

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
	)	Chapter 11
)	
MARSH SUPERMARKETS HOLDING, LLC, <i>et al.</i> , ¹	)	Case No. 17-11066 (___)
)	
Debtors.	)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR ENTRY OF (A) AN ORDER (I) SCHEDULING
A HEARING ON THE APPROVAL OF THE SALE OF ALL OR
SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS FREE AND CLEAR
OF ALL ENCUMBRANCES, AND THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING
CERTAIN BIDDING PROCEDURES, ASSUMPTION AND ASSIGNMENT
PROCEDURES, AND BID PROTECTIONS AND THE FORM AND MANNER OF
NOTICE THEREOF, AND (III) GRANTING RELATED RELIEF; AND (B) AN ORDER
(I) APPROVING ASSET PURCHASE AGREEMENT, (II) AUTHORIZING THE SALE
OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS FREE AND CLEAR
OF ALL ENCUMBRANCES, (III) AUTHORIZING THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (this “Motion”), pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), for the entry of: (a) an order, substantially in the form attached hereto as Exhibit A (the “Bidding Procedures Order”), (i) scheduling a hearing (the “Sale Hearing”) on approval of the proposed sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Assets”), free

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Marsh Supermarkets Holding, LLC (1568); Marsh Merger Sub, LLC (8837); Marsh Supermarkets Company, LLC (8179); A.L. Ross & Sons, LLC (3470); Contract Transport Holding, LLC (5675); Contract Transport, LLC (3718); CT Logistics, LLC (9775); LoBill Foods, LLC (9461); Marsh Drugs Holding, LLC (5755); Marsh Drugs, LLC (3717); Marsh International, LLC (0875); Marsh RE Property, LLC (0641); Marsh Supermarkets, LLC (7924); MS Property, LLC (9199); Marsh Supermarkets of Illinois, LLC (6423); and O’Malia Food Markets, LLC (5222). The mailing address for each of the Debtors is 9800 Crosspoint Blvd., Indianapolis, Indiana 46256.

and clear of all liens, claims, encumbrances, and other interests (collectively, the “**Encumbrances**”) other than those permitted by the APA (as defined below), Stalking Horse APA (as defined below) or Modified APA (as defined in the Bidding Procedures) to a potential stalking horse purchaser (a “**Stalking Horse Purchaser**”) or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder (as defined below), then to the Successful Bidder, and authorizing the assumption and assignment of certain executory contracts and unexpired leases (each, an “**Assumed Contract**,” and collectively, the “**Assumed Contracts**”) in connection therewith; (ii) authorizing and approving certain bidding procedures for the Sale (collectively, the “**Bidding Procedures**,” a copy of which is attached as **Exhibit 1** to the Bidding Procedures Order), certain procedures for the assumption and assignment of the Assumed Contracts (collectively, the “**Assumption and Assignment Procedures**”), certain bid protections for any Stalking Horse Purchaser, including a Break-Up Fee and an Expense Reimbursement (each as defined below and together, the “**Bid Protections**”), and the form and manner of notice thereof; and (iii) granting related relief; and (b) an order, substantially in the form attached hereto as **Exhibit B** (the “**Sale Order**”), (i) authorizing and approving the Debtors’ entry into an asset purchase agreement for the Assets substantially in the form attached hereto as **Exhibit C** (the “**APA**”), with any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder; (ii) authorizing and approving the Sale, free and clear of all Encumbrances other than those permitted by the APA, Stalking Horse APA, or Modified APA; (iii) authorizing and approving the assumption and assignment of the Assumed Contracts in connection therewith; and (iv) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter 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 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105, 363, 365, 503 and 507 of the Bankruptcy Code, Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

BACKGROUND

2. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases and no request has been made for the appointment of a trustee or an examiner.

3. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the *Declaration of Lee A. Diercks In Support of Debtors’ Chapter 11 Petitions and First Day Motions and Applications* (the “**First Day Declaration**”).

4. Contemporaneously with the filing of this Motion, the Debtors have filed a motion (the “**Motion to Shorten**”), pursuant to Bankruptcy Rule 2002 and Local Rules 6004-

1(c) and 9006-1(e), seeking to have this Motion heard on shortened notice as it pertains to the Debtors' request for the entry of the Bidding Procedures Order.

THE DEBTORS' SALE STRATEGY

5. As set forth in further detail in the First Day Declaration, the Debtors are an independent grocery retailer in Indiana and Ohio, and as of the Petition Date, the Debtors operate a total of 60 stores in Indiana and Ohio (collectively, the "**Remaining Stores**").

6. Prior to the Petition Date, when the Debtors began experiencing financial difficulties, in addition to a number of other restructuring initiatives, the Debtors, in consultation with their professional advisors, completed a comprehensive review of the performance of all of their retail stores to analyze, among other things, the profitability and viability of each store location. The results of this analysis led to the Debtors: (i) ceasing operations at and exiting 11 of their stores (collectively, the "**Dark Stores**"); and (ii) planning an orderly liquidation of and exit from 19 underperforming and/or unprofitable Remaining Stores in an effort to conserve resources and maximize utility (collectively, the "**Closing Stores**"). Accordingly, concurrently with the filing of this Motion, the Debtors have filed a motion seeking to reject the Dark Stores effective as of Petition Date, and a motion (the "**Closing Stores Motion**") for authority to conduct closing store sales at the Closing Stores to the extent that such sales did not finish prior to the Petition Date.²

7. The rest of the Debtors' Remaining Stores collectively represent the Debtors' most valuable store locations (collectively, the "**Core Stores**," a list of which is

² The store closing sales finished prior to the Petition Date at 3 of the Closing Stores, which stores the Debtors seek to reject effective as of the Petition Date. In addition, as set forth more fully therein, the Closing Stores Motion seeks authority to conduct going out of business sales at all of the Remaining Stores. This way, the Debtors will have maximum flexibility to preserve and maximize the value of their estates in the event that they determine, in their business judgment, that it is necessary and prudent to conduct going out of business sales at any of the Core Stores. Until any such a determination is made, the Debtors intend to run an orderly and efficient auction and sale process, pursuant to the terms of the Bidding Procedures, for the Core Stores.

attached hereto as **Exhibit D**). As part of the Debtors' overall strategy for these chapter 11 cases, the Debtors have decided, in their business judgment, to sell all or substantially all of their Assets, including the Core Stores, in order to further maximize recoveries for the benefit of the Debtors' estates and their creditors.

8. In pursuit of the Sale, in September 2016, the Debtors engaged Peter J. Solomon Company ("**PJS**") as their investment banking advisor to solicit interest from third parties in a going concern transaction. Additionally, over the past several months, the Debtors were focused on a potential acquisition/merger opportunity, and in early May 2017, they consummated a sale of all of the prescription assets of their pharmacies. This sale resulted in a substantial reduction of the Senior Prepetition Obligations. With respect to the going concern sale process, in total, PJS has thus far contacted more than 40 parties, approximately 35 of which have entered into confidentiality agreements in connection with receiving access to the Debtors' confidential information. Out of the 35 parties who entered into a confidentiality agreement, 5 parties expressed an interest in various groups of stores representing nearly all of the 44 Core Stores. Despite this interest, going concern buyers for the Debtors have not yet emerged, however, some of these parties are still engaged in active due diligence. The Debtors, with the assistance of PJS, are continuing to actively market the Assets for sale to potential buyers in connection with these chapter 11 cases.

9. Although the Debtors have not obtained any stalking horse bids for the Assets as of the filing of this Motion, the Bidding Procedures reserve the Debtors' right to enter into a Stalking Horse APA (as defined below) with a Stalking Horse Purchaser, and the Debtors will continue to negotiate with interested parties in an effort to secure an acceptable stalking horse bid in advance of the Auction (as defined below).

10. By this Motion, the Debtors seek authority to proceed with the robust bidding and auction process set forth herein in order to consummate a sale that will generate maximum value for the Assets. In consultation with their professional advisors, the Debtors developed the Bidding Procedures, which are designed to preserve flexibility in this sale process, and generate the greatest level of interest, and the highest or best value for the Assets. Additionally, by establishing global dates for submitting bids, conducting auctions, and approving the Sale, the Bidding Procedures will provide clarity as to the bidding and auction process to all interested parties, and they create an appropriate timetable for the Sale, consistent with the milestones under the cash collateral order and the Debtors' current liquidity position.

STALKING HORSE PURCHASER

11. By this Motion and in connection with the Bidding Procedures, the Debtors are requesting approval to enter into an APA with any Stalking Horse Purchaser (a "**Stalking Horse APA**") not later than nine (9) days prior to the Bid Deadline (as defined below). The Debtors request authorization, but not direction, to accept an offer from any Stalking Horse Purchaser to purchase the Assets and execute any Stalking Horse APA, subject to the Bidding Procedures. In the event the Debtors enter into any Stalking Horse APA, the Debtors will file with the Court, and serve on the Sale Notice Parties (as defined below), a notice (a "**Stalking Horse Notice**") that shall include the following: (a) the identification of the Stalking Horse Purchaser; (b) a copy of the Stalking Horse APA; (c) the purchase price provided for in the Stalking Horse APA (the "**Stalking Horse Purchase Price**"); and (d) the deposit paid by the Stalking Horse Purchaser.

12. The Debtors also seek authorization, but not direction, to provide a break-up fee (a "**Break-Up Fee**") and an expense reimbursement for the reasonable and documented

expenses incurred by any Stalking Horse Purchaser (an “**Expense Reimbursement**”) to any Stalking Horse Purchaser on terms that are substantially similar to those routinely approved by bankruptcy courts in this District, provided that (i) in the aggregate, any Break-Up Fee shall not exceed two percent (2%) of the Stalking Horse Purchase Price, (ii) the aggregate amount of any Expense Reimbursement shall not exceed one percent (1%) of any Stalking Horse Purchase Price, and (iii) such Stalking Horse Purchaser is not an insider of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code. To the extent that the Debtors provide any Stalking Horse Purchaser with a Break-Up Fee or an Expense Reimbursement, the Stalking Horse Notice will also identify the amount and conditions of the same.

BIDDING PROCEDURES³

13. The Debtors are in the process of soliciting bids for all of the Assets, or any number or combination thereof, in accordance with the Bidding Procedures. The Bidding Procedures describe, among other things, (i) the assets available for sale, (ii) the manner in which bids become “qualified,” (iii) the coordination of diligence efforts among the bidders and the Debtors, (iv) the receipt and negotiation of bids received, (v) the conduct of any Auction, and (vi) the selection and approval of the Successful Bidder and the selection of the Back-Up Bidder. The Bidding Procedures reflect the Debtors’ objective of conducting the Auction in a controlled, but fair and open, manner, while ensuring that the highest or best bid is generated for the Assets.

³ Any summary of the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order. To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order, the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order shall control. Capitalized terms used but not defined in this summary of the Bidding Procedures shall have the meanings ascribed to such terms in the Bidding Procedures.

14. Certain of the key terms of the Bidding Procedures, which shall apply to the Potential Bidder, the Qualifying Bidders, the submission, receipt, and analysis of all bids relating to the Sale, and the conduct of the Sale and the Auction, are included below:

- (a) **Qualification as Bidder:** Any person or entity that wishes to participate in the bidding process for the Assets (each, a “**Potential Bidder**”) must first become a “**Qualifying Bidder**”. In order to become a Qualifying Bidder (and thus being able to conduct due diligence and gain access to the Debtors’ confidential electronic data room concerning the Assets (the “**Data Room**”)), a Potential Bidder must submit to the Debtors and their advisors: (i) documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction; (ii) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, which by its terms will inure to the benefit of the Successful Bidder; (iii) a statement and other factual support demonstrating to the Debtors’ reasonable satisfaction, after consultation with the Consultation Parties, that the interested party has a *bona fide* interest in consummating a sale transaction; and (iv) sufficient information, as determined by the Debtors, to allow the Debtors, after consultation with the Consultation Parties, to determine that the interested party (x) has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure acceptable to the Debtors in their discretion), and (y) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder, and a Stalking Horse APA shall be considered a Qualifying Bid (as defined below); (ii) should it decide to credit bid, Wells Fargo Bank, National Association (the “**Senior Lien Agent**”), in its capacities as agent and lender pursuant to that certain Credit Agreement, dated as of March 10, 2011 (as amended from time to time prior to the Petition Date, the “**Senior Lien Credit Agreement**”), to which certain of the Debtors and the Senior Lien Agent are parties, is a Qualifying Bidder and any such credit bid will be considered a Qualifying Bid; and (iii) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtors may consider a combination of bids for the Assets.

- (b) **Due Diligence:** The Debtors will provide any Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: (a) Scott Moses (212-508-1675;

smoses@pjsc.com) or Gregory Grambling (212-508-1674; ggrambling@pjsc.com); and/or (b) Robert S. Brady, Esq. (302-571-6690; rbrady@ycst.com) or Michael R. Nestor, Esq. (302-571-6699; mnestor@ycst.com). The due diligence period shall extend through and including the Bid Deadline. The Debtors may, but shall not be obligated to, in their sole discretion, furnish any due diligence information after the Bid Deadline. The Debtors reserve the right, in their reasonable discretion, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder; provided that the Debtors shall notify the Consultation parties of any decision to withhold such information. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and the Sale.

(c) **Bid Requirements:**

- i. *Qualifying Bid.* Other than in the case of a bid submitted by the Stalking Horse Purchaser or the Senior Lien Agent, in its capacity as such, to be deemed a “**Qualifying Bid,**” a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements (each, a “**Bid Requirement**”):
 - a. be in writing;
 - b. fully disclose the identity of the Qualifying Bidder and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualifying Bidder;
 - c. set forth the purchase price to be paid by such Qualifying Bidder;
 - d. not propose payment in any form other than cash (except as otherwise expressly set forth in these Bidding Procedures);
 - e. state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
 - f. specify the Assets that are included in the bid and, to the extent a Stalking Horse Purchaser is designated, state that such Qualifying Bidder offers to purchase the Assets, or a number or combination of the Assets, upon substantially the same terms as, or terms more

favorable to the Debtors and their estates than, the terms set forth in the Stalking Horse APA;

- g. be accompanied by a Modified APA that reflects any variations from the APA and, if applicable, a Stalking Horse APA;
- h. state that such Qualifying Bidder's offer is formal, binding and unconditional and is irrevocable until two (2) business days after the closing of the Sale;
- i. state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Modified APA and provide written evidence in support thereof;
- j. contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to close the transactions contemplated by the Modified APA, including, without limitation, such financial and other information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtors to serve, within one (1) business day after such receipt, such information on any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information;
- k. identify with particularity each and every executory contract and unexpired lease the assumption and assignment of which is a condition to close the transactions contemplated by the Modified APA;
- l. a commitment to close the transactions contemplated by the Modified APA by June 19, 2017;
- m. not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;
- n. in the event that there is a Stalking Horse Purchaser, the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) any Stalking Horse Purchase Price, (B) any Break-Up Fee, (C) any Expense Reimbursement, and (D) \$100,000;

- o. not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval or due diligence;
- p. contain written evidence satisfactory to the Debtors, in consultation with the Consultation Parties, that the Qualifying Bidder has a commitment for financing or other evidence of the ability to close the transactions contemplated by the Modified APA, with appropriate contact information for such financing sources;
- q. contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale;
- r. sets forth (i) a statement or evidence that the Qualifying Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings and (ii) any regulatory and third-party approval required for the Qualifying Bidder to close the transactions contemplated by the Modified APA, and the time period within which the Qualifying Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Qualifying Bidder's Modified APA, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualifying Bidder agrees that its legal counsel will coordinate in good faith with Debtor's legal counsel to discuss and explain Qualifying Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Modified APA; provided, further that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;

- s. provides for the Qualifying Bidder to serve as a backup bidder (the “**Back-Up Bidder**”) if the Qualifying Bidder’s bid is the next highest and best bid (the “**Back-Up Bid**”) after the Successful Bid (as defined below), in accordance with the terms of the Modified APA;
- t. includes written evidence of authorization and approval from the Qualifying Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Modified APA;
- u. provides a good faith cash deposit (the “**Deposit**”) in an amount equal to ten percent (10%) of the purchase price provided for in the Modified APA (or such additional amount as may be determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties) to be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtors (the “**Escrow Agent**”) pursuant to the escrow agreement to be provided by the Debtors to the Qualifying Bidders (the “**Escrow Agreement**”); provided that with respect to a bid for a store location submitted by the landlord under the real property lease for such store (a “**Landlord Lease Bid**”), the landlord may deduct from its Deposit the amount of any undisputed monetary obligations, as determined by the Debtors, in their discretion, that constitute the cure amount for the applicable real property lease; and
- v. provides for liquidated damages in the event of the Qualifying Bidder’s breach of, or failure to perform under, the Modified APA equal to the amount of the Deposit.

A bid from a Qualifying Bidder satisfying all of the above requirements, as determined by the Debtors, in consultation with the Consultation Parties, shall constitute a Qualifying Bid. The Debtors reserve the right to work with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

- ii. *Bid Deadline.* A Qualifying Bidder, other than any Stalking Horse Purchaser or the Senior Lien Agent, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD

format to the Notice Parties and the Consultation Parties so as to be received on or before **June 7, 2017 at 5:00 p.m. (ET)** (the “**Bid Deadline**”); provided that the Debtors may extend the Bid Deadline without further order of the Court, subject to providing notice to the Consultation Parties. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**

- iii. *Evaluation of Qualifying Bids.* The Debtors will deliver, within one (1) business day after receipt thereof, copies of all bids from Qualifying Bidders to each of the Consultation Parties. The Debtors, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid, and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than two (2) days prior to the Auction Date. In the event that a bid is determined not to be a Qualifying Bid, the Qualifying Bidder shall be notified by the Debtors and shall have until **June 8, 2017 at 5:00 p.m.** to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid for the Debtors; provided that any Qualifying Bid may be improved at the Auction as set forth herein. One (1) day prior to the Auction Date, the Debtors shall determine, in consultation with the Consultation Parties, which of the Qualifying Bids, at such time, is the highest or best bid for purposes of constituting the opening bid of the Auction (the “**Baseline Bid**” and the Qualifying Bidder submitting the Baseline Bid, the “**Baseline Bidder**”), and shall promptly notify any Stalking Horse Purchaser and all Qualifying Bidders with Qualifying Bids of the Baseline Bid.
- iv. *No Qualifying Bids.* If no timely Qualifying Bids other than any Stalking Horse Purchaser’s Qualifying Bid are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall request at the Sale Hearing that the Court approve the Stalking Horse APA and the transactions contemplated thereunder.
- (b) **Auction:** If the Debtors timely receive one or more Qualifying Bids other than any Stalking Horse Purchaser’s Qualifying Bid, then the Debtors shall conduct an auction (the “**Auction**”). Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors: (a) the number, type and nature of any changes to the APA and any Stalking Horse APA requested by each bidder; (b) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (c) the total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial

wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtors' estates, taking into account any Stalking Horse Purchaser's rights to any Break-Up Fee and any Expense Reimbursement; (f) the impact on employees, trade creditors and landlords; and (g) any other factors the Debtors may reasonably deem relevant. The Auction shall be governed by the following procedures:

- i. the Auction shall be held on **June 12, 2017** (the "**Auction Date**"), at a time and location to be determined and announced by a filing on the docket of these chapter 11 cases, or such other date and time as the Debtors, after consultation with the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; provided that such other date and time is no earlier than two (2) business days following the delivery of such notice;
- ii. only a Stalking Horse Purchaser, the Senior Lien Agent and the other Qualifying Bidders with Qualifying Bids (together, the "**Auction Bidders**") shall be entitled to make any subsequent bids at the Auction;
- iii. the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative;
- iv. only the Debtors, the Auction Bidders, the Consultation Parties, and all creditors of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that any such creditors provide counsel for the Debtors one (1) day's written notice of their intent to attend the Auction;
- v. the Debtors and their professional advisors shall direct and preside over the Auction, which shall be transcribed;
- vi. the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction or the Sale;
- vii. bidding shall commence at the amount of the Baseline Bid, and the Auction Bidders may submit successive bids in increments of at least 2% of the Baseline Bid, provided that: (i) each such successive bid must be a Qualifying Bid; (ii) if the then-highest and best bid was made by any Stalking Horse Purchaser, such bid shall be deemed to include the sum of the amount of (A) any Break-Up Fee and (B) any Expense Reimbursement; (iii) any successive bid made by any Stalking Horse Purchaser shall only be required to equal the sum of the amount of (A) the Baseline Bid or the then-highest and best bid, as applicable, and (B) 2% of the Baseline Bid, less the sum of the amount of (C) any Break-Up Fee and (D) any Expense Reimbursement; and (iv) the Debtors shall retain the right to modify the bid increment requirements at the Auction;

- viii. the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- ix. all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtors' announcement of the then-current highest and best bid;
- x. the Debtors and their professional advisors in consultation with the Consultation Parties may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules, or any applicable order of the Court entered in connection with these chapter 11 cases, including, without limitation, the Bidding Procedures Order and the Cash Collateral Order (as defined in the Bidding Procedures Order), and (ii) disclosed to the Auction Bidders;
- xi. each Auction Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- xii. the Senior Lien Agent, in its capacity as such, shall be entitled to credit bid all or a portion of the Senior Prepetition Obligations (as defined in the order Cash Collateral Order), in accordance with section 363(k) of the Bankruptcy Code;
- xiii. the Auction Bidders shall have the right to make additional modifications to the Modified APA or any Stalking Horse APA, as applicable, in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtors' discretion, in consultation with the Consultation Parties, be less favorable to the Debtors and their estates than the terms of any Stalking Horse APA, and (ii) each Qualifying Bid shall constitute an irrevocable offer and shall be

binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;

- xiv. the Debtors and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtors and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified APA or any Stalking Horse APA, as applicable, as may be amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- xv. upon the conclusion of the Auction, the Debtors shall determine, in consultation with the Consultation Parties, and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction (the "**Successful Bid**"). In making this decision, the Debtors shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the APA or any Stalking Horse APA, as applicable, requested by each bidder, and the net benefit to the Debtors' estates. The bidder submitting such Successful Bid shall become the "**Successful Bidder**," and shall have such rights and responsibilities of the purchaser as set forth in the Modified APA or any Stalking Horse APA, as applicable. The Debtors may, in their sole discretion, designate the Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the Assets in the event that the Successful Bidder does not close the Sale; and
- xvi. prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

THE SUCCESSFUL BID AND ANY BACK-UP BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT THE SUCCESSFUL BID OR THE BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

- (c) **Sale Hearing:** The Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of any Stalking Horse Purchaser is received, then the Stalking Horse APA) will be subject to approval by the Court. The Sale Hearing to approve the Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of any Stalking Horse Purchaser is received, then the Stalking Horse APA) shall take place on **June 15, 2017**. The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Debtors' chapter 11 cases.

At the Sale Hearing, the Debtors will seek entry of an order that, among other things: (i) authorizes and approves the Sale to the Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, pursuant to the terms and conditions set forth in the Stalking Horse APA or Modified APA submitted by the Successful Bidder, as applicable; (ii) finding that the Stalking Horse Purchaser or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code; (iii) as appropriate, exempting the Sale(s) and conveyance(s) of the Assets from any transfer tax, stamp tax or similar tax, or deposit under any applicable bulk sales statute; and (iv) unless otherwise ordered by the Court, directing that all cash proceeds generated from the sale of any Assets shall be paid to the Senior Lien Agent upon the closing of such sale(s) for application against the obligations owing by the Debtors to the Senior Lien Agent in accordance with the terms and conditions of the Cash Collateral Order and the Senior Lien Credit Documents (as defined in the Cash Collateral Order).

- (d) **Backup Bidder:** Notwithstanding any of the foregoing, in the event that the Successful Bidder fails to close the Sale prior to thirty (30) days after the completion of the Auction (or such date as may be extended by the Debtors), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtors will be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.
- (e) **Return of Deposits:** All Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder no later than five (5) business days following the closing of the Sale. The deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Modified APA or any Stalking Horse APA, as applicable, the Debtors and their estates shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up

Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform.

- (f) **Reservation of Rights**. Notwithstanding any of the foregoing, the Debtors and their estates reserve the right to, after consultation with the Consultation Parties, modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, allow for bidding on only a portion of the Assets and not all of them, modify bidding increments, waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.
- (g) **Cash Collateral Order**. Notwithstanding anything to the contrary contained in the Bidding Procedures or otherwise: (i) the right of the Senior Lien Agent to consent to the sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to the Senior Lien Agent, are hereby expressly reserved and not modified, waived or impaired in any way by the Bidding Procedures; (ii) unless otherwise ordered by the Court, all cash proceeds generated from the sale of any Assets shall be paid to the Senior Lien Agent upon the closing of such sale for application against the obligations owing by the Debtors to the Senior Lien Agent in accordance with the terms and conditions of the Cash Collateral Order and the Senior Lien Credit Documents, until such time as all such obligations have been paid in full in accordance with the terms and conditions of the Senior Lien Credit Documents and the Cash Collateral Order; and (iii) nothing in the Bidding Procedures shall amend, modify, or impair any provision of the Cash Collateral Order, or the rights of the Debtors or the Senior Lien Agent thereunder.

