

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
FRESH & EASY, LLC, ¹	:	Case No. 15-12220 (BLS)
Debtor.	:	Hearing Date: January 12, 2017 at 11:00 a.m. (ET) Objection Deadline: January 4, 2017 at 4:00 p.m. (ET)

**DEBTOR’S MOTION FOR AN ORDER, PURSUANT TO SECTIONS 105, 363,
AND 365 OF THE BANKRUPTCY CODE, (I) APPROVING THE PURCHASE AND
SALE AGREEMENT WITH WILD OATS FOR CERTAIN INTELLECTUAL
PROPERTY AND AUTHORIZING THE SALE CONTEMPLATED THEREIN;
AND GRANTING RELATED RELIEF**

The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby submits this motion (the “Motion”) for entry of an order, in substantially the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) approving the purchase and sale agreement (the “PSA”) with Wild Oats Marketing LLC (“Wild Oats”) for certain intellectual property in substantially the form annexed to the Proposed Order as Exhibit 1 and authorizing the transactions contemplated therein; and (ii) granting related relief. In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “Amended Standing Order”). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may

enter a final order on this Motion under Article III of the U.S. Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363, and 365 of the Bankruptcy Code, along with Bankruptcy Rules 2002, 6004, 6006, and 9014.

BACKGROUND

A. General Background

2. On October 30, 2015 (the “Petition Date”), the Debtor commenced the above-captioned chapter 11 case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. The Debtor has continued in possession of its properties and continues to operate and maintain its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On November 10, 2015, the United States Trustee for Region 3 (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this chapter 11 case.

5. Additional information about the Debtor’s business and the events leading up to the Petition Date can be found in the *Declaration of Amir Agam in Support of Chapter 11 Petition and First Day Motions* [Docket No. 10] (the “First Day Declaration”), which is incorporated herein by reference.

6. As further detailed in the First Day Declaration, the Debtor commenced this chapter 11 proceeding because it concluded that it is unable to reorganize on a standalone

¹ The last four digits of the Debtor’s federal taxpayer identification number are 8906. The Debtor’s mailing address is Howard Hughes Center, 6080 Center Drive, 6th Floor, Los Angeles, CA 90045.

basis. Accordingly, the Debtor determined that the best way to maximize value for the benefit of all interested parties was a prompt and orderly wind-down of its business. As more fully discussed in the First Day Declaration, the conclusion to liquidate was reached following a lengthy process in which the Debtor considered and explored reasonable strategic alternatives. Since that time, the Debtor has liquidated the majority of its physical assets and real property lease portfolio.

B. The Intellectual Property Liquidation

7. In furtherance of this wind-down, the Debtor engaged Hilco IP Services, LLC (d/b/a Hilco Streambank) ("Hilco Streambank") as its intellectual property consultant *nunc pro tunc* to February 24, 2016 [Docket No. 697]. Hilco Streambank, with the assistance and oversight of the Debtor's CRO and counsel, fulsomely marketed the Debtor's intellectually property portfolio for sale. As part of this effort, Hilco Streambank prepared sale materials providing an overview of the Debtor's intellectual property assets, including a brand book. The brand book was sent electronically to over 10,000 industry professionals in the database of Hilco Streambank and posted on Hilco Streambank's website. Hilco Streambank also engaged in additional direct outreach to its food and grocery store contacts, and companies considering entry into the industry. All parties were asked to submit initial expressions of interest by May 19, 2016, which deadline was later extended to June 2, 2016 by the Debtor on its own initiative.

8. As a result of these efforts, six parties executed non-disclosure agreements to be provided access to an online diligence data room maintained by Hilco Streambank, and two parties submitted bids. No party asked for additional time to review the opportunity.

9. One of two bids was received by Peach Systems, Inc., d/b/a Specialty Cellars ("Specialty Cellars"), and sought certain rights relating to the Debtor's in-house wine brand, "Big Kahuna." The other bid was that of Wild Oats, for a more comprehensive array of

the Debtor's intellectual property assets. After separate arms-length negotiations with both parties, Hilco Streambank obtained additional consideration from each, raising the offer of Wild Oats to \$100,000, and obtained the removal of those assets sought by Specialty Cellars from the bid of Wild Oats.²

10. Following these developments and after considering the advice of Hilco Streambank, the Debtor's chief restructuring officer, Amir Agam of FTI Consulting, Inc. (the "CRO"), decided in his business judgment that further marketing efforts were unlikely to yield superior offers for the assets to be purchased under the PSA and could jeopardize the proposed transaction with Wild Oats. He further determined, after consultation with Hilco Streambank and counsel, that proceeding with a private sale to Wild Oats is the best course of action available to the Debtor. These terms were then presented to the Committee for its consultation, and to the Debtor's independent manager, Terrence J. Wallock, for his approval (the "Independent Manager"). The Independent Manager's approval was obtained given the fact that Wild Oats is ultimately under the ownership of affiliates of The Yucaipa Companies, LLC, whose principal is Ronald W. Burkle, an indirect equity holder in the Debtor through the Debtor's corporate parent, and because Wild Oats has shared current or former officers and managers/directors with the Debtor (none of whom participated on behalf of the Debtor in the decision of the Debtor to sell the Assets to Wild Oats).³

11. In the business judgment of the Debtor, as expressed through its CRO and Independent Manager, proceeding with such a private sale ensures a recovery to the Debtor's estate and eliminates the risk that the Debtor would be unable to find an alternative bid for the

² The Debtor previously sought and obtained approval of the Specialty Cellars bid through its miscellaneous asset sale procedures.

³ Additionally, Wild Oats has asserted an ownership interest in certain of the Assets, which the Debtor disputes. Proceeding with the sale to Wild Oats will also avoid potential litigation concerning these issues.

assets subject to the PSA. Moreover, the Debtor believes that the many months of marketing conducted by Hilco Streambank have confirmed that the market for its intellectual property assets is limited. Wild Oats presents the highest, best, and only known viable offer for the Debtor's intellectual property assets aside from the limited sale to Specialty Cellars, which the Debtor also intends to consummate. Thus, the Debtor submits that proceeding by private sale is warranted under the circumstances and will maximize the value realized by the Debtor's estate for the benefit of all stakeholders.

12. Understanding that the Debtor has a fiduciary duty to maximize the value of its assets and must necessarily entertain other offers to the extent they arise, the Debtor has informed Wild Oats that it will further consider alternative offers for some or all of the assets subject to the PSA until **January 4, 2017**. The Debtor is not aware of any third parties that will be inclined to put forth a higher and better offer for the assets subject to the PSA.

Notwithstanding this scenario, however, the Debtor believes it is important to subject the PSA to higher and better offers, and will serve this Motion on all parties that executed a non-disclosure agreement as part of the Hilco Streambank marketing process.

SUMMARY OF THE PSA⁴

13. Following extensive arms'-length negotiations, the Debtor and Wild Oats entered into the PSA, substantially in the form annexed to the Proposed Order as Exhibit 1. A summary of the terms of the PSA are listed herein:

- Wild Oats would acquire the Seller Marks, Seller Domain Names and Seller Recipes listed on the Schedules to the PSA (the "Aquired Assets").
- Wild Oats would pay the Debtor a purchase price (the "Purchase Price") of \$100,000.

⁴ The summary of the PSA is qualified in its entirety by the PSA. If there are any inconsistencies between the summary contained herein and the PSA, the PSA shall control. Capitalized terms used but not defined in the following summary of the PSA shall have the definitions ascribed to them in the PSA.

- Wild Oats will assume all liabilities relating to the Acquired Assets, as set forth in the PSA. Wild Oats will pay all Transfer Taxes relating to the sale. All other taxes imposed upon or assessed directly against the Acquired Assets (including personal property taxes and similar taxes) for the tax period in which the Closing occurs, if any, will be the responsibility of Wild Oats.

RELIEF REQUESTED

14. By this Motion, the Debtor seeks entry of an order, pursuant to sections 105(a), 363(b), and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014, (i) approving the PSA with Wild Oats for certain intellectual property in substantially the form annexed to the Proposed Order as Exhibit 1 and authorizing the transactions contemplated therein; and (ii) granting related relief. As set forth more fully below, the Debtor believes that the relief requested herein is in the best interests of the Debtor, its estate, and creditors.

BASIS FOR RELIEF

A. The Debtor Has Satisfied Section 363(b) of the Bankruptcy Code.

15. Section 363(b)(1) of the Bankruptcy Code provides: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In pertinent part, Bankruptcy Rule 6004 states that, “all sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). With respect to the notice required in connection with a private sale, Bankruptcy Rule 2002(c)(1) states, in pertinent part, that,

. . . the notice of a proposed use, sale or lease of property . . . shall include . . . the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property.

Fed. R. Bankr. P. 2002(c)(1).

16. To approve the use, sale, or lease of property outside the ordinary course of business, the Court must find “some articulated business justification” for the proposed action. See In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 145–47 (3d Cir. 1986) (implicitly adopting the “articulated business justification” and good-faith tests of Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983)); see also In re Del. & Hudson Ry. Co., 124 B.R. 169, 175–76 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test in Abbotts Dairies); Titusville Country Club v. PennBank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Indus. Valley Refrigeration & Air Conditioning Supplies, Inc., 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

B. Entry into the PSA Is Within the Sound Business Judgment of the Debtor, and the Transactions Provided Therein Should Be Approved.

17. Generally, courts have applied four factors in determining whether a sale of a debtor’s assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. See Lionel, 722 F.2d at 1071 (setting forth the “sound business purpose” test); Abbotts Dairies, 788 F.2d at 145–57 (implicitly adopting the articulated business justification test and adding the “good faith” requirement); Del. & Hudson Ry., 124 B.R. at 176 (“Once a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.”).

18. This fundamental analysis does not change if the proposed sale is private, rather than public. See, e.g., In re Ancor Exploration Co., 30 B.R. 802, 808 (Bankr. N.D. Okla. 1983) (“[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under § 363(b).”). The bankruptcy court “has ample discretion to administer the estate, including authority to conduct public or private sales of estate property.” In re WPRV-TV, Inc., 143 B.R. 315, 319 (D.P.R. 1991), vacated on other grounds, 165 B.R. 1 (D.P.R. 1992); accord In re Canyon P’ ship, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). Here, the terms of the PSA meets these requirements and should be approved.

19. Additionally, the Debtor acknowledges that where “there is an ‘insider’ relationship between the [Debtor] and [a purchaser] ... it warrants close scrutiny.” In re Phila. Newspapers, LLC, 2009 Bankr. LEXIS 3167, *27-28 (Bankr. E.D. Pa. Oct. 8, 2009), rev’d on other grounds, 599 F.3d 298 (3d Cir. 2010). Nevertheless, the Debtor believes that the business judgment standard should still govern this transaction given that the transaction was overseen by the Independent Manager (and the CRO). *See Oberly v. Kirby*, 592 A.2d 445, 466 (Del. 1991) (“Section 144 [of the Delaware General Corporation Law] allows a committee of disinterested directors to approve a transaction and bring it within the scope of the business judgment rule.”); *Marciano v. Nakash*, 535 A.2d 400, 405 n.3 (Del. 1987) (same). However, the Debtor believes the transaction would also satisfy the “entire fairness” standard, were it to be applied.

a. Proceeding by Private Sale Reflects a Prudent Exercise of the Debtor’s Business Judgment.

20. Ample business justification exists to sell the assets subject to the PSA through a private transaction rather than conducting a public sale or auction process. The Debtor submits that an order granting the relief requested herein is a matter within the discretion of the

Court and would be consistent with the provisions of the Bankruptcy Code. See 11 U.S.C. § 105(a). The Debtor's intellectual property assets were marketed by Hilco Streambank for several months in accordance with industry standards. This marketing process provided an open and fair opportunity for any interested parties to submit bids for the Debtor's intellectual property assets. Although the Debtor received general interest from a few potential acquirers, no written, firm expressions of interest were received for the assets to be sold under the PSA other than that of Wild Oats, further evidencing that the offer from Wild Oats is the highest or best available for such assets. Accordingly, the Debtor believes that proceeding as proposed is in the best interest of its estate and creditors.

