



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 31, 2017

  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§ Chapter 11
	§
Authentic Gelato, LLC, et al.,	§ Case No. 17-33532
	§
Debtors.	§ Jointly Administered

**ORDER GRANTING DEBTORS' MOTION FOR AUTHORITY (I) TO  
SELL CERTAIN ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND  
ENCUMBRANCES AND (II) TO ASSUME AND ASSIGN CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO**

Came on for consideration before the Court the motion [Docket No. 69] (the "***Sale Motion***") filed by Paciugo Holdings, LLC and the other debtors and debtors in possession (collectively, the "***Debtors***") in the above-captioned jointly administered chapter 11 cases for approval of the sale of substantially all the Debtors' assets and the assumption and assignment of certain executory contracts and unexpired leases, in accordance with the procedures (the "***Bid Procedures***") approved in the *Order (a) Authorizing and Scheduling a Public Auction for the Sale of Certain Assets Free and Clear of All Liens, Claims and Encumbrances, (b) Approving Procedures for the Solicitation of Bids; (c) Approving the Stalking Horse Bid and Related Bid*

*Protections; and (d) Granting Related Relief* [Docket No. 61] entered October 3, 2017 (the “**Bid Procedures Order**”).<sup>1</sup> In the Sale Motion, the Debtors request entry of an order:

- (a) approving the Successful Bid and the Successful Back-Up Bid, each as identified in the *Notice of Successful Bidder and Successful Back-Up Bidder* [Docket No. 102] filed on October 24, 2017;
- (b) authorizing the Debtors to sell substantially all the Purchased Assets (as described in the Purchase Agreement) to the Sinelli Concepts International, Inc., or its designee (in such capacity, the “**Purchaser**”) on the terms set forth in the Purchase Agreement, free and clear of all liens, claims, encumbrances, and other interests;
- (c) authorizing the Debtors to assume and assign to Purchaser the Assumed Contracts (as defined below);
- (d) identifying all Priority Vendor Claims;
- (e) establishing the Cure Amount, if any, for each Assumed Contract;
- (f) waiving the 14-day stay under Bankruptcy Rules 6004(h) and 6006(d);
- (g) finding the Purchaser a “good faith purchaser” under § 363(m); and
- (h) granting related relief to facilitate the consummation of the foregoing.

The Court having reviewed and considered the Bid Procedures Order, the Notice of Successful Bidder, and the Purchase Agreement; all timely-filed objections; and the arguments of counsel made, and the evidence adduced, at the Sale Hearing; and it appearing that the Sale is in the best interests of the Debtors and their estates, creditors, employees, franchisees, and other stakeholders; and upon the record of the Sale Hearing and these cases, and after due deliberation thereon, and good cause appearing therefore;

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<sup>1</sup> Capitalized terms used but not defined have the meanings assigned to them in the Bid Procedures Order or, if applicable, the Asset Purchase Agreement between the Debtors and Purchaser and attached hereto as Exhibit C (the “**Purchase Agreement**”).

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. Jurisdiction and Venue. The Court has jurisdiction under 28 U.S.C. §§ 157(b)(1) and 1334(b) to approve and authorize the Sale. Venue of this Chapter 11 Case in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Statutory Predicate. The statutory predicate for the relief granted herein are §§ 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

3. Qualifying Bids. On or prior to the Bid Deadline, the Debtors received two Bids for the purchase of Assets, including the real property located at 1215 Viceroy, Dallas, Texas (the “**Property**”), on the terms set out in the Bid Procedures Order. The first such Qualifying Bid was that of the Stalking Horse Bidder, JxP Capital, LLC, which was deemed a Qualifying Bid by operation of the Bid Procedures Order. The second such Bid was that of Sinelli Concepts International, Inc. (“**Sinelli**”). In accordance with the Bid Procedures Order, and after consulting with Regions Bank (“**Regions**”) and the ad hoc committee of franchisees (the “**Committee**”), the Debtors determined in the exercise of their reasonable business judgment that the Sinelli Bid was a Qualifying Bid.

4. Auction. As scheduled in the Bid Procedures, the Debtors conducted an auction (the “**Auction**”) on October 23, 2017. The Auction was attended by representatives and counsel for each of the Stalking Horse Bidder, Sinelli, Regions, the Committee, and (solely to observe) the Office of the United States Trustee.

5. Successful Bid. At the conclusion of the Auction, the Debtors, in consultation with Regions and the Committee, identified the final bid by Sinelli as the Successful Bid and

Sinelli as the Successful Bidder. The Debtors selected the final bid of the Stalking Horse Bidder as the Successful Back-Up Bid, and the Stalking Horse Bidder as the Successful Back-Up Bidder. No other person or entity or group of entities has offered to purchase the Purchased Assets for greater economic value to the Debtors' estates than the Successful Bidder.

6. Notice. As evidenced by the certificates of service filed on the docket in this case, the Debtors have provided proper, timely, adequate, and sufficient notice of the Sale Motion, the Bid Deadline, the Auction, the Assumed Contracts Schedule (as defined below), the Priority Vendor Schedule (as defined below), the Sale Hearing, and all deadlines related thereto in accordance with Bankruptcy Rules 2002(a), 6004(a), and 9014 and the Bid Procedures Order. The notice given by the Debtors was good, sufficient, and appropriate under the particular circumstances, and reasonably calculated to apprise interested parties of the Auction and Sale.

7. Opportunity to Object. A reasonable opportunity to object and to be heard regarding the relief requested in the Sale Motion has been afforded to those parties entitled to notice under the Bankruptcy Code, the Bankruptcy Rules, and applicable local rules, including all parties asserting any lien or other interest in any of the Debtors' Assets and all nondebtor counterparties to executory contracts and unexpired leases.

8. Corporate Authority. The Debtors have the legal power and authority to convey all of their right, title, and interest in and to the Purchased Assets. Upon approval of the Sale by the Court, the Debtors have the requisite power and authority to execute the Purchase Agreement and all other documents contemplated thereby and to consummate the Sale and all transactions contemplated therein. No consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtors to close the Sale.

9. Business Justification. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets, and consummation of the transactions described in the Purchase Agreement constitutes an exercise of the Debtors' sound business judgment. The Debtors have articulated good and sufficient business reasons justifying the Sale, including that the Purchase Agreement comprises the highest and best offer for the Purchased Assets, and that the transactions described in the Purchase Agreement will present the best opportunity to realize the greatest value for the Debtors' estates from the Purchased Assets. In reaching this determination, the Court has taken into account both the consideration to be realized directly by the Debtors and the indirect benefits of the Sale for the Debtors employees, vendors, customers, and franchisees.

10. Good Faith Purchaser; Arm's Length Sale. The Purchase Agreement and the transactions contemplated therein were negotiated, proposed, and entered into by the Debtors and the Purchaser in good faith, without collusion, and from arm's-length bargaining positions. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement, the sale, or any part of the transactions thereby to be avoided, or costs or damages to be imposed, under § 363(n). In particular, the Court finds that (a) the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (b) all payments and consideration to be paid by the Purchaser and other agreements or arrangements entered into by the Purchaser with the Debtors in connection with the sale have been disclosed; (c) the Purchaser have not violated § 363(n) by any action or inaction; and (d) the Purchaser is not an "insider" of any Debtor as that term is defined by § 101(31). Accordingly, the Purchaser is a good faith purchaser entitled to the full protection of § 363(m) and any other applicable law, including in the event that any portion of this Order is reversed or modified on appeal.

11. Purchaser. Sinelli has formed Paciugo Real Estate, LLC (“***Paciugo RE***”), to act as its designee and Purchaser under the Purchase Agreement for purposes of acquiring and taking possession of the Property, and Paciugo Franchise International, LLC (“***Paciugo Franchise***”), to act as its designee and Purchaser under the Purchase Agreement for purposes of acquiring and taking possession of all other Purchased Assets, including all Assumed Contracts, and assuming the Assumed Liabilities. Sinelli, Paciugo Real Estate, LLC, and Paciugo Franchise International, LLC, are referred to collectively herein and in the Purchase Agreement as the “***Purchaser***”).

12. Consideration. The total consideration proposed to be paid by Purchaser includes (i) \$2,000,000.00 in cash (inclusive of the \$200,000.00 security deposit already paid to the Debtors), as adjusted by the Working Capital Adjustment in accordance with the Purchase Agreement; and (ii) the assumption of the Assumed Liabilities, including the payment of all Current Liabilities. The Purchase Price (as defined in the Purchase Agreement) is the highest or otherwise best offer received by the Debtors, and constitutes reasonably equivalent value for the Purchased Assets under the Bankruptcy Code and other applicable law.

13. Marketing Efforts. The Debtors took reasonable steps to market the Purchased Assets to the fullest extent possible to ensure that the consideration obtained would represent the market value of the Purchased Assets, which is “that value that a prudent business person can obtain from the sale of an asset when there is a willing buyer and a willing seller.” *Pioneer Home Builders, Inc. v. Intl. Bank of Commerce (In re Pioneer Home Builders, Inc.)*, 147 B.R. 889 (Bankr. W.D. Tex. 1992) (citing *Grandison v. National Bank of Commerce of Rochester*, 231 F. 800, 804-05 (2d Cir.1916); *Irving Trust Co. v. Manufacturers' Trust Co. (In re John Connors, Inc.)*, 6 F.Supp. 185, 187 (S.D.N.Y.1934)); *see also In re 1701 Commerce, LLC*, 511 B.R. 812 (Bankr. N.D. Tex. 2014) (“Fair market value means the “value that a prudent business

person can obtain from the sale of an asset when there is a willing buyer and a willing seller.”).

In early 2017, prior to the Petition Date, the Debtors retained Bulkley Capital, LLC (“**Bulkley**”), an investment banking firm, to solicit potential equity investors in the Debtors or, alternatively, potential buyers of the Debtors’ assets and business operations. By summer, the Debtors received an initial offer from the Stalking Horse Bidder—which ultimately became the Stalking Horse Bid—to acquire the Debtor’s assets and operating business through a sale to be conducted under § 363. Following the Petition Date, the Debtors retained Resurgence Financial Services, LLC (“**RFS**”) to further market the Debtors’ Assets to potentially interested buyers for the purpose of identifying the highest and best offer for the Debtors’ Assets and related business operations. Collectively, the Debtors’ marketing efforts provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Debtors’ Assets. The transaction that is the subject of this Order is the result of the Debtors’ efforts to realize the highest possible value from the sale of the Debtors’ Assets.

14. Fair Consideration. As demonstrated by the testimony and other evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, (a) the Debtors have adequately marketed the Purchased Assets; (b) a reasonable opportunity has been given to any interested party to submit a higher or better offer for the Purchased Assets; (c) the consideration offered by the Purchaser in the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets; (d) the consideration provides fair and reasonable consideration for the Purchased Assets and constitutes fair and reasonably equivalent value under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia; (e) the proposed sale to the Purchaser will provide a greater recovery to the Debtors’ estates than would be provided

by any other practically available alternative; (f) taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; and (g) the Debtors' determination that the Purchase Agreement constitutes the highest or best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

15. Satisfaction of § 363(f). The Debtors may sell the Purchased Assets free and clear of all liens, claims, and encumbrances (other than Permitted Liens) because, with respect to each creditor asserting a lien, claim or encumbrance, one or more of the standards set forth in § 363(f)(1)-(5) has been satisfied as set forth herein. First, those holders, if any, of liens, claims, or encumbrances that did not object or that withdrew objections to the Sale are deemed to have consented to the Sale as provided in § 363(f)(2). Further, based on the Court's findings above, the Purchase Price set forth in the Purchase Agreement, which was obtained following a competitive marketing and auction process, is greater than the aggregate value of all liens on the Purchased Assets as provided in § 363(f)(3). *In re Beker Industries Corp.*, 63 B.R. 474 (Bankr.S.D. N.Y. 1986); *see also In re Terrace Gardens Park Partnership*, 96 B.R. 707, 713 (Bankr. W.D. Tex. 1989) ("This court believes that *Beker* is the better reasoned view."). The Court further observes that no creditor asserting a lien or interest in any of the Purchased Assets exercised (or attempted to exercise) its right to credit bid under § 363(k) or otherwise submit a Bid for the purchase of any of the Debtors' Assets. Accordingly, to the extent any holder of a lien, claim, or encumbrance objected to the Sale and did not withdraw such objection, § 363(f)(3) is satisfied as to each such holder.

