To the best of its knowledge, the Sale Shares rank equally in all respects with all other Costa Shares.

6.3 No merger

The provisions of clauses 6.1 and 6.2 will not merge on Completion, and will survive Completion.

6.4 Reduction of Purchase Consideration

Any amount payable to the Buyer for a breach of any representation or warranty in clause 6.1 or 6.2 will be treated as a reduction of the Purchase Consideration paid by the Buyer under this Agreement. Any amount payable by the Buyer to the Seller under this Agreement will be treated as an increase to the Purchase Consideration paid by the Buyer under this Agreement.

7 GST

7.1 Recovery of GST

- (a) All consideration provided under this agreement is exclusive of GST unless it is specifically expressed to be GST inclusive.
- (b) If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**) as calculated by the party making the supply in accordance with the GST Act. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

7.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it must be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

7.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated in accordance with the GST Act to reflect that adjustment and an appropriate payment will be made between the parties.

7.4 Cost exclusive of GST

Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

7.5 Survival

This clause 7 will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

7.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

8 Termination

This Agreement automatically terminates by expiry if the Scheme Implementation Agreement terminates.

9 General

9.1 Amendment

This Agreement may be amended only by another document executed by all the parties.

9.2 Assignment

No party can assign, charge, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the other party.

9.3 Costs and duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by the Buyer.

9.4 Governing law and jurisdiction

This Agreement and, to the extent permitted by law, all related matters including non-contractual matters is governed by the laws of New South Wales and of the Commonwealth of Australia. In relation to such matters each party irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground.

9.5 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one instrument.

Conditional Transfer Agreement


Executed as an agreement.


Executed Driscoll's Inc.:



Witness


Print Name

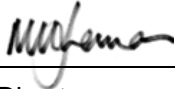


Authorised Signatory


Print Name

Conditional Transfer Agreement

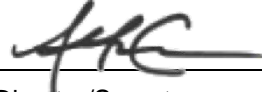
Executed in accordance with section 127 of the
Corporations Act 2001 by **Chilli Buyer Pty Ltd**
(ACN 670 569 678):



Director

MARTIN HUGH FOREMAN

Print Name



Director/Secretary

ALEXANDER CORBACHO

Print Name

Schedule 1 – Promissory Note

Promissory Note

Date

Party

Promissory Note by Chilli Buyer Pty Ltd (ACN 670 569 678). (*Buyer*)

Recitals

- A. The Buyer is party to a Conditional Transfer Agreement with Driscoll's Inc. (*Seller*) dated 2023 (the *CTA*), under which the Buyer has agreed to advance an amount of the Principal Sum to Driscoll's Inc.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Completion Date has the meaning given to it in the CTA or, if earlier, the date which is 9 years and 364 days from the date of this Note.

Note means this promissory note.

Principal Sum means the AU\$ equivalent of A\$67,956,292.96 as determined in accordance with the Scheme Implementation Agreement dated 22 September 2023 between the Buyer and Costa.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

A reference to \$ is a reference to Australian dollars.

The singular includes the plural and the converse.

A reference to a clause is a reference to a clause of this Note.

2 Promise to Pay

For value received, the Buyer promises to pay on demand to the Seller or any subsequent holder of this Note (the **Noteholder**) the Principal Sum.

3 Payments

This Note may be presented for payment on or after the date for payment at the registered office of the Buyer. The Buyer shall make all payments to the Noteholder:

- (a) by cheque or by any other means agreed by the Noteholder in writing with the Seller; and
- (b) without set-off, counterclaim or other deduction, except any compulsory deduction for taxation.

For clarity, no other amounts (eg interest) are payable under this Note.

Conditional Transfer Agreement

4 Endorsement

This Note may be endorsed by the Noteholder, and thereafter the person to whom it has last been endorsed will be the Noteholder.

5 *Bills of Exchange Act 1909 (Cth)*

It is intended that this instrument is a promissory note for the purposes of the *Bills of Exchange Act 1909 (Cth)*.

6 Governing Law

This Note is governed by the laws of New South Wales. The Lender submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Conditional Transfer Agreement

Executed and delivered as a deed poll

**Signed Sealed and Delivered by Chilli Buyer
Pty Ltd (ACN 670 569 678)** in accordance with
section 127 of the *Corporations Act 2001*

Signature of Director

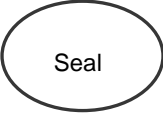
Name of Director

Signature of Director

Name of Director

Conditional Transfer Agreement

Schedule 1 (Endorsement)

Endorsement	Endorsement date	Signed by endorser Noteholder
Chilli Parent Pty Ltd (ACN 670 567 898)		Executed as a deed by Driscoll's, Inc. in the presence of: <div style="text-align: right;"></div> <div>_____ Witness Signature Director Signature</div> <div>_____ Print Name Print Name</div>

Endorsement	Endorsement date	Signed by endorser Noteholder
Chilli Midco Pty Ltd (ACN 670 569 392)		Executed as a deed by Chilli Parent Pty Ltd in accordance with section 127 of the Corporations Act 2001: <div>_____ Director Signature Director/Secretary Signature</div> <div>_____ Print Name Print Name</div>

Endorsement	Endorsement date	Signed by endorser Noteholder
Chilli Buyer Pty Ltd (ACN 670 569 678)		Executed as a deed by Chilli Midco Pty Ltd in accordance with section 127 of the Corporations Act 2001: <div>_____ Director Signature Director/Secretary Signature</div> <div>_____ Print Name Print Name</div>

Annexure C

This is Annexure C of 14 pages (including this page) referred to in the accompanying Form 604

Signature

Signed on behalf of the Substantial Holders

print name Kevin Schwartz

capacity Authorised Signatory

sign here



Date 26 September 2023

Conditional Transfer Agreement

Conditional Transfer Agreement

This Agreement is made on

22 September

2023

Parties

- 1 **Australian Football Holdings, LLC** (the **Seller**).
- 2 **Chilli Buyer Pty Ltd** ACN 670 569 678 (the **Buyer**).

Recitals

- A The Seller is the beneficial owner or entitled to be the holder of the Sale Shares.
- B The Seller has agreed to procure the sale of the Sale Shares to the Buyer, and the Buyer has agreed to buy the Sale Shares from the Seller, on the terms of this Agreement.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ASX Settlement Operating Rules means the operating rules of the settlement facility of ASX Settlement Pty Limited (ACN 008 504 532) for the purposes of the Corporations Act.

CHESS means the Clearing House Electronic Subregister System, which provides for the electronic transfer, settlement and registration of securities in Australia.