21. The surrounding circumstances underscore that the uncertainty and added costs associated with a public auction or extended bid process are unjustified and that such procedures are unlikely to generate additional value. Simply put, the Debtor determined it has identified the value-maximizing alternative for the assets subject to the PSA, and it is in the Debtor's best interest to pursue this opportunity.

b. The Purchase Price Is Fair and Reasonable.

22. The Debtor engaged in arm's length negotiations with Wild Oats through Hilco Streambank, which negotiations resulted in an increased offer from Wild Oats. Following this back and forth, the Debtor's CRO has analyzed Wild Oats' offer with the assistance of his advisors and concluded that the contemplated sale will maximize the value of the Debtor's estate. As explained above, the Debtor, with the assistance from Hilco Streambank, has extensively marketed the Debtor's intellectual property assets. In light of the marketing efforts, the nature of the assets, and the circumstances of this case, the Debtor believes that the proposed sale provides fair and reasonable value to the Debtor. Accordingly, the Debtor submits that the proposed sale is in the best interest of the estate and represents a fair and reasonable disposition.

c. The Sale Is Proposed in Good Faith.

23. The sale pursuant to the PSA has been proposed in good faith as the PSA was the product of good-faith, arms'-length negotiations between the Debtor and Wild Oats, and was negotiated with the active involvement of the Debtor's management and professional advisors. The Debtor believes that the sale to Wild Oats pursuant to the terms and conditions of the PSA is not the product of collusion or bad faith. No evidence exists to suggest that the PSA is anything but the product of arms'-length negotiations between the Debtor and Wild Oats. Under the circumstances, Wild Oats should be afforded the protections that section 363(m) of the Bankruptcy Code provides to a good-faith purchaser. See generally Marin v. Coated Sales, Inc. (In re Coated Sales, Inc.), No. 89 Civ. 3704 (KMW), 1990 WL 212899 (S.D.N.Y.) (holding that to show lack of good faith, a party must demonstrate "fraud, collusion, or an attempt to take grossly unfair advantage of other bidders"); see also generally In re Sasson Jeans, Inc., 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting In re Bel Air Assocs., Ltd., 706 F.2d 301, 305 (10th Cir. 1983)); In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (examining the facts of each case, concentrating on the "integrity of [an actor's] conduct during the sale proceedings" (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978))).

d. Adequate and Reasonable Notice of the Assignment Will Be Provided.

24. The Debtor will provide adequate notice of the Motion to parties in interest, as required by the applicable procedural rules. See Fed. R. Bankr. P. 2002(c)(1) (notice must contain "the terms and conditions of any private sale and the time fixed for filing objections."); see also Del. & Hudson Ry., 124 B.R. at 180 (the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure

statement). Moreover, the Debtor will serve this Motion on the parties that have indicated a previous interest in the assets by executing a non-disclosure agreement with Hilco Streambank.

C. The Sale Should Be Free and Clear of Liens, Claims, and Interests.

25. In accordance with section 363(f) of the Bankruptcy Code, a debtor in possession may sell property under section 363(b) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim, or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a *bona fide* dispute; or (v) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); see In re Elliot, 94 B.R. 343, 354 (E.D. Pa. 1988) (sale “free and clear” may be approved provided the requirements of at least one subsection are met).

26. Here, the Debtor believes that one or more of the subsections of section 363(f) of the Bankruptcy Code have been satisfied. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). See, e.g., In re Trans World Airlines, Inc., 2001 WL 1820325, at *3, 6 (Bankr. D. Del. Mar. 27, 2001); Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). Accordingly, the Debtor requests that the transactions contemplated by the PSA be approved “free and clear.”

D. Assumption and Assignment Should Be Approved Under Section 365 of the Bankruptcy Code, to the Extent Applicable.

27. Pursuant to section 365(a) of the Bankruptcy Code, a debtor in possession may, subject to the Court’s approval, assume or reject any executory contract or unexpired lease.

The standard used to determine whether a debtor may assume or reject an executory contract or unexpired lease is the “business judgment” test. *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (citing *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513 (1984)). Debtors are given significant discretion when requesting to assume or reject an executory contract. *Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005). The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (citation omitted). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

28. Once an executory contract is assumed, the trustee or debtor-in-possession may elect to assign such contract. *See In re Rickel Home Cts., Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the debtor’s estate[.]”); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist a trustee in realizing the full value of the debtor’s assets).

29. Section 365(f) of the Bankruptcy Code further provides that a debtor may assign an assumed contract as long as “adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B. R. 524, 538 (Bankr.

D.N.J. 1989); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business in order to give it a strong likelihood of succeeding).

30. Here, the Court may approve the assumption and assignment of the assets subject to the PSA, to the extent any such assets constitute executory contracts, because (i) the Debtor has exercised reasonable business judgment, (ii) no cure of outstanding defaults is required, and (iii) Wild Oats and the Debtor have provided adequate assurance of future performance.

31. *First*, the assumption and assignment is a reasonable exercise of the Debtor's business judgment. In connection with its efforts to preserve and maximize the value of its assets, the Debtor has determined that entry into the PSA is in the best interests of the estate for the reasons set forth above. Moreover, the Debtor would eliminate its ongoing obligation to perform under such executory contracts and avoid the accrual of any further administrative obligations, rejection damages, or other potential liability thereunder, thereby providing an additional benefit to the estate.

32. *Second*, the Debtor believes that it is not in default with respect to any asset and accordingly no cure payment is due. To the extent the Debtor believes a party may constitute a contract counterparty, they will be provided with notice of this Motion and will have

an opportunity to object to the potential assumption and assignment of their respective contracts prior to the entry of an order approving this Motion. As set forth in the Proposed Order, any counterparty that fails to object to the proposed assumption and assignment of any contract will be deemed to consent to that assumption and assignment pursuant to section 365 of the Bankruptcy Code on the terms set forth in the Proposed Order, along with the cure amounts identified therein, which the Debtor believes to be zero. See, e.g., In re Tabone, Inc., 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor was deemed to have consented to sale by not objecting to sale motion).

33. *Third*, Wild Oats is a financially healthy and well-known entity and will be able to fulfill its ongoing obligations under the assets (if any).

34. Accordingly, for the reasons set forth above, the Debtor has satisfied the requirements of section 365 of the Bankruptcy Code, to the extent applicable. The assumption and assignment of any executory contracts on the terms set forth in the PSA is in the best interests of the Debtor's estate and should be approved.

E. Waiver of the 14-Day Waiting Period Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate.

35. Finally, the Debtor requests a waiver of the 14-day stay that would otherwise apply to the sale (and any assumption and assignment) pursuant to Bankruptcy Rules 6004(h) and 6006(d). Doing so will allow for a prompt closing of the sale. The Court should approve the waiver of the 14-day stay under Bankruptcy Rules 6004(h) and 6006(d), to the extent applicable.

NOTICE

36. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) the Debtor's prepetition secured lenders; (iv) the Debtor's

postpetition secured lenders; (v) Wild Oats; (vi) the parties who have expressed interest in the assets by executing a non-disclosure agreement with Hilco Streambank; (vii) all parties known to have any interest in the assets; and (viii) all parties requesting notice pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is necessary.

CONCLUSION

Based on the foregoing, the Debtor submits that the requirements of sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004(h) and 6006(d) have been satisfied and respectfully request that the Court enter the Proposed Order, in substantially the form attached hereto as **Exhibit A**, and grant such other relief as the Court deems just and proper.

Dated: December 22, 2016

COLE SCHOTZ P.C.

/s/ Patrick J. Reilley
Norman L. Pernick (No. 2290)
J. Kate Stickles (No. 2917)
Patrick J. Reilley (No. 4451)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
npernick@coleschotz.com
kstickles@coleschotz.com
preilley@coleschotz.com

*Counsel for Debtor
and Debtor in Possession*

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
FRESH & EASY, LLC, ¹	:	Case No. 15-12220 (BLS)
Debtor.	:	Related to Docket No. ____

**ORDER, PURSUANT TO SECTIONS
105, 363, AND 365 OF THE BANKRUPTCY CODE, (I) APPROVING
THE PURCHASE AND SALE AGREEMENT WITH WILD OATS
FOR CERTAIN INTELLECTUAL PROPERTY AND AUTHORIZING THE
SALE CONTEMPLATED THEREIN; AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtor and debtor-in-possession (the “Debtor”) for entry of an order, pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) approving the purchase and sale agreement (the “PSA”) with Wild Oats Marketing LLC (“Wild Oats”) for certain intellectual property in substantially the form annexed hereto as **Exhibit 1** and authorizing the transactions contemplated therein; and (ii) granting related relief; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that venue of this chapter 11 case and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court may enter a final order on this matter in accordance with Article III of the U.S.

¹ The last four digits of the Debtor’s federal taxpayer identification number are 8906. The Debtor’s mailing address is Howard Hughes Center, 6080 Center Drive, 6th Floor, Los Angeles, CA 90045.

Constitution; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors and other parties in interest; and this Court having found that the relief requested in the Motion is justified by the facts and circumstances; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, **IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. This Court has jurisdiction over the Motion and over the property of Debtor, including the assets to be sold, assigned, transferred, conveyed, or delivered pursuant to the PSA (the "Assets"), pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court enters this Order as a final order consistent with Article III of the U.S. Constitution. Venue of this chapter 11 case and the Motion in this district and Court is proper under 28 U.S.C. §§ 1408 and 1409.

C. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court finds that there is no just reason for delay in the implementation of this Order, and directs entry of judgment as set forth herein.

² Capitalized terms not defined herein shall have the meanings provided to them in the Motion.

D. The Assets constitute property of Debtor's estate, and title thereto is vested in Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code.

E. Due and adequate notice of the Motion, the hearing with respect thereto, and the subject matter thereof has been provided to all parties in interest herein, and no other or further notice is necessary. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

F. The relief requested in the Motion is in the best interests of the Debtor, its estate, creditors, and other parties in interest. The Debtor has demonstrated good, sufficient, and sound business purposes and justifications for the relief requested in the Motion.

G. The PSA was negotiated and proposed in good faith, from arms'-length bargaining positions, and without collusion. Wild Oats is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and is entitled to the protection thereof. Wild Oats meets the standards of "good faith" that were enumerated by the United States Court of Appeals for the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.3d 143 (3d Cir. 1986). Neither the Debtor nor Wild Oats has engaged in any conduct that would cause or permit the sale to Wild Oats, pursuant to the PSA and this Order, to be avoided under section 363(n) of the Bankruptcy Code.

H. The consideration provided by Wild Oats to the Debtor (i) is fair and reasonable, (ii) is the highest or best offer for the 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 under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession.

I. The Debtor is authorized to sell or assume and assign the Assets free and clear of all liens, claims, interests, and encumbrances of any kind or nature whatsoever, because one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of liens, claims, interests, and encumbrances who did not object to the Motion or the relief requested therein, or who interposed and then withdrew their objections, are deemed to have consented to the PSA pursuant to section 363(f)(2) of the Bankruptcy Code.

J. The Debtor and Wild Oats have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code in connection with the sale or assumption and assignment of the Assets to the extent provided under the PSA.

K. Notice of the Motion was adequate, fair, and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

NOW, THEREFOR, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Any and all objections and responses to the Motion that have not been withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby overruled and denied on the merits.
3. The PSA attached hereto as Exhibit 1, and all of the terms and conditions thereof, and all transactions contemplated therein, are hereby approved in all respects.
4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor, acting by and through its existing agents, representatives, and officers, is authorized and empowered to take any and all actions necessary or appropriate to: (a) consummate and close the PSA; (b) execute and deliver, perform under, consummate, and implement the PSA and all additional

instruments and documents that may be reasonably necessary or desirable to implement the PSA, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the PSA and such other ancillary documents.

