

TRADEMARK ASSIGNMENT COVER SHEET

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NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
RESUBMIT DOCUMENT ID:	900549906		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Lucky's Market Parent Company, LLC		01/29/2020	Limited Liability Company: DELAWARE
RECEIVING PARTY DATA			
Name:	LM Acquisition Co. LLC		
Street Address:	5414 Westridge Drive		
City:	Boulder		
State/Country:	COLORADO		
Postal Code:	80301		
Entity Type:	Limited Liability Company: DELAWARE		
PROPERTY NUMBERS Total: 6			
Property Type	Number	Word Mark	
Registration Number:	5653029	L	
Registration Number:	4735408	L	
Registration Number:	4735409	L	
Serial Number:	87762081	L	
Serial Number:	88669703	MAISON DE BEAUXTRISH	
Serial Number:	88346528	CHATEAU BEAUXTRISH	
CORRESPONDENCE DATA			
Fax Number:	2066826031		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
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THIRD AMENDED AND RESTATED

ASSET PURCHASE AGREEMENT

Between

LUCKY'S MARKET PARENT COMPANY, LLC AND AFFILIATED ENTITIES
collectively as Seller

and

LM ACQUISITION CO. LLC
as Buyer

TABLE OF CONTENTS

<u>Article</u>	<u>Section</u>	<u>Page</u>
ARTICLE I.	Definitions	2
Section 1.1	Definitions	2
ARTICLE II.	Purchase and Sale	12
Section 2.1	Assets to be Conveyed	12
Section 2.2	Assets Excluded	14
Section 2.3	Closing	15
Section 2.4	Assets Are Indivisible	15
ARTICLE III.	Purchase Price	15
Section 3.1	Consideration to be Paid by Buyer	15
Section 3.2	Deposit; Escrow	15
Section 3.3	Adjustments to Purchase Price	16
Section 3.4	Determination of Adjustment Amount	16
ARTICLE IV.	Assumption of Liabilities; Possession; Store Leases	16
Section 4.1	Liabilities Assumed by Buyer	16
Section 4.2	Liabilities Not Assumed by Buyer	16
Section 4.3	Possession and Risk of Loss	17
Section 4.4	Store Leases	17
ARTICLE V.	Payments/Delivery of Documents	17
Section 5.1	Payments	17
Section 5.2	Payment of Prorations	18
Section 5.3	Delivery of Documents	18
ARTICLE VI.	Consents, Licenses and Permits	19
Section 6.1	Consents	19
Section 6.2	Licenses and Permits	19
Section 6.3	Temporary Right to Use	20
ARTICLE VII.	Prorations	20
Section 7.1	Personal Property Taxes	20
Section 7.2	Real Property and Similar Taxes	20
Section 7.3	Payment of Prorated Taxes and Tax Responsibility	21
Section 7.4	Transfer Taxes	21
Section 7.5	Deposits; Prepaid Expenses	22
Section 7.6	Utilities	22
Section 7.7	Prorations Generally; Percentage Rents	22

ARTICLE VIII. Bulk Transfer Laws 22

ARTICLE IX. Representations and Warranties of the Parties 23

Section 9.1 Good Standing 23

Section 9.2 Authority 23

Section 9.3 Binding Obligation 23

Section 9.4 Knowledge 23

ARTICLE X. Representations and Warranties of Sellers 23

Section 10.1 Pending Litigation 24

Section 10.2 Title to Purchased Assets 24

Section 10.3 Taxes 24

Section 10.4 Employee Benefits 25

Section 10.5 Labor Relations 25

Section 10.6 Compliance with Laws; Permits 25

Section 10.7 Data Security 26

Section 10.8 Store Leases and Use of Store Properties 26

Section 10.9 Environmental Matters 27

Section 10.10 Intellectual Property 27

Section 10.11 Store Properties AS IS and WHERE IS 27

ARTICLE XI. Representations and Warranties of Buyer 28

Section 11.1 Pending Litigation 28

Section 11.2 Financing 28

ARTICLE XII. [INTENTIONALLY OMITTED]. 29

ARTICLE XIII. PRE-CLOSING COVENANTS 29

Section 13.1 Efforts; Cooperation 29

Section 13.2 Operation of Leased Stores before Closing 29

Section 13.3 Transition Services Agreement 31

Section 13.4 Existing Store Lease Guarantees 31

Section 13.5 Pre-Closing Access to Information 31

Section 13.6 Removal of Excluded Assets 32

ARTICLE XIV. Casualty 32

Section 14.1 Damage 32

Section 14.2 Condemnation 32

Section 14.3 Purchase Price Adjustment as a Result of Casualty 32

Section 14.4 Termination as a Result of Casualty 32

ARTICLE XV. Employees 32

Section 15.1 Employees and Employee Benefits 32

Section 15.2 No Third Party Beneficiary Rights 33

Section 15.3 Sellers’ Responsibilities 34

ARTICLE XVI. Confidentiality and Access 34

Section 16.1 Access 34

Section 16.2 Confidentiality 34

Section 16.3 Cooperation on Tax Matters 34

Section 16.4 Personally Identifiable Information 34

ARTICLE XVII. Conditions to Closing 35

Section 17.1 Conditions to Obligations of Each Party 35

Section 17.2 Conditions to Obligations of Buyer 35

Section 17.3 Conditions to Obligations of Sellers 37

Section 17.4 Purchase Price Adjustments and Escrows Related to Excluded Store Properties
..... 37

ARTICLE XVIII. Due Diligence of Assets 37

Section 18.1 Due Diligence Period; Condition of Store Properties; Environmental Matters.
..... 37

Section 18.2 Buyer’s Right to Terminate 40

Section 18.3 Landlord and Declaration Estoppels 40

ARTICLE XIX. Termination 42

Section 19.1 Termination Rights 42

Section 19.2 Effect of Termination 43

ARTICLE XX. Title Matters 44

Section 20.1 Title Commitment 44

Section 20.2 Title Objection 44

Section 20.3 Conveyance 45

Section 20.4 Cost of Title Policy 45

Section 20.5 Corrective Instruments 45

ARTICLE XXI. Bankruptcy Court Matters 46

Section 21.1 Section 363 Sale 46

Section 21.2 Approval of Expense Reimbursement 46

Section 21.3 Competing Bid 47

Section 21.4 Bankruptcy Court Milestones 47

Section 21.5 Cure Costs 48

Section 21.6 Bankruptcy Filings 48

Section 21.7 Sale Order 48

Section 21.8 Assumption and Assignment and Rejection of Assumed Contracts, Retained
Contracts, and Rejected Contracts; Cure Costs 49

ARTICLE XXII. Miscellaneous 51

Section 22.1 Notices 51

Section 22.2 Assignability and Parties in Interest 52

Section 22.3 Governing Law 52

Section 22.4 Counterparts 52

Section 22.5 Indemnification for Brokerage 52

Section 22.6 Publicity 53

Section 22.7 Complete Agreement 53

Section 22.8	Modifications, Amendments and Waivers	53
Section 22.9	Interpretation	53
Section 22.10	Joint and Several Obligations.....	55
Section 22.11	Transaction Expenses	55
Section 22.12	Time Is of the Essence.....	55
Section 22.13	Third Party Beneficiary Rights.....	55
Section 22.14	Further Assurance.....	55
Section 22.15	Submission to Jurisdiction; Service of Process	56
Section 22.16	Waiver of Jury Trial	56

EXHIBITS

<u>Exhibit A</u>	– Form of Bid Procedures Order
<u>Exhibit B</u>	– Form of Sale Order
<u>Exhibit C</u>	– Form of Lease Assignment and Assumption Agreements
<u>Exhibit D</u>	– [INTENTIONALLY OMITTED]
<u>Exhibit E</u>	– Form of Bill of Sale
<u>Exhibit F</u>	– Form of Assignment and Assumption Agreement for Assumed Contracts and Guarantees
<u>Exhibit G</u>	– Form of Assignment and Assumption Agreement for Permits (excluding Liquor Licenses)
<u>Exhibit H</u>	– Form of Liquor License Bill of Sale
<u>Exhibit I</u>	– Form of Estoppel Certificate
<u>Exhibit J</u>	– Form of Declaration Estoppel Certificate

THIRD AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

THIS THIRD AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (“**Agreement**”) is made and entered into as of the 8th day of April, 2020, by and between LUCKY’S MARKET PARENT COMPANY, LLC, a Delaware limited liability company (“**Lucky’s**”), the entities listed on **Schedule 1.1-1**, each of which is directly or indirectly owned by, or under common ownership with, Lucky’s (collectively with Lucky’s, the “**Sellers**” and, individually, a “**Seller**”) and **LM Acquisition Co. LLC**, a Delaware limited liability company (“**Buyer**”), and amends and restates in its entirety that certain Asset Purchase Agreement (the “**Original Agreement**”), dated as of January 29, 2020 (the “**Original Execution Date**”), as amended by that certain Amended and Restated Asset Purchase Agreement dated as of February 4, 2020 (the “**Amended and Restated Agreement**”), as further amended by that certain Second Amended and Restated Asset Purchase Agreement dated as of February 20, 2020 (the “**Second Amended and Restated Agreement**”).

RECITALS

WHEREAS, the Parties to the Second Amended and Restated Agreement desire to further amend and restate the Second Amended and Restated Agreement in its entirety on the terms and subject to the conditions set forth herein;

WHEREAS, Sellers each filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code on January 27, 2020 (the “**Petition Date**”), in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

WHEREAS, Sellers (i) lease from third parties and desire to assign to Buyer the Seller’s interest in the Store Leases (as defined below) with respect to the grocery stores identified on **Schedule 1.1-2** (each a “**Leased Store**” and collectively the “**Leased Stores**”, and, together with all Improvements (as defined below) thereon, the “**Store Properties**”) and (ii) own and desire to sell to Buyer the other Purchased Assets (as defined below), in each case on the terms and subject to the conditions set forth herein;

WHEREAS, Buyer desires to (i) assume the Store Lease for each of the Leased Stores and certain Contracts and (ii) purchase all of Sellers’ right, title and interest in and to the Purchased Assets, in each case on the terms and subject to the conditions set forth herein;

WHEREAS, Buyer has agreed to assume certain, specified liabilities of Sellers as more specifically provided herein; and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Sale Order to be entered in the Bankruptcy Case.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the Parties (as defined below) covenant and agree as follows:

**ARTICLE I.
DEFINITIONS**

Section 1.1 Definitions. For the purposes of this Agreement, in addition to capitalized terms defined elsewhere herein, the following terms shall have the following meanings:

Abandoned Property: as defined in **Section 4.3.**

Adjustment Amount: as defined in **Section 3.3.**

Affiliate: of any designated Person means each Person which, directly or indirectly, controls or is controlled by or is under common control with such designated Person and, without limiting the generality of the foregoing, shall include (a) any Person which beneficially owns or holds fifty percent (50%) or more of any class of voting securities of such designated Person or fifty percent (50%) or more of the equity interest in such designated Person, and (b) any Person of which such designated Person beneficially owns and holds fifty percent (50%) or more of any class of voting securities or in which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest. For the purposes of this definition, the terms "controls", "controlled by" and "under common control with", as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

Agreement: as defined in the **Recitals.**

Allocated Store Amount: as defined in **Section 17.4.**

Alternate Estoppel Certificate: as defined in **Section 18.3.A.**

Amended and Restated Agreement: as defined in the **Recitals.**

Assumed Contract: as defined in **Section 2.1.D.**

Assumed Liabilities: as defined in **Section 4.1.**

Assumption and Assignment Notice: as defined in **Section 21.8.A.3** below.

Auction: as defined in the Bid Procedures Order.

Bankruptcy Case: means the case under Chapter 11 of the Bankruptcy Code commenced by Sellers on the Petition Date and continuing immediately thereafter, in the Bankruptcy Court.

Bankruptcy Code: means Chapter 11 of Title 11, United States Code, 11 U.S.C. §§ 101-1532, as may be amended, modified or revised from time to time.

Bankruptcy Court: as defined in the **Recitals**.

Bid Deadline: as defined in **Section 21.4.D**.

Bid Procedures: means the Bid Protections and procedures in form and substance acceptable to Buyer, to be approved by the Bankruptcy Court that will govern the sale process, auction and sale approval related to the Sale.

Bid Procedures Order: means an order of the Bankruptcy Court, substantially in the form attached hereto as **Exhibit A** and in form and substance acceptable to Buyer that, among other things, (a) approves and authorizes the payment of the Expense Reimbursement on the terms and conditions set forth in **Section 21.2**, (b) grants superpriority administrative expense status to the Expense Reimbursement (senior to any other superpriority administrative expense claims except for administrative expense claims of any lender under a debtor in possession facility) pursuant to sections 363, 503(b) and 507(a)(2) of the Bankruptcy Code, (c) establishes a date for the Sale Hearing, and (d) approves the Bid Procedures, including: (i) the receipt by Sellers of a Qualified Bid by the Bid Deadline; (ii) the amount of the cash bid required for a Qualified Bid; (iii) the nature of the financial information that potential bidders must submit to consummate a Qualified Bid; (iv) the requirement that for there to be a Qualified Bid a duly authorized and fully executed purchase agreement must be included, with terms that are substantially the same as, not more burdensome in any material way than, and no more conditional than, the terms of Buyer's proposed transaction under the terms of this Agreement; (v) the nature of the information that potential bidders must submit to demonstrate their ability to provide adequate assurance of future performance with respect to potential Contracts and Leases that may be assumed and assigned; (vi) the minimum bid required to start the Auction; and (vii) the subsequent bid increments for the Auction, which in any event shall be no less than Two Hundred Thousand and No/100 Dollars (\$200,000).

Bid Protections: as defined in **Section 21.2.B**.

Bill of Sale: as defined in **Section 5.3.B**.

Bottom Collar Amount: means the Target Inventory Value minus 5% of the Target Inventory Value.

Business Day: means a day other than a Saturday, a Sunday or any other day on which commercial banks in the State of Colorado are authorized or required by Law or executive order to be closed.

Buyer: as defined in the Recitals.

Buyer's Permit: as defined in **Section 6.2**.

Cash: means, at any given time, the actual cash on hand at the Store Properties.

CERCLA: means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and any successor statute thereto, and all rules and regulations promulgated thereunder, in each case as in effect from time to time.

CERCLIS: means the Comprehensive Environmental Response, Compensation and Liability Information System, as provided for by 40 C.F.R. § 300.5, as amended, and any successor statute thereto, and all rules and regulations promulgated thereunder, in each case as in effect from time to time.

Closing: as defined in **Section 2.3**.

Closing Cash: means the amount of Cash held as of the Closing at each Store Property after giving effect to the Closing Date Cash Distribution. For the avoidance of doubt, the Closing Cash at each Store Property is listed on **Schedule 1.1-3**.

Closing Conditions: as defined in **Section 17.1**.

Closing Date: as defined in **Section 2.3**.

Closing Date Cash Distribution: means that distribution of Cash made by Automated Clearing House (ACH) transfer to Seller, after consultation with Buyer, no later than immediately prior to 11:59 PM Eastern Time on the Closing Date.

Closing Inventory Value: means the value of the Inventory in existence prior to Closing as determined in good faith by Sellers, based upon a physical inspection of the Inventory conducted by Sellers in the ordinary course using the same methodology that was used to determine the Target Inventory, at Sellers' expense, within seven (7) calendar days before the Closing Date or such time period as mutually agreed upon by the Parties.

COBRA: means Part 6 of Subtitle B of Title I of ERISA and Section 4980B(f) of the Code, and any similar state or applicable Law.

Code: means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, and all rules and regulations promulgated thereunder, in each case as in effect from time to time. References to sections of the Code shall be construed also to refer to any successor sections.

Competing Bid: as defined in **Section 21.2.A**.

Condemned Assets: as defined in **Section 14.2**.

Confidentiality Agreement: as defined in **Section 16.2**.

Contract: means any written agreement, contract, arrangement, commitment, promise, obligation, right, instrument, document, sales order, purchase order, or other similar understanding that is binding on any Person or any part of its property under applicable Law (including commitments to enter into any of such).

Contract Schedule: as defined in **Section 21.8.A.1**.

Customer Information: as defined in **Section 16.4.A**.

Cure Cost Cap: as defined in **Section 3.3.C.**

Cure Costs: means all cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assumed Contracts as finally determined by the Bankruptcy Court.

Cure Notice: as defined in **Section 21.8.A.2.**

Damage: as defined in **Section 14.1.**

Damaged Assets: as defined in **Section 14.1.B.**

Data Room: as defined in **Section 18.1.A.**

Data Security Policies: as defined in **Section 10.7.**

Declaration: as defined in **Section 18.3.B.**

Declaration Estoppel Letter: as defined in **Section 18.3.B.**

Due Diligence Period: as defined in **Section 18.1.B.**

Employee Benefits Plans: as defined in **Section 10.4.A.**

Encumbrance: as defined in the definition of “**Permitted Exceptions.**”

Enforceability Limitations: as defined in **Section 9.3.**

Environmental Laws: means all “Laws” and “Orders” (both as hereinafter defined) concerning pollution or protection of the environment, sanitation, public and worker health and safety, including Laws relating to wetlands, emissions, discharges, releases, or threatened releases of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes into ambient air, surface water, groundwater, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes including CERCLA, CERCLIS, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act, the Occupational Safety and Health Act, and similar federal, state, provincial, municipal or local Laws, in all cases as have been or may be amended from time to time.

Equipment: as defined in **Section 2.1.E.**

Escrow Agent: means a third party that is mutually agreed upon by Buyer and Sellers.

Escrow Agreement: means that certain Escrow Agreement by and among Sellers, Buyer, and the Escrow Agent, in the form to be used with each prospective bidder in the Bankruptcy Case.

Escrow Deposit: means Three Hundred Seventeen Thousand, One Hundred and No/100 Dollars (\$317,100).