Completion means completion of the sale and purchase of the Sale Shares under this Agreement.

Completion Date means the Implementation Date (as defined in the Scheme Implementation Agreement).

Corporations Act means the *Corporations Act 2001* (Cth).

Costa means Costa Group Holdings Limited.

Costa Shares means fully paid ordinary shares in the capital of Costa.

Costa Shareholder means a registered holder of one or more Costa Shares.

Effective when used in relation to the Scheme, means the coming into effect, under subsection 411(10) of the Corporations Act, of the order of a Court made under paragraph 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.

Promissory Note means the promissory note from Buyer set out Schedule 1 (or in a form otherwise agreed between the parties).

Purchase Consideration means the Promissory Note described in clause 4.3(b).

Record Date has the meaning given in the Scheme Implementation Agreement.

Sale Shares means 69,675,977 Costa Shares.

Conditional Transfer Agreement

Scheme means the compromise or arrangement (scheme of arrangement) under Part 5.1 of the Corporations Act between Costa and Costa Shareholders, as contemplated in the Scheme Implementation Agreement.

Scheme Implementation Agreement means the Scheme Implementation Agreement dated 22 September 2023 between Bidder and Costa.

Scheme Consideration has the meaning given in the Scheme Implementation Agreement.

Scheme Shares has the meaning given in the Scheme Implementation Agreement.

Security Interest means an interest or power (whether existing or agreed to be granted or created):

- (a) reserved in or over any interest in any property, including any retention of title; or
- (b) created or otherwise arising in or over any interest in any property under a bill of sale, mortgage, charge, lien, pledge, hypothecation, trust or power,

by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and includes any agreement to grant or create any of the above.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (v) A reference to a clause, Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this Agreement.
 - (vi) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
 - (vii) A reference to writing or written includes any method of reproducing words, figures, drawings or symbols in a visible and tangible form.
 - (viii) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

Conditional Transfer Agreement

- (ix) A reference to legislation or to a provision of legislation includes any modification or re-enactment of it, a legislative provision substituted for it and all regulations or statutory instruments issued under it.
- (x) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (xi) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (xii) A reference to any professional body includes the successors of that body.
- (xiii) A reference to dollars, \$ and A\$ is to Australian currency.
- (xiv) All references to time are to Sydney, Australia time.

2 Conditions precedent to formation of agreement

- (a) Clause 3 and the Seller's obligations to procure the sale of the Sale Shares and the Buyer's obligations to buy the Sale Shares do not come into force and effect, and will not bind the parties, unless and until both of the following conditions are satisfied:
 - (i) the Scheme becomes Effective; and
 - (ii) the Record Date has passed,(the **Conditions**).
- (b) If the Conditions are satisfied, clause 3 and the Seller's obligations to procure the sale of the Sale Shares and the Buyer's obligations to buy the Sale Shares will come into force and effect, and will bind the parties, on and from the first calendar day following satisfaction of the Conditions.

3 Sale and purchase of the Sale Shares

- (a) The Seller agrees to procure the sale of the legal and beneficial ownership in the Sale Shares free from all Security Interests and the Buyer buys the Sale Shares for the Purchase Consideration, in each case on the terms set out in this Agreement.
- (b) Title to and property in the Sale Shares remains solely with the legal holder of the Sale Shares until Completion and passes to the Buyer with effect from Completion.
- (c) Unless and until Completion occurs, the Buyer has no rights over the exercise of voting rights attached to the Sale Shares.
- (d) The parties acknowledge and agree that the Purchase Consideration is to be provided on the Completion Date by the Buyer complying with clause 4.3(b).

4 Completion

4.1 Date, time and place for Completion

Completion must take place:

- (a) on the Completion Date at the same time as Scheme Shares are transferred to the Buyer under the Scheme; and
- (b) at the offices of the Buyer's solicitors, Allens of 126 Phillip Street, Sydney NSW 2000, or at such other place as the parties may agree.

4.2 Seller's obligations on Completion

On the Completion Date, the Seller must:

- (a) deliver to the Buyer a duly executed instrument of transfer of the Sale Shares in favour of the Buyer;
- (b) unless already provided to the Buyer prior to Completion, deliver to the Buyer a copy of the holding statement(s) which disclose(s) the Seller's ownership of the Sale Shares; and
- (c) in respect of any Sale Shares that are held on Costa's CHESS-sponsored subregister, procure performance of all that is required by the ASX Settlement Operating Rules for the Sale Shares to be transferred to the Buyer.

4.3 Obligations on Buyer on Completion

On the Completion Date, the Buyer:

- (a) must duly execute the transfer form received under clause 4.2(a); and
- (b) must issue, to the Seller a Promissory Note, which has an aggregate face value equal to the Scheme Consideration multiplied by the number of Sale Shares.

4.4 Interdependency

- (a) The obligations of the parties under clauses 4.2 and 4.3 are interdependent.
- (b) If any action referred to in clause 4.2 or 4.3 does not take place on the Completion Date then Completion will not have occurred and, without prejudice to any rights available to any party as a consequence:
 - (i) there is no obligation on any party to perform any of its obligations under clause 4.2 or 4.3; and
 - (ii) to the extent such actions have already been undertaken, the parties must do everything reasonably required to reverse those actions.

4.5 Foreign resident capital gains withholding

- (a) If the Buyer is required to make any withholding, deduction or payment for or on account of Tax (including under Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**)) or by any Government Agency in respect of the acquisition of Costa Shares from the Scheme Participants, the Buyer:
 - (i) must pay or procure the payment of the full amount of the withholding or deduction, or make or procure the making of the payment, to the appropriate Government Agency under applicable law; and
 - (ii) will not be required to pay any additional amount and will be deemed for all purposes to have paid the full and final amount of the Purchase Consideration (or other payment) required under this document.
- (b) The Buyer acknowledges and agrees that it will not withhold or deduct any Subdivision 14-D amounts under clause 4.5(a) where it receives a declaration in accordance with the requirements of sections 14-210(3) and 14-225 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) that covers, at least, the period between (and including) the date of this document and the Completion Date (**Seller Declaration**) from the Seller prior to the Completion Date and, if the Completion Date is more than six months after the date of this document, a further Seller Declaration (provided, in each case, the Buyer does not know any Seller Declaration to be false).