5. This Order shall be binding in all respects upon the Debtor, its estate, all creditors, all holders of equity interests in the Debtor, all holders of any interests or claims (whether known or unknown) against the Debtor, any holders of interests or claims against or on all or any portion of the Assets transferred under the PSA, Wild Oats and all successors and assigns of Wild Oats, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in the Debtor's chapter 11 case or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtor's case. The terms and provisions of the PSA and this Order shall inure to the benefit of the Debtor, its estate, and its creditors, Wild Oats, and its respective affiliates, successors and assigns, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee(s), party, entity, or other fiduciary such terms and provisions likewise shall be binding.

6. Pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, upon the closing of the PSA, the Assets shall be transferred to Wild Oats free and clear of all encumbrances, claims, interests and asserted ownership rights, and liens, including mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, other interests, conditional sale or other title retention agreements, pledges, and other liens (including mechanics', materialman's, and other consensual and non-consensual liens and statutory liens, including without limitation under PACA/PASA), judgments, demands, encumbrances, rights of first

refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, including any liabilities related to the Internal Revenue Code, or any other liability relating to Debtor's current and former employees, of the Debtor or any of the Debtor's predecessors or affiliates, claims, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of this bankruptcy case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (collectively, the "Interests or Claims").

7. This Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Assets or a bill of sale transferring good and marketable title in such Assets to Wild Oats pursuant to the terms and allocations set forth in the PSA.

8. Subject to the terms and conditions of this Order, the transfer of the Assets to Wild Oats pursuant to the PSA does not require any consents; constitute a legal, valid, and effective transfer of the Assets; and shall vest Wild Oats with right, title, and interest of the Debtor in and to the Assets as set forth in the PSA, free and clear of all Interests or Claims of any kind or nature whatsoever.

9. Upon consummation of the PSA, if any person or entity that has filed financing statements, mortgages, mechanic's liens or other documents or agreements evidencing Interests or Claims against or in the Assets shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfactions, releases of all Interests or Claims that the person or entity has with respect to the Assets, or otherwise, then (a) Wild Oats is hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Assets and (b) Wild Oats is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests or Claims in the Assets of any kind or nature; *provided*, that, notwithstanding anything to the contrary, the provisions of this Order shall be self-executing, and neither the Debtor nor Wild Oats shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. For the avoidance of doubt, upon consummation of the PSA, Wild Oats is authorized to file termination statements, lien terminations, or other amendments in any required jurisdiction to remove and record, notice filings or financing statements recorded to attach, perfect, or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Order under section 363 and the related provisions of the Bankruptcy Code.

10. All entities and persons, including all lenders; debt security holders; equity security holders; governmental, tax, and regulatory authorities; parties to executory contracts and unexpired leases; customers; employees and former employees; dealers and sale representatives; and trade or other creditors holding Interests or Claims of any kind or nature whatsoever against

or in the Debtor or the Assets subject to the PSA arising under or out of, in connection with, or in any way relating to, the Assets or the assumption and assignment or sale of the Assets to Wild Oats, hereby are forever barred, estopped, and permanently enjoined from asserting any Interests or Claims of any kind or nature whatsoever against Wild Oats and its successors, designees, permitted assigns, or property, or the Assets conveyed in accordance with the PSA.

11. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code and the terms of the PSA, the Debtor is hereby authorized to assume and assign or sell the Debtor's interests in the Assets to Wild Oats.

12. The Assets shall be transferred to, and remain in full force and effect for the benefit of, Wild Oats in accordance with the terms of any agreements relating to the Assets, notwithstanding any provision in any such agreement that prohibits, restricts, or conditions such assignment or transfer.

13. There is no outstanding cure obligations ("Cure Costs") of the Debtor relating to the Assets, and the Cure Costs for the Assets are hereby fixed at \$0; Wild Oats and the Debtor shall have no liability for any Cure Costs for the Assets; provided, however, that from the date hereof forward Wild Oats shall have both the benefits and the burdens of the Assets, and shall honor in the ordinary course any obligations under the Assets that first become due and payable after the date hereof, regardless of when accrued, and the Debtor shall be relieved from any further liability with respect to the Assets.

14. The transfer of the Debtor's interest in the Assets as provided in the PSA is "AS IS-WHERE IS," without any representations or warranties of any kind from the Debtor except as expressly set forth in the PSA.

15. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d), or 7062 or any applicable provisions of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply.

16. This Order shall be binding upon the Debtor, all creditors of the Debtor, and any trustees appointed in this proceeding or any trustees appointed in any subsequent proceedings under chapter 7 or chapter 11 of the Bankruptcy Code relating to the Debtor, and all other parties in interest herein.

17. The Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the transaction or this Order.

Dated: Wilmington, Delaware
_____, 2017

Brendan Linehan Shannon
Chief United States Bankruptcy Judge

Exhibit 1

PSA

IP ASSET PURCHASE AGREEMENT

BY AND AMONG

WILD OATS MARKETING, LLC

AND

FRESH & EASY, LLC

December 16, 2016

Exhibit A – Form of Bill of Sale

Exhibit B – Form of Trademark Assignment Agreement

Exhibit C – Form of Domain Name Assignment Agreement

IP ASSET PURCHASE AGREEMENT

This IP Asset Purchase Agreement (this “Agreement”) is entered into as of December 16, 2016 by and among Fresh & Easy, LLC, (“F&E” or “Seller”), Delaware limited liability company, and Wild Oats Marketing, LLC, a Delaware limited liability company, (“Buyer”). Seller and Buyer are referred to collectively herein as the “Parties”.

WITNESSETH

WHEREAS, Seller filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on October 30, 2015 in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

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

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

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. For purposes of this Agreement:

“Acquired Assets” means all of Seller’s right, title, and interest in and to all of the following assets of Seller:

(a) all trademarks set forth on Schedule 1.1(a) and all of the goodwill associated therewith and any name or trademark, service mark, trade name, logo, or other indicia of origin that is confusingly similar thereto or derived therefrom (collectively, the “Seller Marks”);

(b) all Internet domain names set forth on Schedule 1.1(b) and all of the goodwill associated therewith (the “Seller Domain Names”); and

(c) all recipes and other data or content described on Schedule 1.1(d) (the “Seller Recipes”).

provided, however, notwithstanding anything to the contrary set forth in this definition, the Acquired Assets shall not include any Excluded Assets.

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

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

“Assumed Liabilities” means all liabilities relating to the Acquired Assets.

“Bankruptcy Case” means the Chapter 11 case of Seller.

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

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

“Bill of Sale” has the meaning set forth in Section 2.4(b).

“Business” means the operation of supermarkets by Seller, and any related business conducted by Seller in connection therewith, including the preparation of food.

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

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

“Closing” has the meaning set forth in Section 2.3.

“Closing Date” has the meaning set forth in Section 2.3.

“Competing Bid” means an alternative asset purchase agreement that Seller has determined is a higher and better offer for some or all of the Acquired Assets, and has elected to proceed with in lieu of this Agreement or which, if consummated, would render Seller unable to deliver the Acquired Assets to Buyer or otherwise satisfy its obligations hereunder.

“Confidentiality Agreement” means the nondisclosure agreement between F&E and The Buyer.

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

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

“Deposit Amount” has the meaning set forth in Section 2.2(b).

“Disclosure Schedule” has the meaning set forth in Article III.

“Domain Name Assignment Agreement” has the meaning set forth in Section 2.4(b).

“Excluded Assets” means all assets of Seller as of the Closing that are not expressly included in the Acquired Assets.

“Excluded Liabilities” means the following Liabilities of Seller:

- (a) any Liability not relating to or arising out of the Acquired Assets; and
- (b) all Liabilities of Seller arising under this Agreement or any Related Agreement and the transactions contemplated hereby or thereby.

“F&E” has the meaning set forth in the preamble.

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

“Intellectual Property” means (a) all issued patents and patent applications, together with all reissuances, continuations, continuations-in-part, divisionals, extensions and reexaminations thereof; (b) all trademarks, service marks, trade dress, logos, trade names, and Internet domain names, together with all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) all copyrights, together with all registrations and applications for registration therefor and renewals in connection therewith; (d) all trade secrets, know-how, technology, improvements, and inventions, including recipes; and (e) all computer software (including data and databases).

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

“IRS” means the Internal Revenue Service.

“Knowledge” of Seller (and other words of similar import) means the actual knowledge of the Chief Restructuring Officer of Seller. “Knowledge” of Buyer (and other words of similar import) means the actual knowledge of the Chief Executive Officer of Buyer.

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

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

“Lien” means any mortgage, pledge, lien, charge, or security interest.

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

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

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

“Permit” means any franchise, approval, permit, license, order, registration, certificate, variance or similar right obtained from any Governmental Authority.

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

“Purchase Price” has the meaning set forth in Section 2.2(a).

“Related Agreements” means the Bill of Sale, the Trademark Assignment Agreement, and the Domain Name Assignment Agreement.

“Representative” means, when used with respect to a Person, the Person’s controlled Affiliates (including Subsidiaries), if any, and such Person’s and any of the foregoing Persons’ respective officers, directors, managers, members, shareholders, partners, employees, agents, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants), and financing sources, but in the case of Seller shall not include any of its Affiliates.

“Sale Order” means an order of the Bankruptcy Court (a) approving (i) this Agreement and the execution, delivery, and performance by Seller of this Agreement and the other instruments and agreements contemplated hereby; (ii) the sale of the Acquired Assets to Buyer pursuant to Sections 105 and 363 of the Bankruptcy Code, and provide the same is free and clear of all Liens, claims and encumbrances except as set forth herein or therein; (b) determining that Buyer is a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code; and (c)

providing that the Closing will occur in accordance with the terms and conditions hereof, or such other terms and conditions as may be agreed by the Parties.

“Seller Domain Names” has the meaning set forth in the definition of Acquired Assets.

“Seller Marks” has the meaning set forth in the definition of Acquired Assets.

“Seller Recipes” has the meaning set forth in the definition of Acquired Assets.

“Seller Works of Authorship” has the meaning set forth in the definition of Acquired Assets.

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

“Trademark Assignment Agreement” has the meaning set forth in Section 2.4(b).

“Transfer Tax” has the meaning set forth in Section 7.3(a).

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, Buyer will purchase from Seller, and Seller will sell, transfer, assign, convey, and deliver to Buyer at the Closing all of the Acquired Assets and Assumed Liabilities.

Section 2.2 Consideration; Deposit Amount.

(a) The consideration for the Acquired Assets shall be (i) an aggregate Dollar amount equal to the sum of \$100,000 (the “Purchase Price”) (including the Deposit Amount (as defined below)) and (ii) the Buyer shall be responsible for the payment of any costs incurred in effectuating the physical transfer of the Acquired Assets and the Assumed Liabilities.

(b) In conjunction with Buyer’s bid to acquire the Acquired Assets, Buyer has previously furnished a deposit in the amount of \$7,500 (the “Deposit Amount”) to the Seller. Seller acknowledges that it remains in possession of the Deposit Amount and will hold the same in accordance with the terms of this Agreement. The Deposit Amount shall not entitle Buyer to any investment income and shall be further treated as follows:

(i) if the Closing shall occur, the Deposit Amount shall be applied towards the Purchase Price payable by Buyer to Seller at the Closing;

(ii) if this Agreement is terminated by Seller pursuant to Section 9.1(d), the Deposit Amount shall be retained by Seller and become Seller’s exclusive property; or

(iii) if this Agreement is terminated for any reason other than by Seller pursuant to Section 9.1(d), the Deposit Amount shall in each case be returned to Buyer.

Section 2.3 Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place on a date (the “Closing Date”) that is the first business day following the date upon which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in Article VIII (other than conditions that by their nature are to be satisfied at the Closing itself, and subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto.