15. The Bidding Procedures establish the following key dates for the sale

process:

<u>Date</u>	<u>Deadline</u>
May 26, 2017	Assumption Notice deadline
May 29, 2017	Deadline to Designate Any Stalking Horse Purchaser

June 7, 2017 at 5:00 p.m.	Bid Deadline
June 8, 2017 at 4:00 p.m.	Sale Objection Deadline; Contract Objection Deadline ⁴
June 8, 2017 at 5:00 p.m.	Deadline for Qualifying Bidder to Submit Revised Bid if its Initial Bid was Not Deemed a Qualifying Bid
June 9, 2017	Deadline for Debtors to Designate Qualifying Bids
June 11, 2017	Deadline for Debtors to Designate Baseline Bid
June 12, 2017	Auction, at a time and location to be determined and announced by a filing on the docket of these chapter 11 cases, or such other date and time as the Debtors, after consultation with the Baseline Bidder and the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; provided that such other date and time is no earlier than two (2) business days following the delivery of such notice
June 13, 2017	Deadline to File Notice of Successful Bidder
June 13, 2017	Deadline to Serve Notice of Successful Bidder and Successful Bidder's Adequate Assurance Information
not later than two (2) hours prior to the commencement of the Sale Hearing	Adequate Assurance Objection Deadline for Successful Bidders Other Than the Stalking Horse Bidders and for Additional Contracts
June 13, 2017	Debtors' Deadline to Reply to Sale Objections
June 15, 2017	Sale Hearing

⁴ This objection deadline applies to all objections to the sale of the Assets, including all objections to the assumption and assignment of the Assumed Contracts (with the exception of objections related to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Bidder).

16. The proposed timeline for the Sale is driven, in part, by the terms and provisions of the Cash Collateral Order. The Debtors respectfully submit that the timeline set forth in the Bidding Procedures are reasonable and necessary under the circumstances of these chapter 11 cases. Such timeline provides an approximately four-week period between the filing of this Motion and the Bid Deadline, which will allow parties in interest sufficient time to formulate bids for the Assets. Moreover, relevant information regarding the Debtors' businesses has been made available in the Data Room during the Debtors' sale process, allowing potential bidders to conduct diligence on the Debtors' businesses, and the Debtors and their advisors began marketing the Assets prior to the commencement of these chapter 11 cases. To the extent that any potential bidder has not previously conducted such diligence, such bidder will have immediate access to, subject to the execution of an appropriate confidentiality agreement, the information regarding the Debtors' Assets contained in the Data Room.

**NOTICE PROCEDURES FOR THE SALE,
BIDDING PROCEDURES, AUCTION, AND SALE HEARING**

17. The Debtors also request approval of the sale notice (the "**Sale Notice**"), substantially in the form attached to the Bidding Procedures Order as **Exhibit 2**.

18. Upon entry of an order approving the Motion to Shorten, on or before May 18, 2017, the Debtors will serve the Sale Notice by email, mail, facsimile or overnight delivery on: (1) the Office of the United States Trustee for the District of Delaware; (2) counsel to the Senior Lien Agent; (3) counsel to the Junior Noteholder; (4) all parties known by the Debtors to assert a lien on any of the Assets; (5) all persons known or reasonably believed to have asserted an interest in any of the Assets; (6) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets in the Debtors within the six (6) months prior to the Petition Date; (7) the Office of the United States Attorney for the District of

Delaware; (8) the Office of the Attorney General in each state in which the Debtors operate; (9) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (10) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (11) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (12) the Federal Trade Commission; (13) the United States Attorney General/Antitrust Division of Department of Justice; (14) all non-Debtor parties to any of the Assumed Contracts; (16) all of the Debtors' other known creditors and equity security holders; and (17) all other parties that had filed a notice of appearance and demand for service of papers in these chapter 11 cases as of the service date (collectively, the "**Sale Notice Parties**"). On or before that same date, the Debtors will cause the Sale Notice to be published once in the national edition of *USA Today*.

19. The Debtors will also post the Sale Notice and the Bidding Procedures Order on the website of the Debtors' claims and noticing agent.

ASSUMPTION AND ASSIGNMENT PROCEDURES

20. To facilitate the Sale, the Debtors seek authority to assume and assign to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, the Assumed Contracts in accordance with the Assumption and Assignment Procedures.

21. The Assumption and Assignment Procedures are as follows:

- (a) On or before May 26, 2017 (the "**Assumption Notice Deadline**"), the Debtors shall file with the Court and serve on each counterparty (each, a "**Counterparty**," and collectively, the "**Counterparties**") to an Assumed Contract a notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3** (the "**Assumption Notice**").
- (b) The Assumption Notice shall include, without limitation, the cure amount (each, a "**Cure Amount**"), if any, that the Debtors believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy

Code for each of the Assumed Contracts. If a Counterparty objects to (i) the Cure Amount for its Assumed Contract or (ii) the provision of adequate assurance of future performance, the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined below) a written objection (a “**Contract Objection**”).

- (c) Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on June 8, 2017** (the “**Contract Objection Deadline**”); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto. If any Stalking Horse Purchaser is designated in accordance with the Bid Procedures, any objections to adequate assurance of performance by such Stalking Horse Purchaser shall be filed by the Contract Objection Deadline. Any objections to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Purchaser shall be filed in accordance with subparagraph (g) below.
- (d) The “**Objection Notice Parties**” are as follows: (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady, Esq., Michael R. Nestor, Esq., and Robert Poppiti, Jr., Esq.); (ii) proposed counsel to any official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases; (iii) counsel to the Senior Lien Agent, Otterbourg P.C., 230 Park Avenue, New York, New York 10169 (Attn: Jonathan N. Helfat, Esq., Daniel F. Fiorillo, Esq., and Chad B. Simon, Esq.); (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Hannah McCollum, Esq.); and (v) counsel to the Stalking Horse Purchaser, if any.
- (e) If after the Assumption Notice Deadline additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts, as soon as practicable thereafter and in no event less than two (2) business days before the date of the Sale Hearing, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than: (i) the Contract Objection Deadline in the event that such Assumption Notice was filed and served within five (5) days of the Assumption Notice Deadline and (ii) two (2) hours prior to the commencement of the Sale Hearing in the event that such Assumption

Notice was filed and served more than five (5) days after the Assumption Notice Deadline.

- (f) No later than one (1) business day after the date of the Auction, the Debtors shall file with the Court a notice identifying the Successful Bidder (a “**Notice of Successful Bidder**”), which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (if any), (ii) the Selected Assumed Contracts (as defined below), (iii) the proposed assignee(s) of such Selected Assumed Contracts, and (iv) a certification by the Debtors that the Debtors have provided, or will provide, in coordination with the proposed assignee, the Successful Bidder’s Adequate Assurance Information to each affected Counterparty on a confidential basis.
- (g) No later than one (1) business day after the date of the Auction, the Debtors will cause to be served by overnight mail upon each affected Counterparty and its counsel (if known): (i) the Notice of Successful Bidder and (ii) the Successful Bidder’s Adequate Assurance Information (to the extent not previously provided); provided, however, that the Debtors shall provide the Adequate Assurance Information of a Qualifying Bidder that submitted a Qualifying Bid, as soon as practicable after receipt thereof, to such Counterparty that submits a written request to receive the Adequate Assurance Information by email that specifically identifies each property for which such Counterparty would like to receive Adequate Assurance Information. The Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance not later than two (2) hours prior to the commencement of the Sale Hearing.
- (h) At the Sale Hearing, the Debtors will seek Court approval of their assumption and assignment to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of only those Assumed Contracts that have been selected by any Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, to be assumed and assigned (each, a “**Selected Assumed Contract**,” and collectively, the “**Selected Assumed Contracts**”). The Debtors and their estates reserve any and all rights with respect to any Assumed Contracts that are not ultimately designated as Selected Assumed Contracts.
- (i) If no Contract Objection is timely received with respect to a Selected Assumed Contract: (i) the Counterparty to such Selected Assumed Contract shall be deemed to have consented to the assumption by the Debtors and assignment to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of the Selected Assumed Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful

Bidder); (ii) any and all defaults under the Selected Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Selected Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Assumed Contract against the Debtors and their estates or any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.

- (j) To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “**Cure Dispute**”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors or fixed by the Court; provided, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Assumed Contract may be assumed by the Debtors and assigned to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, provided that the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors or any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute.
- (k) Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts, as soon as practicable thereafter, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than fourteen (14) days thereafter. If no Contract Objection is timely received, the Debtors shall be authorized to assume and assign such Assumed Contracts to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, without further notice to creditors or other parties in interest and without the need for further order of the Court, and such assumption and assignment shall be subject to the terms of the Sale Order.

RELIEF REQUESTED

22. By this Motion, the Debtors seek entry of: (a) the Bidding Procedures Order, (i) scheduling a date for the Sale Hearing, (ii) authorizing and approving the Bidding Procedures, the Assumption and Assignment Procedures, and the Bid Protections, and the form and manner of notice thereof, and (iii) granting related relief; and (b) the Sale Order, (i) authorizing and approving the Debtors' entry into any Stalking Horse APA or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then an APA with the Successful Bidder, (ii) authorizing and approving the Sale, free and clear of all Encumbrances, (iii) authorizing and approving the assumption and assignment of the Assumed Contacts to any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder; and (iv) granting related relief.

BASIS FOR RELIEF

A. Sufficient Business Justification Exists for Consummation of the Sale Under Sections 105(a) and 363(b) of the Bankruptcy Code

23. Pursuant to section 105(a) of the Bankruptcy Code, a “[c]ourt 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). Section 363(b) of the Bankruptcy Code provides that a debtor, “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). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (internal citation omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel*

Corp.), 722 F.2d 1063, 1070–71 (2d Cir. 1983); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 147–48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of In re Lionel Corp.); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 175–76 (D. Del. 1991) (holding that the Third Circuit adopted the “sound business judgment” test in Abbotts Dairies); Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999) (same).

24. The demonstration of a valid business justification by the debtor leads to a strong presumption “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

25. The Debtors submit that their decision to consummate the Sale represents a reasonable exercise of the Debtors’ business judgment and, accordingly, the Sale should be approved under sections 105(a) and 363(b) of the Bankruptcy Code. Among other things, the Assets, which include the Core Stores, represent some of the Debtors’ most valuable store locations. The Debtors will continue to conduct an extensive and fulsome process to market the Assets. The open and fair auction and sale process contemplated by the Bidding Procedures will ensure that the Debtors’ estates receive the highest or best value available for the Assets by allowing the market to test the purchase price of the Assets, and will provide a greater recovery than would be provided by any other available alternative. Furthermore, compliance with the Bidding Procedures will ensure the fairness and reasonableness of the consideration to be paid by

the Stalking Horse Purchaser or other Successful Bidder, and establish that the Debtors and such bidder have proceeded in good faith.

26. Additionally, the Debtors believe that the notice procedures described above are reasonable and adequate under the circumstances. Bankruptcy Rules 2002(a) and (c) require the Debtors to notify creditors of the Sale, the terms and conditions of the Sale, the time and place of the Auction, and the deadline for filing any objections. The Debtors believe that the proposed notice procedures fully comply with Bankruptcy Rule 2002, and are reasonably calculated to provide timely and adequate notice of any Stalking Horse APA, the Sale, Bidding Procedures, Auction, and Sale Hearing to the Debtors' creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a *bona fide* interest in acquiring the Assets.

27. The Sale conducted in accordance with the Bidding Procedures will generate significant value for the Debtors' estates and represents the best path forward for maximizing recoveries to such estates, the Debtors' creditors, and all parties in interest. The Debtors submit that ample business justification exists for the consummation of Sale and, therefore, request that this Court approve such Sale.

B. The Sale of the Assets Free and Clear of All Encumbrances Is Authorized Under Section 363(f) of the Bankruptcy Code

28. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

29. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of liens and interests. See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that because section 363(f) is written in the disjunctive, a court may approve a sale free and clear if any one subsection is met); see also Mich. Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (same); In re Bygaph, Inc., 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same). Furthermore, a debtor possesses broad authority to sell assets free and clear of liens. See In re Trans World Airlines, Inc., 322 F.3d 283, 289 (3d Cir. 2003).

30. The Debtors submit that, in the interest of attracting the best offers, it is appropriate to sell their Assets on a final “as is” basis, free and clear of any and all Encumbrances (except as otherwise expressly set forth in the Sale Order and a Stalking Horse APA or an APA with a Successful Bidder, as applicable) in accordance with section 363(f) of the Bankruptcy Code because one or more of the tests of section 363(f) are satisfied with respect to such Sale. In particular, the Debtors believe that section 363(f)(2) of the Bankruptcy Code will be met because the Debtors’ prepetition secured lenders are secured by, among other things, the Assets and have consented to the Sale, provided that, in the case of the Senior Lien Agent, all cash proceeds generated from the sale of any Assets shall be paid to the Senior Lien Agent upon the closing of such sale for application against the obligations owing by the Debtors to the Senior Lien Agent in accordance with the terms and conditions of the Cash Collateral Order and the

Senior Lien Credit Documents, until such time as all such obligations have been paid in full in accordance with the terms and conditions of the Senior Lien Credit Documents and the Cash Collateral Order, and in the case of the Junior Noteholder, all Encumbrances of the Junior Noteholder attach to the cash proceeds of the Sale in the same order of priority, with the same validity, force, and effect that the Junior Noteholder had prior to the Sale.

31. Moreover, with respect to any other party asserting a lien, claim, or encumbrance against the Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f). In particular, known lienholders will receive notice and will be given sufficient opportunity to object to the relief requested. Such lienholders that do not object to the Sale should be deemed to have consented. See FutureSource LLC v. Reuters Ltd., 312 F.3d 281, 285-86 (7th Cir. 2002) (“[L]ack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); Hargrave v. Twp. of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor’s failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); In re Elliot, 94 B.R. at 345 (same). Consistent with the foregoing, the Bidding Procedures Order provides that the absence of a timely objection to the sale of the Assets in accordance therewith shall be “consent” to such sale within the meaning of section 363(f)(2) of the Bankruptcy Code.

32. Furthermore, the Debtors propose that any Encumbrances asserted against the Assets be transferred to and attach to the proceeds of such Sale. Application of the proceeds generated by the Sale will be subject to any applicable provisions of the Cash Collateral Order.

C. The Sale Should Be Subject to the Protections of Section 363(m) of the Bankruptcy Code

33. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. See 11 U.S.C. § 363(m). In approving the Sale free and clear of Encumbrances, the Debtors request that the Court find and hold that all purchasers of Assets purchased in accordance with the Bidding Procedures are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in that selection of the Successful Bidder will be the result of a competitive bidding process and arm's-length, good-faith negotiations, and parties in interest will have the opportunity to review and object to a proposed transaction. See Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.), 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders).

D. The Court Should Approve the Bidding Procedures

34. The key objective in any sale of property of a debtor's estate is to maximize the value received by the estate. See In re Mushroom Transp. Co., 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor "had a fiduciary duty to protect and maximize the estate's assets"); Official Comm. of Unsecured Creditors of Cybergenics, Corp v. Chinery, 330 F.3d 548, 573 (3d Cir. 2003) (same). Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales. See In re O'Brien Env'tl. Energy, Inc., 181 F.3d 527, 537 (3d Cir. 1999); see also Integrated Res. Inc., 147 B.R. at

659 (stating that bidding procedures “encourage bidding and . . . maximize the value of the debtor’s assets”).

35. The Debtors have designed the Bidding Procedures to promote a competitive and fair bidding process and, thus, to maximize value for the Debtors’ estates and creditors. The Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtors will receive the highest or best possible consideration for the Assets. Furthermore, the Bidding Procedures provide an appropriate framework for the Debtors to review, analyze and compare any bids received in order to determine which bids are in the best interests of the Debtors’ estates and their creditors. Moreover, the Debtors are required under the Cash Collateral Order to complete the auction and sale process on the timetable set forth in the Bidding Procedures, which timetable is fair and reasonable in light of the circumstances of these circumstances of these chapter 11 cases, including the Debtors’ current liquidity position.

36. The Debtors submit that the Bidding Procedures are fair, transparent and will derive the highest or best bids for the Assets. Therefore, the Debtors request the Court to approve the Bidding Procedures, including, without limitation, the dates established thereby for the Auction and the Sale Hearing.

E. The Bid Protections Have a Sound Business Purpose and Should Be Approved

37. The Third Circuit has held that, in the bankruptcy sale context, bid protections must provide an actual benefit to a debtor’s estate and be necessary to preserve the value of estate assets. O’Brien Env’tl. Energy, Inc., 181 F. 3d at 533; see also In re Reliant Energy Channelview LP, 594 F.3d 200, 206-07 (3d Cir. 2010). Bid protections may be necessary to preserve the value of the estate if assurance of the such bid protections “promote[s]

more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” See O’Brien Env’tl. Energy, 181 F. 3d. at 537. Additionally, if the availability of such bid protections were to induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” Id.

38. The Debtors submit that, in the event that there is a Stalking Horse Purchaser, the Bid Protections are necessary and collectively provide the Debtors’ estates with the types of benefits generally contemplated by the Third Circuit. Based on the marketing process that the Debtors and their professional advisors have conducted thus far, the Debtors have determined that the Bid Protections are necessary to attract and retain a Stalking Horse Purchaser. Indeed, the Bid Protections will be a material inducement for, and in all likelihood a condition of, any offer from any Stalking Horse Purchaser.

39. Moreover, by inducing a Stalking Horse Purchaser to hold its offer open as a baseline from which other potential bidders can submit higher and/or better offers, the Bid Protections serve to encourage more competitive bidding, which will increase the likelihood that the purchase price of the Assets will reflect their true worth. As such, the Bid Protections will, among other things, enable the Debtors to maximize the value of their estates for the benefit of all economic stakeholders in these chapter 11 cases.

40. Furthermore, the Debtors believe that the Bid Protections, which will represent, in the aggregate, no more than three percent (3.0%) of any Stalking Horse Purchase Price, are well within market, and fair and reasonable in amount in light of the size and nature of the proposed Sale, and the efforts that will be have been expended by any Stalking Horse

Purchaser in connection with negotiating and entering into any Stalking Horse APA, which will serve as the baseline for other bids for the Assets. In addition, given that the Bid Protections are to be paid out of the proceeds of any competing transaction that may be consummated, such payment will not diminish the Debtors' estates. Finally, no Stalking Horse Purchaser that is an insider of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code, will receive any Bid Protections.

41. Similar types of bid protections have been approved by this Court. See, e.g., In re Haggen Holdings, LLC, Case No. 15-11874 (KG), Docket No. 494 (Bankr. D. Del. Oct. 19, 2015) (authorizing stalking horse break-up fee and expense reimbursement); In re AgFeed USA, LLC, Case No. 13-11761 (BLS) (Bankr. D. Del. Aug. 1, 2013) (authorizing break-up fee of 3% and expense reimbursement of 1%); In re Solyndra LLC, Case No. 11-12799 (MFW), Docket No. 1113 (Bankr. D. Del. Sept. 28, 2012) (authorizing break-up fee of 2.6%); In re AES Thames, L.L.C., Case No. 11-10334 (KJC) (Nov. 16, 2011), Docket No. 471 (authorizing a break-up fee of \$300,000 in the event the debtor entered into a stalking horse purchase agreement with a purchase price of at least \$10 million); In re Magic Brands, LLC, Case No. 10-11310 (BLS), Docket No. 267 (Bankr. D. Del. May 18, 2010) (authorizing stalking horse expense reimbursement).

42. For the foregoing reasons, the Debtors respectfully request that this Court authorize the Bid Protections.

F. The Assumption and Assignment of the Assumed Contracts in Connection with the Sale Satisfies Section 365 of the Bankruptcy Code

43. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Second Circuit has stated

that “[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 COLLIER ON BANKRUPTCY ¶ 365.01[1] (15th ed. 1993)).

44. The standard applied to determine whether the assumption of a contract or an unexpired lease should be authorized is the “business judgment” standard. See In re AbitibiBowater Inc., 418 B.R. 815, 831 (Bankr. D. Del. 2009) (finding that a debtor’s decision to assume or reject an executory contract will stand so long as “a reasonable business person would make a similar decision under similar circumstances.”); In re HQ Global Holdings, Inc., 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice). As described above, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.’” Integrated Res., Inc., 147 B.R. at 656 (quoting Smith v. Van Gorkom, 488 A.2d at 872). Indeed, “the sole issue is whether the rejection benefits the estate.” In re HQ Global, 290 B.R. at 511.

45. The business judgment rule is crucial in chapter 11 cases and shields a debtor’s management from judicial second-guessing. See id.; see also Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

Generally, courts defer to a debtor in possession's business judgment to assume or reject an executory contract or lease. See 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) (stating that the business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the executory contract will benefit the estate."); see also N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984); Control Data Corp. v. Zelman (In re Minges), 602 F.2d 38, 42-43 (2d Cir. 1979); In re Riodizio, Inc., 204 B.R. 417, 424-25 (Bankr. S.D.N.Y. 1997); In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994).

46. Here, the Debtors have exercised their sound business judgment in determining that assumption and assignment of the Assumed Contracts is in the best interests of the Debtors and their estates, and, accordingly, the Court should approve the proposed assumption under section 365(a) of the Bankruptcy Code. See, e.g., In re Philadelphia Newspapers, LLC, 424 B.R. 178, 182-83 (Bankr. E.D. Pa. 2010) (stating that if a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract or unexpired lease); Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course").

47. As set forth above, the Sale will provide significant benefits to the Debtors' estates. To that end, the assumption, assignment and sale of the Assumed Contracts is necessary for the Debtors to obtain the benefits of any APA or Stalking Horse APA, as applicable. In addition, under section 365(k) of the Bankruptcy Code, the assignment by a

debtor to an entity of a contract or lease “relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.” 11 U.S.C. § 365(k). Thus, following an assignment to the Successful Bidder of any Assumed Contract, the Debtors will be relieved from any liability for any subsequent breach associated therewith.

48. Furthermore, section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assumed Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. 11 U.S.C. § 365(b)(1). The Debtors propose to file with the Court, and serve on each Counterparty to an Assumed Contract, an Assumption Notice that indicates the proposed Cure Amount for each such contract. As such, each Counterparty will have the opportunity to object to the proposed assumption and assignment to the Successful Bidder and to the proposed Cure Amount, if applicable. Moreover, the payment or reserve of the applicable Cure Amount, as provided for in the Bidding Procedures, will be a condition to the Debtors’ assumption and assignment of any Assumed Contract.

49. Relatedly, section 365(f)(2) of the Bankruptcy Code provides that a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2). The words “adequate assurance of future performance” must be given a “practical, pragmatic construction” in light of the facts and circumstances of the proposed assumption. See In re Fleming Cos., Inc., 499 F.3d 300, 307 (3d Cir. 2007) (internal citation omitted); Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (same); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and profit); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr.

N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

50. Specifically, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. See In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (holding that adequate assurance of future performance is given where the assignee of lease has financial resources and expressed a willingness to devote sufficient funding to the business to ensure its success, and that in the leasing context, the chief determinant of adequate assurance is whether rent will be paid).

51. Here, the Successful Bidder will have provided adequate assurance of future performance with respect to any Assumed Contract. In order for its bid to be deemed a Qualifying Bid, each Qualifying Bidder will be required to provide evidence supporting its ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the “**Adequate Assurance Information**”), including: (a) the bidder’s financial wherewithal and willingness to perform under any contracts that are assumed and assigned to such potential bidder; (b) the name of the proposed tenant that will act as the assignee under any assigned real property lease; and (c) a contact person for the proposed assignee that the Counterparty may directly contact in connection with the adequate assurance of future performance. To the extent available, the Adequate Assurance Information may also include: (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee; (y) the potential assignee’s intended use for the space; and (z) financial statements, tax returns and annual reports. Furthermore, given that the Debtors will submit evidence that all requirements

for the assumption and assignment of such contracts at the Sale Hearing, the Court and other interested parties will have the opportunity to evaluate the ability of each Successful Bidder to provide adequate assurance of future performance.⁵

52. Therefore, the Debtors respectfully request the Court to (a) approve the proposed assumption and assignment of the Assumed Contracts, and (b) find that all anti-assignment provisions of such contracts to be unenforceable under section 365(f) of the Bankruptcy Code.⁶

G. The Senior Lien Agent Should Be Authorized to Credit Bid on the Assets under Section 363(k) of the Bankruptcy Code

53. Section 363(k) of the Bankruptcy Code provides that, unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of a sale “may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the full face value of its claim and does not limit the credit bid to the claim’s economic value. See Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.), 432 F.3d 448, 459-60 (3d Cir. 2006).