5 Power of attorney

Subject to Completion occurring in accordance with this Agreement, the Seller appoints the Buyer to be its attorney from the Completion Date in respect of the Sale Shares until the Sale Shares are registered in the name of the Buyer. Under this power of attorney, the Buyer may do in the name of the Seller and on its behalf everything necessary to:

- (a) transfer the Sale Shares;
- (b) exercise any rights, including rights to appoint a proxy or representative and voting rights, attending to the Sale Shares;
- (c) receive any dividend or other entitlement paid or credited to the Seller in respect of the Sale Shares; and
- (d) do any other act or thing in respect of the Sale Shares.

The Seller declares that all acts and things done by the Buyer in exercising powers under this power of attorney will be as good and valid as if they had been done by the Seller and agrees to ratify and confirm whatever the Buyer does in exercising power under this power of attorney.

6 Representations and warranties

6.1 Mutual representations and warranties

Each party represents and warrants to each other party that each of the following statements is true and correct as at the date of this Agreement and as at Completion.

- (a) **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation; and
- (b) **(Power)** It has the power to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement and to carry on its business as now conducted or contemplated.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement.
- (d) **(Documents binding)** Its obligations under this Agreement are valid and binding obligations on it enforceable in accordance with their terms, subject to any necessary stamping and registration.
- (e) **(Transactions permitted)** The execution and performance by it of this Agreement and each transaction contemplated under this Agreement did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a government or governmental authority or agency binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document or agreement which is binding on it or its assets.

6.2 Additional representations and warranties by the Seller

In addition, the Seller represents and warrants to the Buyer that each of the following statements is true and correct as at the date of this Agreement and as at Completion.

- (a) **(Power to sell)** The Seller has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms and no person has a conflicting right, whether contingent or otherwise, to purchase or to be offered for

Conditional Transfer Agreement

purchase all of its Sale Shares, or any of them, and there is no restriction on the transfer of its Sale Shares to the Buyer on the terms of this Agreement.

- (b) **(Title)** The Seller is the beneficial owner or entitled to be the holder of the Sale Shares and at Completion the Buyer will acquire full legal and beneficial ownership of the Sale Shares free from all Security Interests and any other third party rights over the Sale Shares, and there is no agreement to give or create any Security Interest over the Sale Shares.
- (c) **(Equal ranking)** To the best of its knowledge, the Sale Shares rank equally in all respects with all other Costa Shares.

6.3 No merger

The provisions of clauses 6.1 and 6.2 will not merge on Completion, and will survive Completion.

6.4 Reduction of Purchase Consideration

Any amount payable to the Buyer for a breach of any representation or warranty in clause 6.1 or 6.2 will be treated as a reduction of the Purchase Consideration paid by the Buyer under this Agreement. Any amount payable by the Buyer to the Seller under this Agreement will be treated as an increase to the Purchase Consideration paid by the Buyer under this Agreement.

7 GST

7.1 Recovery of GST

- (a) All consideration provided under this agreement is exclusive of GST unless it is specifically expressed to be GST inclusive.
- (b) If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**) as calculated by the party making the supply in accordance with the GST Act. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

7.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it must be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

7.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated in accordance with the GST Act to reflect that adjustment and an appropriate payment will be made between the parties.

7.4 Cost exclusive of GST

Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

7.5 Survival

This clause 7 will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

7.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

8 Termination

This Agreement automatically terminates by expiry if the Scheme Implementation Agreement terminates.

9 General

9.1 Amendment

This Agreement may be amended only by another document executed by all the parties.

9.2 Assignment

No party can assign, charge, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the other party.

9.3 Costs and duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by the Buyer.

9.4 Governing law and jurisdiction

This Agreement and, to the extent permitted by law, all related matters including non-contractual matters is governed by the laws of New South Wales and of the Commonwealth of Australia. In relation to such matters each party irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground.

9.5 Counterparts

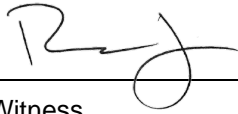
This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one instrument.

Conditional Transfer Agreement

Executed as an agreement.

**Executed by Australian Football Holdings,
LLC:**

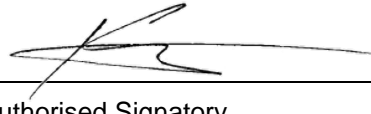
In the presence of:



Witness

Robert Meyer

Print Name



Authorised Signatory

Kevin Schwartz

Print Name

Conditional Transfer Agreement

Executed in accordance with section 127 of the
Corporations Act 2001 by **Chilli Buyer Pty Ltd**
(ACN 670 569 678):



Director

MARTIN HUGH FOREMAN

Print Name



Director/Secretary

ALEXANDER CORBACHO

Print Name

Schedule 1 – Promissory Note

Promissory Note

Date

Party

Promissory Note by Chilli Buyer Pty Ltd (ACN 670 569 678). (*Buyer*)

Recitals

- A. The Buyer is party to a Conditional Transfer Agreement with Australian Football Holdings, LLC (***Seller***) dated _____ 2023 (the ***CTA***), under which the Buyer has agreed to advance an amount of the Principal Sum to Australian Football Holdings, LLC.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Completion Date has the meaning given to it in the CTA or, if earlier, the date which is 9 years and 364 days from the date of this Note.

Note means this promissory note.

Principal Sum means the AU\$ equivalent of A\$220,176,087.32 as determined in accordance with the Scheme Implementation Agreement dated 22 September 2023 between the Buyer and Costa.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

A reference to \$ is a reference to Australian dollars.

The singular includes the plural and the converse.

A reference to a clause is a reference to a clause of this Note.

2 Promise to Pay

For value received, the Buyer promises to pay on demand to the Seller or any subsequent holder of this Note (the ***Noteholder***) the Principal Sum.

3 Payments

This Note may be presented for payment on or after the date for payment at the registered office of the Buyer. The Buyer shall make all payments to the Noteholder:

- (a) by cheque or by any other means agreed by the Noteholder in writing with the Seller; and
- (b) without set-off, counterclaim or other deduction, except any compulsory deduction for taxation.

For clarity, no other amounts (eg interest) are payable under this Note.

Conditional Transfer Agreement

4 Endorsement

This Note may be endorsed by the Noteholder, and thereafter the person to whom it has last been endorsed will be the Noteholder.

5 *Bills of Exchange Act 1909 (Cth)*

It is intended that this instrument is a promissory note for the purposes of the *Bills of Exchange Act 1909 (Cth)*.