Section 2.4 Closing Payments and Deliveries.

(a) On the Closing Date, Buyer shall pay the Purchase Price (less the Deposit Amount, which shall be deemed paid to Seller) to Seller, which shall be paid by wire transfer of immediately available funds into an account designated by Seller or its assignee.

(b) At the Closing, Seller will deliver to Buyer (i) a duly executed Bill of Sale substantially in the form of Exhibit A (the “Bill of Sale”); (ii) a duly executed Trademark Assignment Agreement substantially in the form of Exhibit B (the “Trademark Assignment Agreement”); (iii) a duly executed Domain Name Assignment Agreement substantially in the form of Exhibit C (the “Domain Name Assignment Agreement”); and (iv) a duly executed certificate from an officer of Seller to the effect that each of the conditions specified in Section 8.1(a) and Section 8.1(b) is satisfied.

(c) At the Closing, Buyer will deliver to Seller (i) the Bill of Sale duly executed by Buyer; (ii) the Trademark Assignment Agreement duly executed by Buyer; (iii) the Domain Name Assignment Agreement duly executed by Buyer; and (iv) a duly executed certificate from an officer of Buyer to the effect that each of the conditions specified in Section 8.2(a) and Section 8.2(b) are satisfied and (v) physical possession of the Acquired Assets and all documents, computer files and disks or other physical or electronic copies and storage media on which the Acquired Assets are documented or contained.

ARTICLE III SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that the statements contained in this Article III are true and correct as of the date of this Agreement (which representations and warranties shall terminate and be of no further force or effect as of the Closing), except as set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule").

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

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

Section 3.3 Noncontravention; Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (a) conflict with or result in a breach of the organizational documents of Seller, or (b) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, materially violate any law or Decree to which Seller is subject in respect of the Acquired Assets. Other than as required by the Bankruptcy Code, the Sale Order and any other necessary order to close the sale of the Acquired Assets, Seller is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or materially impair or delay Seller's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 3.4 Litigation; Decrees. Except as set forth in the Disclosure Schedule and other than the Bankruptcy Case, there is no Litigation pending or, to the Knowledge of Seller, threatened, that (a) would reasonably be expected to have a Material Adverse Effect or (b)

challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Other than the Bankruptcy Case, Seller is not subject to any outstanding Decree that would (a) reasonably be expected to have a Material Adverse Effect or (b) prevent or materially delay Seller's ability to consummate the transactions contemplated hereby or perform in any material respect its obligations hereunder.

Section 3.5 Brokers' Fees. Other than the fees and expenses payable to Hilco Streambank in connection with the transactions contemplated hereby, which shall be borne by Seller, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay.

Section 3.6 Intellectual Property. Seller represents and warrants to Buyer that: (a) all necessary registration, maintenance and renewal fees in connection with the Acquired Assets have been paid or will be paid by Seller and, to the best of Seller's knowledge, all necessary documents and certificates in connection with such Acquired Assets have been filed with the relevant patent, copyright, trademark or other authorities in the United States or applicable foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining or renewing such Acquired Assets; and (b) the Seller has taken commercially reasonable actions to maintain, enforce and police their Acquired Assets.

ARTICLE IV OTHER REPRESENTATIONS AND WARRANTIES OF SELLER

Section 4.1 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in Article III (as modified by the Disclosure Schedule), neither Seller nor any other Person shall be deemed to have made any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding Seller, any Acquired Assets, or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in Article III, SELLER MAKES NO OTHER (AND HEREBY DISCLAIMS EACH OTHER) REPRESENTATION, WARRANTY, OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION, OR USE OF THE ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT, SHOULD THE CLOSING OCCUR, BUYER WILL ACQUIRE THE SELLER'S RIGHTS IN AND TO THE ACQUIRED ASSETS IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WITH RESPECT TO ENVIRONMENTAL, HEALTH, OR SAFETY MATTERS). Seller disclaims all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any manager, officer, employee, agent, consultant, professional or other Representative of Seller.

ARTICLE V
BUYER'S REPRESENTATIONS AND WARRANTIES

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

Section 5.1 Organization of Buyer; Good Standing. Buyer is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware and has all requisite corporate or similar power and authority to own, lease, and operate its assets and to carry on its business as now being conducted.

Section 5.2 Authorization of Transaction. Buyer has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Buyer is a party have been duly authorized by Buyer. This Agreement (assuming due authorization and delivery by Seller) constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy law.

Section 5.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will (a) conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Buyer, (b) violate any law or Decree to which Buyer is, or its assets or properties are, subject or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (b) or (c), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, have a Material Adverse Effect on Buyer. Other than as may be required in connection with the Bankruptcy Case, Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 5.4 Litigation; Decrees. Except for the Bankruptcy Case, there is no Litigation pending or, to Buyer's Knowledge, threatened in writing that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Neither Buyer nor any of its Subsidiaries is subject to any outstanding Decree that would prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 5.5 Brokers' Fees. Buyer has not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated to pay.

Section 5.6 Sufficient Funds; Adequate Assurances. Buyer has, and upon the Closing will have, immediately available funds sufficient for the satisfaction of all of Buyer's obligations under this Agreement, including the payment of the Purchase Price and all fees, expenses of, and other amounts required to be paid by, Buyer in connection with the transactions contemplated hereby.

Section 5.7 Acknowledgement. Buyer acknowledges (for itself and on behalf of its Affiliates) that it has conducted and completed its own investigation, analysis, and evaluation of the Acquired Assets, and that in making its decision to enter into this Agreement it has relied on its own investigation, analysis, and evaluation of the Acquired Assets, subject to the representations, warranties, and covenants of Seller contained herein. Buyer acknowledges and agrees (for itself and on behalf of its Affiliates) that, except for the representations and warranties expressly set forth herein, (a) neither Seller nor any other Person makes, or has made, any representation or warranty relating to the Acquired Assets, and neither Buyer nor any of its Affiliates is relying on any representation or warranty except for those expressly set forth herein; (b) no person has been authorized by Seller or its Representatives to make any representation or warranty relating to the Acquired Assets or otherwise in connection with this Agreement, and if made, such representation or warranty must not be relied upon by Buyer or any of its Affiliates as having been authorized by Seller or its Representatives; (c) any estimate, projection, prediction, data, financial information, memorandum, presentation, or any other materials or information provided or addressed to Buyer or any of its Affiliates, including any materials or information made available by Seller or its Representatives, are uncertain and are not and shall not be deemed to be or include representations or warranties unless and to the extent any such materials or information is the subject of any express representation or warranty set forth herein; and (d) ALL ACQUIRED ASSETS CONVEYED PURSUANT TO THIS AGREEMENT WILL BE ON AN "AS-IS," "WHERE-IS," "WITH ALL FAULTS" BASIS AND WITHOUT ANY OTHER REPRESENTATION OR WARRANTY EXCEPT THOSE PROVIDED HEREIN, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE VI PRE-CLOSING COVENANTS

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

Section 6.1 Efforts; Cooperation.

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

(b) Without limiting the generality of Section 6.1(a), neither Party shall take any action, or permit any of its Subsidiaries to take any action, to materially diminish the ability of any Party to consummate, or materially delay any Party's ability to consummate, the transactions contemplated hereby, including any action that is intended or would reasonably be expected to result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VIII to not be satisfied (subject in all cases to the obligation of Seller to obtain a higher and better offer for the Acquired Assets until entry of the Sale Order by the Bankruptcy Court approving this Agreement).

Section 6.2 Bankruptcy Court Matters. Buyer and Seller understand and agree that the consummation of the transactions contemplated by this Agreement is subject to approval by the Bankruptcy Court upon motion of Seller, and that until approval by the Bankruptcy Court this Agreement may be withdrawn from Bankruptcy Court consideration if Seller determines, in its sole and absolute discretion, that it has received a higher and better offer for the Acquired Assets. The Parties acknowledge that Seller shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining approval of the sale and this Agreement, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, demonstrating that Buyer is a "good faith" purchaser under section 363(m) of the Bankruptcy Code.

Section 6.3 Notice of Developments. Buyer and Seller will give prompt written notice to the other Parties of (a) the existence of any fact or circumstance, or the occurrence of any event, of which it has Knowledge that would reasonably be likely to cause a condition to a Party's obligations to consummate the transactions contemplated hereby set forth in Article VIII not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; provided, however, that the delivery of any such notice pursuant to this Section shall not be deemed to amend or supplement this Agreement and the failure to deliver any such notice shall not constitute a waiver of any right or condition to the consummation of the transactions contemplated hereby by any Party.

Section 6.4 Access; No Contact. Upon the reasonable request of Buyer, and to the extent not otherwise prohibited by applicable Law, Seller will permit Buyer and its Representatives to have, upon reasonable advance written notice, reasonable access to all premises, properties, and books and records included in the Acquired Assets during normal business hours or such other times as designated by Seller, and in a manner so as not to interfere unreasonably with the normal operations of Seller; provided, however, that, for avoidance of doubt, the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto. Prior to the Closing, Buyer shall not, and shall cause its Representatives not to, contact any employees, vendors, suppliers, landlords, or licensors of any Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of Seller.

Section 6.5 Bulk Transfer Laws. Buyer acknowledges that Seller will not comply with the provisions of any bulk transfer laws or similar laws of any jurisdiction in

connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

ARTICLE VII OTHER COVENANTS

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

Section 7.1 Further Assurances. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will, at the requesting Party's sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Buyer all of Seller's interest in the Acquired Assets.

Section 7.2 Access; Enforcement; Record Retention. From and after the Closing, upon request by Seller or Buyer, Buyer or Seller will permit Seller or Buyer and its Representatives to have reasonable access during normal business hours or such other times as designated by Seller or Buyer, and in a manner so as not to interfere unreasonably with the normal business operations of Buyer or Seller, to all premises, properties, personnel, and books and records of or related to the Acquired Assets for the purposes of (a) preparing tax returns, (b) monitoring or enforcing rights or obligations of Seller or Buyer under this Agreement or any of the Related Agreements, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Buyer or Seller to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, or (ii) such action would result in violation of applicable law. Buyer and Seller agree to maintain the files or records which are contemplated by the first sentence of this Section in a manner consistent in all material respects with its document retention and destruction policies, as in effect from time to time, for six (6) years following the Closing, provided that, notwithstanding the foregoing six-year retention period, if Seller obtains approval of the Bankruptcy Court to destroy its files or records before the conclusion of such six-year period, Seller's document retention obligations under this Agreement shall terminate upon the entry of such Order. Any costs incurred by Seller or Buyer in providing access to the other party under this Section 7.2 shall be born by the other party requesting such access, provided such costs must be reasonable and documented, or approved in advance.

Section 7.3 Tax Matters.

(a) Transfer Taxes. Buyer shall pay any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income tax, fee or governmental charge (a "Transfer Tax") imposed under applicable law in connection with the transactions contemplated hereby. The party that is required by applicable Law to file any tax returns in connection with Transfer Taxes described in the immediately preceding sentence shall prepare and timely file such tax returns, and if either party may do so Buyer shall make such filing unless otherwise agreed by the Parties. The Parties

hereto shall cooperate in making, in a timely manner, all tax returns, filings, reports, forms and other documentation as are necessary or appropriate to comply with all applicable Laws in connection with the payment of Transfer Taxes and shall cooperate in good faith to minimize, to the fullest extent possible under such Laws, the amount of any such Transfer Taxes.

(b) Taxes on Acquired Assets. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Acquired Assets (including personal property taxes and similar taxes) for the tax period in which the Closing occurs, if any, will be the responsibility of Buyer.