16. Sale Free and Clear. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions described therein if the sale of the



Purchased Assets to the Purchaser were not free and clear of liens, claims, encumbrances, and other interests to the fullest extent permitted by § 363(f). The sale of the Purchased Assets to the Purchaser is a legal, valid, and effective transfer of the Purchased Assets for fair consideration that shall and, upon the Closing, does vest in the Purchaser all rights, title, and interest of the Debtors in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests to the fullest extent permitted by § 363(f), whether arising before or after the Petition Date, whether at law or in equity, including all rights or claims based on any successor or transferee liability. To the extent not otherwise avoided, released, or discharged pursuant to the terms of this Order, all other such liens, claims, encumbrances, and other interests shall attach to the proceeds received by the Debtors under the Purchaser Agreement in the same order of priority and with the same validity and enforceability as they had immediately before the Closing, subject to all defenses thereto. A sale of the Purchased Assets other than one free and clear of all such interests would yield substantially less value for the Debtors' estate, with less certainty, than the sale as contemplated. Therefore, the sale contemplated by the Purchase Agreement free and clear of all such interests is in the best interests of the Debtors and their estates, creditors, and other stakeholders.

17. Assumption and Assignment of Assumed Contracts. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign each Assumed Contract to the Purchaser (or franchisee, as applicable) in connection with the Sale, and such assumption and assignment is in the best interests of the Debtors and their estates, creditors, and other stakeholders. The Assumed Contracts are an integral part of the Purchased Assets and, by extension, the accompanying operating business, and accordingly, the assumption and assignment the Assumed Contracts is reasonable and enhances the value of the Debtors' estates.

18. Priority Vendor Claims. As part of the Purchase Agreement, the Purchaser has agreed to assume and pay unpaid prepetition claims (the “**Priority Vendor Claims**”) that are eligible for priority treatment under either the Perishable Agricultural Commodities Act (“**PACA**”), the Texas Milk Act, or § 503(b)(9). On October 6, 2017, the Debtors filed a *Notice of Priority Vendor Claims* [Docket No. 70] (the “**Priority Vendor Schedule**”) identifying all Priority Vendor Claims known to the Debtors. A timely objection to the Priority Vendor Schedule was filed by Hiland Dairy, and the Priority Vendor Claim asserted by Hiland Dairy was accepted by the Debtors. Any creditor that failed to timely file an objection to the Priority Vendor Schedule as required in the Bid Procedures is deemed to have waived any priority status under PACA, the Texas Milk Act, or § 503(b)(9) associated with such claim. Accordingly, attached hereto as Exhibit A is a list of all claims against the Debtors or their estates that are Priority Vendor Claims, and no other claim that may be asserted against any Debtor or its estate shall be entitled to any such priority in these cases (including if these cases are converted to chapter 7).

19. Cure Amounts. On October 6, 2017, the Debtors filed a *Notice of Assumed Contracts Schedule* [Docket No. 71] (the “**Assumed Contracts Schedule**”) identifying the executory contracts and unexpired leases (the “**Executory Contracts**”) proposed to be assumed by the Debtors and assigned to the Purchaser and the amount, if any, that must be paid in connection with the assumption of each Executory Contract to satisfy the requirements of § 365(b)(1)(A) (such amount, the “**Cure Amount**”). Objections to the Assumed Contracts Schedule were filed or asserted informally by each of (i) Northpark Partners, L.P., (ii) Preston Park Partners, Ltd.; (iii) Grapevine Mills Mall Limited Partnership; (iv) Southwest Traders, Inc.; (v) Parks at Arlington, LLC and Stonebriar Mall, LLC; and (vi) the Committee (collectively, the

**“Cure Objections”**). Additional Cure Objections were filed by the following franchisees:

(i) Asra Ventures (Ameer and Ayesha Khoja); (ii) Barry S. Marshall (Bearchrisaaa, LLC); (iii) Bona Fortuna, LLC; (iv) Gourmet Gelato & Caffè, LLC; (v) Mini’s Gelato and Café Inc. (Galleria store); (vi) Mini’s Gelato and Café Inc. (Northpark store); and (vi) Orchan Investments LLC. Each Cure Objection has been resolved as announced on the record at the Sale Hearing as follows:

<b>Objecting Party</b>	<b>ECF No.</b>	<b>Resolution</b>
Northpark Partners, L.P.,	99	Request to assume and assign withdrawn without prejudice.
Preston Park Partners, Ltd.	82	Debtors agreed to requested Cure Amount. Objection withdrawn.
Grapevine Mills Mall Limited Partnership	81	Request to assume and assign withdrawn without prejudice.
Southwest Traders, Inc.	93	Debtors agreed to requested Cure Amount. Objection sustained.
Parks at Arlington, LLC	108	Request to assume and assign withdrawn without prejudice.
Stonebriar Mall, LLC	108	Assumed and assigned by consent per announced agreement.
Committee	91	Objection withdrawn.
Asra Ventures (Ameer and Ayesha Khoja)	97	Request to assume and assign withdrawn without prejudice.
Barry S. Marshall (Bearchrisaaa, LLC)	84	Assumed and assigned by consent per announced agreement.
Bona Fortuna, LLC	85	Request to assume and assign withdrawn without prejudice.
Gourmet Gelato & Caffè, LLC	90	Assumed and assigned by consent per announced agreement.
Mini’s Gelato and Café Inc. (Galleria store)	88	Objection withdrawn
Mini’s Gelato and Café Inc. (Northpark store)	89	Assumed and assigned by consent per announced agreement.
Orchan Investments LLC	87	Assumed and assigned by consent per announced agreement.
Cengiz and Marvelia Dirican	86	Request to assume and assign withdrawn without prejudice.

20. Each Assumed Contract counterparty that did not object to the proposed Cure Amount, if any, or to the proposed assumption and assignment of such Assumed Contract is deemed to have consented to the assumption and assignment of such Assumed Contract, including the Cure Amount, if any, payable in connection therewith, and is deemed to have acknowledged that such assumption and assignment satisfies all requirements of §§ 365(b), (c) and (f). Accordingly, attached hereto as Exhibit B is a list of the only Cure Amounts necessary to be paid to cure any and all outstanding defaults under the Assumed Contracts identified therein, and no other defaults currently exist under such Assumed Contract. If a Cure Amount of \$0.00 is indicated for such Assumed Contract, no default exists as of the time and date of the assumption of such Assumed Contract that must be cured to satisfy the requirements of § 365.

21. Adequate Assurance of Future Performance. The Debtors and the Purchaser (or franchisee, if applicable) have, to the extent necessary, satisfied the requirements of § 365, including §§ 365(b)(1)(A), (B), and 365(f), in connection with the assumption and assignment of each Assumed Contract. The Purchaser has demonstrated adequate assurance of future performance with respect to each Assumed Contract pursuant to § 365(b)(1)(C). The assumption and assignment of the Assumed Contracts are integral to the Purchase Agreement and are in the best interests of the Debtors and their estates, creditors, and other stakeholders, and represent the exercise of sound and prudent business judgment by the Debtors.

22. Shopping Mall Leases. In connection with the Sale of the Purchased Assets to the Purchaser and as requested in the Sale Motion, the Debtors proposed to assume and assign one or more of the following unexpired leases of real property in shopping centers to the following franchisees currently operating retail stores in those locations (the “*Franchisee Leases*”):

Shopping Center	Nondebtor Counterparty	Franchisee-Assignee
Parks at Arlington Mall	Parks at Arlington	Yen H. Tran, Huong Bui
Stonebriar Mall	Stonebriar Mall, LLC	DBJ Ventures, Inc.
Grapevine Mills Mall	Grapevine Mills Malls Limited Partnership	ASRA Ventures LLC
Northpark Mall	NorthPark Partners, LP	Mini's Gelato Café LLC
Northpark Mall	NorthPark Partners, LP	Mini's Gelato Café LLC

Cure Objections to the assumption of the foregoing Franchisee Leases were filed by each of (i) Northpark Partners, L.P., (ii) Grapevine Mills Mall Limited Partnership; and (iii) Parks at Arlington, LLC and Stonebriar Mall, LLC; and each such objection has been resolved as announced on the record at the Sale Hearing and as set forth herein. The Court finds that the assumption and assignment of each Franchisee Lease satisfies the requirements of § 365(b)(3) insofar as each of the proposed assignees already occupies the retail space described in the corresponding Franchisee Lease (or will take possession of such premises upon assumption and assignment of the corresponding Franchisee Lease) and pays all rents currently due under such lease. Accordingly, the Court finds that (i) the source of rent and other consideration due under such lease, and the financial condition and operating performance of the proposed assignee, is similar to the financial condition and operating performance of the Debtors; (ii) any percentage rent due under the Franchisee Leases will not decline substantially as a result of such assignment; (iii) the assignment of each Franchisee Lease will not breach any radius, location, use, or exclusivity provision in any such lease, and will not disrupt any tenant mix or balance in the corresponding shopping center.

23. Break-Up Fee. Consistent with Paragraph 12 of the Bid Procedures Order and Paragraph E of the Bid Procedures, the Debtors' designation of Sinelli as the Purchaser entitles the Stalking Horse Bidder to an allowed administrative expense pursuant to § 503(b)(1) in the amount not to exceed \$125,000.00 (the "**Break-Up Fee**"), representing out-of-pocket expenses

incurred by the Stalking Horse Bidder to conduct its due diligence, negotiate and finalize the terms of the Stalking Horse Bid, monitor this case, and participate in the Auction. Upon being provided with documentation showing the amount of any such out-of-pocket expenses incurred, the Debtors are authorized and directed to pay the Break-Up Fee to the Stalking Horse Bidder concurrently with the consummation of the Sale to Purchaser out of the proceeds of the Sale.

24. No Intentional Fraudulent Transfer. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or any other laws of the United States, any state, territory, possession, or the District of Columbia.

25. Purchaser Not a Successor. Insofar as the Purchaser is not acquiring the Excluded Assets, Purchaser is not purchasing all of the Debtors' assets and Purchaser is not holding itself out to the public as a continuation of the Debtors. The Sale and related transactions are not and do not amount to a consolidation, merger or de facto merger of Purchaser and the Debtors or their estates, there is not substantial continuity between Purchaser and the Debtors, there is no continuity of enterprise between the Debtors and Purchaser, Purchaser is not a mere continuation of the Debtors or the Debtors' estates, and Purchaser does not constitute a successor to the Debtors or the Debtors' estates to the extent allowed under state law.

26. Legal, Valid Transfer. The transfer of the Purchased Assets to Purchaser will be a legal, valid, and effective transfer of the Purchased Assets, and will vest Purchaser with all right, title, and interest of the Debtors in and to the Purchased Assets free and clear of all liens, claims, and encumbrances (other than Permitted Liens), including all claims arising under any doctrine of successor liability.

27. Not a Sub Rosa Plan. The Sale does not constitute a sub rosa chapter 11 plan, in that the Sale neither impermissibly restructures the rights of Debtors' creditors nor impermissibly

dictates the terms of any plan of reorganization or liquidation that might be filed by or for the Debtors.

28. Prompt Consummation. Time is of the essence in consummating the transactions described herein and in the Purchase Agreement, and the Debtors and the Purchaser intend to close the transactions as soon as practicable. Accordingly, to preserve the value of the Debtors' Assets as reflected in the Purchase Agreement, it is essential that the sale of the Purchased Assets occur as soon as practicable. Accordingly, there is cause to waive the 14-day stay contemplated under Bankruptcy Rules 6004(h) and 6006(d).