6 Governing Law

This Note is governed by the laws of New South Wales. The Lender submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Conditional Transfer Agreement

Executed and delivered as a deed poll

Signed Sealed and Delivered by **Chilli Buyer Pty Ltd (ACN 670 569 678)** in accordance with section 127 of the *Corporations Act 2001*

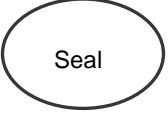
Signature of Director

Name of Director

Signature of Director

Name of Director

Conditional Transfer Agreement**Schedule 1 (Endorsement)**

Endorsement	Endorsement date	Signed by endorser Noteholder
Chilli Parent Pty Ltd (ACN 670 567 898)		Executed as a deed by Australian Football Holdings, LLC in the presence of: <div style="text-align: right;"></div> <div style="display: flex; justify-content: space-between;"><div>_____ Witness Signature Print Name</div><div>_____ Director Signature Print Name</div></div>

Endorsement	Endorsement date	Signed by endorser Noteholder
Chilli Midco Pty Ltd (ACN 670 569 392)		Executed as a deed by Chilli Parent Pty Ltd in accordance with section 127 of the Corporations Act 2001: <div style="display: flex; justify-content: space-between;"><div>_____ Director Signature Print Name</div><div>_____ Director/Secretary Signature Print Name</div></div>

Endorsement	Endorsement date	Signed by endorser Noteholder
Chilli Buyer Pty Ltd (ACN 670 569 678)		Executed as a deed by Chilli Midco Pty Ltd in accordance with section 127 of the Corporations Act 2001: <div style="display: flex; justify-content: space-between;"><div>_____ Director Signature Print Name</div><div>_____ Director/Secretary Signature Print Name</div></div>

Annexure D

This is Annexure D of 22 pages (including this page) referred to in the accompanying Form 604

Signature

Signed on behalf of the Substantial Holders

print name Kevin Schwartz

capacity Authorised Signatory

sign here



Date 26 September 2023

Transaction Co-operation Agreement

Transaction Co-operation Agreement

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

© Allens Australia 2023

Contents

1	Definitions and interpretation	4
1.1	Definitions	4
1.2	Interpretation	8
2	Furtherance of Joint Venture	9
2.1	Association and purpose	9
2.2	Individual rights, obligations and liabilities	9
3	Proposed transaction	9
4	Conduct of the Proposal	10
4.1	Conduct of the Proposal	10
4.2	Day to day communications	10
4.3	Scheme Conditions Precedent	10
4.4	Disclosure	11
5	Commitment to the Joint Venture	11
5.1	Exclusivity	11
5.2	No shop, no talk and no due diligence	12
6	Standstill and other dealings	12
6.1	Standstill	12
6.2	Exception	13
7	Shareholders Deed and HoldCo	13
8	Transaction costs and expenses	13
8.1	Costs	13
8.2	Engagement novation	14
8.3	Break fee	14
8.4	Funding	14
8.5	Indemnity	14
9	Termination and cessation	15
9.1	General termination	15
9.2	Rights and obligations surviving termination	15
10	Warranties	15
11	GST	15
11.1	Recovery of GST	15
11.2	Liability net of GST	16
11.3	Adjustment events	16
11.4	Cost exclusive of GST	16
11.5	Survival	16
11.6	Definitions	16
12	Relationship between the parties	16
12.1	No partnership	16
12.2	Separate tax and accounting obligations	16
13	General	16
13.1	Withholding	16
13.2	Notices	16
13.3	Governing law	18
13.4	Amendments	18
13.5	Waiver	18

13.6	Further acts and documents	18
13.7	Specific performance	18
13.8	Counterparts	18

This Agreement is made on 22 September 2023

Parties

- 1 **PSP Chilli Holdings GP, LLC** (in its capacity as general partner of PSP Chilli Holdings, L.P), a limited partnership incorporated in Delaware, United States whose registered office is 1209 Orange Street, City of Wilmington, County of New Castle, 19801 (**PSP**).
- 2 **Driscoll's, Inc.**, a company incorporated in California, United States with registered number 0271361 whose registered office is at 345 Westridge Dr., Watsonville CA 95076, United States (**Driscoll's**).
- 3 **Varese IRR LP by its general partner Varese IRR GP Inc.**, a limited partnership incorporated in Manitoba, Canada with registration number 7262290 whose registered address is 2200-201 Portage Avenue, Winnipeg, Manitoba R3B 3L3, Canada (**BCI**).

Recitals

- A The parties have or intend to establish the HoldCo, MidCo and BidCo for the purposes of the Proposal.
- B The parties intend to pursue and implement the Proposal by way of a joint venture, involving a transaction pursuant to which BidCo enters into the Scheme Implementation Agreement with Costa.
- C PSP and Driscoll's are each existing shareholders in Costa.
- D This Agreement governs the relationship between the parties for the purposes of making, pursuing and implementing the Proposal for the purposes of the Joint Venture.

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

BidCo means the special purpose vehicle established to enter into the Scheme Implementation Agreement, being Chilli Buyer Pty Ltd ACN 670 569 678.

Business Day means any day that is each of the following:

- (a) a business day as defined in the Listing Rules;
- (b) a day that banks are open for business in New York, United States; and
- (c) a day that banks are open for business in Victoria, British Columbia.

Competing Transaction means any expression of interest, a proposal, offer (including a non-binding indicative offer or proposal), transaction, agreement or arrangement (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise) which, if completed substantially in accordance with its terms, would mean a person (other than a party to this Agreement or their Related Bodies Corporate) whether alone or together with its Associates would:

- (a) directly or indirectly, acquire or have the right to acquire (other than as custodian, nominee or bare trustee):

- (i) an interest or Relevant Interest in; or
- (ii) a legal, beneficial or economic interest (including by way of an equity swap, contract for difference or similar transaction or arrangement) in;
20% or more of Costa Shares;
- (b) acquire control of Costa, within the meaning of section 50AA of the Corporations Act (but disregarding sub-section 50AA(4));
- (c) directly or indirectly acquire or become the holder of, obtain a right to acquire, or otherwise obtain a legal, beneficial or economic interest in, or control of, all or a substantial part or a material part of Costa's business or assets or the assets of or business conducted by the Costa Group;
- (d) otherwise directly or indirectly acquire, be stapled with, merge or amalgamate with, or acquire a controlling shareholding or economic interest in, Costa or any of its Related Bodies Corporate; or
- (e) require Costa to abandon, or otherwise fail to proceed with, the Proposal,
whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement.

Conditional Transfer Agreement means each of the conditional transfer agreements dated on or around the date of this Agreement between BidCo and each of PSP and Driscoll's.