Section 7.4 Indemnification. Buyer hereby agrees to indemnify Seller for each cost, expense or other charge incurred by Seller on account of the Assumed Liabilities after Closing. Seller hereby agrees to indemnify Buyer for each cost, expense or other charge incurred by Buyer on account of the Excluded Liabilities after Closing, provided that such indemnification provided for the benefit of Buyer shall not exceed \$25,000 in the aggregate, and will only cover reasonable and documented costs expenses and other charges presented to Seller for reimbursement within 180 days of Closing.

Section 7.5 Limited License. Buyer hereby agrees that Seller, from and after the closing date, shall have a limited license to continue utilizing its existing entity name and logo until the closing of the Bankruptcy Case in order to assist Seller's liquidation of its remaining assets. This limited license shall be non-transferable, provided however that the limited license shall also inure for the benefit of any trustee, liquidating trust or other such fiduciary appointed to further the liquidation of seller until the closing of the Bankruptcy Case.

ARTICLE VIII CONDITIONS TO OBLIGATION TO CLOSE

Section 8.1 Conditions to Buyer's Obligations. Buyer's obligation to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

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

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

(c) the transactions contemplated by this Agreement shall have been authorized in accordance with a Sale Order of the Bankruptcy Court, and no order appealing, staying, reversing, modifying, or amending such approval and authorization shall be in effect on the Closing Date;

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

(e) each delivery contemplated by Section 2.4(b) to be delivered to Buyer shall have been delivered.

Section 8.2 Conditions to Seller's Obligations. Seller's obligations to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(a) the representations and warranties set forth in Article V shall have been true and correct in all material respects (except that any representation or warranty that is not qualified by materiality shall have been true and correct in all respects) on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);

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

(c) the transactions contemplated by this Agreement shall have been authorized in accordance with a Sale Order of the Bankruptcy Court, and no appeal or order staying or reversing such approval and authorization shall be in effect on the Closing Date;

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

(e) each payment contemplated by Section 2.4(a) to be made to Seller shall have been made, and each delivery contemplated by Section 2.4(c) to be delivered to Seller shall have been delivered.

Section 8.3 No Frustration of Closing Conditions. Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 8.1 or Section 8.2, as the case may be, to be satisfied if such failure was caused by such Party's failure to use its commercially reasonable efforts to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant hereunder.

ARTICLE IX TERMINATION

Section 9.1 Termination of Agreement. The Parties may terminate this Agreement at any time prior to the Closing as provided below:

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

(b) by any Party by giving written notice to the other Parties if any court of competent jurisdiction or other competent Governmental Authority shall have enacted or

issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to Buyer if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of Buyer to have fulfilled any of its obligations under this Agreement; or

(c) by Buyer by giving written notice to Seller if there has been a breach by Seller of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Buyer at Closing set forth in Section 8.1(a) and Section 8.1(b), and such breach has not been waived by Buyer, or, if such breach is curable, cured by Seller prior to twenty (20) days after receipt of Buyer's written notice of intent to terminate; or

(d) by Seller by giving written notice to Buyer if there has been a breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Seller at Closing set forth in Section 8.2(a) and Section 8.2(b), and such breach has not been waived by Seller, or, if such breach is curable, cured by Buyer prior to twenty (20) days after receipt of such Seller's written notice of intent to terminate; or

(e) by Seller or Buyer, if Seller enters into a definitive agreement with respect to a Competing Bid.

(f) by Seller or Buyer by giving written notice to the other Party if the Closing has not occurred by the date that is ninety (90) days after the date hereof; *provided, however*, that the right to terminate this Agreement pursuant to this Section 9.1(f) shall not be available to any Party if the failure of the Closing to occur is due to the failure of such Party to have fulfilled any of its obligations under this Agreement.

Section 9.2 Effect of Termination. If any Party terminates this Agreement pursuant to Section 9.1, the Seller shall immediately return the Deposit Amount to Seller (except in the case of a termination under Section 9.1(d)) all other remaining rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that this Section 9.2 and the provisions of the Confidentiality Agreement) shall survive any such termination) and no Party shall have any Liability to the other Party hereunder; provided, however, that nothing in this Section 9.2 shall relieve any Party from Liability for any breach occurring prior to any such termination set forth in this Agreement; provided, further, that other than in the case of fraud or willful misconduct, that (a) the maximum Liability of Seller under this Agreement shall not exceed the Purchase Price (to the extent the Purchase Price has actually been paid by Buyer) plus Buyer's reasonable and documented out-of-pocket expenses up to an aggregate amount of \$10,000 and (b) the maximum liability of Buyer under this Agreement shall not exceed the Deposit Amount.

ARTICLE X MISCELLANEOUS

Section 10.1 Survival. Except for any covenant that by its terms is to be performed (in whole or in part) by any Party following the Closing, none of the representations, warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 2.4(b) or Section 2.4(c) shall survive, and each of the same shall terminate and be of no further force or effect as of, the Closing, with all liability therefore extinguished as of such date. In the case of any covenant to be performed by Seller after Closing, any liability of Seller thereunder shall be limited to \$50,000 and sought within one year of the Closing Date.

Section 10.2 Expenses. Except as otherwise expressly set forth herein, each Party will bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants. For the avoidance of doubt, Buyer shall pay all recording fees, costs, and Transfer Tax arising from the transfer of the Acquired Assets and Assumed Liabilities.

Section 10.3 Entire Agreement. This Agreement, the Related Agreements and the Confidentiality Agreement constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

Section 10.4 Incorporation of Exhibits and Disclosure Schedule. The Exhibits to this Agreement and the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 10.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 10.5 except as expressly provided herein.

Section 10.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Party, provided that the Seller's rights and remaining obligations, if any, under this Agreement may be transferred to any liquidating trust created by order of the Bankruptcy Court or otherwise ordered by the Bankruptcy Court.

Section 10.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice,

request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) upon receipt of confirmation of receipt if sent by facsimile transmission; (d) on the day such communication was sent by e-mail; or (e) four (4) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Seller: Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 N. King Street
Wilmington, Delaware 19801
Attention: Justin H. Rucki
Facsimile: (302) 576-3391
E-mail: jrucki@ycst.com

If to Buyer: Wild Oats Marketing, LLC
4500 Westgrove Dr., #215
Addison, TX 75001
Attention: Tom Dahlen

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 10.7.

Section 10.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware (without giving effect to the principles of conflict of Laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

Section 10.9 Submission to Jurisdiction; Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 10.7; provided, however, that nothing in this

Section 10.9 shall affect the right of any Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby.

Section 10.10 Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 10.11. Specific Performance. Buyer acknowledges and agrees that Seller and its estate would be damaged irreparably in the event Buyer does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that Seller may have under law or equity, Seller shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

Section 10.12 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect; provided, however, that the requirement in Section 8 hereof that the Sale Order be obtained shall not be severable.

Section 10.13 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than Buyer, Seller, and their respective successors and permitted assigns.

Section 10.14 Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 10.15 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Seller in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure for all purposes of this Agreement and all other sections of the Disclosure Schedule to which such matter relates. The listing of any matter shall expressly not be deemed to constitute an admission by Seller, or to otherwise imply, that any such matter is material, is required to be

disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the listing of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Seller's representations, warranties, or covenants set forth in this Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the applicable section of the Disclosure Schedule in which they are directly or indirectly referenced.

Section 10.16 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.17 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

Section 10.18 Limitations Under Applicable Law. Notwithstanding anything to the contrary contained in this Agreement, Seller's obligations hereunder shall be subject to applicable limitations under the Bankruptcy Code, including, without limitation, Sections 1113 and 1114 of the Bankruptcy Code.

[Remainder of page intentionally left blank.]

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

FRESH & EASY, LLC

By: _____
Name:
Title:





WILD OATS MARKETING, LLC

By: _____
Name:
Title:

Schedule 1.1 (a), (b) and (d)

The Acquired Assets shall include the following:

Fresh & Easy, LLC
Schedule 1.1(a) - Fresh & Easy Trademarks

Registered Trademark	Design	Application #	Filing Date	Registration #	Reg. Date	Status	Classes
Apple Clock Design (Color)		77036360	11/3/2006	3923297	2/22/2011	Registered	35
Apple Clock Design (Black and White)		77044477	11/15/2006	3923300	2/22/2011	Registered	3, 5, 29, 30, 31, 32, 35
TALKING FRESH & EASY	Word Mark	77393519	2/11/2008	4292538	2/19/2013	Registered	41
FRESH & EASY	Word Mark	78947356	8/8/2006	4400455	9/10/2013	Registered	3, 5, 8, 16, 21, 25, 29, 30, 31, 32, 35
FRESH & EASY		77079913	1/10/2007	4727830	4/28/2015	Registered	3, 5, 16, 21, 25, 29, 30, 31, 32
FRESH & EASY		77044437	11/15/2006	4692656	2/24/2015	Registered	35
FRESH & EASY		77040172	11/9/2006	4696114	3/3/2015	Registered	35
F & E		85025880	4/29/2010	4368877	7/16/2013	Registered	29 & 31
F & E	Word Mark	85025879	4/29/2010	4368876	7/16/2013	Registered	29 & 31
F & E		85025881	4/29/2010	4568492	7/15/2014	Registered	29 & 31
MISCELLANEOUS DESIGN (TOTE BAG LOGO B & W)		85051496	6/1/2010	4102927	2/21/2012	Registered	18
MISCELLANEOUS DESIGN (TOTE BAG LOGO B & W)		85051482	6/1/2010	4096761	2/7/2012	Registered	18

Fresh & Easy, LLC
 Schedule 1.1(a) - Fresh & Easy Trademarks

Common Law Trademark	Design
Fresh & Easy Organic (Design Mark)	
Kitchen To Go (Design Mark)	
Like American Kitchen To Go (Design Mark)	
Fresh & easy Mexican Kitchen To Go (Design Mark)	
Fresh & easy Italian Kitchen To Go (Design Mark)	
Fresh & easy Asian Kitchen To Go (Design Mark)	
made easy (Design Mark)	
Fresh & easy goodness (Design Mark)	
like Ready to Cook (Design Mark)	
Fresh & easy green things (Design Mark)	
Fresh & easy Gourmet (Design Mark)	
Fresh & easy Bakery (Design Mark)	
Fresh & easy in store bakery "apron" design (Design Mark)	

Fresh & Easy, LLC
 Schedule 1.1(a) - Fresh & Easy Trademarks

Common Law Trademark	Design
fresh & easy From Our Bakery (Design Mark)	
fresh & easy kitchen (Design Mark)	
Love Food (Design Mark)	
shop for schools (Design Mark)	
Friends (Design Mark)	
Signatures (Design Mark)	
Classic (Design Mark)	
Delikatessen (Design Mark)	
Gluten Free (Design Mark)	
fresh & easy express (Design Mark)	
Click & Collect (Design Mark)	
Fresh & Easy Signoffs (Design Mark)	

Fresh & Easy, LLC
Schedule 1.1(b) - Fresh & Easy Domain Names

Domain Name	Expiration Date
freshandeasy.com	10/4/2017
myfreshfoodsilc.com	9/25/2016
freshfoodsus.com	10/30/2016
freshfoodsus.net	10/30/2016
freshfoodsus.org	10/30/2016

**Fresh & Easy, LLC
Schedule 1.1(d) - Fresh & Easy Recipes and Other Data**

Asset Description	Format
Product formulations contained in the Oracle hosted MICROS® myCreations product development software solution.	Formulations preserved on Oracle servers and access to be negotiated directly with Oracle by Buyer and done solely at Buyer's Expense.
Standard Operating Procedures (SOPs) files documenting Fresh & Easy production procedures.	PDF and Word Document Files.
Product Image files depicting the various products sold in Fresh & Easy stores. Images compatible for e-commerce utilization.	JPEG Files.
Technical Images Library containing modifiable image files in their native format.	Files preserved on VCG Catapult servers and access to be negotiated directly with VCG Catapult by Buyer and done solely at Buyer's Expense.

