

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

IN RE: * CASE NO. 16-11007
*
DL LABS, LLC * SECTION "B"
*
Debtor * CHAPTER 11
*

ORDER GRANTING MOTION TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS UNDER 11 U.S.C. § 363 AND TO ASSUME AND ASSIGN LEASES AND EXECUTORY CONTRACTS PURSUANT TO 11 U.S.C. § 365

Upon the *Motion to Sell Property of the Estate Free and Clear of All Liens, Claims Encumbrances, and Interests Under 11 U.S.C. § 363 and to Assume and Assign Leases and Executory Contracts Pursuant to 11 U.S.C. § 365 (doc. 51)* (the "Motion") filed by DL Labs, LLC (together with its bankruptcy estate, the "Debtor" or the "Seller") pursuant to Sections 105, 363, and 365 of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") seeking, among other things, entry of an order (a) authorizing and approving the sale of the Purchased Assets¹ (for all purposes in this Order, "Purchased Assets" includes all non-executory Transferred Contracts, as well as non-executory contracts, listed on Schedule 2.1(d) to the Purchase Agreement) pursuant to that certain Asset Purchase Agreement dated as of July 15, 2016 (attached hereto as **Exhibit A**, and including all exhibits, schedules and Ancillary Agreements related thereto, as may be amended from time to time, the "Purchase Agreement") by and among the Debtor and FoodWorks Holdings, LLC and/or its designee (together, the "Purchaser") free and

¹ Capitalized terms not defined herein shall have the meanings ascribed in the Purchase Agreement.

clear of all liens, claims, Encumbrances (for all purposes in this Order, “Encumbrances” includes all Statutory Liens) and interests (other than Assumed Liabilities) and authorizing and approving the assumption by the Debtor and assignment to Purchaser of all executory Transferred Contracts listed on Schedule 2.1(d) to the Purchase Agreement and listed on **Exhibit B** hereto, each in accordance with the terms and conditions contained in the Purchase Agreement (collectively, including related transactions contemplated by the Purchase Agreement or any one of the Ancillary Agreements, the “Transactions”), and (b) granting related relief; and the Debtor, having determined that the Purchase Agreement represents the highest and best offer received by the Debtor for the Purchased Assets; and a hearing having been scheduled for August 10, 2016 (the “Sale Hearing”) to consider approval of the Purchase Agreement; and no Objection(s) to the Motion having been filed; and finding that the Court has jurisdiction over this matter, over the property of the Debtor’s estate, and over the Debtor’s estate and this matter is a core proceeding; and that the relief requested in the Motion is in the best interests of the Debtor, its creditors and parties in interest; and reasonable, adequate and sufficient notice and due process of the Motion, Sale Hearing and this Order having been given to parties in interest, including, without limitation, to: (i) the Office of the United States Trustee for the Eastern District of Louisiana, (ii) the NYCEDC, (iii) the Landlord, (iv) all parties requesting or entitled to notice pursuant to Bankruptcy Rule 2002, including, but not limited to, all known creditors of the Debtor and all non-Debtor Contract counterparties, (v) the Internal Revenue Service, and (vi) all applicable state and local taxing authorities;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Any objections to the Motion or the entry of this Order that have not been

withdrawn, waived or resolved, and all reservations of rights, are denied and overruled on the merits and with prejudice.

3. The Purchase Agreement and the Transactions are APPROVED in all respects.

4. Pursuant to Section 363 of the Bankruptcy Code, the Debtor is authorized and directed to: (i) perform under, consummate, and implement the Purchase Agreement and the Transactions together with all additional instruments and documents that are requested by the Purchaser and may be reasonably necessary or desirable to implement the Purchase Agreement, (ii) take all other and further acts or actions as may be reasonably necessary to implement and consummate the Transactions, and (iii) pay Sale Proceeds to parties in interest pursuant to Section 2.7 of the Purchase Agreement at Closing. For the avoidance of doubt, the Sales Proceeds shall be distributed solely in accordance with Section 2.7 of the Purchase Agreement and the Debtor shall retain all sale proceeds in the Louisiana Interest On Lawyer's Trust Account (IOLTA) of the Congeni Law Firm, LLC, and shall not pay or otherwise distribute any remaining portion of such Sales Proceeds after payment of the amounts set forth in Section 2.7 of the Purchase Agreement, without further order of the Bankruptcy Court.

5. Pursuant to Sections 105(a), 363(f), and 365(b) of the Bankruptcy Code, upon the Closing: (i) the transfer of the Debtor's right, title, and interest in the Purchased Assets to the Purchaser pursuant to the Purchase Agreement shall be legal, valid, and effective and shall vest the Purchaser with all right, title and interest in and to the Purchased Assets, (ii) the Debtor's right, title, and interest in the Purchased Assets shall be transferred to the Purchaser free and clear of all liens, claims, Encumbrances and interests of any and every kind whatsoever (including, but not limited to, any liens, claims, Encumbrances, or interests held by any of the Consenting Parties), other than Assumed Liabilities, in accordance with Section 363(f) of the Bankruptcy Code, and

such liens, claims, Encumbrances and interests, if any, shall attach to the Sale Proceeds at Closing with the same priority, validity, force and effect as they had with respect to the Purchased Assets before the Closing, subject to the rights, claims, defenses and objections of the Debtor and other parties in interest. For the avoidance of doubt, the NYCEDC, all non-Debtor parties who hold any judgment Liens or Statutory Liens, the Internal Revenue Service, and all applicable state and local taxing authorities (the “Consenting Parties”) have consented to the Transactions and the entry of this Order pursuant to Section 363(f)(2) of the Bankruptcy Code (to the extent their consent is required).

6. Any and all Contracts that are not Transferred Contracts as of the Closing shall be and be deemed to be rejected, cancelled, and/or terminated effective as of the Closing.

7. The Purchaser and its successors and assigns are not and shall not be deemed or considered a successor to the Debtor or its estate by reason of any theory of law or equity and the Purchaser has neither assumed nor is it in any way responsible for any Liability or obligation of the Debtor or its estate, except with respect to the Assumed Liabilities.

8. Except to the extent expressly included in the Assumed Liabilities, pursuant to Sections 105 and 363 of the Bankruptcy Code, all Persons asserting or holding any lien, claim, Encumbrance or interest of any and every kind whatsoever against, in, relating in any way to, or with respect to the Debtor, the Business or all or any part of the Purchased Assets shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such liens, claims, Encumbrances and interests, whether by payment, setoff or otherwise, directly or indirectly, against the Purchaser or any successor or assign thereof, or against the Purchased Assets.

9. Assumption by the Debtor and assignment to Purchaser at Closing of all executory

Transferred Contracts listed on Schedule 2.1(d) to the Purchase Agreement and listed on **Exhibit B** hereto is approved. Each counterparty to an executory Transferred Contract shall be prohibited from challenging, objecting to or denying that there is no Cure Amount payable, and any default under a Transferred Contract is deemed cured and all executory Transferred Contracts are completely revived. All non-Debtor parties to a Transferred Contract are forever barred and enjoined from raising or asserting against the Debtor or the Purchaser: (i) any fee, cost, expense, default, breach, Claim or pecuniary loss (including on account of true ups), whether by setoff, recoupment or otherwise, arising under or related to a Transferred Contract, or (ii) any fee or condition to assignment arising by reason of the assignment or the Closing.

10. The Purchase Price is fair and reasonable and constitutes reasonably equivalent value and/or fair consideration.

11. The Purchaser is a good faith purchaser of the Purchased Assets and is entitled to all of the benefits and protections afforded by Section 363(m) of the Bankruptcy Code. Neither the Purchase Agreement nor the Transactions are avoidable under Section 363(n) and no party in interest is entitled to any damages or other recovery pursuant thereto.

12. This Order is and shall be binding on and shall govern acts of all Persons including, without limitation, filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state 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 the Purchaser is the transferee and owner of the Purchased Assets free and clear of all liens, claims, Encumbrances and interests (all such Persons being referred to as "Recording Officers"). Recording Officers are

authorized and directed to strike all recorded liens, claims, Encumbrances and interests against the Debtor or the Purchased Assets recorded before the date of this Order.

13. Each and every federal, state, and local governmental agency, taxing authority, recording office or department thereof and all other Persons are authorized and directed to accept this Order (including for recordation) as conclusive evidence of the transfer of all of the Debtor's right, title, and interest in and to the Purchased Assets to Purchaser free and clear of all liens, claims, Encumbrances and interests, and the cancellation of any lien, claim, Encumbrance or interest in and to the Purchased Assets.

14. To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Closing, to operate under any Permit with respect to the Purchased Assets and/or the Business and all such Permits are transferred to Purchaser at Closing.

15. No order of any type or kind entered in the Bankruptcy Case (including, without limitation, any order entered after any conversion of any or all of the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code) or in any related proceeding shall adversely affect or modify, or impair or limit the provisions of the Purchase Agreement or the terms of this Order.

16. The failure to include specifically any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be and is authorized and approved in its entirety with such amendments thereto as may be made in accordance with this Order before the Closing. To the extent of any conflict or inconsistency between the provisions of this Order, the Purchase Agreement and any documents executed in connection therewith, the provisions contained in this Order, the Purchase Agreement, and any documents executed in connection therewith shall govern, in that order.

17. After the Closing Date, Purchaser is authorized to execute and file, on behalf of any Person, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary or desirable to document the release of any and all liens, claims, Encumbrances and interests on or in all or any portion of the Purchased Assets.

18. To the extent applicable, the automatic stay pursuant to Section 362(a) of the Bankruptcy Code is lifted to the extent necessary, without further order of the Court, (a) to allow the Purchaser to give the Debtor any notice under the Purchase Agreement and (b) to allow the Purchaser to take any and all acts or actions in accordance with the Purchase Agreement.

19. Any laws regarding bulk sales, or similar laws, are not applicable to the sale of Purchased Assets. As the assignment, transfer and/or sale of the Purchased Assets: (i) is in exchange for the Purchase Price, no withholding of U.S. federal income tax pursuant to Sections 1441 or 1442 of the Internal Revenue Code is required, and (ii) constitutes a casual sale or occasional sale, it is exempt from New York and Louisiana sales and use tax.

20. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or 7062, this Order shall be effective and enforceable immediately and shall not be stayed. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

21. This Court shall retain exclusive jurisdiction to resolve any controversy or claim arising out of or related to this Order, the Transactions, or the Purchase Agreement.

22. Movant shall serve a copy of this Order on the required parties who will not receive notice through the ECF System pursuant to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules and file a certificate of service to that effect within three (3) days.

New Orleans, Louisiana, August 17, 2016.

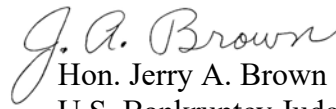

Hon. Jerry A. Brown
U.S. Bankruptcy Judge

EXHIBIT A

Purchase Agreement

See Attached.

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is made as of this 15th day of July, 2016, by and among FoodWorks Holdings, LLC, a limited liability corporation formed under the laws of Delaware, and/or its designee (together, "Purchaser"), and DL Labs, LLC d/b/a Brooklyn FoodWorks, a limited liability company formed under the laws of Louisiana with foreign registration in New York state ("DL Labs" or "Seller") (DL Labs, Seller, and Purchaser collectively, the "Parties," and individually, a "Party").

RECITALS:

WHEREAS, DL Labs is a "food incubator" engaged in the business of providing a platform to prototype, launch, and grow food businesses as well as providing related services, products, and support to its customers, members, and any other clients (the "Business");

WHEREAS, on April 28, 2016, DL Labs commenced the proceeding for relief under Chapter 11 of the Bankruptcy Code pending before the United States Bankruptcy Court for the Eastern District of Louisiana (the "Bankruptcy Court") and styled *In re DL Labs, LLC*, Case No. 16-11007 (the "Bankruptcy Case");

WHEREAS, Purchaser desires to purchase from Seller, and Seller desires to sell, convey, transfer, assign and deliver to Purchaser, Seller's right, title, and interest in the Purchased Assets free and clear of Encumbrances (other than Assumed Liabilities) in accordance with this Agreement and in accordance with the Sale Order, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code; and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants, promises and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1 INTERPRETATION

1.1. Definitions. Whenever used in this Agreement, the following words and phrases shall have the respective meanings ascribed to them as follows.

"Accounts Receivable" means all accounts and notes receivable, unpaid drafts or checks, letters of credit, other rights of Seller to receive payments (whether current or noncurrent) outstanding as of the Closing Date, including in respect of goods shipped, products sold, licenses granted, services rendered or otherwise associated with the Business, and all related Claims, remedies and/or causes of action.

"Action" means any pending or threatened demand, claim, action, suit, proceeding, inquiry, criminal prosecution or investigation by or before any Governmental Authority.

"Alternative Transaction" means the sale, transfer or other disposition, directly or indirectly, including through an asset sale, membership interest or membership unit sale, merger, amalgamation or other similar transaction of equity interest in Seller or Seller's assets or interests therein, in a transaction or series of transactions with one or more Persons other than Purchaser.

"Ancillary Agreements" means, collectively, the Assignment and Assumption Agreement, the Bill of Sale, and the Assignment of Intellectual Property, and all other documents, instruments and certificates required to be delivered for herein and therein, all of which must be in form and substance acceptable to Purchaser.

"Assignment and Assumption Agreement" means the assignment and assumption agreement to be entered into at Closing, substantially in the form attached hereto as Exhibit A.

"Assignment of Intellectual Property" means the Intellectual Property assignment agreement to be entered into at Closing, substantially in the form attached hereto as Exhibit B.

"Balance Sheet" shall have the meaning set forth in Section 3.12.

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.

"Bid Procedures Order" means an order of the Bankruptcy Court, in form and substance acceptable to Purchaser, which, among other things, approves (i) Purchaser as the stalking-horse bidder for the Purchased Assets; (ii) this Agreement and the Transactions contemplated herein as the stalking-horse bid; and (iii) the Break-Up Fee.

"Bill of Sale" means the bill of sale to be entered into at Closing with respect to the Purchased Assets, substantially in the form attached hereto as Exhibit C.

"Break-Up Fee" means an amount equal to: (i) the greater of (a) 3.00% of the Purchase Price or (b) Twenty-Five Thousand Dollars (\$25,000), plus (ii) reimbursement of Purchaser's out-of-pocket fees and expenses, including without limitation, legal and professional fees and expenses, in an amount not to exceed Seventy Five Thousand Dollars (\$75,000), which amounts shall constitute an allowed administrative expense of the DL Labs bankruptcy estate in the Bankruptcy Case pursuant to Sections 503 and 507 of the Bankruptcy Code.

"Claim" means: (i) a "claim" as defined in Section 101(5) of the Bankruptcy Code, or (ii) any "adverse claims" as defined in Section 8-102 of the Uniform Commercial Code, offset rights, setoff rights, recoupment rights, causes of action, defenses or demands.

"Contracts" means any and all commitments, agreements, contracts, leases, powers of attorney, purchase orders, letters of credit, settlement agreements, franchise agreements, undertakings, covenants not to compete, employment agreements, licenses,

instruments, obligations, understandings, policies, purchase and sales orders, quotations and other executory commitments to which Seller is a party and/or beneficiary or by which any Purchased Asset is bound or subject, whether oral or written, express or implied.

"Cure Amounts" means any and all amounts required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of any and all executory Transferred Contracts to Purchaser.

"Employee" means any past or current employee of Seller.