Estoppel Certificate: as defined in **Section 18.3.A.**

Exceptions: as defined in **Section 20.1.**

Excluded Assets: as defined in **Section 2.2.**

Excluded Equipment: as defined in **Section 2.2.A.**

Excluded Intellectual Property: means all non-transferable Marks.

Excluded Liabilities: as defined in **Section 4.2.**

Expense Reimbursement: as defined in **Section 21.2.**

Final Order: means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the clerk of the Bankruptcy Court or such other court on the docket in Sellers' Bankruptcy Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending, or (b) if an appeal, writ of certiorari, motion for new trial, reargument or rehearing thereof has been sought, such order or judgment of the bankruptcy court or other court of competent jurisdiction shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the rules of the Bankruptcy Code, may be filed relating to such order, shall not cause such order not to be a Final Order.

Governmental Authority: means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

Guarantees: as defined in **Section 2.1.C.**

Hazardous Material: means (a) any lead-based paint, petroleum, hazardous or toxic petroleum-derived substances or petroleum products, flammable explosives, radioactive materials, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs); (b) any chemicals or other materials or substances which are regulated, classified or defined as or included in the definition of "hazardous substances," "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "pollutant" or "contaminant" or any similar

denomination intended to classify substances by reason of toxicity, carcinogenicity, ignitability, corrosivity or reactivity under any Environmental Law; and (c) any other waste, material (including building construction materials and debris) or substance that is regulated under any Environmental Law.

Improvements: as defined in **Section 2.1.A.**

Inspector: as defined in **Section 18.1.C.**

Intellectual Property: means any and all of the following arising pursuant to the Laws of any jurisdiction throughout the world: (a) trademarks, service marks, trade names, and similar indicia of source of origin, all registrations and applications for registration thereof, and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights and all registrations and applications for registration thereof; (c) trade secrets and know-how; (d) patents and patent applications; (e) internet domain name registrations; and (f) other intellectual property and related proprietary rights.

Inventory: as defined in **Section 2.1.G.**

Knowledge: as defined in **Section 9.4.**

Laws: means all laws, statutes, rules, regulations, ordinances, common law and other pronouncements (including guidance documents) having the effect of law of the United States or of any other Governmental Authority.

Lease Guaranty: as defined in **Section 13.4.**

Lease Renewal Options: means all renewal or extension options (or similar rights) of the lessee under any Store Lease.

Leased Store: as defined in the **Recitals.**

Liability: means all indebtedness, losses, claims (including "claims" as defined in section 101(5) of the Bankruptcy Code), damages, expenses, fines or other penalties, costs, royalties, causes of action, proceedings, deficiencies, duties, obligations, and other liabilities (including those arising out of any Litigation, such as any settlement or compromise thereof or judgment or award therein) of a Person (whether absolute, accrued, contingent, fixed, liquidated, or unliquidated, or otherwise, and whether known or unknown, and whether due or to become due, and whether in Contract, tort, strict liability, or otherwise, and whether or not resulting from third-party claims).

Lien: means any Liability, mortgage, charge, assessment, deed of trust, security interest, option, right of first refusal, right of first offer, servitude, pledge, hypothecation, easement, restrictive covenant, right of way, encroachment, security agreement, equitable interest, earn-out, deed of trust, hypothecation, priority, order of any Governmental Authority, reservation, restriction, levy, charge, encumbrance or lien (statutory or other) of any kind or nature whatsoever (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing lease having substantially the same economic

effect as any such agreement, and the filing of any statement under the Uniform Commercial Code or comparable Law of any jurisdiction), or any contract to grant any of the foregoing, in each case whether contingent, fixed or otherwise or whether relating to any property or right or income or profits therefrom; provided, however, that “Lien” shall not be deemed to include any license of Intellectual Property.

Liquor Licenses: means all liquor licenses related to sales of alcoholic beverages in the Store Properties (other than the alcoholic beverage licenses solely for sales of beer and wine in the grocery store components of the Store Properties).

Litigation: means any action, cause of action, arbitration, suit, claim, investigation, audit, demand, hearing, or proceeding, whether civil, criminal, administrative, investigative, or arbitral, whether at Law or in equity, and whether before any Governmental Authority.

Losses: means all Liabilities, claims, demands, damages, fines, penalties, Taxes, costs and expenses (including reasonable costs and attorneys’ fees, including reasonable costs and attorneys’ fees on any appeal or incurred to enforce its rights hereunder) (net in all cases of any benefits paid to an indemnified party by an insurance carrier in respect of any loss, Liability, obligation, damage, deficiency or expense).

Marks: as defined in **Section 2.1.H.**

Material Adverse Effect: means any effect, circumstance or change that has a material adverse effect or would reasonably be expected to have a material adverse effect on the condition of the Purchased Assets or the Store Properties, taken as a whole, other than any effects, circumstances or changes to the extent arising from or related to: (a) general business or economic conditions in any of the geographical areas in which the Stores operate; (b) any condition or occurrence affecting retail stores generally; (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (d) financial, banking or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any strike, labor dispute, civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or accounting rules (including GAAP); (g) the taking of any action required or permitted by this Agreement or taken (or omitted to be taken) with the consent of the other Party (other than any action taken pursuant to **Section 13.2**); (h) any effects or changes as a result of the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with Seller; (i) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code; (j) the closing of any stores not acquired by Buyer; (k) any effects or changes arising from or related to the breach of the Agreement by Buyer; (l) the failure of Seller to obtain any consent, permit, authorization, waiver or approval required in connection with the transactions contemplated hereby; (m) any items set forth in the disclosure schedules; or (n) any effect resulting from the filing or pendency of the Bankruptcy Case.

Omitted Contract Motion: as defined in **Section 21.8.B.**

Order: means any writ, judgment, decree, injunction or similar order, directive or other requirement of any Governmental Authority (in each such case whether preliminary or final).

Ordinary Course of Business: means the ordinary and usual course of normal day-to-day operations of the Leased Stores through the date hereof consistent with past practice from the date of the filing of the Bankruptcy Case, but subject, however, to changes arising or resulting from the filing or pendency of the Bankruptcy Case.

Original Agreement: as defined in the **Recitals.**

Original Execution Date: as defined in the **Recitals.**

Outside Date: as defined in **Section 19.1.D.**

Pad Lease: as defined in **Section 20.3.**

Party: means and refers (i) collectively to Sellers (jointly and severally), or (ii) to Buyer, as applicable in the particular context; and “Parties” collectively means and refers to Sellers and Buyer.

Permits: as defined in **Section 2.1.E.**

Permitted Exceptions: means (a) any Lien for “Taxes” (as hereinafter defined) or assessments not yet due or payable or being contested in good faith by appropriate proceedings (including any interest, penalties or additions to any such Taxes or assessments) and the amount of which is fully bonded by a reputable surety company licensed to do business in the state where the pertinent Store Property is located; (b) any statutory Lien arising in the Ordinary Course of Business by operation of Law with respect to a Liability that is not yet due or delinquent; (c) utility easements for electricity, gas, water, sanitary sewer, surface water drainage or other general easements granted to Governmental Authorities in the ordinary course of developing or operating a retail store or development and that (1) do not materially and adversely affect the Seller’s current use of Store Property as a retail supermarket, or (2) would not, if the holder of the easement exercised a right granted under the easement to compel the removal of any Improvements encumbered thereby, materially and adversely affect the Seller’s current use of applicable Store Property as a retail supermarket; (d) reciprocal easement agreements entered into in the ordinary course of developing or operating a retail store or development and which do not materially and adversely affect Seller’s current use of the applicable Store Property as a retail supermarket; (e) encumbrances consisting of zoning restrictions, easements and other restrictions on the use of the Store Properties and which do not materially and adversely affect Seller’s current use of the applicable Store Property as a retail supermarket; (f) any utility company rights, easements or franchises for electricity, water, steam, gas, telephone or other service or the right to use and maintain poles, lines, wires, cables, pipes, boxes and other fixtures and facilities in, over, under and upon the Store Properties and which (1) do not materially and adversely affect Seller’s current use of the applicable Store Property as a retail supermarket, or (2) would not, if the holder of the easement exercised a right granted under the easement to compel the

removal of any Improvements encumbered thereby, materially and adversely affect Seller's current use of the applicable Store Property as a retail supermarket; (g) minor defects, imperfections or irregularities in title easements, covenants and rights of way of record and other similar restrictions, in each case that do not materially and adversely affect Seller's current use of the applicable Store Property as a retail supermarket; and (h) ground leases, mortgages, or deeds of trust (an "**Encumbrance**") to which the underlying fee estate in such real property is subject provided (1) the holder of such Encumbrance would not be entitled to foreclose upon or otherwise terminate such leasehold estate or possessory interest in the event of a foreclosure upon, or a termination of a ground lease relating to, the underlying fee estate, or (2) an effective non-disturbance agreement exists.

Person: means any natural person, corporation, general partnership, limited partnership, proprietorship, limited liability company, joint venture, other business organization, trust, union, association or Governmental Authority.

Personal Property Taxes: as defined in **Section 7.1**.

Petition Date: as defined in the **Recitals**.

Prepaid Expenses: all security, vendor, utility and other deposits, prepaid rent and prepaid expenses related to the Store Properties that are listed on **Schedule 7.5**.

Previously Omitted Contract: as defined in **Section 21.8.B**.

Purchase Price: as defined in **Section 3.1**.

Purchased Assets: as defined in **Section 2.1**.

Qualified Bid: has the meaning set forth in the Bid Procedures Order.

REA: means any reciprocal easement agreement, operating agreement, declaration of covenants and restrictions, or other document of similar purpose or effect to which a Store Property is subject.

Real Property Documents: means deeds, leases, subleases, options, Contracts, extension letters, easements, reciprocal easements, assignments, termination agreements, subordination agreements, non-disturbance agreements, estoppel certificates, amendments or supplements to any of the foregoing, and recorded memoranda of any of the foregoing, all with respect to Store Properties within the Seller's possession or control.

Real Property Taxes: as defined in **Section 7.2.A**.

Rejected Contract: as defined in **Section 21.8.A.3**.

Rejection Notice: as defined in **Section 21.8.A.3**.

Release: means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment,

including the movement of Hazardous Material through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

Remediation Notice: as defined in **Section 18.2**.

Reserve Account: as defined in **Section 21.8.A.5**.

Retained Contract: as defined in **Section 21.8.A.3**.

Retained Contracts Period: as defined in **Section 21.8.A.5**.

Sale: as defined in **Section 21.1**.

Sale Hearing: means a hearing before the Bankruptcy Court to approve this Agreement, the Bid Procedures Order and the Sale Order.

Sale Order: means an order of the Bankruptcy Court, substantially in the form attached hereto as **Exhibit B** and in form and substance acceptable to Buyer that, among other things: (a) approves (i) this Agreement and the execution, delivery, and performance by Sellers of this Agreement and the other instruments and agreements contemplated hereby, (ii) the sale of the Purchased Assets to Buyer free and clear of all Liens (other than Assumed Liabilities), (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein, and (iv) the assumption and assignment to Buyer of the Assumed Contracts on the terms set forth herein; (b) determining that Buyer is a good faith purchaser and has provided adequate assurance of future performance with respect to the Assumed Contracts; and (c) providing that the Closing will occur in accordance with the terms and conditions hereof.

Second Amended and Restated Agreement: as defined in the **Recitals**.

Seller Intellectual Property: as defined in **Section 10.10**.

Seller(s): as defined in the **Recitals**.

Store Employees: as defined in **Section 15.1**.

Store Lease: each of the third-party leases (including, as applicable, subleases), licenses, concessions, options, contracts, extension letters, easements, reciprocal easements, assignments, termination agreements, subordination agreements, nondisturbance agreements, estoppel certificates, and other agreements (written or oral), and any amendments or supplements to the foregoing, and recorded memoranda of any of the foregoing, pursuant to which Seller holds any leasehold or subleasehold estates, and other rights in respect of any property in favor of the applicable Seller as lessee, relating to the Leased Stores.

Store Properties: as defined in the **Recitals**.

Store Systems: as defined in **Section 18.1.B**.

Store Systems Remediation: as defined in **Section 18.2**

Successful Bidder: as defined in the Bid Procedures.

Superpriority Claim: as defined in **Section 21.2.B**.

Target Inventory Value: means a sum equal to One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000) held in the aggregate among the Store Properties.

Tax(es): means any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, employer health, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, goods and services, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not, imposed by any federal, state, local, municipal or foreign governmental authority with the power to tax, or payable pursuant to any tax sharing, allocation or underwriting agreement.

Tax Return: any return, declaration, information report, claim for refund or filing with respect to Taxes, including any schedules, supplements or attachments thereto and including any amendment thereof.

Termination Notice: as defined in **Section 18.2**

Title Commitment: as defined in **Section 20.1**.

Title Company: means First American Title Insurance Company.

Title Defects: means all Liens and all other defects or exceptions to title including leases, subleases, easements, radius restrictions, covenants to operate and other restrictions encumbering a Store Property, in each case other than Permitted Exceptions.

Top Collar Amount: means the Target Inventory Value plus 5% of the Target Inventory Value.

Transfer Taxes: as defined in **Section 7.4**.

Transferred Employees: as defined in **Section 15.1**.

Work: as defined in **Section 18.1.C**.

ARTICLE II. PURCHASE AND SALE

Section 2.1 Assets to be Conveyed. On the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Sellers shall convey, transfer, assign, sell and deliver to Buyer and Buyer shall acquire, accept and purchase, free and clear of all Liens (other than any Permitted Exceptions), all of the right, title and interest of Sellers in and to the following assets comprising or relating to the Store Properties, whether tangible or intangible and

whether or not shown on the books and records of Sellers as the same may exist on the Closing Date, but excluding the Excluded Assets (collectively, the “**Purchased Assets**”):

A. The Store Leases, together with (to the extent of Sellers’ interest therein) buildings, fixtures and improvements (collectively, the “**Improvements**”) located on or attached to such real property, and all rights arising out of the Store Leases, subject only to the Permitted Exceptions and Assumed Liabilities.

B. All Closing Cash.

C. To the extent they are assignable, any and all guarantees and warranties (collectively, the “**Guarantees**”) to the extent they relate to the ownership or operation of the Equipment).

D. To the extent they are assignable, any and all Contracts and agreements, including Equipment leases, landscape Contracts, maintenance Contracts and security Contracts (whether oral or written) relating exclusively to a Store Property or the operation of the business at a Store Property and listed on **Schedule 2.1(C)** (collectively, the “**Assumed Contracts**”).

E. All furnishings, trade fixtures, machinery and equipment owned by Sellers, without warranty and in as-is condition, located on and used in connection with the operation of the Store Properties, other than any Excluded Equipment to be retained by Sellers (collectively, the “**Equipment**”).

F. Subject to **Article 6**, to the extent assignable or transferable by law and with nominal cost or expense to Sellers, all of Sellers’ interest, without warranty, in all transferable licenses, permits and approvals to the extent they relate solely to a Store Property or the operation of the businesses at the Store Property, including all Liquor Licenses (collectively, the “**Permits**”).

G. All merchandise inventory (including private label inventory), supplies (including private label supplies), containers, labels, packaging material, maintenance supplies, food and other similar items, whether in broken or unbroken units, which are located in the Store Properties on the Closing Date (collectively, the “**Inventory**”).

H. To the extent transferable, those certain trademarks, trade names, and similar intangibles listed on **Schedule 2.1(H)** (the “**Marks**”) including any right to use, or interest in, any of the names or tradenames of Sellers used in connection with the operation of the Store Properties; provided that the Marks shall not include the Excluded Intellectual Property.

I. To the extent the Marks are transferred, any signs or personal property which contain the name (or trade derivative thereof) or logo of Sellers or their Affiliates that are located at or used for the Store Properties, including all uniforms supplied to Sellers’ employees.

J. To the extent transferable, any software used in any computer equipment that is located at the Store Properties included in the Purchased Assets.

K. Except as otherwise provided in this Agreement, all books, records, and goodwill primarily associated with the Store Properties.

L. All customer and end-user data and information related to the Store Properties, including that derived from branded loyalty promotion programs and other similar information related to customer purchases at the Store Properties, in each case, to the extent permitted to be assigned, used, or provided by Seller under applicable Laws.

M. To the extent assignable or transferable by law and with nominal cost or expense to Sellers, all other assets owned by Sellers located at the Store Properties and that are used primarily in connection with the operation of the businesses at the Store Properties (other than the Excluded Assets).

Section 2.2 Assets Excluded. Assets not described above as included, and, notwithstanding anything to the contrary contained in this Agreement, the property and assets described below are expressly excluded from the transaction contemplated by this Agreement and do not comprise the Assets being transferred hereunder (collectively, the “**Excluded Assets**”):

A. Any Equipment owned by third parties who are not an Affiliate of Sellers or that is being leased to Sellers (the “**Excluded Equipment**”). The Excluded Equipment shall be removed from the Store Properties by Sellers prior to Closing unless otherwise agreed in writing by the Parties.

B. Currency and cash equivalents located in or at the Store Properties (other than Closing Cash).

C. Undeposited or uncollected checks and food stamps.

D. Accounts receivable relating to the Store Properties or the operation of the businesses at the Store Properties that are allocable to any period before the Closing Date and are owed to Sellers (or their Affiliates) on the Closing Date, including, rent payments, tenant reimbursements, refunds of insurance premiums, and security deposits with utilities accruing to, or held for, the benefit of Sellers.

E. Claims, rebates, refunds and other general intangibles arising from the operation of the Store Properties prior to Closing.

F. The Excluded Intellectual Property.

G. All property that upon installation or expiration of the relevant Store Lease or other lease becomes the property of the landlord or lessor thereunder (subject, however, to any rights to such property that may be retained by any Seller, which rights shall be a part of the Purchased Assets).