Disclosure Schedule

Certain of the Seller Recipes were uploaded into Seller's database by certain of the following persons, who at one time or another were suppliers of Seller or the entity from whom Seller's business assets were purchased. Seller is unaware whether any of the following persons dispute Seller's ability to sell any of the Seller Recipes to Buyer. Seller will provide notice of this Agreement to all of the following persons at the following addresses, even though the Debtor believes most have not at anytime uploaded any of the Seller Recipes to Seller's database:

Disclosure Schedule							
Supplier	Address Line 1	Address Line2	City	State	Zip	Country	
ACH FOOD COMPANIES INC	2301 S E Tones Drive		Ankeny	IA	50021	US	
ACH FOOD COMPANIES INC	7171 Goodlett Farms PKWY		Cordova	TN	38016	US	
ACME FOOD SALES INC	PO Box 80525		Seattle	WA	98108	US	
ADRIENNES GOURMET FOODS	312 Rader Rd		McComb	OH	45858	US	
AGOSTONI CHOCOLATE NORTH AMERICA INC	Via Pescatori 53		Lecco		23900	IT	
AGRUSA, INC.	117 Fort Lee		Leonia	NJ	62039	US	
AMC DIRECT INC DBA AMC FAZIO	2500 S Fowler Ave		Fresno	CA	93725	US	
AMERICAN AERO FOODS LLC	840 Tourmaline Drive		Newbury Park	CA	91320	US	
AMS LLC DBA GAGNE FOODS LLC	105 Front Street		Bath	ME	04530	US	
ANDREW WILLIAMSON FRESH PRODUCE	9940 Marconi D		San Diego	CA	92154	US	
ANGELO & FRANCO	3441 Jack Northrop Ave		Hawthorne	CA	90250	US	
ARIZONA ITALIAN ICE INC DBA BERTOS ICE CREAM	242 Salem Street		Woburn	MA	01801	US	
ARTHUR SCHUMAN INC	6180 Alco Avenue		Vernon	CA	90058	US	
ARYZTA LLC	16932 Valley View Ave		La Mirada	CA	90638	US	
ASCENTIA WINE ESTATES DBA GEYSER PEAK WINERY	349 Healdsburg Avenue		Healdsburg	CA	95448	US	
ATTUNE FOODS LLC	26744 Network Place		Chicago	IL	60673-1267	US	
AUBURN DAIRY PRODUCTS INC	702 W. Main St		Auburn	WA	98001	US	
AUSTRALIAN VINTAGE LIMITED	275 Sir Donald Bradman Drive		Cowandilla	SA	5033	AUS	
AUTUMN HARP INC	61 Pine Street		Bristol	VT	05443	US	
AV THOMAS PRODUCE INC	PO Box 286		Livingston	CA	95334	US	
B AND D FOODS	3494 S. TK Avenue		Boise	ID	83705	US	
BAKE N JOY FOODS INC	351 Willow Street		North Andover	MA	01845	US	
BAKKAHOR USA	2700 Westinghouse Blvd		Charlotte	NC	28273	US	
BARREL O FUN SNACK FOODS INC	PO Box 230		Perham	MN	56573	US	
BAXTERS CANADA INC	4800 Ave. Pinard		St-Hyacinthe	QC	J2S 8E1	CA	
BAY VALLEY FOODS LLC	1000 naturally fresh blvd		Atlanta	GA	30265	US	
BEELERS INC	P O Box 40	11 Central Ave NW	LeMars	IA	51031	US	
BELL CARTER FOODS INC	1012 Second Street		Corning	CA	96021	US	
BISCUITS LECLERC	91, Rotterdam Industrial Park François-Leclerc		Saint-Augustin-de-Desmaures	QC	G3A 1T1	CA	
BLOOMFIELD BAKERS	10711 Bloomfield Street		Los Alamitos	CA	90720	US	
BOBOLI INTERNATIONAL LLC	1718 Boeing Way		Stockton	CA	95219	US	
BODEGA FILUS SA	Franklin Villanueva 3541		Lunilunta Maipu		5517	AR	
BONERTS SLICE OF PIE	2727 S Susan Street		Santa Ana	CA	92704	US	
BONITA D.B.A. PACIFIC FRUIT	500 N. State College Blvd. Suite 560		Orange	CA	92868	US	
BORG PRODUCE SALES INC	1601 East Olympic Boulevard	# 100	Los Angeles	CA	90021	US	
BREMNER FOOD GROUP INC	1475 US Highway 62 West		Princeton	KY	42445	US	
BRUCE FOODS CORPORATION	P O Drawer 1030		New Iberia	LA	70562	US	
BUTTERNUT MOUNTAIN FARM	37 Industrial Park Dr		Morrisville	VT	05661	US	
C & F FOODS, INC.	15620 Valley Blvd		City of Industry	CA	91744	US	
C&H SUGAR COMPANY, INC	2300 Contra Costa Boulevard	Suite 600	Pleasant Hill	CA	94523	US	
CAFFE CALABRIA COFFEE ROASTING COMPANY	3933 30th Street		San Diego	CA	92104	US	
CALAVO GROWERS INC	15765 Telegraph Road		Santa Paula	CA	93060	US	
CALIFORNIA DAIRIES INC	11894 Avenue 120		Tipton	CA	93272	US	
CALIFORNIA OLIVE RANCH INC	2675 Lone Tree Road		Oroville	CA	95965	US	
CAMPAGNA TURANO BAKERY INC	5830 Trade Center Court		Villa Rica	CA	30180	US	
CARGILL COCOA & CHOCOLATE INC	15407 McGinty Road West		Wayzata	MN	56392	US	
CARUTHERS RAISIN PACKING CO IN	12797 S. Elm Ave.		Caruthers	CA	93609	US	
CAVE DE PRISSE	Les Grandes Vignes		Prisse		71960	FR	
CG ROXANE	501 Washington Street		Calistoga	CA	94515	US	
CHELTEN HOUSE PRODUCTS	607 Heron Dr PO Box 434		Bridgeport	NJ	08085	US	
CHICKEN OF THE SEA INTERNATIONAL	COS American Samoa Packing Company		American Samoa	Pago	96799	WS	
CHOCOLAT FREY AG	PO Box 228		Lititz	PA	17543-0228	US	
CHRIS CANDIES INC	1557 Spring Garden Ave		Pittsburgh	PA	15237	US	
CHUDLEIGHS USA LIMITED	8501 Chudleigh Way		Milton	ON	L9T 0L9	CA	
CLEMENT PAPPAS & CO INC	100 Hope Road		Byesville	OH	43723	US	
CLIFFSTAR CORPORATION	11751 Pacific Ave		Fontana	CA	92337	US	
CLOVER STORNETTA FARMS INC	PO Box 750369		Petaluma	CA	94975-0369	US	
COMMERCIAL BAKERIES CORP	45 Torbarrie Road		Toronto	ON	M3L 1G5	CA	
COMMONWEALTH DAIRY LLC	PO Box 6212/3 Omega Drive		Brattleboro	VT	05302	US	
CONAGRA	PO Box 56929		Los Angeles	CA	90074	US	
CONAGRA FOODS INC	7350 World Communication Drive		Omaha	NE	68122	US	
COPPENRATH USA LP	5991 Parkway North Blvd, Suite C		Cumming	GA	30040	US	
CORNERSTONE US WINE IMPORTS LLC	4740 Green River Road	Ste 301	Corona	CA	92880	US	
COTT BEVERAGES	4238 Director Drive		San Antonio	TX	78519	US	
CP FOODS PRODUCTS	7135 Minstrel Way Suite 2023		Columbia	MD	21045	US	
CRESTONE GROUP LLC FOR KITCHEN	5920 Pasteur Court		Carlsbad	CA	92008	US	
CRIDER INC	1 Plant Ave		Stillmore	GA	30464	US	
CUISINE SOLUTIONS INC	2800 Eisenhower Ave, Ste 450,		Alexandria	MD	22314	US	
DABECCA NATURAL FOODS INC	40291 US Hwy 14 East		Huron	SD	57350	US	
DAVID OPPENHEIMER & COMPANY	PO Box 347080		Pittsburgh	PA	15251-4080	US	
DBI PARTNERS LLC	16520 Bake Parkway #230		IRVINE	CA	92618	US	
DEAN FOODS	1739 Albion Street		Los Angeles	CA	90031	US	
DEL REAL FOODS LLC	11041 Inland Ave		Mira Loma	CA	91752	US	
DELICATO VINEYARDS	12001 S Highway 99		Manteca	CA	95336	US	
DESOBRY	Rue du Vieux Colombier 1		Tourna		7500	BE	
DPI WEST.	601 Rockefeller Ave		Ontario	CA	91761	US	
DRAYTON FOODS	307 39th St N		Fargo	ND	58102	US	
ED SMITH & SONS LIMITED DBA BAY VALLEY FOODS LLC	857-897 School Pl		Green Bay	WI	54307	US	
EDDY PACKING CO INC	404 Airport Dr		Yoakum	TX	77995	US	
EGGOLGY	6728 Eton Ave		Canoga Park	CA	91303	US	
EGGS WEST	P O Box 910		Norco	CA	92860	US	
EL PASO CHILE CO	26 Walter Jones Blvd # E		El Paso	TX	79906	US	
ENGLISH PROVENDER COMPANY	Buckner Croke Way		Thatcham		RG19 6HA	GB	
EVOLUTION FRESH INC	11655 Jersey Boulevard		Rancho Cucamonga	CA	91730	US	
FARIBAULT FOODS INC	128 NW 15th Street		Faribault	MN	55021	US	
FCW IMPORTS.	332 Harbor Way		So. San Francisco	CA	94080	US	
FIORE DI PASTA INC	3530 E Church		Fresno	CA	93725	US	
FIVE CROWNS MARKETING	551 West Main Street Suite 2		Brawley	CA	92227	US	