Confidential Information has the meaning given to that term in:

- (a) the confidentiality deed dated 5 May 2023 between Paine Schwartz Partners, LLC and Costa;
- (b) the confidentiality undertaking dated 13 June 2023 between Paine Schwartz Partners, LLC and British Columbia Investment Management Corporation; and
- (c) the confidentiality undertaking dated 11 August 2023 between Paine Schwartz Partners, LLC and Driscoll's.

Corporations Act means the *Corporations Act 2001* (Cth).

Costa means Costa Group Holdings Limited.

Costa Group means Costa, its Subsidiaries and each of the following entities:

- (a) Costa China (Hong Kong) Limited;
- (b) African Blue S.A;
- (c) the Driscoll's Australia Partnership formed under the partnership deed dated 26 March 2010;
- (d) Driscoll's Australia Pty Ltd (ACN 141 680 364); and
- (e) Polar Fresh Cold Chain Services Pty Ltd (ACN 110 728 259),
and their respective Subsidiaries.

Costa Shares means fully paid ordinary shares in the capital of Costa.

Defaulting Respective Interest means, in relation to a Defaulting Consortium Member, the Defaulting Consortium Member's Respective Interest as a proportion of the aggregate Respective Interests of each Defaulting Consortium Member.

Defaulting Consortium Member means any party that, by virtue of its actions or omissions, directly or indirectly causes the Reverse Break Fee to be payable under the Scheme Implementation Agreement.

Exclusivity Period means the period from the date of this Agreement to the earliest of:

- (a) the date of successful completion of the Proposal; and
- (b) the date on which the Scheme Implementation Agreement is terminated,

unless otherwise agreed in writing between all the parties to this Agreement.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.

HoldCo means Chilli Parent Pty Ltd ACN 670 567 898, the ultimate holding company of BidCo.

Joint Costs means the reasonable out of pocket costs, fees and expenses incurred by a party or any of its Related Bodies Corporate in respect of external advisers of any of the parties (as agreed to in writing between the parties) for the benefit of all parties in connection with the making or pursuit of the Proposal and the Transaction Documents. For the avoidance of doubt, Joint Costs will not include any Own Costs and all costs, fees and expenses incurred by BidCo will be Joint Costs.

Joint Venture has the meaning given in clause 2.1(a).

Losses has the meaning given to that term in the Scheme Implementation Agreement.

MidCo means Chilli Midco Pty Ltd ACN 670 569 392.

Non-Defaulting Consortium Member means, in the event that the Reverse Break Fee is payable under the Scheme Implementation Agreement, any party that is not a Defaulting Consortium Member.

Own Costs means the costs, fees and expenses of a party which:

- (a) relate predominantly to:
 - (i) the structuring, arranging or formation of the specific manner in which a party will participate or contribute to the Proposal; or
 - (ii) a party's funding arrangements for the Proposal;
- (b) do not relate to proposing, negotiating or implementing the Proposal or the Transaction Documents, except in relation to the Shareholders Deed;
- (c) are related to internal resources and personnel (including travel costs, accommodation costs and personnel time); or
- (d) relate to matters where the party requires separate representation or advice in connection with specific issues arising out of the Proposal or the Transaction Documents, including in respect of the Shareholders Deed.

Proposal means the proposal described in the Scheme Implementation Agreement under which the parties (or their special purpose vehicle) will acquire Costa by scheme of arrangement or

other transaction pursuant to which the parties (or their special purpose vehicle) acquire all or substantial part of Costa or its assets and business.

Regulatory Authority means:

- (a) ASX, ACCC, ASIC and the Takeovers Panel;
- (b) a Government Agency;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Related Body Corporate means with respect to each party, a 'Related Body Corporate' as defined in section 50 the Corporations Act, and includes:

- (a) any entity, fund, partnership, managed account or similar investment vehicle advised or managed by that party or a Related Body Corporate of that party;
- (b) any entity, fund, partnership, managed account or similar investment vehicle whose trustee, general partner or other operator is that party or its Related Body Corporate; and
- (c) any entity, fund, partnership, managed account or similar investment vehicle that is majority owned and/or controlled by any one or more persons specified in paragraphs (a) and (b) or their Related Bodies Corporate.

Relevant Interest has the meaning given in the Corporations Act.

Representatives means in relation to a party:

- (a) the directors, officers, and employees of that party and its Related Bodies Corporate; and
- (b) the agents and advisers of that party (or its Related Bodies Corporate), but only to the extent acting in that capacity and on the instruction of that party (or Related Bodies Corporate) in accordance with its engagement terms, in connection with the Proposal (other than common consortium advisers or agents engaged by the parties in connection with the Proposal);

provided that, where Representatives is used in clause 6.1 it shall only have the meaning in paragraph (b) above and not paragraph (a).

Respective Interests means the aggregate interest (expressed as a percentage) of a party and its Related Bodies Corporate in all rights and obligations under or in connection with this Agreement with respect to the Joint Venture and HoldCo, being:

- (a) in respect of PSP, 32.7%;
- (b) in respect of Driscoll's, 35%; and
- (c) in respect of BCI, 32.3%.

Reverse Break Fee has the meaning given to that term in the Scheme Implementation Agreement.

Scheme Booklet has the meaning given to that term in the Scheme Implementation Agreement.

Scheme Conditions Precedent means any condition precedent to the completion of the Proposal set out in the Scheme Implementation Agreement.

Scheme Implementation Agreement means the agreement dated on or about the date of this Agreement between Costa and BidCo pursuant to which Costa will be acquired via a scheme of arrangement.

Shareholders Deed has the meaning given in clause 7.

Subsidiary of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; or
- (b) is part of a consolidated group constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares or would be, if the first entity was required to prepare consolidated financial statements.

A trust, partnership or fund may be a subsidiary (and an entity may be a subsidiary of a trust, partnership or fund) if it would have been a subsidiary under this definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share (ignoring the operation of section 48(2) of the Corporations Act).

Third Party means a person other than a party or any of its Related Bodies Corporate or Associates, excluding any Associates of a party which became Associates in breach of this Agreement.

Transaction Documents means the Scheme Implementation Agreement, the Shareholders Deed and financing agreements in relation to the Proposal.