⁵ The Debtors will also provide the Adequate Assurance Information to any Counterparty that submits a written request to receive the Adequate Assurance Information by email that specifically identifies each property for which such Counterparty would like to receive Adequate Assurance Information in accordance with the terms of the Bidding Procedure Order.

⁶ Section 365(f)(1) provides that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease...” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

54. As a result, the Debtors propose that the Senior Lien Agent, in its capacity as such under the Senior Lien Credit Agreement, who holds claims that are secured by valid, binding, enforceable, non-avoidable and perfected liens on and security interests in substantially all of the Assets pursuant to the terms of the Cash Collateral Order, be entitled to credit bid all or a portion of the Senior Prepetition Obligations under section 363(k) of the Bankruptcy Code and as provided for in the Cash Collateral Order and the Bidding Procedures.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h) AND 6006(d)

55. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Furthermore, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

56. As set forth throughout this Motion, any delay in the Debtors’ ability to consummate the Sale would be detrimental to the Debtors, their creditors and estates, and would impair the Debtors’ ability to take advantage of the substantial cost-savings that can be achieved by an expeditious closing of the Sale.

57. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h) and 6006(d), to the extent applicable.

NOTICE

58. Notice of this Motion has been provided to: (1) the Office of the United States Trustee for the District of Delaware; (2) counsel to the Senior Lien Agent; (3) counsel to the Junior Noteholder; (4) all parties known by the Debtors to assert a lien on any of the Assets;

(5) all persons known or reasonably believed to have asserted an interest in any of the Assets; (6) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets in the Debtors within the six (6) months prior to the Petition Date; (7) the Office of the United States Attorney for the District of Delaware; (8) the Office of the Attorney General in each state in which the Debtors operate; (9) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (10) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (11) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (12) the Federal Trade Commission; (13) the United States Attorney General/Antitrust Division of Department of Justice; (14) Debtors' thirty (30) largest unsecured creditors (excluding insiders); and (15) all of the landlords for the Debtors' stores. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

59. The Debtors have not previously sought the relief requested herein from this or any other Court.

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CONCLUSION

WHEREFORE, the Debtors request entry of the Bidding Procedures Order and the Sale Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: May 11, 2017
Wilmington, DE

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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Proposed Counsel to the Debtors

EXHIBIT A

Bidding Procedures Order

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

)	
In re:	)	Chapter 11
)	
MARSH SUPERMARKETS HOLDING, LLC, <i>et al.</i> , ¹	)	Case No. 17-11066 (____)
)	
Debtors.	)	(Jointly Administered)
	)	Ref. Docket No. _____

**ORDER (I) SCHEDULING A HEARING ON THE APPROVAL OF THE
SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, AND
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN
BIDDING PROCEDURES, ASSUMPTION AND ASSIGNMENT PROCEDURES,
AND BID PROTECTIONS AND THE FORM AND MANNER OF
NOTICE THEREOF, AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of: (a) an order, (i) scheduling a hearing (the “**Sale Hearing**”) on approval of the proposed sale (the “**Sale**”) of all or substantially all of the Debtors’ assets (the “**Assets**”), free and clear of all liens, claims, encumbrances, and other interests (collectively, the “**Encumbrances**”) other than those permitted by the APA (as defined below), Stalking Horse APA (as defined below), or Modified APA, to a potential stalking horse purchaser (a “**Stalking Horse Purchaser**”) or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Marsh Supermarkets Holding, LLC (1568); Marsh Merger Sub, LLC (8837); Marsh Supermarkets Company, LLC (8179); A.L. Ross & Sons, LLC (3470); Contract Transport Holding, LLC (5675); Contract Transport, LLC (3718); CT Logistics, LLC (9775); LoBill Foods, LLC (9461); Marsh Drugs Holding, LLC (5755); Marsh Drugs, LLC (3717); Marsh International, LLC (0875); Marsh RE Property, LLC (0641); Marsh Supermarkets, LLC (7924); MS Property, LLC (9199); Marsh Supermarkets of Illinois, LLC (6423); and O’Malia Food Markets, LLC (5222). The mailing address for each of the Debtors is 9800 Crosspoint Blvd., Indianapolis, Indiana 46256.

² Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion.

Bidder, then to the Successful Bidder, and authorizing the assumption and assignment of certain executory contracts and unexpired leases (each, an “**Assumed Contract**,” and collectively, the “**Assumed Contracts**”) in connection therewith; (ii) authorizing and approving certain bidding procedures for the Sale, attached hereto as **Exhibit 1** (collectively, the “**Bidding Procedures**”), certain assumption and assignment procedures for the Assumed Contracts (collectively, the “**Assumption and Assignment Procedures**”), certain bid protections for a Stalking Horse Purchaser, including a Break-Up Fee and an Expense Reimbursement (each as defined below and, together, the “**Bid Protections**”), and the form and manner of notice thereof; and (iii) granting related relief; and (b) an order (the “**Sale Order**”), (i) authorizing and approving the Debtors’ entry into an asset purchase agreement for the Assets substantially in the form attached to the Bidding Procedures as Schedule 1 (the “**APA**”), with the Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder; (ii) authorizing and approving the Sale, free and clear of all Encumbrances other than those Encumbrances permitted by the APA or Modified APA; (iii) authorizing and approving the assumption and assignment of the Assumed Contracts in connection therewith; and (iv) granting related relief; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion; and the Bidding Procedures Hearing (as defined below) having been held; and the Court having found and determined that the relief sought in the Motion as to the Bidding and Auction

Process (as defined below) is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion and at the Bidding Procedures Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

D. In the Motion and at the hearing on the Motion as it pertains to the Bidding and Auction Process (the “**Bidding Procedures Hearing**”), the Debtors demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

E. The Break-Up Fee and Expense Reimbursement are reasonable under the circumstances, provided that (i) in the aggregate, any Break-Up Fee shall not exceed two percent (2%) of the Stalking Horse Purchase Price (as defined below), (ii) the aggregate amount of any Expense Reimbursement shall not exceed one percent (1%) of the Stalking Horse Purchase Price, and (iii) any Stalking Horse Purchaser (as defined below) is not an insider of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code.

F. The Bid Protections: (i) are reasonable and appropriate given, among other things, the size and nature of the Sale and the efforts expended by any Stalking Horse Purchaser; and (ii) are a material inducement for any Stalking Horse Purchaser's entry into a Stalking Horse APA (as defined below). The Bid Protections are commensurate with the real and substantial postpetition benefits that will be conferred upon the Debtors' estates by any Stalking Horse Purchaser and constitute actual and necessary costs and expenses incurred by the Debtors in preserving the value of their estates within the meaning of section 503(b) of the Bankruptcy Code.

G. A Stalking Horse APA will enable the Debtors to secure an adequate floor for the auction with respect to the Assets (the "**Auction**") and will provide a clear benefit to the Debtors, their estates and creditors and all other interested parties.

H. The Stalking Horse Notice (as defined below) is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of: (i) the identification of any Stalking Horse Purchaser; (ii) a copy of any Stalking Horse APA; (iii) any Stalking Horse Purchase Price; (iv) the deposit paid by any Stalking Horse Purchaser; and (v) the amount of any Bid Protections, and no other or further notice is required of the foregoing.

I. The Sale Notice (as defined below) is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the Auction, the Sale, and the Sale Hearing, and any and all objection deadlines related thereto, and no other or further notice is required of the foregoing. As evidenced by the affidavits of service previously filed with the Court, the Debtors served the Sale Notice on the Sale Notice Parties (as defined below) on or before May 18, 2017. In addition, as evidenced by the affidavit of publication previously filed with the Court, the Debtors published the Sale Notice once in the national edition of *USA Today* or before May 18, 2017.

J. The Bidding Procedures are (i) fair, reasonable, and appropriate; and (ii) designed to maximize recovery with respect to the Sale.

K. The Assumption and Assignment Procedures provided for herein and the Assumption Notice (as defined below) are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Assumption Notice have been tailored to provide an adequate opportunity for all Counterparties (as defined below) to assert any Contract Objections (as defined below).

L. Entry of this Order is in the best interests of the Debtors, their estates and creditors and all other interested parties.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Those portions of the Motion seeking approval of (a) the Debtors' entry into a Stalking Horse APA and all of its terms (including, without limitation, any Break-Up Fee and any Expense Reimbursement), (b) the Assumption and Assignment Procedures, (c) the Bidding Procedures, (d) the date and time of the Sale Hearing, and (e) the noticing and objection

procedures related to each of the foregoing, including, without limitation, the Stalking Horse Notice (as defined below), the notice of the Sale, substantially in the form attached hereto as **Exhibit 2** (the “**Sale Notice**”), and the notice of the Debtors’ potential assumption and assignment of the Assumed Contracts, substantially in the form attached hereto as **Exhibit 3** (the “**Assumption Notice**”) (subclauses (a) – (e) above, collectively, the “**Bidding and Auction Process**”), are hereby GRANTED to the extent set forth herein.

2. Any objections to the Motion as it pertains to the Bidding and Auction Process or the relief granted by this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

3. Stalking Horse APA.

(a) The Debtors are hereby authorized, but not directed, in consultation with (i) Wells Fargo Bank, National Association, in its capacities as agent and lender (“**Senior Lien Agent**”) pursuant to that certain Credit Agreement dated as of March 10, 2011 by and among certain of the Debtors and the Senior Lien Agent (as amended from time to time prior to the Petition Date), and (ii) any official committee of unsecured creditors appointed by the Office of the United States Trustee for the District of Delaware in accordance with section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”, and together with the Senior Lien Agent, the “**Consultation Parties**”), to execute one or more APA(s) with a Stalking Horse Purchaser(s) (each, a “**Stalking Horse APA**”) not later than nine (9) days prior to the Bid Deadline (as defined below).

(b) In the event the Debtors enter into any Stalking Horse APA, the Debtors shall file with the Court and serve on the Sale Notice Parties (as defined below) a notice (a

“**Stalking Horse Notice**”) that shall include the following: (a) the identification of the Stalking Horse Purchaser; (b) a copy of the Stalking Horse APA; (c) the purchase price provided for in the Stalking Horse APA (the “**Stalking Horse Purchase Price**”); and (d) the deposit paid by the Stalking Horse Purchaser. Within three (3) days after filing a Stalking Horse Notice, the Debtors shall provide, in coordination with any Stalking Horse Purchaser, Adequate Assurance Information (as defined below) for such Stalking Horse Purchaser to each Counterparty to the applicable Assumed Contracts and their counsel, if known, on a confidential basis; provided that the counterparties’ use and disclosure of the Adequate Assurance Information shall be subject to the restrictions set forth in this Order.

4. The Debtors are hereby authorized, but not directed, in consultation with the Consultation Parties, to provide a break-up fee (a “**Break-Up Fee**”) and an expense reimbursement for the documented and reasonable expenses incurred by a Stalking Horse Purchaser (an “**Expense Reimbursement**”) to any such Stalking Horse Purchaser; provided that (i) in the aggregate, any Break-Up Fee shall not exceed two percent (2%) of any Stalking Horse Purchase Price, (ii) the aggregate amount of any Expense Reimbursement shall not exceed one percent (1%) of any Stalking Horse Purchase Price, and (iii) such Stalking Horse Purchaser is not an insider of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code. To the extent the Debtors provide any Stalking Horse Purchaser with a Break-Up Fee or an Expense Reimbursement, the Stalking Horse Notice shall identify the amount and conditions of the same. Pursuant to sections 105, 363 and 503 of the Bankruptcy Code, the Debtors are authorized to pay such Break-Up Fee and Expense Reimbursement pursuant to the terms of the APA with the Stalking Horse Purchaser. Any Break-Up Fee and any Expense Reimbursement shall each be

allowed claims entitled to administrative expense claim priority under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code.

5. The APA is hereby approved and is appropriate and reasonably calculated to enable the Debtors and other parties in interest to easily compare and contrast the differing terms of any bids presented at the Auction.

6. The Bidding Procedures are hereby approved. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are hereby authorized to conduct the Auction pursuant to the terms of the Bidding Procedures and this Order.

7. The Debtors shall have the right, in their reasonable discretion, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder; provided that the Debtors shall notify the Consultation parties of any decision to withhold such information. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures or the Sale, provided that the information was provided in accordance with this Order.

8. For all purposes under the Bidding Procedures: (a) any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder, and any Stalking Horse APA shall be considered a Qualifying Bid; (b) should it decide to credit bid, the Senior Lien Agent, in its capacity as such, is a Qualifying Bidder and any such credit bid will be considered a Qualifying Bid; and (c) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtors may consider a combination of bids for the Assets.

9. The Bidding Procedures shall apply to the Potential Bidders, the Qualifying Bidders, the submission, receipt, and analysis of all bids relating to the Sale, and the conduct of the Sale and the Auction.

10. The following “**Assumption and Assignment Procedures**” are hereby approved:

- (a) On or before May 26, 2017 (the “**Assumption Notice Deadline**”), the Debtors shall file with the Court and serve on each counterparty (each, a “**Counterparty**,” and collectively, the “**Counterparties**”) to an Assumed Contract an Assumption Notice.
- (b) The Assumption Notice shall include, without limitation, the cure amount (each, a “**Cure Amount**”), if any, that the Debtors believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Assumed Contracts. If a Counterparty objects to (i) the assumption and assignment of the Counterparty’s Assumed Contract, (ii) the Cure Amount for its Assumed Contract or (iii) the provision of adequate assurance of future performance, the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined below) a written objection (a “**Contract Objection**”).
- (c) Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, on or before 4:00 p.m. (ET) on June 8, 2017 (the “**Contract Objection Deadline**”); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed Contract, along

with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto. If any Stalking Horse Purchaser is designated in accordance with the Bid Procedures, any objections to adequate assurance of performance by such Stalking Horse Purchaser shall be filed by the Contract Objection Deadline. Any objections to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Purchaser shall be filed in accordance with subparagraph (g) below.

- (d) The “**Objection Notice Parties**” are as follows: (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady, Esq., Michael R. Nestor, Esq., and Robert Poppiti, Jr., Esq.); (ii) proposed counsel to the Creditors’ Committee; (iii) counsel to the Senior Lien Agent, Otterbourg P.C., 230 Park Avenue, New York, New York 10169 (Attn: Jonathan N. Helfat, Esq., Daniel F. Fiorillo, Esq., and Chad B. Simon, Esq.); (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Hannah McCollum, Esq.); and (v) counsel to the Stalking Horse Purchaser, if any.
- (e) If after the Assumption Notice Deadline additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts, as soon as practicable thereafter and in no event less than two (2) business days before the date of the Sale Hearing, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than: (i) the Contract Objection Deadline in the event that such Assumption Notice was filed and served within five (5) days of the Assumption Notice Deadline and (ii) two (2) hours prior to the commencement of the Sale Hearing in the event that such Assumption Notice was filed and served more than five (5) days after the Assumption Notice Deadline.
- (f) No later than one (1) business day after the date of the Auction, the Debtors shall file with the Court a notice identifying the Successful Bidder (a “**Notice of Successful Bidder**”), which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (if any), (ii) the Selected Assumed Contracts (as defined below), (iii) the proposed assignee(s) of such Selected Assumed Contracts, and (iv) a certification by the Debtors that the Debtors have provided, or will provide, in coordination with the proposed assignee, the Successful Bidder’s Adequate Assurance Information to each affected Counterparty on a confidential basis.
- (g) No later than one (1) business day after the date of the Auction, the Debtors will cause to be served by overnight mail upon each affected Counterparty and its counsel (if known): (i) the Notice of Successful Bidder and (ii) the Successful Bidder’s Adequate Assurance Information (to the extent not previously provided); provided, however, that the Debtors shall provide the Adequate Assurance

Information of a Qualifying Bidder that submitted a Qualifying Bid, as soon as practicable after receipt thereof, to such Counterparty that submits a written request to receive the Adequate Assurance Information by email that specifically identifies each property for which such Counterparty would like to receive Adequate Assurance Information. The Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance not later than two (2) hours prior to the commencement of the Sale Hearing.

- (h) At the Sale Hearing, the Debtors will seek Court approval of their assumption and assignment to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of only those Assumed Contracts that have been selected by any Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, to be assumed and assigned (each, a “**Selected Assumed Contract**,” and collectively, the “**Selected Assumed Contracts**”). The Debtors and their estates reserve any and all rights with respect to any Assumed Contracts that are not ultimately designated as Selected Assumed Contracts.
- (i) If no Contract Objection is timely received with respect to a Selected Assumed Contract: (i) the Counterparty to such Selected Assumed Contract shall be deemed to have consented to the assumption by the Debtors and assignment to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of the Selected Assumed Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder); (ii) any and all defaults under the Selected Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Selected Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Assumed Contract against the Debtors and their estates or any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.
- (j) To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “**Cure Dispute**”), such Contract Objection will be

adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors or fixed by the Court; provided, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Assumed Contract may be assumed by the Debtors and assigned to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, provided that the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors or any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, pending the Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.

- (k) Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts, as soon as practicable thereafter, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than fourteen (14) days thereafter. If no Contract Objection is timely received, the Debtors shall be authorized to assume and assign such Assumed Contracts to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, without further notice to creditors or other parties in interest and without the need for further order of the Court, and such assumption and assignment shall be subject to the terms of the Sale Order.

11. The Debtors' decision to assume and assign the Assumed Contracts to any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of the Sale, the Assumed Contracts shall not be deemed assumed or assigned and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with these chapter 11 cases.

12. The Assumption and Assignment Procedures are appropriate and fair to all Counterparties and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. The Assumption Notice is: (a) reasonably calculated to (i) provide sufficient,

effective notice to all Counterparties and any other affected parties of the Debtors' intent to assume and assign to any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, some or all of the Assumed Contracts and (ii) afford the Counterparties the opportunity to exercise any rights affected by the Motion and the relief granted by this Order pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006; and (b) hereby approved.

13. The inclusion of a contract, lease or other agreement on an Assumption Notice shall not constitute or be deemed a determination or admission by the Debtors and their estates or any other party in interest that such contract, lease or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights of the Debtors and their estates with respect thereto shall be reserved.

14. The Stalking Horse Notice, the Sale Notice, the Assumption Notice, the Bidding Procedures, the Auction, the Sale Hearing, and the Assumption and Assignment Procedures and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, Auction, the Sale, the Sale Hearing, and the assumption and assignment to the Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of the Assumed Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006, and such notice and objection periods are hereby approved.

15. The Sale Notice is approved.

16. Within two (2) business days of the entry of this Order, the Debtors shall service this Order by email, mail, facsimile or overnight delivery on (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Senior Lien Agent; (b) counsel to the Junior Noteholder; (c) all parties known by the Debtors to assert a lien on any of the Assets; (d) all persons known or reasonably believed to have asserted an interest in any of the Assets; (e) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets in the Debtors within the six (6) months prior to the Petition Date; (f) the Office of the United States Attorney for the District of Delaware; (g) the Office of the Attorney General in each state in which the Debtors operate; (h) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (i) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (j) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (k) the Federal Trade Commission; (l) the United States Attorney General/Antitrust Division of Department of Justice; (m) all non-Debtor parties to any of the Assumed Contracts; (n) all of the Debtors' other known creditors and equity security holders; and (o) all other parties that had filed a notice of appearance and demand for service of papers in these chapter 11 cases as of the service date (collectively, the "**Sale Notice Parties**").

17. The Debtors shall post the Sale Notice and the Bidding Procedures Order on the website of the Debtors' claims and noticing agent, at <https://cases.primeclerk.com/marsh>.

18. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008, and is reasonably calculated to provide notice to any affected party, including any Potential Bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

19. Any objections to the Sale or the relief requested in connection with the Sale (a “**Sale Objection**”), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on June 8, 2017** (the “**Sale Objection Deadline**”); and (e) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Objection Notice Parties. If a Sale Objection is not filed and served on or before the Sale Objection Deadline in accordance with the foregoing requirements, the objecting party shall be barred from objecting to the Sale and shall not be heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

20. Failure to file a Sale Objection on or before the Sale Objection Deadline (a) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and/or to the consummation and performance of the Sale contemplated by a Stalking Horse APA or any Modified APA with a Successful Bidder, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

21. The Senior Lien Agent, in its capacity as such, shall be entitled to credit bid all or a portion of the Senior Prepetition Obligations (as defined in the Cash Collateral Order) in accordance with section 363(k) of the Bankruptcy Code.

22. A Qualifying Bidder, other than any Stalking Horse Purchaser or Senior Lien Agent, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties so as to be received on or before **June 7,**

2017 at 5:00 p.m. (ET) (the “**Bid Deadline**”); provided that the Debtors may extend the Bid Deadline without further order of the Court, subject to providing notice to the Consultation Parties. Any party, other than any Stalking Horse Purchaser or Senior Lien Agent, that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline and (b) participate in the Auction.

23. All persons and entities submitting a bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the sale or transfer of the Assets identified under the APA or any Modified APA.

24. As part of its bid, each Qualifying Bidder must provide the Debtors, the other Notice Parties, and the Consultation Parties information supporting the Qualifying Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the “**Adequate Assurance Information**”), including (a) the Qualifying Bidder’s financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to such Qualifying Bidder; (b) the name of the proposed tenant that will act as the assignee under any assigned real property lease; (c) a contact person for the proposed assignee that the applicable Counterparty may directly contact in connection with the adequate assurance of future performance; and (d) the potential assignee’s intended use for the space. To the extent available, the Adequate Assurance Information may also include: (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee; and (y) financial statements, tax returns and annual reports. The Debtors, the other Notice Parties and the Consultation Parties shall keep confidential all Adequate Assurance Information provided to

them under this Paragraph and shall be permitted to use and disclose such Adequate Assurance Information only as provided in this Order unless the Qualifying Bidder that provided such Adequate Assurance Information otherwise consents in writing.

25. Each Counterparty in receipt of Adequate Assurance Information shall review the Adequate Assurance Information received on a confidential basis and shall not disclose the Adequate Assurance Information except as expressly provided in this Paragraph. Such Counterparty may not use or disclose, except to representatives, attorneys, advisors and financing sources (collectively, “**Representatives**”), any confidential Adequate Assurance Information for any purpose other than: (a) evaluating whether adequate assurance of future performance as required under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code has been provided; (b) in support of any objection (the “**Assignment Objection**”) (subject to the limitations on disclosure set forth herein) by such Counterparty relating to adequate assurance of future performance; and (c) except for any Stalking Horse Purchaser, if the proposed assignee is successful and becomes the tenant under the applicable lease, on a confidential basis, in the ordinary course of the landlord tenant relationship. Any Assignment Objection which includes confidential, non-public Adequate Assurance Information must be filed under seal unless disclosure of such confidential, non-public information is authorized by the Debtors and the applicable assignee(s). This Order authorizes the filing of any such Assignment Objections under seal, and on the docket with such non-public information redacted, without further order of the Court; provided, that unredacted versions of such Assignment Objections shall be served upon the Debtors and Consultation Parties, with a copy to the Court’s chambers. Any Representative receiving Adequate Assurance Information shall be notified and shall agree to be bound by the restrictions set forth in this Order.

26. If no timely Qualifying Bids other than any Stalking Horse Purchaser's Qualifying Bid are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall request at the Sale Hearing that this Court approve the Stalking Horse APA and the transactions contemplated thereunder. In the event that the Debtors timely receive one or more Qualifying Bids other than any Stalking Horse Purchaser's Qualifying Bid, the Debtors shall conduct the Auction on **June 12, 2017**, at a time and location to be determined and announced by a filing on the docket of these chapter 11 cases, or such other date and time as the Debtors, after consultation with the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; provided that such other date and time is no earlier than two (2) business days following the delivery of such notice.

27. Each Auction Bidder shall confirm in writing that: (a) it has not engaged in any collusion with respect to the submission of any bid, the bidding or the Auction; and (b) its Qualifying Bid is a good faith *bona fide* offer that it intends to consummate if selected as a Successful Bidder. All proceedings at an Auction shall be transcribed.

28. Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets, which will be determined by considering, among other things: (a) the number, type and nature of any changes to the APA and any Stalking Horse APA requested by each bidder; (b) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (c) the total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net

benefit to the Debtors' estates, taking into account any Stalking Horse Purchaser's rights to any Break-Up Fee and any Expense Reimbursement; (f) the impact on employees, trade creditors and landlords; and (g) any other factors the Debtors may reasonably deem relevant.