**ACCORDINGLY, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

29. **Findings of Fact and Conclusions of Law:** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact shall be determined to be a conclusion of law, it shall be deemed so, and vice versa.

30. **Motion is Granted.** The Sale Motion is GRANTED as set forth herein.

31. **Objections are Overruled.** Any and all objections to the Assumed Contracts Schedule, the Priority Vendor Schedule, or the entry of this Order that have not been withdrawn, waived, or settled, or otherwise resolved by the terms of this Order are denied and overruled on the merits with prejudice.

32. **Approval and Authorization.** Pursuant to §§ 105, 363, the Successful Bid, the Purchase Agreement, and, to the extent necessary upon the failure of the Successful Bid to be fully consummated, the Successful Back-Up Bid, and all the terms and conditions thereof, are hereby approved.

33. **Authorization.** The Debtors are authorized to execute and deliver, and empowered to perform under, consummate, and implement, the Purchase Agreement in substantially the form attached as Exhibit C to this Order, together with all additional instruments and documents that the Debtors or the Purchaser deem necessary or appropriate to implement the Purchase Agreement and effectuate the transactions contemplated therein, and to take all further actions as may reasonably be required by the Purchaser to accomplish the assignment, transfer, and conveyance of all the Purchased Assets, including the Assumed Contracts, to the Purchaser.

34. **Binding Effect of Order.** This Order and the Purchase Agreement shall be binding in all respects upon all known and unknown creditors of, and holders of equity security interests in, the Debtors, including any holders of liens, claims, encumbrances, or other interests, all successors and assigns of the Purchaser, and the Debtors and their estates and affiliates.

35. **Valid Transfer.** The transfer of the Purchased Assets to the Purchaser constitutes a legal, valid, and effective transfer of the Purchased Assets and shall, in accordance with the terms of the Purchase Agreement, vest the Purchaser with all of the Debtors' right, title, and interest in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever.

36. **As Is, Where Is.** Except as expressly set forth herein and in the Purchase Agreement and other documents executed by the Debtors and delivered at Closing (the "**Closing Documents**"), the Debtors make no representations or warranties whatsoever, whether express or implied or arising by operation of law, with respect to the Purchased Assets. THE PURCHASED ASSETS WILL BE SOLD AND CONVEYED TO (AND ACCEPTED BY) THE PURCHASER AT THE CLOSING IN THEIR THEN-EXISTING CONDITION, AS IS,



WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WRITTEN OR VERBAL REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, other than as expressly set forth in the Purchase Agreement and in the Closing Documents; provided, however, that the Purchased Assets shall be “free and clear” of all liens, claims, encumbrances, and other interests to the fullest extent permitted under the Bankruptcy Code. Without limiting the generality of the foregoing, except as set forth in the Purchase Agreement and in the Closing Documents, the transactions contemplated by the Purchase Agreement are without statutory, express or implied warranty, representation, agreement, statement or expression of opinion of or with respect to the condition of any of the Purchased Assets, including (i) any and all statutory, express or implied representations or warranties related to the suitability for habitation, merchantability, or fitness for a particular purpose, (ii) any statutory, express or implied representations or warranties created by any affirmation of fact or promise, by any description of the Purchased Assets or by operation of law and (iii) all other statutory, express or implied representations or warranties by the Seller whatsoever. The Purchaser has knowledge and expertise in financial and business matters that enable the Purchaser to evaluate the merits and risks of the transactions contemplated by the Purchase Agreement

37. **Direction to Release Interests.** Upon the Closing, each of the Debtors’ creditors and any other holder of a lien, claim, encumbrance, or other interest is authorized and directed, without cost to the Debtors, to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance, or other interest in the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanic’s liens, lis

pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest in the Debtors or the Purchased Assets shall not deliver to the Debtors, prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, and other interests, which the person or entity has with respect to the Debtor or the Purchased Assets or otherwise, then the Debtors and the Purchaser are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Debtors or the Purchased Assets. The Purchaser hereby authorized to file, register, or otherwise record a certified copy of this Order, which shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Debtors or the Purchased Assets.

38. **Attachment to Proceeds.** All liens, claims, encumbrances, and other interests in any of the Purchased Assets shall attach to the proceeds received by the Debtors under the Purchase Agreement in the same order of priority and with the same validity and enforceability as they had on the Petition Date, subject to all defenses thereto.

39. **Filing and Recording.** This Order is and shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required, by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any document or instruments. This Order shall constitute conclusive evidence of the sale of the Purchased Assets to the Purchaser and the avoidance, discharge and release of all other liens and mortgages previously

encumbering the Purchased Assets. Each and every federal, state and local government agency is hereby directed to accept any and all documents and instruments necessary, useful or appropriate (including Uniform Commercial Code financing statements) to effectuate, implement and consummate the transactions contemplated by the Purchase Agreement and this Order.

40. **Free and Clear of Liens, Claims, Encumbrances and Other Interests.** The sale of the Purchased Assets to the Purchaser shall be effectuated free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, whether arising before or after the Petition Date, whether at law or in equity, including all rights or claims based on any successor or transferee liability, except as expressly set forth in the Purchase Agreement or this Order. Except as expressly provided in the Purchase Agreement or this Order, the Purchased Assets, shall be transferred to the Purchaser free and clear of all liens, claims, encumbrances, and other interests in, on, or with respect to the Purchased Assets, including interests, obligations, rights, encumbrances, pledges, liens (including, without limitation, mechanics', materialmens', and other consensual and non-consensual liens and statutory liens), mortgages, deeds of trust, security interests, claims (including, any "claim" as defined in § 101(5)), liabilities, debt obligations, losses, penalties, leases, charges, offsets, contracts, options, rights of first refusal, rights of first offer, rights of first sale, rights of notice, proxies, voting trusts or agreements, transfer restrictions under any agreement, conditional sale or other title retention agreements, judgments, hypothecations, demands, licenses, sublicenses, assignments, indentures, loan agreements, instruments, debts, rights of recovery, guaranties, contractual commitments, restrictions, setoff, recoupment, subrogation, employee benefit agreements and obligations, collective bargaining agreements and obligations, claims based on reimbursement, contribution, indemnity, exoneration, products liability, tortious conduct, property damage,

personal injury, alter-ego, environmental liability, or taxes, and claims or liabilities otherwise arising under doctrines of successor liability, de facto merger, or substantial continuity, in each case, of any kind or nature in, against, or with respect to the Purchased Assets or any Debtor, or accrued on or prior to the Petition Date, whether direct or indirect, absolute or contingent, choate or inchoate, known or unknown, matured or unmatured, liquidated or unliquidated, arising or imposed by agreement, understanding, law, statute, equity, or otherwise, and whether arising prior to, on, or after the Petition Date.

41. **No Successor Liability.** The Purchaser is not a mere continuation of any Debtor or its estate, nor is holding itself out to the public as a continuation of the Debtor or its estate. There is no continuity or common identity between any Debtor and the Purchaser, and there is no continuity of enterprise between any Debtor and the Purchaser. The Purchaser is not a successor to any Debtor or its estate, and none of the transactions contemplated by the Purchase Agreement or this Order amounts to a consolidation, merger, or de facto merger of the Purchaser with or into any Debtor.

42. **Good Faith Purchaser.** The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is used in § 363(m), and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the transactions shall not affect the validity of the transactions. The Purchaser is a purchaser in good faith of the Purchased Assets and is entitled to all the protections afforded by § 363(m).

43. **Assumed Liabilities.** Except for the Assumed Liabilities as expressly enumerated in the Purchase Agreement, Purchaser is not assuming nor shall in any way be liable or responsible, as a successor, for any liability, debt, or obligation of any Debtor in any way

whatsoever relating to or arising from any Debtor's ownership or use of any Purchased Asset prior to the Closing Date, nor any liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to the Closing Date, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to any liability successor liability against the Purchaser or any affiliate of the Purchaser.

44. **Authorization to Assign Assumed Contracts.** The Debtors are hereby authorized to assume each Assumed Contract identified on Exhibit B and assign each such Assumed Contract to the Purchaser. In addition, to the extent provided herein or announced on the record at the hearing, the Debtors are hereby authorized to assume each Franchisee Lease and assign each such lease to the franchisee currently operating a Paciugo store in the leased premises. Upon assignment to the Purchaser, each Assumed Contract shall be valid and binding and in full force and effect in accordance with its terms, and (except to the extent satisfied or extinguished by operation of this Order), all of the Debtor's rights, privileges, obligations, and liabilities under each such Assumed Contract shall fully and irrevocably vest in the Purchaser. Purchaser shall pay the Cure Amount, if any, required in connection with the assumption and assignment of each Assumed Contract within five business days after entry of this Order. Except for CAM charges, taxes, or other obligations that may have accrued under such Assumed Contracts and are payable according to the ordinary terms of such Assumed Contract after the Closing Date, all defaults or other obligations of the Debtors under the Assumed Contracts arising or accruing prior to the Closing Date are cured by the payment or other satisfaction of the Cure Amount, if any, identified in Exhibit B for such Assumed Contract.

45. **Assumed Liabilities.** Upon the Closing and consummation of the Purchase Agreement and the transactions described therein, the Purchaser shall have assumed those Assumed Liabilities expressly enumerated or described in the Purchase Agreement and this Order. From and after the Closing, the Purchaser shall be solely and exclusively responsible for the satisfaction of such Assumed Liabilities, and the Debtors and their estates shall have no liability whatsoever for any Assumed Liability enumerated in the Purchase Agreement. Purchaser shall pay each of the Priority Vendor Claims within thirty days after entry of this Order. All other Assumed Liabilities shall be paid by the Purchaser as and when they come due in the ordinary course of the Purchaser's use of the Purchased Assets and operation of the accompanying business. In lieu of paying the Priority Vendor Claims and Cure Amounts directly, the Purchaser may remit an additional cash payment to the Debtors in an amount equal to such Priority Vendor Claims and Cure Amounts. Upon receipt of such payment, the Debtors are authorized to distribute such funds in payment of such claims on behalf of the Purchaser.

46. **Binding Order.** This Order and the Purchase Agreement shall be binding in all respects upon all creditors and interest holders of the Debtors, all non-debtor parties to the Assumed Contracts, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustee, examiner, "responsible person," or other fiduciary appointed in the Debtors' cases, and shall survive dismissal or conversion to chapter 7 of the Debtors' cases.

47. **Modification of Purchase Agreement.** The Purchase Agreement may be modified, amended, or supplemented with the written consent of both the Purchaser and the Debtors without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

48. **Successful Back-Up Bidder.** In the event the Purchaser does not close and consummate the Sale and related transactions as required herein and in the Purchase Agreement, the Debtors are authorized to take all steps necessary or desirable to consummate a Sale or other comparable transaction with the Successful Back-Up Bidder.

49. **Conflicts.** Nothing contained in any order entered in the Debtors' cases, whether under chapter 11 or following conversion to chapter 7 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order.

50. **Waiver of Stay.** Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for any length of time after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the transactions immediately upon entry of this Order. This Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry of this Order. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

51. **Nonseverability.** The provisions of this order are nonseverable and mutually dependent.

52. **Retention of Jurisdiction.** The Court shall retain jurisdiction, consistent with its statutory powers under 28 U.S.C. § 157(b)(2), to interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement.

