

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
CENTRAL GROCERS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-13886 (PSH)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	

**NOTICE OF DEBTORS' MOTION FOR AN ORDER (I) APPROVING THE  
PURCHASE AGREEMENT BETWEEN DEBTOR RACEWAY CENTRAL, LLC AND  
BUYER; (II) AUTHORIZING THE SALE OF CERTAIN OF THE ASSETS OF DEBTOR  
RACEWAY CENTRAL, LLC TO BUYER FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES, AND INTERESTS; (III) AUTHORIZING AND  
APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
IN CONNECTION THEREWITH; AND (IV) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that on September 15, 2017, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Motion for an Order (i) Approving the Purchase Agreement between Debtor Raceway Central, LLC and Buyer; (ii) Authorizing the Sale of Certain of the Assets of Debtor Raceway Central, LLC to Buyer Free and Clear of All Liens, Claims, Encumbrances, and Interests; (iii) Authorizing and Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases of Nonresidential Real Property in Connection Therewith; and (iv) Granting Related Relief* (the “**Motion**”).

**PLEASE TAKE FURTHER NOTICE** that the Debtors have requested that the Motion be heard at a hearing on **October 12, 2017, at 11:00 a.m. (Central Time)** before the Honorable Judge Pamela S. Hollis or any other judge who may be sitting in her place and stead, in Courtroom 644 in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, at which time you may appear if you deem fit.

**PLEASE TAKE FURTHER NOTICE** that any objection to the Motion must be filed on the docket of the above captioned case and served on the Debtors by no later than **October 6, 2017, at 4:00 p.m. (Central Time)** and that any such objection shall be heard at the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Central Grocers, Inc. (3170), CGI Joliet, LLC (7014), Currency Express, Inc. (2650), Raceway Central, LLC (2161), Raceway Central Calumet Park LLC (2161), Raceway Central Chicago Heights LLC (2161), Raceway Central Downers Grove LLC (2161), Raceway Central Joliet North LLC (2161), Raceway Central LLC North Valpo (2161), Raceway Central Wheaton LLC (2161), Strack and Van Til Super Market, Inc. (2184), and SVT, LLC (1185).

hearing on **October 12, 2017, at 11:00 a.m. (Central Time)** before the Honorable Judge Pamela S. Hollis or any other judge who may be sitting in her place and stead, in Courtroom 644 in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois.

**PLEASE TAKE FURTHER NOTICE** that copies of all documents are available free of charge by visiting the case website maintained by Prime Clerk LLC, notice and claims agent for these chapter 11 cases, available at <https://cases.primeclerk.com/centralgrocers> or by calling (866) 727-8489. You may also obtain copies of any pleadings by visiting the Court's website at [www.ilnb.uscourts.gov](http://www.ilnb.uscourts.gov) in accordance with the procedures and fees set forth therein.

Dated: September 15, 2017  
Chicago, Illinois

/s/ David A. Agay  
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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
CENTRAL GROCERS, INC., <i>et al.</i> , <sup>2</sup>	)	Case No. 17-13886 (PSH)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	

**MOTION FOR AN ORDER (I) APPROVING THE PURCHASE AGREEMENT  
BETWEEN DEBTOR RACEWAY CENTRAL, LLC AND BUYER; (II) AUTHORIZING  
THE SALE OF CERTAIN OF THE ASSETS OF DEBTOR RACEWAY CENTRAL, LLC  
TO BUYER FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND  
INTERESTS; (III) AUTHORIZING AND APPROVING THE ASSUMPTION  
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY IN  
CONNECTION THEREWITH; AND (IV) GRANTING RELATED RELIEF**

Central Grocers, Inc. (“CGI”) and its debtor affiliates, including Strack and Van Til Super Market, Inc., as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively with CGI, the “**Debtors**”), hereby move the Court pursuant to sections 105 and 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for the entry of an order (the “**Sale Order**”): (i) approving that certain Purchase Agreement (as may be amended pursuant to the terms thereof and this Sale Order, (the “**Purchase Agreement**”), dated as of September 14, 2017, by and between Debtor Raceway

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<sup>2</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Central Grocers, Inc. (3170), CGI Joliet, LLC (7014), Currency Express, Inc. (2650), Raceway Central, LLC (2161), Raceway Central Calumet Park LLC (2161), Raceway Central Chicago Heights LLC (2161), Raceway Central Downers Grove LLC (2161), Raceway Central Joliet North LLC (2161), Raceway Central LLC North Valpo (2161), Raceway Central Wheaton LLC (2161), Strack and Van Til Super Market, Inc. (2184), and SVT, LLC (1185).

Central, LLC (“**Raceway Central**”), as Seller, and Steve Navarro (the “**Buyer**”), a copy of which is attached hereto as **Exhibit A**,<sup>3</sup> (ii) authorizing and approving the sale of certain real property located in Hammond, Indiana (the “**Owned Real Property**”) owned by Raceway Central free and clear of all liens, claims, interests, and encumbrances; (iii) authorizing and approving the assumption and assignment of certain executory contracts and unexpired leases of nonresidential real property (the “**Assumed Contracts**,” and together with the Owned Real Property, the “**Acquired Assets**”); and (iv) granting related relief.

In support of this Motion, the Debtors state as follows:

### **General Background**

1. On May 2, 2017, certain of CGI’s creditors commenced an involuntary case against CGI under chapter 7 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Illinois (the “**Court**”).

2. On May 4, 2017, each of the Debtors, including CGI, commenced a voluntary case under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”) with the United States Bankruptcy Court for the District of Delaware (the “**Delaware Court**”).

3. On June 13, 2017, the Chapter 11 Cases were transferred to this Court, including the Chapter 11 Case of CGI which was consolidated into the involuntary chapter 7 case pending before the Court. All of the Chapter 11 Cases are proceeding under chapter 11 of the Bankruptcy Code before this Court. CGI’s chapter 11 commencement date is May 2, 2017 and the remaining Debtors’ commencement date is May 4, 2017 (as applicable, the “**Commencement Date**”). All orders entered in the Chapter 11 Cases by the Delaware Court remain in full force and effect and are deemed to be entered in the Chapter 11 Cases pending before this Court.

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<sup>3</sup> Capitalized but undefined terms shall have the meanings ascribed to them in the APA.



4. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On May 15, 2017, the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”). No trustee or examiner has been appointed in these Chapter 11 Cases.

6. The Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

7. Information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Donald E. Harer in Support of the Debtors’ Chapter 11 Petitions and First Day Relief* sworn to and filed on the Commencement Date. (Del. Court, Case No. 17-10993, ECF No. 3, the “**Harer Declaration**”).

### **Jurisdiction**

8. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Sale Process**

9. After an extensive pre- and post-petition marketing process, Buyer is the only party submitting a viable proposal to purchase the Acquired Assets. Specifically, after lengthy, arms’ length negotiations, Buyer has agreed to purchase the Acquired Assets for a purchase price of \$1,850,000 and assume all cure costs related to the Assumed Contracts (the “**Cure Costs**”).

The Debtors submit that, given the status and timing of their wind-down, it is imperative that the Debtors close on this sale as soon as possible in order to maximize value for their estates. The Debtors and their advisors, after consultation with the Creditors' Committee and Prepetition Secured Lenders (as defined in the Harer Declaration), have determined that Buyer's offer to purchase the Acquired Assets is the highest and best offer for the Acquired Assets. The Debtors believe that the Creditors' Committee and the Prepetition Secured Lenders support the sale transaction in principal.

**A. Marketing and Sale Process for the Acquired Assets**

10. The Debtors' assets, including the Acquired Assets, have been marketed for sale since December 2016, when the Debtors initiated a comprehensive marketing process to sell their assets as a going concern or to consummate another strategic, value-maximizing transaction that would resolve their operational and financial challenges. Despite a thorough and extensive pre-petition marketing process, no viable purchasers for the Debtors' assets were identified. Informed by that process, the Debtors concluded that it was in the best interests of the Debtors and their creditors to attempt to sell their assets through a chapter 11 process.

11. Accordingly, on May 13, 2017, the Debtors filed the *Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors' Assets, (B) Approving Stalking Horse Bid Protections, (C) Authorizing Designation of Additional Stalking Horse Bidders, (D) Scheduling Auction for and Hearings to Approve Sale of Debtors' Assets, (E) Approving Form and Manner of Notice of Sale, Auction, and Sale Hearings, (F) Approving Assumption and Assignment Procedures, and (G) Granting Related Relief; and (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief*. (Del. Court, Case No. 17-10993, ECF No. 135, the "**Bidding Procedures and**

**Sale Motion**”).<sup>4</sup> On June 2, 2017, the Delaware Court entered an order granting the Bidding Procedures and Sale Motion as it related to the proposed marketing and auction process. (Del. Court, Case No. 17-10993, ECF No. 338, the “**Bidding Procedures Order**”). The Acquired Assets were among the assets included as part of the Bidding Procedures Order.

12. Pursuant to the Bidding Procedures Order, the Court, among other things, (a) authorized the Debtors to sell substantially all of their assets, including the Acquired Assets, at public auction and (b) approved, among other things, the Debtors’ proposed bid procedures (the “**Bidding Procedures**”), which provided a mechanism for interested parties to make qualified bids for the Debtors’ assets. The Bidding Procedures Order set June 26, 2017, at 4:00 p.m. (prevailing Eastern Time) (the “**Bid Deadline**”) as the deadline for submitting qualified bids, and approved a public auction of the Debtors’ assets (the “**Auction**”).

13. In accordance with the Bidding Procedures, on June 28, 2017, the Debtors served BP Products North America Inc. (“**BP**”), which leases a portion of the Owned Real Property, with that certain *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale*, ECF No. 258 (the “**BP Cure Notice**”), attached hereto as **Exhibit B**. The BP Cure Notice listed BP’s cure amount as \$0 (the “**BP Cure Amount**”). Pursuant to the BP Cure Notice, BP had until July 7, 2017, to object to the BP Cure Amount. BP did not object to the BP Cure Amount.

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<sup>4</sup> The Debtors incorporate the Bidding Procedures and Sale Motion herein by reference. The Debtors further incorporate by reference the *Declaration of Scott Moses in Support of Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Authorizing Designation of Additional Stalking Horse Bidders, (D) Scheduling Auction for and Hearings to Approve Sale of Debtors’ Assets, (E) Approving Form and Manner of Notice of Sale, Auction, and Sale Hearings, (F) Approving Assumption and Assignment Procedures, and (G) Granting Related Relief; and (II)(A) Approving Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing the Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief*. (Del. Court, Case No. 17-10993, ECF No. 222).

14. Despite their best efforts, during the post-petition marketing process, the Debtors only received one qualified bid to purchase the Acquired Assets, which Buyer made for \$1,100,000 and which contemplated the Debtors would retain any cure costs. However, the Debtors did not believe that Buyer's proposed purchase price to be a sufficient purchase price for the Acquired Assets. Accordingly, on July 5, 2017, the Debtors filed a notice, ECF No. 276, that the Auction for the Acquired Assets had been adjourned without date.

15. Contemporaneously with adjourning the Auction for the Acquired Assets, the Debtors sought to negotiate a higher and better purchase price with Buyer while simultaneously continuing to market the Acquired Assets for sale in an effort to maximize value for all stakeholders. As a result of that process, Buyer agreed to increase its proposed purchase price for the Acquired Assets to \$1,850,000, and agreed to assume all Cure Costs.

**B. Buyer's Offer to Purchase the Acquired Assets**

16. The Purchase Agreement contemplates that the Acquired Assets will be bifurcated for sale to allow the Debtors to resolve a property tax issue at 6603 Columbia Avenue, Hammond, Indiana ("**6603 Columbia**"), one of the two parcels of Owned Real Property. First, on the Closing Date, Raceway Central will transfer the Acquired Assets located at 6529 Columbia Avenue, Hammond, Indiana ("**6529 Columbia**"), together with any Assumed Contracts relating to 6529 Columbia, to Buyer for a purchase price of \$1,450,000. Second, on or after the Closing Date, subsequent to satisfactory resolution of the property tax issue, Raceway Central will transfer the Acquired Assets located at 6603 Columbia, together with any Assumed Contracts associated with 6603 Columbia, to Buyer for a purchase price of for \$400,000.

17. After arm's length, good faith negotiations, Raceway Central and Buyer executed the Purchase Agreement, which includes the below material terms:<sup>5</sup>

- a. Purchase Price. \$1,850,000.
- b. Deposit. \$110,000, which is fully refundable unless Raceway Central terminates the Purchase Agreement because of Buyer's breach of any representation, warranty, covenant, or agreement in the Purchase Agreement and Buyer either does not or cannot cure such breach.
- c. Brokers' Fees. 2.10% of the purchase price, plus an amount equal to the Cure Costs, if any.<sup>6</sup>
- d. Acquired Assets. All of Raceway Central's right, title, and interest in and to all of the following: (a) the Owned Real Property and (b) the Assumed Contracts designated by Buyer in the Purchase Agreement other than those leases that expire or that are terminated prior to Closing.
- e. Assumed Liabilities. The Cure Costs and all liabilities of Raceway Central relating to or arising out of the ownership or operation of the Acquired Assets listed above from and after the Closing Date, but in all cases excluding the excluded liabilities listed below.
- f. Excluded Liabilities. Buyer will not assume: (a) any liability not relating to or arising out of the operation of the Acquired Assets; (b) any liability of Raceway Central for Taxes (except as provided for in the Purchase Agreement); (c) any mechanics liens; or (d) any of Raceway Central's liabilities for personal property damage from any Assumed Contract.

#### **I. RELIEF REQUESTED**

18. The Debtors respectfully requests that the Court enter an order: (a) authorizing the sale of the Acquired Assets to Buyer free and clear of all liens, claims, encumbrances, or other interests, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, with such interests to attach to the sale proceeds with the same validity, priority, extent, and perfection as existed

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<sup>5</sup> This following is intended to provide a summary of certain key terms of the APA. To the extent there is any conflict between the contents of this Motion and the APA, the APA shall control.

<sup>6</sup> Brokers' fees will only be payable to Peter J. Solomon Company, as the Debtors did not retain Marcus & Millichap Real Estate Investment Services of Chicago and Marcus & Millichap Real Estate Investment Services as brokers for this transaction.

immediately prior to the sale; and (b) granting such other relief as may be necessary or appropriate.

## **II. BASIS FOR RELIEF**

19. In the exercise of their sound business judgment, the Debtors have determined that the sale of the Acquired Assets to Buyer provides the highest and best opportunity for the Debtors to maximize value for their estates and stakeholders.

### **A. The Sale Was Negotiated in Good Faith and Made for Sound Business Reasons; the Proposed Purchase Price Is Fair and Reasonable**

20. Section 363(b) of the Bankruptcy Code specifically authorizes asset sales outside the ordinary course of business. See 11 U.S.C. § 363(b)(1) (“[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate”). To approve the use, sale, or lease of property outside of the ordinary course of business, the Court must find some articulated business justification for the proposed action. *See in re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (requiring “articulated business justification” for sale, adequate notice, and the availability of a hearing to approve sale under § 363(b)); *see also Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir 1996) (citing *In re Schipper*); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999); *In re Zeigler*, 320 B.R. 362, 381 (Bankr. N.D. Ill. 2005).

21. Generally, courts examine four factors when determining whether a sale of a debtor’s assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice

is provided. *See Lionel*, 722 F.2d at 1071 (setting forth the “sound business purpose” test); *In re Abbotts Dairies of Pa. Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991). A debtor’s showing of a sound business purpose need not be unduly exhaustive; rather, a debtor is “simply required to justify the proposed disposition with sound business reasons.” *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a transaction depends upon the facts and circumstances of each case. *Lionel*, 722 F.2d at 1071.

22. Section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers to administer a case under the Bankruptcy Code. Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of section 105(a) power is appropriate. *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *Pincus v. Graduate Loan Ctr. (In re Pincus)*, 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a) of the Bankruptcy Code, a court may fashion an order or decree that helps preserve or protect the value of a debtor’s assets. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that a bankruptcy court is “one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of their creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.”).

23. The Debtors submit that ample business justification exists to sell the Acquired Assets to Buyer without further marketing or bidding with respect to the Acquired Assets. The sale is designed to maximize the value of the Acquired Assets and provides a greater benefit to the Debtors' estates than any of the alternatives, including a liquidation of Acquired Assets, or the conversion of these Chapter 11 Cases to cases under chapter 7.

24. Further, the Purchase Agreement is the product of good faith and arms' length negotiations and is on commercially reasonable terms. The Debtors and Buyer, with the assistance of their advisors, negotiated the terms of the Purchase Agreement at arm's length, and the Debtors kept the Prepetition Secured Lenders (as defined in the Harer Declaration) and the Creditors' Committee apprised of their discussions with Buyer. In addition, as evidenced by the lengthy marketing efforts, including the Court-approved sale process authorized pursuant to the Bidding Procedures Order, the Purchase Agreement is the highest and best offer for the Acquired Assets.

25. The Debtors submit that the Court should approve the sale contemplated by this Motion and the Purchase Agreement. The Court previously approved the inclusion of the Acquired Assets at the Auction, but the Debtors subsequently adjourned the Auction as to the Acquire Assets because they had not received what they believed was a viable offer for the Acquired Assets. Accordingly, because of the extensive marketing effort for the Acquired Assets, lasting more than ten months, a private sale to Buyer is appropriate under the circumstances.

26. Moreover, no prejudice will result to any parties in interest because: (a) notice of the Auction, which included the auction of the Acquired Assets has previously been afforded to all creditors and parties in interest with adequate and reasonable notice of the Sale under the



circumstances, and (b) such notice provided sufficient information regarding the sale of the assets and the time for filing objections to the sale. Further, as detailed below, the Debtors propose to provide all parties with an interest in the Acquired Assets and the Master Service List (as defined in the *Revised Proposed Order Authorizing Motion of Debtors for Approval of Case Management Procedures*, ECF No. 226) with notice and an opportunity to object to the proposed sale to Buyer.

27. Thus, ample business justification for the approval of the Purchase Agreement and the sale of the Acquired Assets to Buyer in accordance with the Purchase Agreement. The Debtors submit that the sale will inure to the benefit of the Debtors' estates and creditors, as it will further the Debtors' efforts to successfully prosecute these Chapter 11 Cases and, therefore, represents the exercise of the Debtors' sound business judgment. Accordingly, the proposed sale of the Acquired Assets to Buyer comports with the requirements of a section 363(b) sale as enunciated by the Seventh Circuit in *In re Schipper*. 933 F.2d at 515.

**B. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Claims, and Interests**

28. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such property if (i) such a sale is permitted under applicable non-bankruptcy law, (ii) the party asserting such a lien, claim, or interest consents to such sale, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a *bona fide* dispute, or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); *see In re Zeigler*, 320 B.R. at 387 (noting that section 363(f) of the Bankruptcy Code is written in the disjunctive; therefore, a court may approve a sale "free and

clear” provided at least one of the subsections is met). Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, No. 01-0056(PJW), 2001 WL 1820325, at \*3, 6 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987).

29. The Debtors submit that each affected interest satisfies at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such interest will be adequately protected by either being paid in full at the time of closing, or attaching to the proceeds of the sale, subject to any claims and defenses Raceway Central may possess with respect thereto. The Debtors accordingly request authority to convey the Acquired Assets to Buyer, free and clear of all interests under the express terms of the Purchase Agreement, with such interests to attach to the proceeds from the sale of the Acquired Assets, with the same validity, extent, priority, and perfection as existed immediately prior to the sale, subject to the terms of the relevant purchase agreement, as applicable, and the proposed Sale Order.

30. The Debtors further submit that the sale should not expose Buyer to any liability as a successor of Raceway Central or its estate. Courts have also consistently held that a buyer of a debtor’s assets pursuant to a Bankruptcy Code section 363 sale takes free and clear from successor liability relating to the debtor’s business. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 585 (4th Cir. 1996) (affirming the sale of debtors’ assets free and clear of certain taxes); *In re Insilco Techs., Inc.*, 351 B.R. 313, 322 (Bankr. D.

Del. 2006) (stating that a 363 sale permits a buyer to take ownership of property without concern that a creditor will file suit based on a successor liability theory); *see also In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) (“[I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction.”).

31. Notably, previously in these Chapter 11 Cases, the Court has granted similar relief, including authorizing the sale free and clear of all liens, claims, and encumbrances, including pension and retiree liabilities, of certain of the Debtors’ other assets. (*See Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith and, (IV) Granting Related Relief*, ECF No. 374; *Order (I) Approving the Asset Purchase Agreement Among Seller and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith and (IV) Granting Related Relief*, ECF No. 439.)

32. Accordingly, the Court should approve the sale of the Acquired Assets to Buyer, free and clear of all liens, claims, encumbrances, or other interests under section 363(f) of the Bankruptcy Code, and all potential claimants should be compelled to look exclusively to the proceeds of the sale for satisfaction of their claims.

**C. The Proposed Sale Is in Good Faith Under Section 363(m) of the Bankruptcy Code**

33. The Debtors request that the Court find that Buyer is entitled to the benefits and protections of section 363(m) of the Bankruptcy Code in connection with the sale of the Acquired Assets.

34. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

35. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal. By its terms, section 363(m) of the Bankruptcy Code applies to sales of interests in tangible assets. However, many courts have applied the protections of 363(m) to assignments of executory contracts as well. *See In re Kmart Corp.*, No. 03 C 698, 2003 WL 1956149, at \*3 (Bankr. N.D. Ill. April 23, 2003) (collecting cases).

36. To constitute lack of good faith, a party's conduct in connection with the sale must usually amount to "fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders." *In re Wieboldt Stores, Inc.*, 92 B.R. 309, 312 n.3 (Bankr. N.D. Ill. 1988) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)); *see also Abbotts Dairies*, 788 F.2d at 147; *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995); *In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the "integrity of [an actor's] conduct during the sale proceedings." *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

37. As described above, the Purchase Agreement is the product of good faith and free from self-dealing. If necessary, the Debtors intend to establish at hearing on this Motion (the “**Sale Hearing**”) that the Purchase Agreement was a negotiated, arms’ length transaction, in which Buyer has acted in good faith, without collusion or fraud of any kind. The Debtors would further establish that neither the Debtors nor Buyer has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code with respect to the consummation of the sale transaction with Buyer or the transfer of the Acquired Assets to Buyer. In addition, all parties in interest will receive notice of the sale proposed herein and will be provided with an opportunity to be heard. All counterparties to Assumed Contracts also will be provided notice of assumption, assignment and/or transfer and an opportunity to be heard. The Debtors submit that such notice is adequate for entry of the Sale Order and satisfies the requisite notice provisions required under sections 363(b) and 365 of the Bankruptcy Code

38. Accordingly, the Debtors request that the Court find that Buyer has purchased the assets described in its respective purchase agreement in good faith within the meaning of section 363(m) and is entitled to the protections described therein.

**D. Assumption and Assignment of Assumed Contracts Should be Approved**

39. To facilitate and effectuate the sale of the Acquired Assets, the Debtors seek authority to assume, assign and/or transfer one or more Assumed Contracts to Buyer to the extent required by Buyer. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assign their executory contracts and unexpired leases, subject to the approval of the Court; provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is provided. A debtor’s decision to assume or reject an executory contract or unexpired lease must only satisfy the “business judgment rule” and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *Group of*

*Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523 (1943) (applying Bankr. Act section 77 subsection (b), predecessor to Bankruptcy Code Section 365, and rejecting test of whether executory contract was burdensome in favor of whether rejection is within debtor's business judgment); *Lubrizol Enter., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046-47 (4th Cir. 1985).

40. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D. N.J. 1989). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance present when the prospective assignee of a lease from the debtor has the financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding; "chief determinant of adequate assurance of future performance is whether rent will be paid").

41. Buyer likely will want an assignment of the Assumed Contracts. To the extent Assumed Contracts are identified for assumption, assignment, and/or transfer, the Debtors believe that they can and will demonstrate that all requirements for assumption, assignment, and/or transfer of the Assumed Contracts will be satisfied at the Sale Hearing. For the reasons stated throughout this Motion, the Debtors, in exercising their sound business judgment, believe that selling the Acquired Assets, including assuming, assigning, and/or transferring to Buyer the Assumed Contracts, would be in the best interests of their estates. Moreover, the Debtors will provide all parties to the Assumed Contracts an opportunity to be heard.

42. Furthermore, the Debtors submit that there are no cure costs associated with the Assumed Contracts that Buyer has indicated it may want to assume. Specifically, as discussed above, in accordance with the Bidding Procedures, on June 28, 2017, the Debtors served BP with the BP Cure Notice, which listed the BP Cure Amount as \$0. Because BP did not object to the BP Cure Notice within the timeframe set forth in the BP Cure Notice, the Debtors respectfully submit that BP should be precluded from objecting to the BP Cure Amount. The second Assumed Contract that Buyer may want to assume is an ATM lease with Centier Bank (the “**Centier Lease**”). The Debtors submit that the Cure Cost associated with the Centier Lease is also \$0.

43. To the extent a counterparty to an Assumed Contract objects to the proposed assumption and assignment, the Debtors submit that Buyer will demonstrate sufficient adequate assurance for whatever Cure Cost may be necessary, as well as adequate assurance of future performance under the Assumed Contracts. Such adequate assurance information will be provided upon request and will be introduced at the hearing on this Motion to the extent required.

44. Accordingly, given the notices that have previously been provided regarding the proposed sale of the Debtors’ assets, and the notices that the Debtors will serve on all counterparties to Assumed Contracts, and given the Debtors’ business judgment that assigning the Assumed Contracts to Buyer will maximize value for their estates, the Debtors request that the assumption, assignment, and/or transfer of the Assumed Contracts be approved.

**E. Relief from the 14-Day Waiting Periods Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate**

45. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of

the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h). Similarly, Bankruptcy Rule 6006(d) provides that “[a]n order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6006(d). The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to FED. R. BANKR. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, Collier on Bankruptcy suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 COLLIER ON BANKRUPTCY ¶ 6004.11 (16th ed. 2012). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of their intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

46. Notwithstanding the possible applicability of Bankruptcy Rules 6004 and/or 6006 or otherwise, in order to allow the immediate realization of value for the Acquired Assets, the Debtors request that any order granting this Motion be effective immediately and not subject to the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d).

### **III. NOTICE**

47. Notice of this Motion has been provided to the parties listed on the Master Service List (as defined in the *Revised Proposed Order Authorizing Motion of Debtors for Approval of Case Management Procedures*, ECF No. 226), as well as all parties with an interest in the Acquired Assets, including any counterparty to a potentially Assumed Contract. Because the Debtors’ creditors have previously received all relevant notices in these Chapter 11 Cases regarding the sale process for the Acquired Assets, the Debtors submit that notice of this Motion



on any party other than those listed above is unnecessary and would create an unnecessary burden for the Debtors' estates. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice need be given.

**IV. NO PRIOR REQUEST**

48. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors request that the Court enter an order: (a) approving the Purchase Agreement (b) authorizing the sale of the Acquired Assets to Buyer, free and clear of all liens, claims, encumbrances, or other interests; (c) authorizing and approving the assumption and assignment of the Assumed Contracts; and (d) granting such other relief as may be necessary or appropriate.

Dated: September 15, 2017  
Chicago, Illinois

/s/ David A. Agay  
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*Attorneys for Debtors  
and Debtors in Possession*

# EXHIBIT A

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**PURCHASE AGREEMENT**  
**BY AND AMONG**  
**RACEWAY CENTRAL, LLC (SELLER)**  
**AND**  
**Steve Navarro (BUYER)**  
**\_\_\_\_\_, 2017**

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## PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 2017 (the "Execution Date") by and between Raceway Central, LLC, an Illinois limited liability company ("Seller"), and Steve Navarro, ("Buyer"). Seller and Buyer are referred to collectively herein as the "Parties".

### WITNESSETH

WHEREAS, on May 4, 2017, Seller and certain of its affiliates commenced voluntary cases under chapter 11 of title 11 (the "Bankruptcy Cases") of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware, which cases have been transferred to and are now pending in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court"); and

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase and acquire the Acquired Assets and Assumed Liabilities (each as defined herein), all as more specifically provided herein.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

### **ARTICLE I DEFINITIONS**

#### Section 1.1 Definitions. For purposes of this Agreement:

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where "control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by Contract, or otherwise.

"Acquired Assets" means all of Seller's right, title, and interest in and to all of the following assets:

(a) all rights and interests of Seller's with respect to the Owned Real Property, together with all facilities improvements and other appurtenances thereto and rights in respect thereof and all servitudes, easements, rights-of-way, other surface use agreements related thereto.

(b) to the maximum extent permitted by the Bankruptcy Code and in accordance with the terms herein, the leases set forth on Exhibit A under the heading "Assumed Leases", other than those Assumed Leases that expire or that are terminated prior to Closing (the "Assumed Leases"), together with (to the extent of Seller's interest therein) the buildings, fixtures and improvements located on or attached to such real property, and all rights arising therefrom, and all tenements, hereditaments,

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appurtenances and other real property rights appertaining thereto, subject to the rights of the applicable landlord (including rights to ownership or use of such property) under such Assumed Leases;

“Agreement” has the meaning set forth in the preamble.

“Allocation Principles” has the meaning set forth in Section 2.7.

“Assessments” has the meaning set forth in Section 6.3(b).

“Assumed Liabilities” means the Cure Costs and all liabilities of the Seller relating to or arising out of the ownership or operation of any Acquired Asset from and after the Closing Date, but in all cases excluding the Excluded Liabilities.

“Bankruptcy Cases” has the meaning set forth in the recitals.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Business” means the operations of Seller at the Owned Real Property and in relation to the Acquired Assets.

“Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the laws of the State of Illinois or is a day on which banking institutions located in the State of Illinois are authorized or required by Law or other governmental action to close.

“Buyer” has the meaning set forth in the preamble.

“Closing” has the meaning set forth in Section 2.4.

“Closing Date” has the meaning set forth in Section 2.4.

“Contract” means any written agreement, contract, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and signed by parties intending to be bound thereby, other than the Assumed Leases.

“Contracting Parties” has the meaning set forth in Section 9.14.

“Cure Costs” means all amounts payable in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the Seller and assignment to Buyer of the Assumed Leases.

“Damages” means any actual losses, claims, Liabilities, debts, damages, fines, penalties, or costs (in each case, including reasonable out of pocket expenses (including reasonable fees and expenses of counsel)).



“Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.

“Escrow Agent” means First American Title Insurance Company.

“Escrow Agreement” means that certain Escrow Agreement, dated as of \_\_\_\_\_, by and among Central Grocers Inc., Buyer, and the Escrow Agent.

“Escrow Amount” has the meaning set forth in Section 2.3(b).

“Excluded Liabilities” means the following Liabilities of Seller:

- (a) any Liability not relating to or arising out of the operation of the Acquired Assets;
- (b) any Liability of Seller for Taxes (except as provided for in Section 2.8 and Section 6.3);
- (c) any mechanics liens;
- (d) any Liability of Seller for any personal property damages from any Assumed Lease.

“GAAP” means United States generally accepted accounting principles consistently applied.

“Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity.

“IRC” means the Internal Revenue Code of 1986, as amended.

“IRS” means the Internal Revenue Service.

“Knowledge” of Seller (and other words of similar import) means the actual knowledge of the Chief Executive Officer or Chief Restructuring Officer of Central Grocers, Inc.

“Law” means any constitution applicable to, and any statute, treaty, code, rule, regulation, ordinance, or requirement of any kind of, any Governmental Authority.

“Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether directly incurred, absolute or contingent, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.



"Lien" means any mortgage, pledge, lien, charge, security interest, option, right of first refusal, easement, security agreement or other encumbrance or restriction on the use or transfer of any property.

"Litigation" means any action, cause of action, suit, claim, charge, investigation, audit, demand, hearing or proceeding, whether civil, criminal, administrative, or arbitral, whether at law or in equity (including actions or proceedings seeking injunctive relief) and whether before any Governmental Authority.

"Material Adverse Effect" means any effect or change that has a material adverse effect on the condition of the Acquired Assets, taken as a whole, other than any effects or changes arising from or related to: (a) general business or economic conditions in any of the geographical areas in which the Acquired Assets are located; (b) any condition or occurrence affecting retail grocery generally; (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (d) financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or accounting rules; (g) the taking of any action contemplated by this Agreement taken with the written consent of the other Party; (h) any effects or changes as a result of the announcement or pendency of this Agreement; (i) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code; (j) the sale of any other assets or stores to any third parties by Seller or any of its Affiliates; (k) any effects or changes arising from or related to the breach of the Agreement by Buyer; (l) the failure of Seller to obtain any consent, permit, authorization, waiver or approval required in connection with the transactions contemplated hereby; (m) any strike or labor dispute, (n) intentionally omitted; (o) any effect resulting from the filing of the Bankruptcy Cases; or (p) any matter of which Buyer is aware on the date hereof.

"Non-Party Affiliates" has the meaning set forth in Section 9.14.

"Ordinary Course of Business" means the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice.

"Outside Date" has the meaning set forth in Section 8.1(b)(ii).

"Owned Real Property" has the meaning set forth in Exhibit B.

"Parties" has the meaning set forth in the preamble.

"Permitted Lien" means (a) Liens for Taxes not yet delinquent or that are being contested in good faith by appropriate proceedings; (b) ~~[Intentionally Deleted] mechanic's, workmen's, repairmen's, warehousemen's, carrier's or other similar Liens, including all statutory liens, arising or incurred in the Ordinary Course of Business or with respect to the Owned Real Property;~~ (c) with respect to leased or licensed real or personal property, the terms and conditions of the Lease, license, sublease or other occupancy agreement applicable thereto; (d) with respect

to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon that are imposed by any Governmental Authority having jurisdiction over such real property; (e) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects with respect to the Acquired Assets that do not or would not reasonably be expected to have a Material Adverse Effect; (f) matters that would be disclosed on an accurate survey of the real property; (g) ~~[Intentionally Deleted]any liens shown in any title commitment, report or policy, or otherwise of record;~~ (h) any other Liens that Buyer has expressly stated are acceptable to Buyer in a writing delivered to Seller; and (i) other than any of the Liens set forth in the foregoing clauses (a) through (g) and other than any Lien that is required to be removed or cured by the applicable tenant under the applicable Lease or was created by such tenant, any Liens on the fee property underlying any Lease that do not or would not reasonably be expected to adversely affect the current occupancy or use of such real property in any material respect or impose any material adverse obligations on Buyer following the Closing.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or any other entity, including any Governmental Authority or any group of any of the foregoing.

“Pre-Closing Period” has the meaning set forth in Section 6.3(c).

“Prorated Charges” has the meaning set forth in Section 2.8(a).

“Proration Period” has the meaning set forth in Section 6.3(b).

“Purchase Price” has the meaning set forth in Section 2.3(a).

“Representative” means, when used with respect to a Person, the Person’s controlled Affiliates (including Subsidiaries) and such Person’s and any of the foregoing Persons’ respective officers, directors, managers, members, shareholders, partners, employees, agents, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants).

“Sale Hearing” means a hearing before the Bankruptcy Court to approve this Agreement and the Sale Order.

“Sale Order” means an order of the Bankruptcy Court in substantially the form attached hereto as Exhibit D (a) approving (i) this Agreement and the execution, delivery, and performance by Seller of this Agreement and the other instruments and agreements contemplated hereby; (ii) the sale of the Acquired Assets to Buyer free and clear of all Liens, other than any Permitted Liens or any Assumed Liabilities; and (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein; (b) determining that Buyer is a good faith purchaser; and (c) providing that the Closing will occur in accordance with the terms and conditions hereof.

“Seller” has the meaning set forth in the preamble.

“Subsidiary” means, with respect to any Person, on any date, any Person (a) the accounts of which would be consolidated with and into those of the applicable Person in such Person’s

consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date or (b) of which securities or other ownership interests representing more than fifty percent of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests or more than fifty percent of the profits or losses of which are, as of such date, owned, controlled or held by the applicable Person or one or more subsidiaries of such Person.

“Tax” or “Taxes” means any United States federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, stamp, occupation, premium, windfall profits, environmental (including taxes under section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether disputed or not.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transfer Tax” has the meaning set forth in Section 6.3(a).

Section 1.2 Interpretations. Unless otherwise indicated herein to the contrary:

(a) When a reference is made in this Agreement to an Article, Section, Exhibit, clause or subclause, such reference shall be to an Article, Section, Exhibit, clause or subclause of this Agreement.

(b) The words “include,” “includes” or “including” and other words or phrases of similar import, when used in this Agreement, shall be deemed to be followed by the words “without limitation.”

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

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

(e) The use of “or” herein is not intended to be exclusive.

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



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

(h) References herein to a Person are also to its successors and permitted assigns. Any reference herein to a Governmental Authority shall be deemed to include reference to any successor thereto.

(i) Any reference herein to "Dollars" or "\$" shall mean United States dollars.

(j) Buyer acknowledges and agrees that the specification of any dollar amount in the representations, warranties, or covenants contained in this Agreement is not intended to imply that such amounts or higher or lower amounts are or are not material, and Buyer shall not use the fact of the setting of such amounts in any dispute or controversy between the Parties as to whether any obligation, item, or matter is or is not material.

(k) References in this Agreement to materials or information "furnished to Buyer" and other phrases of similar import include all materials or information made available to Buyer or its Representatives in the data room prepared by Seller or provided to Buyer or its Representatives in response to requests for materials or information.

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

## ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, pursuant to section 363 of the Bankruptcy Code and in accordance with the Sale Order entered by the Bankruptcy Court, Buyer will purchase from Seller, and Seller will sell, transfer, assign, convey, and deliver to Buyer at the Closing the Acquired Assets.

Section 2.2 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, Buyer will assume and become responsible for the Assumed Liabilities at the Closing. Buyer agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms thereof.

Section 2.3 Consideration; Deposit; Escrow Amount.

(a) The consideration for the Acquired Assets shall be the aggregate Dollar amount equal to \$1,850,000 (the "Purchase Price"), which shall be allocated for the Acquired Asset as set forth on Exhibit C, subject to Section 2.7 of this Agreement.

(b) Upon the execution of this Agreement, pursuant to the terms of the Escrow Agreement, Buyer shall immediately deposit with the Escrow Agent the sum of \$[185,000.00] by wire transfer of immediately available funds (the "Escrow Amount"). The Escrow Amount shall be released by the Escrow Agent and delivered to either Buyer or Seller, in accordance with the provisions of this Agreement and the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrow Amount (together with all accrued investment income thereon, if any) shall be distributed as follows:

(i) if the Closing shall occur, the Escrow Amount shall be paid to Seller and applied towards the Purchase Price payable by Buyer to Seller under Section 2.3(a) and all accrued investment income thereon, if any, shall be delivered to Buyer at the Closing;

(ii) if this Agreement is terminated by Seller pursuant to Section 8.1(d), the Escrow Amount, together with all accrued investment income thereon, if any, shall be delivered to Seller; or

(iii) if this Agreement is terminated for any reason other than by Seller pursuant to Section 8.1(d), the Escrow Amount, together with all accrued investment income thereon, shall in each case be returned to Buyer.

Section 2.4 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York 10153 (or such other location as shall be mutually agreed upon by Seller and Buyer) commencing at 10:00 a.m. local time on a date (the "Closing Date") that is the third (3rd) Business Day following the date upon which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in Article VII (other than conditions that by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and be effective, and title to and risk of loss associated with the Owned Real Property, shall be deemed to occur at 12:01 am, New York City time, on the Closing Date.

Section 2.5 Closing Payments and Deliveries.

(a) On the Closing Date, Buyer shall pay the Purchase Price (less the Escrow Amount, which shall be released to Seller by the Escrow Agent) to Seller, by wire transfer of immediately available funds into an account designated by Seller.

(b) At the Closing, Seller will deliver to Buyer (i) a duly executed Assignment and Assumption Agreement substantially in the form of Exhibit E (the "Assignment and Assumption Agreement") to the extent Acquired Assets include any Assumed Lease; (ii) a duly executed certificate from an officer of Seller to the effect that each of the conditions specified in Section 7.1(a) and Section 7.1(b) are satisfied; and (iii) duly executed limited warranty deeds transferring fee simple title to the Owned Real Property to be acquired at the Closing to Buyer, in substantially in the form of Exhibit F.

(c) At the Closing, Buyer will deliver to Seller (i) the Assignment and Assumption Agreement duly executed by Buyer; if applicable, and (ii) a duly executed certificate from an officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) is satisfied.

Section 2.6 Buyer's Inspection/ Review of Title. Buyer acknowledges and agrees that this Agreement shall not be subject to any diligence period. Buyer has the right to examine, at Buyer's sole cost and expense, all matters related to the Acquired Assets and to purchase title insurance with respect to same; provided, however, that this Agreement shall not be conditioned on any such diligence or title review.

Section 2.7 Allocation. Buyer and Seller agree to allocate the Purchase Price (as finally determined hereunder), the Assumed Liabilities, and all other relevant items among the Acquired Assets in accordance with section 1060 of the IRC and the Treasury Regulations thereunder (the "Allocation Principles"). No later than sixty (60) days after the Closing Date, Seller shall deliver to Buyer an allocation of the Purchase Price and the Assumed Liabilities (and all other relevant items) as of the Closing Date among the Acquired Assets determined in a manner consistent with the Allocation Principles (the "Purchase Price Allocation") for Buyer's review and comment. Any reasonable comments provided by Buyer to the Seller under this Section 2.7 shall be considered by the Seller in good faith. The Purchase Price Allocation (inclusive of any reasonable comments accepted by the Seller) shall be conclusive and binding on the parties, and Buyer and Seller agree (and agree to cause their respective subsidiaries and Affiliates) to prepare, execute, and file IRS Form 8594 and all Tax Returns on a basis consistent with the Purchase Price Allocation. None of the Parties will take any position inconsistent with the Purchase Price Allocation on any Tax Return or in any audit or Tax proceeding, unless otherwise required by a final determination by a Governmental Authority. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 2.7 shall survive the Closing without limitation.

Section 2.8 Proration.

(a) On the Closing Date all monthly payments for the month in which the Closing occurs (including base rent, common area maintenance fees, and utility charges) under the Assumed Leases (the "Prorated Charges") shall be apportioned and prorated between Seller and Buyer as of the Closing Date with (i) Buyer bearing the expense of Buyer's proportionate share of such Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Prorated Charges under the applicable Lease and the denominator being the total number of days in the lease month in which the Closing occurs, times (B) the number of days in such lease month following the day that immediately precedes the Closing Date and paying such amount at Closing to Seller to the extent payment for such Prorated Charges has been made by Seller prior to the Closing, and (ii) Seller bearing the remaining portion of such Prorated Charges (and paying the amounts thereof to Buyer to the extent payment for such Prorated Charges has not been previously made by Seller). The net amount of all Prorated Charges owed to Buyer and Seller under this shall be referred to as the "Buyer Proration Amount" if owed to Buyer or the "Seller Proration Amount" if owed to Seller. Except as set forth in this Section 2.8 and in Section 6.3, no amounts paid or



payable under or in respect of any Acquired Asset or group of Acquired Assets shall be apportioned and prorated between Seller and Buyer. Notwithstanding the foregoing there shall be no apportionment nor reduction in Purchase Price for percentage rents, if any.

(b) Transfer Taxes shall be paid in the manner set forth in Section 6.3.

(c) As to all non-monthly real estate related payments, the same shall be apportioned between Seller and Buyer as of 12:01 a.m. on the Closing Date. If any amounts are payable in installments, all installments due through the Closing together with the accrued but unpaid portion of any other installments not yet due as of the Closing shall be prorated based on the periods of time covered by such installments occurring before and after the Closing Date.

(d) If on the Closing Date any subtenant or licensee is in arrears in the payment of rent or has not paid the rent payable by it and which is attributable to the month in which the Closing occurs (whether or not it is in arrears for such month on the Closing Date), any rent received by Buyer or Seller after the Closing shall be applied to amounts due and payable by such tenant in the following order of priority: first, to rent attributable to the month in which the Closing occurred, and, thereafter, ratably, between rent attributable to the months following the month in which the Closing occurred and rent attributable to the months preceding the month in which the Closing occurred. If rent or any portion thereof received by Seller or Buyer after the Closing is due and payable to the other party by reason of the foregoing allocation, the appropriate sum shall be promptly paid to such other party.

(e) Following the Closing Date, at no cost to Seller, Buyer shall use commercially reasonable efforts to collect rent owed to Seller by any tenant allocable to the period up to and including the Closing Date. Buyer agrees to reasonably cooperate with Seller at no cost to Buyer in connection with all efforts by Seller to collect such rent.

(f) Subtenant security deposits shall not be assigned and an amount equal to such security deposits shall be a credit to the Buyer.

(g) If any of the items subject to apportionment under the foregoing provisions cannot be apportioned at the Closing because of the unavailability of the information necessary to compute such apportionment, or if any errors or omissions in computing apportionments at the Closing are discovered subsequent to the Closing, then such item shall be reapportioned and such errors and omissions corrected as soon as practicable after the Closing Date and the proper party reimbursed.

Section 2.9 Removal of Tangible Personal Property. As promptly as practicable following the Closing Date (and in any event within ten (10) Business Days), Buyer shall allow Seller to remove, at Seller's sole cost and expense, any tangible personal property that is not purchased under this Agreement that is located at the Owned Real Property or at the site of an Assumed Lease and, if requested by Seller, Buyer shall arrange transportation of such tangible personal property to a location designated by Seller at Seller's sole cost and expense.

### ARTICLE III SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that the statements contained in this Article III are true and correct as of the date of this Agreement, except as (i) set forth in any materials or information furnished to Buyer by Seller or (ii) disclosed in any forms, statements, or other documents filed with the Bankruptcy Court.

Section 3.1 Organization of Seller; Good Standing. Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of Illinois. Seller has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or other organizational power and authority to own, lease and operate its assets and to carry on its business as now being conducted, except where the failure to be so organized, existing, or in good standing or have such power and authority would not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authorization of Transaction. Subject to the Bankruptcy Court's entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, Seller has full power and authority (including full corporate or other organizational power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Seller is a party have been duly authorized by Seller. Upon due execution hereof by Seller, this Agreement (assuming due authorization and delivery by Buyer) shall constitute, subject to the Bankruptcy Court's entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

Section 3.3 Noncontravention; Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II), will (a) conflict with or result in a breach of the organizational documents of Seller; (b) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, materially violate any law or Decree to which Seller is subject in respect of the Acquired Assets; or (c) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, result in a material breach of, constitute a material default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any material Contract to which Seller is a party or to which the Acquired Assets is subject, except, in the case of either clause (b) or (c), for such conflicts, violations, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Other as required or pursuant to the Bankruptcy Code, the Sale Order and any other necessary order to close the sale of the Acquired Assets, Seller is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement, except where the failure



to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or materially impair or delay Seller's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

**Section 3.4 Title to Assets.** At the Closing, subject to any Permitted Liens, Seller will have good and valid title to, or the right to use, the tangible Acquired Assets except to the extent the failure to have such title or right to use would not be expected to have a Material Adverse Effect. Pursuant to the Sale Order, Seller will convey such title to or rights to use, all of the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens).