29. The Debtors, subject to the terms of this Order and the Bidding Procedures, shall have the right as they may reasonably determine to be in the best interests of their estates to carry out the Bidding Procedures, including, without limitation, to: (a) determine which bidders are Qualifying Bidders; (b) determine which bids are Qualifying Bids; (c) determine which Qualifying Bid is a Baseline Bid; (d) determine which bids are the Successful Bid and Back-Up Bid, each as it relates to the Auction; (e) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates; (f) adjourn or cancel an Auction and/or the Sale Hearing in open court without further notice or as provided in this Order and in the Bidding Procedures; (g) modify the Bidding Procedures consistent with their fiduciary duties and bankruptcy law; and (h) withdraw the Motion at any time with or without prejudice.

30. Notwithstanding anything to the contrary contained in this Order or otherwise: (i) the right of the Senior Lien Agent to consent to the sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to the Senior Lien Agent, are hereby expressly reserved and not modified, waived or impaired in any way by this Order; (ii) unless otherwise ordered by the Court, all cash proceeds generated from the sale of any Assets shall be paid to the Senior Lien Agent upon the closing of such sale for application against the obligations owing by the Debtors to the Senior Lien Agent in accordance with the terms and conditions of the *[Interim/Final] Order: (I) Authorizing Use of Cash Collateral and Affording*

Adequate Protection; (B) Modifying Automatic Stay; and (C) Scheduling Final Hearing [Docket No. *] (the “**Cash Collateral Order**”) and the Senior Lien Credit Documents (as defined in the Cash Collateral Order), until such time as all such obligations have been paid in full in accordance with the terms and conditions of the Senior Lien Credit Documents and the Cash Collateral Order; (iii) nothing in this Order shall amend, modify, or impair any provision of the Cash Collateral Order, or the rights of the Debtors or the Senior Lien Agent thereunder; and (iv) the Debtors shall consult with the Consultation Parties prior to employing any additional procedures rules at any Auction.

31. The Debtors shall have until **June 13, 2017** to file and serve a reply to any objection filed in connection with the Sale, including any Sale Objection or Contract Objection.

32. The Sale Hearing shall be held in this Court on **June 15, 2017 at _____ : _____ .m. (ET)**, unless otherwise determined by this Court. The Debtors may adjourn or reschedule the Sale Hearing without notice or with limited and shortened notice to parties, including by: (a) an announcement of such adjournment at the Sale Hearing or at the Auction; or (b) filing a hearing agenda or notice on the docket of the Debtors’ chapter 11 cases prior to the commencement of the Sale Hearing.

33. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

34. In the event that there is a conflict between: (a) this Order or the Bidding Procedures, on the one hand, and the Motion, the APA, a Stalking Horse APA or a Modified APA, on the other hand, this Order and the Bidding Procedures shall control and govern; and (b) the Cash Collateral Order on the one hand, and this Order or the Bidding Procedures on the other hand, the Cash Collateral Order shall control.

35. Prior to mailing the Assumption Notice, as applicable, the Debtors may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtors deems necessary or appropriate.

36. All persons or entities that participate in the bidding process shall be deemed to have knowingly and voluntarily: (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the bidding process, the Auction and/or any Sale) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution; and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

37. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in these chapter 11 cases, any subsequent chapter 7 or chapter 11 case of the Debtors, or any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of this Order; provided that nothing in this Order shall amend, modify, or impair any provision of the Cash Collateral Order, or the rights of the Debtors or the Senior Lien Agent thereunder. This Order shall be binding on any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtors' cases.

38. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtors

are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this Order.

39. The requirements set forth in Local Rules 6004-1, 9006-1 and 9013-1 are hereby satisfied or waived.

40. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

Dated: _____, 2017
Wilmington, Delaware

United States Bankruptcy Judge

Exhibit 1

Bidding Procedures

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

In re:)	
	)	Chapter 11
)	
MARSH SUPERMARKETS HOLDING, LLC, <i>et al.</i> , ¹	)	Case No. 17-11066 (___)
)	
Debtors.	)	(Jointly Administered)
)	

BIDDING PROCEDURES

On May 11, 2017, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On May *, 2017, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered an order [Docket No. *] (the “**Bidding Procedures Order**”), which, among other things, authorized the Debtors to solicit bids and approved these procedures (collectively, the “**Bidding Procedures**”) to be employed by the Debtors in connection with the proposed sale (the “**Sale**”) of all or substantially all of the Debtors’ assets (the “**Assets**”), free and clear of all liens, claims, encumbrances, and other interests other than those permitted by the APA (as defined below) (collectively, the “**Encumbrances**”), to a potential stalking horse purchaser (a “**Stalking Horse Purchaser**”) or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder (as defined below), pursuant to an asset purchase agreement, substantially in the form attached hereto as **Schedule 1** (the “**APA**”), with the Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder.

ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT:

(A) SCOTT MOSES (212-508-1675; SMOSES@PJSC.COM) OR GREGORY GRAMBLING (212-508-1674; GGRAMBLING@PJSC.COM); AND/OR

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Marsh Supermarkets Holding, LLC (1568); Marsh Merger Sub, LLC (8837); Marsh Supermarkets Company, LLC (8179); A.L. Ross & Sons, LLC (3470); Contract Transport Holding, LLC (5675); Contract Transport, LLC (3718); CT Logistics, LLC (9775); LoBill Foods, LLC (9461); Marsh Drugs Holding, LLC (5755); Marsh Drugs, LLC (3717); Marsh International, LLC (0875); Marsh RE Property, LLC (0641); Marsh Supermarkets, LLC (7924); MS Property, LLC (9199); Marsh Supermarkets of Illinois, LLC (6423); and O’Malia Food Markets, LLC (5222). The mailing address for each of the Debtors is 9800 Crosspoint Blvd., Indianapolis, Indiana 46256.

**(B) ROBERT S. BRADY, ESQ. (302-571-6690; RBRADY@YCST.COM) OR
MICHAEL R. NESTOR, ESQ. (302-571-6699; MNESTOR@YCST.COM).**

Summary of Important Dates

<u>Date</u>	<u>Deadline</u>
May 26, 2017	Assumption Notice deadline
May 29, 2017	Deadline to Designate Any Stalking Horse Purchaser
June 7, 2017 at 5:00 p.m.	Bid Deadline
June 8, 2017 at 4:00 p.m.	Sale Objection Deadline; Contract Objection Deadline ²
June 8, 2017 at 5:00 p.m.	Deadline for Qualifying Bidder to Submit Revised Bid if its Initial Bid was Not Deemed a Qualifying Bid
June 9, 2017	Deadline for Debtors to Designate Qualifying Bids
June 11, 2017	Deadline for Debtors to Designate Baseline Bid
June 12, 2017	Auction, at a time and location to be determined and announced by a filing on the docket of these chapter 11 cases, or such other date and time as the Debtors, after consultation with the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; <u>provided</u> that such other date and time is no earlier than two (2) business days following the delivery of such notice
June 13, 2017	Deadline to File Notice of Successful Bidder

² This objection deadline applies to all objections to the sale of the Assets, including all objections to the assumption and assignment of the Assumed Contracts (with the exception of objections related to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Bidder).

June 13, 2017	Deadline to Serve Notice of Successful Bidder and Successful Bidder's Adequate Assurance Information
not later than two (2) hours prior to the commencement of the Sale Hearing	Adequate Assurance Objection Deadline for Successful Bidders Other Than the Stalking Horse Bidders and for Additional Contracts
June 13, 2017	Debtors' Deadline to Reply to Sale Objections
June 15, 2017 at **: * .m.	Sale Hearing

1. Stalking Horse Purchaser

Pursuant to the Bidding Procedures Order, the Debtors are authorized to enter into an APA with a Stalking Horse (a "**Stalking Horse APA**") not later than nine (9) days prior to the Bid Deadline (as defined below). In the event the Debtors enter into a Stalking Horse APA, the Debtors will file with the Court and serve on the Sale Notice Parties (as defined in the Bidding Procedures Order) a notice that includes the following: (a) the identification of the Stalking Horse Purchaser; (b) a copy of the Stalking Horse APA; (c) the purchase price provided for in the Stalking Horse APA (the "**Stalking Horse Purchase Price**"); (d) the deposit paid by the Stalking Horse Purchaser; and (e) the amount of any Break-Up Fee or any Expense Reimbursement (each, as defined below).

2. Assets to be Sold

The Debtors shall offer for sale the Assets, provided that the Debtors, in consultation with the Consultation Parties, determine that the aggregate consideration offered by any bid, or combination of bids, for the Assets, satisfies the requirements set forth in these Bidding Procedures, including, without limitation, cash proceeds in an amount sufficient to pay in full all outstanding obligations owed by the Debtors to the Senior Lien Agent. Potential Bidders may bid on all or any number or combination of the Assets.

3. Participation Requirements

Any person or entity that wishes to participate in the bidding process for the Assets (each, a "**Potential Bidder**") must first become a "**Qualifying Bidder**". In order to become a Qualifying Bidder (and thus being able to conduct due diligence and gain access to the Debtors' confidential electronic data room concerning the Assets (the "**Data Room**")), a Potential Bidder must submit to the Debtors and their advisors:

- (a) documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) an executed confidentiality agreement in form and substance reasonably

satisfactory to the Debtors, which by its terms will inure to the benefit of the Successful Bidder;

- (c) a statement and other factual support demonstrating to the Debtors' reasonable satisfaction, after consultation with the Consultation Parties (as defined below), that the interested party has a *bona fide* interest in consummating a sale transaction; and
- (d) sufficient information, as determined by the Debtors, to allow the Debtors, after consultation with the Consultation Parties, to determine that the interested party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure acceptable to the Debtors in their discretion) and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors, each of the Consultation Parties, or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated transaction.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder, and a Stalking Horse APA shall be considered a Qualifying Bid (as defined below); (ii) should it decide to credit bid, Wells Fargo Bank, National Association (the "**Senior Lien Agent**"), in its capacities as agent and lender pursuant to that certain Credit Agreement, dated as of March 10, 2011 (as amended from time to time prior to the Petition Date), to which certain of the Debtors and the Senior Lien Agent are parties, is a Qualifying Bidder and any such credit bid will be considered a Qualifying Bid; and (iii) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtors may consider a combination of bids for the Assets.

4. Bankruptcy Court Jurisdiction

Any Potential Bidders and Qualifying Bidders shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction (as defined below) and the construction and enforcement of the contemplated transaction documents of such parties, (b) bring any such action or proceeding in the Court, and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

5. Form of Agreement

Potential Bidders should reference the APA attached hereto as Schedule 1 in connection with their bids. As set forth below, Potential Bidders intending to submit bids must include with their bids:

- (a) a statement that such Potential Bidder offers to purchase the Assets, or a number or combination of the Assets, upon substantially the same terms as, or terms more favorable to the Debtors and their estates than, the terms set forth in a Stalking Horse APA, if applicable; and
- (b) a clean and duly executed asset purchase agreement (a “**Modified APA**”) and a marked copy of the Modified APA that reflects any variations from the APA and, if applicable, a Stalking Horse APA.

6. Due Diligence

The Debtors will provide any Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: (a) Scott Moses (212-508-1675; smoses@pjsc.com) or Gregory Grambling (212-508-1674; ggrambling@pjsc.com); and/or (b) Robert S. Brady, Esq. (302-571-6690; rbrady@ycst.com) or Michael R. Nestor, Esq. (302-571-6699; mnestor@ycst.com).

The due diligence period shall extend through and including the Bid Deadline. The Debtors may, but shall not be obligated to, in their sole discretion, furnish any due diligence information after the Bid Deadline.

The Debtors reserve the right, in their reasonable discretion, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder; provided that the Debtors shall notify the Consultation parties of any decision to withhold such information. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and the Sale.

7. Bid Requirements

Other than in the case of a bid submitted by the Stalking Horse Purchaser or the Senior Lien Agent, in its capacity as such, to be deemed a “**Qualifying Bid**,” a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements (each, a “**Bid Requirement**”):

- (a) be in writing;

- (b) fully disclose the identity of the Qualifying Bidder and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualifying Bidder;
- (c) set forth the purchase price to be paid by such Qualifying Bidder;
- (d) not propose payment in any form other than cash (except as otherwise expressly set forth in these Bidding Procedures);
- (e) state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- (f) specify the Assets that are included in the bid and, to the extent a Stalking Horse Purchaser is designated, state that such Qualifying Bidder offers to purchase the Assets, or a number or combination of the Assets, upon substantially the same terms as, or terms more favorable to the Debtors and their estates than, the terms set forth in the Stalking Horse APA;
- (g) be accompanied by a Modified APA that reflects any variations from the APA and, if applicable, a Stalking Horse APA;
- (h) state that such Qualifying Bidder's offer is formal, binding and unconditional and is irrevocable until two (2) business days after the closing of the Sale;
- (i) state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Modified APA and provide written evidence in support thereof;
- (j) contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to close the transactions contemplated by the Modified APA, including, without limitation, such financial and other information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtors to serve, within one (1) business day after such receipt, such information on any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information;
- (k) identify with particularity each and every executory contract and unexpired lease the assumption and assignment of which is a condition to close the transactions contemplated by the Modified APA;
- (l) a commitment to close the transactions contemplated by the Modified APA by June 19, 2017;

- (m) not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;
- (n) in the event that there is a Stalking Horse Purchaser, the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) any Stalking Horse Purchase Price, (B) any Break-Up Fee, (C) any Expense Reimbursement, and (D) \$100,000;
- (o) not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval or due diligence;
- (p) contain written evidence satisfactory to the Debtors, in consultation with the Consultation Parties, that the Qualifying Bidder has a commitment for financing or other evidence of the ability to close the transactions contemplated by the Modified APA, with appropriate contact information for such financing sources;
- (q) contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale;
- (r) sets forth (i) a statement or evidence that the Qualifying Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings and (ii) any regulatory and third-party approval required for the Qualifying Bidder to close the transactions contemplated by the Modified APA, and the time period within which the Qualifying Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Qualifying Bidder's Modified APA, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualifying Bidder agrees that its legal counsel will coordinate in good faith with Debtor's legal counsel to discuss and explain Qualifying Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Modified APA; provided, further that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;
- (s) provides for the Qualifying Bidder to serve as a backup bidder (the "**Back-Up**

Bidder”) if the Qualifying Bidder’s bid is the next highest and best bid (the **“Back-Up Bid”**) after the Successful Bid (as defined below), in accordance with the terms of the Modified APA;

- (t) includes written evidence of authorization and approval from the Qualifying Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Modified APA;
- (u) provides a good faith cash deposit (the **“Deposit”**) in an amount equal to ten percent (10%) of the purchase price provided for in the Modified APA (or such additional amount as may be determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties) to be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtors (the **“Escrow Agent”**) pursuant to the escrow agreement to be provided by the Debtors to the Qualifying Bidders (the **“Escrow Agreement”**); provided that with respect to a bid for a store location submitted by the landlord under the real property lease for such store (a **“Landlord Lease Bid”**), the landlord may deduct from its Deposit the amount of any undisputed monetary obligations, as determined by the Debtors, that constitute the cure costs for the applicable real property lease; and
- (v) provides for liquidated damages in the event of the Qualifying Bidder’s breach of, or failure to perform under, the Modified APA equal to the amount of the Deposit.

A bid from a Qualifying Bidder satisfying all of the above requirements, as determined by the Debtors, in consultation with the Consultation Parties, shall constitute a Qualifying Bid. The Debtors reserve the right to work with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

8. Bid Deadline

A Qualifying Bidder, other than any Stalking Horse Purchaser or the Senior Lien Agent, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties and Consultation Parties so as to be received on or before **June 7, 2017 at 5:00 p.m. (ET)** (the **“Bid Deadline”**); provided that the Debtors may extend the Bid Deadline without further order of the Court, subject to providing notice to the Consultation Parties. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**

9. Evaluation of Qualifying Bids

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all bids from Qualifying Bidders to each of the Consultation Parties.

The Debtors, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid, and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than two (2) days prior to the Auction Date. In the event that a bid is determined not to be a Qualifying Bid, the Qualifying Bidder shall be notified by the Debtors and shall have until **June 8, 2017 at 5:00 p.m.** to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid for the Debtors; provided that any Qualifying Bid may be improved at the Auction as set forth herein.

One (1) day prior to the Auction Date, the Debtors shall determine, in consultation with the Consultation Parties, which of the Qualifying Bids, at such time, is the highest or best bid for purposes of constituting the opening bid of the Auction (the “**Baseline Bid**” and the Qualifying Bidder submitting the Baseline Bid, the “**Baseline Bidder**”), and shall promptly notify any Stalking Horse Purchaser and all Qualifying Bidders with Qualifying Bids of the Baseline Bid.

10. No Qualifying Bids

If no timely Qualifying Bids other than any Stalking Horse Purchaser’s Qualifying Bid are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall request at the Sale Hearing that the Court approve the Stalking Horse APA and the transactions contemplated thereunder.

11. Auction

If Debtors timely receive one or more Qualifying Bids other than any Stalking Horse Purchaser’s Qualifying Bid, then the Debtors shall conduct an auction (the “**Auction**”). Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors: (a) the number, type and nature of any changes to the APA and any Stalking Horse APA requested by each bidder; (b) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (c) the total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtors’ estates, taking into account any Stalking Horse Purchaser’s rights to any Break-Up Fee and any Expense Reimbursement; (f) the impact on employees, trade creditors and landlords; and (g) any other factors the Debtors may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- (a) the Auction shall be held on **June 12, 2017** (the “**Auction Date**”), at a time and location to be determined and announced by a filing on the docket of these chapter 11 cases, or such other date and time as the Debtors, after consultation with the Consultation Parties, may notify Qualifying Bidders who have submitted

Qualifying Bids; provided that such other date and time is no earlier than two (2) business days following the delivery of such notice;

- (b) only a Stalking Horse Purchaser, the Senior Lien Agent and the other Qualifying Bidders with Qualifying Bids (together, the “**Auction Bidders**”) shall be entitled to make any subsequent bids at the Auction;
- (c) the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative;
- (d) only the Debtors, the Auction Bidders, the Consultation Parties, and all creditors of the Debtors, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that any such creditors provide counsel for the Debtors one (1) day’s written notice of their intent to attend the Auction;
- (e) the Debtors and their professional advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction or the Sale;
- (g) bidding shall commence at the amount of the Baseline Bid, and the Auction Bidders may submit successive bids in increments of at least 2% of the Baseline Bid, provided that: (i) each such successive bid must be a Qualifying Bid; (ii) if the then-highest and best bid was made by any Stalking Horse Purchaser, such bid shall be deemed to include the sum of the amount of (A) any Break-Up Fee and (B) any Expense Reimbursement; (iii) any successive bid made by any Stalking Horse Purchaser shall only be required to equal the sum of the amount of (A) the Baseline Bid or the then-highest and best bid, as applicable, and (B) 2% of the Baseline Bid, less the sum of the amount of (C) any Break-Up Fee and (D) any Expense Reimbursement; and (iv) the Debtors shall retain the right to modify the bid increment requirements at the Auction;
- (h) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- (i) all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtors’ announcement of the then-current highest and best bid;
- (j) the Debtors and their professional advisors in consultation with the Consultation Parties may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy

Procedure, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, or any applicable order of the Court entered in connection with these chapter 11 cases, including, without limitation, the Bidding Procedures Order and the Cash Collateral Order (as defined in the Bidding Procedures Order), and (ii) disclosed to the Auction Bidders;

- (k) each Auction Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- (l) the Senior Lien Agent, in its capacity as such, shall be entitled to credit bid all or a portion of the Senior Prepetition Obligations (as defined in the Cash Collateral Order) in accordance with section 363(k) of the Bankruptcy Code;
- (m) the Auction Bidders shall have the right to make additional modifications to the Modified APA or any Stalking Horse APA, as applicable, in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtors' discretion, in consultation with the Consultation Parties, be less favorable to the Debtors and their estates than the terms of any Stalking Horse APA, and (ii) each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;
- (m) the Debtors and Consultation Parties shall have the right to request any additional financial information that will allow the Debtors and Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified APA or any Stalking Horse APA, as applicable, as may be amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- (n) upon the conclusion of the Auction, the Debtors shall determine, in consultation with the Consultation Parties, and subject to Court approval, the offer or offers for

the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction (the “**Successful Bid**”). In making this decision, the Debtors shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the number, type and nature of any changes to the APA or any Stalking Horse APA, as applicable, requested by each bidder, and the net benefit to the Debtors’ estates. The bidder submitting such Successful Bid shall become the “**Successful Bidder**,” and shall have such rights and responsibilities of the purchaser as set forth in the Modified APA or any Stalking Horse APA, as applicable. The Debtors may, in their sole discretion, designate the Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the Assets in the event that the Successful Bidder does not close the Sale; and

- (o) prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

THE SUCCESSFUL BID AND ANY BACK-UP BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT THE SUCCESSFUL BID OR THE BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

12. Sale Hearing

The Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of any Stalking Horse Purchaser is received, then the Stalking Horse APA) will be subject to approval by the Court. The hearing (the “**Sale Hearing**”) to approve the Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of any Stalking Horse Purchaser is received, then the Stalking Horse APA) shall take place on **June 15, 2017 at **: *m. (ET)**. The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a hearing agenda or notice on the docket of the Debtors’ chapter 11 cases.

At the Sale Hearing, the Debtors will seek entry of an order that, among other things: (i) authorizes and approves the Sale to the Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, pursuant to the terms and conditions set forth in the Stalking Horse APA or Modified APA submitted by the Successful Bidder, as applicable; (ii) finding that the Stalking Horse Purchaser or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code; (iii) as appropriate, exempting the Sale(s) and conveyance(s) of the Assets from any transfer tax, stamp tax or similar tax, or deposit under any applicable bulk sales statute; and (iv) unless otherwise ordered by the Court, directing that all cash proceeds generated from the sale of any Assets shall be paid to the Senior Lien Agent upon the closing of

such sale(s) for application against the obligations owing by the Debtors to the Senior Lien Agent in accordance with the terms and conditions of the Cash Collateral Order and the Senior Lien Credit Documents (as defined below).

13. Backup Bidder

Notwithstanding any of the foregoing, in the event that the Successful Bidder fails to close the Sale prior to thirty (30) days after the completion of the Auction (or such date as may be extended by the Debtors), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtors will be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

14. Return of Deposits

All Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder no later than five (5) business days following the closing of the Sale. The deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Modified APA or any Stalking Horse APA, as applicable, the Debtors and their estates shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform

15. Notice and Consultation Parties

- (a) The term “**Notice Parties**” as used in these Bidding Procedures shall mean: (i) the Debtors (Attn: Lee A. Diercks, Chief Restructuring Officer; ldiercks@clearthinkinggrp.com); (ii) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP (Attn: Robert S. Brady, Esq., Michael R. Nestor, Esq., and Robert Poppiti, Jr., Esq; rbrady@ycst.com, mnestor@ycst.com, and rpoppiti@ycst.com); and (iii) investment banking advisor to the Debtors, Peter J. Solomon Company (Attn: Scott Moses and Gregory Grambling; smoses@pjsc.com and ggrambling@pjsc.com).
- (b) The term “**Consultation Parties**” as used in these Bidding Procedures shall mean: (i) the official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases (the “**Creditors’ Committee**”); and (ii) the Senior Lien Agent, in its capacity as such.

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment; provided, however, that the foregoing shall not impact any consent rights that the Senior Lien Agent may have under the [Interim/Final Order]: (I) Authorizing Use of Cash

Collateral and Affording Adequate Protection; (B) Modifying Automatic Stay; and (C) Scheduling Final Hearing [Docket No. *] (the “**Cash Collateral Order**”), the Senior Lien Senior Lien Credit Documents (as defined in the Cash Collateral Order), or otherwise.

In the event that any Consultation Party or any member of the Creditors’ Committee or an affiliate of any of the foregoing submits a bid that is a Qualifying Bid, any obligation of the Debtors to consult with the bidding party established under these Bidding Procedures will be waived, discharged and released without further action; provided that the bidding party will have the same rights as any other Qualifying Bidder set forth above.

If a member of the Creditors’ Committee submits a Qualifying Bid, the Creditors’ Committee will continue to have consultation rights as set forth in these Bidding Procedures; provided that the Creditors’ Committee shall exclude such member from any discussions or deliberations regarding the sale of the Assets and shall not provide any information regarding the sale of the Assets to such member.

16. Reservation of Rights

Notwithstanding any of the foregoing, the Debtors and their estates reserve the right to, after consultation with the Consultation Parties, modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, allow for bidding on only a portion of the Assets and not all of them, modify bidding increments, waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.