53. **Stonebriar Franchisee Lease.** The Debtors contemplate that the Franchisee Lease with Stonebriar Mall, LLC (the "*Stonebriar Lease*") will be assigned to the designee of the existing franchisee in that location in connection with a sale of that franchise by the existing franchisee (the "*Franchisee Sale*"). In connection with such Franchisee Sale and with respect to

the assumption and assignment of the Stonebriar Lease, the assignee of the Franchisee Lease will provide Stonebriar Mall, LLC, as adequate assurance of future performance of its obligations under such lease, with (i) a security deposit in the amount of \$23,750.00 (the “*Stonebriar Deposit*”), representing three months’ rent and expenses under the Stonebriar Lease; and (ii) evidence of insurance coverage as required under the terms of the Stonebriar Lease. Nothing herein shall be construed to waive, limit, or impair any indemnification claims that Stonebriar Mall, LLC may have against any Debtor with respect to any third party claim occurring or arising prior to the closing of the Franchisee Sale, but only to the extent of applicable insurance coverage (and not as to any direct claim against any Debtor, its estate, or any assets of any Debtor or its estate). The assumption and assignment of the Stonebriar Lease shall be conditioned on the closing of the sale of the existing franchise by DBJ Ventures, Inc. and, in the event such sale is not consummated, the Debtors shall be free to further exercise their rights to assume, assume and assign, or reject the Stonebriar Lease under § 365. Following the closing of the Franchisee Sale and payment of the Stonebriar Deposit by the assignee as provided above, Stonebriar Mall, LLC shall refund the existing security deposit of \$6,600.00 to the Debtors or their designee.

### END OF ORDER ###

**Submitted by:**

Michael P. Cooley (TX Bar No. 24034388)  
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Attorneys for the Debtors



**EXHIBIT A****List of Priority Vendor Claims**

<b>Vendor</b>	<b>Street</b>	<b>Nature of Priority</b>	<b>Priority Vendor Claim Amount<sup>1</sup></b>
South Coast Produce	PO Box 150187 Dallas , TX 75315-0187	PACA	\$6,973.00
Restaurant Depot	2151 Irving Blvd Dallas, TX 75252	PACA	\$1,768.72
Borden Dairy	9400 N Central Expressway, Suite 800 Dallas, TX 75231	Texas Milk Act	\$949.96
Hiland Dairy Foods	16990 Dallas Pkwy. Ste 215 Dallas, TX 75248	Texas Milk Act	\$118,947.49
Allegro Coffee	12799 Claude Court Denver, CO 80241	§ 503(b)(9)	\$1,946.25
Lolli Cup USA, Inc.	6185 Kimball Avenue Chino, CA 91708	§ 503(b)(9)	\$2,119.20
Continental Carbonic Products, Inc.	Department CH 19860 Palatine, IL 60055-9860	§ 503(b)(9)	\$3,217.33
Danhil Containers II	PO BOX 2089 Temple, TX 76503	§ 503(b)(9)	\$2,467.40
Ecolab Food Safety	PO Box 70343 Chicago, IL 60673-0343	§ 503(b)(9)	\$264.00
ECI Services LLC	2401 W. Commerce Street Dallas, TX, 75212	§ 503(b)(9)	\$1,122.00

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<sup>1</sup> Some of these amounts may be paid in the course of the Debtors' case as authorized by separate order of the Court. To the extent any such payments are made, the remaining Priority Vendor Claim Amounts reduced by the amount of such payment.

**EXHIBIT B****List of Cure Amounts****Real Property Leases**

<b>Counterparty</b>	<b>Address</b>	<b>Cure Amount</b>
Pavilion on Lovers Lane, LP	7501 Inwood Road Dallas, TX 75209	\$6,339.95
Preston Park Partners, Ltd. <sup>1</sup>	2001 Preston Road Plano, Road 75093	\$9,461.17

**Franchise Agreements**

<b>State</b>	<b>Location</b>	<b>Franchisee Name</b>	<b>Date of Agreement</b>	<b>Cure Amount</b>
CA	Hermosa Beach	BKB Inc.	12/14/2012	\$0.00
CA	Thousand Oaks The Oaks Mall	Gelato Passion Inc. (Scott & Patty Murph signed)	10/15/2007	\$0.00
CO	Lakewood Belmar	Maaad Inc. (possible transfer from HCT Sun, LLC)	7/15/2016	\$0.00
CO	Loveland Promenade Shops at Centerra	Montagne di Gelato, Inc. (Louis Marchesano & Scott King signed)	12/2/2009	\$0.00
FL	St. Petersburg	Mango Man St. Pete LLC (transfer from Riche Enterprises)	8/8/2017	\$0.00
FL	To be determined	Kimberly J. Shelpman	4/28/2012	\$0.00
FL	To be determined – South East FL	Randy Thomas & Elizabeth Borges	10/23/2015	\$0.00
FL	To be determined	Famace, LLC	10/19/2015	\$0.00
FL	To be determined - Orlando	Confys USA LLC	1/6/2016	\$0.00
IL	Chicago Lakeview	Avi Ventures, Inc. (Flavia Arana & Anirudh Poddar signed)	4/3/2008	\$0.00
IL	Chicago Lincoln Square	AYI Enterprises Inc. (Anirudh Poddar) (Franchise Agreement says Skoubis Manta, LLC)	11/29/2009	\$0.00
IL	Chicago Roscoe Village	AADYA HOLDINGS INC. (Anirudh Poddar & Flavia Arana signed)	4/30/2010	\$0.00
IL	Shaumburg Woodfield Mall	Shreeditya, Inc.	4/29/2016	\$0.00
KS	Leawood Park Place	Bearchrisaaa, LLC (transfer from Real Gelato LLC, effective	11/17/2015	\$0.00

<sup>1</sup> Month to month lease.

State	Location	Franchisee Name	Date of Agreement	Cure Amount
KS	Overland Park Oak Park Mall	December 1, 2015) Bearchrisaaa, LLC (transfer from Le Due Scimmie Gelato, LLC, effective May 1, 2016)	5/13/2009	\$0.00
KS	Overland Park Deer Creek Woods	Bearchrisaaa, LLC	3/8/2017	\$0.00
LA	Shreveport	Bayou Gelateria, LLC (Jiwani and Dhanani)	9/17/2016	\$0.00
OK	Oklahoma City Penn Square Mall	Omparts Inc. (transfer from Cris Villarmar, effective January 29, 2017)	1/28/2017	\$0.00
TX	Allen Watters Creek	Saif and Kamil LLC	4/18/2015	\$0.00
TX	Dallas Lakewood	Charlemagne Estates LLC	5/2/2007	\$0.00
TX	Dallas Preston Forest	Rodolfo Stoisa & Miriam Pilotti	3/23/2011	\$0.00
TX	Dallas West Village	Gourmet Gelato & Caffè LLC	4/5/2010	\$0.00
TX	Dallas La Galleria Mall	Mini's Gelato & Café, Inc. Luis & Martha Oseguera	1/16/2016	\$0.00
TX	Frisco South	Saif and Kamil LLC	7/29/2016	\$0.00
TX	Ft. Worth Sundance Square	A&E Gelato, LLC (transfer from J&K Gelato LLC, effective October 5, 2015)	10/5/2015	\$0.00
TX	Houston Willowbrook Mall	Orchan Investment LLC	10/6/2016	\$0.00
TX	Houston Baybrook Mall	Elisa Solis	7/1/2016	\$0.00
TX	Houston TBD	Elisa Solis	10/27/2016	\$0.00
TX	Hurst Northeast Mall (Pierre Bossier)	Jawed Jiwani & Karim Dhanani (originally signed for Pierre Bossier Mall, Louisiana)	8/9/2012	\$0.00
TX	Laredo Mall Del Norte	Jaaar Eateries LLC	9/26/2015	\$0.00
TX	McKinney McKinney Square	Linda Day & Don Day	9/25/2009	\$0.00
TX	Mesquite Town East Mall	WXW Investments, LLC	11/24/2007	\$0.00
TX	Plano Shops at Legacy	Navalta Group LLC	8/24/2016	\$0.00
TX	San Antonio Lincoln Heights	Sphinx Inc, LLC (possible transfer from Graydon Investments, LLC)	12/15/2014	\$0.00
TX	San Antonio NorthStar Mall	Sphinx Inc, LLC	6/30/2016	\$0.00

**Subtenant Franchise Agreement<sup>2</sup>**

<b>State</b>	<b>Location</b>	<b>Franchisee Name</b>	<b>Date of Agreement</b>	<b>Cure Amount</b>
TX	Arlington Parks Mall	Yen Tran & Bui Hong	3/21/2013	\$0.00
TX	Dallas North Park Mall	Mini's Gelato & Café, Inc.	12/10/2016	\$0.00
TX	Frisco Stonebriar Centre Mall	DBJ Ventures LLC (Karim Dhanani, Badruddin Jiwani, Sezad Jiwani & Jawed Jiwani signed)	1/23/2012	\$0.00

**Other Executory Contracts**

<b>Counterparty</b>	<b>Address</b>	<b>Nature of Contract</b>	<b>Cure Amount</b>
Southwest Traders, Inc.	27565 Diaz Road Temecula, CA 92590	Cold Storage/ Distribution Agreements	\$14,671.01
Raymond Leasing Corp.	P.O. Box 130, 22 South Canal St. Greene, NY 13378	Equipment Lease	\$110.66
Harvest Food Solutions, LLC	501 SE Columbia Shores Blvd, Suite 900 Vancouver, WA 98661	Service Agreement	\$5,887.50
IndustryBuilt Software Ltd	1275 Glenlivet Drive, Suite 10 Allentown, PA 18106	Prepaid Software License	\$0.00

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<sup>2</sup> Subject to assumption of corresponding Franchisee Lease.

**EXHIBIT C**

**Proposed Asset Purchase Agreement**

## **DRAFT – ASSET PURCHASE**

This asset purchase agreement and the accompanying schedules remain subject to final review and approval by the Buyer and Sellers.

### **AGREEMENT**

by and between

PACIUGO HOLDINGS, LLC, AD ASTRA HOLDINGS LP, PACIUGO MANAGEMENT LLC, AUTHENTIC GELATO LLC, PACIUGO SUPPLY CO. LP, PACIUGO FRANCHISING LP, PACIUGO PROPERTIES LP, GINATTA RE LLC (“**SELLERS**”)

and

SINELLI CONCEPTS INTERNATIONAL, INC., and its designees (“**BUYER**”)

## AGREEMENT TO PURCHASE ASSETS

THIS AGREEMENT TO PURCHASE ASSETS (“**Agreement**”), is entered into effective as of \_\_\_\_\_, 2017 (the “**Effective Date**”), by and between SINELLI CONCEPTS INTERNATIONAL, INC. (“**Sinelli**”), a Texas corporation, for itself and its designees, PACIUGO REAL ESTATE, LLC, a Texas limited liability company (“**Paciugo RE**”), and Paciugo Franchise International, Inc., a Texas limited liability company (“**Paciugo Franchise**”) and, together with Sinelli and Paciugo RE, the “**Buyer**”), and PACIUGO HOLDINGS, LLC, a Texas limited liability company (“**Paciugo Holdings**”), AD ASTRA HOLDINGS LP, a Texas limited partnership (“**Astra Holdings**”), PACIUGO MANAGEMENT LLC, a Texas limited liability company (“**Paciugo Management**”), AUTHENTIC GELATO LLC, a Texas limited liability company (“**Authentic Gelato**”), PACIUGO SUPPLY CO. LP, a Texas limited partnership (“**Paciugo Supply**”), PACIUGO FRANCHISING LP, a Texas limited partnership (“**Paciugo Franchising**”), and PACIUGO PROPERTIES LP, a Delaware limited partnership (“**Paciugo Properties**”), and GINATTA RE LLC, a Texas limited liability company (“**Ginatta RE**”) in their capacity as debtors and debtors in possession (the “**Sellers**”) for their respective bankruptcy estates. Each of the Buyer, Paciugo Holdings, Astra Holdings, Paciugo Management, Authentic Gelato, Paciugo Supply, Paciugo Franchising, and Paciugo Properties, and Ginatta RE LLC is referred to individually as a “**Party**” and jointly as the “**Parties**.”

## RECITALS

A. The Sellers are engaged in the business of franchising gelato stores, owning and operating gelato franchises, manufacturing and distributing (both through direct and indirect channels) gelato and gelato ingredients to Paciugo Gelato franchisees and foodservice customers, and manufacturing and distributing consumer packaged gelato goods to retailers.

B. The Sellers’ principal place of business is located at 1215 Viceroy Drive, Dallas, Texas 75247.

C. Paciugo Properties is a Delaware limited partnership founded in 2001. It is the owner of the intellectual property associated with the Paciugo brand and it is a wholly owned subsidiary of Astra Holdings and Paciugo Management.