"Encumbrances" means any security interest, Lien, Claim, collateral assignment, right of setoff, debt, obligation, Liability, pledge, levy, charge, escrow, encumbrance, option, right of first refusal, transfer restriction, conditional sale contract, title retention contract, mortgage, lease, deed of trust, hypothecation, indenture, security agreement, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement, or any other agreement, arrangement, contract, commitment, understanding or obligation of any kind whatsoever, whether written or oral, known or unknown.

"Financial Information" shall have the meaning set forth in Section 3.12.

"Governmental Authority" means any federal, state or local government, or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal, or any arbitrator or arbitral body.

"Intellectual Property" means all intellectual property and proprietary rights of any kind, whether registered or unregistered, including, but not limited to, the following: (a) patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, extensions, reexaminations, provisionals, divisions, renewals, revivals, and foreign counterparts thereof and all registrations and renewals, if any, in connection therewith, (b) trademarks, service marks, trade dress, logos, trade names and corporate and/or limited liability company names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals, if any, in connection therewith, (c) copyrightable works, copyrights and all applications, registrations and renewals, if any, in connection therewith, (d) mask works and all applications, registrations and renewals, if any, in connection therewith, (e) trade secrets, inventions and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, archives, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, assembly, test, installation, service and inspection instructions and procedures, technical, operating and service and maintenance manuals and data, hardware reference manuals and engineering, programming, service and maintenance notes and

logs), (f) Software, (g) internet addresses, uniform resource locaters, domain names, websites and web pages, and (h) goodwill related to all of the foregoing.

"Inventory" means all inventory (including, but not limited to, finished goods, supplies, works in progress, spare, replacement and component parts, any other materials, ingredients, kitchen equipment, kitchen-related equipment, food, or food-related products) maintained or held by, stored by or on behalf of and located on or off the Leased Premises or any other location, or in transit to, Seller and to which Seller has title or rights of ownership thereof.

"Knowledge of Seller" with respect to a given matter means the actual knowledge, after reasonable inquiry, of Jorge Barrett.

"Knowledge of Purchaser" with respect to a given matter means the actual knowledge, after reasonable inquiry, of Nicholas Devane.

"Landlord" means the Person that leased the Leased Premises to Seller.

"Law" means any federal, state, local or foreign statute, ordinances, codes or other laws, rules, regulations, orders, common law, technical or other standards, requirements, policies, determinations or procedures enacted, adopted or promulgated by any applicable Governmental Authority, including Environmental Laws, and any judgment, writ, injunction, award or decree of any court, administrative body, judge, justice or magistrate, including any bankruptcy court or judge, and any order of or by any Governmental Authority.

"Lease" means that certain Lease Agreement dated January 30, 2015 by and between ACP BK I LLC and DL Labs, as such agreement is modified and amended from time to time, including any and all leasehold improvements.

"Leased Premises" means that certain portion of the property located at 630 Flushing Avenue, Brooklyn, New York 11206 as set forth on Exhibit A to the Lease as improved during the term of the Lease.

"Leasehold Improvements" means any and all work, modifications, improvements, repairs, alterations, renovations, or changes made to or in connection with the Leased Premises by Seller.

"Liability" means any unsatisfied debt, Claim, liability, obligation, assessment, Tax, cost, expense, Loss, expenditure, charge, fee, penalty, fine, or obligation of any kind, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed, including all costs and expenses relating thereto.

"Liens" means any mortgage, hypothecation, deed of trust, pledge, lien, security interest, conditional or installment sale agreement or other title retention agreement, exaction, imposition, levy, charge, assessment, or other Claims of third parties of any

kind or nature, whether imposed by Law, Contract or otherwise, including, but not limited to, the Statutory Liens.

"Loss" means any and all judgments, lawsuits, Claims, Liabilities, amounts paid in settlement, damages, fines, penalties, deficiencies, costs, charges, Taxes, obligations, demands, fees, interest, losses and expenses (including court costs and reasonable fees of attorneys, accountants and other experts in connection with any Claim).

"Material Adverse Effect" means any event, circumstance, change, occurrence or state of facts that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Purchased Assets, Liabilities, Business, the Leased Premises, properties, condition (financial or otherwise), taken as a whole; provided, however, that in determining whether there has been a Material Adverse Effect, any effect, event, circumstance, change, occurrence or state of facts to the extent attributable to any of the following shall be disregarded: (i) any change in the general political, economic or business condition, including the commencement, continuation or escalation of war, or acts of terrorism, natural disasters or acts of God to the extent that such changes do not disproportionately affect Seller, taken as a whole, compared to the other companies participating in the same industry and geography as Seller; (ii) the taking of any action required to be taken by a Party under the terms of this Agreement or consented to by every other Party to this Agreement, (iii) the announcement or existence of this Agreement or the Transactions, including effects on relationships, contractual or otherwise, with financing sources, customers, suppliers, vendors or Employees as a result thereof; and (iv) changes in Laws (other than changes in labor, pension, benefits or similar Laws) or orders or interpretations thereof or changes in GAAP accounting requirements or principles.

"Member Database" means all customer and/or membership lists, records of customers and/or members and any other customer and/or member information and data in the possession of Seller relating to Persons that purchased, sought to or inquired regarding the purchase of, or have otherwise demonstrated an interest in any service, product or work from or in connection with DL Labs, Seller, or the Business, stored electronically, magnetically, or in other format.

"Membership Agreements" shall mean those certain "License Agreements" by and among DL Labs and certain "Licensees", for the use of commercial kitchen space located at the Leased Premises.

"NYCEDC" means the New York City Economic Development Corporation.

"NYCEDC Consent" means a written and executed acknowledgement and consent, in form and substance acceptable to Purchaser, from the NYCEDC regarding this Agreement and the Transactions contemplated herein and shall include a commitment by the NYCEDC to continue the Operator Contract with Purchaser post-Closing.

"Operator Contract" means that certain Operator Contract for the Provision of Management Services, NYCEDC Contract No. 47670002, Project Code No. 4767 dated October 31, 2014 by and between the NYCEDC and DL Labs, as such contract is modified or amended from time to time with the consent of Purchaser.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Business, and the operations of Seller consistent with past practice and Law.

"Parent" means Dinner Lab, Inc., a corporation formed under the laws of Louisiana, and the sole member of DL Labs.

"Permits" means all material approvals, permits, Environmental Permits, certificates, qualifications, authorizations, licenses, franchises, consents, orders and registrations, together with all modifications, amendments, supplements and extensions thereof, that are or were necessary for Seller to own the Purchased Assets, occupy and/or use the Leased Premises, or operate the Business.

"Person" means any individual or corporation, association, partnership, limited liability company, joint venture, joint stock or other company, business trust, trust, organization, Governmental Authority or other entity of any kind.

"Purchased Assets" means, other than Excluded Assets, all of Seller's assets, properties, rights, Transferred Contracts, and businesses of every kind, character and description, whether tangible or intangible (including goodwill), whether real, personal or mixed, whether accrued, contingent or otherwise, wherever located, and whether or not reflected on the books and records of Seller, including, without limitation, Seller's right, title, and interest in those assets set forth in Section 2.1.

"Sale Hearing" means the hearing conducted by the Bankruptcy Court to consider approval of the sale of the Purchased Assets free and clear of any Encumbrances (other than Assumed Liabilities) contemplated by this Agreement.

"Sale Motion" means Seller's motion, in form and substance acceptable to Purchaser, for entry of the Sale Order and/or the Bid Procedures Order.

"Sale Order" means an order of the Bankruptcy Court, substantially in the form attached hereto as Exhibit D, which approves the terms of this Agreement and the Ancillary Agreements, and authorizes and directs Seller to consummate the Transactions, including the assignment of the Transferred Contracts to Purchaser at Closing.

"Software" means any computer program, operating system, application, system, firmware or software of any nature, whether operational, active, under development or design, non-operational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form,

virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software.

"Tax" or "Taxes" means all federal, state, local and foreign taxes, charges, fees, imposts, levies or other assessments, including income, gross receipts, excise, employment, sales, use, transfer, license, payroll, franchise, stamp, withholding, social security, unemployment, real property, personal property, alternative or add on minimum, estimated or other taxes, charges, fees, imposts, levies or other assessments, including unclaimed property and escheat payments, and also including any interest, penalties or additions thereto, whether disputed or not.

"Tax Return" means any report, return, information return, filing, claim for refund or other information, including any schedules or attachments thereto, and any amendments to any of the foregoing required to be supplied to a taxing authority in connection with Taxes.

"Transactions" mean the transactions contemplated by this Agreement, the Ancillary Agreements and the Sale Order.

The following terms defined elsewhere in this Agreement shall have the respective meanings therein defined:

<u>Term</u>	<u>Section</u>
Assumed Liabilities	Section 2.3
Bankruptcy Case	Recitals
Bankruptcy Court	Recitals
Base Purchase Price	Section 2.6(a)
Break-Up Trust	Section 12.1(i)
Business	Recitals
Casualty Event	Section 5.9
Closing	Section 11.1
Closing Date	Section 11.1
Closing Payment	Section 2.6(c)
Deposit	Section 2.5
DL Labs	Preamble
Documents	Section 2.1(h)
Excluded Assets	Section 2.2
Excluded Liabilities	Section 2.4
Outside Date	Section 12.1
Holdback	Section 2.6(c)
Holdback Period	Section 2.6(c)
Pre-Closing Tax Period	Section 2.4(h)
Purchase Price	Section 2.6
Purchase Price Adjustment	Section 2.6(b)

Purchaser	Preamble
Sale Proceeds	Section 2.6
Seller	Preamble
Statutory Liens	Section 2.4(d)
Transferred Contracts	Section 2.1(c)

SECTION 2
PURCHASE, SALE AND ASSIGNMENT OF PURCHASED ASSETS

2.1. Sale of Purchased Assets. Subject to the terms and conditions of this Agreement, at Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase from Seller and take assignment of, all of Seller's right, title and interest in the Purchased Assets maintained or held by, stored by or on behalf of and located on or off the Leased Premises or any other location, or if any, in transit to Seller, free and clear of all Encumbrances (other than Assumed Liabilities), including, without limitation, any and all of Seller's right, title, and interest in the following:

(a) all real property, personal property (tangible or intangible) and any and all other assets owned or used in the Business including, without limitation, the Inventory, the Leasehold Improvements, all machinery, equipment, mock-ups, designs, specifications, samples, mechanical devices, raw materials, kitchen equipment, kitchen-related equipment, ingredients, food products, food-related items and products, food-related equipment, computers and automatic machinery, dies, casts, moldings, application systems, servers, and systems hardware and networking and communications equipment and assets, all telephone, telex and telephone facsimile numbers and other directory listings used in connection with the Business, furniture, furnishings, fixtures, office supplies, tools, artwork, security deposits, rugs, mats, appliances, devices, engines, televisions and other video equipment, plumbing electrical and mechanical fixtures and other equipment, and other tangible and intangible personal property located at the Leased Premises or otherwise;

(b) all cash, bank accounts, negotiable instruments and cash equivalents, securities, instruments, and investments of Seller;

(c) the Member Database and all Accounts Receivable;

(d) all rights in, to and under (i) the Membership Agreements, and (ii) Contracts listed or described on Schedule 2.1(d) attached hereto, as may be amended by Purchaser in accordance with the last paragraph of this Section 2.1 (collectively, the "Transferred Contracts");

(e) (1) all Intellectual Property owned or used in connection with the Purchased Assets or the Business (including all goodwill associated therewith or symbolized thereby), including, without limitation, trademarks, patents, copyrights, domain names and other Intellectual Property of Seller set forth on Schedule 2.1(c), and (2) all rights as to, causes of action and other Claims for and/or remedies against infringements, dilutions, misappropriations, and other violations thereof, rights of priority and protection of interests therein and all tangible embodiments thereof;

(f) all Permits that relate in any way to the Business or the Purchased Assets (to the extent transferrable to Purchaser);

(g) all insurance benefits, rights and proceeds, and other refunds, rebates, discounts and credits, performance and other bonds, security and other deposits, advance payments, prepaid expenses and any other prepayments in favor of Seller to the extent relating to the Business, the Purchased Assets, or the Assumed Liabilities (to the extent transferable to Purchaser);

(h) all books and records, files, data, reports, advertiser and supplier lists, marketing, advertising and promotional materials, cost and pricing information, business plans, and manuals, blueprints, archives, drawings, research and development files, and other documents, communications, or records that relate in any way to the Business (collectively, the "Documents");

(i) all goodwill associated with the Business and/or the Purchased Assets;

(j) (1) all Claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that Seller may hold against Purchaser, the Parent, or their respective affiliates (except pursuant to this Agreement or an Ancillary Agreement), and any former employee of Seller to the extent hired by Purchaser after the Closing, and (2) all Claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that Seller may hold against any parties to a Transferred Contract, including in respect of the Purchased Assets and/or any Assumed Liability (any claims that cannot be assigned to Purchaser pursuant to this Section 2.1(j) shall be released and/or waived by Seller); and

(k) other than those described in Section 2.1(k), all rights, privileges, Claims, causes of action and demands in respect of prepayments, refunds, warranty claims, indemnification agreements in favor of Seller with, and indemnification and similar rights against, third parties, and any other rights or Claims with respect to Purchased Assets, any Ancillary Agreement, or Assumed Liabilities.

Purchaser shall have the right, for any or no reason, at any time prior to the Closing Date to amend (one or more times) Schedule 2.1(d) to add or designate a Contract as a Transferred Contract, or to remove or exclude any Contract from being a Transferred Contract. Upon the Closing Date, the Transferred Contracts, as determined in accordance with Schedule 2.1(d) in its form as of the Closing Date, shall be assumed by Seller, as necessary, and/or assigned to Purchaser.

2.2. Excluded Assets. The following assets are not a part of the sale and purchase contemplated by this Agreement and are excluded from the Purchased Assets (collectively, the "Excluded Assets"):

- (a) any Contracts other than the Transferred Contracts;
- (b) the Purchase Price;
- (c) any equity security or other interest in Seller or any of its affiliates;
- (d) (i) all corporate and/or limited liability company minute books, equity interest transfer books, the corporate and/or limited liability company seal of Seller and all other corporate and/or limited liability company books and records relating solely to Seller's organization and existence, and (ii) Documents related solely to Excluded Assets or Excluded Liabilities, (iii) a copy of Documents which by Law Seller is required to retain, (iv) Documents prepared primarily in connection with this Agreement and which are subject to privilege;
- (e) other than those set forth in Section 2.1(j) and (k), all Claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that Seller may hold against any third party, foreign or domestic, under any law whatsoever; and
- (f) any distributions of any proceeds arising from the sale of DL Labs' assets, other than the Purchased Assets, by Seller in the Bankruptcy Case.

2.3. Assumed Liabilities. Notwithstanding anything in this Agreement, Purchaser shall only assume the following Liabilities of Seller (collectively, the "Assumed Liabilities"):

- (a) all Liabilities relating to the Transferred Contracts or ownership or use of the Purchased Assets or the Business first arising and accruing after the Closing Date (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the Closing);

(b) all Cure Amounts, if any, with respect to the executory Transferred Contracts only to the extent not first satisfied via the Allocation of Sale Proceeds as discussed in Section 2.7(a); and

(c) all Liabilities for Taxes arising out of or attributable to the Purchased Assets or the Business for taxable years or other taxable periods (or portions thereof) that commence from and after the Closing Date.