17. Cash Collateral Order

Notwithstanding anything to the contrary contained in these Bidding Procedures or otherwise: (i) the right of the Senior Lien Agent to consent to the sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to the Senior Lien Agent, are hereby expressly reserved and not modified, waived or impaired in any way by these Bidding Procedures; (ii) unless otherwise ordered by the Court, all cash proceeds generated from the sale of any Assets shall be paid to the Senior Lien Agent upon the closing of such sale for application against the obligations owing by the Debtors to the Senior Lien Agent in accordance with the terms and conditions of the Cash Collateral Order and the Senior Lien Credit Documents, until such time as all such obligations have been paid in full in accordance with the terms and conditions of the Senior Lien Credit Documents and the Cash Collateral Order; and (iii) nothing in these Bidding Procedures shall amend, modify, or impair any provision of the Cash Collateral Order, or the rights of the Debtors or the Senior Lien Agent thereunder.

Schedule 1

APA

Exhibit 2

Sale Notice

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

In re:)	
	)	Chapter 11
MARSH SUPERMARKETS HOLDING, LLC, <i>et al.</i> , ¹	)	Case No. 17-11066 (___)
)	
Debtors.	)	(Jointly Administered)
	)	Ref. Docket No. _____

**NOTICE OF PROPOSED SALE OF ASSETS, BIDDING
PROCEDURES, AUCTION, AND SALE HEARING**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), on May 11, 2017 (the “**Petition Date**”), in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). The Debtors are seeking to sell (the “**Sale**”) all or substantially all of their assets (the “**Assets**”), free and clear of all liens, claims, encumbrances, and other interests (“**Encumbrances**”).

PLEASE TAKE FURTHER NOTICE that on the Petition Date, the Debtors filed a motion (the “**Bidding Procedures Motion**”)² for the entry of: (a) an order, substantially in the form attached as Exhibit A to the Bidding Procedures Motion (the “**Proposed Bidding Procedures Order**”), (i) scheduling a hearing on approval of the Sale to a potential stalking horse purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, and authorizing the assumption and assignment of certain executory contracts and unexpired leases (the “**Assumed Contracts**”) in connection therewith; and (ii) authorizing and approving certain bidding procedures for the Sale (the “**Proposed Bidding Procedures**”), certain procedures for the assumption and assignment of the Assumed Contracts, certain bid protections for any Stalking Horse Purchaser, and the form and manner of notice thereof; and (b) an order (the “**Sale Order**”), (i) authorizing and approving the Debtors’ entry into an asset purchase agreement for the Assets with any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder; (ii) authorizing and approving the Sale, free and clear of all Encumbrances; and (iii) authorizing and approving the assumption and assignment of the Assumed Contacts in connection therewith.

PLEASE TAKE FURTHER NOTICE that on May *, 2017, the Bankruptcy Court entered an order [Docket No. *] shortening the notice period with respect to the hearing (“**Bidding Procedures Hearing**”)³ to consider the entry of the Proposed Bidding Procedures Order and the Proposed Bidding Procedures. To the extent that there are any inconsistencies between the terms of the Proposed Bidding Procedures Order and the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Marsh Supermarkets Holding, LLC (1568); Marsh Merger Sub, LLC (8837); Marsh Supermarkets Company, LLC (8179); A.L. Ross & Sons, LLC (3470); Contract Transport Holding, LLC (5675); Contract Transport, LLC (3718); CT Logistics, LLC (9775); LoBill Foods, LLC (9461); Marsh Drugs Holding, LLC (5755); Marsh Drugs, LLC (3717); Marsh International, LLC (0875); Marsh RE Property, LLC (0641); Marsh Supermarkets, LLC (7924); MS Property, LLC (9199); Marsh Supermarkets of Illinois, LLC (6423); and O’Malia Food Markets, LLC (5222). The mailing address for each of the Debtors is 9800 Crosspoint Blvd., Indianapolis, Indiana 46256.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Motion.

³ The Bidding Procedures Hearing may be adjourned or rescheduled by an announcement of such adjournment at the Bidding Procedures Hearing or filing a hearing agenda or notice on the docket of these chapter 11 cases prior to the commencement of such hearing.

Proposed Bidding Procedures, on the one hand, and the order actually entered by the Bankruptcy Court with respect to the Proposed Bidding Procedures (the “**Entered Bidding Procedures Order**”) and the bidding procedures approved thereby (the “**Approved Bidding Procedures**”), the Entered Bidding Procedures Order and the Approved Bidding Procedures shall control in all respects. All interested parties should carefully read (i) the Proposed Bidding Procedures Order and the Proposed Bidding Procedures and (ii) the Entered Bidding Procedures Order and Approved Bidding Procedures, once entered and approved.

PLEASE TAKE FURTHER NOTICE that copies of the Bidding Procedures Motion, the Proposed Bidding Procedures Order and the Proposed Bidding Procedures, the proposed Sale Order, and the Entered Bidding Procedures Order and Approved Bidding Procedures, once entered and approved are available upon request to the Debtors’ claims and noticing agent, Prime Clerk LLC, at 844-239-9269, and are available for download at <https://cases.primeclerk.com/marsh>. A separate notice will be provided to counterparties to executory contracts and unexpired leases with the Debtors that may be assumed and assigned in connection with the Sale. **Any interested bidder should contact Scott Moses (212-508-1675; smoses@pjsc.com) or Gregory Grambling (212-508-1674; ggrambling@pjsc.com) at Peter J. Solomon Company, the Debtors’ investment banking advisor.**

PLEASE TAKE FURTHER NOTICE OF THE FOLLOWING INFORMATION AND PROPOSED IMPORTANT DEADLINES IN CONNECTION WITH THE SALE. THESE DATES AND DEADLINES WILL BE FINALIZED IN THE ENTERED BIDDING PROCEDURES ORDER AND THE APPROVED BIDDING PROCEDURES AND THERE REMAIN SUBJECT TO COURT APPROVAL AND CHANGE.

- The proposed deadline to submit a bid for any Assets is **June 7, 2017 at 5:00 p.m. (ET)**. A bid must, among other things, include a deposit in the amount of ten percent (10%) of the proposed purchase price (or such additional amount as may be determined by the Debtors in accordance with the Approved Bidding Procedures). The failure to abide by the procedures, requirements and deadlines set forth in the Entered Bidding Procedures Order and the Approved Bidding Procedures may result in the denial of your bid.
- The Debtors have proposed that any objections to the Sale or the relief requested in connection with the Sale (a “**Sale Objection**”), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on June 8, 2017** (the “**Sale Objection Deadline**”); and (e) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Objection Notice Parties. The “**Objection Notice Parties**” are as follows: (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady, Esq., Michael R. Nestor, Esq., and Robert Poppiti, Jr., Esq.); (ii) proposed counsel to any official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases; (iii) counsel to the Senior Lien Agent, Otterbourg P.C., 230 Park Avenue, New York, New York 10169 (Attn: Jonathan N. Helfat, Esq., Daniel F. Fiorillo, Esq., and Chad B. Simon, Esq.); (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Hannah McCollum, Esq.); and (v) counsel to the Stalking Horse Purchaser, if any. In connection with the proposed sale process, interested bidders may be subject to an expedited discovery process.
- The Debtors have proposed that an auction for the Assets be held on **June 12, 2017** at a time and location to be determined and announced by a filing on the docket of these chapter 11 cases.
- The Debtors have proposed that the Bankruptcy Court conduct a hearing (the “**Sale Hearing**”) to consider the Sale on **June 15, 2017 at *: * .m. (ET)**.

PLEASE TAKE FURTHER NOTICE THAT IF A SALE OBJECTION IS NOT FILED AND SERVED ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH

THE ENTERED BIDDING PROCEDURES ORDER, THE OBJECTING PARTY SHALL BE BARRED FROM OBJECTING TO THE SALE AND SHALL NOT BE HEARD AT THE SALE HEARING, AND THE BANKRUPTCY COURT MAY ENTER THE SALE ORDER WITHOUT FURTHER NOTICE TO SUCH PARTY.

Dated: _____, 2017
Wilmington, DE

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Robert S. Brady (No. 2847)
Michael R. Nestor (No. 3526)
Robert F. Poppiti, Jr. (No. 5052)
Ashley E. Jacobs (No. 5635)
Shane M. Reil (No. 6195)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1256

Proposed Counsel to the Debtors

Exhibit 3

Assumption Notice

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

In re:)	
	)	Chapter 11
MARSH SUPERMARKETS HOLDING, LLC, <i>et al.</i> , ¹	)	Case No. 17-11066 (___)
	)	(Jointly Administered)
Debtors.	)	Ref. Docket No. _____

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT
AND CURE AMOUNTS WITH RESPECT TO EXECUTORY
CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), on May 11, 2017, in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). The Debtors are seeking to assume and assign certain of their executory contracts and unexpired leases in connection with the sale (the “**Sale**”) of all or substantially all of their assets (the “**Assets**”). The Debtors are seeking Court approval of such Sale and assumptions and assignments pursuant to a motion, dated May 11, 2017 [Docket No. *] (the “**Motion**”).

By order, dated May *, 2017 [Docket No. *] (the “**Bidding Procedures Order**”),² the Bankruptcy Court approved certain “**Bidding Procedures**” that govern the sale of the Debtors’ Assets to the highest or best bidders. Copies of the Motion and the Bidding Procedures Order are available for download at <https://cases.primeclerk.com/marsh> (the “**Case Website**”) or by calling the Debtors’ claims and noticing agent, Prime Clerk LLC, at 844-239-9269.

You are receiving this Notice because you may be a party to an unexpired lease or an executory contract that is potentially to be assumed and assigned (collectively, the “Contracts”), in connection with such Sale. A list of the Contracts is attached hereto as Exhibit A.

The Debtors have determined the current amounts owing (the “**Cure Amounts**”) under each Contract, and have listed the applicable Cure Amounts on Exhibit A attached hereto. The Cure Amounts are the only amounts proposed to be paid upon any assumption and assignment of the Contracts, in full satisfaction of all amounts outstanding under the Contracts.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Marsh Supermarkets Holding, LLC (1568); Marsh Merger Sub, LLC (8837); Marsh Supermarkets Company, LLC (8179); A.L. Ross & Sons, LLC (3470); Contract Transport Holding, LLC (5675); Contract Transport, LLC (3718); CT Logistics, LLC (9775); LoBill Foods, LLC (9461); Marsh Drugs Holding, LLC (5755); Marsh Drugs, LLC (3717); Marsh International, LLC (0875); Marsh RE Property, LLC (0641); Marsh Supermarkets, LLC (7924); MS Property, LLC (9199); Marsh Supermarkets of Illinois, LLC (6423); and O’Malia Food Markets, LLC (5222). The mailing address for each of the Debtors is 9800 Crosspoint Blvd., Indianapolis, Indiana 46256.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order.

To the extent that a Counterparty to a Contract objects to (i) the assumption and assignment of such party's Contract, (ii) the applicable Cure Amount, or (iii) the provision of adequate assurance of future performance, the Counterparty must file and serve an objection (a "Contract Objection"). Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, on or before 4:00 p.m. (ET) on June 8, 2017 (the "Contract Objection Deadline"); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto. The "Objection Notice Parties" are as follows: (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady, Esq., Michael R. Nestor, Esq., and Robert Poppiti, Jr., Esq.); (ii) proposed counsel to any official committee of unsecured creditors appointed in the Debtors' chapter 11 cases; (iii) counsel to the Senior Lien Agent, Otterbourg P.C., 230 Park Avenue, New York, New York 10169 (Attn: Jonathan N. Helfat, Esq., Daniel F. Fiorillo, Esq., and Chad B. Simon, Esq.); (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Hannah McCollum, Esq.); and (v) counsel to the Stalking Horse Purchaser, if any. In connection with the proposed sale process, interested bidders may be subject to an expedited discovery process.

If no objection is timely received with respect to Cure Amount, (i) a non-Debtor party to a Contract shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Contract, (ii) the Cure Amount set forth on Exhibit A attached hereto shall be controlling, notwithstanding anything to the contrary in any Contract, or any other document, and the non-Debtor party to a Contract shall be deemed to have consented to the Cure Amount, and (iii) the non-Debtor party to a Contract shall be forever barred and estopped from asserting any other claims related to such Contract against the Debtors or the applicable transferee, or the property of any of them.

If no objection is received by the Contract Objection Deadline to any Stalking Horse Bidder's adequate assurance of future performance with respect to a Contract, a non-Debtor party to such Contract shall be deemed to have consented to the assumption, assignment, and/or transfer of the applicable Contract to the applicable Stalking Horse Bidder, and shall be forever barred and estopped from asserting or claiming that any conditions to such assumption, assignment, and/or transfer must be satisfied under such applicable Contract or that any related right or benefit under such applicable Contract cannot or will not be available to the applicable Stalking Horse Bidder.

Subject to the terms of the Bidding Procedures Order, an auction (the "Auction") for the Assets, including the Contracts, will be conducted on June 12, 2017 at *:* *.m. (ET) at a time and location to be determined and announced by a filing on the docket of these chapter 11 cases. After the Auction, the Debtors will file and serve a notice that identifies the Successful Bidder for the Assets, including any Contracts. **If the Successful Bidder is not a Stalking Horse Bidder, then the deadline to object to adequate assurance of future performance with respect to such Successful Bidder will be extended to two (2) hours prior to the commencement of the Sale Hearing; provided that the deadline to object to the Cure Amounts with respect to such Contracts, and to otherwise object to the assumption and assignment of such Contracts, shall not be extended.**

The Debtors will seek to assume and assign the Contracts that have been selected by a Successful Bidder (collectively, the “Selected Assumed Contracts”) at a hearing before the Honorable Judge *, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, * (*th) Floor, Courtroom #*, Wilmington, Delaware 19801 (a “Sale Hearing”) on June 15, 2017 at *: * .m. (ET), or such other date as determined by the Debtors in accordance with the terms of the Bidding Procedures Order. To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the Cure Amount (any such dispute, a “**Cure Dispute**”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors or fixed by the Court; provided, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Assumed Contract may be assumed by the Debtors and assigned to any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, provided that the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors or any Stalking Purchaser or, absent any Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute.

Dated: _____, 2017
Wilmington, DE

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Robert S. Brady (No. 2847)
Michael R. Nestor (No. 3526)
Robert F. Poppiti, Jr. (No. 5052)
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Facsimile: (302) 571-1256

Proposed Counsel to the Debtors

Exhibit A to Assumption Notice

EXHIBIT B

Sale Order

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

)	
In re:	)	Chapter 11
)	
MARSH SUPERMARKETS HOLDING, LLC, <i>et al.</i> , ¹	)	Case No. 17-11066 (___)
)	
Debtors.	)	(Jointly Administered)
	)	Ref. Docket No. _____

**ORDER (I) APPROVING APA,
(II) AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS’
ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES, (III) AUTHORIZING
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order (this “**Sale Order**”) (a) authorizing and approving that certain Asset Purchase Agreement (the “**APA**,” a copy of which is attached hereto as **Exhibit 1**), dated as of [____], 2017, between Debtor [____] (“**Seller**”) and [____] (“**Buyer**”), (b) approving the sale of the Assets pursuant to the APA, (c) approving the assumption and assignment of certain executory contracts and unexpired leases pursuant to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Marsh Supermarkets Holding, LLC (1568); Marsh Merger Sub, LLC (8837); Marsh Supermarkets Company, LLC (8179); A.L. Ross & Sons, LLC (3470); Contract Transport Holding, LLC (5675); Contract Transport, LLC (3718); CT Logistics, LLC (9775); LoBill Foods, LLC (9461); Marsh Drugs Holding, LLC (5755); Marsh Drugs, LLC (3717); Marsh International, LLC (0875); Marsh RE Property, LLC (0641); Marsh Supermarkets, LLC (7924); MS Property, LLC (9199); Marsh Supermarkets of Illinois, LLC (6423); and O’Malia Food Markets, LLC (5222). The mailing address for each of the Debtors is 9800 Crosspoint Blvd., Indianapolis, Indiana 46256.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA (as defined herein), or to the extent not defined therein, the Bidding Procedures Order (as defined herein).

section 365 of the Bankruptcy Code, (d) authorizing the Debtors to consummate transactions related to the APA, and (e) granting other related relief; and the Court having entered on [____], 2017 that certain *Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors' Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and Bid Protections and the Form and Manner of Notice Thereof, and (III) Granting Related Relief* [Docket No. ____] (the “**Bidding Procedures Order**”); and the Debtors having determined that the highest and otherwise best offer for the Assets was made by Buyer pursuant to the APA; and the Court having conducted a hearing on [____], 2017 (the “**Sale Hearing**”), at which time all parties in interest were offered an opportunity to be heard with respect to the sale of the Assets to Buyer pursuant to the APA (the “**Sale**”), to consider the approval of the Sale pursuant to the terms and conditions of the APA, and the Court having considered (i) the Motion and any objections thereto, (ii) the Sale, (iii) the arguments of counsel made, and evidence adduced, related thereto, and (iv) the full record in these chapter 11 cases, including the record related to the hearing to consider the Bidding Procedures Order and the Sale Hearing held before the Court; all parties in interest having been heard, or having had the opportunity to be heard, regarding the approval of the APA and the Sale and other transactions contemplated by the APA; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; it is hereby **FOUND, CONCLUDED, AND DETERMINED THAT:**³

³ All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith.

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 these chapter 11 cases pursuant to Bankruptcy Rule 9014.

B. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion and over the property of the Debtors, including the Assets to be sold, transferred, and conveyed pursuant to the APA, pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and the Motion in this District and Court is proper under 28 U.S.C. §§ 1408 and 1409.

D. This Sale 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 Sale Order, and directs entry of judgment as set forth herein.

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

F. The statutory bases for the relief requested in the Motion and provided for herein are sections 105, 363, 365, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

G. On May 11, 2017 (the “**Petition Date**”), each of the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

H. This Court previously entered the Bidding Procedures Order: (i) establishing bidding and auction procedures; [(ii) approving proposed bid protections to Buyer in accordance with the APA;] (iii) scheduling the Auction (if necessary) and the Sale Hearing to consider the sale of the Assets, to the extent set forth in the Bidding Procedures Order; (iv) establishing procedures for noticing and determining cure amounts related to Seller’s executory contracts and unexpired leases; (v) approving the form and manner of notice of all procedures, protections, schedules, and agreements; and (vi) granting certain related relief.

I. As evidenced by the affidavits of service and publication previously filed with the Court [Docket Nos. ____], and based on the representations of counsel at the Sale Hearing, due, proper, timely, adequate, and sufficient notice of the Motion, the Sale Hearing, the Auction, the Sale, and the assumption and assignment of the executory contracts and unexpired leases to be assumed and assigned to Buyer at Closing pursuant to this Sale Order and the APA (collectively, the “**Assumed Contracts**”) has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9007, and 9014 and in compliance with the Bidding Procedures Order, to each party entitled to such notice, including, as applicable: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Senior Lien Agent; (b) counsel to the Junior Noteholder; (c) all parties known by the Debtors to assert a lien on any of the Assets; (d) all persons known or reasonably believed to have asserted an interest in any of the Assets; (e) all persons known or reasonably believed to

have expressed an interest in acquiring all or a substantial portion of the Assets in the Debtors within the six (6) months prior to the Petition Date; (f) the Office of the United States Attorney for the District of Delaware; (g) the Office of the Attorney General in each state in which the Debtors operate; (h) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (i) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (j) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (k) the Federal Trade Commission; (l) the United States Attorney General/Antitrust Division of Department of Justice; (m) all non-Debtor parties to any of the Assumed Contracts; (n) all of the Debtors' other known creditors and equity security holders; and (o) all other parties that had filed a notice of appearance and demand for service of papers in these chapter 11 cases as of the entry of the Bidding Procedures Order. With respect to entities whose identities are not reasonably ascertained by the Debtors, publication of the Sale Notice once in the national edition of *USA Today* on [____], 2017, as evidenced by the affidavit of service filed by the Debtors' at Docket No. [____] in these chapter 11 cases, was, and is deemed, sufficient, and reasonably calculated under the circumstances to reach such entities. The notices described above were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale, and the Sale Hearing is, or shall be, required.

J. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion and provided for herein.

K. The Sale Notice provided all interested parties with timely and proper notice of the Sale, the Sale Hearing, and the Auction.

L. The disclosures made by the Debtors in the Motion, the Sale Notice, and related documents filed with the Court concerning the APA, the Auction, the Sale and the Sale Hearing were good, complete and adequate.

M. The Bidding Procedures set forth in the Bidding Procedures Order were non-collusive, proposed and executed in good faith as a result of arms'-length negotiations, and were substantively and procedurally fair to all parties.

N. The Debtors conducted the sale process in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order. The sale process set forth in the Bidding Procedures Order afforded a full, fair, and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Assets.

O. The terms contained in the APA constitute the highest and best offer for the Assets and will provide a greater recovery for Seller's estate for the Assets than would be provided by any other available alternative. Seller's determination that the APA constitutes the highest and best offer for the Assets constitutes a valid and sound exercise of Seller's business judgment.

P. The APA and the Sale contemplated thereby represent a fair and reasonable offer to purchase the Assets under the circumstances of these chapter 11 cases. No other entity or group of entities has presented a higher or otherwise better offer to Seller to purchase the Assets for greater economic value to Seller's bankruptcy estate than Buyer.

Q. Approval of the Motion and the APA and the consummation of the Sale contemplated thereby is in the best interests of the Debtors, their creditors and estates and other parties in interest in these chapter 11 cases.

R. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale of the Assets because, among other reasons, (i) the APA constitutes the highest and best offer for the Assets, (ii) the APA and the closing thereon will present the best opportunity to realize the value of the Assets, and (iii) any other transaction would not have yielded as favorable an economic result.

S. Buyer is purchasing the Assets in good faith and is a good-faith buyer within the meaning of section 363(m) of the Bankruptcy Code and is not an “insider” (as defined under section 101(31) of the Bankruptcy Code) of any Debtor, and, therefore, is entitled to the full protections of that provision, and otherwise has proceeded in good faith in all respects in connection with these chapter 11 cases in that: (i) Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Assets; (ii) Buyer complied with the provisions in the Bidding Procedures Order; (iii) Buyer agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iv) all payments to be made by Buyer and other agreements or arrangements entered into by Buyer in connection with the Sale have been disclosed; (v) Buyer has not violated section 363(n) of the Bankruptcy Code by any action or inaction; and (vi) the negotiation and execution of the APA, including the Sale contemplated thereby, were at arms’-length and in good faith.

T. The APA and the transactions contemplated thereby cannot be avoided under section 363(n) of the Bankruptcy Code. The Debtors and Buyer and Buyer’s agents, representatives and affiliates have not engaged in any conduct that would cause or permit the APA or the consummation of the transactions contemplated thereby to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

U. The consideration provided by Buyer pursuant to the APA: (i) is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act); (ii) is fair consideration under the Uniform Fraudulent Transfer Act; (iii) is reasonably equivalent value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory, or possession thereof, or the District of Columbia; and (iv) will provide a greater recovery for the Debtors' creditors than would be provided by any other reasonably practicable available alternative.

V. By consummating the Sale, Buyer is not a mere continuation of Seller or any other Debtor or any Debtor's bankruptcy estate, and there is no continuity, no common identity, and no continuity of enterprise between Buyer and any Debtor. Buyer is not holding itself out to the public as a continuation of any Debtor. Buyer is not a successor to any Debtor or any Debtor's estate by reason of any theory of law or equity, and the Sale does not amount to a consolidation, merger, or de facto merger of Buyer or any of the Debtors. Neither Buyer nor any of its agents, representatives or affiliates shall assume or in any way be responsible for any obligation or liability of any Debtor (or any affiliates thereof) and/or any Debtor's estate except as expressly provided in this Sale Order or the APA.

W. The Sale neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization of the Debtors. The Sale does not constitute a *sub rosa* plan.

X. The Debtors, acting by and through their existing agents, representatives, and officers, have full corporate power and authority to execute and deliver the APA and all other

documents contemplated thereby, and the Debtors require no further consents or approvals to consummate the Sale contemplated by the APA, except as otherwise set forth in the APA.

Y. The transfer of each of the Assets to Buyer will be as of the Closing Date a legal, valid, and effective transfer of such assets, and vests or will vest Buyer with all right, title, and interest of Seller to the Assets free and clear of all Interests or Claims (as defined below) accruing, arising or relating thereto any time prior to the Closing Date, unless otherwise assumed in, or permitted by, the APA.

Z. Seller may sell the Assets free and clear of all Interests or Claims against Seller, its bankruptcy estate, or any of the Assets (unless otherwise assumed in, or permitted by, the APA) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests or Claims against Seller, its bankruptcy estate, or any of the Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Interests or Claims who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Interests or Claims, if any, in each instance against Seller, its bankruptcy estate, or any of the Assets, attach to the cash proceeds of the Sale ultimately attributable to the Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Sale, subject to any claims and defenses that Seller or any other Debtor may possess with respect thereto.

