

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM604578

<b>SUBMISSION TYPE:</b>	RESUBMISSION
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL
<b>RESUBMIT DOCUMENT ID:</b>	900567340

## CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Elmgang Enterprises I, Inc. d/b/a Esposito's Sausage		06/19/2020	Corporation: NEW YORK

## RECEIVING PARTY DATA

<b>Name:</b>	Esposito's Sausage, LLC
<b>Street Address:</b>	354 West 38th Street, 1st Floor
<b>City:</b>	New York
<b>State/Country:</b>	NEW YORK
<b>Postal Code:</b>	10018
<b>Entity Type:</b>	Limited Liability Company: DELAWARE

## PROPERTY NUMBERS Total: 9

Property Type	Number	Word Mark
Registration Number:	5432318	ESPOSITO SAUSAGE
Registration Number:	3498049	ESPOSITO'S FINEST QUALITY SAUSAGE
Registration Number:	3498047	ESPOSITO'S
Registration Number:	3444250	ESPOSITO'S FINEST QUALITY
Registration Number:	3444247	ESPOSITO'S FINEST
Registration Number:	3444243	
Registration Number:	3444234	ESPOSITO'S FINEST QUALITY SAUSAGE PRODUC
Registration Number:	3444233	ESPOSITO'S FINEST QUALITY SAUSAGE
Registration Number:	3444230	ESPOSITO'S FINEST

## CORRESPONDENCE DATA

**Fax Number:** 6174230498  
*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.*

**Phone:** 617-423-0400  
**Email:** SVeenema@murphyking.com  
**Correspondent Name:** Steven M. Veenema  
**Address Line 1:** Murphy & King P.C.  
**Address Line 2:** One Beacon Street, 21st Floor

**Address Line 4:**

Boston, MASSACHUSETTS 02108

**NAME OF SUBMITTER:**

Steven M. Veenema

**SIGNATURE:**

/Steven M. Veenema/

**DATE SIGNED:**

10/23/2020

**Total Attachments: 45**

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**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT is dated as of the 19th day of June, 2020 by and among (i) ELMGANG ENTERPRISES I, INC., a New York corporation d/b/a ESPOSITO'S SAUSAGE (the "Seller"), (ii) ESPOSITO'S SAUSAGE, LLC, a Delaware limited liability company (the "Buyer"), and (iii) DAVID SAMUELS (the "Selling Shareholder," and collectively with the Seller, the "Selling Group").

WHEREAS, the Selling Shareholder own all of the equity interests of the Seller;

WHEREAS, the Seller is engaged in the business of the manufacture, marketing, distribution and sale of sausage products (the "Business"); and

WHEREAS, the Buyer desires to purchase the Business by acquiring substantially all of the assets owned by the Seller, subject to certain obligations, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, each of the Buyer and the members of the Selling Group agrees as follows:

1. PURCHASE AND SALE.

1.1. Acquired Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing referred to in Section 4 hereof, the Seller shall sell, assign, transfer and deliver to the Buyer, and the Buyer shall purchase, acquire and take assignment and delivery of, all of the Seller's right, title and interest in and to the assets (other than the Excluded Assets specified in Section 1.2) of the Seller (all of which assets are hereinafter referred to collectively as the "Acquired Assets"), including without limitation in and to the following assets:

(a) Any and all of the Seller's trade accounts receivable, notes receivable, credit card receivables and miscellaneous receivables (the "Accounts Receivable");

(b) Any and all fixtures, machinery, installations, equipment, furniture, tools, spare parts, supplies, materials and other personal property, including without limitation, those items described on Schedule 1.1(b) hereto (the "Equipment");

(c) All of the Seller's title to, interest in and rights under the leases of personal property described on Schedule 1.1(c) hereto (the "Personal Property Leases");

(d) All of the Seller's rights under the purchase orders, contracts and agreements described on Schedule 1.1(d) hereto, for the purchase or sale of utilities, goods, materials and services, including all claims, contract rights, product and warranty claims relating thereto (the contracts and agreements referred to in this paragraph (e) being referred to collectively as the "Other Contracts");

(e) All of the Seller's transferable rights under the licenses, permits and approvals, both governmental and private, described on Schedule 1.1(e) hereto (the "Permits");

(f) All of the Seller's trademarks, trade names, trade secrets, corporate or limited liability company names (including without limitation, as applicable, the name "Esposito's Sausages" and variations thereof), domain names, websites, software, copyrights, recipes, proprietary blends, designs, patents, licenses (as licensee or licensor), other agreements and applications with respect to the foregoing, production records, technical information, manufacturing or service know-how, processes, customer lists, telephone numbers and other intangible assets, sales promotion materials, creative materials, art work, photographs, public relations and advertising material, studies, reports, correspondence and other similar documents and records, whether in electronic form or otherwise, including without limitation those described on Schedule 1.1(f) hereto (the "Intangibles");

(g) All of the Seller's inventories, including raw materials, parts, work in process, packaging and finished goods (the "Inventories");

(h) All of the Seller's accounting books, records and ledgers, related to the Business, employment and personnel records for all employees of the Seller related to the Business (to the extent transferrable), information systems and all other documents and records relating to the Acquired Assets (the "Books and Records"); provided, that Seller shall retain copies of any Books and Records that are in archived or back-up electronic form to the extent such Books and Records are not easily accessible and copies of any Books and Records required to be retained by Seller pursuant to applicable laws or regulations (it being agreed that Seller shall have the right to use such Books and Records solely to comply with applicable laws and regulations, and that Buyer shall have the right to use such Books and Records in connection with its operation of the Business); provided, further, that Books and Records shall not include (I) personnel and employment records for former employees of Seller, solely to the extent prohibited by law or (II) Tax Returns and other books and records related to Taxes paid or payable by Seller or any of its Affiliates (the "Excluded Books and Records");

(i) All prepaid expenses and security deposits related to the Business or the other Acquired Assets;

(j) All of the Seller's title to, interest in and rights under the leases of real property described on Schedule 1.1(j) hereto (the "Real Property Leases");

(k) All of the Seller's rights under the insurance policies described on Schedule 1.1(k) hereto (the "Insurance Policies"), including, if such Insurance Policies cannot be assigned to the Buyer, all insurance proceeds actually received from third parties by the Seller under any insurance policy written prior to the Closing with respect to (A) the Acquired Assets prior to the Closing or (B) any Assumed Liabilities; and

(f) All of the Seller's goodwill.

1.2. Excluded Assets. Notwithstanding the foregoing, the Seller is not selling and the Buyer is not purchasing, pursuant to this Agreement, and the term "Acquired Assets" shall not include, any of the following assets (the "Excluded Assets"):

(a) The consideration received by the Seller pursuant to this Agreement;

(b) The rights of the Seller under this Agreement;

(c) All of the Seller's cash, commercial paper and cash equivalents, on hand or in bank accounts as of the Closing;

(d) The Excluded Books and Records;

(e) Any and all refunds or credits against Taxes relating to periods prior to Closing;

(f) Other than insurance proceeds specified in Section 1.1(k), any and all current and prior insurance policies and all rights of any nature with respect thereto, including all rights to insurance proceeds received or receivable thereunder and to assert claims with respect to any such insurance recoveries, in each case whether arising prior to, on or after the Closing; and

(g) Those assets set forth on Schedule 1.2(g) hereto.

2. ASSUMPTION OF CERTAIN OBLIGATIONS.

At the Closing, the Buyer shall assume, and agree to pay, perform, fulfill and discharge, the following obligations of the Seller, each to the extent they relate exclusively to the Business (the "Assumed Liabilities"):

(a) all obligations and liabilities which arise after the Closing and which relate to events which transpire subsequent to the Closing, under the Seller's Personal Property Leases, Permits, Insurance Policies, Real Property Leases and Other Contracts or with respect to the Equipment (to the extent such liability is not otherwise indemnifiable by the Selling Group hereunder); and

(b) all obligations and liabilities of the Seller reflected on the Balance Sheet (as defined in Section 5.5) which remain unpaid at the Closing, other than (i) any obligations or liabilities for Indebtedness (as defined in Section 9), (ii) any obligations or liabilities for Taxes (as defined in Section 9) of the Seller, (iii) any unfunded workmen's compensation claims, accrued vacation pay, benefits, insurance premiums and all other

employee liabilities (other than ordinary course payroll liabilities) incurred through the date of Closing, and (iv) any liability with respect to an Excluded Asset; and

(c) all obligations and liabilities incurred by the Seller in connection with the Business in the ordinary course of business subsequent to the date of the Balance Sheet and through the Closing Date, but only to the extent accrued in accordance with Modified GAAP, consistently applied and reflected on the Final Closing Statement (as defined in Section 3.2(c)), and other than (i) any obligations or liabilities for Indebtedness, (ii) any obligations or liabilities for Taxes of the Seller, (iii) any unfunded workmen's compensation claims, accrued vacation pay, benefits, insurance premiums and all other employee liabilities (other than ordinary course payroll liabilities) incurred through the date of Closing, (iv) any liability with respect to an Excluded Asset;

(d) any actual or alleged liability for death or injury to person or property, to the extent not covered by insurance, as a result of any actual or alleged defect in any product prepared by the Business after the Closing Date (to the extent such liability is not otherwise indemnifiable by the Selling Group hereunder) or any product prepared by the Business prior to the Closing Date and sold, after the Closing Date, and after the expiration of the labeled shelf life for such product.

Anything in this Agreement to the contrary notwithstanding, the Buyer shall not assume, and shall not be deemed to have assumed, any liability or obligation of the Seller whatsoever, including without limitation the liabilities and obligations set forth below, other than as specifically set forth in this Section 2 (with all such unassumed liabilities and obligations referred to herein as the "Excluded Liabilities");

(i) any Indebtedness as of the Closing, including without limitation, any Indebtedness relating to the PPP Loan;

(ii) all obligations and liabilities for Taxes of Seller;

(iii) any actual or alleged liability for the cleanup or removal of, or for death or injury to person or property and any other damages or expenses incurred (to the extent not covered by insurance), as a result of the presence, release, emission or discharge of, any Hazardous Substance, hazardous waste, toxic pollutants or other chemical by-products relating to or affecting the assets of the Seller (including the Acquired Assets), the Real Property or the Business, to the extent such liability arises out of any matter that occurred or existed on or before the Closing Date;

(iv) any actual or alleged liability for death or injury to person or property, to the extent not covered by insurance, as a result of any actual or alleged defect in any product sold or prepared by the Seller on or prior to the Closing Date and sold on or before the expiration of the labeled shelf life for such product; and

(v) to the extent not covered by insurance, any claim, obligation or liability arising in connection with the employment or termination of employment of any persons in the Business on or before the Closing Date (other than ordinary course payroll obligations through Closing), including any workmen's compensation claims, any employee grievances, any liabilities with respect to pension, medical or other employment benefits and any liabilities for accrued vacation, bonus or severance payments arising prior to Closing or as a result of the consummation of the transactions contemplated by this Agreement.

### 3. PURCHASE PRICE.

3.1. Delivery of Purchase Price. At the Closing, the Buyer shall pay to the Seller, or its designee or designees, as the aggregate purchase price for the Acquired Assets (the "Purchase Price"), an amount equal to \$ [REDACTED] of which (a) \$ [REDACTED] less all Indebtedness of Seller as described below shall be payable by wire transfer of immediately available funds as set forth in this Section 3.1, (b) \$ [REDACTED] (the "NWC Holdback Amount") will be paid by the Buyer to the Escrow Agent referred to in Section 4.2 hereof at the Closing by wire transfer or by delivery of a certified or bank check in such amount, (c) \$ [REDACTED] (the "PPP Loan Holdback Amount") will be paid by the Buyer to the Escrow Agent at the Closing by wire transfer or by delivery of a certified or bank check in such amount, and (d) \$ [REDACTED] will be paid pursuant to two promissory notes delivered by the Buyer to the Seller or its designee or designees at the Closing as follows: (i) \$ [REDACTED] of the Purchase Price shall be paid to the Seller or its designee or designees pursuant to the terms of a subordinated promissory note in the form of Exhibit A hereto ("Seller Note A"), and (ii) \$ [REDACTED] of the Purchase Price shall be paid to the Seller or its designee or designees pursuant to a contingent subordinated promissory note in the form of Exhibit B hereto ("Seller Note B", and collectively with Seller Note A, the "Seller Notes"). The Purchase Price is subject to adjustment as provided in Section 3.2 below. That portion of the Purchase Price which is equal to the aggregate amount of all Indebtedness of the Seller outstanding as of 12:01 a.m. on the Closing Date shall be paid by the Buyer, on behalf of the Seller, directly to the creditors to whom such Indebtedness is owed in discharge thereof pursuant to Section 4.2(e) below. The remaining balance of the Purchase Price (the "Cash Purchase Price") shall be paid by the Buyer to the Seller or its designee or designees by wire transfer in the aggregate amount equal to such balance. In addition to the foregoing, the Selling Shareholder shall be entitled to receive \$ [REDACTED] in transition and payments in accordance with the Transition Services Agreement to be executed at Closing in the form of Exhibit C hereto (the "Transition Agreement").