Disclosure Schedule							
Supplier	Address Line 1	Address Line2	City	State	Zip	Country	
FOSTER FARMS DAIRY	529 Kansas Ave		Modesto	CA	95351	US	
FRATELLI BERETTA USA, INC.	750 Clark Dr		Mt Olive Township	NJ	07828	US	
FREMONT COMPANY	802 North Front Street		Fremont	OH	43420	US	
FURLANIS FOOD CORPORATION	1700 Aimco Blvd		Mississauga	ON	L4W1V1	CA	
FUSION FL	2295 East Ridge Ave		Riverside	CA	92507	US	
GALASSOS BAKERY	PO Box 511623		Los Angeles	CA	90051-8178	US	
GIACOBAZZI USA INC	PO Box 5005		SevernaPark	MD	21146	US	
GIMBALS FINE CANDIES	250 Hillside Blvd		South San Francisco	CA	94080	US	
GIULIANOS' SPECIALTY FOODS	12132 Knott Street		GardenGrove	CA	92841	US	
GOLD COAST BAKING CO INC	1590 E St Gertrude Pl		Santa Ana	CA	92705	US	
GOLDEN BOY FOODS LTD	7225 Lougheed Hwy.		Vancouver	BC	V5A 4V8	CA	
GOURMET FRESH PASTA	950 North Fair Oaks Ave		Pasadena	CA	91103	US	
GOURMET INDIA FOOD COMPANY-M_WHITTIER	12220 Rivera Rd Suite A		Whittier	CA	90606	US	
GOURMET TRADING COMPANY	PO BOX 88432		Los Angeles	CA	90009	US	
GREAT LAKES CHEESE CO INC	2602 County Road PP		Plymouth	WI	53073	US	
GULF PACIFIC RICE COMPANY INC	12012 Taylor Road		Houston	TX	77043	US	
HANNAHMAX BAKING	14601 S. Main Street		Gardena	CA	90248	US	
HARRIS TEA COMPANY	1267 Cobb Industrial Drive		Marietta	GA	30066	US	
HUJOS DE ANTONIO BARCELO SA	Crta Valladolid-Segovia Km 7-25		Laguna de Duero		47140	ES	
HONEYVILLE FOODS	11600 Dayton Drive		Rancho Cucamonga	CA	91730	US	
HORMEL FOODS CORPORATION	500 14th Ave NE		Austin	MN	55912	US	
IL FORNAIO AMERICA CORPORATION	16932 Valley View Ave		La Mirada	CA	90638	US	
IL FORNAIO AMERICA CORPORATION	770 Tamalpais Dr Suite 400		Corte Madera	CA	94925	US	
ISTITUTO ENOLOGICO ITALIANO IEI SPA	Corte Fornari 36		San Bonifacio		37047	IT	
J&J PROCESSING INC DBA CUSTOM FOODS	14715 Anson Ave		Santa Fe Springs	CA	90671	US	
JACOBSFARM DEL CABO INC	2145 E. 49th Street		Vernon	CA	90058	US	
JAYONE FOODS INC	14th Floor Woolim Lions Valley	5445 Sangdaewon-dong	Sungnam-si		462-819	KR	
JBS USA LLC	1770 Promontory Circle		Greeley	CO	80634	US	
JENNIE-O TURKEY STORE	2505 Willmar Ave SW		Willmar	MN	56201	US	
JOHANA BEVERAGE COMPANY	5625 W Thorpe Rd		Spokane	WA	99224	US	
JOHN MORRELL & CO	1400 N Weber Ave		Sioux Falls	SD	57117	US	
JOHNVINCE FOODS	6185 El Camino Real		Carlsbad	CA	92009	US	
KARLIN FOODS CORP	1845 Oak Street		Northfield	IL	60093	US	
KELSEN INC	DCI Nr Snede		Bredgede 27		DK8766	DE	
KINGSBURG ORCHARDS	PO Box 38		Kingsburg	CA	93631	US	
KOZY SHACK ENTERPRISES INC	Land OLakes, Inc	PO Box 96314	Chicago	IL	60693-6314	US	
LA GALVANINA SPA	Via Della Torretta, 2		Rimini		47923	IT	
LAKEVIEW FARMS LLC	1700 Gresel Drive		Delphos	OH	45833	US	
LANGER JUICE COMPANY INC	16195 Stephens Street		City of Industry	CA	91745	US	
LANTMANNEN UNIBAKE USA INC	1927 4th Ave South		St. Petersburg	FL	33712	US	
LES DOMAINES BONFILS	Maison Maurel Vedeau		Servian		34290	FR	
MANZANA PRODUCTS CO INC	P O Box 209		Sebastopol	CA	95473	US	
MARSAN FOODS LIMITED	160 Thermos Road		Scarborough	ON	M1L 4W2	CA	
MASSIMO ZANETTI BEVERAGE USA	200 Port Centre Pkwy		Portsmouth	VA	23703	US	
MCCAIN FOODS	2275 Cabot Drive		Lisle	IL	60523	US	
MCL FRESH INC	5655 E Olympic Blvd		LosAngeles	CA	90022	US	
MICHAELS BAKERY PRODUCTS LLC	10635 Scripps Ranch Blvd	Suite D	San Diego	CA	92131	US	
MILLER PACKING COMPANY	PO Box 1390		Lodi	CA	95241	US	
MINSLEY INC	989 S Monterey Avenue		Ontario	CA	91761	US	
MIZKAN AMERICAS INC	27772 Network Place		Chicago	IL	60673-1277	US	
MONDIV DIVISION OF LASSONDE SPECIALTIES INC	3810 Alfred-Laliberte		Boisbriand	QC	J7H 1P8	CA	
MONINI NORTH AMERICA INC	6 Armstrong Road	Armstrong Park	Shelton	CT	06484	US	
MONTEREY MUSHROOM	777 Maher Court		Watsonville	CA	95076	US	
MOONEY FARMS	1220 Fortress Street		Chico	CA	95973	US	
MOREHOUSE FOODS INC	760 Epperson Drive		City of industry	CA	91748	US	
MORTON SALT	PO Box 93052		Chicago	IL	60673-3052	US	
NATRA US INC	Camino Del Rio South, Suite 355		San Diego	CA	92065	US	
NIAGARA BOTTLING LLC	5675 E Concours Ave		Ontario	CA	91764	US	
NORTH AMERICAN FOOD GROUP LTD	PO Box 454		Plainview	NY	11803	US	
NORTHDOWN INDUSTRIES INC	4635 W Colter St.,		Glendale	AZ	85301	US	
NORTHWEST COSMETIC LABORATORIES LLC	201 Technology Drive		Idaho Falls	ID	83402	US	
OLDE THOMPSON INC	3250 Camino Del Sol		Oxnard	CA	93030	US	
ONEILL VINTNERS	101 Larkspur Landing Circle, Suite 350		Larkspur	CA	94939	US	
ORANGE BAKERY INC	17751 Cowan Ave		Irvine	CA	92602	US	
ORACLE CORPORATION UK LIMITED	Oracle Parkway, Thames Valley Park		Reading	BRK	RG6 1RA	UK	
OREGON FREEZE DRY INC	525 25th Ave		Albany	OR	97321	US	
ORGANIC MILLING COMPANY LLC	505 West Allen Ave		San Dimas	CA	91773	US	
OVERHILL FARMS INC	PO Box 58806		Vernon	CA	90058	US	
OVERSEAS FOOD TRADING LTD	2200 Fletcher Avenue, 3rd Floor		Fort Lee	NJ	07024	US	
PACIFIC AMERICAN FISH COMPANY INC	5525 S Santa Fe Ave		Vernon	CA	90058	US	
PACIFIC COAST PRODUCERS INC	631 N Cluff Avenue		Lodi	CA	95240	US	
PACIFIC DRY GOODS INC	1085 Essex Avenue		Richmond	CA	94801	US	
PACIFIC PRIDE SEAFOOD INC	3264 Mines Ave		Los Angeles	CA	90023	US	
PACIFICA FOODS LLC	1001 Dove Street Suite 105		Newport Beach	CA	92660	US	
PAN AMERICAN FOOD LLC	12050 NW 28 Ave.		Miami	FL	33167	US	
PEDIGREE OVENS	495 Commanche Cir		Harvard	IL	60033	US	
PENGUIN NATURAL FOODS INC	260 Pioneer Avenue North		Woodland	CA	95776	US	
PETALUMA POULTRY	2700 Lakeville Hwy		Petaluma	CA	94954	US	
PLUMROSE USA	24402 County Road 45		Elkhart	IN	46515	US	
POTANDON PRODUCE LLC	3427 Solutions Center		Chicago	IL	60677	US	
PRECEPT BRANDS LLC	24962 Highway 243 S		Mattawa	WA	99349	US	
PROGRESSIVE PRODUCE CORPORATION	5790 Peachtree St		Los Angeles	CA	90040	US	
PULMUONE WILDWOOD INC	2315 Moore Ave		Fullerton	CA	92833	US	
RADER FARMS INC	1270 East Badger Road		Lynden	WA	98264	US	
RALCORP FROZEN BAKERY PRODUCTS INC	3250 Lacey Ave, Suite 600		Downers Grove	IL	60515	US	
RALCORP FROZEN BAKERY PRODUCTS INC	529 Annance Court		Delta	BC	V3M 6Y7	US	
RALCORP FROZEN BAKERY PRODUCTS INC	215 N 700 W #A10		Ogden	UT	84404	US	
RALSTON FOODS	P.O Box 618		St. Louis	MO	63188-0618	US	

Disclosure Schedule							
Supplier	Address Line 1	Address Line2	City	State	Zip	Country	
REDSKY SINGLE SITE	11925 S. 700 E.		Draper	UT	84020	US	
REEDS INC	13000 South Spring Street		Los Angeles	CA	90061	US	
REYNOLDS PRESTO PRODUCTS INC	2625 Beltline Rd		Carrollton	TX	75006	US	
RIVIANA FOODS INC	PO Box 841212		Dallas	TX	75284-1212	US	
ROCKLINE INDUSTRIES	813 Commerce St		Sheboygan	WI	53081	US	
ROGERS FAMILY CO	1731 Aviation Blvd		Lincoln	CA	95648	US	
ROMEROS FOOD PRODUCTS INC	15155 Valley View Ave		Santa Fe Springs	CA	90670	US	
ROSEMONT FARMS	2700 N. Military Trail Suite 410		BocaRaton	FL	33431	US	
ROYAL PAPER CONVERTING	711 N 17 ave		Phoenix	AZ	85007	US	
RPE INC	8550 Control Sands Road		Bancroft	WI	54921	US	
RUSSET HOUSE INC	142 Route 202 Ste 103		Huntingdon	QC	JOS 1H0	CA	
SAAGS PRODUCTS LLC	1799 Factor Avenue		San Leandro	CA	94577	US	
SABRE FOODS INTERNATIONAL	111 W. Saint John Street	Suite 1005	San Jose	CA	95113	US	
SAGE V FOODS LLC	5901 Sloane Drive		Little Rock	AR	72206	US	
SAN GENNARO FOODS INC	19255 80th Ave South		Kent	WA	98032	US	
SANDERS CANDY FACTORY INC	5051 Calmview Avenue		Baldwin Park	CA	91706	US	
SANTA MONICA SEAFOOD COMPANY	18531 Broadway St		Rancho Dom	CA	90220	US	
SCHREIBER FOODS INC	PO Box 19010		Green Bay	WI	54307	US	
SENECA FOODS	710 East 7th Street		Blue Earth	MN	56013	US	
SHAMROCK FOODS INC	PO Box 52420		Phoenix	AZ	85072	US	
SHINING OCEAN INC	1515 Puyallup St		Sumner	WA	98390	US	
SHIVERS INC	22921 Lockness Avenue		Torrance	CA	90501	US	
SIoux HONEY ASSOCIATION	301 Lewis Blvd		Sioux City	IA	51101	US	
SMITHFIELD PACKING_M_GRAYSON	800 C. Stevens Blvd		Grayson	KY	41143	US	
SMITHFIELD PACKING_P_BOSTON	PO Box 415247		Boston	MA	02241-5247	US	
SMITHFIELD PACKING-SMITHFIELD	111 Commerce St		Smithfield	VA	23430	US	
SNACK KING CORP	16150 East Stephens Street		Industry	CA	91745	US	
SOPELLA GOURMET NATURAL FOODS	312 W 5th Street 605		Los Angeles	CA	90013	US	
SOKOL & COMPANY	6780 Reliable Parkway		Chicago	IL	60686	US	
SONORA MILLS FOODS INC	3064 Maria St		Rancho Dominguez	CA	90221	US	
SSI G DEBBAS CHOCOLATIER LLC	5877 E Brown Ave		Fresno	CA	93727	US	
ST MORTIZ BAKERY INC DBA MAHLERS BAKERY	1943 Avenida Plaza Real		Oceanside	CA	92056	US	
STAFFORD COUNTY FLOUR MILLS	108 S. Church St.		Hudson	KS	67545	US	
STRATAS FOODS LLC	7130 Goodlett Farms Pkwy #200		Memphis	TN	38016	US	
STREMICKS HERITAGE FOODS LLC	4002 Westminster Ave		Santa Ana	CA	92703	US	
STRUB FOOD CORP	100 Roy Blvd		Brantford	ON	N3R 7K2	CA	
STURM FOODS INC	215 Center Street		Manawa	WI	54949	US	
SUGAR FOODS	24799 Network Pl		Chicago	IL	606731247	US	
SUMMERLAND FOODS INC	10061 Riverside Drive	Suite 807	Toluca Lake	CA	91602	US	
SUN PRODUCTS CORP	3480 West 1900 South		Salt Lake City	UT	84101	US	
SUN VALLEY DAIRY	8088 San Fernando RD		Sun Valley	CA	91352	US	
SUNLAND INC	PO Box 1059		Portales	NM	88130	US	
SUNOPTA GLOBAL ORGANIC INGREDIENTS	36217 Treasury Center Drive		Chicago	IL	60694-6217	US	
SUNOPTA GRAINS & FOODS INC	13810 Cerritos Corporate	Drive Ste B	Cerritos	CA	90703	US	
SUNWEST FOODS INC	2875 Eighth Street A		Biggs	CA	95917	US	
SUPER STORE INDUSTRIES	2600 Spengler Way		Turlock	CA	95380	US	
SWEET CANDY COMPANY	3780 West Directors Row		Salt Lake City	UT	84104	US	
SWEET LIFE ENTERPRISES	2350 Pullman St		Santa Ana	CA	92705	US	
TERRAVANT WINE COMPANY	35 Industrial Way		Buellton	CA	93427	US	
TH FOODS INC	2154 Harlem Road		Loves Park	IL	61111	US	
THE CARRIAGE HOUSE COMPANIES INC	Linette Quality Chocolates		Womelsdorf	PA	19567	US	
THE FUSION FOOD FACTORY DBA LAJOLLA BAKING COMPANY	9350 Trade Place Suite A		San Diego	CA	92126	US	
THE GARLIC COMPANY	18602 Zerker Rd.		Bakersfield	CA	93314	US	
THE INVENTURE GROUP INC	3500 S La Cometa Drive		Goodyear	AZ	85338	US	
THE PERFECT BITE CO INC	747 W Wilson Ave		Glendale	CA	901203	US	
THE PRODUCE EXCHANGE	7407 Southfront Rd		Livermore	CA	94551	US	
THE WINE GROUP	PO Box 90		Tracy	CA	95377	US	
TOMS COOKIES INC	40 Golden Gate Drive		San Rafael	CA	94901	US	
TURN KEY WINE BRANDS LLC	132 E. Carrillo Street		Santa Barbara	CA	93101	US	
TWIN CITY FOODS INC	75 Remittance Dr Ste 1317		Chicago	IL	60675-1317	US	
TYSON FOODS INC	2200 Don Tyson Parkway		Springdale	AR	72762	US	
UNIFIED GROCERS INC	5300 Sheila Street		Commerce	CA	90040	US	
UNITED MELON DISTRIBUTORS INC	PO Box 86387		Los Angeles	CA	90012	US	
UNITED STATES NUTRITION INC	90 Orville Drive		Bohemia	NY	11716	US	
VALLEY FINE FOODS COMPANY	3909 Park Road		Benicia	CA	94510	US	
VAN DRUNEN FARMS	300 W. 6th Street		Momence	IL	60954	US	
VENTURA FOODS	26259 Network Place		Chicago	IL	60673-1262	US	
VENUS LABS	12601 Monarch St		Garden Grove	CA	92841	US	
VI JON INC	One Swan Drive		Smyrna	TN	37167	US	
VILLA DOLCE	6900 Canby Ave	Suite 106	Reseda	CA	91335	US	
VINA SANTA CAROLINA SA	Til Til 2228 Macul 1507 Correo # 21		Santiago	RM	CL		
WALKERS CHOCOLATES	Walker House, Coventry Road, Hay Mills		Birmingham		B25 8HE	GB	
WALKERS SHORTBREAD INC	170 Commerce Dr		Hauppauge	NY	11788	US	
WELLS ENTERPRISES INC.	1 Blue Bunny Dr		Le Mars	IA	51031	US	
WEST PAK AVOCADO INC	38655 Sky Canyon Drive		Murrieta	CA	92563	US	
WESTERN BAGEL BAKING CORPORATION	7814 Sepulveda Blvd.		Van Nuys	CA	91405	US	
WHEAT MONTANA FARMS	10778 Highway 287		Three Forks	MT	59752	US	
WHOLESOME SWEETENERS INC	2701 Holmes Rd		Houtson	TX	77051	US	
WINDSOR FOODS	160 S. Hacienda Blvd		City of Industry	CA	91745	US	
WINDSOR FOODS	Dept 97 PO Box 4346		Houston	TX	77210-4346	US	
WINDSOR FOODS	6711 Alameda		Los Angeles	CA	90001	US	
WINERY EXCHANGE	500 Redwood Boulevard	Suite 200	Novato	CA	94947	US	
YAMASA CORPORATION USA	3500 Fairview Industrial Drive SE		Salem	OR	97302	US	
YVON MAU SA	Rue Ste Petronille	33193 La Reole cedex	Gironde sur Dropt		33193	FR	