**Section 3.5 Lease Indemnity.** If this Agreement is terminated pursuant to Section 8.1(b) or Section 8.1(d), Buyer shall indemnify Seller for all Liabilities and Damages arising out of any Assumed Lease assumed by Seller pursuant to section 365(k) of the Bankruptcy Code.

**Section 3.6 Litigation; Decrees.** Except as set forth in any materials or information furnished to Buyer by Seller and other than the Bankruptcy Case, there is no Litigation pending or, to the Knowledge of Seller, threatened, that (a) would reasonably be expected to have a Material Adverse Effect or (b) challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Other than the Bankruptcy Case, Seller is not subject to any outstanding Decree that would (a) reasonably be expected to have a Material Adverse Effect or (b) prevent or materially delay Seller's ability to consummate the transactions contemplated hereby or perform in any material respect its obligations hereunder.

**Section 3.7 Brokers' Fees.** Other than the fees and expenses payable to Peter J. Solomon Company ("Broker") in connection with the transactions contemplated hereby, which shall be borne by Seller, Seller has not entered into any Contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay.

**Section 3.8 Taxes.**

(a) In each case with respect to the Acquired Assets and except for matters that would not reasonably be expected to result in a Material Adverse Effect, (i) Seller have timely filed all Tax Returns required to be filed with the appropriate Tax authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Seller); and (ii) all Taxes shown as due on such Tax Returns have been paid (except as prohibited by the Bankruptcy Code).

(b) Seller is not a foreign person within the meaning of section 1445 of the IRC.

**Section 3.9 Compliance with Laws.** Seller has not received any written notice of, or been charged with, the violation of any Laws, except where such violation would not reasonably be expected to result in a Material Adverse Effect.

Section 3.10 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in this Article III, neither Seller nor any other Person shall be deemed to have made any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding Seller, the Acquired Assets or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in this Article III, SELLER MAKES NO OTHER (AND HEREBY DISCLAIM EACH OTHER) REPRESENTATION, WARRANTY, OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION, OR USE OF THE ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT, SHOULD THE CLOSING OCCUR, BUYER WILL ACQUIRE THE ACQUIRED ASSETS IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WITH RESPECT TO ENVIRONMENTAL, HEALTH, OR SAFETY MATTERS). Seller disclaims all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant, or representative of Seller or any of their Affiliates).

#### **ARTICLE IV**

#### **BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents and warrants to Seller that the statements contained in this Article IV are true and correct as of the date of this Agreement.

Section 4.1 Organization of Buyer; Good Standing. Buyer is an individual with the authority to own, lease, and operate the assets and to carry on the business as now being conducted.

Section 4.2 Authorization of Transaction. Buyer has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Buyer is a party have been duly authorized by Buyer. This Agreement (assuming due authorization and delivery by Seller) constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II), will (a) conflict with or result in a breach of the organizational documents of Buyer, (b) violate any law or Decree to which Buyer is subject in respect of the Acquired Assets, or (c) result in a breach of, constitute a material default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify

or cancel, or require any notice under any Contract to which Buyer is a party or to which it is bound, except, in the case of either clause (b) or (c), for such conflicts, violations, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.4 Litigation; Decrees. There is no Litigation pending or, to Buyer's knowledge, threatened that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Neither Buyer nor any of its Subsidiaries is subject to any outstanding Decree that would prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.5 Brokers' Fees. Buyer has not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller or any of their Affiliates could become liable or obligated to pay. Buyer hereby indemnifies Seller and agrees to hold Seller harmless with respect to any fees or amounts payable to any brokers other than Broker.

Section 4.6 Sufficient Funds; Adequate Assurances. Buyer has, and upon the Closing will have, immediately available funds sufficient for the satisfaction of all of Buyer's obligations under this Agreement, including the payment of the Purchase Price and all fees, expenses of, and other amounts required to be paid by, Buyer in connection with the transactions contemplated hereby.

## ARTICLE V PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

### Section 5.1 Efforts; Cooperation.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use (except as otherwise set forth in Section 5.3) its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby (including by giving, or causing to be given, any notices to, making any filings with, and using commercially reasonable efforts to obtain any consents of Governmental Authorities, as



applicable, as are necessary and appropriate to consummate the transactions contemplated hereby). Without limiting the generality of the foregoing, (i) Seller shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.1 that are within its control or influence to be satisfied or fulfilled, (ii) Buyer shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.2 that are within its control or influence to be satisfied or fulfilled, and (iii) in the event the Bankruptcy Court requires a consumer privacy ombudsman to be appointed in connection with the transactions contemplated by this Agreement, Buyer shall provide any cooperation reasonably required by such ombudsman and shall use commercially reasonable efforts to take all reasonable actions recommended by such ombudsman in any report provided to the Bankruptcy Court.

(b) Without limiting the generality of Section 5.1(a), neither Party shall take any action, or permit any of its Subsidiaries to take any action, to materially diminish the ability of any Party to consummate, or materially delay any Party's ability to consummate, the transactions contemplated hereby, including any action that is intended or would reasonably be expected to result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VII to not be satisfied.

Section 5.2 Conduct of the Business Pending the Closing. Except (i) as set forth in materials or information furnished to Buyer by Seller, (ii) as required by applicable Law or by order of the Bankruptcy Court, (iii) as required or contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), no Seller shall subject the Acquired Assets to any Lien, except for Permitted Liens and any Lien securing any debtor in possession loan facility or granted in an order authorizing use of cash collateral.

Section 5.3 Bankruptcy Court Matters.

(a) Intentionally omitted.

(b) Bankruptcy Court Filings. As soon as reasonably practicable following the execution of this Agreement, Seller shall seek approval of the Agreement and file any necessary notice or pleadings required in connection therewith. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the transactions contemplated by this Agreement, including furnishing affidavits or other documents or information, and filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Buyer is a "good faith" purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Acquired Assets hereunder. In the event the entry of the Sale Order or approval of the transactions contemplated by this Agreement shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(c) Sale Order. Seller shall seek entry by the Bankruptcy Court of the Sale Order and any other necessary orders to close the sale of the Acquired Assets as soon as reasonably practicable following the execution of this Agreement, and Seller shall provide notice of the Sale Order to all Persons necessary to provide Buyer with the benefits and protections set forth in the Sale Order (including notice to all applicable Tax authorities). Buyer and Seller understand and agree that the transaction is subject to approval by the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order. In the event the entry of the Sale Order or approval of the transactions contemplated by this Agreement shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

Section 5.4 Notice of Developments. Seller and Buyer will give prompt written notice to the other Parties of (a) the existence of any fact or circumstance, or the occurrence of any event, of which it has knowledge that would reasonably be likely to cause a condition to a Party's obligations to consummate the transactions contemplated hereby set forth in Article VII not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; provided, however, that the delivery of any such notice pursuant to this Section 5.4 shall not be deemed to amend or supplement this Agreement and the failure to deliver any such notice shall not constitute a waiver of any right or condition to the consummation of the transactions contemplated hereby by any Party.

Section 5.5 Access; No Contact. Upon the reasonable request of Buyer, and to the extent not otherwise prohibited by applicable Law, Seller will permit Buyer and its Representatives to have, upon reasonable advance written notice, reasonable access to the premises included in the Acquired Assets during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Seller; provided, however, that, for avoidance of doubt, the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto. Prior to the Closing, Buyer shall not, and shall cause its Representatives not to, contact any employees, vendors, suppliers, landlords, or licensors of Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of Seller.

Section 5.6 Bulk Transfer Laws. Buyer acknowledges that Seller will not comply with the provisions of any bulk transfer laws or similar laws of any jurisdiction in connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

## ARTICLE VI OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing:

Section 6.1 Further Assurances. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will, at

the requesting Party's sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Buyer the Acquired Assets.

Section 6.2 Access; Enforcement; Record Retention. From and after the Closing, upon request by Seller, Buyer will permit Seller and its Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Buyer, to all premises, properties, personnel, books and records, and Contracts of or related to the Acquired Assets for the purposes of (a) preparing Tax Returns, (b) monitoring or enforcing rights or obligations of Seller under this Agreement, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Buyer to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, (ii) such action could reasonably be expected to result in violation of applicable law, or (iii) providing such access or information would be reasonably expected to be disruptive to its normal business operations. Buyer agrees to maintain the files or records which are contemplated by the first sentence of this Section 6.2 in a manner consistent in all material respects with its document retention and destruction policies, as in effect from time to time, for two (2) years following the Closing.

Section 6.3 Certain Tax Matters.

(a) Transfer Taxes. Buyer shall pay any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income Tax, fee or governmental charge (a "Transfer Tax") imposed under applicable law in connection with the transactions contemplated hereby. Accordingly, if Seller is required by Law to pay any such Transfer Taxes, Buyer shall promptly reimburse Seller for the amount of such Transfer Taxes actually paid by Seller. Buyer shall be entitled to receive such Tax Returns and other documentation reasonably in advance of filing by Seller, but not less than ten (10) Business Days prior to the due date of such Tax Returns, and such Tax Returns and other documentation shall be subject to Buyer's approval, which shall not be unreasonably withheld, delayed, or conditioned. The party that is required by applicable Law to file any Tax Returns in connection with Transfer Taxes described in the immediately preceding sentence shall prepare and timely file such Tax Returns. The Parties hereto shall cooperate in making, in a timely manner, all Tax Returns, filings, reports, forms and other documentation as are necessary or appropriate to comply with all applicable Laws in connection with the payment of Transfer Taxes and shall cooperate in good faith to minimize, to the fullest extent possible under such Laws, the amount of any such Transfer Taxes.

(b) Tax Adjustments. Taxes (other than Transfer Taxes) and any other assessments, including, without limitation, water and sewer charges (the "Assessments") imposed upon or assessed directly against the Acquired Assets (including real estate Taxes (other than those subsumed in Section 2.8), personal property Taxes and similar Taxes) for the period in which the Closing occurs (the "Proration Period") will be



apportioned and prorated between Seller and Buyer as of the Closing Date with Buyer bearing the expense of Buyer's proportionate share of such Assessments which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Assessments and the denominator being the total number of days in the Proration Period, times (ii) the number of days in the Proration Period following the Closing Date, and Seller shall bear the remaining portion of such Assessments. If the precise amount of any such Assessments cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the period immediately preceding the Proration Period and Buyer and Seller agree that such proration shall be deemed conclusive and final and no further adjustments shall be made.

(c) Tax Refunds. Seller shall be entitled to receive from Buyer all refunds (or credits for overpayments) of Taxes, including any interest paid thereon, by a Governmental Authority, attributable to any tax period ending on or prior to the Closing Date or the portion of any Proration Period ending on and including the Closing Date, net of any costs, fees, expenses or Taxes incurred in obtaining such refunds (or credits). Buyer and Seller shall execute all documents, take reasonable additional actions and otherwise reasonably cooperate as may be necessary to obtain the Tax refunds (or credits) contemplated by this Section 6.3(c). Buyer shall pay any such Tax refund (or the amount of any such credit) to the Seller within five (5) calendar days after Buyer receives such Tax refund from a Governmental Authority or files a Tax Return claiming such credit.

Section 6.4 Insurance Matters. Buyer acknowledges that, upon Closing, all insurance coverage provided in relation to Seller, or the Acquired Assets that is maintained by Seller or its Affiliates (whether such policies are maintained with third party insurers or with Seller or its Affiliates) shall cease to provide any coverage to Buyer, or the Acquired Assets and no further coverage shall be available to Buyer or the Acquired Assets under any such policies.

Section 6.5 Acknowledgements. Buyer acknowledges that, except for the representations and warranties expressly set forth in Article III (which representations and warranties shall terminate and be of no further force or effect as of the Closing), and without limiting the generality of Section 3.10, neither Seller nor any other Person makes any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding Seller, the Acquired Assets or any other matter, and neither Seller nor any other Person will be subject to any Liability to Buyer or any other Person resulting from such matters or the distribution to Buyer, or the use of, any such information. Buyer acknowledges that, should the Closing occur, Buyer will acquire the Acquired Assets in an "as is" condition and on a "where is" basis, without any representation or warranty of any kind, express or implied (including any with respect to environmental, health or safety matters). Further, without limiting any representation, warranty, or covenant of Seller expressly set forth herein, Buyer acknowledges that it has waived and hereby waives as a condition to the Closing any further due diligence reviews, inspections, or examinations with respect to Seller, the Acquired Assets, or any other matter, including with respect to engineering, environmental, title, survey, financial, operational, regulatory, and legal compliance matters.

Section 6.6 Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required by applicable Law or a Decree of the Bankruptcy Court. If any such announcement or other disclosure is required by applicable Law or a Decree of the Bankruptcy Court, the disclosing Party shall give the nondisclosing Parties prior notice of, and an opportunity to comment on, the proposed disclosure. The Parties acknowledge that Seller shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order.

## **ARTICLE VII CONDITIONS TO OBLIGATION TO CLOSE**

Section 7.1 Conditions to Buyer's Obligations. Buyer's obligation to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

- (a) the representations and warranties set forth in Article III shall have been true and correct on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to "material" or "Material Adverse Effect" set forth therein) has not resulted in a Material Adverse Effect;
- (b) Seller shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;
- (c) the Bankruptcy Court shall have entered the Sale Order and no order staying, reversing, modifying, or amending the Sale Order shall be in effect on the Closing Date;
- (d) no material Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement; and
- (e) each delivery contemplated by Section 2.5(b) to be delivered to Buyer shall have been delivered.

Section 7.2 Conditions to Seller's Obligations. Seller's obligations to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

- (a) the representations and warranties set forth in Article IV shall have been true and correct in all material respects (except that any representation or warranty that is qualified by materiality shall have been true and correct in all respects) on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);
- (b) Buyer shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;



(c) the Bankruptcy Court shall have entered the Sale Order and no order staying, reversing, modifying, or amending the Sale Order shall be in effect on the Closing Date;

(d) no material Decree shall be in effect that prohibits consummation of any of the transactions contemplated by this Agreement; and

(e) each payment contemplated by Section 2.5(a) to be made to Seller shall have been made, and each delivery contemplated by Section 2.5(c) to be delivered to Seller shall have been delivered.

Section 7.3 No Frustration of Closing Conditions. Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its reasonable best efforts to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant hereunder.

## **ARTICLE VIII TERMINATION**

Section 8.1 Termination of Agreement. The Parties may terminate this Agreement at any time prior to the Closing as provided below:

(a) by the mutual written consent of the Parties;

(b) by any Party by giving written notice to the other Parties if:

(i) any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available to Buyer if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of Buyer to have fulfilled any of its obligations under this Agreement; or

(ii) the Closing shall not have occurred on or before the date that is 120 days after the Execution Date (the "Outside Date"); provided that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 8.1(b)(ii).

(c) by Buyer by giving written notice to Seller if there has been a breach by Seller of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of

Buyer at Closing set forth in Section 7.1(a) and Section 7.1(b), and such breach has not been waived by Buyer, or, if such breach is curable, cured by Seller prior to the earlier to occur of (A) ten (10) days after receipt of Buyer's notice of intent to terminate or (B) the Outside Date;

(d) by Seller by giving written notice to Buyer that there has been a breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Seller at Closing set forth in Section 7.2(a) and Section 7.2(b), and such breach has not been waived by Seller, or, if such breach is curable, cured by Buyer prior to the earlier to occur of (A) ten (10) days after receipt of Seller's notice of intent to terminate or (B) the Outside Date; or

(e) by Seller or Buyer, if the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement.

**Section 8.2 Effect of Termination.** If any Party terminates this Agreement pursuant to Section 8.1, all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I, Section 2.3(b), Section 3.10, Section 6.6, Section 8.3, Article IX, and this Section 8.2 shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 2.3(b)(ii)) to the other Party hereunder; provided, however, that nothing in this Section 8.2 shall relieve any Party from Liability for any breach occurring prior to any such termination set forth in this Agreement.

**Section 8.3 Lease Indemnity.** If this Agreement is terminated pursuant to Section 8.1(b) or Section 8.1(d), Buyer shall indemnify Seller for all Liabilities and Damages arising out of any Assumed Lease assumed by Seller pursuant to section 365(k) of the Bankruptcy Code.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.1 Survival.** Except for any covenant that by its terms is to be performed (in whole or in part) by any Party following the Closing, including, without limitation, Article I, Section 2.3(b), Section 3.10, Section 6.6, Article IX, and Section 8.2, none of the representations, warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 2.5(b) or Section 2.5(c) shall survive, and each of the same shall terminate and be of no further force or effect as of, the Closing.

**Section 9.2 Expenses.** Except as otherwise expressly set forth herein, each Party will bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants. For the avoidance of doubt, Buyer shall pay all recording fees arising from the transfer of the Acquired Assets.

**Section 9.3 Entire Agreement.** This Agreement, the documents contemplated herein (the "Related Agreements") constitute the entire agreement between the Parties and

supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

Section 9.4 Incorporation of Exhibits. The Exhibits to this Agreement are incorporated herein by reference and made a part hereof.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties, which shall not be unreasonably denied.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) upon receipt of confirmation of receipt if sent by facsimile transmission; (d) on the day such communication was sent by e-mail; or (e) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Seller: c/o Central Grocers, Inc.  
2600 West Haven Avenue  
Joliet, IL 60433  
Attention: Ken Nemeth  
E-mail: knemeth@central-grocers.com

With a copy (which shall not constitute notice to Seller) to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153



Attention: Stephen Karotkin, Sunny Singh and Gavin Westerman  
Facsimile: (212) 310-8007  
E-mail: [stephen.karotkin@weil.com](mailto:stephen.karotkin@weil.com)  
[sunny.singh@weil.com](mailto:sunny.singh@weil.com)

Weil, Gotshal & Manges LLP  
1395 Brickell Avenue, 12th Floor  
Miami, Florida 33131  
Attention: Beatriz Azcuy-Diaz, Esq.  
Facsimile: (305) 374-7159  
E-mail: [beatriz.azcuy@weil.com](mailto:beatriz.azcuy@weil.com)

If to Buyer: Steve Navarro  
P.O. Box 14045  
Oakland, CA 94614  
Attention: Steven Navarro  
Facsimile (510) 383 2917  
E-mail: [stevennavarro1213@gmail.com](mailto:stevennavarro1213@gmail.com)

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 9.7.

Section 9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Illinois (without giving effect to the principles of conflict of Laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

Section 9.9 Submission to Jurisdiction: Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 9.7; provided, however, that nothing in this Section 9.9 shall affect the right of any Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions

will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby or thereby.

**Section 9.10 Waiver of Jury Trial.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

**Section 9.11 Specific Performance.** Buyer acknowledges and agrees that Seller and its estate would be damaged irreparably in the event Buyer does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that Seller may have under law or equity, Seller shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

**Section 9.12 Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

**Section 9.13 No Third Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person other than Buyer, Seller, and their respective successors and permitted assigns.

**Section 9.14 Non-Recourse.** All claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (the "Contracting Parties"). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or lender to, any of the foregoing ("Non-Party Affiliates"), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or the Related Agreements or based on, in respect of, or by reason of this Agreement or the Related Agreements or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting



Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or the Deed or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 9.14.

Section 9.15 Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.16 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.17 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

Section 9.18 Limitations Under Applicable Law. Notwithstanding anything to the contrary contained in this Agreement, the Parties' obligations hereunder shall be subject to limitations under applicable Law, including, without limitation, Sections 1113 and 1114 of the Bankruptcy Code.

Section 9.19 Multiple Sellers. In the event that there is more than one "seller" under this Agreement, the term "Seller" shall refer to each seller individually and/or all sellers collectively, as the context so requires; provided, that no Person shall be deemed to make any representations or warranties with respect to any other Person or any other Person's property. Payments to and liabilities under the Agreement shall be apportioned among the sellers in accordance with the percentage of the Purchase Price allocated to such seller under the allocation provisions hereunder.

Section 9.20 Riders. One of the following riders, if checked off, is attached hereto, and is hereby incorporated herein and made a part hereof.

- ☐ FF&E Rider; OR
- ☐ Inventory Rider; OR
- ☐ FF&E and Inventory Rider

[Remainder of page intentionally left blank.]

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

RACEWAY CETNRAL, LLC

By: \_\_\_\_\_  
Name:  
Title:

STEVE NAVARRO

By:  \_\_\_\_\_  
Name: STEVE NAVARRO  
Title:


CGI ACKNOWLEDGEMENT:

Central Grocers Inc. does hereby acknowledge, solely as a party to the Escrow Agreement, that it  
will deliver all necessary notices pursuant to the Escrow Agreement and this Agreement on  
behalf of Seller.

By: \_\_\_\_\_  
Name:  
Title:

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

RACEWAY CENTRAL, LLC

By:   
Name: Donald Harer  
Title: Chief Restructuring Officer

STEVE NAVARRO

By: \_\_\_\_\_  
Name:  
Title:

CGI ACKNOWLEDGEMENT:

Central Grocers Inc. does hereby acknowledge, solely as a party to the Escrow Agreement, that it will deliver all necessary notices pursuant to the Escrow Agreement and this Agreement on behalf of Seller.


By:   
Name: Donald Harer  
Title: Chief Restructuring Officer



EXHIBIT A

Assumed Leases

1. Commercial Building Lease between the Seller and BP Products North America Inc. ("Tenant") dated on or about October, 2007, as amended by the Lease Amendment and Extension Agreement dated September 30, 2010 between Seller and Tenant, as amended by the Second Amendment and Extension Agreement dated February 11, 2014 between Seller and Tenant.
2. ATM Lease between Seller and Centier Bank.

EXHIBIT B

Owned Real Property

The real property located at **6603 Columbia Avenue, Hammond IN 46320 (assessor parcel number 45-07-07-201-002.000.0223)** and **6529 Columbia Avenue, Hammond IN 46320 (assessor parcel number 45-07-07-201-002.000.023)** together with all structures and improvements thereon, all fixtures therein or thereto and all privileges, easements and appurtenances pertaining thereto, including all of Seller's right, title and interest in and to any adjacent or adjoining streets, alleys, or rights-of-ways and any strips or gores adjacent or adjoining thereto, or used in connection with the beneficial use and enjoyment thereof (the "Owned Real Property").

EXHIBIT C

Purchase Price Allocation for Acquired Assets

100% of the Purchase price will be allocated for all the assets listed in Exhibit B as follows:

\$1,450,000 for 6529 Columbia Avenue, Hammond IN 46320 (assessor parcel number 45-07-07-201-002.000.023);

\$400,000 for 6603 Columbia Avenue, Hammond IN 46320 (assessor parcel number 45-07-07-201-002.000.0223)

EXHIBIT D

Form of Sale Order

EXHIBIT E

Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is entered into and effective as of June 26, 2017, by and between Raceway Central LLC, an Illinois limited liability company, whose address is 2600 West Haven Avenue, Joliet, IL 60433 ("Seller"), and Steve Navarro, whose address is P.O. Box 14045, Oakland, CA 94614 ("Buyer"). Seller and Buyer are referred to collectively herein as the "Parties."