### 3.2. Purchase Price Adjustments.

(a) As used herein: (i) "Net Working Capital" means, as of any particular time, the amount by which the sum of all current assets included in the Acquired Assets exceeds the sum of all current liabilities (other than any Payroll Liability) included in the Assumed Liabilities, in each case calculated as of such time and determined in accordance with Modified GAAP using the methodologies set forth on Schedule 3.2 hereto (the "Methodologies"); (ii) "Payroll Adjustment Amount" (which may be a positive or



negative number) means (A) the Effective Time Payroll Liability (as defined below) *minus* (B) the Payroll Liability Target; provided, that if the Payroll Adjustment Amount is a negative number, then the Payroll Adjustment Amount shall be deemed to be zero (\$0); (iii) "Payroll Liability" means, as of any particular time, the amount of claims for ordinary course payroll liabilities accrued as of such time; (iv) "Payroll Liability Target" means \$ [REDACTED] (v) "Working Capital Target" means \$ [REDACTED] and (vi) "WC Adjustment Amount" (which may be a positive or negative number) means (A) the Effective Time Net Working Capital (as defined below), *minus* (B) the Working Capital Target; provided that if the Effective Time Net Working Capital is between \$ [REDACTED] and \$ [REDACTED] the WC Adjustment Amount shall be zero (\$0).

(b) Within seventy-five (75) days after the Closing Date, the Buyer shall prepare and deliver to the Seller (i) an unaudited balance sheet of the Business as of the Effective Time, prepared in accordance with Modified GAAP and the Methodologies and (ii) an unaudited statement of Net Working Capital and Payroll Liability as of the Effective Time, prepared in accordance with Modified GAAP and the Methodologies (collectively with the balance sheet referred to in (i) above, the "Closing Statement"). The Buyer and its accountants shall consult with the Seller's independent accountants in connection with the preparation of the Closing Statement and shall permit the Seller's accountants at the earliest practicable date to review and make copies of all work papers, schedules and calculations used in the preparation thereof.

(c) When the Buyer delivers the Closing Statement, the Buyer shall also deliver a certificate (i) certifying that the Closing Statement was prepared in accordance with Modified GAAP and the Methodologies in accordance with the procedures set forth in paragraph (b) above and (ii) containing the Buyer's calculations, based on the Closing Statement (the "Buyer's Proposed Calculations") of the Net Working Capital as of the Effective Time (the "Effective Time Net Working Capital") and the Payroll Liability as of the Effective Time (the "Effective Time Payroll Liability." Within thirty (30) days after receipt of the Closing Statement and the accompanying certificate, the Seller shall notify the Buyer of its agreement or disagreement with the Closing Statement and the accuracy of any of the Buyer's Proposed Calculations. If the Seller disputes any aspect of the Closing Statement or the amount of any of the Buyer's Proposed Calculations, then the Seller shall have the right to direct its independent accountants, at the Seller's expense, to review and test the Closing Statement. The Seller's accountants shall complete their review and test within thirty (30) days after the date the Seller disputes the Buyer's Proposed Calculations. If the Seller and its independent accountants, after such review and test, still disagree with the Buyer's Proposed Calculations, and the Buyer does not accept the Seller's proposed alternative calculations (the "Seller's Proposed Calculations"), the Seller and the Buyer shall work together in good faith to attempt to resolve their differences concerning the Effective Time Net Working Capital and if the Seller and the Buyer are unable to resolve such differences within fifteen (15) days after delivery of the Seller's Proposed Calculations to the Buyer, then the Seller and the Buyer shall direct BDO USA LLP (the "Independent Accounting Firm") to resolve the remaining disputed items (the "Remaining Disputed

Items”) within thirty (30) days after the date of the Buyer’s rejection of the Seller’s Proposed Calculations by conducting its own review and test of the Closing Statement and thereafter selecting either the Seller’s Proposed Calculations of the Remaining Disputed Items or the Buyer’s Proposed Calculations of the Remaining Disputed Items or an amount in between the two. Each of the Seller and the Buyer agrees that it shall be bound by the Independent Accounting Firm’s determination of the Remaining Disputed Items. The fees and expenses of the Independent Accounting Firm shall be paid one-half by the Seller and one-half by the Buyer, provided that if the difference between the Final Adjustment Amount calculated pursuant to this paragraph (c) and the Final Adjustment Amount that would have resulted from the use of the Proposed Calculations of one of the parties hereto (the “Erroneous Party”) is more than twice as great as the difference between the Final Adjustment Amount calculated pursuant to this paragraph (c) and the Final Adjustment Amount that would have resulted from the use of the other party’s Proposed Calculations, the Erroneous Party shall pay all of the fees and expenses of the Independent Accounting Firm.

(d) The “Final Adjustment Amount” shall equal (i) the WC Adjustment Amount *minus* (ii) the Payroll Adjustment Amount, with both clauses (i) and (ii) calculated pursuant to paragraph (c) of this Section 3.2. If the Final Adjustment Amount is a positive number, then the Buyer shall pay the Final Adjustment Amount to the Seller, and the Buyer and the Seller shall execute and deliver to the Escrow Agent written disbursement instructions authorizing the Escrow Agent to promptly release the NWC Holdback Amount to the Seller. If the Final Adjustment Amount is a negative number, then the Buyer shall recover the Final Adjustment Amount from the NWC Holdback Amount (to the extent that the funds contained therein are sufficient), in which event the Buyer and the Seller shall execute and deliver to the Escrow Agent written disbursement instructions authorizing the Escrow Agent to promptly make such disbursement to the Buyer from the NWC Holdback Amount and to disburse the remainder to the Seller, and if the NWC Holdback Amount is not sufficient, the entire NWC Holdback Amount shall be delivered to the Buyer and the Seller shall pay to the Buyer an amount equal to such deficiency. Any payment by either the Buyer or the Seller pursuant to this paragraph (e) shall be made in cash or same day funds within ten (10) days after the determination of the Final Adjustment Amount.

(e) Upon either irrevocable (i) forgiveness of all or any portion of the PPP Loan or (ii) payment by the Seller of all or any portion of the PPP Loan, the Seller shall provide written evidence thereof to the Buyer and the Escrow Agent. Upon receipt of written evidence thereof which is reasonably satisfactory to the Buyer (it being understood that written evidence from the lender of the PPP Loan evidencing such forgiveness or repayment shall be deemed reasonably satisfactory), the Buyer and the Seller shall execute and deliver to the Escrow Agent written disbursement instructions authorizing the Escrow Agent to promptly disburse to the Seller from the PPP Loan Holdback Amount the amount so forgiven or paid in accordance with the Escrow Agreement.

3.3. Allocation of Acquired Assets, Assumed Liabilities and Purchase Price. The Buyer and the Seller shall allocate the gross purchase price for the Acquired Assets, as

determined for U.S. federal income Tax purposes (taking into account the Assumed Liabilities), among the Acquired Assets as set forth on Schedule 3.3 hereto (the "Allocation"). The Buyer and the Seller shall modify the Allocation of the gross purchase price as appropriate in accordance with the principles and procedures used in determining the Allocation set forth on Schedule 3.3 to reflect any adjustments in the gross purchase price paid hereunder or under the Seller Notes, as determined for federal income Tax purposes, made following the Closing in accordance with this Agreement. Each of the Buyer and the Seller hereto further agrees that (a) the Allocation shall be used in filing all required forms under Section 1060 of the Code and all Tax Returns and (b) it will not take any position inconsistent with such Allocation upon any examination of any such Tax Return, in any refund claim or in any Tax litigation or other proceeding. The Seller and the Buyer agree to consult with each other with respect to all issues related to the Allocation in connection with any Tax audits, controversies, or litigation.

3.4. Withholding Rights. If Seller provides a valid Certificate of Non-Foreign Status at the Closing then all payments of the Purchase Price pursuant to this Agreement shall be made without any deduction or withholding by the Buyer pursuant to the Code or any provision of state, local or foreign tax law. If Seller does not provide a valid for Certificate of Non-Foreign Status, then the Buyer shall be entitled to deduct and withhold from the Purchase Price otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax law. To the extent that amounts are so withheld by the Buyer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

#### 4. CLOSING.

4.1. Time and Place. The closing of the transfer and delivery of all documents and instruments necessary to consummate the transactions contemplated by this Agreement (the "Closing") shall be held on the date hereof (such date, the "Closing Date") by the exchange of duly executed electronic documents. The Closing shall be deemed to occur 12:01 a.m. on the Closing Date; provided that Net Working Capital, Payroll Liability and Payroll Adjustment Amount shall be determined as of 5:00 p.m. on the Closing Date (the "Effective Time").

4.2. Transactions at Closing. At the Closing:

(a) Each of the Seller and the Buyer shall duly execute and deliver to the other or its nominee or nominees an assignment agreement and Seller shall execute and deliver to the Buyer a bill of sale with respect to the Acquired Assets in the forms of Exhibit D and Exhibit E hereto, respectively.

(b) Each of the Seller and the Buyer shall duly execute and deliver to each other and the Escrow Agent the escrow agreement in the form of Exhibit F hereto (the

“Escrow Agreement”), and the parties shall obtain the executed signature page of the Escrow Agent to the Escrow Agreement.

(c) Each of the Buyer and the Selling Shareholder shall execute and deliver to the other party the Transition Agreement.

(d) The Buyer shall deliver the NWC Holdback Amount and the PPP Loan Holdback Amount to U.S. Bank, National Association (the “Escrow Agent”).

(e) The Seller shall deliver to the Buyer (i) a certificate (the “Certificate of Indebtedness”) certifying as to the amount of Indebtedness of the Seller outstanding as of 12:01 a.m. on the Closing Date, and specifying the amount owed to each creditor listed thereon as well as (ii) pay-off letters and lien discharges from the Seller’s creditors (other than the lender under the PPP Loan (as such term is defined on the Certificate of Indebtedness)), each in form satisfactory to the Buyer, with respect to such Indebtedness.

(f) The Buyer shall pay and discharge all outstanding Indebtedness of the Seller described on the Certificate of Indebtedness (other than the PPP Loan).

(g) The Seller shall deliver a properly executed statement dated as of the Closing Date that meets the requirements of Treasury Regulations Section 1.1445-2(b)(2) (“Certificate of Non-Foreign Status”).

(h) The Seller shall deliver to the Buyer evidence of termination of all Uniform Commercial Code financing statements filed against any of the Acquired Assets (other than any such financing statement in favor of any lender to the Buyer), or agreements to provide same with respect thereto in form and substance satisfactory to the Buyer and the Buyer’s counsel.

(i) The Buyer shall deliver to the Seller the Seller Notes.

(j) The Buyer shall deliver the Cash Purchase Price to the Seller or to such other entity or entities as the Seller shall designate to the Buyer by wire transfer of immediately available funds.

(k) Each of the Buyer and the Seller shall deliver to each other such other originals or certified or other copies of all documents and certificates described above as the other party hereto may reasonably request.

(l) The Seller shall deliver to the Buyer evidence of the landlord’s consent, approval and/or authorization under the Real Property Lease in the form of Exhibit E hereto.

## 5. REPRESENTATIONS AND WARRANTIES OF THE SELLING GROUP.

Each member of the Selling Group jointly and severally represents and warrants to the Buyer as follows:

5.1. Organization of the Seller; Authority. The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York. The Seller is duly qualified and in good standing as a foreign corporation in all jurisdictions in which the character of the properties owned or leased or the nature of the activities conducted by it makes such qualification necessary, except where the failure to be so qualified would not have a material adverse effect on the business, operations or financial condition of the Seller. The Seller has delivered to the Buyer complete and correct copies of the Articles of Incorporation and By-Laws of the Seller and all amendments thereto. The Seller has all requisite corporate power and authority to own and hold the Acquired Assets, to carry on the Business as such business is now conducted and to execute and deliver this Agreement and the Escrow Agreement (as defined in Section 7.13) and the other documents, instruments and agreements contemplated hereby or thereby (collectively, the "Transaction Documents") to which it is a party and to carry out all actions required of it pursuant to the terms of the Transaction Documents.

5.2. Approval; Binding Effect. The Seller has obtained all necessary authorizations and approvals from its Board of Directors and its shareholders required for the execution and delivery of the Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby. Each of the Transaction Documents to which any member of the Selling Group is a party has been duly executed and delivered by such member and constitutes the legal, valid and binding obligation of such member enforceable against it in accordance with its terms, except the enforceability thereof may be limited by any applicable bankruptcy, reorganization, insolvency or other laws affecting creditors' rights generally or by general principles of equity.