AA. [The Senior Lien Agent (as defined in the Bidding Procedures Order), in its capacity as such, has consented to the sale of the Assets to Buyer pursuant to the APA free and clear of any Interests or Claims (as defined below) of the Senior Lien Agent against the

Assets, provided that all cash proceeds generated from the sale shall be paid to the Senior Lien Agent upon the closing of such sale for application against the obligations owing by the Debtors to the Senior Lien Agent in accordance with the terms and conditions of the Cash Collateral Order.]

BB. [The Junior Noteholder (as defined in the Bidding Procedures Order), in its capacity as such, has consented to the sale of the Assets to Buyer pursuant to the APA free and clear of any Interests or Claims of the Junior Noteholder against the Assets, provided that any Interest or Claims of the Junior Noteholder attach to the cash proceeds of the Sale in the same order of priority, with the same validity, force, and effect that the Junior Noteholder had prior to the Sale.]

CC. If the Sale were not free and clear of all Interests or Claims (except as otherwise assumed in, or permitted by, the APA), or if Buyer would, or in the future could, be liable for any of the Interests or Claims (except as otherwise assumed in, or permitted by, the APA), Buyer would not have entered into the APA and would not consummate the Sale, thus adversely affecting the Debtors and their bankruptcy estates and creditors.

DD. Seller has demonstrated that it is an exercise of its sound business judgment for Seller to assume and assign the Assumed Contracts to Buyer pursuant to the terms of this Sale Order and the APA, in each case in connection with the consummation of the Sale, and the assumption and assignment of the Assumed Contracts is in the best interests of Seller, the other Debtors, their bankruptcy estates and creditors, and other parties in interest. The Assumed Contracts being assigned to Buyer under the APA are an integral part of the APA and the Sale and, accordingly, such assumptions and assignments are reasonable and enhance the value of the Debtors' bankruptcy estates. Any non-Debtor counterparty to any Assumed

Contract that has not actually filed with the Court an objection to such assumption as of the date hereof is deemed to have consented to such assumption and assignment.

EE. Seller and Buyer have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A), 365(b)(1)(B), and 365(f) of the Bankruptcy Code, in connection with the sale and assumption and assignment of the Assumed Contracts to the extent provided under this Sale Order and the APA and have: (i) cured any default existing prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and Buyer has provided adequate assurance of future performance with respect to the Assumed Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. The Assumed Contracts are assignable notwithstanding any provisions contained therein to the contrary.

FF. The APA and Sale must be approved and the Closing must occur promptly to preserve the value of the Assets and the Debtors' bankruptcy estates.

GG. Given all of the circumstances of these chapter 11 cases and the adequacy and fair value of the consideration provided by Buyer under the APA, the Sale constitutes a reasonable and sound exercise of Seller's business judgment, is in the best interests of Seller and the other Debtors, their bankruptcy estates, their creditors, and other parties in interest in these chapter 11 cases, and should be approved.

HH. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections

105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Sale.

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

1. The relief requested in 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. Notice of the Motion, the Auction, the Sale Hearing, and the Sale was 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.

Approval of the Sale of the Assets

4. The APA, including all other ancillary documents, and all of the terms and conditions thereof, and the Sale contemplated thereby, are hereby approved in all respects.
5. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors, acting by and through their existing agents, representatives and officers, are authorized and empowered to take any and all actions necessary or appropriate to: (a) consummate and close the Sale pursuant to and in accordance with the terms and conditions of this Sale Order and the APA; (b) transfer and assign all right, title, and interest to all property, licenses, and rights to be conveyed in accordance with the terms and conditions of this Sale Order and the APA; and (c) execute and deliver, perform under, consummate, and implement this Sale Order and the APA and all additional instruments and documents that may be reasonably necessary or desirable to implement this Sale Order, the APA and the Sale, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by this Sale Order, the APA and any such other ancillary documents.

6. This Sale Order shall be binding in all respects upon the Debtors, their bankruptcy estates, all creditors, all holders of equity interests in the Debtors, all holders of any Interests or Claims (whether known or unknown) against any Debtor, any holders of Interests or Claims against or on all or any portion of the Assets, all counterparties to any executory contract or unexpired lease of the Debtors, Buyer and all agents, representatives, affiliates, and permitted successors and assigns of Buyer, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtors' cases. The terms and provisions of the APA and this Sale Order shall inure to the benefit of the Debtors, their bankruptcy estates, and their creditors, Buyer and all agents, representatives, affiliates, and permitted successors and assigns of Buyer, and any other affected third parties, including all persons asserting any Interests or Claims in the Assets to be sold to Buyer pursuant to the APA, 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.

Sale and Transfer of Assets

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, upon the Closing Date and pursuant to and except as otherwise set forth in the APA, the Assets shall be transferred to Buyer free and clear of all encumbrances, claims, interests, and liens, including the Excluded Liabilities, mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, 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), 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 pension liabilities, retiree medical benefit liabilities, liabilities related to the Employee Retirement Income Security Act of 1974, liabilities related to the Internal Revenue Code, or any other liability relating to Debtors' current and former employees, including any withdrawal liabilities or liabilities under any collective bargaining agreement or labor practice agreement, of the Debtors or any of the Debtors' 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 these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (other than Assumed Liabilities and Permitted Liens) (collectively, the "**Interests or Claims**"), with all such Interests or Claims to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force, and effect that they now have as against the Assets, subject to any claims and defenses the Debtors and their bankruptcy estates may possess with respect thereto.

8. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Assets or a bill of sale transferring good and marketable title in such Assets to Buyer

pursuant to the terms and allocations set forth in this Sale Order and the APA. For the avoidance of doubt, the Excluded Assets set forth in the APA are not included in the Assets, and the Excluded Liabilities set forth in the APA are not Assumed Liabilities.

9. Subject to the terms and conditions of this Sale Order, the transfer of Assets to Buyer pursuant to the APA and the consummation of the Sale and any related actions contemplated thereby do not require any consents other than as specifically provided for in this Sale Order and the APA, constitute a legal, valid, and effective transfer of the Assets, and shall vest Purchaser with right, title, and interest of Seller in and to the Assets as set forth in this Sale Order and the APA, as applicable, free and clear of all Interests or Claims of any kind or nature whatsoever (except as otherwise assumed in, or permitted by, the APA).

10. [At the Closing, all cash proceeds generated from the Sale shall be paid to the Senior Lien Agent for application against the obligations owing by the Debtors to the Senior Lien Agent in accordance with the terms and conditions of the Cash Collateral Order.]

11. [At the Closing, any Interest or Claims of the Junior Noteholder shall attach to the cash proceeds of the Sale in the same order of priority, with the same validity, force, and effect that the Junior Noteholder had prior to the Sale.]

12. Buyer, to the extent provided by this Sale Order or the APA, shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of Seller constituting Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of the Closing Date as provided by this Sale Order and the APA. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation

of the Assets sold, transferred, assigned, or conveyed to Buyer on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Sale.

13. All entities that are presently, or on the Closing may be, in possession of some or all of the Assets to be sold, transferred, or conveyed (wherever located) to Buyer pursuant to this Sale Order and the APA are hereby directed to surrender possession of the Assets to Buyer on the Closing Date.

14. Upon consummation of the Sale, if any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Interests or Claims against or in the Assets shall not have delivered to Seller 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 (unless otherwise assumed in, or permitted by, the APA), or otherwise, then (a) the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b) Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests or Claims in the Assets of any kind or nature (except as otherwise assumed in, or permitted by, the APA); provided that, notwithstanding anything in this Sale Order or the APA to the contrary, the provisions of this Sale Order shall be self-executing, and neither Seller nor Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement

the provisions of this Sale Order. For the avoidance of doubt, upon consummation of the Sale, Buyer 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 Sale Order under section 363 of the Bankruptcy Code and the related provisions of the Bankruptcy Code.

15. Except to the extent included in Assumed Liabilities or Permitted Liens, or to enforce the APA, all entities, 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 Debtors and their bankruptcy estates or the Assets arising under or out of, in connection with, or in any way relating to, the Assets or the transfer of the Assets to Buyer, hereby are forever barred, estopped, and permanently enjoined from asserting any Interests or Claims of any kind or nature whatsoever against Buyer and its permitted successors, designees, and assigns, or property, or the Assets conveyed in accordance with the APA.

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

Contracts to be Assumed and Assigned

17. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, Seller's assumption and assignment to Buyer, and Buyer's assumption, on the terms set forth in this Sale Order and the APA of the Assumed Contracts, is hereby approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

18. Seller is hereby authorized in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to assume and assign to Buyer, effective upon the Closing Date, the Assumed Contracts free and clear of all Interests or Claims of any kind or nature whatsoever (except as otherwise assumed in, or permitted by, the APA) and execute and deliver to Buyer such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to Buyer.

19. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Buyer shall be fully and irrevocably vested in all right, title, and interest of each Assumed Contract. The Debtors shall cooperate with, and take all actions reasonably requested by, Buyer to effectuate the foregoing, as further provided in this Sale Order and the APA.

20. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, Buyer in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract that is assumed and assigned to Buyer pursuant to the APA (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer.

21. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, at the Closing, Buyer shall pay to the respective counterparty the Cure Amounts relating to any Assumed Contract.

22. Except as otherwise agreed in writing between the Debtors and the non-Debtor parties to the Assumed Contracts or stated on the record of the Sale Hearing, the Cure Amounts for the Assumed Contracts are hereby fixed at the amounts set forth on **Exhibit 2** attached to this Sale Order, and the non-Debtor parties to such Assumed Contracts are forever bound by such Cure Amounts and, upon payment of such Cure Amounts, are hereby enjoined from taking any action against the Debtors and their bankruptcy estates, Buyer and all agents, representatives, affiliates, and permitted successors and assigns of Buyer, or the Assets with respect to any claim for cure under any Assumed Contract.

23. The payment of the applicable Cure Amounts (if any) shall effect a cure of all defaults existing as of the date that such executory contracts or unexpired leases are assumed and compensate for any actual pecuniary loss to such non-Debtor party resulting from such default.

24. Buyer shall have assumed the Assumed Contracts, and pursuant to section 365(f) of the Bankruptcy Code, the assignment by Seller of such Assumed Contracts shall not be a default thereunder. After the payment of the relevant Cure Amounts by the Seller, neither the Debtors and their bankruptcy estates nor Buyer shall have any further liabilities to the non-Debtor counterparties to the Assumed Contracts, other than Buyer's obligations under the Assumed Contracts that accrue or become due and payable on or after the date that such Assumed Contracts are assumed.

25. Any provisions in any Assumed Contracts that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assumed Contract constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and

conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by Seller and assignment to Buyer of the Assumed Contracts have been satisfied.

26. Any party having the right to consent to the assumption or assignment of any Assumed Contract that failed to object to such assumption or assignment is deemed to have consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code.

27. Buyer shall be deemed to be substituted for Seller as a party to the applicable Assumed Contracts and the Debtors and their estates shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Contracts.

28. Buyer has provided adequate assurance of future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

29. There shall be no assignment fees, increases, rent-acceleration, or any other fees charged to Buyer or the Debtors and their estates as a result of the assumption and assignment of the Assumed Contracts.

30. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all counterparties to the Assumed Contracts are forever barred and permanently enjoined from raising or asserting against the Debtors and their estates or Buyer any assignment fee, default, breach, claim, pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts, existing as of the date that such Assumed Contracts are assumed or arising by reason of the Closing.

31. Neither Buyer nor any successor of Buyer shall be responsible for or have any Interests or Claims or obligations arising out of any of the contracts, agreements, or

understandings that are not Assumed Contracts after the Closing Date (except as specifically provided by the APA).

Additional Provisions

32. Seller and Buyer hereby waive, and shall be deemed to waive, any requirement of compliance with, and any claims related to non-compliance with, the provisions of any bulk sales, bulk transfer, or similar law of any jurisdiction that may be applicable.

33. Following the Closing, no holder of an Interest or Claim in or against the Debtors and their bankruptcy estates or the Assets shall interfere with Buyer's title to or use and enjoyment of the Assets based on or related to such Interest or Claim or any actions that the Debtors and their bankruptcy estates may take in these chapter 11 cases or any successor cases.

34. The Debtors, including their respective officers, employees and agents, are hereby authorized to execute such documents and do such acts as are necessary or desirable to carry out the transactions contemplated by the terms and conditions of the APA and this Sale Order. The Debtors shall be, and they hereby are, authorized to take all such actions as may be necessary to effectuate the terms of this Sale Order and the relief granted pursuant to this Sale Order.

35. The Sale is undertaken by Buyer without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Assumed Contracts by Buyer, if any, and the sale free and clear of all Interests or Claims (unless otherwise assumed in, or permitted by, the APA)), unless such authorization and consummation of such Sale are duly stayed pending such appeal. Buyer is a good-faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

36. As a good-faith purchaser of the Assets, Buyer has not colluded with any of the other bidders, potential bidders, or any other parties interested in the Assets, and therefore the sale of the Assets may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

37. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in these chapter 11 cases, any subsequent chapter 7 or chapter 11 cases of the Debtors, or any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the terms of this Sale Order or the APA.

38. The failure specifically to include any particular provisions of the APA including any of the documents, agreements, or instruments executed in connection therewith in this Sale Order shall not diminish or impair the efficacy of such provision, document, agreement, or instrument, it being the intent of this Court that the APA and each document, agreement or instrument be authorized and approved in its entirety.

39. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

40. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Sale Order shall govern.

41. To the extent there are any inconsistencies between the terms of this Sale Order and the APA (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

42. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court.

43. The provisions of this Sale Order are nonseverable and mutually dependent.

44. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or 7062 or any applicable provisions of the Local Rules, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply.

45. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

Dated: _____, 2017
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT 1

APA

EXHIBIT 2

Cure Amounts

EXHIBIT C

APA

[Seller Draft]

ASSET PURCHASE AGREEMENT
BY AND AMONG
MARSH SUPERMARKETS COMPANY, LLC
[OTHER APPLICABLE SELLER]

AND
[BUYER]

[•], 2017

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 ASSET PURCHASE; PURCHASE PRICE	1
Section 1.1 Purchase and Sale of Assets.....	1
Section 1.2 Purchase Price; Deposit.....	5
Section 1.3 Closing.....	6
Section 1.4 Closing Actions and Deliveries.....	6
Section 1.5 Allocation of Purchase Price.....	7
Section 1.6 Casualty/Condemnation Stores.....	8
ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF SELLERS	8
Section 2.1 Organization and Qualification.....	8
Section 2.2 Authority and Enforceability.....	9
Section 2.3 Consents and Approvals; No Violations.....	9
Section 2.4 Brokers.....	10
Section 2.5 Real and Personal Property.....	10
Section 2.6 Title to Assets.....	10
Section 2.7 Assigned Contracts; Assigned Subleases.....	10
Section 2.8 Labor and Benefits Matters.....	11
Section 2.9 No Other Representations and Warranties.....	11
ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF BUYER	11
Section 3.1 Organization.....	11
Section 3.2 Authority.....	11
Section 3.3 Consents and Approvals; No Violations.....	12
Section 3.4 Brokers.....	12
Section 3.5 Litigation.....	12
Section 3.6 Sufficiency of Funds.....	12
Section 3.7 Solvency.....	12
Section 3.8 Acknowledgement by Buyer; No Other Representations and Warranties.....	13
ARTICLE 4 COVENANTS	13
Section 4.1 Transfer Taxes.....	13
Section 4.2 Further Assurances.....	13
Section 4.3 Preservation of Records; Cooperation.....	13
Section 4.4 Public Announcements; Confidentiality.....	14
Section 4.5 Store Employees.....	14

Section 4.6 Access..... 16

Section 4.7 Reasonable Efforts; Further Assurances; Cooperation..... 16

Section 4.8 Keys and Codes..... 18

Section 4.9 Bulk Sales Laws. 19

Section 4.10 Removal of Excluded Assets; Cure Costs..... 19

ARTICLE 5 CLOSING CONDITIONS 19

Section 5.1 Conditions to Obligation of All Parties..... 19

Section 5.2 Conditions to Obligation of Buyer. 19

Section 5.3 Conditions to Obligation of Seller..... 20

ARTICLE 6 TERMINATION..... 20

Section 6.1 Termination of Agreement. 20

Section 6.2 Effect of Termination. 22

Section 6.3 Buyer Deposit..... 22

ARTICLE 7 MISCELLANEOUS 22

Section 7.1 Definitions. 22

Section 7.2 Expenses. 28

Section 7.3 Entire Agreement; Amendment; Waiver; Assignment..... 28

Section 7.4 Notices..... 28

Section 7.5 Governing Law; Jurisdiction..... 29

Section 7.6 Exhibits and Schedules; Construction; Interpretation. 29

Section 7.7 Parties in Interest. 30

Section 7.8 Severability..... 30

Section 7.9 AS IS CONDITION; DISCLAIMER OF WARRANTIES; EXCLUSIVITY OF REPRESENTATIONS AND WARRANTIES..... 30

Section 7.10 Counterparts..... 33

Section 7.11 Waiver of Jury Trial. 33

Section 7.12 Survival..... 33

Section 7.13 Time of Essence..... 33

Section 7.14 Non-Recourse..... 33

Section 7.15 Bankruptcy Court Approval. 34

Exhibits:

- Exhibit 1.1: Store Properties
- Exhibit A: Form of Bill of Sale
- Exhibit B: Form of Assignment and Assumption Agreement

Exhibit C: Form of Assignment and Assumption of Lease
Exhibit D: Form of Sale Order

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of [●], 2017, is made by and among Marsh Supermarkets Company, LLC (“MS Company”) and [●] (“ ”, and together with MS Company, each, a “Seller”, and together, “Sellers”), and [●], a [●] (“Buyer”). Sellers and Buyer shall be referred to herein from time to time collectively as the “Parties” and each individually as a “Party.” Definitions of capitalized terms are set forth in Section 7.1.

WHEREAS, each Seller is a debtor and debtor in possession in those certain bankruptcy cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) filed on May 11, 2017 in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 17-11066 () (as Jointly Administered, collectively, the “Chapter 11 Case”);

WHEREAS, in connection with the Chapter 11 Case and subject to the terms and conditions contained herein, following the entry of the Sale Order (as defined herein) determining Buyer to be the highest or best bidder with respect to the Store Properties and subject to the terms and conditions thereof, Sellers shall sell, transfer and assign to Buyer, and Buyer shall purchase, acquire and accept from Sellers, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, the Assets (as defined herein), and Buyer shall assume from Sellers the Assumed Liabilities (as defined herein), all as more specifically set forth herein and in the Sale Order; and

WHEREAS, the transactions contemplated by this Agreement and the other Transaction Documents are subject to the approval of the Bankruptcy Court and will be consummated pursuant to the Bid Procedures Order and the Sale Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 ASSET PURCHASE; PURCHASE PRICE

Section 1.1 Purchase and Sale of Assets.

(a) Sale of Assets. Subject to the terms and conditions set forth herein and in the Bid Procedures Order and the Sale Order, at the Closing, each Seller shall sell, assign, assume and assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from each Seller, free and clear of any Liens other than Permitted Liens, all of such Seller’s right, title and interest in, to and under all of its assets, properties and rights of every kind and nature, whether real or personal, tangible or intangible, in each case, other than the Excluded Assets (collectively, the “Assets”), including the following:

¹ NTD: If Buyer is not sufficiently capitalized and creditworthy, a parent entity or other adequate financial assurances will be required to join this Agreement or otherwise support Buyer’s obligations.

(i) the Store Leases, together with (only to the extent of such Seller's interest therein) the Improvements located on or attached to the underlying real property, and all rights arising out of the ownership thereof including: all options and rights of first refusal, all Real Property Documents creating or modifying any such interest, and all of such Seller's rights, title and interest in and under such Real Property Documents related to such Store Property; all easements and rights-of-way; water rights; rights, title and interest in all strips and gores; all reciprocal easements; all alleys and the land laying in the bed of any street, road or right-of-way; all of such Seller's right, title and interest in and to any award made or to be made in lieu thereof, and in and to any unpaid award, for any taking by condemnation of, or any damages to, any Store Property by reason of a change of grade of any street, road or avenue; and all tenements, hereditaments, appurtenances and other real property rights appertaining thereto, subject to the rights of the landlord (including rights to ownership or use of such property) under such Store Leases; provided, however, Buyer agrees not to operate a pharmacy in any of the Store Properties where Seller or its affiliates previously operated a pharmacy within the last six (6) months;

(ii) each lease, sublease, concessionaire agreement, license or other occupancy agreement listed in Section 1.1(a)(ii) of the Disclosure Schedule to the extent the same relates to the Store Properties (each, an "Assigned Sublease");

(iii) each contract set forth in Section 1.1(a)(iii) of the Disclosure Schedule (each, an "Assigned Contract");

(iv) if and to the extent freely assignable, all third party guarantees and warranties (collectively, the "Guarantees") to the extent they relate to the ownership or operation of the Store Properties, the Inventory or the Equipment;

(v) all computer, networking, security and telephone hardware and software, furniture, furnishings, signage, forklifts and other vehicles, equipment, machinery, tooling, parts, racking, refrigerators, freezers, fixtures, trade fixtures, shopping carts, shelf tags, aisle markers, electronic surveillance equipment, store models, shelving and other tangible personal property located at the Store Properties as of the date hereof and owned by such Seller or any Affiliate thereof, including all point-of-sale and check cashing technologies and software (solely if and to the extent such software is freely transferable to Buyer) and all devices and pinpads related thereto, together with all rights of such Seller or any Affiliate thereof against the manufacturers and/or suppliers of such equipment, and any and all rights to any software used in any computer equipment included in the Assets (solely if and to the extent such rights to any such software are freely transferable to Buyer) (collectively, the "Equipment");

(vi) to the extent (A) permitted under applicable Law and (B) used in connection with the Store Properties, all files, documents, instruments, papers, computer files and records and all other non-privileged books and records of such Seller or any Affiliate thereof in any form or media (collectively, the "Files and Records");

(vii) all Inventory of such Seller, other than Excluded Inventory;

(viii) all accounts receivable owed to such Seller relating to the operation of the Store Properties and all claims, remedies and other rights relating to such accounts receivable;

(ix) all security, vendor, utility and other deposits actually being held by a third party (the “Deposits”) related to the Store Properties, and all prepaid rent and other prepaid expenses related to the Store Properties (collectively, the “Prepaid Expenses”);

(x) to the extent freely transferable, all permits, federal and state registrations and licenses related to the Store Properties; and

(xi) any Closing Cash.

(b) Excluded Assets. Notwithstanding the foregoing, Buyer expressly understands and agrees that it is not purchasing or acquiring, and each Seller is not selling, transferring or assigning, any of the following assets or properties of such Seller (the “Excluded Assets”):

(i) all undeposited or uncollected checks and food stamps;

(ii) all claims, counterclaims, rights, set-offs, demands, causes of action, rebates, refunds and other similar intangibles arising from the operation, acquisition or ownership of the Store Properties prior to the Effective Time, including (A) all rights to any Legal Proceeding of any nature available to or being pursued by any Seller whether arising by way of counterclaim or otherwise and (B) all rights and avoidance claims of each Seller arising under Chapter 5 of the Bankruptcy Code;

(iii) all refunds and credits of Taxes attributable to the Store Properties or the Assets for periods occurring prior to the Effective Time;

(iv) all casualty insurance, title insurance, liability insurance and other insurance policies of each Seller and its Affiliates and claims thereunder, including each Seller’s director and officer insurance policies, fiduciary policies or employment practices policies (in each case of the foregoing, including any tail policies or coverage thereon), and any of such Seller’s rights, claims, demands, proceedings, credits, causes of action or rights of set off thereunder;

(v) all rights to any software used in any computer equipment included in the Assets, to the extent not freely transferable to Buyer;

(vi) the following books and records of such Seller and its Affiliates: (A) such books and records as are related to assets that are not included in the Assets, (B) such books and records as are related to Liabilities of such Seller or any of its Affiliates which do not constitute Assumed Liabilities, (C) such books and records (whether copies or originals) relating to formation, qualifications to conduct business as a foreign corporation or other legal entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock

transfer books, stock ledgers, by-laws and other documents relating to the organization and existence of such Seller as a corporation or other legal entity, as applicable (together with analogous documentation), (D) all tax and financial accounting returns and records, (E) such books and records which are covered by attorney-client privilege, candid self-analysis privilege, work product privilege or other similar privileges, (F) such books and records that such Seller is required by Law to retain and is prohibited by Law from providing a copy of to Buyer, (G) such Books and Records that such Seller prepared in connection with, or that relate to, the transactions contemplated by this Agreement and/or the Chapter 11 Case, including bids received from other parties, and (H) personnel files, employee medical files and related documents;

(vii) all stock certificates and all shares of capital stock or other equity interests of a Seller, or securities convertible into or exchangeable or exercisable for any such shares of capital stock or other equity interests;

(viii) all contracts of Sellers other than (A) the Store Leases, (B) the Assigned Contracts and (C) the Assigned Subleases;

(ix) all cash and cash equivalents, bank accounts and securities of such Seller other than Closing Cash;

(x) all assets of such Seller and any Affiliate thereof primarily related to (A) stores or store properties not included among the Store Properties or not primarily related to the Business or (B) employees of such Seller who do not become employees of Buyer;

(xi) the rights which accrue or will accrue to such Seller under the Transaction Documents;

(xii) all equipment and other assets and items located in or at the Store Properties that are (A) owned by third parties, or (B) leased to such Seller or an Affiliate thereof, or are not freely assignable, saleable and transferable to Buyer, in each case, pursuant to a contract or agreement that is not an Assigned Contract or an Assigned Sublease;

(xiii) the following Inventory: (A) car wash chemicals, and (B) merchandise related to firearms, ammunition, explosives, liquor, and any other similar items which cannot by Law be transferred to, or resold by, Buyer (all of the items described in (A) through (B) shall not be included among the Assets or within the term "Inventory" and are collectively referred to as the "Excluded Inventory");

(xiv) all customer data and information of such Seller;

(xv) all receivables (including any accounts receivable), claims (including insurance claims) or causes of action that relate to any Excluded Asset or Excluded Liability or any employees of such Seller who are not Transferred Employees; and

(xvi) all property which, upon installation thereof, under the relevant Store Lease becomes the property of the landlord thereunder.