1.2 Interpretation

In this Agreement headings and words in bold are for convenience only and do not affect the interpretation of this Agreement and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (b) the word "including" or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a "person" or "entity" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trust, other bodies corporate and bodies politic, substitutes (including, without limitation, persons taking by novation) and permitted assigns, and whether or not being a separate legal entity;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, paragraph, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a time period is specified and dates from a given date or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (j) a reference to a time is to that time in Sydney, Australia;
- (k) a reference to a statute includes any regulations or other instruments made under it and a reference to a statute or any regulation or other instrument made under it or a provision of

any such statute, regulation or instrument includes consolidations, amendments, re-enactments and replacements;

- (l) a reference to a "liability" incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person;
- (m) a reference to a "loss" incurred by any person includes any loss, liability, damage, cost, charge, expense which the person pays, incurs or is liable for and any other diminution of value of any description which the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims;
- (n) unless otherwise stated, a reference to "\$", "A\$" or "dollar" is to Australian currency; and
- (o) this Agreement, or a provision of this Agreement, must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

2 Furtherance of Joint Venture

2.1 Association and purpose

- (a) As from the date of this Agreement, the parties associate themselves together as a joint venture for the purposes of:
 - (i) progressing and implementing the Proposal in accordance with the Scheme Implementation Agreement;
 - (ii) if the Proposal is implemented, the subsequent conduct and carrying on by BidCo (indirectly) of the business currently carried on by Costa; and
 - (iii) any other activities as the parties may agree for the purpose of the joint venture, (the **Joint Venture**).
- (b) The parties acknowledge and agree that the provisions of this Agreement are intended to establish and govern the operation of the Joint Venture, and that those provisions are for the purposes of, and reasonably necessary for undertaking, the Joint Venture, including (without limitation) progressing and implementing the Proposal in accordance with the Scheme Implementation Agreement, and if the Proposal is implemented, the subsequent conduct and carrying on by BidCo (indirectly) of the business currently carried on by Costa.

2.2 Individual rights, obligations and liabilities

The rights, obligations and liabilities of the parties under this Agreement and in respect of the Joint Venture are individual in their Respective Interests (subject, in the case of the Joint Venture, to any adjustment agreed by the parties) and not joint or joint and individual as between them.

3 Proposed transaction

Each party must, and must procure that each of its respective Associates, Representatives and Related Bodies Corporate:

- (a) co-operate and use reasonable endeavours to ensure that the Proposal is implemented;

- (b) provide all relevant information, details and explanations available to them concerning the Proposal as is reasonably necessary to prepare the Transaction Documents (which have not already been agreed as at the date of this Agreement) and effectively execute the Proposal;
- (c) act in good faith in its dealings with each other party in relation to the Proposal; and
- (d) do or cause to be done all acts that are reasonably necessary or desirable for the implementation of this Agreement and the Transaction Documents, and the transactions contemplated by this Agreement, the Transaction Documents and the Proposal.

4 Conduct of the Proposal

4.1 Conduct of the Proposal

- (a) The parties agree to devote appropriate resources as required to progress the Proposal in an expeditious manner including:
 - (i) to negotiate and finalise the Transaction Documents (which have not already been agreed as at the date of this Agreement); and
 - (ii) finalise sections of the Scheme Booklet for which the parties have responsibility.
- (b) Each party will regularly and promptly update and consult with the other parties in respect of the status of discussions with the Costa Group and due diligence in relation to Costa Group.
- (c) Subject to any information protocols agreed between any of the parties and Costa, each party will keep the other parties promptly informed of information received from the Costa Group that is material to the negotiations in relation to the Proposal, due diligence in respect of the Costa Group or otherwise material to the Proposal generally.
- (d) The parties will make all material decisions in relation to the Proposal unanimously, including:
 - (i) any amendment or waiver of any provision of the Transaction Documents (including any conditions contained in the Transaction Documents);
 - (ii) any decision to terminate any of the Transaction Documents; and
 - (iii) submitting to Costa the sections of the Scheme Booklet for which the parties have responsibility.
- (e) The parties intend that, should the Proposal proceed, BidCo will be the acquirer under the Proposal.
- (f) No party may legally bind any other party.

4.2 Day to day communications

- (a) The parties will each nominate executives and advisers to be responsible for day to day operational and organisational decisions in respect of the Proposal.
- (b) The parties will engage in regular and comprehensive communication in relation to the day to day conduct, status and prospects of the Proposal.

4.3 Scheme Conditions Precedent

- (a) Each party must:
 - (i) use reasonable endeavours to satisfy the Scheme Conditions Precedent as soon as practicable after the date of the Scheme Implementation Agreement including, to the extent within its control, procuring performance by a Third Party;

- (ii) provide all reasonable assistance to the other parties as is necessary to satisfy the Scheme Conditions Precedent; and
 - (iii) not take any action that will or would be reasonably likely to hinder, delay or prevent the satisfaction of the Scheme Conditions Precedent.
- (b) Without limiting clause 4.3(a), each party must, insofar as the filing of such notices and applications is the primary responsibility of that party, file all notices and applications for approval necessary to satisfy the Scheme Condition Precedent as soon as practicable after the date of execution of the Scheme Implementation Agreement and must:
 - (i) provide each other party with an opportunity to review and comment on any application, notice or other material communication or any Regulatory Authority relating to such approval (which, at the election of the relevant part, may be on an outside counsel only basis);
 - (ii) allow each other party and its Representatives the opportunity to be present and make submissions at any meetings and to participate in any significant discussions with any other Regulatory Authority relating to such approval;
 - (iii) respond to requests for information from any Regulatory Authorities at the earliest practicable time; and
 - (iv) provide to each other party any material written communications sent to or received from any other Regulatory Authority promptly upon despatch or receipt (as the case may be),

provided that no party is required to disclose materially commercially sensitive or competitive information to another party or information which could reasonably be considered to be damaging to the commercial or legal interests of the discloser or its Related Bodies Corporate (**Commercial Information**). Where Commercial Information forms only part of a document, the remainder of the document will be provided to the other party with the Commercial Information redacted.

4.4 Disclosure

The parties will use all reasonable endeavours to co-operate with each other to make the disclosures required by, and within the time limits prescribed by, Part 6C.1 ('Substantial holding information') of the Corporations Act, and any other disclosure required by law and acknowledge and agree that this Agreement may be publicly disclosed pursuant to that law.

5 Commitment to the Joint Venture

5.1 Exclusivity

For the purposes of promoting the commercial objectives of the Joint Venture, during the Exclusivity Period, each of the parties agree that it will not (and must ensure that its Related Bodies Corporate and Representatives (alone or acting in concert with any Third Party) do not directly or indirectly) except with the prior written consent of the other parties:

- (a) be involved in a Competing Transaction;
- (b) accept in respect of, sell or agree to sell any of, its Costa Shares to a Third Party proposing or making a Competing Transaction;
- (c) vote in favour of a Competing Transaction; or
- (d) make any public announcement that it will accept or propose to accept, vote in favour of or otherwise support a Competing Transaction.