5.3. Non-Contravention. The execution and delivery by each member of the Selling Group of the Transaction Documents to which it is a party and the consummation by such member of the transactions contemplated hereby and thereby will not (a) violate or conflict with any provision of the Articles of Incorporation or By-Laws of the Seller, each as amended to date; or (b) constitute a violation of, or be in conflict with, or constitute or create a default under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) upon any property of any of the Seller or the Selling Shareholders (including without limitation any of the Acquired Assets) pursuant to (i) any agreement or instrument to which any of the Seller or the Selling Shareholders is a party or by which any of the Seller or the Selling Shareholders or any of their respective properties (including without limitation any of the Acquired Assets) is bound or to which any of the Seller or the Selling Shareholders or any of such properties is subject, or (ii) any statute, judgment, decree, order, regulation or rule of any court or governmental or regulatory authority applicable to any of the Seller or the Selling Shareholders.

5.4. Governmental Consents; Transferability of Licenses, Etc. Except as set forth on Schedule 5.4, no consent, approval or authorization of, or registration, qualification

or filing with, any governmental agency or authority (foreign, federal, state or local) is required for the execution and delivery by any member of the Selling Group of the Transaction Documents to which it is a party or for the consummation by such member of the transactions contemplated hereby or thereby. The Seller has and maintains, and the Permits listed on Schedule 1.1(e) hereto include, all material licenses, permits and other authorizations from all governmental authorities as are necessary or desirable for the conduct of the Business or in connection with the ownership or use of the Acquired Assets in the operation of the Business as currently conducted (the "Business Permits"). Except as expressly designated on Schedule 5.4, all of the Business Permits are transferable to the Buyer, and true and complete copies of such Business Permits have previously been delivered to the Buyer. Schedule 5.4 hereto lists (i) any material findings relating to food safety audits of the Seller or the Business conducted by any governmental agency or authority or by any customer of the Seller in the five year period prior to the date hereof and (ii) any recalls (whether voluntary or involuntary) of any product of the Seller manufactured, distributed or sold in the five year period prior to the date hereof.

5.5. Financial Statements. The Seller has delivered the following financial statements (the "Financial Statements") to the Buyer, and they are attached as Schedule 5.5 hereto: (a) the unaudited balance sheets of the Seller as of December 31, 2017, December 31, 2018 and December 30, 2019 (the December 31, 2019 balance sheet being referred to herein as the "Balance Sheet") and (b) the unaudited statements of income of the Seller for the fiscal year and portion thereof, as applicable, then ended. Each of the Financial Statements are true and correct and, except as set forth on Schedule 5.5, have been prepared in accordance with generally accepted accounting principles, consistently applied (subject to the absence of footnotes and to normal recurring year-end audit adjustments) ("Modified GAAP"); each of such balance sheets fairly and accurately presents in all material respects the financial condition of the Seller as of its respective date; and such statements of income fairly and accurately present in all material respects the results of operations of the Seller for the periods covered thereby.

5.6. Absence of Certain Changes. Except as set forth on Schedule 5.6, since December 31, 2018, the Seller has carried on its business only in the ordinary course in all material respects, and there has not been (a) any change in the business or financial condition of the Seller, other than changes which were both in the ordinary course of business and have not been, either in any case or in the aggregate, materially adverse; (b) any acquisition or disposition by the Seller of any asset or property other than in the ordinary course of business; (c) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting, either in any case or in the aggregate, the property or business of the Seller; (d) any declaration, setting aside or payment of any dividend or any other distributions in respect of the Seller's equity interests; (e) any increase in the compensation, pension or other benefits payable or to become payable by the Seller to any of its officers or employees, or any bonus payments or arrangements made to or with any of them (other than pursuant to the terms of any existing written agreement or plan of which the Buyer has been supplied complete and correct copies); (f) any forgiveness or cancellation

of any debt or claim by the Seller or any waiver of any right of material value other than compromises of accounts receivable in the ordinary course of business; (g) any entry by the Seller into any transaction other than in the ordinary course of business; (h) any incurrence by the Seller of any obligations or liabilities, whether absolute, accrued, contingent or otherwise (including, without limitation, liabilities as guarantor or otherwise with respect to obligations of others), other than obligations and liabilities incurred in the ordinary course of business; (i) any mortgage, pledge, lien, lease, security interest or other charge or Encumbrance (other than a Permitted Encumbrance) on any of the assets, tangible or intangible, of the Seller; or (j) any discharge or satisfaction by the Seller of any Encumbrance or payment by the Seller of any obligation or liability (fixed or contingent) other than (A) current liabilities included in the Balance Sheet and (B) current liabilities incurred since the date of the Balance Sheet in the ordinary course of business.

5.7. Litigation, Etc. Except as set forth on Schedule 5.7 hereto, no action, suit, proceeding or investigation is pending or, to the knowledge of any member of the Selling Group, threatened, relating to or affecting any of the Acquired Assets or the Seller or its properties, or which questions the validity of any of the Transaction Documents or challenges any of the transactions contemplated hereby or thereby, nor, to the knowledge of any member of the Selling Group, is there any basis for any such action, suit, proceeding or investigation. Except as set forth on Schedule 5.7 hereto, no restraining order or injunction exists which prevents the transactions contemplated by this Agreement and no action, suit or proceeding is pending or threatened before any court or administrative body in which it will be or is sought to restrain or prohibit or obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

5.8. Conformity to Law. Except as set forth on Schedule 5.8, the Seller has during the last five years complied in all material respects with, and is as of the Closing Date in compliance in all material respects with (a) all foreign, federal, state and local laws, statutes, governmental regulations and all judicial or administrative tribunal orders, judgments, writs, injunctions, decrees or similar commands applicable to such Person or any of its assets (including the Acquired Assets) (including, without limitation, any labor, environmental, occupational health, food safety, FDA, USDA, zoning or other law, regulation or ordinance) and (b) all unwaived terms and provisions of all Business Permits. Except as set forth in Schedule 5.8 hereto, during the last five years the Seller has not committed, been charged with, nor, to the knowledge of any member of the Selling Group, been under investigation with respect to, nor does there exist, any material violation of any provision of any foreign, federal, state or local law or administrative regulation in respect of the Seller or any of its assets (including the Acquired Assets).

5.9. Title to Acquired Assets.

(a) Except as set forth on Schedule 5.9(a), the Seller is the lawful owner of and has good and valid record and marketable title to the Acquired Assets, and has the full right to sell, convey, transfer, assign and deliver the Acquired Assets, without the need to obtain the consent or approval of any third party. Except for Permitted Encumbrances,

all of the Acquired Assets are entirely free and clear of any security interests, liens, claims, charges, options, mortgages, debts, leases (or subleases), conditional sales agreements, title retention agreements, encumbrances of any kind, material defects as to title or restrictions against the transfer or assignment thereof (collectively, "Encumbrances"). At and as of the Closing, the Seller will convey the Acquired Assets to the Buyer by bills of sale, certificates of title and other instruments of assignment and transfer effective in each case to vest in the Buyer, and the Buyer will have, good and valid record and marketable title to all of the Acquired Assets of the Seller, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) All of the Acquired Assets are in good condition and repair (reasonable wear and tear excepted) and are adequate and sufficient to carry on the Business as presently conducted.

(c) For purposes of this Agreement, "Permitted Encumbrances" means (i) liens described on Schedule 5.9 hereto which secure Indebtedness and which will be discharged at or prior to the Closing, (ii) liens for Taxes, assessments or other governmental charges or levies that are not yet due or payable or that are being contested in good faith by appropriate proceedings and for which an adequate reserve has been established and reflected on the Final Closing Statement; (iii) statutory liens of landlords and liens of carriers, warehousemen, mechanics, materialmen, workmen, repairmen and other liens imposed by law that are not yet due or payable or that are being contested in good faith and by appropriate proceedings, and for which an adequate reserve has been established and reflected on the Final Closing Statement; (iv) liens incurred or deposits made in the ordinary course of business and on a basis consistent with past practice in connection with workers' compensation, unemployment insurance or other types of social security, to the extent reflected on the Final Closing Statement; (v) with respect to real property, (A) zoning ordinances, variances, conditional use permits and similar regulations, permits, approvals and conditions to the extent not violated by the current use, and (B) liens not created by Seller that affect the underlying fee interest of any leased real property, including master leases or ground leases and any set of facts that an accurate up-to-date survey would show; provided, that (with respect to this clause (v) only) any such item is a Permitted Encumbrance only if it does not materially interfere with the ordinary conduct of the Business or materially impair the continued use and operation of such real property for the purpose for which it is used as of the Closing Date; and (vi) liens deemed to be created by any of the Transaction Documents.

5.10. Real Property; Safety, Zoning and Environmental Matters.

(a) Schedule 5.10 hereto sets forth complete and accurate legal descriptions of all real property owned or leased by the Seller and included in the Acquired Assets (the "Real Property"). There are no material defects in the Real Property, as to title or condition, not described on Schedule 5.10, other than Permitted Encumbrances. The Seller has not received any notice during the last 5 years that either the whole or any portion of the Real Property is to be condemned, requisitioned or otherwise taken by public



authority. No member of the Selling Group has any knowledge of any public improvements which may result in special assessments against or otherwise affect the Real Property. Except as set forth on Schedule 5.10(a) hereto, the Seller has not subleased, licensed or otherwise granted any Person the right to use or occupy any of the Real Property or any portion thereof. The Seller enjoys quiet possession of the properties covered by the Real Property Leases. (i) The Seller provided the landlord, on May 28, 2020, in accordance with the terms of the Real Property Lease, the cover letter and Assignment and Consent to Assignment attached to Schedule 5.10(a) hereto. (ii) The Seller has not previously assigned the Real Property Lease. (iii) The Seller provided the landlord under the Real Property Lease with a check for an additional one month's security deposit in accordance with the terms thereof which the landlord has not yet cashed. (iv) The Seller has not provided anything further to the landlord and the landlord has not requested any additional information from Seller with respect to the requested assignment of the Real Property Lease. (v) The landlord has not provided the Seller with a specific reason why it has not consented to the assignment of the Real Property Lease as of the date hereof.

(b) Except as set forth on Schedule 5.10(b):

(i) Neither the Seller nor any operator of any real property presently or formerly owned, leased or operated by the Seller is in violation in any material respect or alleged violation in any material respect of any judgment, decree, order, law, license, rule or regulation pertaining to environmental matters, including without limitation those arising under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Federal Water Pollution Control Act, the Solid Waste Disposal Act, as amended, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, or any foreign, federal, state or local statute, regulation, ordinance, order or decree relating to health, safety or the environment (hereinafter "Environmental Laws");

(ii) The Seller has not received notice during the last five years from any third party, including without limitation any foreign, federal, state or local governmental authority, (A) that the Seller or any predecessor in interest has been identified by the United States Environmental Protection Agency ("EPA") as a potentially responsible party under CERCLA with respect to a site listed on the National Priorities List, 40 C.F.R. Part 300 Appendix B (1986); (B) that any hazardous waste, as defined by 42 U.S.C. §6903(5), any hazardous substance as defined by 42 U.S.C. §9601(14), any pollutant or contaminant as defined by 42 U.S.C. §9601(33) or any toxic substance, oil or hazardous material or other chemical or substance (including, without limitation, asbestos in any form, urea formaldehyde or polychlorinated biphenyls) regulated by any Environmental Laws ("Hazardous Substances") which the Seller or any predecessor in interest has generated, transported or disposed of has been found at any site at which a foreign, federal, state

or local agency or other third party has conducted or has ordered that the Seller or any predecessor in interest conduct a remedial investigation, removal or other response action pursuant to any Environmental Law; or (C) that the Seller or any predecessor in interest is or shall be a named party to any claim, action, cause of action, complaint, (contingent or otherwise) legal or administrative proceeding arising out of any third party's incurrance of costs, expenses, losses or damages of any kind whatsoever in connection with the release of Hazardous Substances;

(iii) (A) no portion of any real property presently or formerly owned, leased or operated by the Seller has been used for the handling, manufacturing, processing, storage or disposal of Hazardous Substances except in accordance in all material respects with applicable Environmental Laws; and no underground tank or other underground storage receptacle for Hazardous Substances is located on such properties; (B) in the course of any activities conducted by the Seller or operators of any real property presently or formerly owned, leased or operated by the Seller, no Hazardous Substances have been generated or are being used on such properties except in accordance in all material respects with applicable Environmental Laws; (C) all real properties presently or formerly owned, leased or operated by the Seller are free from contamination of every kind, including without limitation, groundwater, surface water, soil, sediment and air contamination, and such properties do not contain any Hazardous Substances, except in each case to the extent that the presence of Hazardous Substances on such properties does not violate in any material respect any applicable Environmental Laws; (D) during the past five years there have been no releases (i.e., any past or present releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping) or threatened releases of Hazardous Substances on, upon, into or from any real property presently or formerly owned, leased or operated by the Seller, except in accordance in all material respects with applicable Environmental Laws; (E) to the knowledge of the Members of the Selling Group, there have been no releases on, upon, from or into any real property in the vicinity of any real property presently or formerly owned, leased or operated by the Seller which, through soil or groundwater contamination, may have come to be located on such real property except for Hazardous Substances whose presence on such real property does not violate any applicable Environmental Laws; and (F) in addition, any Hazardous Substances that have been generated on any real property presently or formerly owned, leased or operated by the Seller have been transported offsite only by carriers having identification numbers issued by the EPA and have been treated or disposed of only by treatment or disposal facilities maintaining valid permits as required under applicable Environmental Laws, which transporters and facilities have been and are, to the knowledge of the members of the Selling Group, operating in all material respects in compliance with such permits and applicable Environmental Laws; and

(iv) no real property presently or formerly owned, leased or operated by the Seller is or shall be subject to any applicable environmental cleanup

responsibility law or environmental restrictive transfer law or regulation, by virtue of the transactions set forth herein and contemplated hereby.