WHEREAS, the Parties are parties to that certain Purchase Agreement, dated June 26, 2017 (the "Purchase Agreement") (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement);

WHEREAS, the execution and delivery of this Assignment is contemplated by the Purchase Agreement; and

WHEREAS, Seller desires to assign, transfer, convey, and deliver to Buyer the Lease described in Exhibit A attached hereto including all amendments, modifications, and supplements thereto (collectively, the "Lease"), and Buyer desires to accept an assignment of the Lease together with all right, title, and interest of Seller thereunder. The Lease encumbers all or a portion of certain property (the "Leased Premises") which property is more specifically described on Exhibit B attached hereto (the "Premises").

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, the Parties hereby agree as follows:

- 1) Assignment and Assumption of Lease. Effective as of the Closing, Seller hereby assigns, transfers, conveys, and delivers to Buyer all of Seller's estate, right, title and interest as tenant of the leasehold estate described under the Lease, and Buyer hereby accepts the assignment, transfer, conveyance, and delivery of Seller's estate, rights, title and interest in, to and under such leasehold estate, and assumes and agrees to pay, discharge, and perform when due all of Seller's obligations as tenant under the Lease.
- 2) Conflict. The assignment and assumption of the Lease (and the obligations thereunder) made hereunder are made in accordance with and subject to the Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede, and prevail. Notwithstanding anything to the contrary in this Assignment, nothing herein is intended to, nor shall it, extend, amplify, or otherwise alter the Purchase Agreement.


- 3) Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Assignment is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Assignment.
- 4) Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by, or on behalf of, Buyer and Seller.
- 5) Counterparts; Facsimile and Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
- 6) Governing Law. This Assignment shall be governed by the Laws of the state in which the Leased Premises are located, except to the extent that the Laws of such state are superseded by the Bankruptcy Code.
- 7) Third Party Beneficiaries and Obligations. This Assignment shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Assignment, express or implied, is intended to or shall confer upon any Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, or liabilities under or by reason of this Assignment.
- 8) Recordation. Seller makes no representation regarding the recordability of this Assignment, nor the Lease or related documents. Seller shall bear no liability for the failure of the Lease or related documents to be recorded.
- 9) Further Assurances. Each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Party may reasonably request to give full effect to this Assignment, including, without limitation, any other form of assignment agreement required in order to record this Assignment in the appropriate public records of the county in which the Leased Premises is located.

\* \* \* \* \*

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first above written.

**SELLER:**

Raceway Central LLC, an Illinois limited liability company

By:   
Name: Donald Harer  
Title: Chief Restructuring Officer

[ACKNOWLEDGMENTS]

{6971714:}

[Seller Signature Page to Assignment and Assumption of Lease –  
City, State (Store \_\_ ) ( \_\_\_\_ )]

**BUYER:**

Steve Navarro

By: 

Name: STEVE NAVARRO

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

[ACKNOWLEDGMENTS]

{6971714:}

[Buyer Signature Page to Assignment and Assumption of Lease –  
City, State (Store \_\_ ) ( \_\_\_\_ )]

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**EXHIBIT A**

Lease

Commercial Building Lease between the Seller and BP Products North America Inc. ("Tenant") dated on or about October, 2007, as amended by the Lease Amendment and Extension Agreement dated September 30, 2010 between Seller and Tenant, as amended by the Second Amendment and Extension Agreement dated February 11, 2014 between Seller and Tenant.

## **EXHIBIT B**

### Premises

The real estate consisting of approximately 52,763 square feet of area, commonly known as 6529 S. Columbia Avenue, Hammond, IN 46320 depicted on Exhibit A of the Lease, together with all improvements now located on the real estate during the term, and all appurtenances belonging to or in any way pertaining to the premises. The real estate, improvements and appurtenances are referred to as the "Leased Premises". The Leased Premises includes a parking area, of which 350 non-exclusive parking spaces are included as part of the Leased Premises. The Leased Premises also includes approximately 11,000 square feet of mezzanine space within the building.

EXHIBIT F

Form of Deed

LIMITED WARRANTY DEED

Parcel No(s). \_\_\_\_\_

***THIS INDENTURE WITNESSETH***, That \_\_\_\_\_ ("Grantor"), ***Conveys and Specially Warrants*** to \_\_\_\_\_ ("Grantee"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in \_\_\_\_\_ County, State of \_\_\_\_\_:

**SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN**

**Property Address:** \_\_\_\_\_

**It is understood and agreed by the parties hereto that the title to the real estate herein conveyed is warranted only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.**

***Subject*** to current taxes not delinquent, and all easements, agreements and restrictions of record and all public rights of way.

The undersigned person(s) executing this deed on behalf of Grantor represent and certify that he/she/they is/are duly elected officer(s) of Grantor and has/have been fully empowered to execute and deliver this deed; that Grantor has full capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

[SIGNATURE ON FOLLOWING PAGE]

*IN WITNESS WHEREOF*, Grantor has executed this deed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**GRANTOR**

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

Printed: \_\_\_\_\_

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

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, who acknowledged the execution of the foregoing Deed for and on behalf of said Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

My Commission expires: \_\_\_\_\_ Signature \_\_\_\_\_  
\_\_\_\_\_ Printed \_\_\_\_\_  
Resident of \_\_\_\_\_ County  
State of \_\_\_\_\_

This instrument was prepared by: \_\_\_\_\_

Upon recording, return to: \_\_\_\_\_

Send Tax Statements to: \_\_\_\_\_

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

EXHIBIT A

### ADDENDUM TO PURCHASE AGREEMENT

This Addendum to Purchase Agreement (the "Addendum") is dated as of the same date as that certain Purchase Agreement (the "Agreement") dated Sept. 14, 2017 (the "Effective Date") between RACEWAY CENTRAL, LLC, an Illinois limited liability company ("Seller") and STEVE NAVARRO, an individual ("Buyer") regarding certain commercial property (the "Property") commonly known as 6603 Columbia Avenue, Hammond, IN 46320 (the "6603 Columbia Ave Property") and 6529 Columbia Avenue, Hammond, IN 46320 (the "6529 Columbia Ave Property"), as more particularly identified in the Agreement.

WHEREAS, Seller and Buyer are parties to the Agreement; and

WHEREAS, Seller and Buyer acknowledge and agree that there is a tax lien (the "Tax Lien") which was filed by Lake County, Indiana against the portion of the Property commonly known as 6529 Columbia Avenue, Hammond, IN 46320; and

WHEREAS, Seller and Buyer acknowledge and agree (without waiving any rights) that a disposition may have occurred with respect to the Tax Lien and the 6529 Columbia Ave Property (the "Tax Sale") and that the parties require additional time to redeem or otherwise resolve the status of the 6529 Columbia Ave Property; and

WHEREAS, because of the extra time required to resolve the Tax Lien and Tax Sale, Seller and Buyer have agreed to close on the sale of the Property in two (2) transactions: (1) 6603 Columbia Ave Property and then (2) 6529 Columbia Ave Property.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and Tenant agree as follows:

1. Recitals. The parties agree that the above referenced recitals are true and correct as of the Effective Date and are hereby incorporated herein by reference.

2. Capitalized Terms. Any capitalized terms used herein, which are not otherwise defined herein shall have the same definition ascribed to them in the Agreement.

3. Bifurcation of Closing. Notwithstanding anything to the contrary contained in Section 2.4 of the Agreement, Seller and Buyer agree that the Closing may occur in two transactions.

4. The 6603 Columbia Closing. The language in Section 2.4 shall be amended so that the first Closing (the "6603 Columbia Closing") shall only be for the transfer of the 6603 Columbia Ave Property. The Closing on the 6603 Columbia Ave Property shall take place at the title company (or such other location as shall be mutually

agreed upon by Seller and Buyer) commencing at 10:00 a.m. local time on a date (the “6603 Closing Date”) that is the third (3rd) Business Day following the date upon which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in Article VII (other than conditions that relate solely to the 6529 Columbia Ave Property or which by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto.

5. The 6529 Columbia Closing. The language in Section 2.4 shall be amended so that the second Closing (the “6529 Columbia Closing”) shall only be for the transfer of the 6529 Columbia Ave Property. The Closing on the 6529 Columbia Ave Property shall take place at the title company (or such other location as shall be mutually agreed upon by Seller and Buyer) commencing at 10:00 a.m. local time on a date (the “6529 Closing Date”) that is the fifth (5th) Business Day following the date upon which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in Article VII (other than conditions that relate solely to the 6603 Columbia Ave Property or which by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto.

6. Closing Payments; Purchase Price Allocation. Section 2.5 of the Agreement shall be amended so that the Purchase Price to be paid related to the 6603 Columbia Closing and the 6529 Columbia Closing shall be in accordance with the Purchase Price Allocation for Acquired Assets on Exhibit C to the Agreement.

7. Closing Deliveries. Section 2.5 of the Agreement shall be amended so that the deliveries to be made for the separate 6529 Columbia Closing and the 6603 Columbia Closing shall be those deliveries identified in Section 2.5 of the Agreement that are applicable to such properties. Those deliveries that are applicable to both parties shall be delivered by the parties.

8. Prorations. Section 2.8 of the Agreement shall be amended so that the Prorated Charges shall be allocated between the 6529 Columbia Closing and the 6603 Columbia Closing, as applicable based on the portions of the Owned Real Property subject to such applicable Closing and based on the applicable Closing Dates for such Closings.

9. Removal of Tangible Personal Property. Section 2.9 of the Agreement shall be amended so that the time periods for removing such property by Seller shall be calculated based on the Closing Dates for the applicable portions of the Owned Real Property.

10. Representations. Section 3.4 and Section 3.9 of the Agreement shall each be amended to except the Tax Lien and Tax Sale for 6529 Columbia Ave. from Seller’s representations and warranties.

11. Covenants. Article VI of the Agreement shall be amended to acknowledge that Buyer is aware of the Tax Lien and Tax Sale and that Buyer shall



permit Seller ninety (90) days from the date of the 6603 Columbia Closing to have such Tax Lien released and have title to the 6529 Columbia Property cleared for such Tax Lien and Tax Sale.

12. Earnest Money. Seller acknowledges that it is holding One Hundred Ten Thousand and No/100 Dollars (\$110,000.00) as earnest money (the "Earnest Money") regarding the Agreement. For the 6603 Columbia Closing, a pro rata portion (based on the Purchase Price Allocation identified in paragraph 6 of this Addendum) of the Earnest Money shall apply as the Escrow Amount in accordance with the Agreement. For the 6529 Columbia Closing, a pro rata portion (based on the Purchase Price Allocation identified in paragraph 6 of this Addendum) of the Earnest Money shall apply as the Escrow Amount in accordance with the Agreement.

13. Acquired Assets; ATM Lease. If any other Acquired Assets (other than the Owned Real Property) are to be transferred to Buyer pursuant to the Agreement, such Acquired Assets that relate to the 6529 Columbia Ave Property shall be transferred as part of the 6529 Columbia Closing and such Acquired Assets that relate to the 6603 Columbia Ave Property shall be transferred as part of the 6603 Columbia Closing. Notwithstanding anything to the contrary contained herein or the Agreement, the ATM lease with Centier Bank shall be assigned to Buyer to the extent such lease has not already terminated and provided that it is otherwise assignable under the Bankruptcy Code.

14. Acquired Liabilities. If any Acquired Liabilities are to be transferred to Buyer pursuant to the Agreement, such Acquired Liabilities that relate to the 6529 Columbia Ave Property shall be transferred as part of the 6529 Columbia Closing and such Acquired Liabilities that relate to the 6603 Columbia Ave Property shall be transferred as part of the 6603 Columbia Closing.

15. Entire Agreement; Conflicts. The Agreement, as modified by this Addendum, constitutes and contains the entire agreement between the parties. In the event of a conflict between the terms and conditions contained in the Agreement and this Addendum, the terms and conditions contained in this Addendum shall govern and control. Except as modified or amended by this Addendum, the terms and conditions of the Agreement shall remain in full force and effect and unchanged.

16. Counterparts. This Addendum may be executed in one or more counterparts, each of which shall be deemed an original. The parties acknowledge and agree that their signatures and initials required in this Addendum may be executed via "wet" original handwritten signature or initials, or via electronic signature or mark, which shall be binding on the parties as originals, and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means, and any such transmittal shall constitute delivery of the executed document for all purposes of the Agreement, as amended by this Addendum.

17. Applicable Law. This Addendum shall be governed by and construed in accordance with the internal Laws of the State of Illinois (without giving effect to the principles of conflict of Laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

18. Bankruptcy Court Approval. Buyer and Seller understand and agree that the Addendum is subject to approval by the Bankruptcy Court in accordance with the terms of the Agreement and that this Addendum shall not be effective and binding on the parties unless such approval is received. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining any such approval required by the Bankruptcy Court.

19. Further Assurances. Each of the parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other party may reasonably request to give full effect to this Addendum, the purpose of which is to allow the parties to effectuate the transfer of the Acquired Assets in two (2) steps with the first transfer relating to the Acquired Assets related to the 6603 Columbia Ave Property and the second transfer relating to the Acquired Assets related to the 6529 Columbia Ave Property.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have signed this Addendum as of the date  
first written above.


Seller:

Raceway Central, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Buyer:

By:

  
\_\_\_\_\_  
Steve Navarro

IN WITNESS WHEREOF, the parties have signed this Addendum as of the date first written above.

Seller:

Buyer:

Raceway Central, LLC

By:

By: 

\_\_\_\_\_  
Steve Navarro

Name: Donald Harer

Title: Chief Restructuring Officer

# EXHIBIT B

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re	)	Chapter 11
CENTRAL GROCERS, INC., <i>et al.</i> ,	)	Case No. 17-13886 (PSH)
Debtors. <sup>1</sup>	)	(Jointly Administered)

**SUPPLEMENTAL NOTICE OF CURE COSTS AND  
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On May 13, 2017, Central Grocers, Inc. and its debtor affiliates, including Strack and Van Til Super Market, Inc., in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) filed with the United States Bankruptcy Court for the District of Delaware (the “**Delaware Bankruptcy Court**”) a motion, which was refiled for administrative purposes only with the United States Bankruptcy Court for the Northern District of Illinois [ECF No. 204] (the “**Motion**”) for the entry of (i) an order (the “**Bidding Procedures Order**”)<sup>2</sup> (a) authorizing and approving bidding procedures (the “**Bidding Procedures**”), substantially in the form attached to the Bidding Procedures Order as Exhibit 1, in connection with the sale or disposition of substantially all of the Debtors’ assets (the “**Assets**”); (b) approving Stalking Horse Bid Protections for Stalking Horse Bidders (as hereinafter defined); (c) authorizing the designation of additional stalking horse bidders, (d) scheduling an auction (each, an “**Auction**”) of the Assets and hearings (each, a “**Sale Hearing**”) to consider approval of proposed Sale Transactions; (e) authorizing and approving the form and manner of notice of the sale of the Assets, Auction, and Sale Hearings; notice to each non-Debtor counterparty (each, a “**Counterparty**”) to executory contracts and unexpired leases (collectively, the “**Contracts and Leases**”) regarding the Debtors’ potential assumption and assignment of their Contracts and Leases and of the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Central Grocers, Inc. (3170), CGI Joliet, LLC (7014), Currency Express, Inc. (2650), Raceway Central, LLC (2161), Raceway Central Calumet Park LLC (2161), Raceway Central Chicago Heights LLC (2161), Raceway Central Downers Grove LLC (2161), Raceway Central Joliet North LLC (2161), Raceway Central LLC North Valpo (2161), Raceway Central Wheaton LLC (2161), Strack and Van Til Super Market, Inc. (2184), and SVT, LLC (1185).

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Order and the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.



Debtors' calculation of the amount necessary to cure all monetary defaults thereunder (collectively, the "**Cure Costs**"); (f) authorizing and approving procedures for the assumption and assignment of Contracts (the "**Assumption and Assignment Procedures**"); and (g) granting related relief; and (ii) entry of one or more Sale Orders, authorizing and approving (a) the sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (b) the assumption and assignment of proposed assumed Contracts and Leases (collectively, the "**Proposed Assumed Contracts**"); and (c) granting related relief.

On June 2, 2017, the Delaware Bankruptcy Court entered the Bidding Procedures Order [Case No. 17-10993 Docket No. 338] approving the relief requested in the Motion.

On June 13, 2017, the Debtors' chapter 11 cases were transferred from the Delaware Bankruptcy Court to the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "**Bankruptcy Court**") [ECF No. 93]. All orders entered by the Delaware Bankruptcy Court, including the Bidding Procedures Order, in the Debtors' chapter 11 cases remain in full force and effect, except for the Auction date of certain of the Assets and the date, time, and location of the Sale Hearing as set forth below.

On June 6, 2017, the Debtors filed with the Delaware Bankruptcy Court and served on the applicable Sale Notice Parties a Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale [Case No. 17-10993 Docket No. 335] (the "**Assumption and Assignment Notice**"). This Notice (the "**Supplemental Assumption and Assignment Notice**") is a supplement to the Assumption and Assignment Notice.

**You are receiving this Supplemental Assumption and Assignment Notice because you may be a Counterparty to a Contract or Lease of the Debtors that could be assumed and assigned to one or more bidders in connection with a sale of the Debtors' Assets.**

### **Stalking Horse Bid**

A binding stalking horse bid (the "**Stalking Horse Bid**") has been submitted by Jewel Food Stores, Inc. (the "**Stalking Horse Bidder**"). The Stalking Horse Bidder has executed an asset purchase agreement (the "**Stalking Horse Agreement**") for the purchase of the Strack Stores (as hereinafter defined) identified on Schedule 1 to the Bidding Procedures and the Sale Notice. The Proposed Assumed Contracts included in the Stalking Horse Package as of the date hereof and all known Designation Rights Contracts (as defined in the Stalking Horse Agreement) and the Debtors' calculation of the Cure Costs with respect thereto are set forth on Exhibit A to the Assumption and Assignment Notice.

### **Cure Costs**

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Debtors may, in connection with a Sale Transaction with a Successful Bidder (as defined in the Bidding Procedures) at an Auction (whether such bidder be the Stalking Horse Bidder or other bidder prevailing at the Auction), seek to assume and assign to the

Successful Bidder (or its designated assignee, if applicable) certain Contracts and Leases of the Debtors, whether or not such Contracts and Leases are included in the Stalking Horse Package.

On Exhibit B to the Assumption and Assignment Notice, the Debtors identified the Contracts and Leases (excluding the Proposed Assumed Contracts and Designation Rights Contracts included in the Stalking Horse Package) that may be assumed and assigned in connection with a Sale Transaction with a Successful Bidder and the Debtors' calculation of the Cure Costs with respect thereto.

**The Debtors have identified certain additional Contracts and Leases that may be assumed and assigned in connection with a Sale Transaction with a Successful Bidder. Such Contracts and Leases and the Debtors' calculation of the Cure Costs with respect thereto are set forth on Exhibit 1 hereto.**

The inclusion of any Contract or Lease on Exhibit 1 does not constitute an admission that a particular Contract or Lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Contract or Lease ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved.

### **Objections**

#### **A. Cure Objections**

Any objection to the proposed assumption, assignment, or potential designation of a Contract or Lease identified on Exhibit 1 hereto the subject of which objection is the Debtors' proposed Cure Costs must be (i) filed in accordance with the Bidding Procedures Order; (ii) filed with the Bankruptcy Court; and (iii) served on the Objection Recipients (as identified in the Bidding Procedures) by no later than **July 7, 2017, at 4:00 p.m. (prevailing Central Time)**.

**IF A COUNTERPARTY FAILS TO FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION RECIPIENTS A TIMELY CURE OBJECTION, THE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE AMOUNT TO CURE ANY DEFAULT UNDER THE APPLICABLE CONTRACT OR LEASE. THE CURE COSTS SET FORTH ON EXHIBIT 1 HERETO, AS APPLICABLE, SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE APPLICABLE CONTRACT OR LEASE UNDER BANKRUPTCY CODE SECTION 365(B), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT OR LEASE, OR ANY OTHER DOCUMENT, AND THE APPLICABLE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY ADDITIONAL CURE OR OTHER AMOUNTS WITH RESPECT TO SUCH CONTRACT OR LEASE AGAINST THE DEBTORS, ANY SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THEM.**

## **B. Adequate Assurance Objections**

Any objection to the proposed assumption, assignment, or designation of a Contract or Lease identified on Exhibit 1 the subject of which objection is a Successful Bidder's (or its known proposed assignee's) proposed form of adequate assurance of future performance with respect to such Contract or Lease must be filed with the Bankruptcy Court and served on the Objection Recipients by no later than **July 10, 2017, at 4:00 p.m. (prevailing Central Time)**.

**IF A COUNTERPARTY FAILS TO FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION RECIPIENTS A TIMELY ADEQUATE ASSURANCE OBJECTION, THE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE OF THE APPLICABLE CONTRACT OR LEASE. THE SUCCESSFUL BIDDER (OR ITS DESIGNATED ASSIGNEE, IF APPLICABLE) SHALL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE APPLICABLE CONTRACT OR LEASE IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 365(F)(2)(B), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT OR LEASE, OR ANY OTHER DOCUMENT.**

### **Sale Hearing**

The Sale Hearing shall be held before the Bankruptcy Court, Eastern Division, 219 S. Dearborn, Chicago, Illinois 60604 before the Honorable Pamela S. Hollis on **July 11, 2017, at 10:00 a.m. (prevailing Central Time)**.

### **Additional Information**

Copies of the Motion, the Bidding Procedures Order, the Bidding Procedures, the Stalking Horse Agreement, and the Assumption and Assignment Notice may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Prime Clerk LLC, located at <http://cases.primeclerk.com/CentralGrocers>.

Dated: June 28, 2017  
Chicago, Illinois

/s/ David A. Agay  
David A. Agay (No. 6244314)  
Rion Vaughan (ARDC No. 6317715)  
MCDONALD HOPKINS LLC  
300 North LaSalle Street  
Suite 1400  
Chicago, IL 60654  
Telephone: (312) 642-2217  
Facsimile: (312) 280-8232

-and-

WEIL, GOTSHAL & MANGES LLP  
Ray C. Schrock, P.C. (admitted *pro hac vice*)  
Stephen Karotkin (admitted *pro hac vice*)  
Sunny Singh (admitted *pro hac vice*)  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*Attorneys for Debtors  
and Debtors in Possession*

**Exhibit 1**

**Potential Assumption and Assignment  
Contracts & Leases and Related Cure Costs**

DEBTOR	COUNTERPARTY	COUNTERPARTY ADDRESS	TYPE OF CONTRACT	CURE AMOUNT
Raceway Central LLC	BP Products North America Inc.	4101 Winfield Road Cantera 3-3E Warrenville, IL 60555  4101 Winfield Road Cantera 3-5W Warrenville, IL 60555  Whiting Refinery 2815 Indianapolis Boulevard Whiting, IN 46394  6529 S. Columbia Avenue Hammond, IN 46320	Lease Agreement	\$0
Central Grocers, Inc.	Independent Computer Consulting Group, Inc.	1 Ivybrook Boulevard, Suite 177 Warminster, PA 18974	Services Agreement	\$0
Central Grocers, Inc.	Enerwise Global Technologies, Inc. (dba CPower)	ATTN: Legal Department 111 Market Place, Suite 201 Baltimore, MD 21202	Services Agreement	\$0

DEBTOR	COUNTERPARTY	COUNTERPARTY ADDRESS	TYPE OF CONTRACT	CURE AMOUNT
Central Grocers, Inc.	Evolutyz Corp.	444 Michigan Avenue, Floor 12, Chicago, IL 60611	Services Agreement	\$3,075
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$0
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$878
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$3,742
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$438
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$1,288
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$0
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$0
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$1,905



DEBTOR	COUNTERPARTY	COUNTERPARTY ADDRESS	TYPE OF CONTRACT	CURE AMOUNT
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$6,640
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$2,489
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$0
SVT, LLC	R. U. Nuts Company	134 Harwood Ct. Lincoln, NE 68502	Services Agreement	\$1,704
Central Grocers, Inc.	Short Cut, LLC	P.O. Box 2255 East Chicago, IN 46312	Services Agreement	\$731

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
CENTRAL GROCERS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-13886 (PSH)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	

**ORDER (I) APPROVING THE PURCHASE AGREEMENT BETWEEN DEBTOR  
RACEWAY CENTRAL, LLC AND BUYER; (II) AUTHORIZING THE SALE OF  
CERTAIN OF THE ASSETS OF DEBTOR RACEWAY CENTRAL, LLC TO BUYER  
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND  
INTERESTS; (III) AUTHORIZING AND APPROVING THE ASSUMPTION  
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY IN  
CONNECTION THEREWITH; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Sale Motion**”)<sup>2</sup> of Central Grocers, Inc. and its debtor affiliates, including Strack and Van Til Super Market, Inc., as debtors and debtors in possession (collectively, the “**Debtors**”), seeking, among other things, the entry of an order (the “**Sale Order**”), pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), (i) approving that certain Purchase Agreement (as may be amended pursuant to the terms thereof and this Sale Order, (the “**Purchase Agreement**”), dated as of September 14, 2017, by and between Debtor Raceway Central, LLC (“**Raceway Central**”),

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Central Grocers, Inc. (3170), CGI Joliet, LLC (7014), Currency Express, Inc. (2650), Raceway Central, LLC (2161), Raceway Central Calumet Park LLC (2161), Raceway Central Chicago Heights LLC (2161), Raceway Central Downers Grove LLC (2161), Raceway Central Joliet North LLC (2161), Raceway Central LLC North Valpo (2161), Raceway Central Wheaton LLC (2161), Strack and Van Til Super Market, Inc. (2184), and SVT, LLC (1185).