5.2 No shop, no talk and no due diligence

- (a) For the purposes of promoting the commercial objectives of the Joint Venture, during the Exclusivity Period, a party must not, and must ensure that its Related Bodies Corporate and Representatives do not directly or indirectly, except with the prior written consent of the other parties:
 - (i) propose, encourage, initiate, solicit or invite any Competing Transaction to or from Costa (or its shareholders) or any Third Party or initiate discussions with Costa (or its shareholders) or any Third Party with a view to obtaining any expressions of interest, offer or proposal from Costa or any other person in relation to a Competing Transaction or which may reasonably be expected to lead to a Competing Transaction;
 - (ii) participate in any negotiations or discussions with Costa (or its shareholders) or a Third Party in relation to a Competing Transaction or which may reasonably be expected to lead to a Competing Transaction;
 - (iii) provide any information to Costa (or its shareholders) or a Third Party for the purposes of enabling or which may reasonably be expected to enable any Third Party to make a Competing Transaction; or
 - (iv) communicate its willingness or intention to do any of the things listed in clauses 5.2(a)(i), 5.2(a)(ii) or 5.2(a)(iii).
- (b) Each party must promptly notify the other of any approach or proposal made to, or any attempt to initiate negotiations or discussions with, that party (or any of its Related Bodies Corporate and Representatives) in connection with a potential Competing Transaction during the Exclusivity Period, whether unsolicited or otherwise, and must, in providing that notice, provide full details of the approach, inquiry or proposal or attempt, including:
 - (i) the identity of the person making the approach, proposal or attempt; and
 - (ii) the content and any terms disclosed in the approach, proposal or attempt (including, without limitation, the price, conditions precedent, timetable and any break fee).
- (c) During the Exclusivity Period, PSP, BCI and Driscoll's each agree it will, and must ensure that each of its Related Bodies Corporate and Representatives, vote against any Competing Transaction.

6 Standstill and other dealings

6.1 Standstill

- (a) For the purposes of promoting the commercial objectives of the Joint Venture, subject to clauses 6.1(b) and 6.2, during the Exclusivity Period, each party must not, and must ensure that their Related Bodies Corporate and its and their Representatives (alone or acting in concert with any Third Party) do not:
 - (i) directly or indirectly acquire, offer or agree to acquire:
 - (A) any shares or other securities in Costa;
 - (B) any rights or interests to acquire any shares or securities (including direct and indirect interests, options and warrants to acquire any shares or securities) in Costa; or
 - (C) any assets of Costa or any Related Bodies Corporate of Costa;

- (ii) obtain by any means a Relevant Interest in the shares or other securities in Costa;
 - (iii) enter into any agreement or arrangement which confers any interest which would have the economic effect being substantially equivalent to acquiring, holding or disposing of an interest described in clause 6.1(a)(i) or 6.1(a)(ii), including cash-settled derivative contracts, contracts for difference or other derivative contracts; or
 - (iv) aid, abet, counsel, procure or induce a third party to do, or announce that it will do, any of the acts referred to in 6.1(a)(i), 6.1(a)(ii) and 6.1(a)(iii).
- (b) For the avoidance of doubt, nothing in clause 6.1(a) prevents:
- (i) any party (or any of its or their Related Bodies Corporate or Representatives) from taking any steps to implement the Proposal;
 - (ii) any party (or any of its or their of their Related Bodies Corporate or Representatives) acquiring or disposing of a Relevant Interest in Costa Shares as a result of:
 - (A) acceptances of the Proposal or implementation of the Proposal; or
 - (B) the terms of this Agreement; or
 - (iii) any action taken with the prior written consent of each other party.

6.2 Exception

Nothing in clauses 6.1 shall in any way restrict or prohibit any activities of a party, its Related Bodies Corporates or Representatives (each a **Relevant Person**) or any of a Relevant Person's investment managers acting with discretionary authority or any fund in which a Relevant Person invests, from doing anything in clause 6.1 in the ordinary course of business on the basis that the Relevant Person maintain and comply with information barrier procedures which restrict individuals or managers trading on the Relevant Person's behalf, or funds in which the Relevant Person invests, from being aware of:

- (a) any Confidential Information;
- (b) the existence of the relevant confidentiality undertakings; and
- (c) a party's interest in the Proposal.

7 Shareholders Deed and HoldCo

The parties will co-operate and use all reasonable endeavours to:

- (a) negotiate in good faith and seek to agree, promptly following the date of this Agreement, the definitive form of the shareholders deed to regulate the affairs of HoldCo following implementation of the Proposal (the **Shareholders Deed**); and
- (b) amend the capital structure of HoldCo having regard to each party's structuring requirements.

8 Transaction costs and expenses

8.1 Costs

- (a) Unless otherwise agreed by the parties, all Joint Costs will be borne:
 - (i) if the Proposal is successfully implemented prior to termination of this Agreement – by BidCo; and

- (ii) otherwise – in respect of each party, proportionally according to their Respective Interests.
- (b) Unless otherwise agreed by the parties, to the extent a Joint Cost has been paid by one of BidCo, PSP, Driscoll's or BCI in a manner that is not consistent with clause 8.1(a), the other parties agree that the first party is to be reimbursed:
 - (i) if the Proposal is successfully implemented prior to termination of this Agreement – by BidCo; and
 - (ii) otherwise – in respect of each party, proportionally according to their Respective Interests.
- (c) Each party will bear and be solely liable for its Own Costs.

8.2 Engagement novation

The parties will use reasonable endeavours to procure that any existing advisor engagement and work product that is paid for as Joint Costs is novated to the BidCo.

8.3 Break fee

The parties agree that, to the extent that BidCo is entitled to receive a break fee or cost reimbursement fee from Costa in connection with the Proposal (**Break Fee**), the parties will procure that BidCo applies the Break Fee (net of any applicable tax) to payment of the Joint Costs. Then any remainder will be distributed to the parties in their Respective Interests.

8.4 Funding

- (a) Subject to clause 8.4(b), on implementation of the Proposal, each of PSP and Driscoll's agree that they will cause any promissory note that they (or their nominee) receives under a relevant Conditional Transfer Agreement to be endorsed to HoldCo and the parties agree that they will:
 - (i) cause HoldCo to issue shares to the PSP or Driscoll's nominated entity (as applicable) in exchange for the note; and
 - (ii) cause each such promissory note to be endorsed to BidCo.
- (b) For the avoidance of doubt, nothing in clause 8.4(a) shall cause PSP or Driscoll to hold shares in HoldCo in excess of their Respective Interests.