(c) Attached as part of Schedule 5.10(c) is a list of all documents, reports, site assessments and communications with governmental entities or any other third parties, in the possession of the Seller or any other member of the Selling Group or to which any of them has access, which contain any material information with respect to potential environmental liabilities associated with any real property presently or formerly owned, leased or operated by the Seller and relating to compliance with Environmental Laws or the environmental condition of such properties and adjacent properties. The Seller has furnished to the Buyer complete and accurate copies of all of the documents, reports, site assessments, data, communications and other materials listed on Schedule 5.10(c) hereto.

5.11. Equipment. Schedule 1.1(b) hereto sets forth a complete and accurate list of all of the Equipment other than items having a market value individually of less than \$ [REDACTED]. The Personal Property Leases listed on Schedule 1.1(c) hereto, include all leases by the Seller of any item of personal property used in the Business having a market value individually of \$ [REDACTED] or more. The Equipment, and all personal property held by the Seller under the Personal Property Leases, are utilized by the Seller in the ordinary course of business.

5.12. Inventories. Except as set forth on Schedule 5.12 hereto, the Inventories consist solely of, and will consist solely of, material and goods of a quality and quantity which are usable or saleable in the normal course of the business carried on by the Seller, or to be carried on by the Buyer, as the case may be, net of any reserve for excessive or obsolete inventories reflected on the Final Closing Statement. Such inventories are adequate for present needs of the Business, are fairly reflected on the books of account of the Seller, stating items of inventory at the lower of cost or market value in accordance with Modified GAAP, with adequate allowance for excessive or obsolete inventories.

5.13. Insurance. Schedule 5.13 hereto lists all policies of fire, liability, workmen's compensation, life, property and casualty and other insurance owned or held by the Seller. All such policies (a) are in full force and effect, (b) are sufficient for compliance by the Seller in all material respects with all requirements of law and all agreements to which the Seller is a party, (c) provide that they will remain in full force and effect through the respective dates set forth in such Schedule, and (d) will not terminate or lapse solely by reason of the transactions contemplated by this Agreement. There have been no gaps in insurance coverage since January 1, 2015 and the Seller is not in default with respect to its material obligations under any of such insurance policies and it has not received any notification of cancellation of any such insurance policies. Schedule 5.13 lists all losses that have occurred since January 1, 2013 under the Seller's insurance policies. No insurer of the Seller has denied any claim submitted by the Seller.

5.14. Material Contracts. Schedule 5.14 sets forth a complete and accurate list of all contracts to which the Seller is a party or by which the Seller is bound or to which the

Seller or any of its assets (including the Acquired Assets) is subject, except (a) contracts which involve annual consideration of less than \$ [REDACTED] and which are terminable by the Seller upon 30 days notice or less without the payment of any termination fee or penalty or any continuing obligation or liability (other than for payments owed for good or services provided prior to termination), and (b) contracts listed in other Schedules hereto. As used in this Section 5.14, the word “contract” means and includes every agreement or understanding of any kind, written or oral, which is legally enforceable by or against the Seller, and specifically includes (a) contracts and other agreements for the purchase or sale of products or services from, or that provides for compensation to be paid to, any current or former officer, director, employee, consultant, manager, member or shareholder or any partnership, corporation, joint venture or any other entity in which any such person has an interest; (b) agreements with any labor union or association representing any employee; (c) contracts and other agreements for the provision of products or services by the Seller; (d) bonds or other security agreements provided by any party in connection with the business of the Seller; (e) contracts and other agreements for the sale of any of the Seller’s assets or properties other than in the ordinary course of business or for the grant to any person of any preferential rights to purchase any of the Seller’s assets or properties; (f) joint venture agreements relating to the assets, properties or business of the Seller or by or to which it or any of its assets or properties are bound or subject; (g) contracts or other agreements under which the Seller agrees to indemnify any party, to share tax liability of any party, or to refrain from competing with any party; (h) any contracts or other agreements with regard to Indebtedness; or (i) any other contract or other agreement whether or not made in the ordinary course of business. The Seller has delivered to the Buyer true, correct and complete copies of all such contracts (or accurate descriptions of all oral agreements), together with all modifications and supplements thereto. Each of the contracts listed on Schedule 5.14 hereto or any of the other Schedules hereto is in full force and effect, the Seller is not in breach in any material respect of any of the provisions of any such contract, nor, to the knowledge of any member of the Selling Group, is any other party to any such contract in default thereof in any material respect, nor does any event or condition exist which with notice or the passage of time or both would constitute a default thereunder in any material respect. The Seller has in all material respects performed all obligations required to be performed by it to date under each such contract to which it is a party. Subject to obtaining any necessary consents by the other party or parties to any such contract (the requirement of any such consent being reflected on Schedule 5.14), no contract includes any provision the effect of which may be to enlarge or accelerate any obligations of the Buyer to be assumed or transferred thereunder or give additional rights to any other party thereto or will in any other way be affected by, or terminate or lapse by reason of, the transactions contemplated by this Agreement and the other Transaction Documents. Except as specifically noted on Schedule 5.14, none of the contracts to which the Seller is a party and that constitutes Acquired Assets contain any provision which would limit or restrict the Seller’s business in any manner, field or area or the Seller’s ability to hire any person.

5.15. Compensation of and Contracts with Employees. Schedule 5.15 hereto sets forth a complete and accurate list of each employee of the Seller and the rate, character

and amount of the compensation paid to such employee for the fiscal year ended December 31, 2019. There have been no changes in such compensation since such date. The Seller does not have any employment agreement, written or oral, with any currently active employee, including any agreement to provide any bonus or benefit to any such employee. Except as set forth on Schedule 5.15, since December 31, 2019, the Seller has not made any pension, bonus or other payment, other than base salary, or become obligated to make any such payment, to any employee of the Seller. Except as set forth on Schedule 5.15, the Seller does not have any outstanding loans or advances to employees. Any employee of the Seller who, at the Closing Date is on short or long term disability is accurately listed as such on Schedule 5.15.

5.16. Employee Benefit Plans.

(a) Except for the arrangements set forth on Schedule 5.16, the Seller does not now maintain or contribute to, and it has not in the current or preceding six (6) calendar years maintained or contributed to, any pension, profit-sharing, deferred compensation, bonus, stock option, share appreciation right, severance, group or individual health, dental, medical, life insurance, survivor benefit, or similar plan, policy or arrangement, whether formal or informal, for the benefit of any director, officer, consultant or employee, whether active or terminated, of the Seller. Each of the arrangements set forth on Schedule 5.16 is hereinafter referred to as an “Employee Benefit Plan”, except that any such arrangement which is a multi-employer plan shall be treated as an Employee Benefit Plan only for purposes of Sections 5.16(e)(iv), (vi) and (viii) and 5.16(h) below.

(b) The Seller has heretofore delivered to Buyer true, correct and complete copies of each material Employee Benefit Plan of the Seller, and with respect to each such Plan (i) any associated trust, custodial, insurance or service agreements, (ii) any annual report, actuarial report, or disclosure materials (including specifically any summary plan descriptions) submitted to any governmental agency or distributed to participants or beneficiaries thereunder in the current or any of the six (6) preceding calendar years and (iii) the most recently received IRS determination letters and any governmental advisory opinions or rulings.

(c) Each Employee Benefit Plan is and has for the last six years been maintained and operated in compliance in all material respects with the terms of such Plan and with the requirements prescribed (whether as a matter of substantive law or as necessary to secure favorable tax treatment) by any and all statutes, governmental or court orders, or governmental rules or regulations in effect from time to time, except that this Section 5.16(c) shall not relate to compliance with the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and the Code and applicable to such Plan. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Code has been determined to be so qualified by the IRS and, to the knowledge of the members of the Selling Group, nothing has occurred since the date of the last such determination which has resulted or is likely to result in the revocation of such determination. Except as set forth on Schedule 5.16(c), there is no pending or, to the knowledge of any member of the Selling Group,

threatened material legal action, proceeding or investigation, other than (i) routine claims for benefits or (ii) arising under ERISA, concerning any Employee Benefit Plan or to the knowledge of any member of the Selling Group any service provider thereof and, to the knowledge of the members of the Selling Group, there is no basis for any such material legal action or proceeding.

(d) Each Employee Benefit Plan that is required to comply with ERISA is and has for the last six years been maintained and operated in compliance in all material respects with ERISA.

(e) Except as set forth on Schedule 5.16,

(i) there is no pending or, to the knowledge of any member of the Selling Group, threatened legal action, proceeding or investigation, other than routine claims for benefits, concerning any Employee Benefit Plan or to the knowledge of any member of the Selling Group any fiduciary or service provider thereof and, to the knowledge of the members of the Selling Group, there is no basis for any such legal action or proceeding;

(ii) no liability (contingent or otherwise) to the Pension Benefit Guaranty Corporation (“PBGC”) or any multi-employer plan has been incurred by the Seller or any affiliate thereof (other than insurance premiums satisfied in due course);

(iii) no reportable event, or event or condition which presents a material risk of termination by the PBGC, has occurred with respect to any Employee Benefit Plan, or any retirement plan of an affiliate of the Seller, which is subject to Title IV of ERISA;

(iv) no Employee Benefit Plan nor any party in interest in respect thereof, has engaged in a prohibited transaction which could subject the Seller directly or indirectly to liability under Section 409 or 502(i) of ERISA or Section 4975 of the Code;

(v) no material communication, report or disclosure has been made which, at the time made, did not accurately reflect the terms and operations of any Employee Benefit Plan;

(vi) no Employee Benefit Plan provides welfare benefits subsequent to termination of employment to employees or their beneficiaries (except to the extent required by applicable state insurance laws and Title I, Part 6 of ERISA);

(vii) no benefits due under any Employee Benefit Plan have been forfeited subject to the possibility of reinstatement (which possibility would still exist at or after Closing); and

(viii) the Seller has not undertaken to maintain any material Employee Benefit Plan for any minimum period of time and each such Plan is terminable at the sole discretion of the sponsor thereof, subject only to such constraints as may be imposed by applicable law.

(f) With respect to each Employee Benefit Plan for which a separate fund of assets is or is required to be maintained, full payment has been made of all amounts that the Seller is required, under the terms of each such Plan, to have paid as contributions to that Plan as of the end of the most recently ended plan year of that Plan, and no accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the Code), whether or not waived, exists with respect to any such Plan. The current value of the assets of each such Employee Benefit Plan, as of the end of the most recently ended plan year of that Plan, exceeded the current value of all accrued benefits under that Plan.

(g) Except as set forth on Schedule 5.16 hereto, the execution of this Agreement and the consummation of the transactions contemplated hereby and by the other Transaction Documents will not result in any payment (whether of severance pay or otherwise) becoming due from any Employee Benefit Plan to any current or former director, officer, consultant or employee of the Seller or result in the vesting, acceleration of payment or increases in the amount of any benefit payable to or in respect of any such current or former director, officer, consultant or employee.

(h) No Employee Benefit Plan is a multi-employer plan.

(i) For purposes of this Section 5.16, “multi-employer plan”, “party in interest”, “current value”, “accrued benefit”, “reportable event” and “benefit liability” have the same meaning assigned such terms under Sections 3, 4043(b) or 4001(a) of ERISA, and “affiliate” means any entity which under Section 414 of the Code is treated as a single employer with the Seller.

5.17. Labor Relations. Except as set forth on Schedule 5.17, the Seller is in compliance in all material respects with all foreign, federal and state laws respecting employment and employment practices, terms and conditions of employment, wages and hours and nondiscrimination in employment, and is not engaged in any material respect in any unfair labor practice. Except as set forth on Schedule 5.17, there is no charge pending or, to the knowledge of the members of the Selling Group, threatened against the Seller alleging unlawful discrimination in employment practices before any court or agency and there is no charge of or proceeding with regard to any unfair labor practice against the Seller pending before the National Labor Relations Board or any similar entity. There is no labor strike, dispute, slow-down or work stoppage actually pending or, to the knowledge of the members of the Selling Group, threatened against or involving the Seller. No one has petitioned within the last three (3) years, and no one is now petitioning, for union representation of the Seller’s employees. No grievance or arbitration proceeding arising out of or under any collective bargaining agreement is pending against the Seller and no claim therefor has been asserted. None of the employees of the Seller is covered by any collective

bargaining agreement, and no collective bargaining agreement is currently being negotiated by the Seller. The Seller has not experienced any material work stoppage during the last five years. The Seller is presently in compliance in all material respects with the Immigration Reform and Control Act of 1986 or its successor, the Immigration and Nationality Act, and all other laws regarding immigration, employment of non-citizen workers in the United States, and/or the use of E-Verify or other work-authorization verification systems or services (collectively, "Immigration Laws"). To the knowledge of the members of the Selling Group, there is no pending or threatened investigation of the Seller by any branch or department of the United States Immigration and Customs Enforcement, the Office of Special Counsel for Immigration-Related Unfair Employment Practices, or other governmental authority charged with administration and enforcement of any Immigration Laws.