2.4. Excluded Liabilities. Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Purchaser will not assume any Liability, other than the Assumed Liabilities. In furtherance, and not in limitation, of the foregoing, neither Purchaser nor any of its subsidiaries or affiliates shall assume, and shall not be deemed to have assumed, and Seller shall retain any debt, Claim, obligation or other Liability whatsoever, including, but not limited to the following (collectively, the "Excluded Liabilities"):

(a) all Liabilities which are not Assumed Liabilities;

(b) all Liabilities relating to, asserted in, or arising out of the Bankruptcy Case (other than Cure Amounts relating to executory Transferred Contracts), including, but not limited to, scheduled claims, proofs of claim that were or could have been filed (assuming proper notice had been provided) in the Bankruptcy Case and Claims pursuant to Sections 503 or 507 of the Bankruptcy Code;

(c) all Liabilities associated with any (i) Excluded Assets, or (ii) Contracts that are not Transferred Contracts;

(d) all statutory Liens against the Purchased Assets (and related Liabilities), such as Tax, artisan's, carriers', warehousemen's, materialmen's and mechanics' Liens (collectively, the "Statutory Liens");

(e) all Liabilities associated with any and all indebtedness of Seller for borrowed money;

(f) all Liabilities arising out of or in connection with Claims, litigation and proceedings (whether instituted prior to or after the Closing) for acts or omissions that occurred, or arise from events that occurred, prior to the Closing;

(g) all penalties, fines, settlements, interest, costs and expenses incurred as a result of any actual or alleged violation by Seller of any Law prior to the Closing;

(h) all Liabilities for Taxes arising out of or attributable to the Purchased Assets or the Business for any taxable years or other taxable periods (or portions thereof) that end on or before the Closing Date (the "Pre-Closing Tax Period"); and

- (i) all Liabilities in connection with any Employee.

In the event of an inconsistency or conflict between the scope or meaning of "Assumed Liabilities" and "Excluded Liabilities," the scope or meaning of "Excluded Liabilities" shall govern and control. If any Liability may be interpreted as both an Assumed Liability and an Excluded Liability, it shall be treated as and deemed to be an Excluded Liability.

2.5. Deposit. Upon full execution of this Agreement, Purchaser shall deposit Fifty Thousand Dollars (\$50,000) with Seller (the "Deposit"). Upon the occurrence of the Closing, the Deposit shall be paid to Seller and credited against the Purchase Price. Upon the termination of this Agreement, the Deposit shall be payable pursuant Section 12.2 of this Agreement.

2.6. Purchase Price. The aggregate consideration provided by Purchaser for the Purchased Assets shall be (i) the Base Purchase Price, (ii) net of the Purchase Price Adjustment, plus (iii) the Assumed Liabilities (together, the "Purchase Price" and the cash component thereof, the "Sale Proceeds").

- (a) Base Purchase Price. An amount in cash equal to Five Hundred Thousand Dollars (\$500,000) (the "Base Purchase Price").

- (b) Purchase Price Adjustment. The Base Purchase Price shall be increased on a dollar-for-dollar basis in an amount equal to the cash on Seller's Balance Sheet at the Closing Date (collectively, the "Purchase Price Adjustment").

- (c) Holdback. The balance of \$50,000 of the Purchase Price (the "Holdback") shall be withheld by Purchaser at Closing and payable to Seller, subject to possible reduction or deferred payment under Section 11.2, by wire transfer three (3) months after the occurrence of the Closing Date (the "Holdback Period").

2.7. Allocation of the Sale Proceeds. Seller shall distribute the Sale Proceeds at Closing as needed to permit the sale of the Purchased Assets free and clear of all Encumbrances. On the Closing Date, Seller, or Purchaser with Seller's consent, shall pay Sale Proceeds, in whole or in part, (in such amounts as agreed to in writing by the Parties) to the following Persons:

- (a) the Landlord in respect of any Cure Amounts under the Lease, Operator Contract, or any other executory Transferred Contract;

- (b) Congeni Law Firm, LLC in the amount of \$10,000 as retainer to be applied to outstanding fees and costs, subject to Bankruptcy Court approval.

- (c) holders of Liens, if any, in full and final satisfaction of any amounts owed by Seller.

2.8. Excluded Assets and Liabilities. Notwithstanding anything in this Agreement, Purchaser shall not purchase any Excluded Assets nor assume any of the Excluded Liabilities.

SECTION 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows:

3.1. Authorization. Seller has all requisite power and authority to execute and deliver, and carry out its obligations under this Agreement and the Ancillary Agreements, and to perform its obligations hereunder and thereunder, and to consummate the Transactions (subject to entry of the Sale Order).

3.2. Organization and Good Standing. Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization, or formation, as applicable and duly qualified to do business and in good standing in each jurisdiction in which the ownership, use or leasing of its assets and properties, or the conduct or nature of its Business, makes such qualification necessary. Seller has the corporate or limited liability company power and authority, as applicable, to carry on its Business as it is now being conducted and to own, operate and lease the Purchased Assets.

3.3. Consents and Approvals. The consummation of the Transactions by Seller will not require any other consent, approval, or authorization of any Person or Governmental Authority not already obtained, or notification to, or other action by any Person or Governmental Authority not already completed, as to each except for the NYCEDC Consent and the entry of the Sale Order.

3.4. Compliance with Law. Seller (i) has not received notice that it is in violation of any Law applicable to the Business, and (ii), to the Knowledge of Seller, is not under investigation with respect to any violation of any Law applicable to the Business.

3.5. Free and Clear Title to Purchased Assets. Seller owns and has good, valid and marketable title to all Purchased Assets. At Closing, the Purchased Assets will be delivered by Seller to Purchaser free and clear of all Encumbrances.

3.6. [Intentionally Left Blank].

3.7. No Broker or Finder. No broker, finder, or financial advisor has been engaged by Seller or is otherwise entitled to any brokerage, finder's or other fee or commission in connection with this Agreement or the Transactions.

3.8. Insurance. All of the insurance policies of Seller with respect to the Purchased Assets, the Leased Premises, and/or the Business are in full force and effect, and Seller is not in material default with respect to its obligations under any such policy.

3.9. Litigation. There are no Actions or Claims by or before any Governmental Authority pending or, threatened in writing against Seller that question or challenge the validity of this Agreement, any Ancillary Agreement, or any action taken or proposed to be taken by Seller pursuant hereto or thereto, and there are no Actions or Claims by or before any Governmental Authority pending or, to the Knowledge of Seller, threatened against Seller that involve or affect the Purchased Assets or the Business, or may have a Material Adverse Effect, or materially impair or delay the Closing.Fraudulent Transfers. To the knowledge of Seller, no transfers of assets from the Parent or any other Person in the six years prior to the filing of the Bankruptcy Case would constitute a fraudulent transfer under the Bankruptcy Code or comparable state law.Intellectual Property Rights.

(a) Seller: (i) has not licensed or transferred any rights to any Intellectual Property, and (ii) owns, (iii) otherwise has the right pursuant to a valid written license, sublicense or other Contract, or (iv) has public domain or other legal access without need of a license, lease or consent of any third party, to the Intellectual Property, free and clear of all Encumbrances, and has the right to use all such Intellectual Property as currently used in the Business.

(b) Seller is not currently in receipt of any written notice asserting that any of its Intellectual Property is invalid or that the use of such Intellectual Property is violating the rights of others. There is no pending or, to the Knowledge of Seller, threatened opposition, interference or cancellation proceeding before any court or registration authority in any jurisdiction, to the Knowledge of Seller, against any registrations and applications relating to Seller's Intellectual Property.

(c) To the Knowledge of Seller, none of the Intellectual Property nor the conduct of Seller's Business or operations of Seller infringes upon, misappropriates or otherwise violates, nor within the previous five (5) years has infringed upon, misappropriated or otherwise violated, any Intellectual Property of others.

(d) To the Knowledge of Seller, no other Person is engaging in any activity that infringes, violates or misappropriates the Seller's Intellectual Property rights.

(e) After the consummation of the Transactions, Purchaser will own all of Seller's right, title, and interest in and to or have a valid written license to use all Intellectual Property on substantially the same terms and conditions as Seller immediately prior to the consummation of the Transactions.

3.12. Financial Information. Seller has made available to Purchaser (i) Seller's most recent audited balance sheet (the "Balance Sheet"), and (ii) the unaudited financial projections of Seller from fiscal year 2016 through fiscal year 2018 (collectively, the "Financial Information").

3.13. Environmental Matters.

(a) Sellers have made available to Purchaser copies of all material site assessment reports, environmental audit reports, governmental inspection reports, Environmental Permits, pending applications for Environmental Permits, and correspondence relating to pending environmental liabilities or obligations, in its possession, custody or control, regarding environmental matters in connection with ownership or operation of the Leased Locations, including compliance with Environmental Laws. Section 3.13(a) of the Sellers Disclosure Letter sets forth all Environmental Permits held by any of Sellers that are required for the operation and use of the Leased Locations, in the manner they are currently owned and operated by Sellers. True, correct and complete copies of all such Environmental Permits have been provided to Purchaser.

(b) Except as otherwise described in Section 3.13(b) of the Sellers Disclosure Letter:

(i) Each Location has been and is in material compliance with all applicable Environmental Laws;

(ii) (A) Sellers hold all Environmental Permits that are required for the ownership and operation of the Business, (B) all such Environmental Permits are valid and in full force and effect, (C) no appeal nor any other Action is pending to revoke or modify any such Environmental Permit, nor has any notice of an appeal or Action to revoke or modify such Environmental Permit been given to Sellers, (D) to the Knowledge of Sellers, no other event has occurred which permits, or after due notice or lapse of time or both would permit, any adverse modification, revocation or termination of any such Environmental Permit, and (E) each Seller is in material compliance with the terms and conditions of all such Environmental Permits. To the extent required by applicable Environmental Laws, excluding any filings required as a result of the transactions contemplated by this Agreement, Sellers have filed or will have filed prior to the Closing Date, pursuant to the deadlines set forth in applicable Environmental Laws to the extent such deadlines arise prior to the Closing Date, all applications necessary to renew or obtain any Environmental Permits so as to allow the Purchaser to continue to operate the Leased Locations in compliance with applicable Environmental Laws through and after the Closing Date;

(iii) No Seller has been served with written notice of any Environmental Claims, Actions, proceedings or investigations that are currently outstanding, and no Environmental Claims are pending or, to the Knowledge of

Sellers, threatened, against any Seller or Leased Location under any Environmental Laws;

(iv) none of Sellers, nor any Leased Locations are subject to any outstanding Order, including any administrative, civil or judicial order, decree or judgment pursuant to Environmental Law or in connection with Hazardous Materials;

(v) to the Knowledge of Sellers, there has been no Release at, beneath or from any Leased Location that has resulted in or could result in an Environmental Claim; and

(vi) There are no (A) underground storage tanks, (B) asbestos in a friable condition, (C) polychlorinated biphenyls in regulated quantities, or (D) landfills or other waste disposal areas, in each case, at any Leased Location.

3.14. Labor and Employment Matters.

(a) Section 3.14(a) of the Sellers Disclosure Letter sets forth a true and correct list of all Employees as of July 15, 2016, together with the following information for each Employee: (i) name, job title or position and date of hire; (ii) the current base salary or wage rate; (iii) total W-2 compensation for the most recent completed calendar year; (iv) the most recent bonus paid for the Companies' last fiscal year and current target or guaranteed bonus, if any; (v) accrued but unused paid time off; and (vi) employment status (*i.e.*, active or on leave or disability; full-time or part-time). With respect to any Employee who is not actively at work for any reason, Section 3.14(a) of the Sellers Disclosure Letter also sets forth the reason for such absence, the date the Employee's absence from work began, and the date the employee is expected to return to work. At least three (3) days and not more than five (5) Business Days prior to the Closing Date, Sellers shall (x) update Section 3.14(a) of the Sellers Disclosure Letter, and (y) provide to Purchaser a true and correct list, by date and location, of all Employees who are terminated by Sellers during the ninety (90) days preceding the Closing Date.

(b) Except as set forth in Section 3.14(b) of the Sellers Disclosure Letter: (i) Sellers are in compliance in all material respects with all applicable Law respecting employment of employees, including without limitation fair employment practices (including Laws concerning unfair labor practices within the meaning of Section 8 of the National Labor Relations Act), terms and conditions of employment, collective bargaining, wages and hours, family leave, safety and health, workers' compensation, unemployment insurance, the WARN Act, classification of employees and independent contractors, discrimination, civil rights, immigration and the employment of non-residents under the Immigration Reform and Control Act of 1986, and the collection and payment of withholding and/or payroll Taxes and similar Taxes; (ii) there are no Actions, claims, charges, governmental audits, investigations, administrative proceedings or complaints concerning the employment (or termination of employment) of employees or any employment practices pending or, to the Knowledge of Sellers, threatened before any Governmental Authority, and, to the Knowledge of Seller, no basis for any such matter

exists; and (iii) Sellers are not liable for any material payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security, disability or other benefits for employees, other than routine payments to be made in the Ordinary Course of Business and consistent with past practice. Each employee, independent contractor, and consultant of Sellers has been, and is, properly classified as such under applicable Law. Except to the extent required by applicable Law, the employment of each of the Employees may be terminated "at will" and without notice or penalty of any kind.

(c) There are no collective bargaining agreements or drafts, memoranda of understanding, letters or side letters with respect to any collective bargaining agreement to which any Seller is a party or by which any Seller is bound applicable to Employees, (ii) there is no labor strike, slowdown, work stoppage or lockout pending, or to the Knowledge of Sellers, threatened against any Seller, (iii) there is no unfair labor practice charge or complaint pending or, to the Knowledge of Sellers, threatened against any Seller in respect of the Business, before the National Labor Relations Board, and (iv) neither the execution and delivery of this Agreement nor the consummation of the Transactions shall require the provision of notice to, approval of or consultation with any employee, labor union, works council or other employee or labor organization.

3.15. Taxes.

Except as set forth in Section 3.15 of the Sellers Disclosure Letter:

(a) Seller has timely filed (taking into account any extensions of time for such filings that have been properly and timely requested by the Companies) all Tax Returns that were required to be filed by Seller. All such Tax Returns were complete and accurate in all respects. All Taxes owed by Seller (whether or not shown on such Tax Returns) have been paid. Seller is not currently the beneficiary of any extension of time within which to file any such Tax Return.

(b) There is no proceeding, audit, written claim pending or, to the Knowledge of Seller, proposed with respect to any Taxes of Seller. Seller has not received any written notice from any taxing or Governmental Authority to the effect that such taxing or Governmental Authority intends to conduct an audit or investigation of any Taxes

(c) There are no waivers or extensions of, or agreements that have the effect of waiving or extending, any applicable statute of limitations for the assessment or collection of Taxes with respect to the Purchased Assets that remain in effect as of the date hereof.

(d) There are no Encumbrances for Taxes upon the Purchased Assets, except for Taxes not yet assessed or not yet due and payable or which are being contested in good faith and by appropriate proceedings.

(e) Seller has complied in all respects with all applicable laws relating to the payment and withholding of Taxes relating to the Purchased Assets and such Taxes have been duly and timely paid to the Taxing Authority responsible for the collection of such Taxes.

(f) No taxing or Governmental Authority has asserted in writing any deficiency, claim or issue with respect to Taxes or any adjustment to or assessment of Taxes relating to the Purchased Assets that is currently unresolved.

(g) Seller has never been a member of an affiliated group filing a consolidated federal income Tax Return and does not have any liability for the Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or non-US law), as a transferee or successor, by contract, or otherwise.

3.16. No Undisclosed Liabilities. There are no Liabilities against, relating to or affecting the Business or any of the Purchased Assets, other than Liabilities (i) incurred in the Ordinary Course of Business consistent with past practice or (ii) which, individually or in the aggregate, are not material to the Business.