(c) Assumption of Certain Liabilities. On and subject to the terms and conditions of this Agreement and the Sale Order, at the Closing, Buyer shall assume and agree to pay, perform and discharge when due only the following Liabilities (collectively, the “Assumed Liabilities”):

(i) all Liabilities arising out of or relating to the operation of the Business or the ownership of the Assets after the Effective Time;

(ii) all current Liabilities of each Seller included on Schedule 1.1(c)(ii);

(iii) all Liabilities arising under or relating to the Store Leases, Assigned Contracts, and Assigned Subleases, in each case after the Effective Time;

(iv) all Liabilities for Taxes relating to the Store Properties, the Assets or the Assumed Liabilities for any taxable period (or portion thereof) after the Effective Time;

(v) all Liabilities of each Seller relating to employee benefits, compensation, workers’ compensation claims, incentive plans, or other arrangements with respect to any Transferred Employee other than wages attributable to the period prior to the Effective Time;

(vi) all Liabilities of each Seller with respect to Permitted Encumbrances; and

(vii) all other Liabilities assumed by Buyer under this Agreement or any other Transaction Document, including under Section 4.5.

(d) Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, Buyer shall not assume any Liabilities that are not Assumed Liabilities (such excluded Liabilities, collectively, the “Excluded Liabilities”).

Section 1.2 Purchase Price; Deposit.

(a) The aggregate consideration (collectively, the “Purchase Price”) to be paid by Buyer for the Assets acquired by Buyer hereunder, in addition to the assumption of the Assumed Liabilities, shall consist of:

(i) the Base Amount; plus

(ii) the amount, if any, of Closing Cash.

(b) In accordance with the Bid Procedures Order, Buyer and Sellers have entered into an escrow agreement provided by Sellers (as amended, supplemented, amended

and restated or otherwise modified from time to time, the “Escrow Agreement”), with _____ (the “Escrow Holder”). Concurrently with the execution and delivery of the Escrow Agreement, Buyer deposited \$[●][Note: No less than 10% of Purchase Price] (the “Buyer Deposit”) with the Escrow Holder by wire transfer of immediately available funds. The Escrow Holder holds the Buyer Deposit in a segregated non-interest-bearing account (the “Escrow Account”) pursuant to the terms of the Escrow Agreement. Buyer, on the one hand, and Sellers, on the other hand, shall share equally all costs under the Escrow Agreement, including any fee of the Escrow Holder. The Buyer Deposit shall become payable, and shall be paid, to the Sellers at the Closing. At the Closing, Buyer and Sellers shall instruct the Escrow Holder to deliver the Buyer Deposit to Sellers by wire transfer of immediately available funds into an account designated by Sellers. If this Agreement is validly terminated prior to the Closing, the Buyer Deposit shall be released and distributed to Buyer or Seller, as applicable, in accordance with the terms of the Escrow Agreement and Section 6.3. In the event of any conflict between the Escrow Agreement and this Agreement, the terms of this Agreement shall prevail.

Section 1.3 Closing.

The closing of the transactions contemplated hereby (the “Closing”) shall take place as described below on _____ subject to the satisfaction or (to the extent permitted) waiver of the conditions set forth in ARTICLE 5 (excluding those conditions that, by their terms, cannot be satisfied until the Closing), or at such other place and time as the Parties shall mutually agree, but in no event later than the Expiration Date. The Closing shall be effective as of 12:01 a.m. New York, NY time (the “Effective Time”) on the day of the Closing (the “Closing Date”).

Section 1.4 Closing Actions.

(a) On the Closing Date, each Seller, as applicable, shall deliver to Buyer:

(i) a bill of sale in the form of Exhibit A hereto (the “Bill of Sale”), duly executed by such Seller, transferring the tangible personal property included in the Assets to Buyer;

(ii) an assignment and assumption agreement in the form of Exhibit B hereto (the “Assignment and Assumption Agreement”), duly executed by such Seller, effecting the assignment to and assumption by Buyer of the Assets and the Assumed Liabilities;

(iii) with respect to each Store Lease and Assigned Sublease, an Assignment and Assumption of Lease substantially in the form of Exhibit C (each, an “Assignment and Assumption of Lease”), duly executed, and if applicable acknowledged, by such Seller;

(iv) a certificate pursuant to Treasury Regulations Section 1.1445-2(b), in a form reasonably acceptable to Buyer, that such Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, duly executed by such Seller;

(v) a certificate of the secretary of such Seller certifying to (A) such entity's certificate of formation and limited liability company agreement (or similar governing documents), (B) the adoption of resolutions of such entity approving the transactions contemplated hereby, and (C) the incumbency of the officers signing this Agreement and other Transaction Documents on behalf of such entity (together with their specimen signatures);

(vi) the Sellers' Closing Certificate;

(vii) such other documents, instruments or certificates as shall be reasonably requested by Buyer and its counsel.

(b) On the Closing Date, Buyer shall deliver to Sellers:

(i) the Closing Cash Consideration by wire transfer of immediately available funds to the account(s) specified in writing by Sellers;

(ii) each Bill of Sale, each Assignment and Assumption Agreement and each Assignment and Assumption of Lease, each duly executed, and if applicable acknowledged, by Buyer;

(iii) a certificate of the secretary of Buyer certifying to (A) Buyer's certificate of incorporation and bylaws (or similar governing documents), (B) the adoption of resolutions of Buyer approving the transactions contemplated hereby, and (C) the incumbency of the officers signing this Agreement and other Transaction Documents on behalf of Buyer (together with their specimen signatures);

(iv) the Buyer's Closing Certificate; and

(v) such other documents, instruments or certificates as shall be reasonably requested by Sellers and their counsel.

(c) At the Closing, Buyer and Sellers shall deliver to Escrow Holder joint written instructions instructing the Escrow Holder to deliver the Buyer Deposit to Sellers by wire transfer of immediately available funds to an account designated by Sellers.

Section 1.5 Allocation of Purchase Price.

Buyer and Sellers shall agree on the allocation of the Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for federal income Tax purposes) among the Assets within sixty (60) days after the Closing Date. The Parties agree to file (or cause to be filed) (i) all required federal Forms 8594, an Asset Acquisition Statement under Section 1060, and (ii) all other Tax Returns (including amended Tax Returns and claims for refund) in a manner consistent with such allocation of the Purchase Price described herein. The Parties agree to refrain from taking any position that is inconsistent with such allocation, and to use their commercially reasonable efforts to sustain such allocation in any subsequent Tax audit or Tax dispute.

Section 1.6 Casualty/Condemnation Stores.

Notwithstanding anything to the contrary in this Agreement, if, during the period beginning on the date hereof and ending on the Effective Time, any Store Property (any such Store Property, a “Casualty/Condemnation Store”) is materially damaged, or destroyed, by fire or other casualty or subject to a taking such that restoration of such Store Property to substantially the same condition prior to such casualty/condemnation would (a) take six (6) months or longer, (b) in the case of a condemnation, such Store Property cannot be substantially restored to the condition prior to such condemnation or (c) the applicable landlord of such Store Property shall have the right to terminate the applicable Store Lease as a result of such casualty or condemnation, then the applicable Seller and any of such Seller’s Affiliates shall remit to Buyer any insurance proceeds or condemnation awards (“Proceeds”) received by such Seller or any of such Seller’s Affiliates in respect of any such damage or destruction on the later of (i) the Closing and (ii) the third (3rd) Business Day after the receipt of such proceeds by such Seller or any of such Seller’s Affiliates, and shall, upon the request of Buyer, assign to Buyer, effective upon the Closing Date, the rights of such Seller, or any of such Seller’s Affiliates to receive any such Proceeds with respect to any such occurrence prior to such time.

**ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF SELLERS**

Except as set forth in the Disclosure Schedule, each Seller hereby represents and warrants to Buyer as follows:

Section 2.1 Organization and Qualification.

(a) Such Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation. Subject to the necessary authority from the Bankruptcy Court, such Seller has the requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as presently conducted except where the failure to have such power or authority would not have a Seller Material Adverse Effect.

(b) Subject to the necessary authority from the Bankruptcy Court, such Seller is duly qualified or licensed to do business and is in good standing (or the equivalent thereof) in each jurisdiction in which the property owned, leased or operated by it, or the nature of the business conducted by it, makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Seller Material Adverse Effect.

Section 2.2 Authority and Enforceability. Subject to the entry of the Sale Order, such Seller has all requisite limited liability company power and authority to execute and deliver this Agreement and each other Transaction Document to which such Seller is or will be a party, and to consummate the transactions contemplated hereby. Subject to the entry of the Sale Order, this Agreement and each other Transaction Document to which such Seller is a party has been (or, in the case of each Transaction Document to which such Seller will be a party, will be) duly and validly executed and delivered by such Seller and constitutes a valid, legal and binding agreement of such Seller, enforceable against such Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at Law or in equity).

Section 2.3 Consents and Approvals; No Violations.

(a) Except (i) as set forth in Section 2.3(a) of the Disclosure Schedule, and assuming the accuracy of the representations and warranties set forth in Section 3.3, (ii) as may be necessary as a result of any facts or circumstances relating solely to Buyer or any of its Affiliates, (iii) such filings as may be required under the HSR Act and (iv) as may be required pursuant to the Bankruptcy Code, the Bid Procedures Order or the Sale Order, and after taking into account the effect of the Sale Order under the Bankruptcy Code, no material filing with or material notice to, and no material permit, authorization, consent or approval of, or material Order of, any court or tribunal or administrative, governmental or regulatory body or agency (a "Governmental Entity") or any other Person is necessary for the execution and delivery by such Seller of this Agreement or the consummation by such Seller of the transactions contemplated hereby.

(b) Subject to the entry of the Sale Order and any other order(s) necessary to consummate the transactions contemplated by this Agreement, neither the execution, delivery and performance of this Agreement by such Seller nor the consummation by such Seller of the transactions contemplated hereby will (i) conflict with or result in any breach of any provision of the certificate of formation or limited liability company agreement (or similar governing documents) of such Seller or any Affiliate thereof, (ii) except as set forth in Section 2.3(b) of the Disclosure Schedule, result in a material violation or material breach of, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a material default (or give rise to any material right of termination, modification, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which such Seller or any Affiliate thereof is a party or by which such Seller or any Affiliate thereof or any of such Seller's or any Affiliate of such Seller's properties or assets may be bound, (iii) violate any Order or Law applicable to such Seller or any Affiliate thereof or any of such Seller's or any Affiliate of such Seller's properties or assets, or (iv) result in the creation or imposition of any Lien on any of the Assets, except for Permitted Liens.

Section 2.4 Brokers. Except as set forth in Section 2.44 of the Disclosure Schedule, no broker, finder or investment banker is entitled to any broker's, finder's or investment banker's fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of such Seller.

Section 2.5 Real and Personal Property.

(a) Leased Real Properties. To the Knowledge of Sellers, Section 2.5(a) of the Disclosure Schedule sets forth each lease, sublease, license or similar occupancy agreement, together with all amendments or supplements thereto, of real property ("Leased Real Property") to which such Seller or any Affiliate thereof is a party or by which it is bound as lessee, in each case, related to the Store Properties (each a "Store Lease," and collectively the "Store Leases").

(b) Personal Property. As of the date hereof, such Seller owns or holds under valid leases all material tangible personal property necessary for the conduct of the Business.

(c) Complete Copies. Such Seller has delivered to Buyer a complete copy of each Store Lease, in each case, as amended or otherwise modified and in effect as of the date hereof, to the extent in the actual possession of such Seller or any of its Affiliates.

Section 2.6 Title to and Sufficiency of Assets.

(a) As of the date of this Agreement and subject to the entry of the Sale Order, (i) such Seller or an Affiliate thereof is the sole and lawful owner of, and has good title to, or a valid leasehold interest in, all of the Assets, free and clear of all Liens other than the Permitted Liens, and (ii) none of the Assets is in the possession, custody, or control of any Person other than such Seller or an Affiliate thereof.

(b) As of immediately prior to the Closing and subject to the entry of the Sale Order, (i) such Seller shall be the sole and lawful owner of, and have good title to, or a valid leasehold interest in, and the power to sell, assign or transfer to the Buyer, all of the Assets free and clear of all Liens other than the Permitted Liens, and (ii) subject to the rights of any parties under Assigned Subleases, none of the Assets shall be in the possession, custody, or control of any Person other than such Seller.

Section 2.7 Assigned Contracts; Assigned Subleases.

(a) Such Seller has delivered to Buyer a complete copy of each Assigned Contract, in each case, as amended or otherwise modified and in effect as of the date hereof.

(b) Such Seller has delivered to Buyer a complete copy of each Assigned Sublease, in the actual possession of such Seller.

Section 2.8 Labor and Benefits Matters. Section 2.8(a) of the Disclosure Schedule sets forth, in all material respects, a complete and accurate list of all Store Employees along with the position, status as full-time or part-time, date of hire, union affiliation, base compensation, any other regular compensation (such as bonuses or commissions), status as active or on leave (and if on leave, the nature of the leave and the anticipated date of return), status as exempt or non-exempt for purposes of federal and state overtime pay requirements, and, as of [_____, 2016], accrued but unused sick time or vacation leave or paid time off.

(b) Section 2.8(b) of the Disclosure Schedule sets forth each “multiemployer plan” within the meaning of Section 3(37) or Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) that is subject to Title IV of ERISA, to which such Seller or any Affiliate thereof contributes or has an obligation to contribute or in respect of which such Seller or any Affiliate thereof has any actual or contingent liability, in each case with respect to the Store Employees or the Assets (a “Multiemployer Pension Plan”).

Section 2.9 No Other Representations and Warranties.

Except for the representations and warranties contained in this ARTICLE 2 (including the related portions of the Disclosure Schedule) and the Sellers’ Closing Certificate, no Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of any Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Business and the Assets furnished or made available to Buyer and its representatives (including any information, documents or material made available to Buyer in any electronic data room, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or otherwise in Law.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to the Sellers as follows:

Section 3.1 Organization. Buyer is a [●] duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to carry on its businesses as now being conducted, except where the failure to have such power or authority would not be reasonably expected to prevent or materially delay the consummation of the transactions contemplated hereby.

Section 3.2 Authority. Buyer has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Buyer and no other proceeding (including by its direct or indirect equityholders) on the part of Buyer is necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and constitutes a valid, legal and binding agreement of Buyer, enforceable against Buyer in accordance with its terms assuming the due

authorization, execution and delivery by the other Parties, except (i) to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other Laws affecting the enforcement of creditors' rights generally, and (ii) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding thereof may be brought.

Section 3.3 Consents and Approvals; No Violations. No material filing with or material notice to, and no material permit, authorization, consent or approval of, or material Order of, any Governmental Entity is necessary for the execution and delivery by Buyer of this Agreement or the consummation by Buyer of the transactions contemplated hereby, except for (i) such filings as may be required under the HSR Act and (ii) where the failure to obtain such permits, authorizations, consents or approvals or to make such filings or give such notice would not, individually or in the aggregate, be reasonably expected to prevent or materially delay the consummation of the transactions contemplated hereby. Neither the execution, delivery and performance of this Agreement by Buyer nor the consummation by Buyer of the transactions contemplated hereby will (a) conflict with or result in any breach of any provision of the certificate or articles of incorporation or bylaws (or similar governing documents) of Buyer, (b) result in a material violation or material breach of, or constitute (with or without due notice or lapse of time or both) a material default (or give rise to any material right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Buyer is a party or by which Buyer or any of its properties or assets may be bound or (c) violate any Law or Order applicable to Buyer or any of Buyer's Affiliates or any of their respective properties or assets.

Section 3.4 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or investment banker's fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of Buyer or any of its Affiliates.

Section 3.5 Litigation. Buyer is not a party to any litigation or threatened litigation which would reasonably be expected to affect or prohibit the consummation of the transactions contemplated hereby, or the timing thereof.

Section 3.6 Sufficiency of Funds. Buyer has and will have at Closing sufficient cash on hand or other sources of immediately available funds to enable it to pay the Purchase Price and consummate the transactions contemplated by this Agreement.

Section 3.7 Solvency. Assuming the (i) accuracy in all material respects of the representations and warranties of Sellers set forth in the Transaction Documents (without giving effect to any "materiality," "Seller Material Adverse Effect," "Knowledge" or "knowledge" qualifiers included therein) and (ii) performance in all material respects by Sellers of their obligations under the Transaction Documents, immediately after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business.

No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Sellers. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 3.8 Acknowledgement by Buyer; No Other Representations and Warranties. Buyer acknowledges and agrees that it has conducted its own independent review and analysis of the business, assets, condition and operations of Sellers and the Store Properties. Except for the representations and warranties contained in this ARTICLE 3, neither Buyer nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Buyer.

ARTICLE 4 COVENANTS

Section 4.1 Transfer Taxes.

All transfer, sales and use, value added, registration, documentary, stamp and similar Taxes (including any penalties, interest, additions to Tax and costs and expenses relating to such Taxes, but excluding any transfer gains Taxes), whether for real or personal property, imposed in connection with the sale of the Assets or any other transaction that occurs pursuant to this Agreement shall be borne by Buyer. Buyer shall timely prepare and file all Tax Returns and other filings with respect thereto. Buyer and Sellers will cooperate with each other in the preparation of any such Tax Returns or other filings.

Section 4.2 Further Assurances. If any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request.

Section 4.3 Preservation of Records; Cooperation.

(a) For a period of seven (7) years after the Closing Date, Buyer shall preserve and retain all accounting and auditing books and records included in the Assets (and any material documents relating to any material governmental or non-governmental proceeding) relating to the conduct of the Business and operations of the Store Properties prior to the Closing Date.

(b) For a period of seven (7) years after the Closing Date, Buyer shall provide Sellers with reasonable access, at reasonable times and upon reasonable advance notice, to the materials referenced in Section 4.3(a) in connection with the administration of the Chapter 11 Case, any Tax audit, other government inquiry or investigation, or request, claim or demand by or against a third party (but excluding in connection with any claim or dispute between the Parties), in each case, subject to the imposition of customary confidentiality protections and in compliance with applicable Law. Each Party agrees to cooperate with the other Party, and to

cause its Affiliates and successors to do so, in the preparation for and prosecution of the defense of any Legal Proceeding arising out of or relating to any Store Property related to facts or circumstances that arose prior to the Closing. Such cooperation shall include providing access to the books and records of the cooperating party relating to any such Legal Proceeding and making available evidence within the cooperating party's control and persons needed as witnesses employed by the cooperating party, as reasonably needed for such defense and at reasonable times and upon reasonable advance notice. The requesting party shall reimburse the cooperating party for its actual out-of-pocket costs relating to its cooperation under this Section 4.3(b).

Section 4.4 Public Announcements; Confidentiality.

(a) No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Parties, such approval not to be unreasonably withheld, conditioned or delayed, unless a press release or public announcement is required by applicable Law or an Order of the Bankruptcy Court or, in the case of Buyer, is otherwise consistent with the Confidentiality Agreement (as defined herein). The Parties acknowledge that Sellers shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order and shall make any applicable disclosures regarding this Agreement (i) to the Bankruptcy Court and (ii) as contemplated by the Bid Procedures Order.

(b) Buyer acknowledges and agrees that the Confidentiality Agreement, dated [●], by and between [●] and [●] (the "Confidentiality Agreement"), remains in full force and effect and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of such Confidentiality Agreement, information provided to Buyer pursuant to this Agreement. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 4.4(b) shall nonetheless continue in full force and effect.

Section 4.5 Store Employees.

(a) At the Closing, Buyer shall extend offers of employment to all of the Store Employees and provide such Store Employees at the Closing with (A) a base salary or an hourly wage rate, as applicable, that is no lower than the base salary or hourly wage rate provided to such Store Employee immediately prior to the Closing and (B) substantially comparable employee benefits, including health, welfare and severance benefits that are no less favorable, in the aggregate, considering all benefit plans taken as a whole, and not with reference to any individual employee, than those provided to such Store Employees immediately prior to the Closing (the Store Employees who accept such employment and commence employment on the Closing Date, the "Transferred Employees").

(b) Buyer hereby assumes all obligations with respect to Transferred Employees, if any, under the WARN Act Laws, which obligations arise after the Closing, with respect to the transactions contemplated hereby; and Buyer hereby covenants and agrees to indemnify, defend and hold harmless the Seller Indemnified Parties, from and against all Losses sustained or incurred as a result of any violation of the WARN Act Laws by Buyer or its Affiliates that occurs after the Closing with respect to the Transferred Employees ("Post-Closing").

WARN Liabilities”). Buyer also assumes all immigration-related rights and obligations of Sellers.

(c) With respect to Transferred Employees, Buyer shall carry over any fringe benefit eligibility, length of service, sick leave, vacation not paid out at Closing, paid time off, personal holidays and similar items accrued by Transferred Employees during their term of their employment with Sellers and shall afford FMLA and USERRA entitlements to the Transferred Employees as though they were continuously employed from Sellers to Buyer, counting service with Sellers for determining the Transferred Employees’ eligibility for leave and reinstatement after the sale. With respect to each Transferred Employee, Buyer shall cause: (i) to be waived any waiting periods to participate in any employee benefit plan of Buyer, (ii) to be waived any pre-existing condition exclusions and actively-at-work requirements and (iii) any co-payments, deductibles and other eligible expenses incurred by such Transferred Employees and/or his or her covered dependents during the applicable plan year to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Transferred Employee and his or her covered dependents for the applicable plan year of each comparable employee benefit plan of Buyer. Sellers shall not be obligated to pay, except to the extent required by Law, any accrued but unused vacation to the Transferred Employees upon Closing, and Buyer shall give Transferred Employees unpaid time during the remaining year equivalent to the earned but untaken vacation as of Closing.

(d) It is expressly agreed and understood that neither Buyer on the one hand nor any Seller on the other hand has any right, power or authority to control, direct or regulate the labor relations and human resources policies and procedures of the other, that neither is deemed to constitute the agent or representative of the other, and that neither is liable in any manner whatsoever for the acts or omissions of the other, its agents, representatives or employees.

(e) At all times prior to the Closing Date, Sellers shall have sole and exclusive responsibility for the operation and management of the Store Properties and the Assets related thereto, for the employment and control of the Store Employees, for compliance with all Laws governing the employment relationship, and for compliance with the terms of any employment contracts or employee benefit plans covering the Store Employees or any former employees of any Seller. At all times subsequent to the Closing Date, Buyer shall have sole and exclusive responsibility for the operation and management of the Store Properties and the Assets related thereto, for the employment and control of its employees, for compliance with all Laws governing the employment relationship, and for compliance with the terms of any employment contract or employee benefit plan covering its employees. Each Party shall comply with its respective legal responsibilities under the National Labor Relations Act and federal, state and local employment Laws, with respect to Store Employees at all times pre- and post-closing, as applicable.

(f) Nothing in this Section 4.5, express or implied, shall confer any rights or remedies upon any employee (current or former) of any Seller or any Affiliate thereof or their dependents or representatives and no such Person shall be a direct or intended beneficiary under this Section 4.5 or any other provision of this Agreement.

(g) Within ten (10) days after Closing, Buyer shall provide Sellers with a list of all of each Seller's employees who have accepted Buyer's employment offers.

Section 4.6 Access.