5.18. Trademarks, Patents, Etc.

(a) Schedule 1.1(f) hereto, together with Schedule 5.18 hereto, sets forth a complete and accurate list of (a) all patents, trademarks, trade names and copyrights registered in the name of the Seller, and all applications therefor, (b) all other patents, trademarks, trade names, domain names and copyrights used or proposed to be used by the Seller in the conduct of the Business, all applications therefor, and all licenses (as licensee or licensor) and other agreements relating thereto, and (c) all material written agreements relating to other technology, recipes, proprietary blends, know-how and processes which the Seller is licensed or authorized by others to use or which the Seller has licensed or authorized for use by others. Except to the extent set forth in Schedule 5.18, the Seller (x) owns or has the sole and exclusive right to use all patents, trademarks, trade names and copyrights referred to in clause (a) of the preceding sentence, (y) has the right without material restriction to use all patents, trademarks, trade names, domain names and copyrights referred to in clause (b) of the preceding sentence, and (z) has the right to use all technology, recipes, proprietary blends, know-how and processes used or necessary for the ordinary course of business as presently conducted or proposed to be conducted in all material respects, and the consummation of the transactions contemplated hereby and by the other Transaction Documents will not alter or impair any such right in any material respect. No claims have been asserted, and no claims are pending, by any person regarding the use of any such patents, trademarks, trade names, domain names, copyrights, technology, recipes, proprietary blends, know-how or processes, or challenging or questioning the validity or effectiveness of any license or agreement, and to the knowledge of the members of the Selling Group there is no basis for such claim. To the knowledge of the members of the Selling Group, the use by the Seller of such patents, trademarks, trade names, domain names, copyrights, technology, recipes, proprietary blends, know-how or processes in the ordinary course of business does not infringe on the rights of any Person in any material respect.

(b) (i) None of the Seller nor, to the knowledge of any member of the Selling Group, any of its employees or consultants has infringed or made unlawful use of, or is infringing or making unlawful use of, any proprietary or confidential information of



any Person, including without limitation any former employer of any past or present employee or consultant of the Seller; and (ii) the activities of the Seller's employees and consultants in connection with their employment or consulting do not violate, to the knowledge of any member of the Selling Group, any agreements or arrangements that any such employees or consultants have with any former employer or any other Person. The Seller has taken commercially reasonable steps to protect the confidentiality of its trade secrets and other proprietary information, and no such trade secrets or proprietary information have been disclosed to any Person except pursuant to valid non-disclosure or license agreements.

(c) The computer software, hardware, systems, databases and information technology services used in the operation of the Business of the Seller (the "IT Assets") adequately meet the needs of the Business operations of the Seller as currently conducted in all material respects. The Seller uses disaster recovery and/or back-up data processing services adequate to meet its data processing needs as currently conducted in all material respects in the event that any of the IT Assets are rendered temporarily or permanently inoperative as a result of a natural or other disaster. The IT Assets have not suffered any (i) failures, errors or breakdowns within the past twelve (12) months that have caused any substantial disruption or interruption in the Seller's Business operations or (ii) to the knowledge of the any member of the Selling Group, unauthorized breaches of the security thereof.

5.19. Suppliers and Customers. Schedule 5.19 hereto sets forth the ten (10) largest suppliers and ten (10) largest customers of the Business as of the date hereof, based on the dollar amount of purchases and sales for the immediately preceding twelve (12) full months prior to Closing (the "Material Suppliers and Customers"). The relationships of the Seller with its Material Suppliers and Customers are good commercial working relationships and, except as set forth on Schedule 5.19, no Material Supplier or Customer of the Seller has cancelled or otherwise terminated, or threatened to cancel or otherwise to terminate or to materially modify, its relationship with the Seller or has during the last twelve (12) months decreased materially, or threatened to materially decrease or materially limit or to materially modify, its services, supplies or materials for use in the Business except for normal cyclical changes related to suppliers' businesses or its usage or purchase of the services or products of the Seller except for normal cyclical changes related to customers' businesses, and the consummation of the transactions contemplated hereby and by the other Transaction Documents will not adversely affect the relationship of the Buyer with any Material Suppliers and Customers. The members of the Selling Group have no knowledge or reason to believe that any Material Supplier or Customer of the Business intends to terminate, cancel or materially limit its services, supplies or materials for use in the Business or its usage or purchase of the products or services of the Business or to materially modify its relationship with the Business, in each case, during the twelve (12) months subsequent to the Closing Date (including, for this purpose any termination, cancellation or limit actually known by any members of the Selling Group which would result from the announcement or

consummation of the transactions contemplated by this Agreement or the identity of the Buyer).

5.20. Acquired Assets Complete. The Acquired Assets, when utilized with a labor force substantially similar to that currently employed by the Seller at the Real Property and together with the services to be provided under the Transition Agreement, are adequate and sufficient to conduct the Business as currently conducted by the Seller in all material respects.

5.21. No Undisclosed Liabilities. Except to the extent (a) reflected or reserved against in the Balance Sheet, (b) incurred in the ordinary course of business after the date of the Balance Sheet and either discharged prior to Closing or reflected or reserved against on the Final Closing Statement or (c) described on any Schedule hereto, the Seller does not have any liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise (including without limitation as guarantor or otherwise with respect to obligations of others), other than performance obligations with respect to the Seller's contracts that would not be required to be reflected or reserved against on a balance sheet prepared in accordance with GAAP.

5.22. Taxes.

(a) Except as disclosed on Schedule 5.22, the Seller has duly and timely filed with the appropriate government agencies all material Tax Returns and reports required to have been filed by it. All such Tax Returns were true, correct, and complete in all material respects. Except as set forth on Schedule 5.22, no waiver of any statute of limitations relating to Taxes that is still outstanding has been executed or given by the Seller. All Taxes, assessments, fees and other governmental charges upon the Seller or upon any of its properties, assets, revenues, income and franchises with respect to any periods ending on or before the Closing Date have been timely paid, other than those that are currently payable without penalty or interest and are (or, as applicable, will be) reflected as liabilities on the Final Closing Statement. The Seller has withheld and timely paid all Taxes required to have been withheld or paid in connection with amounts paid or owing to any employee, creditor, independent contractor or third party. Except as set forth on Schedule 5.22, to the knowledge of the Selling Group, no federal Tax Return of the Seller is currently under audit by the IRS, and to the knowledge of the Selling Group, no other Tax Return of the Seller is currently under audit by any other Tax Authority. Neither the IRS nor any other Tax Authority is now asserting or, to the Selling Group's knowledge, threatening to assert against the Seller any material deficiency or claim for additional Taxes or interest thereon or penalties in connection therewith. There is no action or proceeding relating to Taxes of the Seller pending in any judicial or administrative forum.

(b) The Seller has delivered to the Buyer all Tax Returns filed by the Seller for all taxable periods occurring during the preceding five (5) years. No Tax Authority with which the Seller does not file Tax Returns has notified Seller in writing during the preceding five (5) years that the Seller is or may be required to file Tax Returns with that

Tax Authority. The Seller does not have any permanent establishment in any country with which the United States of America has a relevant Tax treaty, as defined in such relevant Tax treaty, nor otherwise operates or conducts business through any branch in any country other than the United States.

(c) The Seller has timely withheld and paid all Taxes required to have been withheld or paid in connection with amounts paid or owing to any employee, creditor, independent contractor or third party. The Seller does not have any liability for Taxes, benefits or compensation as a result of the misclassification of (i) employees as independent contractors or (ii) independent contractors as employees.

(d) The Seller has not participated (i) in any "tax shelter" within the meaning of Section 6111 of the Code (as in effect prior to the enactment of P.L. 108-357 or any comparable laws of jurisdictions other than the United States) or (ii) in any "reportable transaction" within the meaning of Treasury Regulations Section 1.6011-4(b) or any comparable laws of jurisdictions other than the United States.

(e) The Seller (i) has not been a member of an affiliated group of corporations (as defined in Section 1504(a) of the Code); (ii) has not filed or been required to file or been included in a combined, consolidated, or unitary federal, state, local or foreign income Tax Return; nor (iii) is it a successor to any other entity for Tax purposes by way of merger, liquidation or other transaction.

5.23. Broker. Except as set forth on Schedule 5.23, none of the Seller or the Selling Shareholders has retained, utilized or been represented by any broker, agent, finder or intermediary in connection with the negotiation or consummation of the transactions contemplated by this Agreement.

5.24. Potential Conflicts of Interest. Except as set forth on Schedule 5.24, no officer, director, manager, member, stockholder or employee (or Affiliate (as defined in Section 9) thereof) of the Seller (a) owns, directly or indirectly, any interest in (excepting not more than 1% stock holdings for investment purposes in securities of publicly held and traded companies) or is an officer, director, manager, employee or consultant of any Person which is a competitor, lessor, lessee, customer or supplier of the Seller; (b) owns, directly or indirectly, in whole or in part, any tangible or intangible property the use of which is necessary for the Business; (c) has any cause of action or other claim whatsoever against, or owes any amount to, the Seller, except for claims in the ordinary course of business, such as for accrued vacation pay, accrued benefits under Employee Benefit Plans and similar matters and agreements; or (d) is a party to any agreement, contract or commitment with the Seller or has received any loan, advance or investment from the Seller that has not been repaid in full prior to the date hereof.

5.25. Indebtedness. Except for Indebtedness described on the Certificate of Indebtedness, the Seller does not have any Indebtedness outstanding at the Closing Date. Except as disclosed on Schedule 5.25 hereto, the Seller is not in default with respect to any

outstanding Indebtedness or any instrument relating thereto. Complete and correct copies of all instruments (including all amendments, supplements, waivers and consents) relating to any Indebtedness of the Seller have been furnished to the Buyer.

5.26. Subsidiaries; Capitalization of Seller. The Seller does not own or hold of record and/or beneficially any shares of any class of the capital of any corporation. The Seller does not own any legal and/or beneficial interests in any limited liability companies, partnerships, business trusts or joint ventures or in any unincorporated trade or business enterprises. As of the date hereof, all of the outstanding shares of capital stock in the Seller are owned by the Selling Shareholders, and constitute all of the issued and outstanding capital stock of the Seller. There are no commitments for the purchase or sale of, and no options, warrants or other rights to subscribe for or purchase, any securities of the Seller to which the Seller is bound.

5.27. Accounts Receivable. All Accounts Receivable represent sales made in the ordinary course of business, are valid obligations owing to the Seller and have been collected or are collectible in the aggregate recorded amounts thereof in accordance with their terms, net of the reserve for uncollected accounts to be set forth on the Final Closing Statement.

5.28. Product Warranty; Product Liability. Except as set forth on Schedule 5.28 hereto, (a) each product developed, manufactured, sold, leased, or delivered by the Seller has been in conformity in all material respects with all applicable contractual commitments, all express and implied warranties (other than those validly disclaimed), and all federal, state and local labelling and truth in advertising requirements, and (b) the Seller has no material liabilities (whether accrued, absolute, contingent, unliquidated or otherwise, whether due or to become due and regardless of when or by whom asserted) for replacement or repair thereof or other damages in connection therewith, in excess of the reserve for product warranty claims set forth on the Final Closing Statement (if any). Prior to the date hereof, the Seller has made available to the Buyer copies of the standard terms and conditions (if any) of sale for products delivered and services rendered by the Seller (containing all applicable guaranty, warranty, and indemnity provisions) and such terms and conditions are complete and accurate in all material respects. Except as set forth on Schedule 5.28 hereto, no product manufactured, sold, installed or delivered by the Seller is subject to any guaranty, warranty, or other indemnity by the Seller beyond such standard terms and conditions and the Seller's standard warranty policies. The Seller has no liability arising out of and the members of the Selling Group have no knowledge of any liability that could arise out of any injury to individuals or property as a result of the ownership, possession, or use of any product manufactured, sold, installed or delivered by the Seller, except liabilities for which appropriate reserves have been established on the Final Closing Statement.

5.29. Anti-Bribery; International Trade Matters.

(a) The Seller has instituted and maintained appropriate policies and procedures designed to ensure, and which are reasonably expected to continue to ensure,

compliance in all material respects by the Buyer and its directors, managers, officers, employees and business intermediaries with all anti-corruption laws in relation to the Business of the Seller.