3.17. Customer and Member Information. Seller is in compliance with all applicable laws governing the collection and use of personal information and such collection and use are in accordance with the privacy policies under which the information was collected. Seller has not received any written notice or claim asserting violation of any applicable laws governing the collection and use of personal information or violation of any privacy policies.

3.18. No Subsidiaries. Seller has no direct or indirect subsidiaries.

SECTION 4 **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Seller as follows:

4.1. Organization and Good Standing. Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and is duly qualified to do business and in good standing in such jurisdiction.

4.2. Authorization. Purchaser has all requisite corporate or limited liability company power and authority to execute and deliver, and carry out its obligations under, this Agreement and the Ancillary Agreements and to perform its obligations hereunder and thereunder, and to consummate the Transactions (subject to entry of the Sale Order).

4.3. Consents and Approvals. The consummation of the Transactions by Purchaser will not require any other consent, approval, or authorization of any Person or Governmental Authority not already obtained, or notification to or other action by any Person or Governmental Authority not already completed, as to each except for the entry of the Sale Order.

SECTION 5 **CERTAIN COVENANTS OF SELLER**

5.1. Provision of Records. Seller shall arrange, at Purchaser's cost, as soon as reasonably practicable following the Closing for delivery to Purchaser of the Documents that are Purchased Assets, to the extent not previously delivered.

5.2. Receipt of Property Relating to Purchased Assets. Subject to the terms and conditions of this Agreement and applicable Law, if, following the Closing, Seller shall receive any money, check, note, draft, instrument, payment or other property which are Purchased Assets, Seller shall receive all such items in trust for, and as the sole and exclusive property of, Purchaser and, upon receipt thereof, shall promptly notify Purchaser of such receipt and shall promptly remit the same (or cause the same to be remitted) to Purchaser.

5.3. Conduct of Business Pending the Closing; Treatment of Purchased Assets and Leased Premises; Transferred Contracts.

(a) From the date of this Agreement through the Closing Date or the earlier termination of this Agreement, except as may be expressly permitted or contemplated by this Agreement, required, authorized or restricted pursuant to the Bankruptcy Code or ordered by the Bankruptcy Court, or as otherwise agreed to in writing by Purchaser, Seller shall continue to operate its Business in the Ordinary Course of Business (it being understood that such ordinary course may take into account the fact that the Business is to be operated while in bankruptcy) and as a debtor and debtor-in-possession in the Bankruptcy Case. Without limiting the generality of the foregoing, from the date of this Agreement through the Closing Date or the earlier termination of this Agreement, except as may be expressly permitted or contemplated by this Agreement, required, authorized or restricted pursuant to the Bankruptcy Code or ordered by the Bankruptcy Court, or as otherwise agreed to in writing by Purchaser, Seller shall not:

(i) conduct the Business and operate and maintain the Purchased Assets other than in the Ordinary Course of Business;

(ii) take any action that would adversely impact the preservation of Seller and the Purchased Assets, or the goodwill of and relationships with customers, suppliers, members, vendors, lessors, licensors, licensees, contractors, distributors, agents, Employees and others having dealings with the Business;

(iii) fail to maintain the Purchased Assets in substantially the same working order and conditions as such Purchased Assets are in as of the date of this Agreement, ordinary wear and tear and insured casualty excepted;

(iv) directly or indirectly sell (including by sale-leaseback), lease, transfer, license, mortgage or otherwise dispose of, or agree or commit (in writing or otherwise) to sell, lease, transfer, mortgage or otherwise dispose of, or encumber or subject to any Encumbrance (other than an Assumed Liability), any equity interests in Seller or the Purchased Assets or interests therein other than in the Ordinary Course of Business;

(v) enter into a plan, agreement or arrangement of or for any consolidation, merger, share exchange or reorganization with any Person, effect any split, combination, redemption, purchase, repurchase, recapitalization, reclassification or other change in capitalization, issue or sell any equity interests or options, warrants, calls, subscriptions or other rights to purchase any equity interests of Seller (or any economic equivalent thereof), repurchase any equity interests of Seller, or undertake a complete or partial liquidation of Seller;

(vi) fail to maintain all Permits of Seller;

(vii) fail to maintain in full force and effect existing policies of insurance with respect to the Business or replacement insurance;

(viii) fail to comply with all of Seller's obligations and duties (a) under its Contracts, and other documents relating to or affecting the Purchased Assets and the Business, and (b) imposed upon them by all applicable Law;

(ix) incur or permit the incurrence of any Liability individually or in the aggregate in excess of \$25,000, except in the Ordinary Course of Business, or make or agree to make any capital expenditures, other than capital expenditures as may be required pursuant to any contractual obligations as of the date hereof or as may be agreed to between Seller and Purchaser;

(x) sell or otherwise dispose of Inventory in a manner inconsistent with the Ordinary Course of Business;

(xi) collect Accounts Receivable in a manner inconsistent with the Ordinary Course of Business, or amend, modify, supplement or otherwise alter customer policies except as may be required to comply with applicable Laws, or cancel or compromise any material debt or Claim, or waive or release any material right of Seller that constitutes an Purchased Asset, other than in the Ordinary Course of Business;

(xii) pay or declare or set aside for payment any dividend or other distribution, payable in cash, equity or property, with respect to any equity securities, or purchase, redeem or otherwise acquire any of equity securities;

(xiii) (i) use, modify, duplicate, convey, transfer, or assign the Member Database, or (ii) fail to maintain the Member Database in the Ordinary Course of Business;

(xiv) modify, amend, supplement or terminate any Contract, except in the Ordinary Course of Business;

(xv) fail to keep or cause to be kept its books, accounts and records in the usual and regular manner and in material compliance with all applicable Laws;

(xvi) except otherwise required by applicable Law, (I) grant, pay or provide any severance, retention or termination payments or benefits to any director, officer or Employee of any of Sellers, except in the Ordinary Course of Business consistent with past practice, (II) except for travel and expense advances in the Ordinary Course of Business, loan or advance money or other property to any Employee, officer, director, or former employee, officer or director, (III) increase the compensation, bonus, welfare, severance or other payments or benefits of, or pay any bonus to, any director, officer or Employee, other than in the Ordinary Course of Business consistent with past practice (but in no event causing an increase in Sellers' aggregate compensation expense by more than \$100,000 per annum), (IV) establish, adopt, amend or terminate any benefit plan, other than in the Ordinary Course of Business consistent with past practice or as may be required by applicable Law; or (V) take any action to accelerate the vesting or payment, or fund or in any other way secure the payment, of compensation or benefits under any benefit plan, to the extent not already provided in any such Plan;

(xvii) make any material changes in its operations, accounting methods or practices, except in accordance with GAAP;

(xviii) (A) increase the annual level of compensation (including benefits) of any Employee, other than as required pursuant to a Contract, (B) increase the annual level of compensation payable or to become payable to any of their respective executive officers, (C) grant any unusual or extraordinary bonus, benefit or other direct or indirect compensation to any employee, director or consultant, (D) increase the coverage or benefits available under any (or creating any new) severance pay, termination pay, vacation pay, company awards, salary continuation for disability, sick leave, deferred compensation, bonus or other incentive compensation, insurance, pension or other benefit plan or arrangement made to, for, or with any of the directors, officers, Employees, agents or representatives of any Seller or otherwise modifying or amending or terminating any such plan or arrangement, (E) enter into any new employment, deferred compensation, severance, consulting, non-competition or similar agreement (or materially amending any such agreement) to which any Seller is a party or involving an Employee of any Seller whose annual compensation and bonus (including benefits) would be in excess of \$100,000, or a director or officer of any

Seller in his or her capacity as an Employee, director or officer of any Seller, or (F) enter into any collective bargaining agreement (including successor collective bargaining agreements);

(xix) cause or permit any Seller to redeploy or significantly increase the number of Employees, other than in the Ordinary Course of Business (including seasonal hires) consistent with past practice;

(xx) make any loan or advance to any Person;

(xxi) agree to voluntarily change or attempt to change, or cause or permit Seller to agree to voluntarily change or attempt to change, the current zoning of the Leased Premises to the extent such change imposes any additional restrictions on the use of the Leased Premises;

(xxii) Settle or commence any Action or complaint (including any Action or complaint brought by or against any Governmental Authority) other than collection, default or other proceedings in the Ordinary Course of Business;

(xxiii) settle any condemnation or insurance Claims;

(xxiv) enter into any transaction or take any other action that could reasonably be expected to cause or constitute a breach of any representation or warranty made by Seller herein;

(xxv) fail to file any Tax Return or pay any Tax on or before the due date thereof, or file any amended Tax Return, make any material change in any method of Tax accounting, make any material change in any Tax election, settle or compromise any Tax audit or Proceeding, settle or compromise any Tax Claim or assessment, or consent to any extension or waiver of the limitation period applicable to any Claim or assessment with respect to Taxes;

(xxvi) cause or permit Seller to engage in any new line of business;

(xxvii) enter into any oral Contract; or

(xxviii) enter into a Contract, commitment or arrangement (oral or written) to do any of the foregoing, or authorize, recommend, propose or publicly announce an intention to do any of the foregoing actions.

(b) From the date of this Agreement through the Closing Date or the earlier termination of this Agreement, Seller will maintain any and all Purchased Assets and the Leased Premises in good repair, order, and condition (ordinary wear and tear excepted), and Seller shall not (i) take any action that would adversely impact the Closing or the Transactions; (ii) violate, modify, amend or terminate any of the Transferred Contracts or waive, release or assign any material rights or claims under any of the Transferred Contracts or relating to the Purchased Assets; (iii) incur or permit the incurrence of any

Assumed Liability; (iv) settle or compromise any Tax Claim or assessment, or consent to any extension or waiver of the limitation period applicable to any Claim or assessment with respect to Taxes; (v) enter into any Contract except as contemplated by this Agreement or otherwise necessary to consummate the Transactions or as may be agreed to between Seller and Purchaser; or (vi) enter into a Contract, commitment or arrangement (oral or written) to do any of the foregoing, or authorize, recommend, propose or announce an intention to do any of the foregoing unless agreed to between Seller and Purchaser.

5.4. Communication with Parties to Contracts. Seller agrees to cooperate with Purchaser to facilitate the establishing of any new agreements (to the extent required) to be effective upon Closing with Seller's suppliers, tenants, lenders, vendors, Employees and other parties. Purchaser may not communicate with any such parties without advance written consent of Seller.

5.5. Access to Information. Upon reasonable notice by Purchaser, Purchaser and its representatives shall have reasonable access during normal business hours at any time before Closing, to (i) the Purchased Assets and Documents relating or (ii) the Documents relating to the Business, and during such period Seller shall furnish to Purchaser, at Purchaser's expense, all information concerning the Purchased Assets as Purchaser may reasonably request. Seller shall provide or cause to be provided to Purchaser, at Purchaser's expense, such copies or extracts of Documents constituting Purchased Assets as Purchaser may reasonably request. Any inspections, examinations and audits shall be conducted during normal business hours by Purchaser's employees or agents upon reasonable advance notice. Notwithstanding anything in this Agreement to the contrary, Seller shall not be required to provide access to or to disclose information where such access or disclosure would be reasonably likely to (i) breach any agreement with any third party (other than the Operator Contract and Lease), (ii) constitute a waiver of or jeopardize the attorney-client or other privilege held by Seller, or (iii) otherwise violate any applicable Law.

5.7. Transfer of Permits. Except for those Permits that are not transferable to Purchaser by Law, Seller shall use commercially reasonable efforts to cause the issuance or transfer at Purchaser's expense of all Permits that relate in any way to the Purchased Assets or the Business.

5.8. Free and Clear of Encumbrances. Subject to entry of the Sale Order, Seller shall deliver the Purchased Assets to Purchaser free and clear of any Encumbrances, other than the Assumed Liabilities, at Closing.

5.9. Assignability of Certain Contracts. To the extent that the assignment to Purchaser of any Transferred Contract pursuant to this Agreement is not permitted without the consent of a third party and such restriction cannot be effectively overridden or canceled by the Sale Order or

other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment of or an undertaking or attempt to assign such Contract or any right or interest therein unless and until such consent is obtained; provided, however, that Seller will use its commercially reasonable efforts and cooperate with Purchaser, before the Closing, to obtain all such consents including, without limitation, the NYCEDC Consent (and failure to do so shall constitute a default); provided, further, that if any such consents are not obtained prior to the Closing Date, Seller will cooperate with Purchaser in any lawful and feasible arrangement designed to provide Purchaser with the benefits and obligations of any such Contract and Purchaser shall be responsible for performing all obligations under such Contract required to be performed by Seller on or after the Closing Date to the extent set forth in this Agreement. For the avoidance of doubt, the efforts contemplated by this Section 5.9 shall not include any obligation by Seller to pay money (advance or otherwise) to any third party or to incur out of pocket expenses unless Purchaser funds such amounts.

5.10. Rejection of Contracts. Seller shall reject or otherwise terminate or cancel, any Contract that is not a Transferred Contract effective as of the Closing Date or at any other time agreed to by the Parties.

5.11. Financing; Cash Collateral. No agreement, order of a court, or other document evidencing or approving credit, debt, or financing obtained or incurred, or use of cash collateral, by or in favor of Seller before or after the date of this Agreement and prior to the Closing, shall limit, impair, release or waive Purchaser's rights, defenses, remedies, Claims or causes of action pursuant to this Agreement, the Sale Order and/or the Bid Procedures Order.

5.12. Casualty Loss. Notwithstanding any provision in this Agreement, if at or prior to the Closing Date, any portion of the Purchased Assets or Business is (i) condemned or taken by eminent domain or (ii) is damaged or destroyed by fire, flooding, storm or other act of God, any act of terrorism or any other casualty event (each of the foregoing, a "Casualty Event"), Seller shall notify Purchaser of such Casualty Event and Seller shall, before the occurrence of the Closing, either (a) pay or cause to be paid, as the case may be, any and all insurance proceeds thereof to Purchaser or (b) assign to Purchaser the right to payment of such insurance proceeds; provided, however, that a condition precedent to Seller's ability to assign the right to payment of such insurance proceeds in (b) shall be Seller's prior provision of evidence satisfactory to Purchaser that Seller has an uncontested right to payment of such insurance proceeds enforceable against the insurer (and in the event the provision of such evidence would delay the Closing beyond the Outside Date for reasons outside the Seller's control, the Outside Date shall be automatically extended by thirty (30) days). From the date of this Agreement and through the Closing Date, Seller shall prepay and maintain at its own cost and expense (including all premiums, fees, charges, and deductibles) insurance in an aggregate amount of not less than one million dollars (\$1,000,000) for any Casualty Event that may occur with respect to the Purchased

Assets or the Business. Any such insurance policy(ies) shall be maintained with an insurer licensed to issue insurance policies in New York.

For the avoidance of doubt, Purchaser shall not be entitled to a credit against, or to otherwise deduct from, the Purchase Price for the amount of any Losses caused by a Casualty Event. However, Purchaser may, in its sole discretion, elect to terminate this Agreement if the amount of such Losses in excess of any recoverable insurance proceeds are greater than One Hundred Thousand Dollars (\$100,000).

SECTION 6 **CERTAIN MUTUAL COVENANTS**

6.1. Approvals and Filings. Subject to the terms and conditions of this Agreement, each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the Transactions. Seller shall make or cause to be made all filings and submissions under laws applicable to Seller, if any, as may be required for the consummation of the Transactions. Purchaser, on the one hand, and Seller, on the other hand, shall coordinate and reasonably cooperate in exchanging such information and reasonable assistance as may be requested by either of them in connection with the filings and submissions contemplated by this Section 6.1.