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement (as hereinafter defined) or, if not defined in the Purchase Agreement, the meanings ascribed to such terms in the Sale Motion.

as Seller, and Steve Navarro (the “**Buyer**”), a copy of which is attached hereto as **Exhibit A**, (ii) authorizing and approving the sale of certain real property located in Hammond, Indiana (the “**Owned Real Property**”) owned by Raceway Central free and clear of all liens, claims, interests, and encumbrances; (iii) authorizing and approving the assumption and assignment of certain executory contracts and unexpired leases of nonresidential real property (the “**Assumed Contracts**,” and together with the Owned Real Property, the “**Acquired Assets**”); and (iv) granting related relief; and Buyer having submitted the highest or best bid for the Acquired Assets, as reflected in the certain Purchase Agreement, pursuant to which Raceway Central has agreed, among other things, to sell the Acquired Assets to Buyer, including the Assumed Contracts that will be assumed and assigned to Buyer, on the terms and conditions set forth in the Purchase Agreement and this Sale Order (collectively, the “**Sale Transaction**”); and the Court having conducted a hearing on the Sale Motion (the “**Sale Hearing**”) on [●], 2017, at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; and the Court having reviewed and considered (1) the Sale Motion and the exhibits thereto; (2) the Purchase Agreement; and (3) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that due notice of the Sale Motion, the Purchase Agreement, and the proposed form of this Sale Order (the “**Sale Order**”) having been provided; and all objections to the Sale Motion with respect to the relief granted by this Sale Order having been withdrawn, resolved, or overruled as provided in this Sale Order; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest in these Chapter 11 Cases; and upon the record of the Sale Hearing and these Chapter 11 Cases; and after due deliberation thereon; and good cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT**

A. **Fed. R. Bankr. P. 7052.** The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. The Court's findings also shall include any oral findings of fact and conclusions of law made by the Court during or at the conclusion of the Sale Hearing.

B. **Jurisdiction and Venue.** This Court has jurisdiction to decide the Sale Motion, and jurisdiction over the Sale Transaction and the property of each of the Debtors' estates, including the Acquired Assets, pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U. S.C. § 157. Venue of these Chapter 11 Cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Statutory and Rule Predicates.** The statutory and other legal predicates for the relief sought in the Sale Motion are sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004, 6006, and 9014.

D. **Notice and Opportunity to Object.** As evidenced by the certificates of service filed with the Court and the Delaware Bankruptcy Court, due, proper, timely, adequate, and sufficient notice of, and a fair and reasonable opportunity to object to and to be heard with respect to the Sale Motion, the Bidding Procedures, the Auction, the Sale Hearing, the Purchase Agreement, including the sale of the Acquired Assets free and clear of any Claims (as hereinafter defined), proposed assumption and assignment of Assumed Contracts to Buyer, and the Sale Order has been or will be provided by the Debtors, as required by sections 102(1), 363, and 365

of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014 to all Persons entitled to such notice, including, but not limited to, the following: (i) counterparties to Assumed Contracts (the “**Counterparties**” and, each, a “**Counterparty**”); (ii) all parties with an interest in the Acquired Assets; (iii) counsel for the Creditors’ Committee; (iv) Buyer; and (v) all other persons and entities as directed by the Court or the Delaware Bankruptcy Court. Such notice was good, sufficient, and appropriate under the circumstances. No other or further notice of the foregoing is required.

E. **Disclosures**. The disclosures made by the Debtors in the Sale Motion and related notices and documents filed with the Court concerning the Purchase Agreement, the Bidding Procedures Order, the Purchase Agreement, and the Sale Hearing were good, complete, and adequate.

F. **Final Order**. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). In the absence of a stay pending appeal, Buyer, being a good faith purchaser under Bankruptcy Code section 363(m), may close the Sale Transaction contemplated by the Purchase Agreement at any time after entry of this Sale Order shall not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

G. **Sound Business Purpose**. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of the Sale Motion, the Purchase Agreement, and entering into the Purchase Agreement and any ancillary agreements thereto (collectively, the “**Related Agreements**”). The Debtors’ entry into and performance under the Purchase Agreement and Related Agreements (i) are a result of due deliberation by the Debtors and constitute a sound and reasonable exercise of the Debtors’ business judgment consistent with their fiduciary duties; (ii) provide value to and are beneficial to the Debtors’ estates, and are in

the best interests of the Debtors and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. Business justifications for entry into the Purchase Agreement include, but are not limited to, the following: (a) the Purchase Agreement constitutes the highest and best offer received for the Acquired Assets; (b) the Purchase Agreement presents the best opportunity to maximize the value of the Acquired Assets and avoid decline and devaluation of the Acquired Assets; (c) unless the sale and all of the other transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for pursuant to the Purchase Agreement, recoveries to the Debtors' creditors may be materially diminished; and (d) the value of the Debtors' estates will be maximized through the sale of the Acquired Assets pursuant to the Purchase Agreement.

H. **Compliance with Bidding Procedures.** The Bidding Procedures were substantively and procedurally fair to all parties. The Debtors, Buyer, and their respective counsel and other advisors have complied with the Bidding Procedures and Bidding Procedures Order in all respects.

I. **Highest or Best Value.** The Debtors determined, in accordance with their business judgment and in consultation with the Secured Lenders (as defined below) and the Creditors' Committee, that the Buyer's offer constitutes the highest and best offer for the Acquired Assets. The Debtors and their advisors, including Peter J. Solomon Company, LLC, engaged in a robust and extensive marketing and sale process over a period of over ten (10) months, both prior to the Commencement Date and through the postpetition sale process pursuant to the Bidding Procedures Order and the Bidding Procedures. The Debtors conducted a fair and open sale process. The Debtors (i) afforded interested purchasers a full, fair, and reasonable opportunity to qualify as Qualified Bidders (as defined in the Bidding Procedures)



and submit their highest or otherwise best offer to purchase the Acquired Assets; (ii) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets; and (iii) considered all Qualified Bids (as defined in the Bidding Procedures). The sale process, was non-collusive, duly noticed, and provided a full, fair, and reasonable opportunity for any person or entity to submit an offer to purchase the Acquired Assets. The sale and auction process conducted by the Debtors pursuant to the Bidding Procedures resulted in the highest or best value for the Acquired Assets for the Debtors and their estates, and any other transaction would not have yielded as favorable an economic result.

J. **Fair Consideration.** The consideration to be paid by Buyer under the Purchase Agreement (i) constitutes fair and reasonable consideration for the Acquired Assets; (ii) is the highest and best offer for the Acquired Assets; (iii) will provide a greater recovery for the Debtors' estates and creditors than would be provided by any other practically available alternative; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and other laws of the United States, any state, territory, or any other applicable jurisdiction with laws substantially similar to the foregoing.

K. **No Successor or Other Derivative Liability.** The sale and transfer of the Acquired Assets to Buyer or Buyer's occupation and use of the Acquired Assets will not subject Buyer to any liability (including any successor liability) with respect to the operation of Raceway Central's business prior to Closing or by reason of such transfer. Buyer is not a successor to any of the Debtors or their respective estates by reason of any theory of law or equity, and the sale does not constitute a consolidation, merger, or *de facto* merger of Buyer and any of the Debtors. Buyer is not a mere continuation of Raceway Central or any other Debtor or their respective

estates, and there is no substantial continuity, common identity, or continuity of enterprise between Buyer and any Debtor. Buyer is not holding itself out as a continuation of any Debtor.

L. **No Sub Rosa Plan**. The sale neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization of the Debtors. The sale does not constitute a *sub rosa* or *de facto* plan of reorganization or liquidation, as it does not propose to (i) impair or restructure existing debt of, or equity interests in, the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtors, (iii) circumvent chapter 11 safeguards, such as those set forth in sections 1125 and 1129 of the Bankruptcy Code, or (iv) classify claims or equity interests or extend debt maturities.

M. **Good Faith; No Collusion**. The Debtors, Buyer, and their respective counsel and advisors have negotiated, proposed and entered into the Purchase Agreement, Related Agreements, and each of the transactions contemplated therein in good faith, without collusion and from arm's-length bargaining positions. Buyer is a "good faith purchaser" and is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. Buyer has proceeded in good faith in all respects. Specifically, (i) Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets; (ii) Buyer complied with the provisions of the Bidding Procedures Order; (iii) Buyer's bid was subjected to competitive Bidding Procedures as set forth in the Bidding Procedures Order; (iv) Buyer has not violated section 363(n) of the Bankruptcy Code by any action or inaction; and (v) all payments to be made by Buyer and all other material agreements or arrangements entered into by Buyer and the Debtors in connection with the Sale Transaction have been disclosed and are appropriate. The sale price in respect of the Acquired Assets was not controlled by any agreement among potential bidders, and neither

the Debtors nor Buyer have engaged in collusion or any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the laws of the United States, any state, territory, possession, or the District of Columbia. Buyer is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between Buyer and the Debtors.

N. **Satisfaction of Section 363(f) Standards.** The Debtors may sell the Acquired Assets free and clear of all encumbrances, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), interests, and liens, including the Excluded Liabilities, rights, mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, possessory interests (including those under section 365(h) of the Bankruptcy Code), other interests, leases, licenses, options, deeds of trust, security interests, condition sale or other title retention agreements, pledges, other liens (including, without limitation, mechanics’, materialmen’s and other consensual and non-consensual liens and statutory liens), judgments, demands, rights of first refusal, offsets, set-offs, recoupment, contracts, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, tax liabilities, and other interests of any kind or nature whatsoever against any of the Debtors or the Acquired Assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employment or labor law claims or liabilities, employee

pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims or claims for Taxes of or against any of the Debtors, any claims under, or trusts or liens created by PACA<sup>3</sup> or PASA,<sup>4</sup> and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule, or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the Commencement Date, whether known or unknown, contingent or matured, liquidated or unliquidated, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to any of the Debtors, any of the Debtors' interests in the Acquired Assets, the operation of any of the Debtors' businesses before the effective time of Closing pursuant to the Purchase Agreement, or the transfer of any of the Debtors' interests in the Acquired Assets to Buyer (collectively, the "**Claims**"), because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Without limiting the generality of the foregoing, "**Claims**" shall include any and all rights to payment, liabilities, contingent or otherwise, or obligations whatsoever arising under or out of, in connection with, or in any way relating to, (i) any employee benefit plan or pension plans contributed to or maintained by any of the Debtors, or multi-employer plan participated in by any of the Debtors prior to or subsequent to the Commencement Date, including, without limitation, any employee benefit plan and any Claims related to unpaid contributions or current or potential partial or complete withdrawal or termination liability with respect to the foregoing; (ii) any of the Debtors' collective bargaining agreements; (iii) the Worker Adjustment and Retraining

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<sup>3</sup> "PACA" means the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §§ 499a, et seq.) or any similar state laws.

<sup>4</sup> "PASA" means the Packers and Stockyards Act (7 U.S.C. §§ 181 et seq.) or any similar state laws.

Notification Act of 1988 (“**WARN**”); or (iv) any of the Debtors’ current and former employees. Any holder of a Claim who did not object (or who ultimately withdrew its objection, if any) to the Sale Transaction or the Sale Motion shall be forever barred from asserting any objection to the Sale Transaction, including with respect to the transfer of the Acquired Assets to Buyer free and clear of all Claims in accordance with the terms of the Purchase Agreement, and any and all other relief granted by this Sale Order.

O. **Free and Clear Sale.** PNC Bank, National Association (“**PNC**”), as administrative agent for itself and other lenders under that certain (a) Revolving Credit Agreement, dated as of June 15, 2011, and (b) Debtor-In-Possession Credit Agreement, dated as of May 19, 2017 has consented to the sale of the Acquired Assets to the Buyer pursuant to the Purchase Agreement free and clear of any Claims of each Secured Lender against the Acquired Assets; provided that payment of the Purchase Price (as defined in the Purchase Agreement) is deposited by wire transfer into the master concentration account held by Central Grocers, Inc., ending in 9318 at PNC (the “**Concentration Account**”) to be applied to the Obligations (as defined in the final order of the Delaware Bankruptcy Court approving the Debtors’ DIP Financing [Case No. 17-10993 (LSS) ECF No. 368] (the “**Final DIP Order**”)) in accordance with the terms of the order approving the Debtors’ DIP Financing on an interim basis [Case No. 17-10993 (LSS) ECF No. 190] (together with the Final DIP Order, the “**DIP Orders**”); provided further that the Purchase Price is without any setoff or deduction of any kind other than as set forth in the Purchase Agreement and; provided further that nothing contained herein shall constitute a finding or determination regarding the allocation of the Purchase Price to any particular assets of the Debtors, and all parties’ rights with respect to the allocation of the proceeds of the Acquired Assets are hereby reserved. Any other holders of Claims that have an

interest in the Acquired Assets have either consented to the sale of the Acquired Assets to the Buyer or could be compelled in a legal or equitable proceeding to accept money in satisfaction of such Claim pursuant to section 363(f)(5), or fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, therefore, are adequately protected by having their Claims constituting interests in the Acquired Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which such holders have an interest, in the same order of priority, and with the same validity, force, and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors.

P. **Buyer's Reliance on Free and Clear Sale.** Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Acquired Assets was not free and clear of all Claims, or if Buyer would, or in the future could, be liable for any such Claims, including, as applicable, certain liabilities related to the Business that will not be assumed by Buyer, as described in the Purchase Agreement. A sale of the Acquired Assets other than one free and clear of all Claims would adversely impact the Debtors, their estates, and their creditors, and would yield substantially less value for the Debtors' estates, with less certainty than provided under the Sale Transaction. The total consideration to be provided under the Purchase Agreement reflects Buyer's reliance on this Sale Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Acquired Assets free and clear of all Claims (including, without limitation, any potential derivative, vicarious, transferee, or successor liability Claims).

Q. **Assumption and Assignment of Assumed Contracts.** The assumption and assignment of Assumed Contracts is integral to the Purchase Agreement and is in the best



interests of the Debtors, their estates, their creditors, and other parties in interest, and represents the exercise of sound and prudent business judgment by the Debtors.

R. **Validity of the Transfer.** As of the Closing and payment of the Purchase Price, the transfer of the Acquired Assets to Buyer will be a legal, valid, and effective transfer of the Acquired Assets, and will vest Buyer with all right, title, and interest of the Debtors in and to the Acquired Assets, free and clear of all Claims. The consummation of the Sale Transaction is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) and all of the applicable requirements of such sections have been complied with in respect of the Sale Transaction. The Debtors (i) have full corporate or limited liability company (as applicable) power and authority to execute the Purchase Agreement, Related Agreements, and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtors; (ii) have all of the corporate or limited liability company (as applicable) power and authority necessary to consummate the transactions contemplated by the Purchase Agreement and Related Agreements; and (iii) upon entry of this Sale Order, other than any consents identified in the Purchase Agreement, need no consent or approval from any other Person to consummate the Sale Transaction.

S. **Acquired Assets Are Property of the Raceway Central Estate.** The Acquired Assets constitute property of, and good title is vested in, Raceway Central's estate within the meaning of section 541(a) of the Bankruptcy Code. Raceway Central is the sole and rightful owner of the Acquired Assets with all right, title, and interest to transfer and convey the Acquired Assets to Buyer, and no other Person has any ownership right, title, or interests therein.

T. **Valid and Binding Contract.** The Purchase Agreement is a valid and binding contract between Raceway Central and Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement, Related Agreements, Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and any chapter 7 or chapter 11 trustee appointed in these chapter 11 cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

U. **Waiver of Bankruptcy Rules 6004(h) and 6006(d).** The sale of the Acquired Assets and the assumption and assignment of Assumed Contracts must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Debtors and Buyer intend to close the Sale Transaction as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and good, sufficient, and sound business purposes and justifications for the immediate approval and consummation of the Sale Transaction as contemplated by the Purchase Agreement. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regard to the transactions contemplated by this Sale Order.

V. **Legal and Factual Bases.** The legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
THAT**

1. **Motion Is Granted.** The Sale Motion and the relief requested therein (to the extent not previously granted by the Court pursuant to the Bidding Procedures Order or otherwise) is granted and approved as set forth herein.

2. **Objections Overruled.** All objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn with prejudice, waived, or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits with prejudice.

3. **Notice.** Notice of the Sale Motion, the Bidding Procedures, the Bidding Procedures Order, the Auction, the Sale Transaction, the Sale Hearing, and the Sale Order was adequate, reasonable, appropriate, and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

4. **Fair Purchase Price.** The consideration provided by Buyer pursuant to the Purchase Agreement (i) is fair and adequate; (ii) constitutes reasonably equivalent value, fair consideration, and fair value under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and similar laws); and (iii) will provide an equal or greater recovery for the Debtors' creditors than would be provided by any other reasonably practicable available alternative.

5. **Payment of Proceeds.** Payment of the Purchase Price shall be deposited by wire transfer into the Concentration Account to be applied to the Obligations in accordance with the terms of the DIP Orders and subject to the rights of parties in interest thereunder; provided that the Purchase Price is without any setoff or deduction of any kind other than as set forth in the Purchase Agreement.

6. **Approval of the Purchase Agreement.** The Purchase Agreement, all transactions contemplated therein (including, but not limited to, all Related Agreements

contemplated thereby) and all of the terms and conditions thereof are hereby approved. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement (including, but not limited to, all Related Agreements contemplated thereby) be authorized and approved in its entirety.

**Sale and Transfer of Acquired Assets**

7. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors, acting by and through their existing agents, representatives, and officers, are authorized and empowered, without further order of the Court, to take any and all actions necessary or appropriate to (i) consummate and close the Sale Transaction pursuant to and in accordance with the terms and conditions of the Purchase Agreement; (ii) transfer and assign all right, title, and interest in and to all Acquired Assets, property, licenses, and rights to be conveyed pursuant to and in accordance with the terms and conditions of the Purchase Agreement; (iii) execute and deliver, perform under, consummate, and implement the Purchase Agreement and all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale Transaction, including any Related Agreements, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and Related Agreements; and (iv) take all further action as may be reasonably requested by Buyer for the purposes of assigning, transferring, granting, conveying, or conferring to Buyer, or reducing to Buyer's possession, the Acquired Assets. All Persons that are currently in possession of any or all of the Acquired Assets are hereby directed to surrender possession of such Acquired Assets to Buyer as of Closing. To the extent required by the Purchase Agreement, the Debtors agree to exercise commercially reasonable efforts to assist

Buyer in assuring that all Persons that are presently, or on the Closing Date may be, in possession of any or all of the Acquired Assets will surrender possession of such Acquired Assets to either (i) the Debtors before the Closing Date or (ii) Buyer on or after the Closing Date.

8. All Persons are prohibited from taking any action to adversely affect or interfere with the ability of any of the Debtors to transfer the Acquired Assets to Buyer in accordance with the Purchase Agreement and this Sale Order; provided that the foregoing restriction shall not prevent any party from appealing this Sale Order in accordance with applicable law or opposing any appeal of this Sale Order.

9. Each and every federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

10. **Transfer of Assets Free and Clear.** Pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Acquired Assets in accordance with the terms of the Purchase Agreement. The Acquired Assets shall be transferred to Buyer and, upon Closing, such transfer shall (i) be valid, legal, binding, and effective; (ii) vest Buyer with all right, title, and interest of any of the Debtors in and to the Acquired Assets; and (iii) upon payment of the Purchase Price consistent with Paragraph 5 above, be free and clear of all Claims (including Claims of any Governmental Authority) in accordance with section 363(f) of the Bankruptcy Code, with all Claims that represent interests in property to attach to the net proceeds of the Sale Transaction, in the same order of their priority and with the same validity,

force, and effect that they now have against the Acquired Assets, subject to any claims and defenses any of the Debtors may possess with respect thereto.

11. Except as otherwise expressly provided in the Purchase Agreement, all Persons (and their respective successors and assigns) including, without limitation, any of the Debtors, any of the Debtors' estates, all debt security holders, equity security holders, governmental, tax and regulatory authorities, governmental units, lenders, current and former employees, pension plans, labor unions, trade creditors, and any other creditors holding Claims against any of the Debtors, the Acquired Assets, or any of the Debtors' businesses (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, any of the Debtors, the Acquired Assets, or any of the Debtors' businesses prior to the Closing Date or the transfer of the Acquired Assets to Buyer, are hereby forever barred, estopped, and permanently enjoined from asserting or pursuing such Claims against Buyer, its Affiliates, successors, or assigns, its property or the Acquired Assets, including, without limitation, taking any of the following actions with respect to or based on a Claim: (i) commencing or continuing in any manner any action or other proceeding against Buyer, its Affiliates, or their respective successors or assigns, assets, or properties; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against Buyer, its Affiliates, or their respective successors or assigns, assets, or properties; (iii) creating, perfecting, or enforcing any Claims against Buyer, its Affiliates, or their respective successors or assigns, assets, or properties; (iv) asserting a Claim as a setoff, right of subrogation or recoupment of any kind against any obligation due Buyer, its Affiliates, or their respective successors or assigns; or (v) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Sale



Order or the agreements or actions contemplated or taken in respect thereof, including the Purchase Agreement. No such Persons shall assert or pursue against Buyer or its Affiliates, successors, or assigns any such Claim.

12. This Sale Order (i) shall be effective as a determination that, as of Closing, all Claims have been unconditionally released, discharged, and terminated as to Buyer and the Acquired Assets and that the conveyances and transfers described herein have been effected; and (ii) is and shall be binding upon and govern the acts of all Persons, including 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, county, and local officials, and all other Persons 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 documents or instruments that reflect that Buyer is the assignee and owner of the Acquired Assets free and clear of all Claims, or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as “**Recording Officers**”). All Recording Officers are authorized and specifically directed to strike recorded encumbrances, claims, liens, and other interests against the Acquired Assets recorded prior to the date of this Sale Order. A certified copy of this Sale Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, claims, liens, and other interests against the Acquired Assets recorded prior to the date of this Sale Order. All Recording Officers are hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement and Related Agreements.