(b) None of the Seller, any director, manager, officer, shareholder or member of Seller, or, to the knowledge of the members of the Selling Group, employee or agent of the Seller, has provided, offered, gifted or promised, directly or indirectly, anything of material value to any customer or supplier, government official, political party or candidate for government office or any agent for any thereof, nor provided or promised anything of material value to any other Person while knowing that all or a portion of that thing of value would or will be offered, given, or promised, directly or indirectly, to any customer or supplier, government official, political party or candidate for government office or any agent of any thereof, for the purpose of:

(i) influencing any act or decision of such customer, supplier, official, party or candidate or agent of any thereof in his or her official capacity, inducing such customer, supplier, official, party or candidate or agent of any thereof to do or omit to do any act in violation of their lawful duty with respect to the Seller, or securing any improper advantage for the direct or indirect benefit of the Seller; or

(ii) inducing such customer, supplier, official, party or candidate or any agent of any thereof to use his or her influence with his or her business, government or instrumentality to affect or influence any act or decision of such business, government or instrumentality, in order to assist the Seller, directly or indirectly, in obtaining or retaining business.

(c) None of the Seller or any director or officer, shareholder or member of the Seller is a Person who (a) is directly or indirectly owned or controlled by any Person currently included on the List of Specially Designated Nationals and Blocked Persons or the Foreign Sanctions Evaders List maintained by the Office of Foreign Assets Control, Department of the Treasury (“OFAC”) or any other governmental authority imposing economic sanctions and trade embargoes, or (b) is directly or indirectly owned or controlled by any Person who is located, organized or resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC or any other governmental authority.

(d) None of the Seller or any of its directors, managers, shareholders or officers is a Person who (i) is currently the subject of any investigation by OFAC or any other governmental authority pursuant to any laws administered by OFAC or any other governmental authority, or (ii) is directly or indirectly owned or controlled by any Person who is currently the subject of a such investigation. The Seller has instituted and maintains appropriate policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance in all material respects by the Buyer and its directors, managers, officers, employees and business intermediaries with all anti-corruption laws in relation to the Business of the Seller.

5.30. Disclosure; No Other Representations. No representation or warranty made by any member of the Selling Group in this Agreement or in any exhibit, schedule, written statement, certificate or other document delivered or to be delivered to the Buyer pursuant hereto or in connection with the consummation of the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading. The Buyer acknowledges that no member of the Selling Group has made any representation or warranty, expressed or implied, as to the Acquired Assets, the Assumed Liabilities, the Business, their respective financial condition, results of operations, future operating or financial results, estimates, projections, forecasts, plans or prospects (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans or prospects) or the accuracy or completeness of any information regarding the Acquired Assets, the Assumed Liabilities or the Business furnished or made available to Purchaser and its Affiliates and Representatives, except, in all of the foregoing cases, as expressly set forth in this Section 5.

## 6. REPRESENTATIONS AND WARRANTIES OF THE BUYER.

The Buyer represents and warrants to each member of the Selling Group as follows:

6.1. Organization of Buyer; Authority. The Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The Buyer has all requisite power and authority to execute and deliver the Transaction Documents to which it is a party and to carry out all of the actions required of it pursuant to the terms of such Transaction Documents.

6.2. Approval; Binding Effect. The Buyer has obtained all necessary authorizations and approvals from its Board of Managers and members required for the execution and delivery of the Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby. Each of the Transaction Documents to which the Buyer is a party has been duly executed and delivered by the Buyer and constitutes the legal, valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as enforceability thereof may be limited by any applicable bankruptcy, reorganization, insolvency or other laws affecting creditors' rights generally or by general principles of equity.

6.3. Non-Contravention. The execution and delivery by the Buyer of the Transaction Documents to which it is a party and the consummation by the Buyer of the transactions contemplated hereby and thereby will not (a) violate or conflict with any provisions of the formation or organizational agreements of the Buyer, each as amended to date; or (b) constitute a violation of, or be in conflict with, constitute or create a default under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) upon any property of the Buyer pursuant to (i) any agreement or instrument to which the Buyer is a party or by which the Buyer or any of its properties is bound or to which the Buyer or any of such properties is subject, or (ii) any statute, judgment, decree,

order, regulation or rule of any court or governmental or regulatory authority applicable to the Buyer.

6.4. Governmental Consents. No consent, approval or authorization of, or registration, qualification or filing with, any governmental agency or authority is required for the execution and delivery by the Buyer of the Transaction Documents to which it is a party or for the consummation by the Buyer of the transactions contemplated hereby or thereby.

6.5. Litigation, Etc. Except as set forth on Schedule 6.5 hereto, no action, suit, proceeding or investigation is pending or, to the knowledge of the Buyer, threatened, relating to or affecting any of the assets of the Buyer or its properties, or which questions the validity of any of the Transaction Documents or challenges any of the transactions contemplated hereby or thereby. Except as set forth on Schedule 6.5 hereto, no restraining order or injunction shall prevent the transactions contemplated by this Agreement and no action, suit or proceeding shall be pending or threatened before any court or administrative body in which it will be or is sought to restrain or prohibit or obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

6.6. Broker. The Buyer has not retained, utilized or been represented by any broker, agent, finder or other intermediary in connection with the negotiation or consummation of the transactions contemplated by this Agreement.

## 7. CERTAIN COVENANTS.

7.1. Confidential Information. From and after Closing, the Seller and the Selling Shareholder agree not to divulge or disclose or use for their benefit or purposes any information with respect to the Buyer or the Business unless such information (a) was publicly known prior to the time of disclosure or becomes generally available to the public other than as a result of a disclosure by the Seller, the Selling Shareholder or their respective representatives, (b) is or becomes available on or after the Closing Date to the Seller, the Selling Shareholder or their respective representatives on a non-confidential basis from a source other than the Buyer, its Affiliates or their respective representatives if such source is not bound by a confidentiality obligation to the Buyer, its Affiliates or their respective representatives, or (c) the Buyer has given its consent to Seller or the Selling Shareholder to disclose. The information intended to be protected hereby shall include, but not be limited to, financial information, customers, sales representatives, intangible property and anything else having an economic or pecuniary benefit to the Buyer and its Subsidiaries.

7.2. Non-Competition. Each member of the Selling Group acknowledges that the covenants and agreements in this Section 7.2 are a condition precedent to the Buyer's obligations to purchase the Acquired Assets from the Seller under this Agreement, and that the Buyer would not purchase the Acquired Assets but for the agreements of the members of the Selling Group with the Buyer in this Section 7.2. Each of the members of the Selling

Group and the Buyer acknowledges that from and after the Closing the Buyer will provide services to customers located in North America and that engagement by any member of the Selling Group in the Designated Industry (as hereinafter defined) anywhere in North America could cause the Buyer irreparable damage. For a period from the date hereof until the fifth anniversary of the Closing Date, no member of the Selling Group shall, without the prior written consent of the Buyer, (i) engage anywhere in North America, directly or indirectly, alone or as a shareholder (other than as a holder of less than 1% of the capital stock of any publicly-traded corporation), partner, manager, member, officer, director, employee or consultant, in any business organization or otherwise that is engaged or becomes engaged in the Business (the "Designated Industry"), (ii) divert to any competitor of the Buyer or its Affiliates any customer of the Buyer or its Affiliates, or (iii) hire, solicit or encourage any officer, manager, employee or consultant of the Buyer or any of its Affiliates to leave their employ for employment by or with any member of the Selling Group or any competitor of the Buyer or any of their Affiliates; provided, that the members of the Selling Group shall not be precluded from soliciting or hiring, or taking any other action with respect to any individual (A) whose employment with the Buyer ceased more than one (1) year prior to commencement of employment discussions between such member and such individual or (B) who responds to a general solicitation not specifically targeted at employees of the Buyer or any of its Affiliates (including by a search firm or recruiting agency). If at any time the provisions of this Section 7.2 shall be determined to be invalid or unenforceable, by reason of being vague or unreasonable as to area, duration or scope of activity, this Section 7.2 shall be considered divisible and shall become and be immediately amended to only such area, duration and scope of activity as shall be determined to be reasonable and enforceable by the court or other body having jurisdiction over the matter; and each of the members of the Selling Group agrees that this Section 7.2 as so amended shall be valid and binding as though any invalid or unenforceable provision had not been included herein.

7.3. Use of Name. The Buyer is purchasing all of the Seller's rights to the business names of the Seller used in the Business and therefore the Seller shall not be entitled to use the names "Esposito's Sausage," "Esposito's Finest Quality Sausage" or variations thereof as corporate, limited liability company or business names or titles anywhere in the world from and after the Closing. The Seller shall, simultaneously with the Closing, undertake and promptly pursue all necessary action to change its business and corporate names to new names bearing no resemblance to any of such business names so as to permit the use of such names by the Buyer (it being understood that the Seller shall retain all of its rights to the name "Elmgang" or variations thereof). Without limiting the foregoing and subject to Sections 7.1 and 7.2 above, the Seller and the Selling Shareholder may use such business names (a) at all times after the Closing Date (i) in a neutral, non-disparaging, non-trademark, non-commercial use to describe their business history and track record (including any nominations, awards or similar recognition received by such business and the Seller's and Selling Shareholder's involvement in the development and operation of the Business); and (ii) as required or permitted by applicable law or regulation, and (b) on (A) archival copies of legal documents, business correspondence and similar items and (B) hard copy



corporate documents and other materials describing the operations of Seller and the Selling Shareholder's businesses; provided, that such materials shall not reasonably suggest or convey that the Seller or the Selling Shareholder are offering goods or services under such business names.

7.4. Nonassignable Contracts.

(a) To the extent that any Personal Property Lease, Permit or Other Contract (an "Assumed Contract") is not capable of being transferred by the Seller to the Buyer pursuant to this Agreement without the consent, approval or waiver of a third person, and such consent, approval or waiver is not obtained prior to Closing (and the Closing still occurs) or Seller and Buyer are unable, after each using their reasonable best efforts, to obtain consent after Closing, or if such transfer or attempted transfer would constitute a breach thereof or a violation of any law, rule or regulation, nothing in this Agreement will constitute a transfer or an attempted transfer thereof.

(b) Each of the Seller and the Buyer shall use their reasonable best efforts to obtain, at Seller's expense, such consents, approvals and waivers necessary to transfer such Assumed Contracts.

(c) In the event that such consents, approvals and waivers referred to in paragraph (a) are not obtained by the Seller and the Closing occurs, then, the Seller and the Buyer shall cooperate and use their respective reasonable best efforts to (i) obtain such consents after Closing, (ii) provide to the Buyer the benefits and burdens of any Assumed Contract referred to in paragraph (a) above, (iii) enter into a reasonable and lawful arrangement designed to provide such benefits and burdens to the Buyer without incurring any obligation to any other Person other than to provide such benefits to the Buyer, including without limitation, the appointment of the Buyer as the agent of the Seller for purposes of such Assumed Contract, and (iv) enforce, at the request of the Buyer for the account of the Buyer and at the sole expense of the Buyer, any rights of the Seller arising from such Assumed Contract (including without limitation the right to terminate such Assumed Contract in accordance with the terms thereof upon the request of the Buyer). Upon obtaining the relevant consent, approval or waiver, the Seller shall promptly sell, convey, assign, transfer and deliver to the Buyer such Assumed Contract, and Purchaser shall promptly assume and agree to promptly pay, perform or discharge all Assumed Liabilities arising after such date under such Assumed Contract.

(d) No consent, approval or waiver of a third person with respect to the transfer of, or any novation with respect to, any Assumed Contract, shall cause an Excluded Liability to be deemed for purposes of this Agreement to have become an Assumed Liability or otherwise affect the rights of the Buyer under Section 8 hereof.

(e) Notwithstanding anything contained herein to the contrary, neither the Seller nor the Buyer shall have any obligation under this Agreement or otherwise to pay any consent, approval or waiver "fee", discount, rebate or any money or other consideration

beyond administrative costs, including a *de minimis* review charge, to any person or entity, or to initiate any claim or proceeding against any person or entity, in order to obtain any such consents, approvals or waivers required for the transfer or assignment to the Buyer of any Assumed Contract.

7.5. Payment of Monies Received. The Seller and its Affiliates will promptly pay to the Buyer when received all monies received by the Seller or its Affiliates constituting Acquired Assets after the Closing. The Buyer and its Affiliates will promptly pay to the Seller when received all monies received by the Buyer or its Affiliates constituting Excluded Assets after Closing.

7.6. Tax Matters.

(a) Each party hereto shall, and shall cause its Affiliates to, provide to the other party hereto such cooperation, documentation and information relating to the Acquired Assets, the Assumed Liabilities and/or the Business as either of them reasonably may request in (i) filing any Tax Return, amended Tax Return or claim for refund, (ii) determining a liability for Taxes or a right to refund of Taxes, (iii) conducting any audit, examination, contest, litigation or other proceeding with or against any governmental entity responsible for the administration or imposition of any Tax. The requesting party shall be responsible for and hold the other party and its Affiliates harmless against any reasonable out-of-pocket expenses incurred by such other party (and/or its Affiliates) in connection with any request made pursuant to this Section 7.6(a).