- H. All refunds and credits of Taxes and other Tax attributes of Sellers.
- I. All customer data and information not related to the Store Properties.
- J. Except as otherwise provided in this Agreement, all casualty insurance, title insurance, liability insurance and other insurance policies of Sellers and claims thereunder.
- K. All records relating to claims, obligations or Liabilities against Sellers or any of their Affiliates which do not constitute Assumed Liabilities.
- L. Except as otherwise provided in this Agreement, all rights and interests in Employee Benefits Plans.
- M. All Contracts, Guarantees, or Permits that (i) are not transferable to Buyer, or (ii) do not exclusively apply to a Store Property.
- N. All prepaid expenses of a Store Property, if any.

Section 2.3 Closing. The closing of the transactions herein contemplated shall, unless another date, time or place is agreed to in writing by the Parties, take place at the Denver offices of Polsinelli PC on that date that is as soon as practicable after the Sale Order becomes the Final Order and the Conditions to Closing set forth in **ARTICLE XVII** are satisfied or such other date as is mutually acceptable to both parties (the “**Closing**” or “**Closing Date**”).

Section 2.4 Assets Are Indivisible. Except as otherwise set forth in **Article 14**, the rights to purchase the Purchased Assets are indivisible. The Purchased Assets may not be individually purchased without all of the others, unless expressly permitted or required pursuant to the provisions of this Agreement.

ARTICLE III. PURCHASE PRICE

Section 3.1 Consideration to be Paid by Buyer. The purchase price payable hereunder for the Purchased Assets shall be One Million Ten Thousand and No/100 Dollars (\$1,010,000) (the “**Purchase Price**”), subject to adjustments for prorations as provided in **Article 7** and the Adjustment Amount determined in accordance with **Section 3.4** hereof, which shall be paid by Buyer to Sellers in accordance with **Section 5.1**.

Section 3.2 Deposit: Escrow. No later than two (2) Business Days after the Bankruptcy Court enters the Bid Procedures Order and pursuant to the terms of the Escrow Agreement, Buyer shall deposit with the Escrow Agent the Escrow Deposit to be released by the Escrow Agent and delivered to either Buyer or Seller in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrow Deposit (together with all accrued investment income thereon, if any) shall be distributed as follows:

- A. the Escrow Deposit shall be held by the Escrow Agent and applied towards the Purchase Price payable by Buyer to Sellers under **Section 3.1** at the Closing;

B. if this Agreement is terminated under **Section 19.1.C**, the Escrow Deposit shall be remitted to Seller; and

C. if this Agreement is terminated for any reason except under **Section 19.1.C**, the Escrow Deposit shall be returned to Buyer.

Sellers acknowledge and agree that, except in the case of fraud or willful misconduct, payment and delivery of the Escrow Deposit under **Section 3.2.B** will constitute liquidated damages and be the sole and exclusive remedy of Sellers and their representatives and Affiliates, whether at Law or in equity, and such payment will be deemed to have fully released and discharged Buyer and its representatives and Affiliates from any Liability to Sellers and their representatives and Affiliates.

Section 3.3 Adjustments to Purchase Price. The Purchase Price shall be adjusted by an amount equal to the sum of the following items (the "**Adjustment Amount**"):

A. the amount by which the Closing Inventory Value exceeds the Top Collar Amount on a dollar for dollar basis, if any;

B. minus the amount by which the Bottom Collar Amount exceeds the Closing Inventory Amount on a dollar for dollar basis, if any; and

C. minus the amount of Cure Costs in excess of Fifty Thousand and No/100 Dollars (\$50,000) in connection with Buyer's assumption and assignment of the Assumed Contracts from Sellers (the "**Cure Cost Cap**"), if any.

Section 3.4 Determination of Adjustment Amount. Immediately prior to the Closing Date, the Parties shall use their reasonable best efforts and act in good faith to agree upon the calculations of the amount of Cure Costs.

ARTICLE IV.

ASSUMPTION OF LIABILITIES; POSSESSION; STORE LEASES

Section 4.1 Liabilities Assumed by Buyer. Subject to the terms and conditions set forth in this Agreement, effective as of the Closing, Buyer shall assume, pay and discharge only the following obligations of Sellers related to the Purchased Assets ("**Assumed Liabilities**"):

A. All Liabilities (i) relating to or arising in connection with the use, non-use, ownership (whether by leasehold or fee) of the Purchased Assets or the operation of the Store Properties from and after the Closing Date, (ii) under the Assumed Contracts (excluding Cure Costs except as set forth in this Agreement), in each case to the extent arising and relating solely to the period from and after the Closing Date, and (iii) related to Transferred Employees that are assumed pursuant to **Section 15.1** of this Agreement.

Section 4.2 Liabilities Not Assumed by Buyer. Except for the Assumed Liabilities, Buyer shall not assume and shall have no liability for, any Liabilities or obligations of Sellers or any of Sellers' Affiliates of any kind, character or description whatsoever ("**Excluded**

Liabilities”), all of which shall continue to be Liabilities and obligations of Sellers or such Affiliate, as appropriate.

Section 4.3 Possession and Risk of Loss. Buyer shall take possession of the Store Properties together with the other Purchased Assets being transferred hereunder on the Closing Date or pursuant to the terms of the Store Leases and shall assume all risk of loss by fire or other casualty and all risks relating to the operation of the business with respect thereto occurring upon the Closing Date. The keys to the Store Properties shall be delivered to the designated Buyer’s representative at the time of the Closing, and Buyer shall immediately make its own arrangements to have the locks changed. Notwithstanding anything to the contrary contained in this Agreement, except for any Excluded Equipment which is permitted to remain in the Store Properties after Closing pursuant to **Section 2.2.A**, if any Equipment, Inventory or other personal property is located on or in any of the Store Properties after the Closing (including any shopping carts), then (i) all such personal property (collectively, “**Abandoned Property**”) shall for all purposes be deemed to constitute a part of the Purchased Assets, (ii) Buyer shall have the absolute right to dispose of the Abandoned Property in such manner as Buyer sees fit, in the exercise of its sole discretion, and (iii) Buyer shall neither have nor incur any Liability to Sellers, or to any Person claiming by, through or under Sellers, with respect to or in connection with the Abandoned Property or Buyer’s disposition thereof. If Buyer disposes of all or a portion of any Abandoned Property, Buyer will do so at its sole cost and expense.

Section 4.4 Store Leases. Buyer will (and will cause its assignees and successors to) fully and promptly perform all of the obligations of Sellers assumed by Buyer pursuant to this Agreement accruing and attributable to the period from and after the consummation of the Closing on the Closing Date, including the obligations of Sellers under the Store Leases and of Sellers, as landlords or sublandlords, as the case may be, under any leases or subleases set forth on **Schedule 4.4** of all or any portion of the Store Properties. Sellers represent and warrant to Buyer that (i) **Schedule 4.4** contains a complete and accurate list of all Lease Renewal Options that any Seller will become entitled to exercise between the date of this Agreement and the Closing and (ii) Sellers have heretofore provided or made available to Buyer true and complete copies (in all material respects) of all Store Leases (including any and all material amendments or modifications thereto) that have been executed by any Seller as of the date of this Agreement.

ARTICLE V.
PAYMENTS/DELIVERY OF DOCUMENTS

Section 5.1 Payments. At the Closing, Buyer shall pay or cause to be paid:

A. to Sellers, via wire transfer of immediately available funds to an account designated in writing by Sellers, the Purchase Price (as adjusted in accordance with this Agreement) less the Escrow Deposit; and

B. all other amounts required by this Agreement to be paid by Buyer to Sellers at the Closing, via wire transfer of immediately available funds to an account designated in writing by Sellers.

For the avoidance of doubt, at the Closing, Buyer and Sellers shall direct the Escrow Agent to release the Escrow Deposit to Sellers in accordance with **Section 3.2.A**.

Section 5.2 Payment of Prorations. Subject to **Article 7**, at the same time and manner as the payments are made as provided in **Section 5.1**, the Parties shall calculate all prorations of all matters to be prorated hereunder and the net difference shall be paid to the applicable Party at the Closing. All prorations shall be final at the Closing (i.e., no future adjustments shall be made with respect to Real Estate Taxes when the actual tax bills are available or operating expenses once an annual reconciliation is provided).

Section 5.3 Delivery of Documents. At least three (3) days prior to Closing, as a condition to Closing, Buyer and Sellers (as applicable) shall deliver to Escrow Agent all documents necessary to transfer to Buyer all of each Sellers' right, title and interest in and to the Purchased Assets being purchased hereunder or required by this Agreement to be delivered on such date, duly executed by an authorized officer of such Sellers, including the following:

A. Lease Assignment and Assumption Agreements substantially in the form attached hereto as **Exhibit C** assigning to Buyer all of Sellers' right, title and interest in the Store Leases, together with (i) an Estoppel Certificate (as applicable in accordance with **Section 18.2**) with respect to each Store Lease, and (ii) originals or, if Sellers cannot secure originals, copies of completed W-9 forms for the lessor(s) under each Store Lease.

B. [INTENTIONALLY OMITTED]

C. Bill of Sale substantially in the form attached hereto as **Exhibit E** conveying title to the Equipment to Buyer ("**Bill of Sale**").

D. Assignment and Assumption Agreements substantially in the form attached hereto as **Exhibit F** assigning to Buyer all of Sellers' right, title and interest in the Assumed Contracts and the Guarantees.

E. Assignment and Assumption Agreements substantially in the form attached hereto as **Exhibit G** assigning to Buyer all of Sellers' right, title and interest in the Permits (excluding Liquor Licenses) that are transferable.

F. With respect to any transferred Liquor License for a Store Property:

1. Bill of Sale in the form attached hereto as **Exhibit H** assigning to Buyer all of Seller's right, title and interest in such Liquor License (including with any and all rights of renewal or extensions thereof);

2. Two (2) completed original, properly executed and notarized transfer applications for each jurisdiction in which the Liquor License is held (executed by an officer, manager or other statutorily authorized signatory of Seller whose name is listed as such with the respective Secretary of State Division of Corporations);

3. Any such original documents required by each jurisdiction in which the Liquor License is held; and

4. Any such instruments of assignment as are customarily used for such purpose in the jurisdiction in which the Store Properties are located.

G. All other instruments, opinions and certificates required by this Agreement and all other deliveries reasonably required by Buyer or its counsel or Sellers or their counsel, in form and substance reasonably acceptable to Buyer and Sellers, and customarily executed in the jurisdiction in which a Store Property is located by Sellers or Buyer to effect the conveyance of property similar to any of the Purchased Assets, with the effect that, after the Closing Date, Buyer will have succeeded to all of the rights, title, and interest of Sellers in or related to the Purchased Assets purported to be sold and/or conveyed on the Closing Date and, after the Closing Date, Sellers will no longer have any rights, title or interest in and to any of such Purchased Assets.

All documents to be delivered at or with respect to the Closing shall be effective as of the date specified therein (which shall be the Closing Date, unless otherwise agreed by Sellers and Buyer).

To the extent in Sellers' possession or control, any other Real Property Documents not previously delivered to Buyer shall be delivered by Sellers at Closing.

ARTICLE VI. CONSENTS, LICENSES AND PERMITS

Section 6.1 Consents. Subject to this **Article 6**, Sellers shall obtain all consents of third parties as may be required in connection with the transactions contemplated hereby. Sellers shall, at the request of Buyer, provide Buyer with the name, address and telephone number of, and shall provide an introduction to, a contact person of each such third party, the consent of which is required in connection with such transaction.

Section 6.2 Licenses and Permits. To the extent a specific Permit is not transferable to Buyer, Sellers hereby agree to use their commercially reasonable efforts to assist Buyer in obtaining all permits, licenses and approvals ("**Buyer's Permits**") required for operation (including maintenance and repairs) of each of the Store Properties as a retail supermarket (provided that Buyer shall be responsible for any third-party, out-of-pocket costs and expenses reasonably incurred by Sellers other than Sellers' legal fees). All Liquor Licenses shall be transferred to Buyer in accordance with **Section 5.3.E**, provided that Buyer shall be solely responsible for any transfer fees associated therewith. All Permits held for use in relation to the Store Properties and owned by Sellers (unless Buyer shall notify Sellers in writing that it does not require an assignment of one or more of such Permits) shall, provided Buyer has made application in Buyer's name and in substantial compliance with all applicable rules and regulations therefor (if such application is required by applicable Laws), be transferred to Buyer at Closing, provided that such transfer can be made with nominal cost or expense to Sellers and to the extent (but only to the extent) (i) such Permits are transferable in accordance with Law, and (ii) such Permits relate exclusively to the Store Properties. With respect to the Liquor

Licenses and any other Permit conveyed hereunder, the Parties shall comply with all applicable Laws, including the creation of any necessary escrow and the disbursement or release of any funds held in such escrow. The Closing of this transaction is not conditioned on Buyer obtaining any liquor license from applicable Governmental Authorities (provided, however, this sentence shall not obviate any of Sellers' obligations under **Section 5.3.E** or this **Section 6.2** with respect to the transfer and assignment of a Liquor License).

Section 6.3 Temporary Right to Use. Anything in this Agreement to the contrary notwithstanding, if a Liquor License or other Buyer Permit required for the operation of a particular Store Property is not issued to Buyer prior to Closing, Sellers shall, if legally permissible, grant Buyer the right to use Seller's Liquor License or Permit required for the operation of such Store Property until the earlier of (1) the date of issuance to Buyer of its own liquor license or Buyer's Permit (as applicable) for such Store Property, and (2) the ninetieth (90th) day following the Closing. Buyer shall also indemnify, defend and hold harmless Sellers from and against all Losses and Liabilities sustained or incurred by Sellers resulting from any such temporary use by Buyer of Sellers' Liquor License(s) or Permits during the term of such use.

ARTICLE VII. PRORATIONS

Section 7.1 Personal Property Taxes. Subject to **Section 7.4**, personal property taxes associated with the Purchased Assets ("**Personal Property Taxes**") that are imposed on a periodic basis and are payable for a tax period that includes (but does not end on) the Closing Date shall be prorated as of the Closing Date, and Sellers shall bear the proportion of, and shall have the sole responsibility for, such taxes equal to a fraction, the numerator of which is equal to the number of days which shall have elapsed from the beginning of the applicable tax period to the date immediately prior to the Closing Date and the denominator of which is the number of days in the entire applicable tax period and Buyer shall be responsible for the remainder.

Section 7.2 Real Property and Similar Taxes.

A. The real property taxes and assessments including commercial rent taxes, ad valorem, sewer rents, business improvement district, license, intangibles and other similar Taxes ("**Real Property Taxes**") required to be paid by Sellers pursuant to the Store Leases shall be prorated as of the Closing Date between Buyer and Sellers as follows: Sellers shall bear the proportion of, and shall have the sole responsibility for, Real Property Taxes equal to a fraction, the numerator of which is equal to the number of days which shall have elapsed from the beginning of the applicable tax period to the date immediately prior to the Closing Date and the denominator of which is the number of days in the entire applicable tax period and Buyer shall be responsible for the remainder. Taxes relating to utilities shall be apportioned in accordance with the apportionment of the relevant utility charge or fee contained in **Section 7.4**.

B. Subject to the proration provisions of **Section 7.3**, to the extent that any Real Property Taxes are being contested in good faith by appropriate proceedings, such contested amounts shall not be deemed a Title Defect to the extent Sellers deposit the full

amount of such contested taxes (including a sum sufficient to cover all interest, penalties or additions thereto) into escrow with Escrow Agent at or prior to the Closing pursuant to the Escrow Agreement in form and substance satisfactory to Buyer, Sellers and Title Company (and Sellers hereby covenant and agree to establish such an escrow, at the Closing, for any unpaid Real Property Taxes that are being contested at the time of the Closing). The Escrow Agent shall hold such amount until final resolution of the applicable proceedings. To the extent any Real Property Taxes or other amounts are determined to be due and owing as a result of such proceedings, Escrow Agent shall disburse payment in full, from the escrow account, and any remaining amounts shall be refunded to Sellers.

Section 7.3 Payment of Prorated Taxes and Tax Responsibility.

A. The amount of Buyer's and Sellers' respective liability for Personal Property Taxes and Real Property Taxes pursuant to **Section 7.1** and **Section 7.2** shall be considered a Purchase Price adjustment at the Closing. If the tax statement or appropriate information for the applicable tax year is not in the possession of the Parties on the Closing Date, the Tax proration payment shall be estimated (on the basis of the Taxes for the most recent prior year for which final tax bills are available) and paid at Closing based upon such estimate.

B. It is acknowledged that, except as otherwise provided to the contrary in this Agreement, each Party shall pay its own capital (including capital gains), net worth, user, franchise and income and gains taxes and the same shall not be the subject of apportionment hereunder.

C. From and after the Closing Date, Buyer agrees to take all actions reasonably necessary to notify all applicable federal, state and local Governmental Authorities of the change of ownership and address to which all such tax statements and related information should be mailed to insure Buyer's receipt thereof.

Section 7.4 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other such federal, state and local taxes and fees (including any penalties, interest, additions to tax and costs and expenses relating to such taxes, but excluding any transfer gains taxes), whether for real or personal property, incurred in connection with the consummation and performance of the transactions contemplated hereby (collectively, the "**Transfer Taxes**") shall be borne by Buyer, and Buyer shall timely prepare and cause to be filed all tax returns and other filings with respect thereto. Buyer and Sellers will cooperate with each other in the preparation of any tax returns or other filings required in connection with the Transfer Taxes. If, and to the extent, however, that Sellers are required by Law to collect any Transfer Taxes, Buyer shall pay to Sellers at Closing or, if request for payment is made after the Closing, within five (5) Business Days of Sellers' request therefor, an amount equal to such Transfer Taxes and Sellers shall remit all such amounts to the appropriate Governmental Authority. Notwithstanding the forgoing provisions of this **Section 7.4**, the Parties (i) acknowledge that as required by respective state Laws, documentary stamp taxes will be payable at the time of the recordation of the deeds and assignments described in **Sections 5.3.A** and **5.3.B** and (ii) agree that, at the Closing, Buyer and

Sellers will make available to the Title Company their respective portions of such Transfer Taxes for payment by the Title Company to the appropriate Governmental Authorities.