13. As of and after the Closing, (i) each of the Debtors' creditors is hereby authorized and directed to execute such documents and take all other actions as may be necessary to release its Claims in the Acquired Assets (if any) as such Claims may have been recorded or may otherwise exist; and (ii) any Acquired Asset that may be subject to a statutory or mechanic's lien shall be turned over and such liens shall attach to the proceeds of the Sale Transaction in the same priority they currently enjoy with respect to the Acquired Assets.

14. Following the Closing, no holder of any Claim shall interfere with Buyer's title to or quiet use and enjoyment of the Acquired Assets based on or related to any such Claim or based on any actions any of the Debtors may take in these Chapter 11 Cases.

15. Except as provided below concerning the Claims in the Acquired Assets held by the Secured Lenders, if any Person that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Claims in or against the Acquired Assets shall not have delivered to the Debtors prior to Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or, as appropriate, releases of all Claims against or in the Acquired Assets (collectively, the "**Release Documents**") that the Person holds, then with regard to the Acquired Assets that are purchased by Buyer pursuant to the Purchase Agreement and this Sale Order, (i) the Debtors are hereby authorized and directed to, and Buyer is hereby authorized to, execute and file such statements, instruments, releases, and other documents on behalf of the Person with respect to the Acquired Assets; and (ii) Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against the Acquired Assets; provided that, neither the Debtors nor Buyer is authorized to file any Release Documents with respect to

the Claims held by a Secured Lender, in the Acquired Assets without first obtaining the express written consent of such Secured Lender and providing drafts of such Release Documents to the Secured Lender for its review and approval, which consent and approval shall be in the Secured Lender's sole discretion; provided further that, notwithstanding anything in this Sale Order or the Purchase Agreement to the contrary, the provisions of this Sale Order shall be self-executing, and neither the Debtors nor Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Sale Order. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, county or local government agency, department or office.

16. Without limiting the effect or scope of the foregoing, as of the Closing (except as expressly set forth in the Purchase Agreement), Buyer, its Affiliates and their respective successors and assigns shall have no liability for any Claim, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature, or character whatsoever, by reason of any theory of law or equity, including, without limitation, Claims arising under (i) any employment or labor agreements or the termination thereof; (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of or related to any of the Debtors or any of the Debtor's Affiliates or predecessors or any current or former employees of any of the foregoing, including, without limitation, employee benefit plans and any participation or other agreements related to the employee benefit plans, or the termination of any of the foregoing; (iii) any of the Debtors' business operations or the cessation thereof or termination of employees;

(iv) any litigation involving any of the Debtors; and (v) any labor, employee, workers' compensation, occupational disease, or unemployment or temporary disability related law, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974 ("**ERISA**"), as amended; (b) the Fair Labor Standards Act; (c) Title VII of the Civil Rights Act of 1964; (d) the Federal Rehabilitation Act of 1973; (e) the National Labor Relations Act; or the Labor Management Relations Act; (f) WARN; (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended; (h) the Americans with Disabilities Act of 1990; (i) the Consolidated Omnibus Budget Reconciliation Act of 1985; (j) the Multiemployer Pension Plan Amendments Act of 1980 ("**MPPAA**"); (k) state and local discrimination laws; (l) state and local unemployment compensation laws or any other similar state and local laws; (m) state workers' compensation laws; (n) any other state, local, or federal employee benefit laws, regulations, or rules relating to wages, benefits, employment, or termination of employment with any of the Debtors or any of their predecessors; (o) any antitrust laws; (p) any product liability or similar laws, whether state, federal, or otherwise; (q) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes; (r) PACA or PASA; (s) any bulk sales or similar laws; (t) any federal, state, or local tax statutes, regulations, or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (u) any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory, or any other theory of or related to successor liability.

17. On the Closing Date, this Sale Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the

Acquired Assets under the Purchase Agreement or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in and to all of the Acquired Assets to Buyer.

18. To the maximum extent available under applicable law, and to the extent provided for under the Purchase Agreement, Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of any of the Debtors with respect to the Acquired Assets and, to the maximum extent available under applicable law, as applicable, and to the extent provided for under the Purchase Agreement, all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been transferred to Buyer as of the Closing Date. All existing licenses or permits applicable to the Acquired Assets shall remain in place for Buyer's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures.

19. **No Successor or Other Derivative Liability.** Except as expressly set forth in the Purchase Agreement, as a result of the Sale Transaction, or subsequent use or occupation of the Acquired Assets, Buyer and its Affiliates and their respective successors and assigns shall not be deemed a successor to any of the Debtors and shall not have any successor, transferee, or vicarious liability of any kind or character, including, without limitation, within the meanings of or under any theory of foreign, federal, state, or local antitrust, environmental, successor, tax, ERISA, the MPPAA, assignee or transferee liability, labor, product liability, employment, *de facto* merger, substantial continuity, or other law, rule, regulation, or doctrine, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to any of the Debtors or any obligations of any of the Debtors arising prior to the Closing Date, including, without

limitation, liabilities on account of any Taxes or other Governmental Authority fees, contributions, or surcharges, in each case, arising, accruing, or payable under, out of, in connection with, or in any way relating to, the Acquired Assets prior to the Closing Date or arising based on actions of any of the Debtors taken after the Closing Date.

**Assumption and Assignment of Assumed Contracts**

20. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, the Debtors' assumption and assignment to Buyer, and Buyer's assumption on the terms set forth in the Purchase Agreement of the Assumed Contracts and pursuant to the terms and provisions of this Sale Order shall be approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto shall be deemed satisfied.

21. The Debtors are hereby authorized in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to assume and assign any Assumed Contracts to Buyer free and clear of all Claims, and to execute and deliver to Buyer such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to Buyer as provided in the Purchase Agreement.

22. Buyer shall be fully and irrevocably vested with all right, title, and interest of the Debtors in and to the Assumed Contracts and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Contracts. The assumption by the Debtors and assignment to Buyer of an Assumed Contract shall not be, or result in, a default under any such Assumed Contract or constitute a termination of any such Assumed Contract.

23. Payment of the Cure Costs by Buyer shall (i) be in full satisfaction and cure of any and all defaults under the Assumed Contracts, whether monetary or non-monetary; and (ii) compensate Counterparties for any actual pecuniary loss resulting from such defaults. Each Counterparty shall be forever barred, estopped, and permanently enjoined from asserting against the Debtors or Buyer, their respective Affiliates, successors, or assigns, or the property of any of them, any assignment fee, rent acceleration, rent increase on account of assignment, default, breach, claim, pecuniary loss, or condition to assignment arising under or related to the Assumed Contracts, existing as of the date that such Assumed Contracts are assumed or arising by reason of the Closing. Neither Buyer nor any successor of Buyer shall be responsible for Claims or obligations arising out of any of the contracts, agreements, or understandings that are not Assumed Contracts after the Closing Date (except as specifically provided by the Purchase Agreement).

24. Pursuant to sections 365(f)(1) and (3) of the Bankruptcy Code, the Assumed Contracts shall be transferred to, and for the benefit of, Buyer in accordance with their respective terms, including all obligations of Buyer as the assignee of the Assumed Contracts, notwithstanding any provision in any Assumed Contract or under applicable law (including, without limitation, those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer.

25. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors or Buyer or any of its Affiliates any defaults, cross-defaults, breach, claim, pecuniary loss, rent accelerations, escalations, rent increase, assignment fees, increases or any other fees charged to Buyer or the Debtors existing as of the date of assumption of the Assumed Contracts



or as a result of the assumption or assignment of the Assumed Contracts on the Closing Date. For the avoidance of doubt, and without limiting the generality of the foregoing, any provision in an Assumed Contract, any other document, or under applicable law that prohibits, restricts or otherwise impairs assignment of the Assumed Contracts or Buyer's ability to operate the Acquired Assets is hereby void and of no force or effect, including any provision that (i) requires any or all of the proceeds from the assignment of such Assumed Contract be paid to or shared with the applicable Counterparty or distributed in a manner inconsistent with the terms of the Purchase Agreement, the applicable Assignment and Assumption Agreement, or the intent of the Debtors and Buyer with respect to the distribution of such proceeds; (ii) terminates or adversely impacts any extension option rights or any other rights of Buyer under such Assumed Contract; (iii) cross-defaults to or from any other lease or executory contract that is not an Assumed Contract; (iv) restricts Buyer's operation of the Acquired Assets with respect to radius, use, location, and exclusivity; (v) contains operating covenants or "go-dark" provisions that would purport to terminate or modify any Assumed Contract before assumption and assignment to Buyer; or (vi) requires a Counterparty's consent prior to assignment of the Assumed Contract to Buyer.

26. Upon the Debtors' assignment of Assumed Contracts to Buyer under the provisions of this Sale Order, no default shall exist under any Assumed Contracts, and no Counterparty to any Assumed Contracts shall be permitted to declare a default by any Debtor or Buyer or any of its Affiliates or otherwise take action against Buyer or any of its Affiliates as a result of any Debtor's financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Assumed Contract. Any provision in an Assumed Contract, other document, or under applicable law that prohibits or conditions the assignment or sublease of such Assumed

Contract (including, without limitation, the granting of a lien therein) or allows the relevant Counterparty to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force or effect. The failure of the Debtors or Buyer to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Debtors' or Buyer's rights to enforce every term and condition of the Assumed Contract. Any party having the right to consent to the assumption or assignment of any Assumed Contracts that failed to object to such assumption or assignment is deemed to have consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code.

27. **Statutory Mootness.** The transactions contemplated by the Purchase Agreement and Related Agreements are undertaken by Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Acquired Assets or the assignment of Assumed Contracts to Buyer free and clear of Claims, unless such authorization is duly stayed before the Closing Date pending such appeal. Buyer is a good faith purchaser of the Acquired Assets and is granted and entitled to all of the benefits and protections afforded to a good faith purchaser under section 363(m) of the Bankruptcy Code, including with respect to the transfer of the Assumed Contracts as part of the Sale Transaction pursuant to section 365 of the Bankruptcy Code and this Order. The Debtors and Buyer will be acting in good faith if they proceed to consummate the Sale Transaction at any time after entry of this Sale Order.

28. **No Avoidance of Purchase Agreement.** Neither the Debtors nor Buyer has engaged in any conduct that would cause or permit the Purchase Agreement or Related Agreements to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Accordingly, the Purchase Agreement, Related Agreements, and the Sale Transaction shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Purchase Agreement, Related Agreements, or the Sale Transaction.

29. **Waiver of Bankruptcy Rules 6004(h), 6006(d) and 7062.** Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d), 7062, or any applicable provisions of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the Northern District of Illinois, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Sale Transaction, and the Debtors and Buyer may close the Sale Transaction as soon as practicable. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal being foreclosed as moot.

30. **Binding Effect of Sale Order.** The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon each of the Debtors, their estates and their creditors, any affected third parties, all holders of equity interests in any of the Debtors, all holders of any Claims, whether known or unknown, against any of the Debtors, any holders of Claims against or on all or any portion of the Acquired Assets, including, but not limited to, all contract counterparties, holders of leasehold interests, governmental units, and any

trustees, examiners, administrators, responsible officers, estate representatives, or similar entities for any of the Debtors, if any, subsequently appointed in any of the Debtors' Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' chapter 7 cases, and each of their respective Affiliates, successors, and assigns. The Purchase Agreement and this Sale Order shall inure to the benefit of the Debtors, their estates and creditors, Buyer and its Affiliates, and each of their respective successors and assigns. The Purchase Agreement, the Sale Transaction, and this Sale Order shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, or any trustee, examiner, or receiver.

31. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Sale Order, the Purchase Agreement, or any documents executed in connection therewith, the provisions contained in this Sale Order, the Purchase Agreement, any documents executed in connection therewith, shall govern, in that order. Nothing contained in any chapter 11 plan hereinafter confirmed in these Chapter 11 Cases, any order confirming such plan, or in any other order of any type or kind entered in these Chapter 11 Cases (including, without limitation, any order entered after any conversion of any or all of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code) or in any related proceeding shall alter, conflict with, or derogate from the provisions of the Purchase Agreement or the terms of this Sale Order.

32. **Modification of Purchase Agreement.** The Purchase Agreement, the Related Agreements, and any other documents or other instruments executed in connection therewith, may be modified, amended, or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of the Court; provided that (i) any such modification, amendment, or supplement shall not materially change the terms of the Purchase Agreement, Related Agreements, or any documents or other instruments executed in

connection therewith; (ii) written notice of any non-material modification or amendment shall be provided to counsel for the Secured Lenders and the Creditors' Committee within two (2) business days after entering into such amendment or modification; (iii) advanced written notice of any material modification or amendment shall be provided to counsel for the Secured Lenders and the Creditors' Committee, which parties may object to such modification or amendment, in writing, within three (3) business days (unless such parties consent to a shorter notice period) from the date of the transmittal of such notice of amendment or modification.

33. **Bulk Sales; Taxes.** No bulk sales law, bulk transfer law, or similar law of any state or other jurisdiction (including those relating to Taxes other than Transfer Taxes) shall apply in any way to the transactions contemplated by the Purchase Agreement, the Sale Motion, or this Sale Order. Except as otherwise expressly provided in the Purchase Agreement, all obligations of the Debtors relating to Taxes, whether arising under any law, by the Purchase Agreement, or otherwise shall be the obligation of and fulfilled and paid by the Debtors.

34. **Controlled Group Reservation of Rights.** Nothing herein or in the Purchase Agreement shall affect, impair or limit the claims of any pension plan against the Debtors or any member of the control group of the Debtors' or such control group member's rights to dispute such claims.

35. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce, and implement the terms and provisions of this Sale Order, the Purchase Agreement, Related Agreements, all amendments thereto, and any waivers and consents thereunder (and of each of the agreements executed in connection therewith), to adjudicate disputes related to this Sale Order, the Purchase Agreement, Related Agreements, the

assumption and assignment of any Assumed Contracts, and to enforce the injunctions set forth herein.

Dated: \_\_\_\_\_, 2017  
Chicago, Illinois

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THE HONORABLE PAMELA S. HOLLIS  
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT A



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**PURCHASE AGREEMENT**  
**BY AND AMONG**  
**RACEWAY CENTRAL, LLC (SELLER)**  
**AND**  
**Steve Navarro (BUYER)**  
**\_\_\_\_\_, 2017**

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## PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 2017 (the "Execution Date") by and between Raceway Central, LLC, an Illinois limited liability company ("Seller"), and Steve Navarro, ("Buyer"). Seller and Buyer are referred to collectively herein as the "Parties".

### WITNESSETH

WHEREAS, on May 4, 2017, Seller and certain of its affiliates commenced voluntary cases under chapter 11 of title 11 (the "Bankruptcy Cases") of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware, which cases have been transferred to and are now pending in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court"); and

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase and acquire the Acquired Assets and Assumed Liabilities (each as defined herein), all as more specifically provided herein.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

### **ARTICLE I DEFINITIONS**

#### Section 1.1 Definitions. For purposes of this Agreement:

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where "control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by Contract, or otherwise.

"Acquired Assets" means all of Seller's right, title, and interest in and to all of the following assets:

(a) all rights and interests of Seller's with respect to the Owned Real Property, together with all facilities improvements and other appurtenances thereto and rights in respect thereof and all servitudes, easements, rights-of-way, other surface use agreements related thereto.

(b) to the maximum extent permitted by the Bankruptcy Code and in accordance with the terms herein, the leases set forth on Exhibit A under the heading "Assumed Leases", other than those Assumed Leases that expire or that are terminated prior to Closing (the "Assumed Leases"), together with (to the extent of Seller's interest therein) the buildings, fixtures and improvements located on or attached to such real property, and all rights arising therefrom, and all tenements, hereditaments,

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appurtenances and other real property rights appertaining thereto, subject to the rights of the applicable landlord (including rights to ownership or use of such property) under such Assumed Leases;

“Agreement” has the meaning set forth in the preamble.

“Allocation Principles” has the meaning set forth in Section 2.7.

“Assessments” has the meaning set forth in Section 6.3(b).

“Assumed Liabilities” means the Cure Costs and all liabilities of the Seller relating to or arising out of the ownership or operation of any Acquired Asset from and after the Closing Date, but in all cases excluding the Excluded Liabilities.

“Bankruptcy Cases” has the meaning set forth in the recitals.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Business” means the operations of Seller at the Owned Real Property and in relation to the Acquired Assets.

“Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the laws of the State of Illinois or is a day on which banking institutions located in the State of Illinois are authorized or required by Law or other governmental action to close.

“Buyer” has the meaning set forth in the preamble.

“Closing” has the meaning set forth in Section 2.4.

“Closing Date” has the meaning set forth in Section 2.4.

“Contract” means any written agreement, contract, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and signed by parties intending to be bound thereby, other than the Assumed Leases.

“Contracting Parties” has the meaning set forth in Section 9.14.

“Cure Costs” means all amounts payable in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the Seller and assignment to Buyer of the Assumed Leases.

“Damages” means any actual losses, claims, Liabilities, debts, damages, fines, penalties, or costs (in each case, including reasonable out of pocket expenses (including reasonable fees and expenses of counsel)).



“Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.

“Escrow Agent” means First American Title Insurance Company.

“Escrow Agreement” means that certain Escrow Agreement, dated as of \_\_\_\_\_, by and among Central Grocers Inc., Buyer, and the Escrow Agent.

“Escrow Amount” has the meaning set forth in Section 2.3(b).

“Excluded Liabilities” means the following Liabilities of Seller:

- (a) any Liability not relating to or arising out of the operation of the Acquired Assets;
- (b) any Liability of Seller for Taxes (except as provided for in Section 2.8 and Section 6.3);
- (c) any mechanics liens;
- (d) any Liability of Seller for any personal property damages from any Assumed Lease.

“GAAP” means United States generally accepted accounting principles consistently applied.

“Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity.

“IRC” means the Internal Revenue Code of 1986, as amended.

“IRS” means the Internal Revenue Service.

“Knowledge” of Seller (and other words of similar import) means the actual knowledge of the Chief Executive Officer or Chief Restructuring Officer of Central Grocers, Inc.

“Law” means any constitution applicable to, and any statute, treaty, code, rule, regulation, ordinance, or requirement of any kind of, any Governmental Authority.

“Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether directly incurred, absolute or contingent, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

“Lien” means any mortgage, pledge, lien, charge, security interest, option, right of first refusal, easement, security agreement or other encumbrance or restriction on the use or transfer of any property.

“Litigation” means any action, cause of action, suit, claim, charge, investigation, audit, demand, hearing or proceeding, whether civil, criminal, administrative, or arbitral, whether at law or in equity (including actions or proceedings seeking injunctive relief) and whether before any Governmental Authority.

“Material Adverse Effect” means any effect or change that has a material adverse effect on the condition of the Acquired Assets, taken as a whole, other than any effects or changes arising from or related to: (a) general business or economic conditions in any of the geographical areas in which the Acquired Assets are located; (b) any condition or occurrence affecting retail grocery generally; (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (d) financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or accounting rules; (g) the taking of any action contemplated by this Agreement taken with the written consent of the other Party; (h) any effects or changes as a result of the announcement or pendency of this Agreement; (i) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code; (j) the sale of any other assets or stores to any third parties by Seller or any of its Affiliates; (k) any effects or changes arising from or related to the breach of the Agreement by Buyer; (l) the failure of Seller to obtain any consent, permit, authorization, waiver or approval required in connection with the transactions contemplated hereby; (m) any strike or labor dispute, (n) intentionally omitted; (o) any effect resulting from the filing of the Bankruptcy Cases; or (p) any matter of which Buyer is aware on the date hereof.

“Non-Party Affiliates” has the meaning set forth in Section 9.14.

“Ordinary Course of Business” means the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice.

“Outside Date” has the meaning set forth in Section 8.1(b)(ii).

“Owned Real Property” has the meaning set forth in Exhibit B.

“Parties” has the meaning set forth in the preamble.

“Permitted Lien” means (a) Liens for Taxes not yet delinquent or that are being contested in good faith by appropriate proceedings; (b) ~~[Intentionally Deleted] mechanic’s, workmen’s, repairmen’s, warehousemen’s, carrier’s or other similar Liens, including all statutory liens, arising or incurred in the Ordinary Course of Business or with respect to the Owned Real Property;~~ (c) with respect to leased or licensed real or personal property, the terms and conditions of the Lease, license, sublease or other occupancy agreement applicable thereto; (d) with respect



to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon that are imposed by any Governmental Authority having jurisdiction over such real property; (e) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects with respect to the Acquired Assets that do not or would not reasonably be expected to have a Material Adverse Effect; (f) matters that would be disclosed on an accurate survey of the real property; (g) ~~[Intentionally Deleted]any liens shown in any title commitment, report or policy, or otherwise of record;~~ (h) any other Liens that Buyer has expressly stated are acceptable to Buyer in a writing delivered to Seller; and (i) other than any of the Liens set forth in the foregoing clauses (a) through (g) and other than any Lien that is required to be removed or cured by the applicable tenant under the applicable Lease or was created by such tenant, any Liens on the fee property underlying any Lease that do not or would not reasonably be expected to adversely affect the current occupancy or use of such real property in any material respect or impose any material adverse obligations on Buyer following the Closing.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or any other entity, including any Governmental Authority or any group of any of the foregoing.

“Pre-Closing Period” has the meaning set forth in Section 6.3(c).

“Prorated Charges” has the meaning set forth in Section 2.8(a).

“Proration Period” has the meaning set forth in Section 6.3(b).

“Purchase Price” has the meaning set forth in Section 2.3(a).

“Representative” means, when used with respect to a Person, the Person’s controlled Affiliates (including Subsidiaries) and such Person’s and any of the foregoing Persons’ respective officers, directors, managers, members, shareholders, partners, employees, agents, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants).

“Sale Hearing” means a hearing before the Bankruptcy Court to approve this Agreement and the Sale Order.

“Sale Order” means an order of the Bankruptcy Court in substantially the form attached hereto as Exhibit D (a) approving (i) this Agreement and the execution, delivery, and performance by Seller of this Agreement and the other instruments and agreements contemplated hereby; (ii) the sale of the Acquired Assets to Buyer free and clear of all Liens, other than any Permitted Liens or any Assumed Liabilities; and (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein; (b) determining that Buyer is a good faith purchaser; and (c) providing that the Closing will occur in accordance with the terms and conditions hereof.

“Seller” has the meaning set forth in the preamble.

“Subsidiary” means, with respect to any Person, on any date, any Person (a) the accounts of which would be consolidated with and into those of the applicable Person in such Person’s

consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date or (b) of which securities or other ownership interests representing more than fifty percent of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests or more than fifty percent of the profits or losses of which are, as of such date, owned, controlled or held by the applicable Person or one or more subsidiaries of such Person.

“Tax” or “Taxes” means any United States federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, stamp, occupation, premium, windfall profits, environmental (including taxes under section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether disputed or not.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transfer Tax” has the meaning set forth in Section 6.3(a).

Section 1.2 Interpretations. Unless otherwise indicated herein to the contrary:

(a) When a reference is made in this Agreement to an Article, Section, Exhibit, clause or subclause, such reference shall be to an Article, Section, Exhibit, clause or subclause of this Agreement.

(b) The words “include,” “includes” or “including” and other words or phrases of similar import, when used in this Agreement, shall be deemed to be followed by the words “without limitation.”