(b) The Seller shall pay, when due, and be responsible for all sales, use, transfer (including real estate transfer), documentary, stamp, or similar Taxes and related fees imposed on or payable in connection purchase and sale of the Acquired Assets and the Business pursuant to this Agreement ("Transfer Taxes"). The party responsible under applicable law for filing the Tax Returns with respect to such Transfer Taxes shall prepare and timely file such Tax Returns and promptly provide a copy of such Tax Return to the other party hereto. The Seller and the Buyer shall, and shall cause their respective Affiliates to, cooperate to timely prepare and file any Tax Returns or other filings relating to such Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes.

7.7. Employee Matters.

(a) As of the Closing Date, the Buyer shall offer employment to each employee of Seller who is employed by Seller as of such date, other than the Selling Shareholder and his spouse (a "Business Employee") at no less than the same wage rate or cash base salary level in effect for such Business Employee immediately prior to the Closing Date and with employee benefits that are substantially similar (or at least not materially inferior), in the aggregate, to those in effect for such Business Employee immediately prior to the Closing Date. Seller shall be responsible for any severance or other payments due or owing to any Business Employee who does not accept such offer.

(b) For purposes of vesting, eligibility to participate and accrual of benefits under the Buyer's employee benefit plans, Buyer shall use commercially reasonable efforts to ensure that each such Business Employee is credited with his or her years of service with the Seller before the Closing Date. Buyer and Seller shall reasonably cooperate to ensure a prompt and reasonable transfer of all Business Employees who accept Buyer's offer to Buyer's employee benefit plans.

(c) Without limiting the generality of Section 10.11, the provisions of this Section 7.7 are solely for the benefit of the parties hereto, and no current or former director, officer, employee or any other individual associated therewith shall be regarded for any purpose as a third party beneficiary of this Agreement. Nothing contained in this Agreement shall guarantee employment for any period of time or preclude the ability of Buyer to terminate the employment of any Business Employee at any time and for any reason, or constitute or be deemed to be an amendment to or agreement to retain for any period of time, any compensation or benefit plan, policy, agreement or arrangement of the Buyer, the Seller or their respective subsidiaries for any purpose.

7.8. PPP Loan. Buyer shall not incur any Indebtedness under the Small Business Administration's Paycheck Protection Program pursuant to the Coronavirus Aid, Relief, and Economic Security Act, as the same may be amended, supplemented or modified from time to time ("PPP Loan Program") before December 31, 2020 if incurring any such Indebtedness could reasonably be expected to impair, limit or otherwise adversely affect Seller's ability to obtain forgiveness under the PPP Loan Program of the PPP Loan.

## 8. INDEMNIFICATION.

8.1. Indemnity by the Selling Group. Subject to the overall limitations, minimum amounts and time limitations set forth in Section 8.5, each member of the Selling Group jointly and severally agrees to indemnify and hold each of the Buyer and its managers, members, directors, officers, employees and Affiliates and their successors and permitted assigns harmless from and with respect to any and all claims, liabilities, losses, damages, costs and expenses, including without limitation the reasonable fees and disbursements of outside counsel (collectively, the "Losses"), related to or arising directly or indirectly out of any of the following:

(a) any failure or any breach by any member of the Selling Group of any representation or warranty, covenant, obligation or undertaking made by any such Person in or pursuant to this Agreement (including the Schedules and Exhibits hereto), or any other statement, certificate or other instrument delivered pursuant hereto or thereto;

(b) any claim, liability, obligation or damage with respect to any Excluded Liability, including without limitation, the PPP Loan;

(c) any claim or liability arising under the bulk sales laws of any jurisdiction in connection with the transactions contemplated by this Agreement (in view of such indemnification obligation the Buyer hereby waives the Seller's compliance with any such bulk sales laws as a condition to the Closing hereunder);

(d) any liability with respect to any of the items expressly set forth on (including by means of a cross-reference) Schedules 5.7, 5.8, 5.9(a), 5.10(b), 5.16, 5.17, 5.18, 5.21, 5.22, 5.23 or 5.25 hereto; and

(e) 50% of any Specified Packaging Liability.

8.2. Indemnity by the Buyer. Subject to the overall limitations, minimum amounts and time limitations set forth in Section 8.5 below, the Buyer agrees to indemnify and hold Seller, the Selling Shareholder and their respective managers, members, directors, officers, employees and Affiliates and successors and permitted assigns harmless from and with respect to (a) any and all Losses, related to or arising directly or indirectly out of any failure or breach by any of the Buyer of any representation or warranty, covenant, obligation or undertaking made by any of the Buyer in this Agreement (including the Schedules and Exhibits hereto) or any other statement, certificate or other instrument delivered pursuant hereto, (b) any claim, liability, obligation or damage with respect to the Assumed Liabilities and (c) 50% of any Specified Packaging Liability.

8.3. Claims.

(a) Notice. Any party seeking indemnification hereunder (the "Indemnified Party") shall promptly notify the other party or parties hereto from whom such Indemnified Party is entitled to indemnification hereunder (the "Indemnifying Party", which term shall include all Indemnifying Parties if there be more than one) of any action, suit, proceeding, demand or breach (a "Claim") with respect to which the Indemnified Party claims indemnification hereunder, provided that failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations under this Section 8 except to the extent, if at all, that such Indemnifying Party shall have been prejudiced thereby.

(b) Third Party Claims. If such Claim relates to any action, suit, proceeding or demand instituted against the Indemnified Party by a third party (a "Third Party Claim"), the Indemnifying Party shall be entitled to participate in the defense of such Third Party Claim after receipt of notice of such claim from the Indemnified Party. Within thirty (30) days after receipt of notice of a particular matter from the Indemnified Party, the Indemnifying Party may assume the defense of such Third Party Claim, in which case the Indemnifying Party shall have the authority to negotiate, compromise and settle such Third Party Claim, if and only if the following conditions are satisfied:

(i) the Indemnifying Party shall have confirmed in writing that it is obligated hereunder to fully indemnify the Indemnified Party with respect to such Third Party Claim;

(ii) the Indemnified Party shall not have given the Indemnifying Party written notice that it has determined, in the exercise of its reasonable discretion, that an actual or potential conflict of interest make separate representation by the Indemnified Party's own counsel advisable;

(iii) such Third Party Claim involves only money damages and does not seek an injunction or other equitable relief; and

(iv) such Third Party Claim is not a criminal matter, regulatory enforcement action, permitting or certification matter or matter which involves the Buyer's customers or suppliers.

The Indemnified Party shall retain the right to employ its own counsel and to participate in the defense of any Third Party Claim, the defense of which has been assumed by the Indemnifying Party pursuant hereto, but the Indemnified Party shall bear and shall be solely responsible for its own costs and expenses in connection with such participation.

8.4. Method and Manner of Paying Claims. In the event of any Claims under this Section 8, the claimant shall advise the party or parties who are required to provide indemnification therefor in writing of the amount and circumstances surrounding such Claim. With respect to liquidated Claims, if within thirty (30) days the other party has not contested such Claim in writing, the other party will pay the full amount thereof within ten (10) days after the expiration of such period. Any amount owed by an Indemnifying Party hereunder with respect to any Claim for which the Buyer is liable hereunder shall be made in cash. Any amount owed by an Indemnifying Party hereunder with respect to any Claim for which any member of the Selling Group is liable hereunder shall be made in the following order (i) by set-off by the Indemnified Party against any amounts owed by the Indemnified Party under the Seller Notes up to a maximum of \$ [REDACTED] (ii) from the NWC Holdback Amount if there is any amount remaining in escrow with respect thereto (that is not otherwise allocated to any Final Adjustment), (iii) in cash up to a cash amount equal to \$ [REDACTED] in the aggregate, and (iv) by set-off against any other amounts owing by the Indemnified Party under the Seller Notes and if none, then in cash. The unpaid balance of a Claim shall bear interest at a rate per annum equal to the rate announced in The Wall Street Journal, "Money Rates" column as the "Prime Rate" plus four percent (4%) from the date notice thereof is given by the Indemnified Party to the Indemnifying Party.

8.5. Limitations on Indemnification.

(a) The members of the Selling Group on the one hand and the Buyer on the other hand shall not be required to indemnify an Indemnified Party hereunder except to the extent that the aggregate amount of Losses for which the Indemnified Party is otherwise entitled to indemnification pursuant to this Section 8 exceeds [REDACTED] whereupon the Indemnified Party shall only be entitled to be paid the aggregate amount of all such Losses in excess such threshold amount, subject to the limitations on maximum amount of recovery set forth in Section 8.5(b); provided, that Losses related to or arising directly or

indirectly out of any inaccuracies in any representation or warranty made by the Selling Group in the first sentence of Section 5.1 (Organization), Sections 5.2 (Authority; Binding Effect), 5.9(a) (Title), 5.10(a)(i)-(v) (Assignment of Real Property Lease), 5.10(b) (Environmental), 5.18 (Patents, Trademarks, Etc.), 5.22 (Taxes), 5.23 (Brokers), 5.25 (Indebtedness), 5.26 (Capitalization) or Sections 5.16(d), (e), (f), (g) and (h) (such subsections of Section 5.16, the “ERISA Representations”) or payable with respect to claims for indemnification made with respect to Sections 8.1(b), 8.1(c), 8.1(d), 8.1(e), 8.2(b) and 8.2(c) hereof or in connection with a breach by the members of the Selling Group or the Buyer of any other covenant or agreement in this Agreement (collectively, “Unlimited Claims”) shall be indemnified in their entirety by the applicable party or parties and shall not be subject to the limitations set forth in this Section 8.5(a).

(b) The aggregate Losses payable by an Indemnifying Party pursuant to this Section 8 with respect to all claims for indemnification (other than Unlimited Claims) shall not exceed [REDACTED] and the aggregate Losses payable by an Indemnifying Party pursuant to this Section 8 for all claims for indemnification (including Unlimited Claims), shall not exceed the Purchase Price.

(c) No Indemnifying Party shall be liable for any Losses pursuant to this Section 8 unless a written claim for indemnification in accordance with Section 8.4 is given by the Indemnified Party to the Indemnifying Party with respect thereto within eighteen (18) months after the Closing, except that this time limitation shall not apply to any Losses related to or arising directly or indirectly out of any Unlimited Claims (except for breaches of representations or warranties contained in Section 5.16), as to which in each case the applicable statute of limitations shall apply and if no statute of limitations applies, such time limitation shall be indefinite; provided that with respect to breaches of the ERISA Representations, such time limitation shall be three (3) years from the Closing Date.

8.6. Packaging. If a Third Party Claim is made within six (6) months after the Closing Date regarding the Buyer’s use of or right to use the “Esposito’s Sausage” photo currently used on labeling and packaging for the Business’s sausage products (the “Packaging Photo”), including without limitation, any Third Party Claim for direct infringement, inducement to infringe, contributory infringement or misappropriation (a “Specified Packaging Claim”), then: (a) the Buyer and the Seller shall each assume and bear fifty percent (50%) of any Losses other than Losses in the nature of repackaging or relabeling product (the “Specified Packaging Liability”); (b) the Buyer shall bear one hundred percent (100%) of all other Losses to the extent relating to such Specified Packaging Claim, (c) the Buyer and the Seller shall jointly control the defense of the Specified Packaging Claim, including selecting counsel reasonably acceptable to both the Buyer and the Seller; and (dc) neither the Buyer nor the Seller shall consent to the settlement of such Specified Packaging Claim without the prior written consent of the other party, such consent not to be unreasonably withheld, delayed or conditioned. If a Specified Packaging Claim is made after the six (6) month anniversary of the Closing Date, then the Buyer shall bear one

hundred percent (100%) of all Losses to the extent relating to or arising directly or indirectly out of such Specified Packaging Claim.

8.7. Adjustments for Indemnity Payments. The Buyer and the Seller agree to treat any indemnity payment made pursuant to this Agreement as an adjustment to the Purchase Price, unless otherwise required pursuant to a “determination” within the meaning of Section 1313(a)(1) or (2) of the Code.

8.8. Exclusive Remedy. The Buyer and the Seller acknowledge and agree that, except (a) for specific performance or (b) with respect to Claims for fraud, following the Closing, the indemnification provisions of Section 8 shall be the sole and exclusive remedies of the Seller and the Buyer, respectively, for any Losses (including any Losses from claims for breach of any representation or warranty or covenant in this Agreement (or any certificate delivered in accordance with this Agreement) by any party.

8.9. Additional Indemnification Provisions. With respect to each indemnification obligation contained in this Agreement, all Losses shall be net of any third-party insurance or indemnity, contribution or similar proceeds that have been actually recovered by the Indemnified Party in connection with the facts giving rise to the right of indemnification (it being agreed that if third-party insurance or indemnification, contribution or similar proceeds in respect of such facts are recovered by the Indemnified Party subsequent to the Indemnifying Party’s making of an indemnification payment in satisfaction of its applicable indemnification obligation, such proceeds shall be promptly remitted to the Indemnifying Party to the extent of the indemnification payment made), and the Indemnified Party shall use, and cause its Affiliates to use, commercially reasonable efforts to seek recovery under all insurance and indemnity, contribution or similar provisions covering such Loss to the same extent as it would if such Loss were not subject to indemnification hereunder. Upon making any payment to the Indemnified Party for any indemnification claim pursuant to this Section 8, the Indemnifying Party shall be subrogated, to the extent of such payment, to any rights which the Indemnified Party may have against any third parties with respect to the subject matter underlying such indemnification claim, and the Indemnified Party shall assign any such rights to the Indemnifying Party, to the extent such would not interfere with the operation of the Business by the Buyer.