Section 7.5 Deposits; Prepaid Expenses. Buyer shall reimburse Sellers at the Closing for the amounts set forth on **Schedule 7.5** which are the full amounts of all Prepaid Expenses (including applicable deposits) made by Sellers (except any such amounts recouped or retained by Sellers pursuant to **Section 2.2**) including all deposits less Cure Costs held by any utility company, landlord, Governmental Authority or any other person in connection with the Store Leases, the Assumed Contracts, the Permits, the Guarantees or the Store Properties, and Sellers shall assign such deposits (and the benefit of all other Prepaid Expenses) to Buyer. If deposits are in the form of a bond issued by Sellers surety, Buyer will replace the bond or make the applicable deposit to the appropriate deposit holder prior to or within five (5) days after the Closing, at which time Sellers have the right to cancel the bond.

Section 7.6 Utilities. Sellers shall use commercially reasonable efforts to obtain final meter readings for utilities at the Store Properties as of the Closing Date and shall pay for all utilities through the date immediately prior to the Closing Date. If it shall not be practicable to obtain the meter reading for any utility as of that date or there are utilities that are not metered, then the cost of such utilities shall be prorated between the Parties by estimating such cost on the basis of the most recent bills for such services.

Section 7.7 Prorations Generally; Percentage Rents.

A. Any and all lease payments for Leased Stores or receipts, rentals, costs, charges, fees or expenses connected with the use or operation of any Store Property, including all common area costs and costs under the Assumed Contracts, the Permits, the Guarantees, or revenues from Purchased Assets such as subtenant rents, copy machines, vending machines, pay phones and the like, shall be prorated between the Parties on the Closing Date, and Sellers shall bear their proportion thereof through the day prior to the Closing Date using the best available information at the time of the proration. Sellers shall be responsible for any penalties and interest payable for rent or other items under each Store Lease where the same are due as a result of an underpayment or late payment by Sellers prior to the Closing Date and Buyer shall be responsible for such amounts in respect of periods on or following the Closing Date.

B. For purposes of calculating prorations, Sellers shall be responsible for amounts allocable to the period up to but not including the Closing Date. All such prorations shall be made on the basis of the actual number of days of the year and month which shall have elapsed as of the Closing.

The provisions of this **Article 7** shall survive the Closing.

**ARTICLE VIII.
BULK TRANSFER LAWS**

Sellers and Buyer waive the requirements of any Laws (including Tax Laws) with respect to bulk transfers, and Sellers agree to pay and discharge when due all claims of creditors that could be asserted against Buyer by reason of such waiver.

**ARTICLE IX.
REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

Each Seller represents and warrants to Buyer, and Buyer represents and warrants to Sellers, as follows:

Section 9.1 Good Standing. It is duly formed, validly existing and in good standing (or, with respect to Buyer, of active status) under the Laws of its state of formation and possesses full limited liability company, corporate, or other similar power to own and operate its properties and carry on business as it is currently conducting it.

Section 9.2 Authority. Subject to the necessary authority from the Bankruptcy Court, it has all requisite limited liability company, corporate, or other similar power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. All requisite Bankruptcy Court, limited liability company, corporate, or other similar action has been, or will be taken, by such Party before the Closing in order to authorize the execution and delivery of this Agreement and, as the case may be, the assignment, transfer, conveyance and acceptance of the Purchased Assets and all other properties as herein provided, the payment of all sums payable hereunder, and the consummation of the transactions contemplated by this Agreement; and compliance with the terms and provisions hereof (assuming all necessary consents are obtained) will not conflict with or result in a breach of, or violate (i) any terms and provisions of, or constitute a default under, its certificate of formation, articles of incorporation, limited liability company agreement, by-laws or similar organizational documents, (ii) any indenture, mortgage, Contracts or other agreement to which it or any of its Affiliates is a party or by which any of such Person's properties are bound, or require notice to or the consent of any other party thereto or any third party, or (iii) any Law or Order of any Governmental Authority or court.

Section 9.3 Binding Obligation. Subject to the necessary authority from the Bankruptcy Court, it has duly and validly executed and delivered this Agreement and, upon due and valid execution and delivery by the other Party, this Agreement constitutes its legal, valid and binding obligation (assuming this Agreement is a valid and binding obligation of the other Party), enforceable against it in accordance with its terms, subject, however, to all bankruptcy, insolvency, reorganization, moratorium and other Laws of general applicability relating to or affecting creditor's rights, to general principles of equity, and to judicial limits on the rights of specific performance, injunctive relief or other equitable remedies (the "**Enforceability Limitations**").

Section 9.4 Knowledge. In this Agreement, any reference to a Party's "**Knowledge**" means, in the case of Sellers, the actual knowledge of Jason B. Sharon, Andrew Pillari, Christopher Darling, Michael Phillips, and Maria Woods as such knowledge may exist without inquiry into the matter and, in the case of Buyer, the actual knowledge of Jason B. Sharon, as such knowledge may exist without inquiry into the matter.

**ARTICLE X.
REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers hereby jointly and severally represent and warrant to Buyer, as of the date hereof, and with respect to the representations and warranties regarding each of Sellers and Store Properties (and, in each case, the Purchased Assets related thereto), as applicable, being transferred, as of the Closing Date, as follows:

Section 10.1 Pending Litigation. Except as disclosed in **Schedule 10.1**, (i) there is no Litigation pending or, to Sellers' Knowledge, threatened against any Seller or any of its Affiliates relating to any of the Store Properties, Store Leases or other Purchased Assets that could reasonably be expected to prevent, enjoin, alter or delay the consummation of the transactions contemplated by this Agreement, and (ii) to Sellers' Knowledge, there is no Litigation pending or threatened against the lessor under any Store Lease which, if determined adversely to such lessor, would be reasonably expected to have a Material Adverse Effect on the lessor's performance of its obligations under the Store Lease or the rights of the lessee thereunder.

Section 10.2 Title to Purchased Assets. Sellers are in possession of, and have good and marketable title to that portion of the Purchased Assets consisting of personal property owned by Sellers to be transferred to Buyer at Closing.

Section 10.3 Taxes.

A. Except for matters that would not be reasonably expected to result in a Material Adverse Effect, (i) Sellers have timely filed all Tax Returns required to be filed by Sellers or with respect to the business or the Purchased Assets with the appropriate tax authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted); and (ii) all Taxes (whether or not shown due on such Tax Returns) owed by Sellers or with respect to the business or the Purchased Assets have been timely paid in full (except as prohibited by the Bankruptcy Court).

B. There are no Liens with respect to a material amount of Taxes upon the Purchased Assets.

C. Sellers have complied in all material respects with all applicable Laws relating to the payment and withholding of Taxes with respect to the Purchased Assets and the business (including, for the avoidance of doubt, Taxes related to employee salaries, wages or other compensation) and have duly and timely withheld and paid over to the appropriate Tax authorities all material amounts required to be so withheld and paid over under all applicable Laws with respect to the Purchased Assets and the business.

D. With respect to the business and the Purchased Assets, Sellers have collected all material sales and use Taxes required to be collected, and have remitted, or will remit on a timely basis, such amounts to the appropriate taxing authority, or have been furnished properly completed exemption certificates and have maintained all such records and supporting documents in the manner required by all applicable sales and use Tax statutes and regulations.

Section 10.4 Employee Benefits.

A. **Schedule 10.4.A** lists all Employee Benefit Plans. “**Employee Benefit Plans**” means “employee benefit plans,” as defined in section 3(3) of ERISA, including any Multiemployer Plans, and all other employee benefit plans, programs, policies, practices, or other arrangements providing benefits (other than governmental plans and statutorily required benefit arrangements), including bonus or incentive plans, deferred compensation arrangements, stock purchase, stock option, change of control, severance pay, sick leave, vacation pay, disability, medical insurance and life insurance, in each case, whether written or unwritten, maintained or contributed to by Sellers and ERISA Affiliates with respect to employees or former employees of the Store Properties and/or their dependents (including, solely for purposes of this **Section 10.4.A**, employees of the Properties who are on short-term disability, long-term disability or any other approved leave of absence). Before Closing Sellers shall provide to Buyer (i) a list of all full-time and part-time employees of the Store Properties as of such date; and (ii) the then-current annual or hourly compensation and/or commission rate of, and a description of the fringe benefits provided to such employees.

B. True, correct and complete copies of the following documents, with respect to each of the Employee Benefit Plans have been made available to Buyer: (1) any plan documents, and all amendments thereto, (2) the most recent Forms 5500, (3) the most recent summary plan descriptions (including letters or other documents updating such descriptions), and (4) the most recent IRS determination letter.

C. Each of the Employee Benefit Plans intended to qualify under section 401 of the Code (“Qualified Plan”), has received an opinion (or similar or comparable) letter as to the qualification in form of each such Employee Benefit Plan issued to the document sponsor of each such Qualified Plan, or if applicable, such Qualified Plan has received a favorable IRS determination letter.

D. Other than continuation health coverage requirements specifically imposed under COBRA on the Buyer with respect to employees associated with the Store Properties which arises as a result of the termination of all benefit plans of the Sellers and their respective ERISA Affiliates subject to COBRA on or after the Petition Date, the Buyer will not have any Liability on or after Closing with respect to any of the Employee Benefit Plans.

E. No Seller nor any ERISA Affiliate has, within the past six (6) years, sponsored, maintained, had any Liability with respect to, contributed or been required to contribute to (i) any Multiemployer Plan; or (ii) any plan subject to Title IV or Section 302 of ERISA or Section 412 of the Code.

Section 10.5 Labor Relations. No Seller nor any ERISA Affiliate of Sellers is party to or bound by any collective bargaining agreement covering any employee of Sellers.

Section 10.6 Compliance with Laws; Permits.

A. Sellers are in compliance with all Laws applicable to the business, except as resulting from the filing and pendency of the Bankruptcy Case or where the failure to be in compliance would not be reasonably expected to have a Material Adverse Effect. To the Knowledge of Sellers, there are no investigations pending or threatened against Sellers regarding the possible material breach or violation of any Laws applicable to the business.

B. Sellers have all Permits which are required for the operation of the business as presently conducted, except where such failure to have Permits would not be reasonably expected to have a Material Adverse Effect. Sellers are not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which they are parties, except where such default or violation would not be reasonably expected to have a Material Adverse Effect. **Schedule 10.6(B)** sets forth a Store Property-by-Store Property list of all material Permits held, used or intended to be used by Sellers.

Section 10.7 Data Security.

A. As it pertains to the operation of the business, each Seller complies in all material respects with the Payment Card Industry Data Security Standard and all applicable Laws, contracts and company policies governing the collection, sharing, processing, use, safeguarding and destruction of information regarding individuals in the possession or under the control of the Sellers and which relate to the business, and has not received any written notice or claim alleging a misuse, breach or violation of the same. To the Knowledge of Sellers, within the past twelve (12) months there has been no material security breach of, unauthorized access to, or unauthorized acquisition of, any information regarding individuals or confidential business information in the possession or under the control of Sellers relating to the business, or, to the Knowledge of Sellers, maintained by any third party service provider on behalf of Sellers and related to the Business.

B. Each Seller has a written business continuity plan which relates to the business and has provided a copy of such plan to the Buyer. To the Knowledge of Sellers, no Seller has collected, received, used or released (or allowed the release of) any data in violation of, and no Seller has otherwise violated such business continuity plan.

Section 10.8 Store Leases and Use of Store Properties.

A. The Store Leases have not been modified or amended (except as indicated on **Schedule 1.1-2**), are valid and enforceable in accordance with their terms, and are in full force and effect subject to the Enforceability Limitations. The rents and any other amounts due under the Store Leases are current in payment, and to the Sellers' Knowledge, neither Sellers nor the landlord are in default of any of their obligations under the Store Leases beyond any applicable notice and cure period, and no event has occurred that, with the giving of notice, lapse of time or both, could constitute a default by Sellers or the landlord under the Store Leases. The applicable Seller is the sole

occupant of each respective Store Property and no Seller has entered into any agreement with any other Person for occupancy of any Store Property or any portion thereof.

B. The use and operation of the Store Properties in the conduct of the Sellers' business do not violate any Law, covenant, condition, restriction, easement, license, permit or agreement, including the American with Disabilities Act. To Sellers' Knowledge, Sellers have the right to assign each Store Lease to Buyer. No material improvements constituting a part of the real property encroach on real property owned or leased by a Person other than the Sellers. With the exception of the Bankruptcy Case, there is no Litigation pending nor, to the Knowledge of the Sellers, threatened against or affecting the real property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

Section 10.9 Environmental Matters. The representations and warranties contained in this **Section 10.9** are the sole and exclusive representations and warranties of Sellers with respect to environmental matters, including matters relating to Environmental Laws. Except as would not be reasonably likely to have a Material Adverse Effect, with respect to each Store Property and the business and operations conducted at each Store Property by the applicable Seller:

A. Sellers operations are in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining and complying with all Permits issued pursuant to Environmental Laws necessary to operate the business;

B. Sellers are not the subject of any outstanding Litigation with any Governmental Authority with respect to Environmental Laws; and

C. Sellers are not the subject of any pending, or to the Knowledge of Sellers, threatened Litigation alleging that Sellers may (i) be in violation of any Environmental Law, or any Permit issued pursuant to Environmental Law, or (ii) have any liability under any Environmental Law.

Section 10.10 Intellectual Property. Sellers own or otherwise have the right to use all intellectual property used in the operation of their business as presently conducted at the Store Properties (together, the "**Seller Intellectual Property**"). The Seller Intellectual Property is valid, subsisting, in full force and effect, and has not been cancelled, expired or abandoned. Sellers and their Affiliates have not received any written notice regarding the infringement or misappropriation by Sellers or their Affiliates of any intellectual property of any third party.

Section 10.11 Store Properties AS IS and WHERE IS. Buyer acknowledges as of the expiration of the Due Diligence Period that it will have had the opportunity to fully inspect the Store Properties and if Buyer then closes this transaction, it does assume all of the risks, including, but not limited to, latent defects in the Store Properties. Sellers shall not be obligated to do any work or alter, restore, repair or develop the Store Properties. Any work (including demolition) which may be necessary to adapt the Store Properties for Buyer's occupancy or for the operation of Buyer's business therein shall be the sole responsibility of Buyer and shall be performed by Buyer at its sole cost and expense, in accordance with the terms of the Store Leases.

BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE SET FORTH HEREIN, SELLERS MAKE NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO: ANY MATTER RELATED TO THE STORE LEASES OR THE STORE PROPERTIES (INCLUDING INCOME TO BE DERIVED FROM OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE STORE PROPERTIES; THE PHYSICAL CONDITION OF THE STORE PROPERTIES; THE ZONING OF THE STORE PROPERTIES; THE POSSIBILITY OF DEVELOPING OR USING THE STORE PROPERTIES IN THE MANNER CONTEMPLATED BY BUYER OR OBTAINING ANY CONSENTS, APPROVALS, PERMITS, AUTHORIZATIONS OR ENTITLEMENTS IN CONNECTION THEREWITH; THE VALUE OF THE STORE LEASES OR THE STORE PROPERTIES; OR THE FITNESS OF THE STORE PROPERTIES, FOR ANY PARTICULAR PURPOSE OR USE. BUYER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE SET FORTH HEREIN, BUYER HAS NOT RELIED, AND IS NOT RELYING, UPON ANY INFORMATION, DOCUMENT, SALES BROCHURES OR OTHER LITERATURE, MAPS OR SKETCHES, PROJECTIONS, PRO FORMAS, STATEMENTS, REPRESENTATIONS, GUARANTEES OR WARRANTIES (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OR MATERIAL OR IMMATERIAL) THAT MAY HAVE BEEN GIVEN BY OR MADE BY OR ON BEHALF OF SELLERS. BUYER ALSO ACKNOWLEDGES THAT BUYER HAS CONDUCTED OR WAIVED THE RIGHT TO CONDUCT AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL AND ENVIRONMENTAL CONDITIONS OF THE STORE PROPERTIES AND ALL SUCH OTHER MATTERS RELATED TO OR AFFECTING THE STORE PROPERTIES AND/OR THE STORE LEASE, AS BUYER DEEMED NECESSARY OR APPROPRIATE. EXCEPT AS OTHERWISE SET FORTH HEREIN, BUYER IS NOT RELYING UPON ANY REPRESENTATIONS OF SELLERS OR SELLERS' AGENTS. FURTHER, EXCEPT AS OTHERWISE SET FORTH HEREIN, BUYER HEREBY ACCEPTS THE STORE PROPERTIES, EACH IN ITS "AS IS, WHERE IS," "WITH ALL FAULTS," CONDITION.

The provisions of this **Section 10.11** shall survive the Closing.

**ARTICLE XI.
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Sellers, as of the date hereof, and with respect to the representations and warranties regarding Buyer, as of the Closing Date, as follows:

Section 11.1 Pending Litigation. Except as disclosed in **Schedule 11.1**, there is no Litigation pending or, to Buyer's Knowledge, threatened against any Buyer or any of its Affiliates that could reasonably be expected to prevent, enjoin, materially alter or delay the consummation of the transactions contemplated by this Agreement.

Section 11.2 Financing. Buyer has and will have at the Closing immediately available funds sufficient for the satisfaction of all of Buyer's obligations under this Agreement, including the payment of the Purchase Price, and all fees, expenses of and other amounts required to be

paid by Buyer in connection with the transactions contemplated hereby. Buyer is capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts and Store Leases and the related Assumed Liabilities.

ARTICLE XII.
[INTENTIONALLY OMITTED].

ARTICLE XIII.
PRE-CLOSING COVENANTS

Except as otherwise required or restricted pursuant to the Bankruptcy Code or a decree of the Bankruptcy Court, the Parties agree as follows with respect to the period between the execution of this Agreement and Closing (except as otherwise expressly stated to apply to a different period):

Section 13.1 Efforts; Cooperation.

Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner reasonably practicable, the transactions contemplated hereby (including by giving, or causing to be given, any notices to, making any filings with, and using commercially reasonable efforts to obtain any Consents of Governmental Authorities as are necessary and appropriate to consummate the transactions contemplated hereby). Subject to **Article 21**, without limiting the generality of the foregoing, (a) Sellers shall use their commercially reasonable efforts to cause the conditions set forth in **Section 17.1** that are within its control or influence to be satisfied or fulfilled, and (b) Buyer shall use its commercially reasonable efforts to cause the conditions set forth in **Section 17.2** that are within its control or influence to be satisfied or fulfilled.

Section 13.2 Operation of Leased Stores before Closing.

A. Compliance with Leases; Lease Amendments and Renewals.

1. Between the date of this Agreement and the Closing Date, Sellers shall timely perform all of their material obligations under the Store Leases and will not commit, permit, or suffer the occurrence of a material default in the performance of such obligations beyond any notice and applicable cure period. Without limiting the generality of the preceding sentence, Sellers:

a. shall at all times engage in and maintain such types and levels of activities in the Leased Stores as are necessary to avoid (A) triggering a default under any “go dark,” “continuous operation,” or similar covenant or condition contained in any Store Lease, or (B) otherwise giving the lessor under any Store Lease the right to terminate any Store Lease; and

b. shall give the lessor under each Store Lease notice of the applicable Seller's intent to assign its interest in the applicable Store Lease to Buyer pursuant to this Agreement (such notice shall be given to lessor in a timely manner pursuant to the terms of the applicable Store Lease and this Agreement).

2. Between the date of this Agreement and the Closing Date, no Seller shall enter into any amendment or modification of a Store Lease without Buyer's prior written consent. Buyer agrees that it will not unreasonably withhold, delay or condition its consent to any such proposed amendment or modification; provided, however, Buyer shall have no obligation to consent to any proposed amendment or modification to a Store Lease that would (i) increase the amount of any rent or other monetary obligations payable under such Store Lease by any Seller, or (ii) increase any non-monetary obligations of the tenant under such Store Lease in any material respect.

3. With respect to any Lease Renewal Option that (i) a Seller is entitled to exercise as of the date of this Agreement, or becomes entitled to exercise between the date of this Agreement and the Closing, and (ii) is scheduled to expire or otherwise terminate prior to the Closing, Sellers shall duly exercise or cause to be exercised such Lease Renewal Option prior to the date on which the same would otherwise expire or terminate. Sellers agree to give Buyer a copy of the exercise notice for any such Lease Renewal Option prior to the Closing Date.

4. Between the date of this Agreement and the Closing Date, Sellers shall promptly deliver to Buyer any written communication received by Sellers after the date of this Agreement from any landlord under any Store Lease alleging or otherwise relating to a default under such Store Lease by the tenant thereunder.

B. Operation of Leased Stores. Prior to the Closing Date, Sellers shall use commercially reasonable efforts to operate the Leased Stores in the Ordinary Course of Business. Sellers shall use commercially reasonable efforts to, except as related to or the result of the filing or pendency of the Bankruptcy Case, (A) preserve intact its current business organizations, (B) maintain the Store Properties and the Purchased Assets (normal wear and tear excepted), (C) not terminate relationships with licensors, licensees, suppliers, contractors, distributors, consultants, vendors and others having business relationships with Sellers in connection with the operation of the Store Properties (other than payment of pre-petition claims), and (D) continue to operate the Store Properties and Purchased Assets in all material respects in compliance with all Laws applicable to the business and Sellers consistent with past practice. No Seller shall, as it relates to the Store Properties:

1. display any signs or conduct any advertising (including direct mailing, point-of-purchase coupons, or the like) that indicates such Sellers is moving its operations to another location or that a Store Property will close;

2. conduct any “going out of business”, “close-out”, liquidation or similar sales or promotions at or relating to any Store;

3. other than the sale of inventory in the Ordinary Course of Business, sell, lease (as lessor), transfer (including the transfer from a Store Property to a non-acquired store), assign, convey or otherwise dispose of, or impose or suffer to be imposed any Lien (except for Permitted Exceptions) on any of the Purchased Assets;

4. sell, donate, gift, or otherwise issue gift cards; or

5. grant any license to any Intellectual Property included in the Purchased Assets which extends beyond the Closing Date.

C. Liquor Licenses. From and after the date of this Agreement, Sellers shall cause the Liquor Licenses associated with all of the Store Properties to be maintained in full force and effect through the date of Closing.

Section 13.3 Transition Services Agreement. No later than one (1) Business Day before the hearing on the Bid Procedures Order, the Parties shall mutually agree upon a Transition Services Agreement with a term no longer than sixty (60) days after the Closing, and which transition services shall be provided at a mutually agreed upon cost with any out-of-pocket expenses of Sellers reimbursed by Buyer.

Section 13.4 Existing Store Lease Guarantees. Promptly after landlords have signed a confidentiality agreement with Sellers and Buyer, Buyer will use commercially reasonable effort to relieve any Affiliates of Sellers that are Debtors from personal and corporate guarantees entered into in connection with a Store Lease (each, a “**Lease Guaranty**”). The Parties agree that for purposes of this Agreement it is commercially reasonable to substitute Buyer or an Affiliate of Buyer as the guarantor for any current Affiliate of Sellers that is a Debtor, as may be acceptable to any applicable guaranteed party. Should Buyer trigger a Lease Guaranty for which an Affiliate of Sellers has not been released, Buyer agrees to indemnify, defend, and hold harmless such Affiliate from any and all Losses arising out of Buyer’s default in connection with the Store Lease.

Section 13.5 Pre-Closing Access to Information. From the date hereof through the Closing Date, upon reasonable notice, Sellers shall afford to Buyer and Buyer’s employees and representatives (a) reasonable access to all of the books, Contracts, commitments and records of Sellers that are related to the business or applicable to the Purchased Assets, and the right to make copies of any of the foregoing, (b) reasonable access to those employees of Sellers as specifically requested by Buyer and agreed to by Sellers, and (c) reasonable access to the Store Properties necessary in the judgment of Buyer to sample the environment, manufacturing or waste treatment processes, structures, emissions or discharges Related to the Business (including Phase I and any necessary subsequent environmental assessments of the Store Properties); provided that Buyer shall pay reasonable third-party out-of-pocket costs or expenses incurred by Sellers in connection with such access by Buyer and its representatives, if any, and provided further that all information so disclosed in any of the books, Contracts, commitments and records

of Sellers reviewed by Buyer shall be subject to the terms and provisions of **Section 16.2**. The Parties shall cooperate in any environmental, health and safety due diligence including any soil, groundwater or other intrusive sampling upon any Store Property.

Section 13.6 Removal of Excluded Assets. The Excluded Assets shall be removed from the Store Properties by Sellers prior to Closing unless otherwise agreed in writing by the Parties.

ARTICLE XIV. CASUALTY

Section 14.1 Damage. In the event of risk of destruction, loss or damage by fire or other casualty to 15% or more of the square footage of any Store Property between the date hereof and the Closing ("**Damage**"), Buyer shall have the option in its sole discretion to terminate this Agreement with respect to only the Purchased Assets that have incurred Damages such that the assets that incurred Damages become Excluded Assets (together with the related Purchased Assets, the "**Damaged Assets**").

Section 14.2 Condemnation. If 15% or more of the square footage of a Store Property is taken in condemnation or by the exercise of eminent domain, or is the subject of a threatened condemnation or exercise of eminent domain (together with the related Purchased Assets, the "**Condemned Assets**"), prior to the Closing Date Buyer shall have the option in its sole discretion to terminate this Agreement with respect to only the Condemned Assets becoming Excluded Assets.

Section 14.3 Purchase Price Adjustment as a Result of Casualty. In the event Buyer elects to terminate this Agreement with respect to one or more Store Properties under **Section 14.1** or **Section 14.2**, Sellers shall sell and Buyer shall purchase the remaining Purchased Assets at the value determined by the Parties which shall be equal to the Purchase Price less the allocation of the Purchase Price that the Parties mutually agree to designate to the Damaged Assets and/or Condemned Assets which this Agreement is terminated. In the event the Parties are unable to agree upon the designated amount for the Damaged Assets and/or Condemned Assets which become Excluded Assets, the Parties agree that Sellers shall sell and Buyer shall purchase the remaining Purchased Assets at the value determined by the Bankruptcy Court which shall be equal to the Purchase Price less the allocation of the Purchase Price that the Bankruptcy Court designates to the Damaged Assets and/or Condemned Assets which become Excluded Assets.

Section 14.4 Termination as a Result of Casualty. In the event Buyer terminates with respect to more than two (2) Store Properties which become Damaged Assets or Condemned Assets, Buyer shall have the right to terminate this Agreement in its entirety.

ARTICLE XV. EMPLOYEES

Section 15.1 Employees and Employee Benefits. Sellers shall terminate, as of the Closing Date, the employment of all of Sellers' store level employees at the Store Properties ("**Store Employees**"). In connection with and subject to Closing, Buyer will make offers of

employment to the employees at the Store Properties effective upon Closing and such employees will be listed by Buyer on **Schedule 15.1** at Closing (each such person, upon accepting an offer of employment from Buyer, being a “**Transferred Employee**,” and collectively, the “**Transferred Employees**”). Any such employment offer from Buyer shall be subject to Buyer’s background check and pre-employment screening process. Such offers by Buyer shall be for positions having comparable duties, hours, and salary as the Transferred Employee’s current employment. Buyer will undertake its commercially reasonable efforts to offer the Transferred Employees health and other welfare benefits that, in all material respects when taken as a whole, are not less favorable than the health and other welfare benefits of Sellers in effect as of the date hereof. Any Transferred Employee shall be considered to be employed “at will” and nothing shall be construed to limit the ability of Buyer or any of its Affiliates to terminate any such employee at any time for any reason, or to change any such employee’s terms and conditions of employment, including the levels of compensation and benefits plans, programs or arrangements in effect after the Closing Date. With respect to the continuation health coverage requirements of COBRA, the Buyer acknowledges and agrees that Buyer shall be solely responsible for providing such continuation health coverage on or after Closing for all Store Employees and their eligible dependents, who (i) have experienced a qualifying event, with respect to the Sellers, at any time before or after the Closing Date as a result of the transactions contemplated by this Agreement, (ii) elect continuation coverage within the time period prescribed by COBRA, and (iii) are otherwise qualified beneficiaries (as defined in Section 4980B(g)(1) of the Code). Nothing in this Agreement shall be construed as an offer of employment or require Buyer to continue the employment of any Transferred Employee for any specific period after the Closing Date. To the extent an employee becomes a Transferred Employee, Buyer agrees to:

A. Provide such Transferred Employees with any benefits accrued by such Transferred Employees prior to the Closing Date, including the amount of accrued but unused vacation time, sick leave time, and other paid time off; and

B. Grant such Transferred Employees credit for the amount of months and years of service of such Transferred Employee with Sellers for purposes of eligibility, vesting of benefits, calculation of severance pay, determination of vacation time, sick leave, or other approved or statutory leave of absence, or for purposes of determining the amount of benefit coverage under any plan of Buyer providing for medical, dental, and prescription drug coverage or other employee benefits.

Section 15.2 No Third Party Beneficiary Rights. Without limiting the generality of this **Section 15**, no provision of this Agreement shall create any third party beneficiary rights in any current or former employee of any Seller, any Store Employee or Transferred Employee (including any beneficiary or dependent thereof) in respect of continued employment by Sellers or their Affiliates or Buyer or its Affiliates or otherwise. Nothing herein shall (i) guarantee employment for any period of time or preclude the ability of Buyer or any of its Affiliates to terminate any Transferred Employee for any reason, (ii) require Buyer or any of its Affiliates to continue any company benefit plans, employee benefit plans or arrangements or prevent the amendment, modification or termination thereof after the Closing, or (iii) constitute an amendment to any company benefit plan, employee benefit plans or arrangements.

Section 15.3 Sellers' Responsibilities. Prior to the Closing Date, upon termination of employment of the Store Employees, Sellers shall pay all Liabilities resulting from the termination of Store Employees including expenses for accrued wages and salary, vacation pay, severance pay and any other employee benefits and compliance with the Worker Adjustment and Retraining Notification Act.

**ARTICLE XVI
CONFIDENTIALITY AND ACCESS**

Section 16.1 Access. Subject to any limitations arising, or consents required, under or related to this Agreement, authorized representatives of Buyer shall have full access during normal business hours to the Store Properties as set forth in **Section 18.1.C** (provided that Buyer shall pay reasonable third-party out-of-pocket costs or expenses incurred by Sellers in connection with such access by Buyer and its representatives, if any); provided, such representatives shall not unreasonably interfere with the personnel or operations of any of the Store Properties, and provided further that all information so disclosed in any files and records reviewed by Buyer shall be subject to the terms and provisions of **Section 16.2**.

Section 16.2 Confidentiality.

A. The Parties acknowledge and agree that all information received by Buyer or Sellers pursuant to this Agreement shall, except to the extent otherwise provided herein, be governed by the terms and provisions of that certain Confidentiality Agreement dated January 28, 2020 between Lucky's Market Parent Company, LLC, and Buyer ("**Confidentiality Agreement**").

B. From the date of this Agreement to the Closing Date, each Party shall keep confidential and not make any public announcement or similar publicity concerning this Agreement, the transactions contemplated herein or the details relating thereto, without first obtaining the prior written consent of the other Parties; provided, however, that nothing contained herein shall prohibit (i) disclosures required by the Bankruptcy Case, (ii) disclosures required by applicable Law, or (iii) any Party from making any public announcement following reasonable notice to the other Parties if such Party determines in good faith, on the advice of legal counsel, that such public disclosure is required by applicable Law, in which case the Parties shall use commercially reasonable efforts to coordinate in determining the appropriate form and scope of such disclosure.

Section 16.3 Cooperation on Tax Matters. Buyer and Sellers shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with any audit, Litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other Party's request) the timely provision of copies of all records, returns and other information that are reasonably relevant to any such audit, Litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

Section 16.4 Personally Identifiable Information.

A. Buyer acknowledges that the Purchased Assets include “personally identifiable information” within the meaning of section 363(b) of the Bankruptcy Code, along with associated information about Seller’s customers (the “**Customer Information**”).

B. Buyer shall: (i) employ appropriate security controls and procedures (technical, operational, and managerial) to protect the Customer Information, (ii) abide by all applicable Laws with respect to the Customer Information, and (iii) take any such actions as may be agreed between Sellers and Buyer.

C. Buyer shall abide by Sellers’ privacy policies, and privacy-related covenants made in Sellers’ terms of service, governing the Customer Information and in effect as of the bankruptcy Petition Date.

D. Buyer shall honor all prior requests by any individual who has opted out of receiving marketing messages from Sellers.

E. Buyer may use the Customer Information solely for the purpose of continuing Sellers’ business operations and continuing to provide similar goods and services to individuals. Buyer shall not contact any individual derived from the Customer Information other than with respect to a transaction with Seller already initiated by such individual.

ARTICLE XVII. CONDITIONS TO CLOSING

Section 17.1 Conditions to Obligations of Each Party. The obligations of Sellers and Buyer to consummate the transactions contemplated hereby shall, for each Party at such Party’s option, be subject to satisfaction, at or prior to the Closing Date, or such earlier period as provided herein with respect to certain conditions, of the following conditions (the “**Closing Conditions**”):

A. No Order or Injunction. No action, suit or proceeding before any Governmental Authority shall have been commenced by any Person against any of the Parties, or any of the principals, officers or directors of any of them, or any of the Store Properties or the Purchased Assets, seeking to restrain, prevent or change the transactions contemplated hereby or questioning the validity or legality of any of such transactions or seeking damages in connection with any of such transactions.

Section 17.2 Conditions to Obligations of Buyer. The obligation of Buyer to consummate the transactions contemplated hereby shall be, at the option of Buyer, subject to the fulfillment, at or prior to the Closing Date, of the following additional conditions:

A. Representations and Warranties. The representations and warranties of Sellers contained in this Agreement or in any other document of Sellers delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date, unless specifically made as of another date, and Sellers shall have

delivered a certificate to such effect to Buyer executed by a duly authorized officer of Sellers.

B. Sellers' Performance. Each of the obligations of Sellers to be performed by them on or before the Closing Date pursuant to the terms of this Agreement shall have been duly performed in all material respects on or before the Closing Date, and Sellers shall have delivered to Buyer a certificate to such effect signed by a duly authorized officer of Sellers. Sellers shall have provided Buyer with fully executed originals (or copies, if permitted under **Article 5**) of all documents required to be delivered by Sellers at Closing.

C. Closing Documentation.

1. Except to the extent otherwise provided in this Agreement, at the Closing, Sellers shall have transferred, or cause to be transferred, to Buyer all of Sellers' rights, title and interest in the Store Leases by the assignments described in **Section 5.3.A**, and any corresponding lessor consents, if applicable.

2. Sellers shall have provided Buyer with executed originals of all documents required to be delivered at Closing pursuant to **Section 5.3**.

3. Sellers shall have delivered Estoppel Certificates (or the Alternate Estoppel Certificates, as provided for pursuant to **Section 18.3.A**) and Declaration Estoppel Certificates for the Leased Stores.

4. Sellers, Buyer, and Escrow Agent shall have agreed upon and executed the Escrow Agreement.

D. Subject to Buyer exercising its commercially reasonable best efforts and unless otherwise waived by Buyer, the Parties shall not Close until Buyer has obtained any Permits (excluding the Liquor Licenses), or the consent to transfer any Permits as applicable, reasonably necessary to operate the Store Properties as operating prior to the Closing Date.