EXHIBIT A

FORM OF BILL OF SALE

BILL OF SALE

_____, 2017

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Fresh & Easy, LLC, a Delaware limited liability company (“Seller”), does hereby grant, bargain, transfer, sell, assign, convey and deliver to Wild Oats Marketing, LLC, a Delaware limited liability company (“Buyer”), all of its right, title and interest in and to the Acquired Assets, as such term is defined in the IP Asset Purchase Agreement, dated as of [____], 2016 (the “Purchase Agreement”), by and between Seller and Buyer, to have and to hold the same unto Buyer, its successors and assigns, forever.

Buyer acknowledges that Seller makes no representation or warranty with respect to the assets being conveyed hereby except as specifically set forth in the Purchase Agreement.

Seller for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Buyer, Seller will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required by Buyer in order to assign, transfer, set over, convey, assure and confirm unto and vest in Buyer, its successors and assigns, title to the assets sold, conveyed and transferred by this Bill of Sale.

[Signatures follow.]

IN WITNESS WHEREOF, the Seller has duly executed this Bill of Sale in favor of the Buyer as of the date first above written.

FRESH & EASY, LLC

By: _____

Name:

Title:

Acknowledged and agreed:

WILD OATS MARKETING, LLC

By: _____

Name:

Title:

EXHIBIT B

FORM OF TRADEMARK ASSIGNMENT AGREEMENT

TRADEMARK ASSIGNMENT AGREEMENT

This TRADEMARK ASSIGNMENT AGREEMENT (“Trademark Assignment”), dated as of [____], 2017 is made by Fresh & Easy, LLC, a Delaware limited liability company (“Seller”), in favor of Wild Oats Marketing, LLC, a Delaware limited liability company (“Buyer”), pursuant to the terms of the IP Asset Purchase Agreement, dated as of [____], 2016, by and between the Seller and the Buyer, (the “Purchase Agreement”).

WHEREAS, under the terms of the Purchase Agreement, Seller has conveyed, transferred, and assigned to Buyer, among other assets, certain intellectual property of Seller, and has agreed to execute and deliver this Trademark Assignment, for recording with the United States Patent and Trademark Office;

NOW THEREFORE, the parties agree as follows:

1. Assignment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby irrevocably conveys, transfers, and assigns to Buyer, and Buyer hereby accepts, all of Seller’s right, title, and interest in and to the following (the “Assigned Trademarks”), together with the goodwill of the business connected with the use of, and symbolized by, the Assigned Trademarks:

(a) the trademark registrations and trademark applications set forth on Schedule 1 hereto and all issuances, extensions, and renewals thereof;

(b) all rights of any kind whatsoever of Seller accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions, and otherwise throughout the world;

(c) any and all royalties, fees, income, payments, and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and

(d) any and all claims and causes of action with respect to any of the foregoing, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, dilution, misappropriation, violation, misuse, breach, or default, with the right but no obligation to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages.

2. Recordation and Further Actions. Seller hereby authorizes the Commissioner for Trademarks in the United States Patent and Trademark Office to record and register this Trademark Assignment upon request by Buyer. Following the date hereof, upon Buyer’s reasonable request, Seller shall take such steps and actions, and provide such cooperation and assistance to Buyer and its successors, assigns, and legal representatives, including the execution and delivery of any affidavits, declarations, oaths, exhibits, assignments, powers of attorney, or other documents, as may be reasonably necessary to effect, evidence, or perfect the assignment of the Assigned Trademarks to Buyer, or any assignee or successor thereto.

3. Terms of the Purchase Agreement. The parties hereto acknowledge and agree that this Trademark Assignment is entered into pursuant to the Purchase Agreement, to which reference is made for a further statement of the rights and obligations of Seller and Buyer with

respect to the Assigned Trademarks. The representations, warranties, covenants, agreements, and indemnities contained in the 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 Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

4. Counterparts. This Trademark Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same agreement. A signed copy of this Trademark Assignment delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Trademark Assignment.

5. Successors and Assigns. This Trademark Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

6. Governing Law. This Trademark Assignment and any claim, controversy, dispute, or cause of action (whether in contract, tort, or otherwise) based upon, arising out of, or relating to this Trademark Assignment and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the United States and the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

[Signatures follow.]

IN WITNESS WHEREOF, Seller has duly executed and delivered this Trademark Assignment in favor of Buyer as of the date first written above.

FRESH & EASY, LLC

By: _____

Name:

Title:

Acknowledged and agreed:

WILD OATS MARKETING, LLC

By: _____

Name:

Title:

SCHEDULE 1
ASSIGNED TRADEMARK REGISTRATIONS AND APPLICATIONS

EXHIBIT C

FORM OF DOMAIN NAME ASSIGNMENT AGREEMENT

DOMAIN NAME ASSIGNMENT AGREEMENT

This DOMAIN NAME ASSIGNMENT AGREEMENT (“Assignment”), dated as of [____], 2017 is by and between Fresh & Easy, LLC, a Delaware limited liability company (“Seller”), and Wild Oats Marketing, LLC, a Delaware limited liability company (“Buyer”), pursuant to the terms of the IP Asset Purchase Agreement, dated as of [____], 2016, by and between the Seller and the Buyer, (the “Purchase Agreement”).

WHEREAS, Seller is the owner of all right, title and interest in and to the domain names listed on Schedule 1 attached hereto (the “Domain Names”) and is the registrant thereof; and

WHEREAS, in accordance with the terms of the Purchase Agreement Seller has agreed to transfer all right, title and interest in and to the Domain Names and the registrations thereof to Buyer on the terms set forth in the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Domain Name Assignment. In exchange for the consideration set forth in the Purchase Agreement, Seller hereby irrevocably sells, assigns, transfers and conveys to Buyer:

(a) all right, title and interest in and to the Domain Names, including the current registrations thereof; and

(b) any other rights (including, but not limited to, trademark rights in any jurisdiction) Seller may have in the Domain Names, including any goodwill associated therewith.

2. Transfer of Domain Names. Within 10 business days after the date hereof, Seller shall execute all documents, papers, forms and authorizations, and take such other actions as are reasonably necessary to (i) effectuate the transfer of ownership and control of the Domain Names to Buyer and (ii) cause the Domain Names to be registered in the name of Buyer with the domain name registry of Buyer’s choosing as designated by Buyer in writing, at Buyer’s expense. The Domain Names will be deemed transferred when:

(a) Buyer’s registrar has confirmed the transfer in accordance with its procedures therefor;

(b) the applicable “WHOIS” database identifies Buyer as the registrant of the Domain Names; and

(c) the Buyer has administrative and technical access to the Domain Names, and sole control over where the Domain Names point.

3. Terms of the Purchase Agreement. The parties hereto acknowledge and agree that this Assignment is entered into pursuant to the Purchase Agreement, to which reference is made for a further statement of the rights and obligations of Seller and Buyer with respect to the Domain Names. The representations, warranties, covenants, agreements, and indemnities contained in the 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 Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

4. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same agreement. A signed copy of this Assignment delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Assignment.

5. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

6. Governing Law. This Assignment and any claim, controversy, dispute, or cause of action (whether in contract, tort, or otherwise) based upon, arising out of, or relating to this Assignment and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the United States and the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

[Signatures follow.]

IN WITNESS WHEREOF, Seller has duly executed and delivered this Domain Name Assignment Agreement in favor of Buyer as of the date first written above.

FRESH & EASY, LLC

By: _____

Name:

Title:

Acknowledged and agreed:

WILD OATS MARKETING, LLC

By: _____

Name:

Title:

SCHEDULE 1

TRANSFERRED DOMAIN NAMES