9. DEFINITIONS. As used herein the following terms not otherwise defined have the following respective meanings:

“Affiliate”: As applied to any Person (as defined in this Section 9), any Person controlling, controlled by or under common control with such Person.

“Code”: The Internal Revenue Code of 1986, as amended.

“GAAP”: Generally accepted accounting principles, consistently applied.

“Indebtedness”: As applied to any Person (as defined in this Section 9), all indebtedness of such Person for borrowed money, whether current or funded, or secured or unsecured, including without limitation, (a) all indebtedness of such Person for the deferred purchase price of property or services represented by a note, (b) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (c) all indebtedness of such Person secured by a purchase money mortgage or other lien to secure all or part of the purchase price of property subject to such mortgage or lien, (d) all obligations under leases which shall have been or must be, in accordance with generally accepted accounting principles, recorded as capital leases in respect of which such Person is liable as lessee, (e) any liability of such Person in respect of banker’s acceptances or letters of credit, (f) all interest, fees and other expenses owed with respect to the indebtedness referred to above, and (g) all indebtedness referred to above which is directly or indirectly guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured a creditor against loss.

“IRS”: The United States Internal Revenue Service.

“Person”: A corporation, an association, a partnership, a limited liability company, an organization, a business, an individual, a trust, a government or political subdivision thereof or a governmental agency.

“Subsidiary” or “Subsidiaries”: Any corporation, limited liability company, partnership, association, trust, or other business entity, of which the designated parent at any time owns or controls, directly or indirectly, (a) at least a majority (by number of votes) of the outstanding shares of capital stock (or other shares of beneficial interest) entitled ordinarily to vote for the election of such business entity’s directors (or in the case of a business entity that is not a corporation, for those Persons exercising functions similar to directors of a corporation), or (b) in the case of a Person other than a corporation, a fifty percent (50%) or greater interest in the capital and/or profits of such Person.

“Tax”: Any federal, state, local, foreign and other income, profits, franchise, capital, capital stock, net worth, withholding, unemployment insurance, social security, occupational, production, severance, gross receipts, value added, sales, use, excise, stamp, registration, real or personal property, ad valorem, occupancy, transfer, employment, disability, workers’ compensation or other similar tax, customs, duty or other governmental charge (including all interest and penalties thereon and additions thereto).

“Tax Authority”: With respect to any Tax, the governmental entity or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

“Tax Return”: Any return, declaration, report, claim for refund, information return, statement or other document (including any related or supporting estimates, elections, schedules, statements or information) filed or required to be filed in connection with the



determination, assessment or collection of any Tax or the administration of any law, regulation or administrative requirements relating to any Tax.

10. GENERAL.

10.1. Survival of Representations and Warranties. The representations and warranties of the parties hereto contained in this Agreement or otherwise made in writing in connection with the transactions contemplated hereby (in each case except as affected by the transactions contemplated by this Agreement) shall be deemed material and, notwithstanding any investigation by the Buyer, shall be deemed to have been relied on by the Buyer and shall survive the Closing, and the consummation of the transactions contemplated hereby. Each representation and warranty made by any member of the Selling Group or the Buyer in this Agreement shall expire on the last day, if any, that Claims for breaches of such representation or warranty may be made pursuant to Section 8.5 hereof, except that any such representation or warranty that has been made the subject of a Claim prior to such expiration date shall survive with respect to such Claim (but not any other Claim) until the final resolution of such Claim pursuant to Section 8.

10.2. Expenses. All expenses of the preparation, execution and consummation of this Agreement and of the transactions contemplated hereby, including without limitation attorneys', accountants' and outside advisers' fees and disbursements, shall be borne by the party incurring such expenses.

10.3. Notices. All notices, demands and other communications hereunder shall be in writing, and shall be deemed to have been duly given if delivered personally or if mailed by certified mail, return receipt requested, postage prepaid, or if sent by overnight courier, or sent by facsimile or electronic communication, as follows:

If to any member of the Selling Group, to:

Elmgang Enterprises I, Inc.  
47 Hardscrabble Hill  
Chappaqua NY 10514

Attn: David Samuels  
Email: [samuels.david@gmail.com](mailto:samuels.david@gmail.com)

with a copy sent contemporaneously to:

Kluk Farber Law PLLC  
166 Mercer Street, #6B  
New York, NY 10012  
Attn: Eitan Hoenig, Esq.  
Email: [eitan@klukfarber.com](mailto:eitan@klukfarber.com)

If to the Buyer, to:

3 Little Pigs, LLC  
4223 1<sup>st</sup> Avenue  
2<sup>nd</sup> floor  
Brooklyn, NY 11232  
Attn: David Kemp

with a copy sent contemporaneously to:

c/o Gemini Investors  
20 William Street, Suite 250  
Wellesley, MA 02481  
Attn: Luke McLaughry

and to:

Sherry L. Countryman, Esq.  
Countryman Law LLC  
285 Barnes Road  
Vineyard Haven, Massachusetts 02568  
Email: [sherry@sherrycountrymanlaw.com](mailto:sherry@sherrycountrymanlaw.com)

Any such notice shall be effective (a) if delivered personally, when received, (b) if sent by overnight courier, when receipted for, (c) if mailed, three (3) days after being mailed as described above, and (d) if sent by facsimile or electronic communication, when received.

10.4. Entire Agreement. This Agreement contains the entire understanding of the parties, supersedes all prior agreements and understandings relating to the subject matter hereof and shall not be amended except by a written instrument hereafter signed by all of the parties hereto.

10.5. Governing Law; Venue. The validity and construction of this Agreement shall be governed by the internal laws (and not the choice-of-law rules) of the State of Delaware. All disputes, litigation, proceedings or other legal actions by any party to this Agreement shall be instituted exclusively in the courts of the State of Delaware or of the United States in the State of Delaware.

10.6. Sections and Section Headings. The headings of sections and subsections are for reference only and shall not limit or control the meaning thereof.

10.7. Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. Neither this Agreement nor the obligations of any party hereunder shall be assignable or transferable by such party without the prior written consent of the other party hereto; provided, however, that nothing contained in this Section 10.7 shall prevent the Buyer, without the consent of

the members of the Selling Group, (a) from transferring or assigning this Agreement or its rights or obligations hereunder to another entity controlling, under the control of, or under common control with the Buyer or (b) from assigning all or part of its rights or obligations hereunder by way of collateral assignment to any bank or financing institution or other lender providing financing for the acquisition contemplated hereby or (c) from transferring or assigning this Agreement and its rights and obligations hereunder as a whole to another Person in connection with a sale of substantially all of the assets of any Buyer, but no such transfer or assignment made pursuant to clauses (a) or (b) shall relieve such Buyer of its obligations under this Agreement.

10.8. Severability. In the event that any covenant, condition, or other provision herein contained is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed to be severable from the remainder of this Agreement and shall in no way affect, impair, or invalidate any other covenant, condition, or other provision contained herein.

10.9. Further Assurances. The parties agree to take such reasonable steps and execute such other and further documents as may be necessary or appropriate to cause the terms and conditions contained herein to be carried into effect.

10.10. Tax Treatment. The Buyer and the Seller shall treat and report the transactions contemplated by this Agreement in all respects consistently for purposes of any foreign, federal, state or local tax, including without limitation with respect to calculation of gain, loss and basis with reference to the allocation of the Purchase Price made pursuant to Section 3 hereof. The parties hereto shall not take any actions or positions inconsistent with the obligations set forth herein.

10.11. No Implied Rights or Remedies. Except as otherwise expressly provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person, firm or corporation, other than the members of the Selling Group and the Buyer and their respective members, any rights or remedies under or by reason of this Agreement.

10.12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. To the extent this Agreement or any writing required or permitted hereby is signed and/or delivered by means of facsimile or other electronic transmission, such facsimile or other electronic transmission shall be treated in all manner and respects as an original signed counterpart thereof and shall nonetheless be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

10.13. Public Statements or Releases. Each of the parties hereto agrees that no party to this Agreement will make, issue or release any public announcement, statement or acknowledgment of the existence of, or reveal the status of, this Agreement or the transactions provided for herein, without first obtaining the consent of the other parties

hereto; provided, that the initial press release (if any) with respect to the transactions contemplated by this Agreement shall be a joint press release that has been agreed upon by the Seller and the Buyer, and both the Seller and the Buyer shall be entitled to make any such announcement after Closing that references the content of such joint press release without the prior consent of the other parties hereto. Nothing contained in this Section 10.13 shall prevent any party from making such nonpublic disclosures as such party may consider necessary in order to obtain financing for the transactions contemplated hereby or to satisfy such party's legal or contractual obligations.

10.14. Business Records. The Buyer acknowledge that business records of the Seller relating to the Seller's operations prior to the Closing will be conveyed to the Buyer as part of the Acquired Assets, and that the Seller may from time to time require access to or copies of such records in connection with its performance under this Agreement as well as Tax matters and claims arising with respect to their operations prior to the Closing or the winding up of its affairs, and the Buyer agrees that upon reasonable prior notice from the Seller, it will, during normal business hours, provide the Seller with either access to or, at the Seller's request and expense, copies or, if required, the originals of such records for such purposes, provided that any originals provided are returned as soon as practicable. The Seller agrees to hold any information so provided in confidence and to use such information only for the purposes described above. The Buyer agrees that it will not within six (6) years after the Closing Date destroy any business records prepared prior to the Closing without first notifying the Seller and affording it the opportunity to remove or copy them. For purposes of the preceding sentence, any notice from the Buyer delivered in accordance with Section 10.3 shall be deemed to be adequate notice if not responded to in writing by the Seller within thirty (30) days.

10.15. Knowledge. Whenever the phrase "to the knowledge of any member of the Selling Group" or another similar qualification is used herein, the members of the Selling Group shall be deemed to have knowledge of any particular fact or other matter if the Selling Shareholder has knowledge of such fact or matter after reasonable investigation.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Agreement to be duly executed and delivered as a sealed instrument as of the date and year first above written.

BUYER:

ESPOSITO'S SAUSAGE, LLC

By: 

Name: David Kemp

Title: CEO

SELLER:

ELMGANG ENTERPRISES I, INC. d/b/a  
ESPOSITO'S SAUSAGE

By: \_\_\_\_\_

Name: David Samuels

Title: President

SELLING SHAREHOLDER:

By: \_\_\_\_\_

David Samuels

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Agreement to be duly executed and delivered as a sealed instrument as of the date and year first above written.

BUYER:

ESPOSITO'S SAUSAGE, LLC

By: \_\_\_\_\_

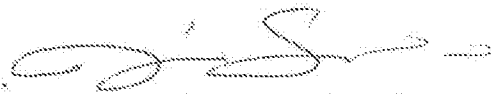
Name: David Kemp

Title: CEO

SELLER:

ELMGANG ENTERPRISES I, INC. d/b/a

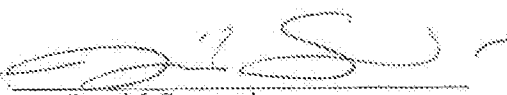
Esposito's Finest Quality Sausage Products

By:  \_\_\_\_\_

Name: David Samuels

Title: President

SELLING SHAREHOLDER:

By:  \_\_\_\_\_

David Samuels

**DISCLOSURE SCHEDULES**

**TO THE**

**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**ESPOSITO'S SAUSAGE, LLC,**

**ELMGANG ENTERPRISES I, INC.**

**AND**

**DAVID SAMUELS**

**Dated June 19, 2020**

Schedule 1.1(f)

Intangibles

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. The following marks:

Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead	
1	87576778	5432318	ESPOSITO SAUSAGE	TSDR	LIVE
2	87431454		ESPOSITO SAUSAGE	TSDR	DEAD
3	77253560	3498049	ESPOSITO'S FINEST QUALITY SAUSAGE	TSDR	LIVE
4	77253481	3498047	ESPOSITO'S	TSDR	LIVE
5	77252348	3444250	ESPOSITO'S FINEST QUALITY	TSDR	LIVE
6	77252143	3444247	ESPOSITO'S FINEST	TSDR	LIVE
7	77251406	3444243		TSDR	LIVE
8	77248999	3444234	ESPOSITO'S FINEST QUALITY SAUSAGE PRODUCTS	TSDR	LIVE
9	77248940	3444233	ESPOSITO'S FINEST QUALITY SAUSAGE	TSDR	LIVE
10	77248760	3444230	ESPOSITO'S FINEST	TSDR	LIVE
11	77249187	3498017	ESPOSITO SAUSAGE	TSDR	DEAD