D. Paciugo Franchising is a Texas limited partnership founded in 2001. It is the franchisor entity of the Paciugo brand and it is a wholly owned subsidiary of Astra Holdings and Paciugo Management.

E. Paciugo Supply is a Texas limited partnership founded in 2001. It is the manufacturer and supplier of the ingredient packets and ready-made gelato for the Paciugo franchisee system, foodservice customers, and of the consumer packaged goods sold to retailers. It is a wholly owned subsidiary of Astra Holdings and Paciugo Management.

F. Paciugo Management is a Texas limited liability company founded in 2001. It is the sole manager of Paciugo Holdings and it is co-owner with Astra Holdings of Paciugo Properties, Paciugo Franchising, Paciugo Supply, and Authentic Gelato.

G. Astra Holdings is a Texas limited partnership founded in 2001. It is the co-owner with Paciugo Management of Paciugo Properties, Paciugo Franchising, Paciugo Supply, and Authentic Gelato.

H. Authentic Gelato was founded in 2007. It is the owner and operator of the franchised gelato stores as licensed under Paciugo Franchising. It is a wholly owned subsidiary of Astra Holdings and Paciugo Management.

I. Paciugo Holdings was founded in 2013. It is the parent company of Paciugo Management and co-owner with Paciugo Management of Astra Holdings.

J. Ginatta RE LLC was founded in 2006. It is the owner of the real estate with the address 1215 Viceroy Drive, Dallas, Texas 75247.

K. The Sellers wish to sell, assign, and transfer to the Buyer or its designees, and the Buyer wishes to purchase and acquire from the Sellers, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, certain Purchased Assets (defined below), free and clear of all debts, liabilities, liens, claims and encumbrances of any nature whatsoever.

L. Buyer has formed two new entities, Paciugo RE and Paciugo Franchise, to act as its assignees and designees for the purpose of holding the Purchased Assets and assuming the Assumed Contracts and Assumed Liabilities to be sold, transferred, and assigned in accordance with the terms of this Agreement.

M. On September 19, 2017 (the “**Petition Date**”), the Sellers filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”). Their bankruptcy cases are being jointly administered under the case styled *In re Authentic Gelato, LLC, et al.*, and assigned Case Number 17-33532 (the “**Bankruptcy Case**”).

N. On September 22, 2017, the Sellers filed a *Motion for an Order (a) Authorizing and Scheduling a Public Auction for Sale of Certain Assets Free and Clear of All Liens, Claims and Encumbrances; (b) Approving Procedures for the Solicitation of Bids; (c) Approving the Stalking Horse Bid and Related Bid Protections; and (d) Granting Related Relief* [Docket No. 34] (the “**Bid Procedures Motion**”) with the Bankruptcy Court, which the Bankruptcy Court approved by order entered October 3, 2017 [Docket No. 61] (the “**Bid Procedures Order**”).

O. Subject to approval by the Bankruptcy Court under section 363 of the Bankruptcy Code, Sellers and Buyer desire to enter into this Agreement and to consummate the transactions described herein (a “**Sale**”).

P. Buyer desires to acquire the Purchased Assets (defined below) pursuant to the terms of this Agreement on terms acceptable to Buyer and to be approved by the Bankruptcy Court.



NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree that:

## SECTION 1. PURCHASE AND SALE

1.1 Purchase Price. On the terms and subject to the conditions set forth in this Agreement, in consideration for the sale to Buyer of all of the Purchased Assets (defined below), Buyer will pay to the Sellers the following purchase price (“**Purchase Price**”), as allocated in Schedule 1.1:

- (a) Cash: Buyer shall pay the sum of Two Million Dollars (\$2,000,000.00) in cash, as increased or decreased as provided in Section 1.1 (d) below (the “**Cash Payment**”).
- (b) Intentionally Omitted.
- (c) Assumed Liabilities. In addition to the foregoing, the Buyer shall assume the Assumed Liabilities (defined below) on the terms set forth in Section 1.4 of this Agreement.
- (d) Working Capital Adjustment. The Purchase Price shall be increased or decreased dollar-for-dollar in an amount (the “**Working Capital Adjustment**”) equal to the lesser of (i) \$200,000.00 and (ii) an amount equal to (A) the sum, measured as of the Closing Date, of the Sellers’ Cash and Qualifying Receivables (as defined below) transferred to Buyer (the “**Working Capital**”); (B) minus the Current Liabilities (as defined below). For purposes of the Working Capital Adjustment:
  - (i) For purposes of the Working Capital Adjustment, the “**Qualifying Receivables**” shall include only Receivables that were less than 15 days old (for franchise-related customers) and 30 days old (for food service-related customers) as of the Closing Date.
  - (ii) The Working Capital Adjustment will be calculated at or just prior to the Closing Date. The Buyer shall provide Regions and the Sellers with a written accounting of the Closing Date Working Capital Adjustment, with proposed reconciliation showing the Buyer’s calculation.

1.2 Purchased Assets. On the Closing Date, and subject to the terms and conditions of this Agreement, the Sellers will convey, under such limitations and conditions as are approved by the Bankruptcy Court, all of the Sellers’ rights, title and interests in, to and under all of the assets, property rights, and businesses, held or used in the conduct of the Sellers’ businesses, including the rights, title and interests in the following assets (the “**Purchased Assets**”):

- (a) Cash. All of the Sellers’ cash, cash equivalents and petty cash, wherever located.

- (b) Machinery and Equipment. All the machinery and equipment owned by the Sellers and used in their operations, as listed on Schedule 1.2(b) (the “*Equipment*”).
- (c) Real Property. All rights, title and interest in and to the Sellers’ real estate as are set forth in Schedule 1.2(c).
- (d) Contract rights. All rights under executory contracts and unexpired leases, including franchise agreements, explicitly listed on Schedule 1.2(d) (the “*Assumed Contracts*”); provided, however, that each executory contract identified on Schedule 1.2(d) as a “Subtenant Franchise Agreement” shall be an Assumed Contract if and only if the Franchisee Lease where the franchisee operates under such Subtenant Franchise Agreement is assigned to and assumed by such franchisee on or prior to November 30, 2017.
- (e) Licenses. All necessary licenses, permits and filings, if any, including those that may be listed in Schedule 1.2(e) (collectively, the “*Licenses*”), necessary for the operation of the Sellers’ businesses.
- (f) Furniture and Office Equipment. All furniture and office equipment owned by the Sellers listed on Schedule 1.2(f).
- (g) Inventory. All inventory and supplies, including perishables and expendables owned by the Sellers immediately prior to the Closing Date, whether or not carried on the Books and Records (the “*Inventory*”), subject only to regulatory prohibitions against such retention.
- (h) Vehicles. Any vehicles owned by the Sellers and listed on Schedule 1.2(h) and leases assumed by the Buyer.
- (i) Intellectual Property. All intellectual property owned by the Sellers and used solely in connection with the Sellers’ operations before the Closing Date, including without limitation all domain names, patents, trademarks, copyrights, and other intellectual property listed on Schedule 1.2(i).
- (j) Security, Utility and Other Deposits. All of the Sellers’ security and utility deposits and prepaid expenses, wherever located, as listed on Schedule 1.2(j).
- (k) Records, Software, Hardware, Other Information Technology. All of the Sellers’ historical records electronically and hardcopy, wherever located, and all technology related hardware and software, located at the principal place of business or otherwise.
- (l) Receivables. All notes receivable, accounts receivable, payments for services performed prior to the Closing Date, and other amounts owed to the Sellers (the “*Receivables*”).

- (m) Training Materials, Operations Manuals, and Other Related. All of the Sellers' writing documents and procedures necessary to perform the operations of the business in a manner similar to before the Closing Date.

1.3 Excluded Assets. All assets not expressly included in Section 1.2 above (the "**Excluded Assets**") shall remain with the Sellers. The following is a non-exclusive list of Excluded Assets:

- (a) Excluded Contracts. All executory contracts and unexpired leases listed in the Sellers' bankruptcy schedules that are not Assumed Contracts or otherwise assumed pursuant to an order of the Bankruptcy Court (the "**Excluded Contracts**"). For the avoidance of doubt, the Excluded Contracts shall include (i) all unexpired leases identified on Schedule 1.3(a), including all unexpired leases identified as "**Franchisee Leases**"; (ii) all Subtenant Franchisee Agreements that are not expressly assumed in accordance with Section 1.2(d) above; and (iii) the franchisee agreements identified on Schedule 1.3(a); and (iv) all "incentive agreements" or other informal arrangements Paciuco Supply Co. LP and any franchisee that are not memorialized in any franchise agreement, including those identified on Schedule 1.3(a).
- (b) Abandoned Assets. Any and all assets listed in the Sellers' bankruptcy schedules that are abandoned by the Sellers under section 554 of the Bankruptcy Code or orders of the Bankruptcy Court prior to the Closing.
- (c) Rights under this Agreement. All rights that accrue or will accrue to the Sellers and/or their estates under this Agreement.
- (d) Setoff/Recoupment Rights. To the extent such rights existed prior to the Closing Date, all of the Sellers' setoff and recoupment rights against third parties that assert claims against the Sellers' bankruptcy estates.
- (e) Causes of Action. All causes of action that have accrued in favor of the Sellers as of the Closing Date, including those causes of action arising under sections 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code.

The Parties agree that all schedules hereto are fully incorporated into, and fully subject to, the terms of this Agreement.

1.4 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, Buyer agrees, effective at the time of the Closing Date, to assume, pay, perform and discharge, promptly when payment or performance is due or required, only the following liabilities and obligations of Sellers (the "**Assumed Liabilities**"):

- (a) all claims, liabilities, and obligations, other than those claims, liabilities and obligations more specifically described in subsections (b)-(e) below, related to or arising in connection with the Purchased Assets, to the extent related to events, circumstances and conditions arising after the Closing and to be performed solely after the Closing;

- (b) all amounts required to be paid by Buyer in connection with the assumption of the Assumed Contracts, including all cure amounts required to be paid in connection with such assumption and all costs and expenses necessary in connection with providing “adequate assurance of future performance” of the Assigned Contracts for purposes of Section 365 of the Bankruptcy Code;
- (c) any amounts necessary to obtain an assumption and assignment of the Assumed Contracts under section 365 of the Bankruptcy Code, which amounts shall be paid directly to the non-debtor parties;
- (d) the amount of unpaid claims payable under the Perishable Agricultural Commodities Act (PACA) or section 503(b)(9) of the Bankruptcy Code, but only to the extent determined by the Bankruptcy Court to be allowable, or as otherwise agreed to be paid by the Buyer;
- (e) all payroll and payroll-related expenses, accounts payable and other trade payables incurred by Sellers after the Petition Date that remain unpaid as of the Closing Date;
- (f) all liabilities and obligations of Sellers arising under outstanding gift cards, including gift cards issued or sold prior to or after the Petition Date;
- (g) except to the extent satisfied by a reduction to the Purchase Price, the outstanding balance of the DIP Loan due on the Closing Date; and
- (h) all property taxes, ad valorem taxes, and assessments on the Purchased Assets that relate to the period from and after the Closing Date.

The Assumed Liabilities described in Sections 1.4(b)-(e) above are referred to collectively as the “***Current Liabilities***.”

1.5 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, the Buyer shall not assume or in any manner whatsoever be liable or responsible for any liability of any Seller, or of any predecessor or affiliate of any Seller, whether existing on the Closing Date or arising thereafter as a result of any act, omission or circumstance taking place on or prior to the Closing, other than the Assumed Liabilities. Buyer shall not be a successor in interest to any Seller for any purpose and is not answerable for any successor liability claims. Liabilities not specifically and expressly assumed by Buyer under this Agreement shall be referred to collectively herein as the “***Excluded Liabilities***.”

## **SECTION 2. DELIVERIES AS OF THE CLOSING DATE**

2.1 Sellers’ Deliveries On The Closing Date. The Sellers shall deliver the following to the Buyer on the Closing Date:

- (a) The Sale Order (as defined in Section 9.1 below).