8.5 Indemnity

- (a) Should the Reverse Break Fee become payable under the Scheme Implementation Agreement, any Defaulting Consortium Member shall indemnify and hold harmless the Non-Defaulting Consortium Members from any Losses suffered or incurred by the Non-Defaulting Consortium Members as a result of such payment, including, but not limited to, legal fees and expenses.
- (b) If there is more than one Defaulting Consortium Member, each Defaulting Consortium Member must pay compensation under clause 8.5(a) in proportions reflecting their respective fault (or if it is not possible to determine such proportions, in proportion to its Defaulting Respective Interest).
- (c) The liability of the Defaulting Consortium Member(s) under the indemnity in clause 8.5(a) shall be several, and each Defaulting Consortium Member shall be liable for the proportion of the Losses suffered by the Non-Defaulting Consortium Member(s) determined under clause 8.5(b).

- (d) For the avoidance of doubt, in circumstances where every party to this Agreement is a Defaulting Consortium Member, and all parties are equally at fault, the indemnity in clause 8.5(a) will not apply.

9 Termination and cessation

9.1 General termination

This Agreement and the Joint Venture terminates at the expiry of the Exclusivity Period, provided that, if the Proposal is implemented, the Joint Venture will survive and will become subject to any Shareholders Deed relating to HoldCo agreed in accordance with clause 7.

9.2 Rights and obligations surviving termination

The following rights and obligations survive the termination of this Agreement under clause 9.1:

- (a) any claim that a party has against another party or its related entity at the time of termination, including any claim for expenses under clause 8; and
- (b) any rights or obligations which have accrued at the time of termination.

10 Warranties

Each party represents and warrants to the other that, as at the date of this Agreement:

- (a) it is duly incorporated under the laws of the place of its incorporation;
- (b) it has the power and authority to sign this Agreement and perform and observe all its terms;
- (c) this Agreement has been duly executed and is a legal valid and binding agreement enforceable against it in accordance with its terms;
- (d) it is not bound by any contract which may restrict its right or ability to enter into or perform this Agreement; and
- (e) it and its Related Bodies Corporate do not hold any Costa Shares, rights to acquire Costa Shares or any economic interest in Costa Shares (through a cash settled equity swap, derivative or otherwise) which would require disclosure under the Australian Takeovers Panel's Guidance Note 20: Equity Derivatives other than:
 - (i) PSP having a Relevant Interest in 69,675,977 Costa Shares; and
 - (ii) Driscoll's having a Relevant Interest in 21,505,156 Costa Shares.

11 GST

11.1 Recovery of GST

- (a) All consideration provided under this agreement is exclusive of GST unless it is specifically expressed to be GST inclusive.
- (b) If GST is payable, or notionally payable, on a supply made under or in connection with this agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**) as calculated by the party making the supply in accordance with the GST Act. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

11.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this agreement is based on any cost, expense or other liability, it must be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

11.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this agreement, the GST Amount will be recalculated in accordance with the GST Act to reflect that adjustment and an appropriate payment will be made between the parties.

11.4 Cost exclusive of GST

Any reference in this agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

11.5 Survival

This clause 10(e)(ii) will not merge upon completion and will continue to apply after expiration or termination of this agreement.

11.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

12 Relationship between the parties

12.1 No partnership

- (a) Nothing in this Agreement will be construed as giving rise to a partnership or fiduciary relationship between the parties.
- (b) No party may act as the agent of, assume any obligation or responsibility on behalf of the other party or in any way bind or pledge the credit of the other party.

12.2 Separate tax and accounting obligations

- (a) Each party is responsible for its own tax, accounting and record keeping obligations.
- (b) No party is responsible for the obligations of the other party under the tax laws of any relevant jurisdiction, unless otherwise specifically provided for in a Transaction Document.

13 General

13.1 Withholding

All payments to be made under this agreement must be paid free and clear of all deductions and withholdings except as required by law.

13.2 Notices

How notice is to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;

- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

- (i) if to PSP:

Address:	[REDACTED]
Email:	[REDACTED]
For the attention of:	[REDACTED]

- (ii) if to Driscoll's:

Address:	[REDACTED]
Email:	[REDACTED]
For the attention of:	[REDACTED]
With a copy to Driscoll's solicitors (which copy shall not constitute notice):	
Address:	[REDACTED]
Email:	[REDACTED]
For the attention of:	[REDACTED]

- (iii) if to BCI:

Address:	[REDACTED]
Email:	[REDACTED] with a copy to: [REDACTED]
For the attention of:	[REDACTED]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (d) must be delivered by hand or sent by email to the address, in accordance with clause 13.2(b).

When notice is taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement is taken to be received by the addressee:

- (e) (in the case of email),
- (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered;

(f) (if sent by post), 6 Business Days after posting (or 10 days after posting if sent from one country to another); and

(g) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

13.3 Governing law

This Agreement is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

13.4 Amendments

Any amendment or variation of this Agreement must be agreed in writing by all parties.

13.5 Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

13.6 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Agreement, including procuring that BidCo undertakes actions in accordance with this Agreement.

13.7 Specific performance

The parties acknowledge that damages will not be a sufficient remedy for breach of this Agreement. Specific performance or injunctive relief is available as a remedy for a breach or threatened breach of this Agreement by any party.

13.8 Counterparts

This agreement may be executed in a number of counterparts and signatures on behalf of a party may be on different counterparts.

Driscoll's Inc

**Signed for and on behalf of Driscoll's,
Inc.:**

A handwritten signature in blue ink, appearing to read "Tom O'Brien", written over a horizontal line.

Signature of Authorised Signatory

A handwritten name in blue ink, "Tom O'Brien", written over a horizontal line.

Name of Authorised Signatory

BCI

Signed by

Varese IRR LP, by its general partner
Varese IRR GP Inc.:



Signature of Authorised Signatory

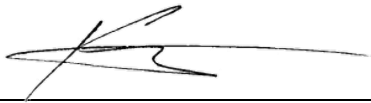
Jerry Divoky

Name of Authorised Signatory

PSP

Signed by

PSP Chilli Holdings GP, LLC (in its capacity as general partner of PSP Chilli Holdings, L.P), a limited partnership incorporated in Delaware, United States whose registered office is 1209 Orange Street, City of Wilmington, County of New Castle, 19801



Signature of Authorised Signatory

Kevin M. Schwartz

Name of Authorised Signatory