E. FIRPTA Affidavit. Buyer shall have received an affidavit of an officer of Sellers, sworn to under penalty of perjury, setting forth such Sellers' name, address and federal tax identification number and stating that such Sellers are not a "foreign person" within the meaning of Section 1445 of the Code.

F. No Litigation. Except for Litigation identified on **Schedule 10.1**, no Litigation that would have a Material Adverse Effect affects the ownership, possession or current use of any of the Store Properties (i) exists or is threatened against any of the Purchased Assets, or (ii) has been brought by Sellers against any lessor under a Store Lease.

G. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a Final Order on the Closing Date.

H. FTC. There is no action, suit or proceeding before any governmental authority, including any suit by the Federal Trade Commission, seeking to restrain, prevent or enjoin the transactions hereunder.

Section 17.3 Conditions to Obligations of Sellers. The obligation of Sellers to consummate the transactions contemplated hereby shall be, at the option of Sellers, subject to the fulfillment, at or prior to the Closing Date, of the following additional conditions:

A. Representations and Warranties. The representations and warranties of Buyer contained in this Agreement or in any other document of Buyer delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date, unless specifically made as of another date, and Buyer shall have delivered a certificate to such effect to Sellers executed by a duly authorized officer of Buyer.

B. Buyer's Performance. Each of the obligations of Buyer to be performed by it on or before the Closing Date pursuant to the terms of this Agreement shall have been duly performed in all material respects on or before the Closing Date, and Buyer shall have delivered to Sellers a certificate to such effect signed by a duly authorized officer of Buyer. Buyer shall have provided Sellers with fully executed originals (or copies, if permitted under **Article 5**) of all documents required to be delivered by Buyer at Closing.

Section 17.4 Purchase Price Adjustments and Escrows Related to Excluded Store Properties. Buyer and Sellers acknowledge that, under the terms of this Agreement, it may become necessary for them to try to reach agreement as to (i) the amount by which the Purchase Price will be reduced by reason of a particular Store Property becoming an Excluded Asset hereunder, or (ii) or the portion of the Purchase Price that will be escrowed at the Closing in connection with a particular Store Property.

ARTICLE XVIII. DUE DILIGENCE OF ASSETS

Section 18.1 Due Diligence Period; Condition of Store Properties; Environmental Matters.

A. Data Room. Sellers (A) represent and warrant to Buyer that to Sellers' Knowledge, prior to the Closing, they will provide or make available to Buyer via access to a secure internet site or digital medium (such as compact discs) or by making available for physical inspection, or any combination of the foregoing (the "**Data Room**") copies of any and all of the following with respect to the Store Properties (but solely to the extent they are in Sellers' possession or control) to the extent that they are material: licenses, permits, Contracts, surveys, as-built surveys, soil tests, plans and specifications, plats, reports and studies, paid tax bills for the year 2019, assessment notices, title insurance policies, all REAs, environmental reports, wetland and floodplain delineations, architectural drawings, utility bills, service Contracts (only such Contracts exclusive to the Store Properties and capable of being assigned to Buyer, if any), maintenance Contracts (only such Contracts exclusive to the Store Properties and capable of being assigned to Buyer, if any), management Contracts

(only such Contracts exclusive to the Store Properties and capable of being assigned to Buyer, if any), maintenance records and warranties relating to the Store Properties, copies of material notices from any Governmental Authority with respect to the Store Properties, certificates of occupancy, building inspection approvals, covenants, conditions and restrictions applicable to the Store Properties, occupancy agreements in favor of third parties (if any) and any other pertinent information regarding the Store Properties in Sellers' possession or control. The information in the Data Room shall also include copies of the (i) non-disturbance agreements for any mortgages to which the Store Leases are subordinate, recorded memoranda of leases, and any documents or correspondence that modify or materially affect the foregoing in Sellers' possession, and (ii) Store Leases, including any amendments or modifications thereto.

B. Inspections. Within thirty (30) days from the date of this Agreement (“**Due Diligence Period**”), Buyer may, if Buyer so elects, conduct and complete inspections of the Store Properties at Buyer's expense to ascertain if (x) the roof (including membrane and structural elements) of each Store Property is watertight and structurally sound, (y) the Improvements are structurally sound, and (z) the plumbing, electrical and heating, ventilating and air conditioning systems (“**Store Systems**”) that exclusively serve the Store Properties are in working condition. Sellers shall provide access to the Store Properties for purposes of such inspections as set forth in **Section 18.1.E**.

C. Environmental Inspections; Hazardous Material. During the Due Diligence Period, Sellers shall allow Buyer access to the Store Properties as set forth in **Section 18.1.B** for Buyer or Buyer's agents to perform any inspections necessary for Buyer to evaluate the environmental condition of the Store Properties. Buyer shall provide notice to Sellers prior to any soil or groundwater testing on the Store Properties; provided, however, in no event shall Buyer or Buyer's agents be permitted to conduct or perform any invasive testing at the Store Properties (including any so called “Phase II” environmental testing) without Sellers' and the applicable landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. With respect to any invasive testing that Buyer proposes to conduct (or cause to be conducted) on a Store Property, Buyer shall first deliver to Sellers a written proposal describing in detail the scope, locations, and other parameters of the proposed inspection (“**Work**”) (it being agreed that no such “proposal” shall be required in connection with non-invasive site inspections necessary to complete “Phase I” reports commissioned by Buyer). Such Work shall be performed by a qualified individual or firm (“**Inspector**”) and be performed in compliance with all applicable Laws (including any and all permits required thereunder, which permits shall be obtained by and at the sole cost of Buyer). Buyer shall indemnify, defend and hold Sellers harmless from any third party Losses, injury, Liability, or Losses arising out of any act or omission of Buyer or Buyer's agents, employees and contractors, in connection with the inspection, testing and sampling of the Store Properties. Buyer agrees not to disclose any information received as a result of Buyer's inspection of the Store Properties to any third party without Sellers' prior written consent, unless Buyer is legally compelled to do so, or such disclosure is necessary for Buyer's evaluation of the Store Properties.

D. Confidentiality. Except as provided in this **Section 18.1.D**, all information or contents of any environmental reports or analyses (oral or written), or the results of any inspection of the Store Properties for Hazardous Material will be Confidential Information. If this Agreement is terminated as to any Store Properties for any reason, Buyer shall deliver to Sellers the originals (with respect to materials received from Sellers) or copies (with respect to materials received from any Person other than Sellers) of any and all documents, plans and other items furnished to Buyer regarding such Store Properties or any reports or analyses created or obtained by Buyer or the Inspector regarding such Store Properties) pursuant to this **Section 18.1.D**. All studies, data, reports, analyses, writings and communications, including any environmental studies or reports, shall (i) be generated by the Inspector for the use of Buyer's and Sellers' attorneys, (ii) to the fullest extent permitted by Law, shall be the work product of both Buyer's and Sellers' respective attorneys, (iii) shall constitute confidential, attorney-client communications, and (iv) shall remain subject to **Section 16.2** following any termination of this Agreement.

E. Right of Entry. Subject to the terms of this **Section 18.1.C** and to any limitations arising, consents required, or obligations imposed under or related to any agreement encumbering any of the Store Properties, Sellers hereby grant Buyer a license to enter in and upon the Store Properties (including all Improvements located thereon) at all reasonable times for the purpose of conducting the inspections contemplated by **Section 18.1.C**, at Buyer's sole cost and expense; provided that Buyer shall not disclose to the Store Employees the existence of, or the nature of this transaction, until such time as the Sellers have given prior agreement to make such a disclosure. The designated contact person with Sellers who will cooperate with Buyer for the purpose of scheduling such access to the Store Properties is Maria Woods or Andy Pillari, whose email addresses are mariaw@luckysmarket.com or andy@luckysmarket.com, respectively. Buyer shall give Sellers at least 24 hours prior written or e-mail notice to such contact person of the date, time and place of such access (or of site visits to do any of the foregoing). The Parties agree, subject to the requirements of applicable Law, to keep confidential any and all information resulting from such inspections and site access in accordance with the terms and provisions of this Agreement. Buyer agrees to indemnify, defend and hold harmless Sellers, together with the landlords, and any other party required to be indemnified, under the Store Leases or any Real Property Documents, from any and all Losses arising out of Buyer's exercise of the license granted herein. The access to the Store Properties granted hereunder shall be limited to reasonably necessary access during normal business hours, and such access shall not interfere with Sellers' operations at the Store Properties. After conducting any inspections or performing any Work, Buyer shall promptly repair any damage caused to the Store Properties by any such inspections or performance of Work, to the same condition existing prior to the inspections. Buyer shall not permit or allow any mechanics' or materialmans' lien of any kind related to such inspections or the access granted hereunder to be placed upon or enforced against the Store Properties. Buyer agrees that it shall cause its consultants, contractors and any sub-contractors performing the inspections or Work to obtain and maintain (i) general comprehensive liability insurance, (ii) automobile liability insurance, and (iii) Engineer's Professional Liability Insurance (covering performance of environmental services), all in an amount not less than Two Million and No/100 Dollars

(\$2,000,000), with endorsements, upon terms, and from insurers acceptable to Sellers, and such insurance policies shall name Sellers as additional insureds.

Section 18.2 Buyer's Right to Terminate

A. If Buyer's inspection during the Due Diligence Period indicates that the estimated aggregate cost to bring the Store Properties into compliance with clauses (x), (y) and (z) of **Section 18.1.B** (the "**Store Systems Remediation**") is in excess of Three Hundred Thousand and No/100 Dollars (\$300,000) (excluding the amount of any individual claim related to any single Store Property which does not exceed Seventy-Five Thousand and No/100 Dollars (\$75,000)), then Buyer shall have the option to elect to terminate this Agreement (subject to Sellers' rights hereinafter described) by delivering written notice to Sellers on or before the expiration of the Due Diligence Period (the "**Termination Notice**"). The Termination Notice shall include, as applicable, reasonable detail of the following: (x) whether the inspections indicated that, the roof of any Store Properties or the structural elements of any Improvements or the Store Systems are not in the condition required by clauses (x), (y) and (z) of **Section 18.1.B**, and (y) based upon the inspections, the method reasonably satisfactory to Buyer to satisfy or cure any such non-compliance and the estimated cost of remedying such non-compliance. Buyer at such time shall also provide Sellers with copies of the inspection reports or draft inspection reports as to all Store Properties. Upon the expiration of fifteen (15) days after Sellers' receipt of the Termination Notice, this Agreement shall terminate unless Sellers agree by written notice to Buyer (the "**Remediation Notice**"), at Sellers' election, to remedy those matters identified in the Remediation Notice which render the Store Properties in noncompliance with clauses (x), (y) and (z) of **Section 18.1.B** (provided, however, Sellers shall not have the right to extend the Closing Date for the purpose of remedying such matters identified in the Termination Notice).

B. Scope Limitation. This **Section 18.2** shall not apply to the roof, structural elements, or Store Systems, which are the landlord's responsibility under the applicable Store Lease. Sellers shall not have any obligation to remediate any condition relating thereto deemed not satisfactory by Buyer and Buyer shall not be entitled to terminate this Agreement as a result thereof.

Section 18.3 Landlord and Declaration Estoppels

A. Landlord Estoppel Certificates. To the extent applicable, Sellers shall request an estoppel certificate (the "**Estoppel Certificate**") from each landlord under the Store Leases, certifying to Buyer and the Title Company as follows:

1. The expiration date of the current term of the applicable Store Lease and the number and length of any extension or renewal options available thereunder;
2. The amount of the periodic rent and other charges payable under the Store Lease, the date to which the rent and other charges have been paid, and the amounts (if any) currently due to the landlord thereunder;

3. That there are no defaults under the Store Lease being claimed by the certifying landlord, and that to the knowledge of the certifying landlord there exists no condition that, with the passage of time or the giving of notice, or both, would constitute a default under the Store Lease;

4. That the Store Lease is unmodified (except as specified in the estoppel certificate) and is in full force and effect;

5. That to the landlord's knowledge, no consent or approval by any party other than the landlord of the Store Lease is required as a condition to the assignment of the Store Lease by Seller, and that the landlord under the Store Lease grant such consent; and

6. Any such other certifications reasonably requested by Buyer upon review of the Real Property Documents.

Sellers shall prepare each such Estoppel Certificate utilizing the template attached hereto as Exhibit I and remit a draft of same to Buyer for review and approval prior to sending same for execution, and shall afford Buyer at least ten (10) Business Days to review and provide comments to the draft prior to sending same to third parties. Should Buyer fail to respond in writing with approval or comments within ten (10) Business Days after Sellers provide the prepared Estoppel Certificate to Buyer, Buyer shall be deemed to have approved such estoppels as prepared. Upon Sellers' receipt of the executed Estoppel Certificate, Sellers shall deliver a copy of the Estoppel Certificate (which shall be received and dated effective by the landlord no earlier than thirty (30) days prior to the Closing, but not later than five (5) days prior to the Closing), and shall deliver the original Estoppel Certificate at Closing; provided, however, that if no Estoppel Certificate is received from any required party at least five (5) days prior to Closing, despite Sellers' good faith efforts to obtain the same, then in lieu thereof, Sellers shall deliver to Buyer at Closing a Seller certificate with respect to the foregoing matters and such certificate shall survive the Closing (the "**Alternate Estoppel Certificate**"). If Sellers shall receive an Estoppel Certificate from the landlord for a Leased Store that alleges a default or Store Lease terms different from those indicated by the Due Diligence Documents, or otherwise fails to grant any consents or approvals required hereby or stipulated in such Estoppel Certificate, then Buyer shall have the right to postpone the Closing in order to allow Sellers, at Sellers' election, time to correct the same, and if Seller is unable or unwilling to correct the same to Buyer's reasonable satisfaction, then Buyer shall have the right to: (i) cure such default or accept such Store Lease terms, or (ii) terminate this Agreement with regard to that Leased Store, in which case neither party shall have any further rights or obligations hereunder, except for any indemnity obligation hereunder expressly stated to survive, and except as otherwise expressly provided herein.

B. Declaration Estoppels. To the extent any portion of a Store Property is subject to a declaration of easements, covenants or restrictions, a property owners association, a joint operating agreement or any similar instrument that imposes covenants, restrictions or obligations upon the Store Property or any owner thereof,

including any obligation to pay assessments or reimburse another party for expenses (the foregoing being referred to as a “**Declaration**”), Sellers shall use reasonable efforts to obtain and deliver to Buyer an estoppel letter (“**Declaration Estoppel Letter**”), dated within thirty (30) days prior to the Closing Date (but no later than five (5) Business Days prior to the Closing Date), from each party under such a Declaration in the form requested by Buyer pursuant to its notice of Title Defects or, if no such direction is given pursuant to Buyer’s notice of Title Defects, in the form set forth on attached **Exhibit J**. Sellers shall prepare and provide draft Declaration Estoppel Letters to Buyer for review and approval no later than the date which is five (5) days after receipt of Buyer’s notice of Title Defects, as provided above. Should Buyer fail to respond in writing with approval or comments within ten (10) Business Days after Sellers provide the prepared Declaration Estoppel Letters to Buyer, Buyer shall be deemed to have approved such estoppels as prepared. If any Declaration Estoppel Letter for a Leased Store is not timely received or otherwise indicates any defaults (or matter which, with the passage of time or notice or both, could result in a default) or any unperformed obligations, then Buyer shall have to postpone the Closing in order to allow Sellers, at Sellers’ option, time to correct the same and if Sellers are unwilling to correct the same to Buyer’s reasonable satisfaction then Buyer shall have the right to: (i) cure such default or accept such Declaration Estoppel Letter, or (ii) to terminate this Agreement with regard to that Leased Store, in which case neither party shall have any further rights or obligations hereunder, except as otherwise expressly provided herein.

ARTICLE XIX. TERMINATION

Section 19.1 Termination Rights. This Agreement may be terminated with respect to all Store Properties (and the related Purchased Assets), or as to one or more Store Properties (and related Purchased Assets) as specified below, at any time prior to the Closing:

A. By mutual consent of Buyer and Sellers with respect to any or all Store Properties;

B. By Buyer, by giving written notice, with respect to all Store Properties, if there has been a breach by Sellers of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of any condition precedent to Buyer’s obligations at Closing under **Section 17.2** and such breach has not been waived by Buyer or, if such breach is curable, cured by Sellers within ten (10) days after receipt of such Buyer’s notice of intent to terminate;

C. By Sellers, by giving written notice, with respect to all Store Properties, if there has been a breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of any condition precedent to Sellers’ obligations at Closing under **Section 17.3** and such breach has not been waived by Sellers or, if such breach is curable, cured by Buyer within ten (10) days after receipt of such Seller’s notice of intent to terminate;

D. By Sellers or Buyer by giving written notice to the other Parties if the Closing shall not have occurred on or prior to ninety (90) days after the Petition Date (the “**Outside Date**”); provided that such right to terminate this Agreement shall not be available to the respective Party if it is at that time in material default of this Agreement;

E. By Buyer by giving notice to Sellers, if: (i) Sellers do not comply with any of the Bankruptcy Court milestones set forth in **Section 21.4**; provided that Sellers shall have a three (3) day grace period to complete a missed milestone if such missed milestone is as a result of the Bankruptcy Court’s calendar not being able to accommodate the schedule of the milestones set forth herein; (ii) following the entry of the Bid Procedures Order, such order is reversed, vacated, or otherwise modified in a manner prejudicial to Buyer; (iii) the Bid Procedures Order is stayed as of the date the Auction is scheduled to commence; (iv) following the entry of the Sale Order, such order is reversed, vacated, or otherwise modified in a manner prejudicial to Buyer; or (v) the Sale Order is not a Final Order prior to the day before the Outside Date;

F. By Buyer, with respect to one or more Store Properties pursuant to **Section 20.2** (subject, however, to the right of Sellers to terminate this Agreement set forth in said Section);

G. The event that Buyer is not the Successful Bidder at the Auction, by Buyer by giving written notice to Sellers at any time after the conclusion of the Auction;

H. By Sellers or Buyer, if (i) (x) Seller enters into a definitive agreement with respect to a Competing Bid, (y) the Bankruptcy Court enters a decree approving a Competing Bid, and (z) the Person making the Competing Bid consummates the Competing Bid, or (ii) the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement; provided that such right to terminate this Agreement shall not be available to Sellers unless the Bankruptcy Court has entered the Bid Procedures Order;

I. By Buyer at any time if Seller breaches **Section 13.2.B** and such breach results in a Material Adverse Effect on the transaction as a whole;

J. By Buyer pursuant to **Article 14**; or

K. By Buyer during the Due Diligence Period in the event that Buyer is unsatisfied with the results of any due diligence remaining to the Store Leases, Title Defects, environmental studies or survey results; provided that, in the event the Store Properties are not in compliance with the conditions required under clauses (x), (y) and (z) of **Section 18.1.B**, Buyer shall first exhaust the remedies set forth in **Section 18.2**.