- (b) All reports reasonably requested by the Seller and contemplated by orders entered by the Bankruptcy Court, including without limitation the detail concerning the Seller's Working Capital and the Assumed Liabilities as necessary to enable the Buyer to complete the calculation required under Section 1.1(d) above.
- (c) Conveyance of all the Sellers' rights, title and interest in the Purchased Assets, free and clear of all liens, claims and encumbrances, as set forth in the Sale Order and consistent with the terms of this Agreement.
- (d) All other documents and agreements necessary to consummate the transaction described herein.

2.2 Buyer's Deliveries On The Closing Date. The Buyer shall deliver to Sellers at Closing:

- (a) The cash portion of the Purchase Price in immediately available funds, including cure amounts to be paid to contract counterparties of the Assumed Contracts or evidence of Buyer's payment of such cure amounts directly to such contract counterparties;
- (b) Documents evidencing consummation and effectiveness of all other non-cash components of the Purchase Price, including the assumption of all Assumed Liabilities, satisfactory to the Sellers;
- (c) All other documents and agreements necessary to consummate the transactions described herein.

2.3 Conditions to the Sellers' Obligation to Close. The Sellers' obligations to close are subject to the Sellers' satisfaction, on or prior to the Closing Date, of all of the following conditions:

- (a) The Sale Order shall have been entered in form and substance satisfactory to Buyer and Sellers, and all other orders, approvals and consents from the Bankruptcy Court required for the sale or transfer of the Purchased Assets to Buyer consistent with the terms of this Agreement.
- (b) Each of the deliveries required to be made to Sellers pursuant to Section 2.2 shall have been delivered.

2.4 Conditions to the Buyer's Obligation to Close. The Buyer's obligation to close is subject to satisfaction, on or prior to the Closing Date, of all of the following conditions:

- (a) The Sale Order shall have been entered in form and substance satisfactory to Buyer and Sellers, and all other orders, approvals and consents from the Bankruptcy Court required for the sale or transfer of the Purchased Assets to Buyer consistent with the terms of this Agreement.

- (b) Each of the deliveries required to be made to Buyer pursuant to Section 2.1 shall have been delivered.
- (c) Regions shall have consented to the Sale and the Purchase Price, as adjusted by Section 1.1.

### SECTION 3. OPERATIONS TRANSITION

#### 3.1 Closing Date; Cooperation.

- (a) The transfer of the Purchased Assets to the Buyer and the assumption of the Assumed Liabilities by the Buyer shall become effective on the Closing Date.
- (b) The Parties agree to cooperate with each other to effect an orderly transition of the Purchased Assets to Buyer.
- (c) On or before the Closing Date, Buyer shall promptly submit to each appropriate governmental entity and agency any notices or, if necessary, applications required by applicable law, rule or regulation to ensure the effective continuation of all licenses, certifications, registrations, permits, accreditations, and federal taxpayer identification number.

#### 3.2 Intentionally Deleted.

3.3 Compliance with Laws. The Parties shall comply in all material respects with all applicable laws, and with all applicable rules and regulations of all governmental authorities, in conjunction with the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

3.4 Access to Books and Records. After the Closing Date, the Buyer or its designees shall have unrestricted access to all books and records of the Sellers, including all electronically stored data and all reporting systems and data tools (collectively, “**Books and Records**”).

3.5 Remittances, Mail and Other Communications. All remittances, mail, and other communications relating to operation or ownership of, or accountability related to the Purchased Assets or related operations after the Closing Date received by the Sellers, or any successor trustee shall be promptly provided to the Buyer.

### SECTION 4. CLOSING

4.1 Closing Date. The closing of the transactions contemplated in this Agreement and as may be detailed in the Sale Order shall occur as soon as practicable following the entry of such Sale Order, but in no event later than 15 days after such date, unless agreed in writing with the Sellers (the “**Closing Date**”) and all documents necessary in connection therewith shall be executed and delivered, subject to the entry of the Sale Order..

4.2 Transfer of Assets. From and after the Closing Date, the Buyer shall be responsible for the use, care and maintenance of the Purchased Assets. The Sale Order shall

provide that all Purchased Assets shall be transferred free and clear of all liens, claims and encumbrances other than Assumed Liabilities, except with the express, written consent of the Buyer.

4.3 Time and Place of Closing. The closing shall take place at the offices of Bryan Cave LLP, 2200 Ross Avenue, Suite 3300, Dallas, TX 75201 at a time reasonably agreed upon by the parties, or at such other time and place designated in the Sale Order.

## **SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer hereby makes the representations and warranties indicated below to Sellers, as Sellers:

5.1 Authority, Validity and Binding Effect. The Buyer will have as of the execution of this Agreement all necessary corporate, limited liability company, or other necessary power and authority to own the Purchased Assets. The Buyer has all necessary corporate, limited liability company, or other appropriate power and authority to enter into this Agreement and to execute all documents and instruments referred to herein or contemplated hereby and all necessary action has been taken to authorize the individuals executing this Agreement on its behalf to so execute. This Agreement has been duly and validly executed and delivered by the Buyer and is enforceable against it in accordance with its terms.

5.2 No Defaults. The execution and delivery of this Agreement, the Sale and Sale Order (consistent with the terms of this Agreement) and any documents contemplated hereby by the Buyer and the performance of its obligations hereunder and thereunder does not and will not:

- (a) Conflict with or result in any material breach of the provisions of, or constitute a default under any of Buyer's governing documents; and
- (b) Constitute a violation of any applicable material resolution, rule, regulation, law, statute or ordinance of any administrative agency or governmental authority, or of any judgment, decree, writ, injunction or order of any court to which the Buyer is subject or by which its assets are bound, or any credit agreement or other financing arrangement to which the Buyer or any of its affiliates is a party.

5.3 No Litigation. There are no actions, suits, claims, governmental investigations or other legal or administrative proceedings, or any orders, decrees or judgments in progress, pending, or in effect, or to the knowledge of the Buyer, threatened against, the Buyer relating to the transactions contemplated by this Agreement.

5.4 Financial Capacity. The Buyer currently has, and shall on the Closing Date have, the financial capacity to consummate the transactions contemplated herein.

5.5 Due Diligence. The Buyer hereby acknowledges and agrees that the Buyer has conducted its own due-diligence investigation of the Sellers' businesses, including their assets and operations, and Buyer will acquire the Purchased Assets, "AS IS, WHERE IS." Except as specifically set out in Section 6 below, the Buyer will not have any recourse against the Sellers, the Sellers' bankruptcy estates, or any officers, managers, attorneys, or advisors of the foregoing

if any representation or warranty made herein, or deemed made herein, is inaccurate in any respect as at any time of expression thereof. The Buyer specifically acknowledges and agrees that, if any information provided in the Bid Procedures Motion is applicable to any Section of this Agreement, then such information shall be deemed to have been timely provided to the Buyer with respect to all Sections of the Agreement.

5.6 Accuracy of Representations and Warranties. Each representation and warranty of the Buyer herein is true, complete, and correct in all respects as of the Effective Date.

## **SECTION 6. REPRESENTATION AND WARRANTY OF THE SELLERS**

The Sellers hereby represent and warrant as follows:

6.1 Authority, Validity and Binding Effect. Upon receipt of approval of the Bankruptcy Court, the Sellers will have all necessary power and authority to enter into this Agreement and to execute all documents and instruments referred to herein or contemplated hereby, and all necessary action has been taken to authorize the individuals executing this Agreement to do so. This Agreement has been duly and validly executed and delivered by the Sellers.

6.2 No Defaults. The execution and delivery of this Agreement, the Sale (consistent with the terms of this Agreement) and any documents contemplated hereby by the Sellers and the performance of its obligations hereunder and thereunder does not and will not:

- (a) Conflict with or result in any material breach of the provisions of, or constitute a default under any of Sellers' governing documents;
- (b) Violate any material restriction to which the Sellers are subject or, without the giving of notice, passage of time, or both, violate (or give rise to any right of termination, cancellation or acceleration under) any material license, authorization, or permit or other material agreement or instrument to which the Sellers are a party that will not be satisfied or terminated prior to the Effective Date as a result of the transactions contemplated by this Agreement, or result in the termination of any such instrument or termination of any provisions in such instruments that will result in the impairment of the Sellers' rights under such instruments (it being understood and agreed that, in connection with this representation and warranty, Sellers will schedule any item covered by this representation and warranty and describe the item that contains a restriction on change of control to the Buyer and the restriction); and
- (c) Constitute a violation of any applicable material resolution, rule, regulation, law, statute or ordinance of any administrative agency or governmental authority, or of any judgment, decree, writ, injunction or order of any court to which the Sellers are subject or by which its assets are bound, or any credit agreement or other financing arrangement to which the Sellers or any of its affiliates is a party.

6.3 No Litigation. There are no actions, suits, claims, governmental investigations or other legal or administrative proceedings, or any orders, decrees or judgments in progress,



pending, or in effect, or to the knowledge of the Sellers, threatened against, the Sellers relating to the transactions contemplated by this Agreement.

6.4 Intellectual Property. Sellers are the record owners of all intellectual property listed on Schedule 1.2(g), and, to the knowledge of Sellers, (i) the use of such intellectual property by Sellers does not infringe upon or otherwise violate the rights of any other person or entity, and (ii) there are no threatened actions by any person or entity seeking damages from or an injunction against the Sellers' use of such intellectual property

6.5 Compliance with Laws. Sellers have fully complied with, and are not in default under, any laws, regulations, or orders applicable to the Purchased Assets or the business of Sellers.

6.6 Updates. From the Effective Date through the Closing Date, Sellers shall promptly notify Buyer by written update to its representations and warranties contained herein, including the Schedules attached hereto, of any matter occurring after the Effective Date which, if existing or occurring on the Effective Date, would have been required to be set forth on a Schedule to this Agreement or which would render inaccurate any of the representations, warranties or statements of Sellers set forth in this Agreement.

6.7 Material Disclosure. No representation or warranty by Sellers contained in this Agreement and no statement by Sellers contained in the Schedules attached hereto, or in any certificate, list or other written document furnished to Buyer by Sellers pursuant to any provision of this Agreement, contains any untrue statement of material fact.

6.8 Accuracy of Representations and Warranties. Each representation and warranty of the Sellers herein is true, complete, and correct in all respects as of the Effective Date

6.9 As Is — Where Is. Except as specifically set out in this Section 6, the Sellers make no representations or warranties whatsoever, express or implied, including any implied warranty or representation as to condition, merchantability or suitability of any Purchased Asset, that survives Closing.

## **SECTION 7. TERMINATION**

7.1 Notwithstanding any contrary provision contained in this Agreement, this Agreement may be terminated and the transactions contemplated hereby may be abandoned by:

- (a) Written mutual agreement of the Parties at any time before entry of the Sale Order;
- (b) Either Party, if the Closing Date has not occurred within the period prescribed in Section 4.1; provided, however, that a Party shall not be permitted to terminate this Agreement under this Section 7.1(b) if such Party is in material breach of this Agreement.
- (c) Either Party, if Sellers accept and consummate a competing bid other than the Buyer's bid, provided, however, that the Sellers may only terminate this

Agreement under this subsection (c) if the competing bid is sufficient to satisfy the Buyer's Expense Reimbursement as set forth in Section 7.3 below.

- (d) Either Party, if any law or regulation makes the consummation of the transactions contemplated hereby illegal or otherwise prohibited or consummating the transactions contemplated hereby would violate any non-appealable final order, decrees, or judgment of any court or governmental authority having competent jurisdiction.
- (e) The Buyer if, between the Petition Date and the Closing Date, there is a change in any customer relationships, franchisee relationships, supplier relationships, employee compensation or benefits, or in the condition or future prospects of the Company that has had or reasonably could be expected to have a material adverse effect on the Sellers' business, the Assumed Liabilities, or the Purchased Assets, taken as a whole, that was not reasonably anticipated by the Buyer.
- (f) The Buyer, if any of the conditions in Section 2.4 or the Sellers' covenants in Section 8 are not met to the reasonable satisfaction of the Buyer.
- (g) The Sellers, if any of the conditions in Section 2.3 are not met to the reasonable satisfaction of the Sellers.