6.2. Notification of Certain Matters.

(a) Seller shall give notice as soon as reasonably practicable to Purchaser, and Purchaser shall give notice as soon as reasonably practicable to Seller, of (a) any notice or other communication from any Person alleging that the consent of such Person which is or may be required in connection with the Transactions or the Ancillary Agreements is not likely to be obtained prior to Closing, and (b) any written objection or proceeding that challenges the Transactions or the entry of the Sale Order and/or the Bid Procedures Order by the Bankruptcy Court.

(b) In addition, Seller shall give notice as soon as reasonably practicable to Purchaser upon becoming aware of:

(i) any facts, circumstances, events or actions the existence, occurrence or taking of which (A) have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Purchased Assets or Closing, (B) have resulted in, or would reasonably be expected to result in, any representation or warranty made by Seller herein not being true and correct, or (C) have resulted in, or would reasonably be expected to result in, the

failure of any of the conditions set forth in Section 8 or Section 9 of this Agreement to be satisfied; or

(ii) any Actions commenced or Claim asserted, to the Knowledge of Seller, threatened against, relating to or involving or otherwise affecting the consummation of the Transactions or any of the Ancillary Agreements.

Purchaser's receipt of information pursuant to this Section 6.2 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement.

6.3. Further Assurances. Upon the written request of Purchaser or Seller, as the case may be, Seller or Purchaser, as the case may be, shall, forthwith execute and deliver, or cause to be executed and delivered, such instruments and other documents and perform or cause to be performed such acts and provide such information, as the requesting Party or its counsel may reasonably request to evidence or effectuate the Transactions or for the performance by Seller or Purchaser, as the case may be, of any of its other obligations under this Agreement or the other instruments delivered in connection herewith.

SECTION 7 **EMPLOYEE MATTERS**

7.1. Employment. Purchaser shall have no obligation to make an offer or promise to offer employment to any Employee of the Seller or the Business, but Purchaser may make any such offers of employment after the Closing.

7.2. No Liability to Purchaser. Notwithstanding anything contained in this Agreement, Purchaser shall not be liable for any wages, remuneration and other obligations, Claims and Liabilities, whether actual or contingent, (A) associated with any Employee or other service provider of the Seller or the Business, including in connection with any termination of any such service relationship, and/or (B) that arise at any time with respect to any benefit plan, or any other severance, retention, employment, change-of-control, pension, retirement, equity or other employee plan, program, policy, practice or agreement sponsored, maintained, contributed to (or required to be contributed to) or entered into by Seller.

7.3. No Implied Limitations or Third Party Rights. Notwithstanding the foregoing, nothing in this Section 7 or elsewhere in this Agreement, express or implied, shall give any third party (including any Employee or any family member or beneficiary of any Employee or trustee) any right to enforce the provisions of this Agreement or obligate Purchaser or any of its affiliates to retain the employment of any particular Employee for any period of time or to maintain any

particular employee benefit plan or practice, any benefits or level of benefits thereunder, or any other benefit, for any period of time.

SECTION 8
CONDITIONS TO PARTIES' OBLIGATIONS

The obligation of the Parties to consummate the Transactions is subject to satisfaction (unless waived in writing by the applicable Party) of each of the following conditions on or prior to the Closing Date:

8.1. Representations and Warranties. The representations and warranties of each Party in this Agreement shall be true and correct in all material respects on and as of the Closing Date except to the extent expressly made as of an earlier date, in which case as of such earlier date.

8.2. Compliance with Agreements. Each Party shall have performed and complied in all material respects with all covenants and agreements under this Agreement and the Ancillary Agreements to be performed or complied with by it on or prior to the Closing Date.

8.3. No Injunctions. No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation or non-appealable judgment, decree, injunction or other order that is in effect on the Closing Date and prohibits the consummation of the Closing.

8.4. Sale Order. The Bankruptcy Court shall have entered the Sale Order, in form and substance acceptable to Purchaser and such Sale Order shall be final and non-appealable.

8.5. No Modification. The Sale Order and the Bankruptcy Court's authorization to consummate the Transactions shall not have been (i) reversed, (ii) stayed, or (iii) modified in any material respect prior to the Closing Date, other than with the prior written consent of Purchaser.

8.6. Closing Deliveries and Obligations. Each Party shall have delivered all items and satisfied all obligations necessary to consummate the Transactions.

8.7. Final Documentation. The Parties must have executed definitive transaction documents needed to carry out or otherwise consummate this Agreement and the Transactions contemplated herein, including, without limitation, customary representations, warranties, covenants and indemnities for an asset sale of this nature.

SECTION 9
CONDITIONS TO PURCHASER'S OBLIGATIONS

The obligation of Purchaser to consummate the Transactions is subject to satisfaction (unless waived in writing by Purchaser) of each of the following conditions on or prior to the Closing Date:

9.1. Consents. Seller shall have obtained consents, in form and substance acceptable to Purchaser, from any third party, in order to permit the transfer of all of Seller's right, title and interest in and to the Purchased Assets at Closing, free and clear of any and all Encumbrances (other than Assumed Liabilities), including, without limitation, the executed NYCEDC Consent.

9.2. Environmental Approvals. All governmental (federal, state, and municipal) environmental approvals for the Transactions shall have been obtained.

9.3. Other Contracts. The Bankruptcy Court shall have approved assumption and/or assignment, as applicable, of all of Seller's rights in, to and under the Transferred Contracts to Purchaser at Closing, free and clear of any and all Encumbrances (other than Assumed Liabilities).

SECTION 10
BANKRUPTCY MATTERS

10.1. Bankruptcy Actions; Sale Hearing; Sale Order. The Parties' obligations under this Agreement and any Ancillary Agreements are subject to and conditioned upon the Sale Order becoming final and non-appealable. Seller shall use commercially reasonable efforts to (i) cause the Sale Motion, seeking approval of the Sale Order (and only if the Court is unwilling to approve the Sale Order, the Bid Procedures Order), to be considered or heard by the Bankruptcy Court within twenty-one (21) days of the filing thereof; (ii) cause the Sale Hearing to be completed as soon as practicable, (iii) obtain (a) entry of the Sale Order at the Sale Hearing and (b) if the Sale Order is not entered on the first date that the Bankruptcy Court considers or conducts a hearing in connection with the Sale Motion, entry of the Bid Procedures Order on such date (unless Purchaser directs otherwise); and (iv) comply (or obtain an order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with obtaining approval of this Agreement and the Transactions contemplated herein. All documents concerning the Transactions (including, but not limited to, the Sale Motion, any proposed Sale Order, and any proposed Bid Procedures Order as well as any declaration, affidavit, motion, response, request, or statement) filed on by or on behalf of Seller in the Bankruptcy Case shall be in form and substance acceptable to Purchaser. Further, Seller shall obtain extensions of time to assume or

reject executory contracts and/or unexpired leases to which Seller is a party through and including the Closing.

SECTION 11
CLOSING

11.1. The Closing. The closing of the purchase by Purchaser from Seller and sale, transfer and assignment by Seller to Purchaser of the Purchased Assets (the "Closing") shall be held on the second (2nd) business day after the satisfaction or waiver of the conditions set forth in Section 8, Section 9 and Section 10 of this Agreement (excluding those conditions which by their nature are to be satisfied as part of the Closing), or at such other time as the Parties may otherwise agree (the "Closing Date"). The Closing shall be held at the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020 or at such other location as the Parties may agree. All of the Transactions shall be deemed to be consummated on a concurrent and simultaneous basis. The Closing shall be effective as of 12:01 a.m. New York City time on the Closing Date.

(a) Seller's Deliveries at Closing. At the Closing, Seller shall deliver (or cause to be delivered) to Purchaser the following:

(i) the duly executed Ancillary Agreements to which it is a party, including the Assignment and Assumption Agreement, Bill of Sale, and the Assignment of Intellectual Property;

(ii) as necessary, fully executed consents, in form and substance acceptable to Purchaser, to assignment of all of Seller's rights in, to and under the Intellectual Property;

(iii) fully executed consents, including the NYCEDC Consent, obtained pursuant to Seller's obligations under Section 3.2 of this Agreement;

(iv) such transfer tax forms as required by taxing or Governmental Authorities; and

(v) keys to the building entrances, garage, mailbox, machinery, safe deposit boxes, equipment, trucks and automobiles and any locks concerning the Purchased Assets.

(b) Payments at Closing. At Closing, Purchaser shall deliver (or cause to be delivered) the Closing Payment, less the Deposit, in cash by wire transfer of immediately available funds to an account or accounts designated in writing by the Parties at least two (2) business days prior to Closing. The Sale Proceeds, including the Post-Closing

Payment, shall be paid and distributed pursuant to Sections 2.6 and 2.7 and as set forth on the funds-flow statement to be agreed by the Parties.

(c) Purchaser's Deliveries to Seller at Closing. At the Closing, Purchaser shall deliver (or cause to be delivered) to Seller the following:

(i) the duly executed Ancillary Agreements to which it is a party, including the Assignment and Assumption Agreement; and

(ii) properly completed resale exemption certificates and other similar certificates or instruments as are applicable to claim available exemptions from the payment of sales, transfer, use or other similar Taxes under applicable Law.

11.2. Holdback Payments. Purchaser is entitled to withdraw funds, receive payments from, or otherwise withhold funds in the Holdback in the event that Purchaser incurs or may incur any Losses arising out of, based upon or resulting from: (i) any inaccuracy of any representation or warranty of Seller which is contained in this Agreement; or (ii) any breach or non-fulfillment by Seller of any covenants, agreements, or other obligations contained in or otherwise related to this Agreement and the Transactions. For the avoidance of doubt, "Losses" under this Section 11.2 shall include all reasonable fees, costs and expenses of any kind related to Losses, including without limitation, attorney's fees. Upon five (5) Business Days written notice to Seller, Purchaser shall also have the right to withdraw, receive payment from, or further withhold funds from the Holdback equal to a reasonable and good-faith estimate of Losses arising from, or likely to arise from, any claim or dispute relating to this Section 11.2 pending the resolution thereof. If any such claim is resolved following the Holdback Period and Losses with respect to such claim are less than the amount withdrawn, paid to, or withheld by Purchaser, Purchaser shall, within a reasonable time, release any amount due to Seller with the amount remaining following the Holdback Period to be used solely as recourse for the particular claim pending, or otherwise released to Seller. In the event that no such claims for Losses have been made against or with respect to the Holdback, the entire payment shall, within a reasonable time after the Holdback Period ends, be distributed to Seller.

SECTION 12

TERMINATION 12.1 Termination. Anything in this Agreement to the contrary notwithstanding, this Agreement and the Transactions may be terminated in any of the following ways at any time before the Closing and in no other manner, subject to the provisions hereof:

(a) at any time by mutual written consent of Purchaser and Seller;

(b) by Purchaser, if the Closing has not occurred on or before the earliest of (i) 50 days after entry of the Bid Procedures Order by the Bankruptcy Court, (ii) 21 days

after entry of the Sale Order by the Bankruptcy Court, or (iii) September 21, 2016 (the "Outside Date");

(c) by either Party, if the other Party has breached any material representation, warranty, covenant, or agreement set forth in this Agreement and such breach is not cured in all material respects by the earlier of fifteen (15) calendar days after written notice thereof, or the Outside Date;

(d) by Purchaser, if (i) neither the Sale Order nor the Bid Procedures Order has been entered by the Bankruptcy Court on or before August 31, 2016, or (ii) the Bid Procedures Order is entered by the Bankruptcy Court on or before August 31, 2016 but the Sale Order is not entered by the Bankruptcy Court on or before August 31, 2016;

(e) by Purchaser, if any creditor or other party obtains relief from any stay to foreclose on or take any other action against any of the Purchased Assets or the Business;

(f) by Purchaser, if the Break-Up Fee is not approved by the Bankruptcy Court on or before August 31, 2016, assuming the Sale Order approving the Transactions is not entered on or before that date;

(g) by Purchaser, if Seller makes any filing with the Bankruptcy Court or takes any other action inconsistent with this Agreement or the Ancillary Agreements;

(h) automatically (without notice or any other action), with such termination deemed to be by Purchaser, if Seller closes an Alternative Transaction; provided, however, that Seller shall deposit and segregate the full amount of the Break-Up Fee in Seller's attorney's trust account (the "Break-Up Trust") upon the date that is the earlier of (i) Seller's execution of an agreement for an Alternative Transaction or (ii) approval of any agreement for an Alternative Transaction by the Bankruptcy Court or other court of competent jurisdiction.

For the avoidance of doubt, Purchaser agrees to serve as a back-up bidder in the event that there is a higher and better proposed Alternative Transaction approved by the Bankruptcy Court until 5:00 p.m. (prevailing Eastern Time) the day of the closing of such Alternative Transaction, on and subject to the terms and conditions set forth in this Agreement (and provided that there has been no breach or termination of this Agreement, including without limitation pursuant to the provisions in Sections 12.1(a)-(g) hereof).

12.2. Effects of Termination. If this Agreement is terminated pursuant to Section 12.1(a), this Agreement forthwith shall become null and void, and no Party shall have any liability or further obligation relating to this Agreement to any other Party. If this Agreement is terminated pursuant to Section 12.1(b)-(g), the Party not at fault may assert claims

against the other Party. If this Agreement is terminated pursuant to Section 12.1(h), the Deposit and the Break-Up Fee shall immediately be paid by Seller to Purchaser.

SECTION 13 **TAXES**

13.1. Taxes Related to Purchase of Purchased Assets. Purchaser shall be solely responsible for the payment of any state and local sales, transfer, recording, stamp or other similar transfer taxes that may be imposed on the sale, transfer, assignment and delivery of the Purchased Assets and not exempted under the Sale Order (Seller shall seek such exemption in the Sale Order), along with any recording and filing fees. At the Closing, Purchaser shall remit to Seller such properly completed resale exemption certificates and other similar certificates or instruments as are applicable to claim available exemptions from the payment of sales, transfer, use or other similar Taxes under applicable Law. Purchaser and Seller shall cooperate in preparing such forms and shall execute and deliver such affidavits and forms as are reasonably requested by the other Party.

13.2. Tax Treatment. The Parties acknowledge and agree that Purchaser shall be treated as the owner of the Purchased Assets for tax purposes as of the Closing Date and no Party, on a Tax Return or otherwise, shall take any position inconsistent with such treatment.

13.3. Tax Refunds and Rebates; Liability. Seller hereby agrees to pay to Purchaser any Tax refunds, Tax rebates, or other similar such amounts received relating to Seller or the Business attributable to any taxable years or other taxable periods (or portions thereof) on or after the Closing.

13.4. Cooperation. Purchaser and Seller agree to furnish or cause to be furnished to each other, as promptly as reasonably practicable, such information and assistance relating to the Purchased Assets as is reasonably necessary for the preparation and filing of any Tax Return, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Tax matters and for the answer of any governmental or regulatory inquiry relating to Tax matters.

SECTION 14 **MISCELLANEOUS**

14.1. Survival of Representations and Warranties and Covenants. Until the Closing, all representations and warranties and covenants herein shall be operative and in full force and effect. All representations and warranties and covenants contained herein shall terminate and shall not survive the Closing, except that covenants that by their terms are to be performed after Closing shall survive Closing in accordance with their terms.