Either Party may exercise its right to terminate this Agreement if such Party has such right under the Agreement by giving written notice thereof from time to time to the other Party specifying the basis for its termination.

Section 19.2 Effect of Termination.

A. If this Agreement is terminated pursuant to **Section 19.1** with respect to any Store Property, this Agreement shall forthwith become void as it relates to such Store Property (and related Purchased Assets and Assumed Liabilities), but none other, and there shall be no further liability on the part of Buyer (on the one hand) or Sellers (on the other hand) to the other with respect to such terminated Store Property.

B. Notwithstanding the termination of this Agreement, the following provisions (and the definitions of all defined terms appearing in the foregoing sections) shall remain in full force and effect: **Section 3.2** (Deposit; Escrow); **ARTICLE XIV** (Casualty); **Section 16.2** (Confidentiality), **Section 21.2** (Approval of Expense Reimbursement) **Section 22.1** (Notices), **Section 22.3** (Governing Law), **Section 22.5** (Indemnification for Brokerage), **Section 22.6** (Publicity) and **Section 22.11** (Expenses). The termination of this Agreement shall in no event relieve a Party from liability for breach of any covenant or agreement contained herein.

ARTICLE XX.
TITLE MATTERS.

Section 20.1 Title Commitment. During the Due Diligence Period, Buyer shall have the right, at Buyer's sole cost and expense, (a) to obtain surveys of the Store Properties, and (b) to obtain a commitment for issuance of a lessee's policy of title insurance with respect to each Store Property and each Store Lease ("**Title Commitment**") issued by the Title Company. Each Title Commitment shall list as exceptions all easements, covenants, restrictions, liens, encumbrances, tenancies and other exceptions to title affecting title to the applicable Store Property or each Store Lease (collectively, the "**Exceptions**") and includes copies of all instruments creating such Exceptions. Sellers represent and warrant to Buyer that to Sellers' Knowledge, they have heretofore provided or made available to Buyer copies of any material existing surveys and title insurance policies relating to any of the Store Properties that are in Sellers' possession or control.

Section 20.2 Title Objection.

A. During the Due Diligence Period, Buyer shall review each Title Commitment, including copies of all instruments shown as Exceptions in such Title Commitments. Buyer shall provide Sellers with a written notice of objection to any Exceptions that they claim constitutes a Title Defect. With respect to any Title Defect (or portions thereof) to which Buyer timely objects, Sellers may at their option and in their sole and absolute discretion elect to attempt to cure, remove or otherwise satisfy such Title Defect. If Sellers elect to attempt the cure, removal or other satisfaction of any Title Defect to which Buyer has objected, the Closing shall, if necessary, be extended for a period not to exceed sixty (60) days (without the action of either Buyer or Sellers being required to effect such extension) until the day next following the date that Sellers notify Buyer that its objection to such Title Defect has been cured, removed or otherwise satisfied. If Sellers are unable or unwilling to cure any such Title Defect at or prior to Closing (and after any applicable extension of the date of Closing), Sellers shall notify Buyer in writing and Buyer shall have the right to either (i) waive all Title Defects that have not been cured, removed or satisfied (as applicable) whereupon all such Title

Defects shall become Permitted Exceptions, or (ii) terminate this Agreement with respect to any Store Property for which Sellers have notified Buyer that Sellers are unable or unwilling to cure a Title Defect, in which event the Store Property and all Purchased Assets related thereto shall not be transferred at Closing and shall become an Excluded Asset and the Purchase Price shall be reduced by an amount mutually agreed upon by the Parties.

B. Anything in this **Section 20.2** to the contrary notwithstanding, Buyer shall not have the right to terminate this Agreement pursuant to clause (ii) of **Section 20.2.A** for Sellers' failure to cure any Title Defect within the designated cure period if such Title Defect is terminated, satisfied and released of record on or prior to the Closing or insured over by the Title Company at Closing, and Sellers have advised Buyer by written notice of their intent to terminate, satisfy and release said Title Defect of record or cause said Title Defect to be insured over by the Title Company either at or prior to Closing.

C. Notwithstanding anything to the contrary contained in this Agreement, Sellers shall have an absolute obligation, at or prior to the Closing, to (x) pay and discharge (or cause the Title Company to insure over) any construction lien or judgment lien or any type of monetary encumbrance encumbering a Store Property (unless the validity or amount of any such Lien is being contested by Sellers in good faith, in which case Sellers shall have the option of transferring such Lien to substitute security, at or prior to the Closing, in accordance applicable Laws), and (y) cause to be satisfied and released of record (or cause the Title Company to insure over) any mortgage or other Lien of a liquidated amount that can be discharged upon the payment of money, it being expressly agreed by the Parties that no Lien of the nature described in this **Section 20.2.C** shall be or become a Permitted Exception hereunder unless Buyer, in the exercise of its sole discretion, shall otherwise agree in writing. Sellers shall have no right to extend the Closing Date in order to take any of the actions contemplated in the immediately preceding sentence.

Section 20.3 Conveyance. To the extent applicable, fee simple title to the Improvements on any ground leased or pad leased Store Properties shall be conveyed by customary quitclaim deed, free and clear of all restrictions, easements, reservations, declarations, liens and encumbrances, except for (i) the ground leases in the case of the Improvements located on parcels of land demised under Store Lease identified as "**Pad Lease**" in **Section 20.3**, and (ii) in all cases, the Permitted Exceptions.

Section 20.4 Cost of Title Policy. The cost of the Title Commitments and any owner's policy of title insurance (or an equivalent in the jurisdiction in which a Store Property is located) with respect to each parcel of Real Property and any leasehold policy of title insurance with respect to each Store Property subject to a Store Lease, including any cancellation fees resulting from termination of this Agreement, shall be paid by Buyer.

Section 20.5 Corrective Instruments. Sellers shall provide and deliver any corrective or remedial instruments reasonably required by the Title Company which are required to correct any gap in the chain of title with respect to any Store Property; provided, however, that notwithstanding the foregoing, if the consent, approval, execution or other action from a non-

Affiliate third party is required in connection with the delivery of such corrective or remedial instruments, then the foregoing obligation of Sellers shall be limited to using commercially reasonable efforts to obtain such instruments.

**ARTICLE XXI.
BANKRUPTCY COURT MATTERS**

Section 21.1 Section 363 Sale. Sellers will market the Purchased Assets for sale pursuant to Bankruptcy Court approved Bid Procedures (the “Sale”) seeking to sell the Purchased Assets free and clear of all Liens (except Permitted Exceptions) pursuant to Sections 363 and 365 of the Bankruptcy Code. Within one (1) Business Day of the Petition Date, Sellers will file a motion to approve the Bid Procedures Order and the Sale Order.

Section 21.2 Approval of Expense Reimbursement. Subject to entry of the Bid Procedures Order:

A. If this Agreement is terminated pursuant to **Section 19.1.B, Section 19.1.D, Section 19.1.E, Section 19.1.F, Section 19.1.G, Section 19.1.H, Section 19.1.I, Section 19.1.J, or Section 19.1.K**, in consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Sellers, Sellers shall pay Buyer, in accordance with the terms hereof and subject to the entry of the Bid Procedures Order, an amount equal to the actual, reasonable, and documented expenses of Buyer incurred in connection with the negotiation, execution, and preparation for the consummation of the transactions contemplated by this Agreement in an amount not to exceed Two Hundred Twenty-Five Thousand and No/100 Dollars (\$225,000) (the “**Expense Reimbursement**”), by wire transfer of immediately available funds to the account specified by Buyer to Sellers in writing. The Expense Reimbursement shall be paid no later than the first Business Day following termination of this Agreement except if the Sellers owe the Expense Reimbursement because the Buyer is not the Successful Bidder at the Auction, in which case the Expense Reimbursement shall be paid no later than the earlier of (i) as a condition to the closing of a sale to the Successful Bidder, and (ii) twenty (20) days after the Auction. Nothing in this **Section 21.2** shall relieve Buyer or Sellers of any Liability for a breach of this Agreement prior to the date of termination. Buyer acknowledges and agrees that payment and delivery of the Expense Reimbursement pursuant to this **Section 21.2** will constitute liquidated damages and be the sole and exclusive remedy of Buyer and its Representatives and Affiliates whether at Law or in equity, and upon the payment and delivery thereof to Buyer, Buyer and its Representatives and Affiliates will be deemed to have fully released and discharged Sellers and their Representatives and Affiliates from any Liability resulting from the termination of this Agreement.

B. The obligation to pay the Expense Reimbursement shall not be discharged, modified, or otherwise affected by any chapter 11 plan in the Bankruptcy Case or by any other Order or action of the Bankruptcy Court or any other court. The Expense Reimbursement shall be a superpriority administrative expense status (senior to any other superpriority administrative expense claims except for administrative expense claims of

any lender under a debtor in possession facility) pursuant to sections 363, 503(b), and 507(a)(2) of the Bankruptcy Code and payable by any Seller from its bankruptcy estate (the “**Superpriority Claim**,” and together with the Expense Reimbursement, the “**Bid Protections**”). For the avoidance of doubt, to the extent Sellers do not consummate an Alternative Transaction or do not otherwise have funds sufficient of pay the Expense Reimbursement, Buyer shall have allowed claims as set forth under this **Section 21.2.B**.

Section 21.3 Competing Bid.

This Agreement, the Parties’ obligations hereunder and the transactions contemplated hereby are subject to approval of the Bankruptcy Court and Sellers’ right and ability to pursue and consider higher or otherwise better competing bids with respect to the Store Properties and a material portion of the Purchased Assets in compliance with the Bid Procedures Order (each a “**Competing Bid**”); provided, however, that Sellers agree that they will not enter into any definitive documentation with respect to a Competing Bid until after the Bid Procedures Order is entered and this Agreement is terminated thereafter.

Section 21.4 Bankruptcy Court Milestones.

A. No later than January 27, 2020, each Seller shall file a petition with the Bankruptcy Court seeking relief from its creditors under Chapter 11 of the Bankruptcy Code.

B. No later than January 31, 2020, Sellers shall file with the Bankruptcy Court a motion seeking entry of the Bid Procedures Order and the Sale Order.

C. The Bid Procedures Order shall be entered no later than February 21, 2020.

D. The Bid Procedures Order shall contain a provision providing that the deadline for the submission of any Competing Bid must be submitted in accordance with the Bid Procedures Order no later than March 25, 2020 (the “**Bid Deadline**”).

E. If a Qualified Bid is submitted pursuant to the Bid Procedures Order, Sellers shall complete the Auction in accordance with the Bid Procedures Order on or before March 27, 2020.

F. The Sale Hearing shall be no later than March 30, 2020.

G. The Sale Order shall be entered no later than April 10, 2020.

H. Sellers shall be prepared to have the Closing no later than three (3) Business Days after the Sale Order is entered.

I. Sellers shall promptly file such motions or pleadings as may be necessary or appropriate to assume and assign the Assumed Contracts and to determine and resolve, if necessary, the amount of the Cure Costs.

Section 21.5 Cure Costs. Subject to entry of the Sale Order, the Parties shall, on or prior to the Closing, pay the Cure Costs and cure any and all other defaults and breaches under the Assumed Contracts so that such Assumed Contracts may be assumed by the applicable Seller and assigned to Buyer (subject to provision by Buyer of adequate assurance of future performance as may be required under Section 365 of the Bankruptcy Code) in accordance with the provisions of Section 365 of the Bankruptcy Code and this Agreement. To fund the payment of the Cure Costs, on or prior to the Closing, (a) Buyer shall pay the Cure Costs associated with the Assumed Contracts and fund the Reserve Account in a total aggregate amount not to exceed the Cure Cost Cap, and (b) Sellers shall pay the Cure Costs associated with the Assumed Contracts and fund the Reserve Account to the extent the Cure Costs exceed the Cure Cost Cap. For the avoidance of doubt, (i) Buyer shall fund the Reserve Account in an amount equal to the Cure Cost Cap, *minus* the Cure Costs funded by Buyer on the Closing Date for Assumed Contracts assumed on the Closing Date, (ii) Sellers shall fund the Reserve Account for all Cure Costs in excess of the Cure Cost Cap, and (iii) in the event the Cure Costs for Assumed Contracts assumed on the Closing Date exceed the Cure Cost Cap, then Sellers shall pay the Cure Costs for Assumed Contracts assumed on the Closing Date for amounts in excess of the Cure Cost Cap and fund the entire Reserve Account. The Sellers agree that it will promptly take such commercially reasonable actions as are necessary to obtain a Final Order of the Bankruptcy Court providing for the assumption and assignment of such Assumed Contracts.

Section 21.6 Bankruptcy Filings. At least two (2) Business Days prior to filing any motion, pleading, or other filing with the Bankruptcy Court relating to this Agreement, the sale of the Purchased Assets, the Bid Procedures Order, or the Sale Order, Sellers shall deliver to Buyer a copy in draft form. Sellers shall reasonably cooperate with Buyer with respect to all such filings and incorporate any reasonable comments of Buyer and its counsel into such document. If any Person shall file an appeal, petition for certiorari, motion for rehearing, motion for reargument, motion for reconsideration, motion for revocation of the Bid Procedures Order or the Sale Order or motion for a stay pending a decision on any such request, Sellers shall (a) immediately notify Buyer of such filing, (b) provide Buyer a copy of any such filing within one (1) Business Day, and (c) use its best efforts to defend against, oppose, and seek the dismissal of any such filing as expeditiously as practicable. Buyer may file or join in any motion, pleading, or other Bankruptcy Court filing in support or seeking approval of, and reply to any response or objection to, the Bid Procedures Order (including the Bid Procedures), the sale of the Purchased Assets hereunder, and the Sale Order, and shall cooperate with Sellers and use commercially reasonable efforts to obtain an expedited appeal of any adverse ruling concerning the Bid Procedures Order or the Sale Order.

Section 21.7 Sale Order. The proposed Sale Order submitted to the Bankruptcy Court shall, among other things, (a) approve, pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Sellers of this Agreement, (ii) the sale of the Purchased Assets to Buyer on the terms set forth herein and free and clear of all Liens (other than Permitted Exceptions included in the Assumed Liabilities), and (iii) the performance by Sellers of their respective obligations under this Agreement; (b) authorize and empower Sellers to assign to Buyer the Assumed Contracts; (c) find that Buyer is a “good faith” buyer within the meaning of Section 363(m) of the Bankruptcy Code, not a successor to any Seller, and grant Buyer the protections of Section 363(m) of the Bankruptcy Code; (d) find that Buyer shall have no Liability or responsibility for any Liability or other obligation of any Seller arising under or

related to the Purchased Assets other than as expressly set forth in this Agreement (including the Assumed Liabilities), including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, environmental, successor or transferee Liability, labor law, de facto merger or substantial continuity; and (e) find that Buyer shall have no Liability for any Excluded Liability. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining bankruptcy court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the bankruptcy court for purposes, among others, of (x) demonstrating that Buyer is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code, and (y) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code.

Section 21.8 Assumption and Assignment and Rejection of Assumed Contracts, Retained Contracts, and Rejected Contracts; Cure Costs.

A. Assignment and Assumption at Closing.

1. No later than ten (10) calendar days after the Petition Date, Sellers shall provide to Buyer a schedule setting forth (A) each Contract and Store Lease to which any Seller is a party or by which any Seller is bound and that is used in or related to any Leased Store or any of the Purchased Assets, (B) all Cure Costs (if any) for each such Contract or Store Lease, and (C) a general description of each such Contract or Store Lease (such schedule is referred to herein as the “**Contract Schedule**”);

2. No later than two (2) days after entry of the Bid Procedures Order, Sellers shall send a notice to each counterparty to a Contract or Store Lease on the Contract Schedule setting forth the proposed Cure Costs (if any) for such Contract or Store Lease (the “**Cure Notice**”). In the Cure Notice, Seller shall (x) set forth the procedures for the assumption and assignment of a Contract or Store Lease, and (y) notify counterparties that their Contract or Store Lease may be assumed by the Sellers and assigned to the Buyer or rejected by the Sellers.

3. No later than three (3) days prior to the Closing Date, Buyer shall, by delivering written notice to Sellers, designate each Contract or Store Lease on the Contract Schedule as “assumed,” “rejected,” or “retained.” Each Contract or Lease to be assumed by the Sellers and assigned to the Buyer will be so designated as “assumed” and is referred to herein as an Assumed Contract; each Contract or Store Lease to be rejected by the Seller will be so designated as “rejected” is referred to herein as a “**Rejected Contract**”; and each Contract or Lease that may become designated as “assumed” or “rejected” will be so designated as “retained” is referred to herein as a “**Retained Contract.**” Prior to the Closing Date, Sellers shall file a notice with the Bankruptcy Court setting forth the Assumed Contracts, the Rejected Contracts, and the Retained Contracts. The Sale Order shall provide that (x) Assumed Contracts or Retained Contracts that are later designated as Assumed Contracts are assumed by the Sellers and assigned to the Buyer effective upon Sellers filing a notice with the Bankruptcy Court and the counterparty being paid any Cure Costs (each, an “**Assumption**”

and Assignment Notice") and (y) the Rejected Contracts or Retained Contracts that are later designated as Rejected Contracts are rejected by the Sellers effective upon Sellers filing a notice with the Bankruptcy Court (each, a "**Rejection Notice**").