7.2 Effects of Termination. If this Agreement is terminated under Section 7.1, the Party terminating will promptly provide written notice thereof to the other Party and this Agreement will thereafter become void and have no further force and effect, and, except for those provisions that expressly survive the termination of this Agreement, all further obligations of the Parties to each other under this Agreement will terminate without further obligations or liability. For the avoidance of doubt, in the event of termination of this Agreement for any reason, Buyer will have no liability to any party.

7.3 Intentionally Deleted.

## **SECTION 8. COVENANTS**

The Sellers covenant and agree that:

8.1 Access. From the Effective Date through the Closing Date, the Sellers will allow the Buyer to (a) have access upon reasonable notice and during normal administrative hours to the Sellers' offices and operations, (b) conduct physical inspections, environmental, and other assessments deemed necessary by the Buyer or its lenders, all in compliance with the confidentiality provisions contained herein; and (c) comply with all other provisions of the Bankruptcy Court orders entered during the Bankruptcy Case concerning reporting and access to the Sellers' offices, operations and records.

8.2 Intentionally Deleted.

8.3 Notice to Buyer. From the Effective Date through the Closing Date, the Sellers shall provide Buyer with prompt written notice of any business activities which may have a material impact on the operations and/or financial performance of Sellers' businesses.

8.4 Financial Updates to Buyer. From the Petition Date through the Closing Date, the Sellers shall provide Buyer with financial updates as requested, but no fewer than once per week, including, but not limited to, the closed monthly financials, reported sales by franchisees, sales of Paciugo Supply, royalties collected, transfers of franchisee stores, new store openings, store closings, operations of Authentic Gelato stores, and vendors paid.

## **SECTION 9. BANKRUPTCY COURT APPROVALS**

9.1 Sale Order. As conditions precedent to the effectiveness of this Agreement, the Sellers and the Buyer shall have obtained an order of the Bankruptcy Court (the "***Sale Order***"), which order has not been reversed, vacated, stayed, modified, or amended, approving the transactions contemplated by this Agreement:

- (a) approving all of the transactions as described in this Agreement and authorizing the Sellers to transfer the Purchased Assets to Buyer free and clear of all liens, claims, and encumbrances, to the maximum extent allowable under Section 363(f) of the Bankruptcy Code, other than those Assumed Liabilities expressly assumed by the Buyer under this Agreement;
- (b) expressly providing that on the Closing Date all of the right, title, and interest in the Purchased Assets shall be conveyed to the Buyer, in accordance with this Agreement;
- (c) fixing the cure costs necessary to assume the Assumed Contracts, and authorizing Sellers to assume and assign such Assumed Contracts to the Buyer on the condition that such amounts have been paid;
- (d) if applicable, expressly providing that, pursuant to Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d), the consummation of this Agreement and the transactions described herein is not stayed for any period; and
- (e) finding that adequate and proper notice was given to all parties entitled to receive notice in connection with the transactions contemplated by this Agreement, including, without limitation, appropriate notice to all parties to any executory contracts that remain with the Sellers pursuant to this Agreement.

9.2 Expenses. Except as otherwise provided in this Agreement or any order entered by the Bankruptcy Court prior to the Closing Date, each Party will bear all of its own expenses incurred in connection with this Agreement and the transactions contemplated thereby, including legal, accounting, and investment advisor fees and travel expenses.

## SECTION 10. MISCELLANEOUS

10.1 Sellers' Rights of Offset. Nothing in this Agreement shall affect or impair the Debtor's rights of offset to satisfy obligations owed to it by the Buyer.

10.2 Regulatory Filings. Within 30 days after the entry of the Sale Order (or such other time as required by applicable law or regulation), Buyer shall deliver to all appropriate governmental entities, governmental agencies, organizations and authorities, all necessary applications, filings, notices, or other documents (if any) to be provided in connection with the transactions contemplated herein, including, without limitation, any notice required by this transaction.

10.3 Further Assurances. Each Party agrees to execute and deliver any and all further agreements, documents or instruments necessary to effectuate this Agreement and the transactions referred to herein, contemplated hereby, or reasonably requested by the other party to perfect or evidence the party's rights hereunder.

10.4 Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be sent by facsimile, personally delivered, or sent by overnight commercial delivery service (provided a receipt is available and requested with respect to such delivery), or mailed by first-class registered or certified mail, return-receipt requested, postage-prepaid, and shall be effective when received, if delivered by personal delivery, by facsimile, or by overnight delivery service, or, if mailed, said notice shall be effective on day received by the party to whom notice is mailed, as evidenced by the return receipt. Notices shall be provided to the Parties as indicated below:

If to the Buyer:

**Sinelli Concepts International, Inc.**

[Address]

[Address]

[Email]

Fax: \_\_\_\_\_

Attention: Jeffrey P. Sinelli

with a copy to:

Mullin Law, PC

2425 N. Central Expy., Suite 200

Richardson, TX 75080

[Cheryl.mullin@mullinlawpc.com](mailto:Cheryl.mullin@mullinlawpc.com)

Fax 972-931-0124

Attention: Cheryl Mullin

If to the Sellers (prior to the Closing Date):

Paciugo Holdings, LLC  
1215 Viceroy Drive  
Dallas, Texas 75247  
[Vincent@paciugo.com](mailto:Vincent@paciugo.com)  
Attention: Vincent Ginatta

with a copy to:

Bryan Cave LLP  
2200 Ross Avenue, Suite 3300  
Dallas, Texas 75201  
Fax: (214) 220-6754  
[michael.cooley@bryancave.com](mailto:michael.cooley@bryancave.com)  
Attention: Michael P. Cooley

or to such other person or address as any party hereto shall furnish to the other party hereto in writing pursuant to this Section 10.4.

10.5 Entire Agreement; Amendment; Waiver. This Agreement, the Sale and the Sale Order referred to herein, constitute the entire understanding between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. This Agreement may not be modified or amended except as necessary to obtain approval of the Sale, consistent with this Agreement. No waiver of any term, provision, or condition of this Agreement, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision, or condition of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition or rights granted thereunder.

10.6 Assignment. Neither this Agreement nor the rights, duties, or obligations arising hereunder shall be assignable or delegable by either Party hereto without the express prior written consent of the other Party; however, the Buyer shall be permitted to assign this Agreement to an entity for which Buyer is a general partner, or managing member, or to a corporate entity in which the purchaser has a majority ownership interest. This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding on, the Parties and each of their respective successors and permitted assigns.

10.7 Joint Venture; Third Party Beneficiaries. Nothing contained herein shall be construed as forming a joint venture or partnership between the Parties with respect to the subject matter hereof. The Parties do not intend that any third party shall have any rights under this Agreement.

10.8 Intentionally Deleted.

10.9 Representation by Counsel. The Parties acknowledge that they have been represented by independent legal counsel of their choosing throughout all of the negotiations

which preceded the execution of this Agreement, and that each party has executed this Agreement with the consent and on the advice of such independent legal counsel. This Agreement is a negotiated document. As a result, any rule of construction providing for any ambiguity in the terms of this Agreement to be construed against the draftsman of this Agreement shall be inapplicable to the interpretation of this Agreement.

10.10 Captions. The section headings contained in this Agreement are for convenience only, and shall not be considered or referred to in resolving questions of interpretation.

10.11 Counterparts. This Agreement may be executed and delivered (including by facsimile transmittal, which for purposes of this Agreement shall be deemed to be an original signature) in one or more counterparts, and all such counterparts taken together shall constitute a single original Agreement.

10.12 Governing Law. This Agreement shall be governed by the laws of (a) the State of Texas as to, including (but not limited to) matters of validity, construction, effect and performance but exclusive of its conflicts of law's provisions; and (b) to the extent applicable, the Bankruptcy Code and jurisprudence applicable thereto.

10.13 Enforceability. Subject to approval by the Bankruptcy Court, this Agreement constitutes the valid and legally binding obligation of the Sellers and the Buyer, enforceable in accordance with its terms, except as such enforceability may be limited by equitable principles and by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, or similar laws relating to or affecting the rights of creditors generally.

10.14 Jurisdiction. Each party hereto acknowledges the jurisdiction of the Bankruptcy Court, and consents to the jurisdiction of the bankruptcy court, the courts of the State of Texas or, as applicable, if it can acquire jurisdiction, the United States District Court for the Northern District of Texas as to claims arising under or brought in connection with this Agreement and the transactions contemplated herein.

10.15 Waiver of Trial by Jury. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, AND RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, INCLUDING TO ENFORCE OR DEFEND ANY RIGHTS HEREUNDER, AND AGREES THAT ANY SUCH ACTION SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

**[Signature Pages Follow]**

**IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first written above.**

**SELLERS:**

PACIUGO HOLDINGS, LLC, a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

AD ASTRA HOLDINGS LP, a Texas limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PACIUGO MANAGEMENT LLC, a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

AUTHENTIC GELATO LLC, a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PACIUGO SUPPLY CO. LP, a Texas limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PACIUGO FRANCHISING LP, a Texas limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PACIUGO PROPERTIES LP, a Delaware limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

GINATTA RE LLC, a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**BUYER:**

SINELLI CONCEPTS INTERNATIONAL, INC.,  
a Texas limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PACIUGO REAL ESTATE, LLC, a Texas limited  
liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PACIUGO FRANCHISE INTERNATIONAL,  
LLC, a Texas limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**Schedule 1.1**  
**Allocation of Purchase Price**

**Schedule 1.2(b)**  
**Machinery and Equipment**

All machinery and equipment.

**Schedule 1.2(c)**  
**Real Estate**

The real property located at 1215 Viceroy Drive, Dallas, Texas and described more particularly in that certain Deed of Trust, dated January 16, 2014 by Ginatta RE, as Grantor, in favor of Regions Bank, as beneficiary, and recorded as Number 201400011349 in the real property records of Dallas County, Texas.

**Schedule 1.2(d)**  
**Assumed Contracts**

**Real Property Leases**

<b>Counterparty</b>	<b>Address</b>	<b>Cure Amount</b>
Pavilion on Lovers Lane, LP	7501 Inwood Road Dallas, TX 75209	\$6,339.95
Preston Park Partners, Ltd.	2001 Preston Road Plano, Road 75093	\$9,461.17

**Franchise Agreements**

<b>State</b>	<b>Location</b>	<b>Franchisee Name</b>	<b>Date of Agreement</b>	<b>Cure Amount</b>
CA	Hermosa Beach	BKB Inc.	12/14/2012	\$0.00
CA	Thousand Oaks The Oaks Mall <sup>1</sup>	Gelato Passion Inc. (Scott & Patty Murph signed)	10/15/2007	\$0.00
CO	Lakewood Belmar	Maaad Inc. (possible transfer from HCT Sun, LLC)	7/15/2016	\$0.00
CO	Loveland Promenade Shops at Centerra	Montagne di Gelato, Inc. (Louis Marchesano & Scott King signed)	12/2/2009	\$0.00
FL	St. Petersburg	Mango Man St. Pete LLC (transfer from Riche Enterprises)	8/8/2017	\$0.00
FL	To be determined	Kimberly J. Shelpman	4/28/2012	\$0.00
FL	To be determined – South East FL	Randy Thomas & Elizabeth Borges	10/23/2015	\$0.00
FL	To be determined	Famace, LLC	10/19/2015	\$0.00
FL	To be determined - Orlando	Confys USA LLC	1/6/2016	\$0.00
IL	Chicago Lakeview	Avi Ventures, Inc. (Flavia Arana & Anirudh Poddar signed)	4/3/2008	\$0.00
IL	Chicago Lincoln Square	AYI Enterprises Inc. (Anirudh Poddar) (Franchise Agreement says Skoubis Manta, LLC)	11/29/2009	\$0.00
IL	Chicago Roscoe Village	AADYA HOLDINGS INC. (Anirudh Poddar & Flavia Arana signed)	4/30/2010	\$0.00
IL	Shaumburg Woodfield Mall	Shreeaditya, Inc.	4/29/2016	\$0.00
KS	Leawood Park Place	Bearchrisaaa, LLC (transfer from Real Gelato LLC, effective December 1, 2015)	11/17/2015	\$0.00
KS	Overland Park Oak Park Mall	Bearchrisaaa, LLC (transfer from Le Due Scimmie Gelato, LLC, effective May 1, 2016)	5/13/2009	\$0.00
KS	Overland Park Deer Creek Woods	Bearchrisaaa, LLC	3/8/2017	\$0.00