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

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

(e) The use of “or” herein is not intended to be exclusive.

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

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

(h) References herein to a Person are also to its successors and permitted assigns. Any reference herein to a Governmental Authority shall be deemed to include reference to any successor thereto.

(i) Any reference herein to "Dollars" or "\$" shall mean United States dollars.

(j) Buyer acknowledges and agrees that the specification of any dollar amount in the representations, warranties, or covenants contained in this Agreement is not intended to imply that such amounts or higher or lower amounts are or are not material, and Buyer shall not use the fact of the setting of such amounts in any dispute or controversy between the Parties as to whether any obligation, item, or matter is or is not material.

(k) References in this Agreement to materials or information "furnished to Buyer" and other phrases of similar import include all materials or information made available to Buyer or its Representatives in the data room prepared by Seller or provided to Buyer or its Representatives in response to requests for materials or information.

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

## ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, pursuant to section 363 of the Bankruptcy Code and in accordance with the Sale Order entered by the Bankruptcy Court, Buyer will purchase from Seller, and Seller will sell, transfer, assign, convey, and deliver to Buyer at the Closing the Acquired Assets.

Section 2.2 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, Buyer will assume and become responsible for the Assumed Liabilities at the Closing. Buyer agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms thereof.

Section 2.3 Consideration; Deposit; Escrow Amount.

(a) The consideration for the Acquired Assets shall be the aggregate Dollar amount equal to \$1,850,000 (the "Purchase Price"), which shall be allocated for the Acquired Asset as set forth on Exhibit C, subject to Section 2.7 of this Agreement.



(b) Upon the execution of this Agreement, pursuant to the terms of the Escrow Agreement, Buyer shall immediately deposit with the Escrow Agent the sum of \$[185,000.00] by wire transfer of immediately available funds (the "Escrow Amount"). The Escrow Amount shall be released by the Escrow Agent and delivered to either Buyer or Seller, in accordance with the provisions of this Agreement and the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrow Amount (together with all accrued investment income thereon, if any) shall be distributed as follows:

(i) if the Closing shall occur, the Escrow Amount shall be paid to Seller and applied towards the Purchase Price payable by Buyer to Seller under Section 2.3(a) and all accrued investment income thereon, if any, shall be delivered to Buyer at the Closing;

(ii) if this Agreement is terminated by Seller pursuant to Section 8.1(d), the Escrow Amount, together with all accrued investment income thereon, if any, shall be delivered to Seller; or

(iii) if this Agreement is terminated for any reason other than by Seller pursuant to Section 8.1(d), the Escrow Amount, together with all accrued investment income thereon, shall in each case be returned to Buyer.

Section 2.4 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York 10153 (or such other location as shall be mutually agreed upon by Seller and Buyer) commencing at 10:00 a.m. local time on a date (the "Closing Date") that is the third (3rd) Business Day following the date upon which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in Article VII (other than conditions that by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and be effective, and title to and risk of loss associated with the Owned Real Property, shall be deemed to occur at 12:01 am, New York City time, on the Closing Date.

Section 2.5 Closing Payments and Deliveries.

(a) On the Closing Date, Buyer shall pay the Purchase Price (less the Escrow Amount, which shall be released to Seller by the Escrow Agent) to Seller, by wire transfer of immediately available funds into an account designated by Seller.

(b) At the Closing, Seller will deliver to Buyer (i) a duly executed Assignment and Assumption Agreement substantially in the form of Exhibit E (the "Assignment and Assumption Agreement") to the extent Acquired Assets include any Assumed Lease; (ii) a duly executed certificate from an officer of Seller to the effect that each of the conditions specified in Section 7.1(a) and Section 7.1(b) are satisfied; and (iii) duly executed limited warranty deeds transferring fee simple title to the Owned Real Property to be acquired at the Closing to Buyer, in substantially in the form of Exhibit F.

(c) At the Closing, Buyer will deliver to Seller (i) the Assignment and Assumption Agreement duly executed by Buyer; if applicable, and (ii) a duly executed certificate from an officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) is satisfied.

Section 2.6 Buyer's Inspection/ Review of Title. Buyer acknowledges and agrees that this Agreement shall not be subject to any diligence period. Buyer has the right to examine, at Buyer's sole cost and expense, all matters related to the Acquired Assets and to purchase title insurance with respect to same; provided, however, that this Agreement shall not be conditioned on any such diligence or title review.

Section 2.7 Allocation. Buyer and Seller agree to allocate the Purchase Price (as finally determined hereunder), the Assumed Liabilities, and all other relevant items among the Acquired Assets in accordance with section 1060 of the IRC and the Treasury Regulations thereunder (the "Allocation Principles"). No later than sixty (60) days after the Closing Date, Seller shall deliver to Buyer an allocation of the Purchase Price and the Assumed Liabilities (and all other relevant items) as of the Closing Date among the Acquired Assets determined in a manner consistent with the Allocation Principles (the "Purchase Price Allocation") for Buyer's review and comment. Any reasonable comments provided by Buyer to the Seller under this Section 2.7 shall be considered by the Seller in good faith. The Purchase Price Allocation (inclusive of any reasonable comments accepted by the Seller) shall be conclusive and binding on the parties, and Buyer and Seller agree (and agree to cause their respective subsidiaries and Affiliates) to prepare, execute, and file IRS Form 8594 and all Tax Returns on a basis consistent with the Purchase Price Allocation. None of the Parties will take any position inconsistent with the Purchase Price Allocation on any Tax Return or in any audit or Tax proceeding, unless otherwise required by a final determination by a Governmental Authority. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 2.7 shall survive the Closing without limitation.

Section 2.8 Proration.

(a) On the Closing Date all monthly payments for the month in which the Closing occurs (including base rent, common area maintenance fees, and utility charges) under the Assumed Leases (the "Prorated Charges") shall be apportioned and prorated between Seller and Buyer as of the Closing Date with (i) Buyer bearing the expense of Buyer's proportionate share of such Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Prorated Charges under the applicable Lease and the denominator being the total number of days in the lease month in which the Closing occurs, times (B) the number of days in such lease month following the day that immediately precedes the Closing Date and paying such amount at Closing to Seller to the extent payment for such Prorated Charges has been made by Seller prior to the Closing, and (ii) Seller bearing the remaining portion of such Prorated Charges (and paying the amounts thereof to Buyer to the extent payment for such Prorated Charges has not been previously made by Seller). The net amount of all Prorated Charges owed to Buyer and Seller under this shall be referred to as the "Buyer Proration Amount" if owed to Buyer or the "Seller Proration Amount" if owed to Seller. Except as set forth in this Section 2.8 and in Section 6.3, no amounts paid or

payable under or in respect of any Acquired Asset or group of Acquired Assets shall be apportioned and prorated between Seller and Buyer. Notwithstanding the foregoing there shall be no apportionment nor reduction in Purchase Price for percentage rents, if any.

(b) Transfer Taxes shall be paid in the manner set forth in Section 6.3.

(c) As to all non-monthly real estate related payments, the same shall be apportioned between Seller and Buyer as of 12:01 a.m. on the Closing Date. If any amounts are payable in installments, all installments due through the Closing together with the accrued but unpaid portion of any other installments not yet due as of the Closing shall be prorated based on the periods of time covered by such installments occurring before and after the Closing Date.

(d) If on the Closing Date any subtenant or licensee is in arrears in the payment of rent or has not paid the rent payable by it and which is attributable to the month in which the Closing occurs (whether or not it is in arrears for such month on the Closing Date), any rent received by Buyer or Seller after the Closing shall be applied to amounts due and payable by such tenant in the following order of priority: first, to rent attributable to the month in which the Closing occurred, and, thereafter, ratably, between rent attributable to the months following the month in which the Closing occurred and rent attributable to the months preceding the month in which the Closing occurred. If rent or any portion thereof received by Seller or Buyer after the Closing is due and payable to the other party by reason of the foregoing allocation, the appropriate sum shall be promptly paid to such other party.

(e) Following the Closing Date, at no cost to Seller, Buyer shall use commercially reasonable efforts to collect rent owed to Seller by any tenant allocable to the period up to and including the Closing Date. Buyer agrees to reasonably cooperate with Seller at no cost to Buyer in connection with all efforts by Seller to collect such rent.

(f) Subtenant security deposits shall not be assigned and an amount equal to such security deposits shall be a credit to the Buyer.

(g) If any of the items subject to apportionment under the foregoing provisions cannot be apportioned at the Closing because of the unavailability of the information necessary to compute such apportionment, or if any errors or omissions in computing apportionments at the Closing are discovered subsequent to the Closing, then such item shall be reapportioned and such errors and omissions corrected as soon as practicable after the Closing Date and the proper party reimbursed.

Section 2.9 Removal of Tangible Personal Property. As promptly as practicable following the Closing Date (and in any event within ten (10) Business Days), Buyer shall allow Seller to remove, at Seller's sole cost and expense, any tangible personal property that is not purchased under this Agreement that is located at the Owned Real Property or at the site of an Assumed Lease and, if requested by Seller, Buyer shall arrange transportation of such tangible personal property to a location designated by Seller at Seller's sole cost and expense.



### ARTICLE III SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that the statements contained in this Article III are true and correct as of the date of this Agreement, except as (i) set forth in any materials or information furnished to Buyer by Seller or (ii) disclosed in any forms, statements, or other documents filed with the Bankruptcy Court.

Section 3.1 Organization of Seller; Good Standing. Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of Illinois. Seller has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or other organizational power and authority to own, lease and operate its assets and to carry on its business as now being conducted, except where the failure to be so organized, existing, or in good standing or have such power and authority would not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authorization of Transaction. Subject to the Bankruptcy Court's entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, Seller has full power and authority (including full corporate or other organizational power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Seller is a party have been duly authorized by Seller. Upon due execution hereof by Seller, this Agreement (assuming due authorization and delivery by Buyer) shall constitute, subject to the Bankruptcy Court's entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

Section 3.3 Noncontravention; Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II), will (a) conflict with or result in a breach of the organizational documents of Seller; (b) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, materially violate any law or Decree to which Seller is subject in respect of the Acquired Assets; or (c) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, result in a material breach of, constitute a material default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any material Contract to which Seller is a party or to which the Acquired Assets is subject, except, in the case of either clause (b) or (c), for such conflicts, violations, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Other as required or pursuant to the Bankruptcy Code, the Sale Order and any other necessary order to close the sale of the Acquired Assets, Seller is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement, except where the failure



to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or materially impair or delay Seller's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 3.4 Title to Assets. At the Closing, subject to any Permitted Liens, Seller will have good and valid title to, or the right to use, the tangible Acquired Assets except to the extent the failure to have such title or right to use would not be expected to have a Material Adverse Effect. Pursuant to the Sale Order, Seller will convey such title to or rights to use, all of the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens).

Section 3.5 Lease Indemnity. If this Agreement is terminated pursuant to Section 8.1(b) or Section 8.1(d), Buyer shall indemnify Seller for all Liabilities and Damages arising out of any Assumed Lease assumed by Seller pursuant to section 365(k) of the Bankruptcy Code.

Section 3.6 Litigation; Decrees. Except as set forth in any materials or information furnished to Buyer by Seller and other than the Bankruptcy Case, there is no Litigation pending or, to the Knowledge of Seller, threatened, that (a) would reasonably be expected to have a Material Adverse Effect or (b) challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Other than the Bankruptcy Case, Seller is not subject to any outstanding Decree that would (a) reasonably be expected to have a Material Adverse Effect or (b) prevent or materially delay Seller's ability to consummate the transactions contemplated hereby or perform in any material respect its obligations hereunder.

Section 3.7 Brokers' Fees. Other than the fees and expenses payable to Peter J. Solomon Company ("Broker") in connection with the transactions contemplated hereby, which shall be borne by Seller, Seller has not entered into any Contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay.

Section 3.8 Taxes.

(a) In each case with respect to the Acquired Assets and except for matters that would not reasonably be expected to result in a Material Adverse Effect, (i) Seller have timely filed all Tax Returns required to be filed with the appropriate Tax authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Seller); and (ii) all Taxes shown as due on such Tax Returns have been paid (except as prohibited by the Bankruptcy Code).

(b) Seller is not a foreign person within the meaning of section 1445 of the IRC.

Section 3.9 Compliance with Laws. Seller has not received any written notice of, or been charged with, the violation of any Laws, except where such violation would not reasonably be expected to result in a Material Adverse Effect.

Section 3.10 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in this Article III, neither Seller nor any other Person shall be deemed to have made any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding Seller, the Acquired Assets or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in this Article III, SELLER MAKES NO OTHER (AND HEREBY DISCLAIM EACH OTHER) REPRESENTATION, WARRANTY, OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION, OR USE OF THE ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT, SHOULD THE CLOSING OCCUR, BUYER WILL ACQUIRE THE ACQUIRED ASSETS IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WITH RESPECT TO ENVIRONMENTAL, HEALTH, OR SAFETY MATTERS). Seller disclaims all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant, or representative of Seller or any of their Affiliates).

#### **ARTICLE IV BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents and warrants to Seller that the statements contained in this Article IV are true and correct as of the date of this Agreement.

Section 4.1 Organization of Buyer; Good Standing. Buyer is an individual with the authority to own, lease, and operate the assets and to carry on the business as now being conducted.

Section 4.2 Authorization of Transaction. Buyer has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Buyer is a party have been duly authorized by Buyer. This Agreement (assuming due authorization and delivery by Seller) constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II), will (a) conflict with or result in a breach of the organizational documents of Buyer, (b) violate any law or Decree to which Buyer is subject in respect of the Acquired Assets, or (c) result in a breach of, constitute a material default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify

or cancel, or require any notice under any Contract to which Buyer is a party or to which it is bound, except, in the case of either clause (b) or (c), for such conflicts, violations, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.4 Litigation; Decrees. There is no Litigation pending or, to Buyer's knowledge, threatened that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Neither Buyer nor any of its Subsidiaries is subject to any outstanding Decree that would prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.5 Brokers' Fees. Buyer has not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller or any of their Affiliates could become liable or obligated to pay. Buyer hereby indemnifies Seller and agrees to hold Seller harmless with respect to any fees or amounts payable to any brokers other than Broker.

Section 4.6 Sufficient Funds; Adequate Assurances. Buyer has, and upon the Closing will have, immediately available funds sufficient for the satisfaction of all of Buyer's obligations under this Agreement, including the payment of the Purchase Price and all fees, expenses of, and other amounts required to be paid by, Buyer in connection with the transactions contemplated hereby.

## ARTICLE V PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

### Section 5.1 Efforts; Cooperation.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use (except as otherwise set forth in Section 5.3) its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby (including by giving, or causing to be given, any notices to, making any filings with, and using commercially reasonable efforts to obtain any consents of Governmental Authorities, as



applicable, as are necessary and appropriate to consummate the transactions contemplated hereby). Without limiting the generality of the foregoing, (i) Seller shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.1 that are within its control or influence to be satisfied or fulfilled, (ii) Buyer shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.2 that are within its control or influence to be satisfied or fulfilled, and (iii) in the event the Bankruptcy Court requires a consumer privacy ombudsman to be appointed in connection with the transactions contemplated by this Agreement, Buyer shall provide any cooperation reasonably required by such ombudsman and shall use commercially reasonable efforts to take all reasonable actions recommended by such ombudsman in any report provided to the Bankruptcy Court.

(b) Without limiting the generality of Section 5.1(a), neither Party shall take any action, or permit any of its Subsidiaries to take any action, to materially diminish the ability of any Party to consummate, or materially delay any Party's ability to consummate, the transactions contemplated hereby, including any action that is intended or would reasonably be expected to result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VII to not be satisfied.

Section 5.2 Conduct of the Business Pending the Closing. Except (i) as set forth in materials or information furnished to Buyer by Seller, (ii) as required by applicable Law or by order of the Bankruptcy Court, (iii) as required or contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), no Seller shall subject the Acquired Assets to any Lien, except for Permitted Liens and any Lien securing any debtor in possession loan facility or granted in an order authorizing use of cash collateral.

Section 5.3 Bankruptcy Court Matters.

(a) Intentionally omitted.

(b) Bankruptcy Court Filings. As soon as reasonably practicable following the execution of this Agreement, Seller shall seek approval of the Agreement and file any necessary notice or pleadings required in connection therewith. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the transactions contemplated by this Agreement, including furnishing affidavits or other documents or information, and filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Buyer is a "good faith" purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Acquired Assets hereunder. In the event the entry of the Sale Order or approval of the transactions contemplated by this Agreement shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(c) Sale Order. Seller shall seek entry by the Bankruptcy Court of the Sale Order and any other necessary orders to close the sale of the Acquired Assets as soon as reasonably practicable following the execution of this Agreement, and Seller shall provide notice of the Sale Order to all Persons necessary to provide Buyer with the benefits and protections set forth in the Sale Order (including notice to all applicable Tax authorities). Buyer and Seller understand and agree that the transaction is subject to approval by the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order. In the event the entry of the Sale Order or approval of the transactions contemplated by this Agreement shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

Section 5.4 Notice of Developments. Seller and Buyer will give prompt written notice to the other Parties of (a) the existence of any fact or circumstance, or the occurrence of any event, of which it has knowledge that would reasonably be likely to cause a condition to a Party's obligations to consummate the transactions contemplated hereby set forth in Article VII not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; provided, however, that the delivery of any such notice pursuant to this Section 5.4 shall not be deemed to amend or supplement this Agreement and the failure to deliver any such notice shall not constitute a waiver of any right or condition to the consummation of the transactions contemplated hereby by any Party.

Section 5.5 Access; No Contact. Upon the reasonable request of Buyer, and to the extent not otherwise prohibited by applicable Law, Seller will permit Buyer and its Representatives to have, upon reasonable advance written notice, reasonable access to the premises included in the Acquired Assets during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Seller; provided, however, that, for avoidance of doubt, the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto. Prior to the Closing, Buyer shall not, and shall cause its Representatives not to, contact any employees, vendors, suppliers, landlords, or licensors of Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of Seller.

Section 5.6 Bulk Transfer Laws. Buyer acknowledges that Seller will not comply with the provisions of any bulk transfer laws or similar laws of any jurisdiction in connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

## **ARTICLE VI OTHER COVENANTS**

The Parties agree as follows with respect to the period from and after the Closing:

Section 6.1 Further Assurances. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will, at

the requesting Party's sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Buyer the Acquired Assets.

Section 6.2 Access; Enforcement; Record Retention. From and after the Closing, upon request by Seller, Buyer will permit Seller and its Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Buyer, to all premises, properties, personnel, books and records, and Contracts of or related to the Acquired Assets for the purposes of (a) preparing Tax Returns, (b) monitoring or enforcing rights or obligations of Seller under this Agreement, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Buyer to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, (ii) such action could reasonably be expected to result in violation of applicable law, or (iii) providing such access or information would be reasonably expected to be disruptive to its normal business operations. Buyer agrees to maintain the files or records which are contemplated by the first sentence of this Section 6.2 in a manner consistent in all material respects with its document retention and destruction policies, as in effect from time to time, for two (2) years following the Closing.

Section 6.3 Certain Tax Matters.

(a) Transfer Taxes. Buyer shall pay any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income Tax, fee or governmental charge (a "Transfer Tax") imposed under applicable law in connection with the transactions contemplated hereby. Accordingly, if Seller is required by Law to pay any such Transfer Taxes, Buyer shall promptly reimburse Seller for the amount of such Transfer Taxes actually paid by Seller. Buyer shall be entitled to receive such Tax Returns and other documentation reasonably in advance of filing by Seller, but not less than ten (10) Business Days prior to the due date of such Tax Returns, and such Tax Returns and other documentation shall be subject to Buyer's approval, which shall not be unreasonably withheld, delayed, or conditioned. The party that is required by applicable Law to file any Tax Returns in connection with Transfer Taxes described in the immediately preceding sentence shall prepare and timely file such Tax Returns. The Parties hereto shall cooperate in making, in a timely manner, all Tax Returns, filings, reports, forms and other documentation as are necessary or appropriate to comply with all applicable Laws in connection with the payment of Transfer Taxes and shall cooperate in good faith to minimize, to the fullest extent possible under such Laws, the amount of any such Transfer Taxes.

(b) Tax Adjustments. Taxes (other than Transfer Taxes) and any other assessments, including, without limitation, water and sewer charges (the "Assessments") imposed upon or assessed directly against the Acquired Assets (including real estate Taxes (other than those subsumed in Section 2.8), personal property Taxes and similar Taxes) for the period in which the Closing occurs (the "Proration Period") will be



apportioned and prorated between Seller and Buyer as of the Closing Date with Buyer bearing the expense of Buyer's proportionate share of such Assessments which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Assessments and the denominator being the total number of days in the Proration Period, times (ii) the number of days in the Proration Period following the Closing Date, and Seller shall bear the remaining portion of such Assessments. If the precise amount of any such Assessments cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the period immediately preceding the Proration Period and Buyer and Seller agree that such proration shall be deemed conclusive and final and no further adjustments shall be made.

(c) Tax Refunds. Seller shall be entitled to receive from Buyer all refunds (or credits for overpayments) of Taxes, including any interest paid thereon, by a Governmental Authority, attributable to any tax period ending on or prior to the Closing Date or the portion of any Proration Period ending on and including the Closing Date, net of any costs, fees, expenses or Taxes incurred in obtaining such refunds (or credits). Buyer and Seller shall execute all documents, take reasonable additional actions and otherwise reasonably cooperate as may be necessary to obtain the Tax refunds (or credits) contemplated by this Section 6.3(c). Buyer shall pay any such Tax refund (or the amount of any such credit) to the Seller within five (5) calendar days after Buyer receives such Tax refund from a Governmental Authority or files a Tax Return claiming such credit.

Section 6.4 Insurance Matters. Buyer acknowledges that, upon Closing, all insurance coverage provided in relation to Seller, or the Acquired Assets that is maintained by Seller or its Affiliates (whether such policies are maintained with third party insurers or with Seller or its Affiliates) shall cease to provide any coverage to Buyer, or the Acquired Assets and no further coverage shall be available to Buyer or the Acquired Assets under any such policies.

Section 6.5 Acknowledgements. Buyer acknowledges that, except for the representations and warranties expressly set forth in Article III (which representations and warranties shall terminate and be of no further force or effect as of the Closing), and without limiting the generality of Section 3.10, neither Seller nor any other Person makes any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding Seller, the Acquired Assets or any other matter, and neither Seller nor any other Person will be subject to any Liability to Buyer or any other Person resulting from such matters or the distribution to Buyer, or the use of, any such information. Buyer acknowledges that, should the Closing occur, Buyer will acquire the Acquired Assets in an "as is" condition and on a "where is" basis, without any representation or warranty of any kind, express or implied (including any with respect to environmental, health or safety matters). Further, without limiting any representation, warranty, or covenant of Seller expressly set forth herein, Buyer acknowledges that it has waived and hereby waives as a condition to the Closing any further due diligence reviews, inspections, or examinations with respect to Seller, the Acquired Assets, or any other matter, including with respect to engineering, environmental, title, survey, financial, operational, regulatory, and legal compliance matters.

Section 6.6 Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required by applicable Law or a Decree of the Bankruptcy Court. If any such announcement or other disclosure is required by applicable Law or a Decree of the Bankruptcy Court, the disclosing Party shall give the nondisclosing Parties prior notice of, and an opportunity to comment on, the proposed disclosure. The Parties acknowledge that Seller shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order.