14.2. Entirety of Agreement; Amendments and Waivers. This Agreement (including all schedules and exhibits hereto), together with the Ancillary Agreements and certificates delivered hereunder, state the entire agreement of the Parties with respect to the subject matter hereof, merge all prior negotiations, agreements and understandings, if any, and state in full all representations, warranties, covenants and agreements which have induced this Agreement. Each of Seller and Purchaser otherwise makes no other representations or warranties including any implied representations or warranties. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement is sought. The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

14.3. Assignment. Without the prior written consent of all Parties hereto, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, by operation of Law (including, without limitation, by merger or consolidation) or otherwise.

14.4. Successors and Assigns; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

14.5. Governing law; Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and to be entirely performed therein, except to the extent that such laws are superseded by the Bankruptcy Code. In the event of any controversy or claim arising out of or relating to this Agreement or the breach or alleged breach hereof, each of the Parties irrevocably (a) submits to the exclusive jurisdiction of the Bankruptcy Court, (b) waives any objection which it may have at any time to the laying of venue of any action or proceeding brought in the Bankruptcy Court, (c) waives any claim that such action or proceeding has been brought in an inconvenient forum, and (d) agrees that service of process or of any other papers upon such Party by registered mail at the address to which notices are required to be sent to such Party under Section 14.9 shall be deemed good, proper and effective service upon such Party.

14.6. Headings. Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

14.7. Construction. In this Agreement (a) words denoting the singular include the plural and vice versa, (b) "it" or "its" or words denoting any gender include all genders, (c) the word "including" shall mean "including without limitation," whether or not expressed, (d) any

reference to a statute shall mean the statute and any regulations thereunder in force as of the date of this Agreement or the Closing Date, as applicable, unless otherwise expressly provided, (c) any reference herein to a Section or Exhibit refers to a Section of, or Exhibit to, this Agreement, unless otherwise stated, and (d) when calculating the period of time within or following which any act is to be done or steps taken, the date which is the reference day in calculating such period shall be excluded and if the last day of such period is not a Business Day, then the period shall end on the next day which is a Business Day.

14.8. Severability. If any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by applicable Law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

14.9. Negotiated Agreement. Seller and Purchaser each acknowledge that it has been advised and represented by counsel in the negotiation, execution and delivery of this Agreement and accordingly agrees that, if an ambiguity exists with respect to any provision of this Agreement, such provision shall not be construed against any Party.

14.10. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally, by electronic mail (with an appropriate subject heading) or telecopy if receipt is confirmed, or mailed by registered or certified mail (return receipt requested) to the Parties at the following addresses (or at such other address for a Party as shall be specified by notice pursuant to this paragraph):

If to Purchaser:	FoodWorks Holdings, LLC 219 Bowery, #2 New York, New York 10002 Email: nick@cathomcmade.com Attn: Nicholas Devane
with a copy to:	Dentons US LLP SoHo Startup and Venture Tech Centre 241 Centre Street New York, New York 10013 Email: randolph.adler@dentons.com oscar.pinkas@dentons.com Fax: (212) 768 - 6800 Attn: Randolph K. Adler Oscar N. Pinkas
If to Seller:	DI Labs, LLC dba Brooklyn FoodWorks 630 Flushing Avenue, Suite 200

Brooklyn, NY 11206
Email: drew@thebrooklynfoodworks.com

with a copy to:

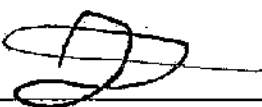
Congeni Law Firm, LLC
424 Gravier Street
New Orleans, LA 70130
Email: leo@congenilawfirm.com
Attn: Leo Congeni

14.11. Counterparts; Facsimile Copies. This Agreement may be executed in any number of copy counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signed facsimile or .pdf copies of this Agreement shall legally bind the Parties to the same extent as original documents.

14.12. Specific Performance. Seller on the one hand, and Purchaser on the other hand, acknowledge that the other Party would be damaged irreparably in the event that this Agreement or any Ancillary Agreement is not performed in accordance with its specific terms, is otherwise breached, or is not consummated as required hereunder. In addition to any other rights and remedies under law or equity, Seller on the one hand, and Purchaser on the other hand, as applicable, shall be entitled to seek equitable relief, without proof of actual damages, including an injunction or injunctions or orders for specific performance to prevent breaches of the terms of this Agreement or any Ancillary Agreement and to enforce specifically the terms and provisions hereof that are required to be performed. Seller and Purchaser further agree that no Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 14.12, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

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

DL LABS, LLC d/b/a BROOKLYN
FOODWORKS, and its bankruptcy estate

By: 
Name: Jorge Barrett
Title: Manager of DL Labs, LLC

FOODWORKS HOLDINGS, LLC


By: _____
Name: Nicholas Devane
Title: Authorized Signatory

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

DL LABS, LLC d/b/a BROOKLYN
FOODWORKS, and its bankruptcy estate

By: _____
Name: Jorge Barrett
Title: Manager of DL Labs, LLC

FOODWORKS HOLDINGS, LLC

By:  _____
Name: Nicholas Devane
Title: Authorized Signatory

SCHEDULE 2.1(d)

Transferred Contracts

Contract Counterparty Name and Address	Contract Description
ACP BK I LLC c/o Acumen Capital Partners, LLC 630 Flushing Avenue Brooklyn, NY 11206	Commercial Lease Agreement for 630 Flushing Avenue, Suite 200, Brooklyn, NY 11206 dated January 30 th , 2015, as amended
NYCEDC 110 William St. New York, NY 10038	Operator Contract #47670002 dated October 31, 2014
Precibake Commercial LP 222 Broadway, 19 th Floor New York, NY 10038	Equipment Rental Agreement for Baxter Oven dated March 04, 2016
Precibake Commercial LP 222 Broadway, 19 th Floor New York, NY 10038	Equipment Rental Agreement for WP Oven dated December 15, 2015
Membership Agreements (as outlined in Section 2.1(d))	License Agreements for short-term kitchen usage with various dates

Schedule 2.1 (e)

Intellectual Property

Trademarks:

Trademark	Jurisdiction	Registration No.	Registration Date
None			

Patents:

Patent	Jurisdiction	Registration No.	Registration Date
None			

Copyrights:

Copyright	Jurisdiction	Registration No.	Registration Date
None			

Domain Names:

Domain Name	Registrar	Expiration Date
thebrooklynfoodworks.com	GoDaddy	03/05/17
foodworksbrooklyn.com	GoDaddy	03/05/17
brooklynfoodworks.kitchen	GoDaddy	03/05/17
100347817 brooklynfoodworks.nyc	GoDaddy	03/04/17
brooklynfoodworks.co	GoDaddy	03/04/17
foodworks.kitchen	GoDaddy	03/02/17
bkfoodworks.com	GoDaddy	03/02/17
foodworks.nyc	GoDaddy	03/01/17
brooklynfoodworks.com	GoDaddy	10/21/16

EXHIBIT A
Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Assignment") is made as of August [•], 2016, by and among FOODWORKS HOLDINGS, LLC, a Delaware limited liability company, and/or its designee (together, "Purchaser") and DL LABS, LLC d/b/a BROOKLYN FOODWORKS, a limited liability company formed under the laws of Louisiana with foreign registration in New York State, and its bankruptcy estate (together, "DL Labs" or "Seller" and together with Purchaser, the "Parties," and individually, a "Party").

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of July [•], 2016 (the "Asset Purchase Agreement"), Seller has agreed to sell, transfer, assign, convey and deliver to Purchaser all of Seller's right, title and interest in and to the Transferred Contracts free and clear of any and all Encumbrances, and Purchaser has agreed to assume, perform, pay and discharge the Assumed Liabilities;

WHEREAS, the Asset Purchase Agreement provides that upon the Closing, Seller shall assign to Purchaser the Transferred Contracts that constitute executory contracts or unexpired leases under Section 365 of the Bankruptcy Code free and clear of any and all Encumbrances, and Purchaser shall assume and be responsible for the Assumed Liabilities;

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

WHEREAS, Seller desires to deliver to Purchaser such instruments as are required in order to effectuate and evidence the assignment by Seller to Purchaser of the Transferred Contracts that constitute executory contracts or unexpired leases under Section 365 of the Bankruptcy Code free and clear of any and all Encumbrances.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Assignment hereby agree as follows:

1. Definitions. Each capitalized term used but not defined in this Assignment shall have the meaning ascribed to it in the Asset Purchase Agreement.
2. Assignment. On the terms and subject to the conditions of the Asset Purchase Agreement, Seller hereby assumes the Transferred Contracts that constitute executory contracts or unexpired leases under Section 365 of the Bankruptcy Code, and Seller hereby sells, transfers, conveys, assigns and/or delivers to Purchaser, free and clear of any and all Encumbrances, all of its right, title and interest in and to such Transferred Contracts.
3. Assumed Liabilities. On the terms and subject to the conditions of the Asset Purchase Agreement, Purchaser hereby assumes and agrees to discharge the Assumed Liabilities, including all Cure Amounts that relate to Transferred Contracts that constitute executory contracts or unexpired leases under Section 365 of the Bankruptcy Code. For the avoidance of doubt, it is expressly agreed and acknowledged that Seller will retain, and Purchaser does not assume, any of the Excluded Liabilities.
4. Governance. This Assignment is intended to evidence the sale, transfer, conveyance,

assignment and/or delivery to Purchaser, free and clear of any and all Encumbrances, of all Seller's right, title and interest in and to the Transferred Contracts that constitute executory contracts or unexpired leases under Section 365 of the Bankruptcy Code, and the assumption by Purchaser of the Assumed Liabilities.

5. Counterparts. This Assignment may be executed and delivered in two or more counterpart copies via facsimile transmission or via email with scan or email attachment. Any such counterpart executed and delivered via facsimile transmission or via email with scan or email attachment will be deemed an original for all intents and purposes, and all such counterparts shall together constitute one and the same instrument.
6. Successors and Assigns. This Assignment shall bind and inure to the benefit of the Parties and their successors and assigns. This Assignment is for the sole benefit of the Parties hereto and their successors and assigns, and nothing herein expressed or implied shall give or be construed to give to any Person, other than the Parties hereto and their successors or assigns, any legal or equitable rights hereunder.
7. Entire Understanding; Amendments. This Assignment, the Asset Purchase Agreement and all documents and instruments referred to herein or therein constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof or thereof. This Assignment shall not be amended or modified except in a written document signed by the Parties.
8. Governing Law; Jurisdiction. This Assignment shall be governed by and interpreted and enforced in accordance with federal laws and the laws of the State of New York, as applicable, without giving effect to the choice-of-law provisions thereof to the extent that the application of the laws of another jurisdiction would be required thereby. The Bankruptcy Court shall retain exclusive jurisdiction to interpret and enforce the terms of this Assignment and to decide any claims or disputes that may arise under this Assignment and in respect of the transactions contemplated hereby; provided, however, that in the event the Bankruptcy Court at any time declines to accept jurisdiction, each of the Parties hereby irrevocably (i) submits to the exclusive jurisdiction of the courts of the State of New York and federal courts located in New York, New York regarding any such claim or dispute; (ii) waives, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the venue of any such claim or dispute brought in such court or any defense of inconvenient forum for the maintenance of such claim or dispute; and (iii) agrees that a judgment in any claim or dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.
9. Section Headings; References. Section headings in this Assignment are for convenience of reference only, and shall neither constitute a part of this Assignment nor affect its interpretation. All words in this Assignment shall be construed to be of such number and gender as the context requires or permits.
10. Severability. If any term or other provision of this Assignment is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and

provisions of this Assignment shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Assignment is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Assignment so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated by this Assignment are fulfilled to the extent possible.

[Signature Page(s) Follow]

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

SELLER

**DL LABS, LLC d/b/a BROOKLYN
FOODWORKS and its bankruptcy estate**

By: _____

Name: Jorge Barrett

Title: Manager of DL Labs, LLC

PURCHASER

FOODWORKS HOLDINGS, LLC

By: _____

Name: Nicholas Devane

Title: Authorized Signatory

100347821

EXHIBIT B
Form of Intellectual Property Assignment Agreement

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Intellectual Property Assignment Agreement (this "IP Assignment") is made as of August [•], 2016, by and among FOODWORKS HOLDINGS, L.L.C, a Delaware limited liability company, and/or its designee (together, "Purchaser") and DL LABS, LLC d/b/a BROOKLYN FOODWORKS, a limited liability company formed under the laws of Louisiana with foreign registration in New York State, and its bankruptcy estate (together, "DL Labs" or "Seller" and together with Purchaser, the "Parties," and individually, a "Party").

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of July [•], 2016 (the "Asset Purchase Agreement"), Seller has agreed to sell, transfer, assign, convey and deliver to Purchaser all of Seller's right, title and interest in and to the Intellectual Property free and clear of any and all Encumbrances, and Purchaser has agreed to assume, perform, pay and discharge the Assumed Liabilities;

WHEREAS, the execution and delivery of this IP Assignment is required by the Asset Purchase Agreement; and

WHEREAS, Seller desires to deliver to Purchaser such instruments as are required in order to effectuate and evidence the assignment by Seller to Purchaser of the Intellectual Property free and clear of any and all Encumbrances.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this IP Assignment hereby agree as follows:

1. Definitions. Each capitalized term used but not defined in this IP Assignment shall have the meaning ascribed to it in the Asset Purchase Agreement.
2. Intellectual Property. Seller hereby grants, sells, conveys, transfers, assigns, delivers and relinquishes exclusively to Purchaser, all of Seller's right, title and interest in, to and under (1) all Intellectual Property owned or used in connection with the Purchased Assets or the Business (including all goodwill associated therewith or symbolized thereby), including, without limitation, all registered and unregistered trademarks, patents, copyrights, domain names and other Intellectual Property of DL Labs [set forth on Schedule 2.1(d)], and (2) all rights as to, causes of action and other Claims for and/or remedies against infringements, dilutions, misappropriations, and other violations thereof, rights of priority and protection of interests therein and all tangible embodiments thereof under the laws of any jurisdiction worldwide, whether arising prior or subsequent to the date of this IP Assignment, and any and all renewals and extensions thereof that may hereafter be secured under the laws now or hereafter in effect in the United States and in any other jurisdiction, the same to be held and enjoyed by Purchaser, its successors and assigns from and after the date hereof as fully and entirely as the same would have been held and enjoyed by Seller had this IP Assignment not been made.
3. Terms of the Asset Purchase Agreement. The terms of the Asset Purchase Agreement, including but not limited to Seller's representations, warranties, covenants, and agreements, are incorporated herein by this reference. Seller acknowledges and agrees that the representations, warranties, covenants, and agreements contained in the Asset

Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms hereof, the terms of the Asset Purchase Agreement shall govern.