4. Sellers shall take all actions necessary to cause all Assumed Contracts to be assumed by Sellers and assigned to Buyer in accordance with Section 365 of the Bankruptcy Code and all actions necessary to cause all Rejected Contracts to be rejected by Sellers in accordance with Section 365 of the Bankruptcy Code.

5. At Closing, a reserve account controlled by Buyer in the aggregate amount of the Cure Costs for Retained Contracts (the "**Reserve Account**") shall be funded in accordance with **Section 21.5**. Between the Closing Date and the date that is sixty (60) days after Closing (the "**Retained Contracts Period**"), Buyer may designate any Retained Contract as an Assumed Contract or a Rejected Contract. Any Retained Contract that is designated as an Assumed Contract shall be a Purchased Asset. Any Retained Contract that is not designated as an Assumed Contract with the timely filing of an Assumption and Assignment Notice and is not designated as a Rejected Contract with the timely filing of a Rejection Notice on or before the expiration of the Retained Contracts Period shall automatically become a Rejected Contract immediately after the expiration of the Retained Contracts Period. The balance in the Reserve Account, if any, after the expiration of the Retained Contracts Period and after Cure Costs have been paid to all counterparties to Assumed Contracts shall be paid to (x) Sellers, up to the amount the Sellers paid to fund the Reserve Account, and (x) Buyer, for all remaining amounts in the Reserve Account.

6. Any Retained Contract shall be held by Sellers and not rejected in accordance with Section 365 of the Bankruptcy Code unless and until the Retained Contract is designated as a Rejected Contract or automatically becomes a Rejected Contract in accordance with **Section 21.8.A.5**. With respect to any Retained Contract: (i) Buyer shall be responsible for and pay for all costs associated with the continuation, operation, or holding by Sellers of such Retained Contract for the period from the Closing Date through the date the Retained Contract is designated as an Assumed Contract or is designated as a Rejected Contract or automatically becomes a Rejected Contract in accordance with **Section 21.8.A.5**. In the case whereby Buyer cannot directly pay the costs associated with the continuation or holding by Sellers of such Retained Contract, Sellers shall pay such costs and Buyer shall promptly reimburse Sellers for such costs. Notwithstanding anything herein to the contrary, if Buyer fails to pay when due any costs associated with the continuation or holding by Sellers of any Retained Contract, then such Retained Contract shall be deemed, upon delivery of three (3) Business Days' prior written notice from Sellers to Buyer of such breach and an opportunity to cure during such three (3) Business Day time period, a Rejected Contract.

B. Previously Omitted Contracts. In the event that it is discovered that a Contract or Store Lease should have been listed on the Contract Schedule but was not listed on the Contract Schedule (any such Contract or Store Lease, a “**Previously Omitted Contract**”), Sellers shall, immediately following the discovery thereof (but in no event later than two (2) Business Days following the discovery thereof), (i) notify Buyer of such Previously Omitted Contract and all Cure Costs (if any) for such Previously Omitted Contract and (ii) file a motion with the Bankruptcy Court on notice to the counterparties to such Previously Omitted Contract seeking entry of an order (the “**Omitted Contract Motion**”) requesting that the Bankruptcy Court fix the Cure Costs and authorize the assumption and assignment or rejection of such Previously Omitted Contract in accordance with this **Section 21.8**. Buyer shall then have until the later of the Retained Contract Deadline and ten (10) Business Days after the receipt of notice of the Previously Omitted Contract to designate such Previously Omitted Contract as an Assumed Contract, Rejected Contract, or, if the Retained Contracts Period is at least twenty (20) Business Days in the future, a Retained Contract. Sellers shall take all other actions necessary or appropriate to cause any Previously Omitted Contract to be treated in accordance with this **Section 21.8.B**. Seller shall be responsible for the payment of any Cure Costs related to a Previously Omitted Contract designated as an Assumed Contract to the extent that the Reserve Account is not sufficient to pay all Cure Costs.

**ARTICLE XXII.
MISCELLANEOUS**

Section 22.1 Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given when delivered personally to or when received by commercial delivery service (such as Federal Express, UPS, or Airborne with written confirmation of the date of receipt) or sent by facsimile (with facsimile confirmation of the date of receipt) by the Parties, their successors or assigns at the following addresses, or at such other addresses as the Parties may designate by written notice in the manner aforesaid:

“Seller”	Lucky’s Market Operating Company, LLC 6328 Monarch Park Pl. Niwot, CO 80503 Attn: CFO and General Counsel Email:
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With a copy to:	Polsinelli PC 222 Delaware Avenue, Suite 1101 Wilmington, DE 19801 Attn: Chris Ward Email: cward@polsinelli.com
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“Buyer”

LM Acquisition Co. LLC
5414 Westridge Drive
Boulder, CO 80301
Attn: Jason B. Sharon
Email: bosharon@icloud.com

With a copy to:

McDonald Hopkins LLC
300 North LaSalle
Suite 1400
Chicago, IL 60654
Attn: Marc J. Carmel
Email: mcarmel@mcdonaldhopkins.com

Section 22.2 Assignability and Parties in Interest. This Agreement shall not be assignable by any of the Sellers and the rights, interests, and obligations of the Sellers hereunder shall not be assignable without the prior written consent of the Buyer, which may be withheld in the exercise of its sole discretion. Buyer may by notice in writing to Sellers assign this Agreement or its rights, interests, and obligations hereunder and to the Purchased Assets, the Contracts, and the Store Leases in whole or in part to one or more of any of its Affiliates in its sole discretion, provided that, if Buyer so assigns, Buyer remains bound and the assignee is able to fully discharge all of Buyer’s obligations under this Agreement. Upon any such permitted assignment, the references in this Agreement to Buyer shall also apply to any such assignee(s) unless the context otherwise requires. This Agreement shall inure to the benefit of and be binding upon Buyer and Sellers and their respective permitted successors and assigns. No person other than the Parties and their assignees shall have any rights or benefits hereunder. Notwithstanding anything to the contrary set forth herein, the rights and interests of Sellers under this Agreement shall inure to the benefit of any trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code and/or any liquidating trust or any other entity appointed as successor to Sellers pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code.

Section 22.3 Governing Law. This Agreement shall be governed by, and construed and enforced, in accordance with the laws of the State of Delaware without regard to its choice of laws rules, except that, as to matters of real property law, this Agreement shall be governed by the internal law of the jurisdiction in which the real property is located.

Section 22.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same instrument; and shall be effective upon execution and delivery of one or more of such counterparts by each of the Parties. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which will be deemed an original.

Section 22.5 Indemnification for Brokerage. Except for any fees owed to the Sellers’ investment bankers by Sellers, Buyer and Sellers each represent and warrant to the other that no broker or finder has acted on its behalf in connection with this Agreement or the transactions contemplated hereby. Each Party agrees to indemnify, defend and hold harmless the other from

any Losses for commissions or other compensation by any broker, finder or similar agent claiming to have been employed by or on behalf of such Party.

Section 22.6 Publicity. All publicity relating to this Agreement and the sale of Purchased Assets hereunder shall be released subject to the terms of the confidentiality provisions of this Agreement and only after prior consultation with the other Party. The Parties agree not to disclose publicly (except as required by Law, including any applicable securities law or other legal disclosure obligations of such Party or any consolidated group of which it is a part, or except as may be required by debt instruments and/or financing or credit agreements by which the Parties are bound) any financial information in connection with the sale of Purchased Assets hereunder. This provision shall survive the Closing and the termination of this Agreement without limitation.

Section 22.7 Complete Agreement. This Agreement, its exhibits, schedules, annexes, and all other documents delivered or to be delivered pursuant to this Agreement and the Confidentiality Agreement, contain or will contain the entire agreement between the Parties with respect to the transactions contemplated herein and shall supersede all previous oral or written agreements and all contemporaneous oral negotiations, commitments, and understandings.

Section 22.8 Modifications, Amendments and Waivers. At any time prior to the Closing Date or termination of this Agreement, the Parties may, by written agreement:

- A. Extend the time for the performance of any of the obligations or other acts of the Parties;
- B. Waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement (including any alleged waiver based on a Party's knowledge of any inaccuracy in any representation or warranty contained herein);
- C. Waive compliance with any of the covenants or agreements contained in this Agreement; and
- D. Amend or supplement any of the provisions of this Agreement.

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all Parties. No waiver by any Party of any default, misrepresentation or breach of warranty, covenant or agreement hereunder, whether intentional or not, shall be (i) effective unless expressed in a writing executed by the Party sought to be charged therewith, or (ii) deemed to extend to any prior or subsequent default, misrepresentation or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Section 22.9 Interpretation. As used in this Agreement and unless otherwise indicated herein to the contrary:

- A. When a reference is made in this Agreement to an Article, Section, Exhibit, Disclosure Schedule, clause, or subclause, such reference shall be to an Article, Section, Exhibit, Disclosure Schedule, clause, or subclause of this Agreement.

B. The words “include,” “includes,” and “including” and other words or phrases of similar import shall be deemed to be followed by the words “without limitation” whether or not they are in fact followed by such word or words of like import.

C. The words “hereof,” “herein,” and “hereunder” and other words or phrases of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement.

D. The word “if” and other words or phrases of similar import shall be deemed, in each case, to be followed by the phrase “and only if.”

E. The use of “or” herein is not intended to be exclusive.

F. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa.

G. All terms defined in this Agreement have their defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

H. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any Contract are to that Contract as amended, modified, or supplemented from time to time in accordance with the terms hereof and thereof. References to a Person are also to its successors and permitted assigns. References to a Governmental Authority shall be deemed to include reference to any successor thereto. References from or through any date means, unless otherwise specified, from and including or through and including such date, respectively.

I. References to “Dollars” or “\$” shall mean United States dollars.

J. References to “days” shall refer to calendar days unless Business Days are specified. If any period expires on a day that is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day that is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

K. Unless the context otherwise requires, the word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if.”

L. The headings contained in this Agreement are for reference purposes only and, shall not affect in any way the meaning or interpretation of this Agreement.

M. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and the use of a gender shall include all genders.

N. All exhibits, annexes and schedules attached to this Agreement are incorporated as part of this Agreement as if fully set forth herein.

O. Should any article, section, clause or other part of this Agreement be held or declared to be void or illegal for any reason, all other sections, articles, clauses and other parts of this Agreement which can be effective without such void or illegal article, section, clause or part shall, nevertheless, remain in full force and effect.

P. There shall be no presumption or standard of construction in favor of or against either Party.

Q. All references in this Agreement to “the date hereof” or “the date of this Agreement” shall refer to the Original Execution Date.

R. The date on which the representations and warranties set forth in Article IX, Article X and Article XI are made by Sellers or Buyer shall not change as a result of the execution of this Agreement and shall be made as of such dates as they were in the Original Agreement.

Section 22.10 Joint and Several Obligations.

A. All obligations and covenants of Sellers under this Agreement are joint and several.

B. For the purposes of this Agreement, Lucky’s Market Parent Company, LLC is hereby irrevocably appointed by Sellers as their agent, to (i) receive on behalf of Sellers the Purchase Price and any other amounts payable to Sellers, under this Agreement, (ii) give and receive notices under this Agreement, (iii) amend this Agreement and any related agreements, and (iv) give any consent, waiver or approval contemplated under this Agreement or any related agreement.

Section 22.11 Transaction Expenses. Except as otherwise specifically provided herein, including **Section 21.2**, all fees, costs and expenses incurred by Buyer or Sellers in connection with the transactions contemplated by this Agreement shall be borne by the Party incurring the same.

Section 22.12 Time Is of the Essence. Time is of the essence of each and every provision of this Agreement.

Section 22.13 Third Party Beneficiary Rights. Except as may be otherwise specifically provided herein, this Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not a Party hereto.

Section 22.14 Further Assurance. Provided the same does not result in any nominal expense or Liability to the requested Party in addition to that specifically provided elsewhere or

contemplated in this Agreement, each Party will from time to time after the Closing Date, upon the request of the other Party, do, execute, acknowledge and deliver such further acts, assignments, assumptions, transfers and conveyances as may be reasonably required to consummate the transactions contemplated herein or to convey, transfer, assign and vest in Buyer all of Sellers' rights, title and interest in and to the Purchased Assets, or to respond to any reasonable inquiry of a Governmental Authority concerning this transaction including the Federal Trade Commission, the Department of Justice or any state attorney general.

From and after the Closing Date, Sellers shall cooperate with Buyer, and Buyer shall arrange, at Buyer's expense, to transfer the applicable telephone numbers of the Store Properties to the account of Buyer to the extent practicable.

Section 22.15 Submission to Jurisdiction; Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any related agreement or the transactions contemplated hereby or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court, or (b) bring any Litigation arising out of or relating to this Agreement or any related agreement or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions will enforce any Order of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any related agreement or the transactions contemplated hereby or thereby.

Section 22.16 Waiver of Jury Trial. Buyer and Sellers each acknowledge that they are aware of and have had the advice of counsel with respect to their rights to trial by jury under the Laws of the United States or of any other Governmental Authority, and each Party hereby expressly and knowingly waives and releases all such rights to trial by jury in any action or proceeding brought by either Party against the other (or against its officers, directors, shareholders, trustees, members, partners, limited partners, agents or employees including its accountants, advisors or attorneys) on any matters whatsoever arising out of or in any way connected with this Agreement, and any dispute arising from or connected with any such matter shall not be tried by jury.

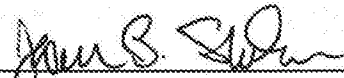
Section 22.17 No Survival of Sellers' Representations and Warranties. The representations and warranties of Sellers contained in this Agreement (which, for the avoidance of doubt, does not include Section 10.11) or in any certificate delivered hereunder shall not survive the Closing.

[Remainder of Page Intentionally Left Blank]

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


BUYER:

LM ACQUISITION CO. LLC, a Delaware
limited liability company

By: 
Name: Jason B. Sharon
Title: Sole Member

SELLERS:

LUCKY'S MARKET PARENT COMPANY, LLC, a
Delaware limited liability company

By: 
Name: Andy Pittari
Title: CEO

LUCKY'S MARKET OPERATING COMPANY,
LLC, a Delaware limited liability company

By: 
Name: Andy Pittari
Title: CEO

SINOC, INC., a Colorado corporation

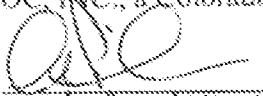
By: 
Name: Andy Pittari
Title: CEO

Exhibit B

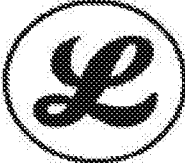



Name of Contract or Store Lease	Description	Cure Cost
Commercial Lease dated September 22, 2017, by and between 425SC, LLC, a Colorado limited liability company, as landlord, and Lucky's Market Operating Company, LLC, a Delaware limited liability company, as tenant.	Store Lease for Fort Collins Store Property	\$98,073.00
Lease Agreement dated December 15, 2006, as last extended by letter agreement dated May 11, 2016 (collectively, the "Lease"), by and between Conis Development Co., a partnership, as landlord, and Sinoc, Inc., a Colorado corporation, as tenant.	Retail Lease for the North Boulder Grocery Store Property	\$0.00
Lease Agreement dated January 1, 2007, as last extended by letter agreement dated May 11, 2016 (collectively, the "Lease"), by and between Conis Development Co., a partnership, as landlord, and Sinoc, Inc., a Colorado corporation, as tenant.	Retail Lease for the North Boulder Cafe Store Property	\$0.00
Lease Agreement dated August 12, 2011, as last extended by letter agreement dated May 11, 2016 (collectively, the "Lease"), by and between Conis Inc., as landlord, and Sinoc, Inc., a Colorado corporation, as tenant	Retail Lease for the North Boulder Bakehouse Store Property	\$0.00
Parking Lot Lease dated December 4, 1980, between Nomad Players, Inc., as landlord, and Conis, Inc., as tenant, with tenant's interest being assigned by Assignment and Assumption of Parking Lot Lease dated July 21, 2018, from Conis Development Co., a general partnership, to Lucky's Operating Company, LLC, a Delaware limited liability company	Parking lease for the Store Properties located in North Boulder	\$0.00
Fat & Bone Removal Service Agreement between Dar Pro Solutions between Lucky's Market Operating Company, LLC dated February 28, 2019 – Fort Collins	Fat and bone removal services	\$0.00
Used Cooking Oil Removal Service Agreement between Lucky's Market Operating Company, LLC and Dar Pro Solutions, dated February 28, 2019 – Fort Collins	Cooking oil removal services	\$0.00
Service Agreement between Lucky's Market Operation Company, LLC and Waste Management of Colorado, Inc., dated February 22, 2019 - Fort Collins	Waste Services	\$265.30
Service Agreement between Lucky's Market Operation Company, LLC and Waste Management of Colorado, Inc., dated March 22, 2019 - Fort Collins	Recycling	Included in Waste Services Cure

SCHEDULE 2.1(H)

Marks

<http://luckysmarket.com>

<http://www.luckysmarket.com>

<u>Owner</u>	<u>Country</u>	<u>Mark</u>	<u>App./Reg. No.</u>	<u>App./Reg. Date</u>
Lucky's Market Parent Company, LLC	USA	MAISON DE BEAUXTRISH	88/669703	10/25/2019
Lucky's Market Parent Company, LLC	USA	CHATEAU BEAUXTRISH	88/346528	03/19/2019
Lucky's Market Parent Company, LLC	USA		87/762081	01/19/2018
Lucky's Market Parent Company, LLC	USA		5653029	01/15/2018
Lucky's Market Parent Company, LLC	USA		4735408	05/12/2015
Lucky's Market Parent Company, LLC	USA		4735409	05/12/2015