## **ARTICLE VII CONDITIONS TO OBLIGATION TO CLOSE**

Section 7.1 Conditions to Buyer's Obligations. Buyer's obligation to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(a) the representations and warranties set forth in Article III shall have been true and correct on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to "material" or "Material Adverse Effect" set forth therein) has not resulted in a Material Adverse Effect;

(b) Seller shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;

(c) the Bankruptcy Court shall have entered the Sale Order and no order staying, reversing, modifying, or amending the Sale Order shall be in effect on the Closing Date;

(d) no material Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement; and

(e) each delivery contemplated by Section 2.5(b) to be delivered to Buyer shall have been delivered.

Section 7.2 Conditions to Seller's Obligations. Seller's obligations to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(a) the representations and warranties set forth in Article IV shall have been true and correct in all material respects (except that any representation or warranty that is qualified by materiality shall have been true and correct in all respects) on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);

(b) Buyer shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;



(c) the Bankruptcy Court shall have entered the Sale Order and no order staying, reversing, modifying, or amending the Sale Order shall be in effect on the Closing Date;

(d) no material Decree shall be in effect that prohibits consummation of any of the transactions contemplated by this Agreement; and

(e) each payment contemplated by Section 2.5(a) to be made to Seller shall have been made, and each delivery contemplated by Section 2.5(c) to be delivered to Seller shall have been delivered.

Section 7.3 No Frustration of Closing Conditions. Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its reasonable best efforts to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant hereunder.

## **ARTICLE VIII TERMINATION**

Section 8.1 Termination of Agreement. The Parties may terminate this Agreement at any time prior to the Closing as provided below:

(a) by the mutual written consent of the Parties;

(b) by any Party by giving written notice to the other Parties if:

(i) any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available to Buyer if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of Buyer to have fulfilled any of its obligations under this Agreement; or

(ii) the Closing shall not have occurred on or before the date that is 120 days after the Execution Date (the "Outside Date"); provided that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 8.1(b)(ii).

(c) by Buyer by giving written notice to Seller if there has been a breach by Seller of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of

Buyer at Closing set forth in Section 7.1(a) and Section 7.1(b), and such breach has not been waived by Buyer, or, if such breach is curable, cured by Seller prior to the earlier to occur of (A) ten (10) days after receipt of Buyer's notice of intent to terminate or (B) the Outside Date;

(d) by Seller by giving written notice to Buyer that there has been a breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Seller at Closing set forth in Section 7.2(a) and Section 7.2(b), and such breach has not been waived by Seller, or, if such breach is curable, cured by Buyer prior to the earlier to occur of (A) ten (10) days after receipt of Seller's notice of intent to terminate or (B) the Outside Date; or

(e) by Seller or Buyer, if the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement.

**Section 8.2 Effect of Termination.** If any Party terminates this Agreement pursuant to Section 8.1, all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I, Section 2.3(b), Section 3.10, Section 6.6, Section 8.3, Article IX, and this Section 8.2 shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 2.3(b)(ii)) to the other Party hereunder; provided, however, that nothing in this Section 8.2 shall relieve any Party from Liability for any breach occurring prior to any such termination set forth in this Agreement.

**Section 8.3 Lease Indemnity.** If this Agreement is terminated pursuant to Section 8.1(b) or Section 8.1(d), Buyer shall indemnify Seller for all Liabilities and Damages arising out of any Assumed Lease assumed by Seller pursuant to section 365(k) of the Bankruptcy Code.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.1 Survival.** Except for any covenant that by its terms is to be performed (in whole or in part) by any Party following the Closing, including, without limitation, Article I, Section 2.3(b), Section 3.10, Section 6.6, Article IX, and Section 8.2, none of the representations, warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 2.5(b) or Section 2.5(c) shall survive, and each of the same shall terminate and be of no further force or effect as of, the Closing.

**Section 9.2 Expenses.** Except as otherwise expressly set forth herein, each Party will bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants. For the avoidance of doubt, Buyer shall pay all recording fees arising from the transfer of the Acquired Assets.

**Section 9.3 Entire Agreement.** This Agreement, the documents contemplated herein (the "Related Agreements") constitute the entire agreement between the Parties and

supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

Section 9.4 Incorporation of Exhibits. The Exhibits to this Agreement are incorporated herein by reference and made a part hereof.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties, which shall not be unreasonably denied.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) upon receipt of confirmation of receipt if sent by facsimile transmission; (d) on the day such communication was sent by e-mail; or (e) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Seller: c/o Central Grocers, Inc.  
2600 West Haven Avenue  
Joliet, IL 60433  
Attention: Ken Nemeth  
E-mail: knemeth@central-grocers.com

With a copy (which shall not constitute notice to Seller) to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153



Attention: Stephen Karotkin, Sunny Singh and Gavin Westerman  
Facsimile: (212) 310-8007  
E-mail: [stephen.karotkin@weil.com](mailto:stephen.karotkin@weil.com)  
[sunny.singh@weil.com](mailto:sunny.singh@weil.com)

Weil, Gotshal & Manges LLP  
1395 Brickell Avenue, 12th Floor  
Miami, Florida 33131  
Attention: Beatriz Azcuy-Diaz, Esq.  
Facsimile: (305) 374-7159  
E-mail: [beatriz.azcuy@weil.com](mailto:beatriz.azcuy@weil.com)

If to Buyer: Steve Navarro  
P.O. Box 14045  
Oakland, CA 94614  
Attention: Steven Navarro  
Facsimile (510) 383 2917  
E-mail: [stevennavarro1213@gmail.com](mailto:stevennavarro1213@gmail.com)

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 9.7.

Section 9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Illinois (without giving effect to the principles of conflict of Laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

Section 9.9 Submission to Jurisdiction: Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 9.7; provided, however, that nothing in this Section 9.9 shall affect the right of any Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions

will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby or thereby.

**Section 9.10 Waiver of Jury Trial.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

**Section 9.11 Specific Performance.** Buyer acknowledges and agrees that Seller and its estate would be damaged irreparably in the event Buyer does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that Seller may have under law or equity, Seller shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

**Section 9.12 Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

**Section 9.13 No Third Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person other than Buyer, Seller, and their respective successors and permitted assigns.

**Section 9.14 Non-Recourse.** All claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (the "Contracting Parties"). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or lender to, any of the foregoing ("Non-Party Affiliates"), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or the Related Agreements or based on, in respect of, or by reason of this Agreement or the Related Agreements or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting



Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or the Deed or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 9.14.

Section 9.15 Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.16 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.17 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

Section 9.18 Limitations Under Applicable Law. Notwithstanding anything to the contrary contained in this Agreement, the Parties' obligations hereunder shall be subject to limitations under applicable Law, including, without limitation, Sections 1113 and 1114 of the Bankruptcy Code.

Section 9.19 Multiple Sellers. In the event that there is more than one "seller" under this Agreement, the term "Seller" shall refer to each seller individually and/or all sellers collectively, as the context so requires; provided, that no Person shall be deemed to make any representations or warranties with respect to any other Person or any other Person's property. Payments to and liabilities under the Agreement shall be apportioned among the sellers in accordance with the percentage of the Purchase Price allocated to such seller under the allocation provisions hereunder.

Section 9.20 Riders. One of the following riders, if checked off, is attached hereto, and is hereby incorporated herein and made a part hereof.

- ☐ FF&E Rider; OR
- ☐ Inventory Rider; OR
- ☐ FF&E and Inventory Rider


[Remainder of page intentionally left blank.]

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

RACEWAY CETNRAL, LLC

By: \_\_\_\_\_  
Name:  
Title:

STEVE NAVARRO

By:   
Name: STEVE NAVARRO  
Title:

CGI ACKNOWLEDGEMENT:

Central Grocers Inc. does hereby acknowledge, solely as a party to the Escrow Agreement, that it will deliver all necessary notices pursuant to the Escrow Agreement and this Agreement on behalf of Seller.

By: \_\_\_\_\_  
Name:  
Title:



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

RACEWAY CENTRAL, LLC

By:   
Name: Donald Harer  
Title: Chief Restructuring Officer

STEVE NAVARRO

By: \_\_\_\_\_  
Name:  
Title:

CGI ACKNOWLEDGEMENT:

Central Grocers Inc. does hereby acknowledge, solely as a party to the Escrow Agreement, that it will deliver all necessary notices pursuant to the Escrow Agreement and this Agreement on behalf of Seller.


By:   
Name: Donald Harer  
Title: Chief Restructuring Officer

EXHIBIT A

Assumed Leases

1. Commercial Building Lease between the Seller and BP Products North America Inc. ("Tenant") dated on or about October, 2007, as amended by the Lease Amendment and Extension Agreement dated September 30, 2010 between Seller and Tenant, as amended by the Second Amendment and Extension Agreement dated February 11, 2014 between Seller and Tenant.
2. ATM Lease between Seller and Centier Bank.

EXHIBIT B

Owned Real Property

The real property located at **6603 Columbia Avenue, Hammond IN 46320 (assessor parcel number 45-07-07-201-002.000.0223)** and **6529 Columbia Avenue, Hammond IN 46320 (assessor parcel number 45-07-07-201-002.000.023)** together with all structures and improvements thereon, all fixtures therein or thereto and all privileges, easements and appurtenances pertaining thereto, including all of Seller's right, title and interest in and to any adjacent or adjoining streets, alleys, or rights-of-ways and any strips or gores adjacent or adjoining thereto, or used in connection with the beneficial use and enjoyment thereof (the "Owned Real Property").

EXHIBIT C

Purchase Price Allocation for Acquired Assets

100% of the Purchase price will be allocated for all the assets listed in Exhibit B as follows:

\$1,450,000 for 6529 Columbia Avenue, Hammond IN 46320 (assessor parcel number 45-07-07-201-002.000.023);

\$400,000 for 6603 Columbia Avenue, Hammond IN 46320 (assessor parcel number 45-07-07-201-002.000.0223)

EXHIBIT D

Form of Sale Order

EXHIBIT E

Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is entered into and effective as of June 26, 2017, by and between Raceway Central LLC, an Illinois limited liability company, whose address is 2600 West Haven Avenue, Joliet, IL 60433 ("Seller"), and Steve Navarro, whose address is P.O. Box 14045, Oakland, CA 94614 ("Buyer"). Seller and Buyer are referred to collectively herein as the "Parties."

WHEREAS, the Parties are parties to that certain Purchase Agreement, dated June 26, 2017 (the "Purchase Agreement") (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement);

WHEREAS, the execution and delivery of this Assignment is contemplated by the Purchase Agreement; and

WHEREAS, Seller desires to assign, transfer, convey, and deliver to Buyer the Lease described in Exhibit A attached hereto including all amendments, modifications, and supplements thereto (collectively, the "Lease"), and Buyer desires to accept an assignment of the Lease together with all right, title, and interest of Seller thereunder. The Lease encumbers all or a portion of certain property (the "Leased Premises") which property is more specifically described on Exhibit B attached hereto (the "Premises").

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, the Parties hereby agree as follows:

- 1) Assignment and Assumption of Lease. Effective as of the Closing, Seller hereby assigns, transfers, conveys, and delivers to Buyer all of Seller's estate, right, title and interest as tenant of the leasehold estate described under the Lease, and Buyer hereby accepts the assignment, transfer, conveyance, and delivery of Seller's estate, rights, title and interest in, to and under such leasehold estate, and assumes and agrees to pay, discharge, and perform when due all of Seller's obligations as tenant under the Lease.
- 2) Conflict. The assignment and assumption of the Lease (and the obligations thereunder) made hereunder are made in accordance with and subject to the Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede, and prevail. Notwithstanding anything to the contrary in this Assignment, nothing herein is intended to, nor shall it, extend, amplify, or otherwise alter the Purchase Agreement.




- 3) Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Assignment is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Assignment.
- 4) Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by, or on behalf of, Buyer and Seller.
- 5) Counterparts; Facsimile and Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
- 6) Governing Law. This Assignment shall be governed by the Laws of the state in which the Leased Premises are located, except to the extent that the Laws of such state are superseded by the Bankruptcy Code.
- 7) Third Party Beneficiaries and Obligations. This Assignment shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Assignment, express or implied, is intended to or shall confer upon any Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, or liabilities under or by reason of this Assignment.
- 8) Recordation. Seller makes no representation regarding the recordability of this Assignment, nor the Lease or related documents. Seller shall bear no liability for the failure of the Lease or related documents to be recorded.
- 9) Further Assurances. Each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Party may reasonably request to give full effect to this Assignment, including, without limitation, any other form of assignment agreement required in order to record this Assignment in the appropriate public records of the county in which the Leased Premises is located.

\* \* \* \* \*

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first above written.

**SELLER:**

Raceway Central LLC, an Illinois limited liability company

By:   
Name: Donald Harer  
Title: Chief Restructuring Officer

[ACKNOWLEDGMENTS]

{6971714:}

[Seller Signature Page to Assignment and Assumption of Lease –  
City, State (Store \_\_ ) ( \_\_\_\_ )]

**BUYER:**

Steve Navarro

By: 

Name: STEVE NAVARRO

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

[ACKNOWLEDGMENTS]

{6971714:}

[Buyer Signature Page to Assignment and Assumption of Lease –  
City, State (Store \_\_ ) ( \_\_\_\_ )]

WEIL:196235739\3176248.0004

**EXHIBIT A**

Lease

Commercial Building Lease between the Seller and BP Products North America Inc. ("Tenant") dated on or about October, 2007, as amended by the Lease Amendment and Extension Agreement dated September 30, 2010 between Seller and Tenant, as amended by the Second Amendment and Extension Agreement dated February 11, 2014 between Seller and Tenant.

## **EXHIBIT B**

### Premises

The real estate consisting of approximately 52,763 square feet of area, commonly known as 6529 S. Columbia Avenue, Hammond, IN 46320 depicted on Exhibit A of the Lease, together with all improvements now located on the real estate during the term, and all appurtenances belonging to or in any way pertaining to the premises. The real estate, improvements and appurtenances are referred to as the "Leased Premises". The Leased Premises includes a parking area, of which 350 non-exclusive parking spaces are included as part of the Leased Premises. The Leased Premises also includes approximately 11,000 square feet of mezzanine space within the building.

EXHIBIT F

Form of Deed

LIMITED WARRANTY DEED

Parcel No(s). \_\_\_\_\_

***THIS INDENTURE WITNESSETH***, That \_\_\_\_\_ ("Grantor"), ***Conveys and Specially Warrants*** to \_\_\_\_\_ ("Grantee"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in \_\_\_\_\_ County, State of \_\_\_\_\_:

**SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN**

**Property Address:** \_\_\_\_\_

**It is understood and agreed by the parties hereto that the title to the real estate herein conveyed is warranted only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.**

***Subject*** to current taxes not delinquent, and all easements, agreements and restrictions of record and all public rights of way.

The undersigned person(s) executing this deed on behalf of Grantor represent and certify that he/she/they is/are duly elected officer(s) of Grantor and has/have been fully empowered to execute and deliver this deed; that Grantor has full capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

[SIGNATURE ON FOLLOWING PAGE]



*IN WITNESS WHEREOF*, Grantor has executed this deed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**GRANTOR**

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

Printed: \_\_\_\_\_

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

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, who acknowledged the execution of the foregoing Deed for and on behalf of said Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

My Commission expires: \_\_\_\_\_ Signature \_\_\_\_\_  
\_\_\_\_\_ Printed \_\_\_\_\_  
Resident of \_\_\_\_\_ County  
State of \_\_\_\_\_

This instrument was prepared by: \_\_\_\_\_

Upon recording, return to: \_\_\_\_\_

Send Tax Statements to: \_\_\_\_\_

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

EXHIBIT A

### ADDENDUM TO PURCHASE AGREEMENT

This Addendum to Purchase Agreement (the "Addendum") is dated as of the same date as that certain Purchase Agreement (the "Agreement") dated Sept. 14, 2017 (the "Effective Date") between RACEWAY CENTRAL, LLC, an Illinois limited liability company ("Seller") and STEVE NAVARRO, an individual ("Buyer") regarding certain commercial property (the "Property") commonly known as 6603 Columbia Avenue, Hammond, IN 46320 (the "6603 Columbia Ave Property") and 6529 Columbia Avenue, Hammond, IN 46320 (the "6529 Columbia Ave Property"), as more particularly identified in the Agreement.

WHEREAS, Seller and Buyer are parties to the Agreement; and

WHEREAS, Seller and Buyer acknowledge and agree that there is a tax lien (the "Tax Lien") which was filed by Lake County, Indiana against the portion of the Property commonly known as 6529 Columbia Avenue, Hammond, IN 46320; and

WHEREAS, Seller and Buyer acknowledge and agree (without waiving any rights) that a disposition may have occurred with respect to the Tax Lien and the 6529 Columbia Ave Property (the "Tax Sale") and that the parties require additional time to redeem or otherwise resolve the status of the 6529 Columbia Ave Property; and

WHEREAS, because of the extra time required to resolve the Tax Lien and Tax Sale, Seller and Buyer have agreed to close on the sale of the Property in two (2) transactions: (1) 6603 Columbia Ave Property and then (2) 6529 Columbia Ave Property.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and Tenant agree as follows:

1. Recitals. The parties agree that the above referenced recitals are true and correct as of the Effective Date and are hereby incorporated herein by reference.
2. Capitalized Terms. Any capitalized terms used herein, which are not otherwise defined herein shall have the same definition ascribed to them in the Agreement.
3. Bifurcation of Closing. Notwithstanding anything to the contrary contained in Section 2.4 of the Agreement, Seller and Buyer agree that the Closing may occur in two transactions.
4. The 6603 Columbia Closing. The language in Section 2.4 shall be amended so that the first Closing (the "6603 Columbia Closing") shall only be for the transfer of the 6603 Columbia Ave Property. The Closing on the 6603 Columbia Ave Property shall take place at the title company (or such other location as shall be mutually

agreed upon by Seller and Buyer) commencing at 10:00 a.m. local time on a date (the “6603 Closing Date”) that is the third (3rd) Business Day following the date upon which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in Article VII (other than conditions that relate solely to the 6529 Columbia Ave Property or which by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto.

5. The 6529 Columbia Closing. The language in Section 2.4 shall be amended so that the second Closing (the “6529 Columbia Closing”) shall only be for the transfer of the 6529 Columbia Ave Property. The Closing on the 6529 Columbia Ave Property shall take place at the title company (or such other location as shall be mutually agreed upon by Seller and Buyer) commencing at 10:00 a.m. local time on a date (the “6529 Closing Date”) that is the fifth (5th) Business Day following the date upon which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in Article VII (other than conditions that relate solely to the 6603 Columbia Ave Property or which by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto.

6. Closing Payments; Purchase Price Allocation. Section 2.5 of the Agreement shall be amended so that the Purchase Price to be paid related to the 6603 Columbia Closing and the 6529 Columbia Closing shall be in accordance with the Purchase Price Allocation for Acquired Assets on Exhibit C to the Agreement.

7. Closing Deliveries. Section 2.5 of the Agreement shall be amended so that the deliveries to be made for the separate 6529 Columbia Closing and the 6603 Columbia Closing shall be those deliveries identified in Section 2.5 of the Agreement that are applicable to such properties. Those deliveries that are applicable to both parties shall be delivered by the parties.

8. Prorations. Section 2.8 of the Agreement shall be amended so that the Prorated Charges shall be allocated between the 6529 Columbia Closing and the 6603 Columbia Closing, as applicable based on the portions of the Owned Real Property subject to such applicable Closing and based on the applicable Closing Dates for such Closings.

9. Removal of Tangible Personal Property. Section 2.9 of the Agreement shall be amended so that the time periods for removing such property by Seller shall be calculated based on the Closing Dates for the applicable portions of the Owned Real Property.

10. Representations. Section 3.4 and Section 3.9 of the Agreement shall each be amended to except the Tax Lien and Tax Sale for 6529 Columbia Ave. from Seller’s representations and warranties.

11. Covenants. Article VI of the Agreement shall be amended to acknowledge that Buyer is aware of the Tax Lien and Tax Sale and that Buyer shall

permit Seller ninety (90) days from the date of the 6603 Columbia Closing to have such Tax Lien released and have title to the 6529 Columbia Property cleared for such Tax Lien and Tax Sale.

12. Earnest Money. Seller acknowledges that it is holding One Hundred Ten Thousand and No/100 Dollars (\$110,000.00) as earnest money (the "Earnest Money") regarding the Agreement. For the 6603 Columbia Closing, a pro rata portion (based on the Purchase Price Allocation identified in paragraph 6 of this Addendum) of the Earnest Money shall apply as the Escrow Amount in accordance with the Agreement. For the 6529 Columbia Closing, a pro rata portion (based on the Purchase Price Allocation identified in paragraph 6 of this Addendum) of the Earnest Money shall apply as the Escrow Amount in accordance with the Agreement.

13. Acquired Assets; ATM Lease. If any other Acquired Assets (other than the Owned Real Property) are to be transferred to Buyer pursuant to the Agreement, such Acquired Assets that relate to the 6529 Columbia Ave Property shall be transferred as part of the 6529 Columbia Closing and such Acquired Assets that relate to the 6603 Columbia Ave Property shall be transferred as part of the 6603 Columbia Closing. Notwithstanding anything to the contrary contained herein or the Agreement, the ATM lease with Centier Bank shall be assigned to Buyer to the extent such lease has not already terminated and provided that it is otherwise assignable under the Bankruptcy Code.

14. Acquired Liabilities. If any Acquired Liabilities are to be transferred to Buyer pursuant to the Agreement, such Acquired Liabilities that relate to the 6529 Columbia Ave Property shall be transferred as part of the 6529 Columbia Closing and such Acquired Liabilities that relate to the 6603 Columbia Ave Property shall be transferred as part of the 6603 Columbia Closing.

15. Entire Agreement; Conflicts. The Agreement, as modified by this Addendum, constitutes and contains the entire agreement between the parties. In the event of a conflict between the terms and conditions contained in the Agreement and this Addendum, the terms and conditions contained in this Addendum shall govern and control. Except as modified or amended by this Addendum, the terms and conditions of the Agreement shall remain in full force and effect and unchanged.

16. Counterparts. This Addendum may be executed in one or more counterparts, each of which shall be deemed an original. The parties acknowledge and agree that their signatures and initials required in this Addendum may be executed via "wet" original handwritten signature or initials, or via electronic signature or mark, which shall be binding on the parties as originals, and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means, and any such transmittal shall constitute delivery of the executed document for all purposes of the Agreement, as amended by this Addendum.

17. Applicable Law. This Addendum shall be governed by and construed in accordance with the internal Laws of the State of Illinois (without giving effect to the principles of conflict of Laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.



18. Bankruptcy Court Approval. Buyer and Seller understand and agree that the Addendum is subject to approval by the Bankruptcy Court in accordance with the terms of the Agreement and that this Addendum shall not be effective and binding on the parties unless such approval is received. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining any such approval required by the Bankruptcy Court.

19. Further Assurances. Each of the parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other party may reasonably request to give full effect to this Addendum, the purpose of which is to allow the parties to effectuate the transfer of the Acquired Assets in two (2) steps with the first transfer relating to the Acquired Assets related to the 6603 Columbia Ave Property and the second transfer relating to the Acquired Assets related to the 6529 Columbia Ave Property.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have signed this Addendum as of the date  
first written above.


Seller:

Raceway Central, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Buyer:

By:

  
\_\_\_\_\_  
Steve Navarro


IN WITNESS WHEREOF, the parties have signed this Addendum as of the date first written above.

Seller:

Buyer:

Raceway Central, LLC

By:

By: 

\_\_\_\_\_  
Steve Navarro

Name: Donald Harer

Title: Chief Restructuring Officer