4. Recordation. Seller hereby authorizes and requests that the Commissioner of Patents and Trademarks of the United States, and any official of any other country empowered to issue trademarks, patents, or copyrights, record this IP Assignment, and to issue or transfer all registrations and applications to Purchaser as owner of all right, title and interest therein, or otherwise as Purchaser may direct, in accordance with the terms of this IP Assignment.
5. Governance. This IP Assignment is intended to and shall evidence the sale, conveyance, transfer, assignment and delivery to Purchaser of the Intellectual Property free and clear of any and all Encumbrances.
6. Counterparts. This IP Assignment may be executed and delivered in two or more counterpart copies via facsimile transmission or via email with scan or email attachment. Any such counterpart executed and delivered via facsimile transmission or via email with scan or email attachment will be deemed an original for all intents and purposes, and all such counterparts shall together constitute one and the same instrument.
7. Successors and Assigns. This IP Assignment shall bind and inure to the benefit of the Parties and their successors and assigns. This IP Assignment is for the sole benefit of the Parties hereto and their successors and assigns, and nothing herein expressed or implied shall give or be construed to give to any Person, other than the Parties hereto and their successors or assigns, any legal or equitable rights hereunder.
8. Entire Understanding; Amendments. This IP Assignment, the Asset Purchase Agreement and all documents and instruments referred to herein or therein constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof or thereof. This IP Assignment shall not be amended or modified except in a written document signed by the Parties.
9. Governing Law; Jurisdiction. This IP Assignment shall be governed by and interpreted and enforced in accordance with federal laws and the laws of the State of New York, as applicable, without giving effect to the choice-of-law provisions thereof to the extent that the application of the laws of another jurisdiction would be required thereby. The Bankruptcy Court shall retain exclusive jurisdiction to interpret and enforce the terms of this IP Assignment and to decide any claims or disputes that may arise under this IP Assignment and in respect of the transactions contemplated hereby; provided, however, that in the event the Bankruptcy Court at any time declines to accept jurisdiction, each of the Parties hereby irrevocably (i) submits to the exclusive jurisdiction of the courts of the State of New York and federal courts located in New York, New York regarding any such claim or dispute; (ii) waives, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the venue of any such claim or dispute

brought in such court or any defense of inconvenient forum for the maintenance of such claim or dispute; and (iii) agrees that a judgment in any claim or dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

10. Section Headings; References. Section headings in this IP Assignment are for convenience of reference only, and shall neither constitute a part of this IP Assignment nor affect its interpretation. All words in this IP Assignment shall be construed to be of such number and gender as the context requires or permits.
11. Severability. If any term or other provision of this IP Assignment is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this IP Assignment shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this IP Assignment is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this IP Assignment so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated by this IP Assignment are fulfilled to the extent possible.

[Signature Page(s) Follow]

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

SELLER

**DL LABS, LLC d/b/a BROOKLYN
FOODWORKS and its bankruptcy estate**

By: _____
Name: Jorge Barrett
Title: Manager of DL Labs, LLC

PURCHASER

FOODWORKS HOLDINGS, LLC

By: _____
Name: Nicholas Devane
Title: Authorized Signatory

EXHIBIT C
Form of Bill of Sale

BILL OF SALE

This Bill of Sale is made as of August [•], 2016, by and among FOODWORKS HOLDINGS, LLC, a Delaware limited liability company, and/or its designee (together, "Purchaser") and DL LABS, LLC d/b/a BROOKLYN FOODWORKS, a limited liability company formed under the laws of Louisiana with foreign registration in New York State, and its bankruptcy estate (together, "DL Labs" or "Seller" and together with Purchaser, the "Parties," and individually, a "Party").

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of July 15, 2016 (the "Asset Purchase Agreement"), Seller has agreed to sell, transfer, assign, convey and deliver to Purchaser all of Seller's right, title and interest in and to the Purchased Assets free and clear of any and all Encumbrances, and Purchaser has agreed to assume, perform, pay and discharge the Assumed Liabilities;

WHEREAS, the Asset Purchase Agreement provides that immediately upon the Closing, Seller shall sell to Purchaser the Purchased Assets free and clear of any and all Encumbrances, and Purchaser shall assume the Assumed Liabilities;

WHEREAS, the execution and delivery of this Bill of Sale is required by the Asset Purchase Agreement; and

WHEREAS, Seller desires to deliver to Purchaser such instruments as are required in order to effectuate and evidence the sale by Seller to Purchaser of the Purchased Assets free and clear of any and all Encumbrances;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Bill of Sale hereby agree as follows:

1. Definitions. Each capitalized term used but not defined in this Bill of Sale shall have the meaning ascribed to it in the Asset Purchase Agreement.
2. Transfer of Assets. Effective as of the Closing, on the terms and subject to the conditions of the Asset Purchase Agreement, Seller hereby sells, transfers, conveys, assigns and delivers to Purchaser, free and clear of any and all Encumbrances, and Purchaser accepts from Seller all of Seller's right, title and interest in and to, the Purchased Assets (other than the Transferred Contracts that constitute executory contracts or unexpired leases under Section 365 of the Bankruptcy Code).
3. Governance. This Bill of Sale is intended to evidence the sale, conveyance, transfer, assignment and delivery to Purchaser of the Purchased Assets (other than the Transferred Contracts that constitute executory contracts or unexpired leases under Section 365 of the Bankruptcy Code) free and clear of any and all Encumbrances.
4. Counterparts. This Bill of Sale may be executed and delivered in two or more counterpart copies via facsimile transmission or via email with scan or email attachment. Any such counterpart executed and delivered via facsimile transmission or via email with scan or

- email attachment will be deemed an original for all intents and purposes, and all such counterparts shall together constitute one and the same instrument.
5. Successors and Assigns. This Bill of Sale shall bind and inure to the benefit of the Parties and their successors and assigns. This Bill of Sale is for the sole benefit of the Parties hereto and their successors and assigns, and nothing herein expressed or implied shall give or be construed to give to any Person, other than the Parties hereto and their successors or assigns, any legal or equitable rights hereunder.
 6. Entire Understanding; Amendments. This Bill of Sale, the Asset Purchase Agreement and all documents and instruments referred to herein or therein constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof or thereof. This Bill of Sale shall not be amended or modified except in a written document signed by all Parties.
 7. Governing Law. This Bill of Sale shall be governed by and interpreted and enforced in accordance with federal laws and the laws of the State of New York, as applicable, without giving effect to the choice-of-law provisions thereof to the extent that the application of the laws of another jurisdiction would be required thereby. The Bankruptcy Court shall retain exclusive jurisdiction to interpret and enforce the terms of this Bill of Sale and to decide any claims or disputes that may arise under this Bill of Sale and in respect of the transactions contemplated hereby; provided, however, that in the event the Bankruptcy Court at any time declines to accept jurisdiction, each of the Parties hereby irrevocably (i) submits to the exclusive jurisdiction of the courts of the State of New York and federal courts of located in New York, New York regarding any such claim or dispute; (ii) waives, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the venue of any such claim or dispute brought in such court or any defense of inconvenient forum for the maintenance of such claim or dispute; and (iii) agrees that a judgment in any claim or dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.
 8. Section Headings; References. Section headings in this Bill of Sale are for convenience of reference only, and shall neither constitute a part of this Bill of Sale nor affect its interpretation. All words in this Bill of Sale shall be construed to be of such number and gender as the context requires or permits.
 9. Severability. If any term or other provision of this Bill of Sale is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Bill of Sale shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Bill of Sale is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Bill of Sale so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated by this Bill of Sale are fulfilled to the extent possible.

[Signature Page(s) Follow]

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

SELLER

**DL LABS, LLC d/b/a BROOKLYN
FOODWORKS and its bankruptcy estate**

By: _____
Name: Jorge Barrett
Title: Manager of DL Labs, LLC

PURCHASER

FOODWORKS HOLDINGS, LLC

By: _____
Name: Nicholas Devane
Title: Authorized Signatory

EXHIBIT D
Form of Sale Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: * CASE NO. 16-11007
*
DL LABS, LLC * SECTION "B"
*
Debtor * CHAPTER 11
*

ORDER GRANTING MOTION TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS UNDER 11 U.S.C. § 363 AND TO ASSUME AND ASSIGN LEASES AND EXECUTORY CONTRACTS PURSUANT TO 11 U.S.C. § 365

Upon the *Motion to Sell Property of the Estate Free and Clear of All Liens, Claims Encumbrances, and Interests Under 11 U.S.C. § 363 and to Assume and Assign Leases and Executory Contracts Pursuant to 11 U.S.C. § 365* (doc. []) (the "Motion") filed by DL Labs, LLC (together with its bankruptcy estate, the "Debtor" or the "Seller") pursuant to Sections 105, 363, and 365 of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") seeking, among other things, entry of an order (a) authorizing and approving the sale of the Purchased Assets¹ (for all purposes in this Order, "Purchased Assets" includes all non-executory Transferred Contracts) pursuant to that certain Asset Purchase Agreement dated as of July [•], 2016 (attached hereto as Exhibit A, and including all exhibits, schedules and Ancillary Agreements related thereto, as may be amended from time to time, the "Purchase Agreement") by and among the Debtor and FoodWorks Holdings, LLC and/or its designee (together, the "Purchaser") free and clear of all liens, claims, Encumbrances (for all purposes in this Order, "Encumbrances" includes all Statutory Liens) and interests (other than Assumed Liabilities) and

¹ Capitalized terms not defined herein shall have the meanings ascribed in the Purchase Agreement.

authorizing and approving the assumption by the Debtor and assignment to Purchaser of all executory Transferred Contracts, each in accordance with the terms and conditions contained in the Purchase Agreement (collectively, including related transactions contemplated by the Purchase Agreement or any one of the Ancillary Agreements, the "Transactions"), and (b) granting related relief; and the Debtor, having determined that the Purchase Agreement represents the highest and best offer received by the Debtor for the Purchased Assets; and a hearing having been held on August [•], 2016 (the "Sale Hearing") to consider approval of the Purchase Agreement; and the relief requested in the Motion is in the best interests of the Debtor, its creditors and parties in interest; and reasonable, adequate and sufficient notice of the Motion having been given to parties in interest; and parties in interest having been afforded due process and an opportunity to be heard with respect to the Motion and all relief requested therein; and the Court having reviewed and considered: (i) the Motion, (ii) objections to the Motion, if any, (iii) responses in support of the Motion, if any, and (iv) the arguments of counsel made, and the evidence proffered or adduced at, the Sale Hearing; and after due deliberation and for sufficient cause;

IT HEREBY IS FOUND, DETERMINED AND CONCLUDED THAT:²

A. The Court has jurisdiction over this matter, over the property of the Debtor's estate, and over the Debtor's estate pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and other bases for the relief sought in the Motion are Sections 105, 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014.

² The findings of fact and conclusions of law contained in this Order shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to these proceedings pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it is deemed as such in this Order, and to the extent any conclusion of law later shall be determined to be a finding of fact, it is deemed as such in this Order.

B. Due, proper, timely, adequate and sufficient notice of the Sale Hearing, the Purchase Agreement, the Transactions, the Motion and the relief requested therein has been provided to all parties in interest, such notice was good, sufficient and appropriate under the circumstances, and no other or further notice thereof is or shall be required. Actual written notice and a reasonable opportunity to object and to be heard has been given to all parties in interest, including, without limitation, to: (i) the Office of the United States Trustee for the Eastern District of Louisiana, (ii) the NYCEDC, (iii) the Landlord, (iv) all parties in interest with any active Uniform Commercial Code financing statement or recording evidencing Liens on file against the Debtor or the Purchased Assets, (v) all non-Debtor parties who hold any tax or judgment Liens, (vi) all parties requesting or entitled to notice pursuant to Bankruptcy Rule 2002, including, but not limited to, all known creditors of the Debtor and all non-Debtor Contract counterparties, (vii) the Internal Revenue Service, and (xii) all applicable state and local taxing authorities.

C. Notice of the Debtor's assignment to the Purchaser of the executory Transferred Contracts has been provided to each non-Debtor party thereto, together with a statement therein from the Debtor with respect to the amount, if any, to be paid to such party under Section 365(b) of the Bankruptcy Code as a condition to assumption and assignment. Each of the non-Debtor parties to the executory Transferred Contracts has had an opportunity to object to the Debtor's notice (any such notice, the "Cure Notice") relating to the Transferred Contracts, and Purchaser has provided adequate assurance of its ability to perform under the executory Transferred Contracts. Pursuant to Section 365 of the Bankruptcy Code, the Debtor and/or the Purchaser have complied with any and all applicable requirements of Section 365 of the Bankruptcy Code. Therefore, the executory Transferred Contracts may be assumed by the Debtor and assigned to

the Purchaser at Closing.

D. The disclosures made by the Debtor concerning the Purchase Agreement, the Transactions, the Sale Hearing, and the assumption, assignment, transfer and/or sale of the Transferred Contracts were good, complete, and adequate.

E. The Debtor's right, title, and interest in the Purchased Assets constitute property of the Debtor's estate and title thereto is vested in the Debtor's estate within the meaning of Section 541(a) of the Bankruptcy Code. The Debtor has all right, title and interest in the Purchased Assets required to transfer and convey the Debtor's right, title, and interest in the Purchased Assets to the Purchaser free and clear of liens, claims, Encumbrances and interests (other than Assumed Liabilities) at Closing. The Debtor has taken all limited liability company or other action necessary to authorize and approve the Purchase Agreement and the consummation of the Transactions, and the Debtor's sale of the Debtor's right, title, and interest in the Purchased Assets to the Purchaser has been duly and validly authorized by all necessary limited liability company or other action. Upon entry of this Order, the Debtor shall have full authority to consummate the Purchase Agreement and the Transactions.

F. Approval of the Purchase Agreement and consummation of the Transactions, including the assumption, assignment, transfer and/or sale of the Transferred Contracts is in the best interests of the Debtor, its creditors, and parties in interest. The Debtor has demonstrated good, sufficient and sound business purposes, justifications, and judgment for the Transactions pursuant to Section 363(b) of the Bankruptcy Code and the assumption and assignment to Purchaser of executory Transferred Contracts pursuant to Section 365 of the Bankruptcy Code.

G. The Purchase Agreement and the Transactions were negotiated, proposed and agreed to by the Debtor and the Purchaser without collusion, in good faith and from arms' length

bargaining positions and thus, neither the Purchase Agreement nor the Transactions are avoidable under Section 363(n) of the Bankruptcy Code and no party in interest is entitled to any damages or other recovery pursuant to Section 363(n) of the Bankruptcy Code. The Purchaser is not an "insider" or an "affiliate" of the Debtor, as those terms are defined in Section 101 of the Bankruptcy Code.

H. The Purchaser is a good faith purchaser under Section 363(m) of the Bankruptcy Code and, therefore, is entitled to all protections afforded by Section 363(m).

I. The Purchase Price to be provided by the Purchaser pursuant to the terms and conditions of the Purchase Agreement: (i) is fair and reasonable, (ii) is the highest and best offer received by the Debtor for the Purchased Assets, (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration. The Debtor's determination that the Purchase Agreement constitutes the highest and best offer received by the Debtor for the Purchased Assets is a result of due deliberation by the Debtor and constitutes a valid and sound exercise of the Debtor's business judgment consistent with his fiduciary duties.

J. The transfer of the Debtor's right, title, and interest in the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and will vest the Purchaser with all right, title, and interest of the Debtor to the Purchased Assets free and clear of all liens, claims, Encumbrances and interests of any and every kind whatsoever (other than Assumed Liabilities) at Closing.

K. Entry of this Order is a necessary condition precedent to the Purchaser consummating the Transactions. The Purchaser would not have entered into the Purchase Agreement and will not consummate the Transactions if transfer of the Purchased Assets to the

Purchaser is not free and clear of all liens, claims, Encumbrances and interests of any and every kind whatsoever (other than Assumed Liabilities) at Closing, or if the Purchaser will, or could, be liable for any liens, claims, Encumbrances, or interests (other than Assumed Liabilities).