<sup>1</sup> Expired

State	Location	Franchisee Name	Date of Agreement	Cure Amount
LA	Shreveport	Bayou Gelateria, LLC (Jiwani and Dhanani)	9/17/2016	\$0.00
OK	Oklahoma City Penn Square Mall	Omparts Inc. (transfer from Cris Villarmar, effective January 29, 2017)	1/28/2017	\$0.00
TX	Allen Watters Creek	Saif and Kamil LLC	4/18/2015	\$0.00
TX	Dallas Lakewood <sup>2</sup>	Charlemagne Estates LLC	5/2/2007	\$0.00
TX	Dallas Preston Forest	Rodolfo Stoisa & Miriam Pilotti	3/23/2011	\$0.00
TX	Dallas West Village	Gourmet Gelato & Caffè LLC	4/5/2010	\$0.00
TX	Dallas La Galleria Mall	Mini's Gelato & Café, Inc. Luis & Martha Oseguera	1/16/2016	\$0.00
TX	Frisco South	Saif and Kamil LLC	7/29/2016	\$0.00
TX	Ft. Worth Sundance Square	A&E Gelato, LLC (transfer from J&K Gelato LLC, effective October 5, 2015)	10/5/2015	\$0.00
TX	Houston Willowbrook Mall	Orchan Investment LLC	10/6/2016	\$0.00
TX	Houston Baybrook Mall	Elisa Solis	7/1/2016	\$0.00
TX	Houston TBD	Elisa Solis	10/27/2016	\$0.00
TX	Hurst Northeast Mall (Pierre Bossier)	Jawed Jiwani & Karim Dhanani (originally signed for Pierre Bossier Mall, Louisiana)	8/9/2012	\$0.00
TX	Laredo Mall Del Norte	Jaaar Eateries LLC	9/26/2015	\$0.00
TX	McKinney McKinney Square	Linda Day & Don Day	9/25/2009	\$0.00
TX	Mesquite Town East Mall <sup>3</sup>	WXW Investments, LLC	11/24/2007	\$0.00
TX	Plano Shops at Legacy	Navalta Group LLC	8/24/2016	\$0.00
TX	San Antonio Lincoln Heights	Sphinx Inc, LLC (possible transfer from Graydon Investments, LLC)	12/15/2014	\$0.00
TX	San Antonio NorthStar Mall	Sphinx Inc, LLC	6/30/2016	\$0.00

#### Subtenant Franchise Agreement<sup>4</sup>

State	Location	Franchisee Name	Date of Agreement	Cure Amount
TX	Arlington Parks Mall	Yen Tran & Bui Hong	3/21/2013	\$0.00
TX	Dallas North Park Mall	Mini's Gelato & Café, Inc.	12/10/2016	\$0.00
TX	Frisco Stonebriar Centre Mall	DBJ Ventures LLC (Karim Dhanani, Badruddin Jiwani, Sezaad Jiwani & Jawed Jiwani signed)	1/23/2012	\$0.00

#### Other Executory Contracts

<sup>2</sup> Expired.

<sup>3</sup> Expires November 24, 2007

<sup>4</sup> Subject to assumption of corresponding Franchise Lease.

<b>Counterparty</b>	<b>Address</b>	<b>Nature of Contract</b>	<b>Cure Amount</b>
Southwest Traders, Inc.	27565 Diaz Road Temecula, CA 92590	Cold Storage/ Distribution Agreements	\$14,671.01
Raymond Leasing Corp.	P.O. Box 130, 22 South Canal St. Greene, NY 13378	Equipment Lease	\$110.66
Harvest Food Solutions, LLC	501 SE Columbia Shores Blvd, Suite 900 Vancouver, WA 98661	Service Agreement	\$5,887.50
IndustryBuilt Software Ltd	1275 Glenlivet Drive, Suite 10 Allentown, PA 18106	Prepaid Software License	\$0.00

**Schedule 1.2(e)**  
**Licenses**

**Business Licenses and Permits**

Texas Frozen Dessert Manufacturer Permit  
Texas Department of State Health Services Permit  
Texas Sales and Use Tax Permit - Paciugo Supply  
Texas Sales and Use Tax Permit - Paciugo Franchising  
Texas Sales and Use Tax Permit - Authentic Gelato  
Texas Commission of Environmental Quality - Stormwater Multi-sector General Permit  
FDA Facility Registration  
SQF Code Edition 7.2 Certification

**Software**

Microsoft ERP license  
Harvest Software license  
All Microsoft Office product licenses  
Industrybuilt license

**All other licenses being used, leased or accessed by the Debtor**

**Schedule 1.2(f)**  
**Furniture and Office Equipment**

All furniture and office equipment.



**Schedule 1.2(h)**  
**Vehicles**

None.

**Schedule 1.2(i)**  
**Intellectual Property**

**Trademarks**

Buyer will acquire all trademarks, services marks, logos, tag lines, and other indicia of origins, including the following trademarks, trademark registrations, and pending trademark applications:

**US Trademark Registrations**

<b>Mark</b>	<b>Registration/ Serial Number</b>	<b>Date of Registration</b>	<b>Class</b>
PACIUGO	2916871	January 11, 2005	43
GELATTE	4410789	October 1, 2013	30, 46
ALBA GELATO	4791464	August 11, 2015	30, 46

**Pending US Trademark Applications**

<b>Mark</b>	<b>Serial Number</b>	<b>Application Date</b>	<b>Class</b>
PACIUGO	87165364	September 8, 2016	30, 46

**International Trademark Registrations**

<b>TRADEMARK</b>	<b>STATUS</b>	<b>COUNTRY</b>	<b>REGISTRATION NO.</b>	<b>REGISTRATION DATE</b>
PACIUGO	Registered	Colombia	343403	16-Oct-2007
PACIUGO (Series)	Published	Oman		
PACIUGO	Registered	Venezuela	S036723	17-Dec-2007
PACIUGO	Registered	Chile	805334	10-Jan-2008
PACIUGO	Pending	Kuwait		
PACIUGO	Registered	Argentina	2218422	12-Mar-2008
PACIUGO	Registered	China	4302001	07-Apr-2008
PACIUGO	Registered	Brazil	900254947	08-Dec-2009
PACIUGO	Registered	European Union	9834094	23-Mar-2011
PACIUGO	Registered	Canada	745857	20-Aug-2009
PACIUGO	Registered	Saudi Arabia	1437021784	12-Oct-2016
PACIUGO	Registered	Bahrain	116595	26-Jun-2016

<b>TRADEMARK</b>	<b>STATUS</b>	<b>COUNTRY</b>	<b>REGISTRATION NO.</b>	<b>REGISTRATION DATE</b>
PACIUGO (Series)	Registered	Qatar	107045	22-May-2017
PACIUGO in Arabic	Registered	Bahrain	116596	26-Jun-2016
PACIUGO	Registered	Taiwan	1832236	01-Apr-2017

### **Copyrights**

Buyer will acquire all copyrights used in connection with the operation of the PACIUGO business including the following:

- Confidential operations manual
- Design portion of the trademarks
- Website and social media content/Wikipedia content
- Copyrighted elements of PACIUGO store trade dress and menu boards
- Advertising and marketing materials

<b>COPYRIGHT</b>	<b>STATUS</b>	<b>COUNTRY</b>	<b>REGISTRATION NO.</b>	<b>REGISTRATION DATE</b>
JUGGLING UGO	Registered	USA	VA1707721	14-Jan-2010
UGO CHEF	Registered	USA	VA1707731	14-Jan-2010
UGO COW	Registered	USA	VA1707719	14-Jan-2010
UGO ON BIKE	Registered	USA	VA1707717	14-Jan-2010
UGO ON LADDER	Registered	USA	VA1725372	14-Jan-2010
UGO WITH CONES	Registered	USA	VA1707714	14-Jan-2010
UGO WITH MUSTACHE	Registered	USA	VA1707888	14-Jan-2010

### **Telephone Numbers, URLs, Domain Names, Social Media Accounts and Handles**

Buyer will acquire all telephone numbers used in connection with the PACIUGO manufacturing, distribution and franchise operations. Buyer also will acquire all URLs, domain names, social media accounts and handles used in connection with the operation of the PACIUGO business including the following:

pacuigo.net

paciugogelato.net

pacuigo.org

paciugogelato.org

pacuigo.info

paciugogelato.info

paciugo.biz

paciugogelato.biz

paciugo.us

paciugogelato.us

italiangelatofranchise.com

paciugo.info

paciugo.biz

paciugo.us

paciugo.com

paciugofranchising.com

<http://www.facebook.com/paciugo/>

All other domain names associated with the Company

### **Trade Secrets**

Buyer will acquire all confidential and proprietary information, including recipes, formulations, supplier and pricing information, nutritional and caloric information, and product labeling information.

**Schedule 1.3(a)**  
**Excluded Contracts**

**Franchisee Leases**

<b>Counterparty</b>	<b>Street</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
Stonebriar Mall, LLC	c/o Stonebriar Center 110 N. Wacker Dr	Chicago	IL	60606
NorthPark Partners, LP	8080 North Central Expressway, Suite 1100	Dallas	TX	75206-1807
Parks at Arlington	7309 Brighter Water Road	Fort Worth	TX	76132
Grapevine Mills	225 West Washington Street	Indianapolis	IN	46204

**Franchisee Subleases and Other Unexpired Leases**

<b>Counterparty</b>	<b>Street</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
The Woodlands Mall Associates, LLC	Attn: Law/Lease Admin Dept 110 N. Wacker Drive	Chicago	IL	60606
AmREIT Plaza in the Park, LP	8 Greenway Plaza, Suite 1000	Houston	TX	77046-0808
Ginatta RE, LLC	1215 Viceroy Drive	Dallas	TX	75247
DBJ Ventures, Inc.	4356 Live Springs Road	Frisco	TX	75034
Mini's Gelato Café LLC	4108 Emerson, Unit #2	Dallas	TX	75205
Yen H. Tran, Huong Bui	7309 Brighter Water Rd	Ft Worth	TX	76132
ASRA Ventures LLC	401 Eastland Drive	Lewisville	TX	75056

**Franchise Agreements**

<b>State</b>	<b>Location</b>	<b>Franchisee Name</b>	<b>Date of Agreement</b>
MN	Bloomington Mall of America	Hassan Saffouri	8/14/2009
TX	Cielo Vista Mall (El Paso)	Cengiz & Marvelia Dirican	10/27/2016
TX	McAllen La Plaza Mall	Bona Fortuna LLC	6/15/2016
TX	Grapevine Mills Mall	Asra Ventures, LLC (Ameer and Ayesha Khoja signed)	7/1/2016

**All other executory contracts and unexpired leases not expressly assumed or otherwise provided for under this Purchase Agreement.**

**Schedule 1.2(j)**  
**Security, Utility, and other Deposits**

All security, utility, and other deposits relating to the acquired assets including:

<b>Deposit</b>	<b>Amount</b>
Pavilion on Lovers Security Deposit	\$4,530.18
City of Dallas - Deposit for New HQ Account for Water/Sewer	\$420.00
Stanpac - Refundable crate deposit	\$600.00
Industrybuilt - Navision maintenance renewal	\$7,482.24
FSE Annual Distributor Catalogue Fee	\$3,300.00