L. The Debtor may sell the Debtor's right, title, and interest in the Purchased Assets free and clear of all liens, claims, Encumbrances and interests of any and every kind whatsoever (other than Assumed Liabilities), because, in each case, one or more of the standards set forth in Section 363(f)(1) through (5) of the Bankruptcy Code have been satisfied. Each Person with a lien, claim, Encumbrance, or interest against the Debtor or in or relating to the Purchased Assets or the Business: (i) has consented to the Transactions, either expressly or is deemed to have consented, including pursuant to the terms and conditions of this Order, (ii) could be compelled in a legal or equitable proceeding to accept money in satisfaction of such a lien, claim, Encumbrance, or interest, or (iii) otherwise falls within the provisions of Section 363(f) of the Bankruptcy Code. Those holders of any liens, claims, Encumbrances, or interests who did not object to the Motion, or whose objections were withdrawn or otherwise resolved, are deemed to have consented to the Transactions pursuant to Section 363(f)(2) of the Bankruptcy Code. For the avoidance of doubt, and without limiting the extent of the relief granted by this Order, the NYCEDC (as evidenced by the NYCEDC Consent), all non-Debtor parties who hold any judgment Liens or Statutory Liens, the Internal Revenue Service, and all applicable state and local taxing authorities (the "Consenting Parties") have consented to the Transactions and the entry of this Order pursuant to Section 363(f)(2) of the Bankruptcy Code (to the extent their consent is required), and the Debtor's right, title, and interest in the Purchased Assets shall be transferred to the Purchaser free and clear of all liens, claims, Encumbrances and interests held or assertable by any and all of the Consenting Parties.

M. The Transactions must be consummated promptly to maximize the value of the Debtor's estate. Cause has been shown as to why this Order should not be subject to any stay.

N. The Transactions do not constitute a de facto plan of reorganization or liquidation. The consummation of the Transactions is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Sections 105, 363, and 365 of the Bankruptcy Code and all of the applicable requirements of such Sections have been complied with in respect of the Transactions. The Purchase Agreement is a valid and binding contract between the Debtor and the Purchaser, which is and shall be enforceable according to its terms.

O. The Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia.

P. There is good and sufficient cause to grant the relief requested in the Motion and approve the Purchase Agreement and the Transactions.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Any objections to the Motion or the entry of this Order that have not been withdrawn, waived or resolved, and all reservations of rights, are denied and overruled on the merits and with prejudice.
3. The Purchase Agreement and the Transactions are APPROVED in all respects.
4. Pursuant to Section 363 of the Bankruptcy Code, the Debtor is authorized and directed to: (i) perform under, consummate, and implement the Purchase Agreement and the Transactions together with all additional instruments and documents that are requested by the

Purchaser and may be reasonably necessary or desirable to implement the Purchase Agreement, (ii) take all other and further acts or actions as may be reasonably necessary to implement and consummate the Transactions, and (iii) pay Sale Proceeds to parties in interest pursuant to Section 2.7 of the Purchase Agreement at Closing.

5. Pursuant to Sections 105(a), 363(f), and 365(b) of the Bankruptcy Code, upon the Closing: (i) the transfer of the Debtor's right, title, and interest in the Purchased Assets to the Purchaser pursuant to the Purchase Agreement shall constitute a legal, valid, and effective transfer of the Debtor's right, title, and interest in the Purchased Assets and shall vest the Purchaser with all right, title and interest in and to the Debtor's right, title, and interest in the Purchased Assets, (ii) the Debtor's right, title, and interest in the Purchased Assets shall be transferred to the Purchaser free and clear of all liens, claims, Encumbrances and interests of any and every kind whatsoever (including, but not limited to, any liens, claims, Encumbrances, or interests held by any of the Consenting Parties), other than Assumed Liabilities, in accordance with Section 363(f) of the Bankruptcy Code.³ There are no liens on the Purchased Assets whose

³ For the avoidance of doubt, except for the Assumed Liabilities, the Purchaser shall not have any liability for any liens, claims, Encumbrances, or interests and/or Liabilities arising out of, related to, or in connection with the Purchased Assets, the Debtor, or any of its predecessors, subsidiaries, or affiliates, including, but not limited to, Liabilities from any of the following: (1) under any ERISA (defined below), tax, employment, labor or antidiscrimination laws, rules or regulations, products liability law, or environmental law, (2) any employment or labor agreements, consulting agreements, severance arrangements, change in control agreements or other similar agreements to which Debtor is or was a party, (3) any pension, welfare, compensation or other employee benefits, plans, agreements, practices and programs, including without limitation, any pension plan or benefit plan of the Debtor, (4) the cessation of the Debtor's operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs and any obligations with respect thereto, including those that arise from the Employee Retirement Income Security Act of 1974 (as amended, "ERISA"), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), or the Worker Adjustment and Retraining Notification Act (or comparable state law), (5) any withdrawal Liability or COBRA Liability under ERISA, whether contingent or non-contingent, (6) workmen's compensation, occupational disease, or unemployment or temporary disability insurance claims, (7) environmental Liabilities, debts, claims or obligations which may be asserted on any basis, (8) any litigation by or against the Debtor, and (9) the laws of the United States, any state, territory or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including without limitation, the laws of the States of New York and Louisiana pertaining to the creation, enforcement,

lien will transfer to the Sale Proceeds at Closing. Any and all claims, Encumbrances, or interests that the Purchased Assets are sold free and clear of pursuant to this Order shall attach to the Sale Proceeds at Closing with the same priority, validity, force and effect as they had with respect to the Purchased Assets before the Closing, with the priority, validity, force, and effect of the claims, Encumbrances, or interests in or against the Sale Proceeds being subject to the rights, claims, defenses and objections of the Debtor and other parties in interest.

6. Any and all Contracts that are not Transferred Contracts as of the Closing shall be and be deemed to be rejected, cancelled, and/or terminated effective as of the Closing.

7. After the Closing, no holder of any lien, claim, Encumbrance, or interest that the Purchased Assets were sold free and clear of may interfere with the Purchaser's use and enjoyment of the Purchased Assets based on or related to such a lien, claim, Encumbrance or interest, or any action that the Debtor may take in this Bankruptcy Case, and no party may take any action to prevent, interfere with, impair or otherwise enjoin consummation of the Transactions. All Persons are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtor to sell and transfer the Debtor's right, title, and interest in the Purchased Assets to the Purchaser in accordance with the terms of the Purchase Agreement and this Order.

8. The Purchaser and its successors and assigns are not and shall not be deemed or considered a successor to the Debtor or its estate by reason of any theory of law or equity and the Purchaser has neither assumed nor is it in any way responsible for any Liability or obligation of the Debtor or its estate, except with respect to the Assumed Liabilities.

9. Except to the extent expressly included in the Assumed Liabilities, pursuant to

validity, extent, or priority of liens, or any theory of equitable law, including, without limitation, any theory of successor or transferee liability.

Sections 105 and 363 of the Bankruptcy Code, all Persons asserting or holding any lien, claim, Encumbrance or interest of any and every kind whatsoever against, in, relating in any way to, or with respect to the Debtor, the Business or all or any part of the Purchased Assets shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such liens, claims, Encumbrances and interests, whether by payment, setoff or otherwise, directly or indirectly, against the Purchaser or any successor or assign thereof, or against the Purchased Assets.

10. Each counterparty to an executory Transferred Contract shall be prohibited from challenging, objecting to or denying that there is no Cure Amount payable, and any default under a Transferred Contract is deemed cured [and all Transferred Contracts are completely revived].

11. Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, all non-Debtor parties to a Transferred Contract are forever barred and permanently enjoined from raising or asserting against the Debtor or the Purchaser: (i) any fee, cost, expense, default, breach, Claim or pecuniary loss (including on account of true ups), whether by setoff, recoupment or otherwise, arising under or related to a Transferred Contract, or (ii) any fee or condition to assignment arising by reason of the assignment or the Closing.

12. The Purchase Price is fair and reasonable and constitutes reasonably equivalent value and/or fair consideration under any applicable state or federal law, including the laws of the District of Columbia and the States of New York and Louisiana.

13. The Purchaser is a good faith purchaser of the Purchased Assets and is entitled to all of the benefits and protections afforded by Section 363(m) of the Bankruptcy Code. The Purchase Agreement and the Transactions are undertaken by the Purchaser and the Debtor 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 shall not affect the validity of the sale of the Purchased Assets and assignment of the executory Transferred Contracts to the Purchaser pursuant to the Purchase Agreement and the Transactions, unless the consummation thereof is duly stayed prior to Closing pending such appeal. Notwithstanding anything contained in this Order, the Purchaser shall not be required to consummate any of the Transactions in the event this Order or this Court's authorization to consummate the Transactions pursuant to the terms of this Order shall have been (i) reversed, (ii) stayed, or (iii) modified in any material respect prior to the Closing Date (other than with the prior written consent of Purchaser).

14. All Persons that are in possession of some or all of the Purchased Assets as of or after the Closing are hereby ordered to surrender possession of such Purchased Assets to the Purchaser as of the Closing or at such time thereafter as the Purchaser may request. The Debtor agrees to exercise commercially reasonable efforts to assist the Purchaser in assuring that all Persons that are presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets surrender possession of the Purchased Assets to either (i) the Debtor before the Closing or (ii) the Purchaser on or after the Closing.

15. This Order is and shall be binding on and shall govern acts of all Persons including, without limitation, filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state 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 the Purchaser is the transferee and owner of the Purchased Assets free and clear of all liens, claims, Encumbrances

and interests (all such Persons being referred to as "Recording Officers"). Recording Officers are authorized and directed to strike all recorded liens, claims, Encumbrances and interests against the Debtor or the Purchased Assets recorded before the date of this Order.

16. Each and every federal, state, and local governmental agency, taxing authority, recording office or department thereof and all other Persons are authorized and directed to accept this Order (including for recordation) as conclusive evidence of the transfer of all of the Debtor's right, title, and interest in and to the Purchased Assets to Purchaser free and clear of all liens, claims, Encumbrances and interests, and the cancellation of any lien, claim, Encumbrance or interest in and to the Purchased Assets.

17. All governmental (federal, state, and municipal) approvals necessary to consummate the Transactions have been obtained.

18. To the greatest extent available under applicable law and to the extent provided for under the Purchase Agreement, the Purchaser shall be authorized, as of the Closing, to operate under any Permit with respect to the Purchased Assets and/or the Business and, to the greatest extent available under applicable law and to the extent provided for under the Purchase Agreement, all such Permits are deemed to have been transferred to the Purchaser as of the Closing. All Permits applicable to the Purchased Assets and/or the Business shall remain in place for the Purchaser's benefit until such Permits are transferred to the Purchaser at Closing.

19. The terms and provisions of the Purchase Agreement and any Ancillary Agreements shall be binding in all respects on the Debtor, the Purchaser, and their respective successors and assigns. The terms and provisions of this Order shall be binding in all respects on the Debtor, the Purchaser, the Consenting Parties, their respective successors and assigns, and any other affected party in interest. The Purchase Agreement, the Transactions, and this Order

shall be enforceable against and binding on, and shall not be subject to rejection or avoidance by, any chapter 7 or chapter 11 trustee appointed in the Bankruptcy Case or any other bankruptcy or insolvency proceeding related to the Debtor or the Purchased Assets.

20. Nothing contained in any chapter 11 plan confirmed in the Debtor's Bankruptcy Case, in any order confirming any such plan, approving postpetition financing to the Debtor, approving the Debtor's use of cash collateral, or any other order of any type or kind entered in the Bankruptcy Case (including, without limitation, any order entered after any conversion of any or all of the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code) or in any related proceeding shall adversely affect or modify, or impair or limit the provisions of the Purchase Agreement or the terms of this Order.

21. The Purchase Agreement and any related agreements, documents or other instruments may be amended or supplemented in a writing signed by the Parties without further order of the Court.

22. The failure to include specifically any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be and is authorized and approved in its entirety with such amendments thereto as may be made in accordance with this Order before the Closing. To the extent of any conflict or inconsistency between the provisions of this Order, the Purchase Agreement and any documents executed in connection therewith, the provisions contained in this Order, the Purchase Agreement, and any documents executed in connection therewith shall govern, in that order.

23. The NYCEDC has executed and provided the NYCEDC Consent to permit a Closing.

24. The provisions of this Order are self-executing, notwithstanding the failure of the Debtor, the Purchaser or any other party in interest to execute, file or obtain releases, termination statements, assignments, consents or other instruments to effectuate, consummate or implement the provisions of this Order. To the extent the Purchaser deems it necessary or appropriate, if, upon consummation of the Transactions, any Person which has filed statements or other documents or agreements evidencing a lien, claim, Encumbrance or other interest on or in all or any portion of the Purchased Assets shall not have delivered to the Debtor prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary or desirable to the Purchaser for the purpose of documenting the release of all such liens, claims, Encumbrances and interests, the Purchaser is authorized to execute and file such statements, instruments, releases, and other documents on behalf of such Person.

25. From time to time, as and when requested, the Debtor shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other acts or actions as such other party may reasonably deem necessary or desirable to consummate the Transaction, including such acts or actions as may be necessary to vest, perfect or confirm, of record or otherwise, in the Purchaser its right, title and interest in and to all the Purchased Assets free and clear of all liens, claims, Encumbrances or other interests on or in all or any portion of the Purchased Assets (other than Assumed Liabilities).

26. To the extent applicable, the automatic stay pursuant to Section 362(a) of the Bankruptcy Code is lifted to the extent necessary, without further order of the Court, (a) to allow the Purchaser to give the Debtor any notice under the Purchase Agreement and (b) to allow the

Purchaser to take any and all acts or actions in accordance with the Purchase Agreement.

27. Any laws regarding bulk sales, or similar laws, are not applicable to the sale of Purchased Assets. As the assignment, transfer and/or sale of the Purchased Assets: (i) is in exchange for the Purchase Price, no withholding of U.S. federal income tax pursuant to Sections 1441 or 1442 of the Internal Revenue Code is required, and (ii) constitutes a casual sale or occasional sale, it is exempt from [New York and Louisiana] sales and use tax.

28. The Purchaser's Claims against the Debtor under the Purchase Agreement and this Order are allowed administrative expense claims pursuant to Section 503(b) of the Bankruptcy Code, not subject to avoidance, subordination, setoff, recoupment, reduction or allocation, without need to file any proof of claim or other request for payment thereof.

29. No order concerning the distribution of the Sale Proceeds, no distribution of the Sale Proceeds, and no allocation in connection with either of the foregoing, whether based upon a valuation of the Purchased Assets or otherwise, shall affect or have an effect on: (i) the Purchaser's tax basis, allocation, or other tax position regarding the Purchased Assets, (ii) the manner in which the Purchased Assets are valued by the Purchaser for tax, accounting, or any other purposes, or (iii) how the Purchaser accounts for the Purchased Assets in financial statements, or otherwise.

30. The provisions of this Order are non-severable and mutually dependent.

31. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or 7062, this Order shall be effective and enforceable immediately and shall not be stayed. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

32. This Court shall retain exclusive jurisdiction to resolve any controversy or claim arising out of or related to this Order, the Transactions, the Purchase Agreement, or any related

agreements.

New Orleans, Louisiana, this ____ day of August, 2016.

EXHIBIT B

Transferred Contracts

Contract Counterparty Name and Address	Contract Description
ACP BK I LLC c/o Acumen Capital Partners, LLC 630 Flushing Avenue Brooklyn, NY 11206	Commercial Lease Agreement for 630 Flushing Avenue, Suite 200, Brooklyn, NY 11206 dated January 30 th , 2015, as amended
NYCEDC 110 William St. New York, NY 10038	Operator Contract #47670002 dated October 31, 2014
Precibake Commercial LP 222 Broadway, 19 th Floor New York, NY 10038	Equipment Rental Agreement for Baxter Oven dated March 04, 2016
Precibake Commercial LP 222 Broadway, 19 th Floor New York, NY 10038	Equipment Rental Agreement for WP Oven dated December 15, 2015
Membership Agreements (as outlined in Section 2.1(d))	License Agreements for short-term kitchen usage with various dates