(a) During the period commencing on the date hereof and ending on the Closing Date, each Seller will, and will cause its officers, employees and auditors to, provide Buyer and its accountants, counsel and other authorized representatives reasonable access, not to be unreasonably conditioned or delayed, during normal business hours, under reasonable circumstances and otherwise in accordance with the terms of the Store Leases, to the premises, officers, employees, landlords, properties, contracts, books and records related to the Store Properties, and shall cause the officers of such Seller to otherwise reasonably cooperate with the conduct of due diligence by Buyer and Buyer's representatives.

Section 4.7 Reasonable Efforts; Further Assurances; Cooperation.

(a) Subject to the other provisions hereof, each Party shall use its commercially reasonable efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to obtain all regulatory approvals required to consummate the transactions contemplated by this Agreement and to satisfy all conditions to its obligations hereunder and to cause the Closing to be effected as soon as practicable, but in any event on or prior to the Expiration Date, in accordance with the terms hereof, and shall cooperate fully with each other Party and its officers, directors, managers, employees, agents, counsel, accountants and other designees in connection with any step required to be taken as a part of its obligations hereunder, including the following:

(i) From and after the date hereof, each Seller shall provide Buyer (A) with copies of all motions or pleadings relating to this Agreement, the Sale Order, or the transactions contemplated under any of the foregoing prior to the intended date of filing and (B) with prompt notice of any objections raised by any party in interest with respect to this Agreement, the Sale Order or the transactions contemplated by any of the foregoing.

(ii) Each Party shall promptly and diligently make all filings and submissions and shall use commercially reasonable efforts to take all other actions necessary, proper or advisable under applicable Laws, to obtain any required approvals of any Governmental Entities with jurisdiction over the transactions contemplated hereby required to consummate the transactions contemplated by this Agreement. Each Party shall use commercially reasonable efforts to furnish all information required for any application or other filing to be made pursuant to any applicable Law in connection with the transactions contemplated hereby. Each of the Parties shall cooperate with the others in promptly filing any other necessary applications, reports or other documents with any Governmental Entity having jurisdiction with respect to this Agreement and the transactions contemplated hereby, and in seeking necessary consultation with and prompt favorable action by such Governmental Entity. In furtherance of the foregoing, if required by the HSR Act and if the appropriate filing pursuant to the HSR Act has not

been filed prior to the date hereof, each applicable Party agrees to make an appropriate filing pursuant to the HSR Act with respect to the transactions contemplated by this Agreement within five (5) Business Days after the date hereof and to supply as promptly as practicable to the appropriate Governmental Entity any additional information and documentary material that may be requested pursuant to the HSR Act.

(iii) Sellers and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 2.3(b) of the Disclosure Schedules; provided, however, that no Seller shall be obligated to pay any consideration therefor to any third party from whom consent or approval is requested, in each case other than any Cure Costs required to be paid by such Seller pursuant to this Agreement or the Sale Order. Buyer shall provide to any landlord under a Store Lease, within two (2) Business Days after such landlord's request therefor, copies of financial statements, organizational charts and any other information reasonably requested by any landlord of a Store Lease and which such landlord has the right to request from a potential assignee under the terms of such Store Lease in connection with Seller's request for any consent with respect thereto.

(iv) In the event any Legal Proceeding by any Governmental Entity or other Person is commenced that questions the validity or legality of the transactions contemplated hereby or seeks damages in connection therewith, the Parties shall (A) cooperate reasonably and use all commercially reasonable efforts to defend against such Legal Proceeding, (B) in the event an injunction or other Order is issued in any such Legal Proceeding, use commercially reasonable efforts to have such injunction or other Order lifted, and (C) cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated hereby.

(v) Without limiting the generality of Buyer's undertakings pursuant to this Section 4.7(a), Buyer agrees to use its reasonable best efforts and to take any and all steps necessary to avoid or eliminate any impediment under any antitrust, competition or trade regulation Law that may be asserted by any Governmental Entity or any other party so as to enable the parties hereto to consummate the transactions contemplated by this Agreement as promptly as possible, including proposing, negotiating, committing to and effecting, by consent decree, hold separate orders, or otherwise, the sale, divestiture or disposition of any of its assets, properties or businesses or of the assets, properties or businesses to be acquired by it pursuant to this Agreement as are required to be divested in order to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order in any suit or proceeding, which would otherwise have the effect of materially delaying or preventing the consummation of the transactions contemplated by this Agreement. In addition, Buyer shall use its reasonable best efforts to defend through litigation on the merits any claim asserted in court by any party in order to avoid entry of, or to have vacated or terminated, any Order (whether temporary, preliminary or permanent) that would prevent the consummation of the Closing.

(b) Buyer shall use its commercially reasonable efforts to obtain, as soon as reasonably practicable after the date hereof, all material authorizations, approvals, Orders, consents, licenses, certificates, permits, registrations and qualifications from each

Governmental Entity (collectively the “Permits”) required to be obtained by it in order to own the Assets and operate the Store Properties and Sellers shall cooperate with Buyer in connection therewith and shall cooperate with Buyer to secure from the applicable Governmental Entity consent to the issuance of any necessary temporary or provisional Permits required for Buyer’s operation of the Store Properties following the Closing. To the extent new Permits are not required or the existing Permits do not require consent, approval or notice to the applicable Governmental Entity prior to the Closing, Buyer shall use its commercially reasonable efforts to update ownership, contact and other information, as necessary, or advisable, with the applicable Governmental Entity as soon as reasonably practicable after the Closing. The Parties shall cooperate and each of them shall comply with and carry out any and all commercially reasonable requirements, demands, requests, rules, and regulations of the local issuing authority, so as to expedite the approval of the issuance of such Permits prior to the Closing or submission of updated information after the Closing. In connection with the foregoing, each Seller shall, and shall cause each of its Affiliates and representatives to, use its commercially reasonable efforts to provide to Buyer, at Buyer’s cost and expense, all cooperation reasonably requested by Buyer in connection with Buyer obtaining all Permits required for Buyer’s ownership and operation of the Store Properties and the Assets, including promptly providing all documentation and information in the possession of such Seller as may be reasonably requested by Buyer and/or any Governmental Entity in connection therewith. With respect to any liquor (or similar) license or liquor or other alcoholic beverage inventory conveyed hereunder, Buyer shall comply with all applicable Laws. For avoidance of doubt, it shall not be a condition precedent to Buyer’s obligations under this Agreement that the issuance of any such Permits be accomplished.

(c) From time to time prior to the Closing, Sellers shall have the right (but not the obligation) to supplement or amend the Disclosure Schedule hereto with respect to any matter hereafter arising or of which they become aware after the date hereof (each a “Schedule Supplement”). Any disclosure in any such Schedule Supplement shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of the indemnification or termination rights contained in this Agreement or of determining whether or not the conditions set forth in Section 5.2(a) have been satisfied; provided, however, that if Buyer has the right to, but does not elect to, terminate this Agreement within two (2) Business Days of its receipt of such Schedule Supplement, then Buyer shall be deemed to have irrevocably waived any right to terminate this Agreement with respect to such matter and, further, shall have irrevocably waived its right to any further claim or action with respect to such matter.

Section 4.8 Keys and Codes.

At the Closing, Sellers shall deliver to Buyer’s designated representative the keys and access and security codes to the Store Properties and the combinations to all safes at the Store Properties, and Buyer shall immediately make arrangements to have such locks and codes changed.

Section 4.9 Bulk Sales Laws.

The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Assets to Buyer and waive all claims related to the non-compliance therewith.

Section 4.10 Removal of Excluded Assets; Cure Costs.

Sellers shall use commercially reasonable efforts to remove any Excluded Assets located at the Store Properties within fifteen (15) days after the Closing. From and after the Closing, Buyer will, and will cause its employees to, provide Sellers and their representatives reasonable access, during reasonable hours and under reasonable circumstances, to the Store Properties in order to facilitate such removal of Excluded Assets. Notwithstanding anything in any Transaction Document to the contrary, Buyer shall be solely responsible for all Cure Costs.

**ARTICLE 5
CLOSING CONDITIONS**

Section 5.1 Conditions to Obligations of All Parties

The obligation of each Party to consummate the transactions contemplated by this Agreement is subject to the fulfillment on or prior to the Closing of each of the following conditions, any one or more of which (to the extent permitted by applicable Law) may be waived by such Party:

(a) No temporary restraining Order, Law, preliminary or permanent injunction, cease and desist Order, or other Order issued by any Governmental Entity, shall be in effect prohibiting or preventing the transactions contemplated by this Agreement.

(b) The filings of Buyer and Sellers required pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

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

Section 5.2 Conditions to Obligation of Buyer.

The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the fulfillment on or prior to the Closing of each of the following conditions, any one or more of which (to the extent permitted by applicable Law) may be waived by Buyer:

(a) The representations and warranties of Sellers contained in this Agreement shall be true, correct and complete in all respects, both as of the date of this Agreement and as of the Closing (other than such representations and warranties that are made as of a specified date, which representations and warranties shall be true, correct and complete as of such date), except

where the failure of such representations and warranties to be true, correct and complete would not have a Seller Material Adverse Effect.

(b) Sellers shall have performed or complied in all material respects with their material obligations and covenants required by this Agreement to be performed or complied with by them at or prior to the Closing.

(c) Sellers shall have delivered to Buyer a certificate, dated as of the Closing Date, executed by a duly authorized officer of each Seller to the effect that the conditions set forth in Section 5.2(a) and Section 5.2(b) have been satisfied (the “Seller’s Closing Certificate”).

(d) Sellers shall have made the deliveries to Buyer and the Escrow Holder required under Section 1.4(a) and Section 1.4(c).

Section 5.3 Conditions to Obligation of Seller.

The obligation of each Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment on or prior to the Closing of each of the following conditions, any one or more of which (to the extent permitted by applicable Law) may be waived by such Seller:

(a) The representations and warranties of Buyer contained in this Agreement shall be true, correct and complete in all respects, both as of the date of this Agreement and as of the Closing (other than such representations and warranties that are made as of a specified date, which representations and warranties shall be true, correct and complete as of such date), except where the failure of such representations and warranties to be true, correct and complete would not have a material adverse effect on Buyer’s ability to consummate the transactions contemplated hereby.

(b) Buyer shall have performed or complied in all material respects with its material obligations and covenants required by this Agreement to be performed or complied with by Buyer at or prior to the Closing.

(c) Buyer shall have delivered to Sellers a certificate, dated as of the Closing Date, executed by Buyer to the effect that the conditions set forth in Section 5.3(a) and Section 5.3(b) have been satisfied (the “Buyer’s Closing Certificate”).

(d) Buyer shall have made the deliveries to Sellers and the Escrow Holder required under Section 1.4(b) and Section 1.4(c).

ARTICLE 6 TERMINATION

Section 6.1 Termination of Agreement.

This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing as provided below:

(a) Buyer and Sellers may terminate this Agreement by mutual written consent at any time prior to the Closing;

(b) Buyer may terminate this Agreement by giving written notice to Sellers at any time prior to the Closing if:

(i) the Chapter 11 Case of any Seller or any of its affiliated debtors is converted to a case under chapter 7 or is dismissed.

(c) Buyer may terminate this Agreement (so long as Buyer is not then in material breach of any of its representations, warranties, material covenants or material agreements contained in this Agreement) by giving written notice to Sellers at any time prior to the Closing:

(i) in the event that any Seller has breached any representation, warranty, covenant or agreement contained in this Agreement, which breach would cause the failure of any condition set forth in Section 5.2 to be satisfied and Buyer shall have provided written notice of such breach to Sellers, and such breach, if curable, has continued without cure for a period of ten (10) days after receipt of such notice by Sellers;

(ii) if the Closing shall not have occurred on or before the Expiration Date by reason of the failure of any condition precedent set forth in Section 5.2 to have occurred (unless such failure shall be due to the failure of Buyer to perform or comply with any of the representations, warranties, material covenants, material agreements, or conditions of this Agreement to be performed or complied with by it prior to Closing);

(d) Sellers may terminate this Agreement (so long as Sellers are not then in material breach of any of their representations, warranties, material covenants or material agreements contained in this Agreement) by giving written notice to Buyer at any time prior to the Closing:

(i) in the event Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement which breach would cause the failure of any condition set forth in Section 5.3 to be satisfied and Sellers shall have provided written notice of such breach to Buyer, and the breach, if curable, has continued without cure for a period of ten (10) days after receipt of such notice by Buyer; or

(ii) if the Closing shall not have occurred on or before the Expiration Date by reason of the failure of any condition precedent set forth in Section 5.3 to have occurred (unless such failure shall be due to the failure of Sellers to perform or comply with any of the representations, warranties, material covenants, material agreements, or conditions of this Agreement to be performed or complied with by them prior to Closing).

Section 6.2 Effect of Termination.

If any Party terminates this Agreement pursuant to Section 6.1, all rights and obligations of the Parties hereunder shall terminate without any Liability of any Party to the other Parties except for the Liabilities of a Party then in material breach (in which case, any non-breaching Party shall retain all rights and remedies in equity or Law as a result of such breach); provided, that, in connection with any termination of this Agreement, the aggregate Liability of Buyer or Seller shall not exceed the amount of the Buyer Deposit. Notwithstanding the foregoing, this Section 6.2, Section 4.4, Section 6.3 and ARTICLE 7 shall survive any termination of this Agreement.

Section 6.3 Buyer Deposit.

In the event of a termination of this Agreement pursuant to Section 6.1(a), Section 6.1(b), or Section 6.1(c)(i), Buyer shall be entitled to disbursement of the Buyer Deposit (including, for the avoidance of doubt, all interest and other earnings accrued and earned thereon) from the Escrow Account. In the event of a termination of this Agreement pursuant to Section 6.1(c)(ii) or Section 6.1(d), Sellers shall be entitled to disbursement of the Buyer Deposit (including, for the avoidance of doubt, all interest and other earnings accrued and earned thereon) from the Escrow Account. In the event that this Agreement is terminated, then Sellers and Buyer will deliver to the Escrow Holder, promptly following the effective date of any such termination, joint written instructions to pay Sellers or Buyer, as applicable, the Buyer Deposit from the Escrow Account, subject to the terms of the Escrow Agreement.

**ARTICLE 7
MISCELLANEOUS**

Section 7.1 Definitions.

(a) For purposes of this Agreement, the terms set forth below have the following meanings:

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities or otherwise.

“Base Amount” means an amount equal to \$[●].

“Bid Procedures Order” means that certain Order (I) Scheduling a Hearing on the Approval of the Sale of the Debtors’ Core Stores, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, and Bid Protections and the Form and Manner of Notice Thereof, and (III) Granting Related Relief [Docket No. _____].

“Business” means the business currently conducted by Sellers at the Store Properties.

“Business Day” means any day of the year on which national banking institutions in the City of New York, NY are open to the public for conducting business and are not required or authorized to close.

“Closing Cash” means all cash on hand in cash registers and safes at the Store Properties as of the Effective Time.

“Closing Cash Consideration” means an amount in cash, which shall be equal to the following: (i) the Base Amount, plus (ii) the amount of the Closing Cash.

“Cure Costs” means any and all amounts, costs or expenses that must be paid or actions or obligations that must be performed or satisfied pursuant to section 365(b)(1) of the Bankruptcy Code to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Buyer of the Assigned Contracts and Store Leases, as determined by the Bankruptcy Court or as agreed to by the applicable Seller and the non-Seller counterparty to the applicable Assigned Contract or Store Lease.

“Disclosure Schedule” means the disclosure schedule dated the date hereof regarding this Agreement that has been provided by Sellers to Buyer, as updated or supplemented in accordance with the terms hereof.

“Expiration Date” means June 19, 2017.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Improvements” means the buildings, fixtures, lighting, electrical, mechanical, plumbing and heating, ventilation and air conditioning systems and improvements (including the USTS) located on or attached to the Store Properties, which are owned by any Seller and which upon installation or expiration of the relevant Store Lease do not become the property of the landlord thereunder, if any.

“Inventory” means merchandise inventory, supplies, containers, labels, packaging material, maintenance supplies, beverages (alcoholic and non-alcoholic), food and other similar items, whether in broken or unbroken units, which are located in or held for sale at the Store Properties as of the Effective Time.

“Knowledge of Sellers” or words of similar effect, regardless of case, means the actual knowledge of the board of managers of Sellers.

“Law” means any federal, state, local or foreign law (including common law), statute, code, ordinance, rule, regulation or other requirement or rule of law of any Governmental Entity.

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private), claims, hearings, investigations, charges, complaints, demands or governmental proceedings.

“Liability” means any liability, obligation or commitment of any nature whatsoever (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, or otherwise), including any liability for Taxes and any accounts payable.

“Lien” means, with respect to any property or asset, any mortgage, lien, pledge, charge, claim, security interest, community or other marital property interest, equitable interest, license, option, right of way, easement, encroachment, servitude, right of first offer or first refusal, buy/sell agreement or other encumbrance with respect to the use, construction, voting, transfer, receipt of income or exercise of any other attribute of ownership in respect of such property or asset.

“Losses” means all damages, losses, liabilities, obligations, claims of any kind, interest or expenses (including reasonable attorneys’ fees and expenses, but excluding all lost profits, diminution in value, consequential damages, incidental damages and punitive damages).

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award.

“Person” means an individual, partnership, corporation, limited liability company, joint stock company, unincorporated organization or association, trust, joint venture, association or other organization, whether or not a legal entity, or a Governmental Entity.

“Permitted Lien(s)” means (i) liens for Taxes that are not yet due and payable, (ii) statutory liens of landlords, liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due, (iii) liens incurred or deposits made in the ordinary course of business in connection with worker’s compensation, unemployment insurance and other types of social security, (iv) purchase money liens, (v) minor irregularities of title which do not materially detract from the value or use of such property, (vi) liens to secure obligations to landlords, lessors or renters under leases or rental agreements or underlying leased property, and (vii) liens which do not materially impair the value of any material portion of the Assets as a whole.

“Real Property Documents” means leases, subleases, options, contracts, extension letters, easements, reciprocal easements, assignments, termination agreements, subordination agreements, nondisturbance agreements, recognition agreements, estoppel certificates, development agreements, entitlement agreements, zoning agreements, written approvals and authorizations and written signage rights and approvals, surveys, amendments or supplements to any of the foregoing, and recorded memoranda of any of the foregoing, in each case, with respect to Store Properties.

“Sale Order” means an order of the Bankruptcy Court, in substantially the form set forth in Exhibit D: (a) approving (i) this Agreement, the other Transaction Documents and the execution, delivery, and performance by Sellers of this Agreement, the other Transaction

Documents and the other instruments and agreements contemplated hereby and thereby; (ii) the sale of the Assets to Buyer free and clear of all liens, other than any Permitted Liens or any Assumed Liabilities; (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein and in the other Transaction Documents; and (iv) the assumption and assignment to Buyer of the Assigned Contracts on the terms set forth herein and in the other Transaction Documents; (b) determining that Buyer is a good faith purchaser; and (c) providing that the Closing will occur in accordance with the terms and conditions hereof.

“Seller Indemnified Parties” means the Sellers and their Affiliates and their respective officers, directors, shareholders, trustees, members, partners, managers, limited partners, agents, advisors and employees.

“Seller Material Adverse Effect” means any effect, event, occurrence, development or change that, individually or in the aggregate, has had, or could reasonably be expected to have, a material adverse effect on the assets, properties, results of operations or conditions (financial or otherwise) of the Business or on the ability of any Seller to consummate the transactions contemplated by this Agreement (excluding any effect, event, occurrence, development or change resulting from or related to (i) the filing of the Chapter 11 Case, (ii) compliance by any Seller with the terms of this Agreement, the Sale Order or the Bid Procedures Order, (iii) general economic conditions or relating to those industries specific to the Business, (iv) the authorized public announcement of the transactions contemplated by this Agreement, (v) national or international political or social conditions, including the engagement by the United States in hostilities, (vi) changes in financial, banking or securities markets, (vii) changes in GAAP following the date hereof, or (viii) changes to any Law or Order following the date hereof).

“Store Employees” means all employees of any Seller or any Affiliate thereof at the Store Properties as of immediately prior to the Closing Date.

“Store Properties” means the stores operated by any Seller or any Affiliate thereof at the locations identified on Exhibit 1.1 hereto.

“Tax” or “Taxes” means all United States federal, state, local and foreign taxes including: (i) taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, profits, sales, use, excise, withholding, ad valorem, stamp, transfer, value added, registration, documentary, stamp, gains, escheat, unclaimed property, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, net worth, license, severance, occupation, premium, environmental, customs duties, disability, real property, personal property, alternative or add-on minimum, estimated, or other tax of any kind or any charge of any kind in the nature of (or similar to) taxes whatsoever, including any interest, penalty, or addition thereto, whether disputed or not; and (ii) any liability for the payment of any amounts of the type described in clause (i) of this definition as a result of being a member of an affiliated, consolidated, combined or unitary group for any period, as a result of any tax sharing or tax allocation agreement, arrangement or understanding, or as a result of being liable for another person’s taxes as a transferee or successor, by contract or otherwise.

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

“Transaction Document” means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, each Assignment and Assumption of Lease, the Escrow Agreement and the other agreements, instruments and documents required to be delivered hereunder on the date hereof or in connection with the Closing.

“USTS” means underground storage tanks and related equipment, including piping and dispensing equipment.

“WARN Act Laws” means Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar state, local or foreign plant closing Regulation

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Assets	<u>Section 1.1(a)</u>
Assigned Contract	<u>Section 1.1(a)(iii)</u>
Assigned Sublease	<u>Section 1.1(a)(ii)</u>
Assignment and Assumption Agreement	<u>Section 1.4(a)</u>
Assignment and Assumption of Lease	<u>Section 1.4(a)</u>
Assumed Liabilities	<u>Section 1.1(c)</u>
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bill of Sale	<u>Section 1.4(a)</u>
Buyer	Preamble
Buyer Deposit	<u>Section 1.2(b)</u>
Buyer’s Closing Certificate	<u>Section 5.3(c)</u>
Casualty/Condemnation Store	<u>Section 1.6</u>
Chapter 11 Case	Recitals
Closing	<u>Section 1.3</u>
Closing Date	<u>Section 1.3</u>
Confidentiality Agreement	<u>Section 4.4(b)</u>
Deposits	<u>Section 1.1(a)(ix)</u>
Effective Time	<u>Section 1.3</u>
Equipment	<u>Section 1.1(a)(v)</u>
Escrow Account	<u>Section 1.2(b)</u>
Escrow Agreement	<u>Section 1.2(b)</u>
Escrow Holder	<u>Section 1.2(b)</u>

<u>Term</u>	<u>Section</u>
Excluded Asset	<u>Section 1.1(b)</u>
Excluded Liability	<u>Section 1.1(d)</u>
Files and Records	<u>Section 1.1(a)(vi)</u>
Governmental Entity	<u>Section 2.3(a)</u>
Guarantees	<u>Section 1.1(a)(iv)</u>
Leased Real Property	<u>Section 2.5(a)</u>
Non-Party Affiliate	<u>Section 7.144</u>
Party	Preamble
Permits	<u>Section 4.7(b)</u>
Prepaid Expenses	<u>Section 1.1(a)(ix)</u>
Proceeds	<u>Section 1.6</u>
Purchase Price	<u>Section 1.2(a)</u>
Seller	Preamble
Seller's Closing Certificate	<u>Section 5.2(c)</u>
Store Lease	<u>Section 2.5(a)</u>

Section 7.2 Expenses. Except as expressly set forth in this Agreement, all fees and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement, including the fees and disbursements of counsel, financial advisors and accountants, shall be paid by the Party incurring such fees or expenses; provided that Buyer shall be responsible for all filing and other similar fees payable in connection with any filings or submissions under the HSR Act.

Section 7.3 Entire Agreement; Amendment; Waiver; Assignment. This Agreement (a) constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof, (b) can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by Buyer, in the case of an amendment, supplement, modification or waiver sought to be enforced against Buyer, or the applicable Seller, in the case of an amendment, supplement, modification or waiver sought to be enforced against such Seller; and (c) shall not be assigned by any Party (whether by operation of Law or otherwise) without the prior written consent of the other Parties.

Section 7.4 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given by personal delivery, nationally recognized overnight courier, certified mail or facsimile at the following addresses (or to such other address as a Party may have specified by notice given to the other Party pursuant to this provision):

To Buyer:

[Buyer]
[•]
[•]
Facsimile: [•]
Attention: [•]

with a copy (which shall not constitute notice to Buyer) to:

[•]
[•]
[•]
Facsimile: [•]
Attention: [•]

To Sellers:

Marsh Supermarkets Company, LLC
[•]
[•]
Facsimile: [•]
Attention: [•]

with a copy (which shall not constitute notice to Sellers) to:

Young Conaway Stargatt & Taylor, LLC
1000 North King Street
Wilmington, DE 19801
Attn: Vincent C. Thomas, Esquire

Any such notice or communication shall be deemed to have been received (i) when delivered, if personally delivered, (ii) on the next Business Day after dispatch, if sent postage pre-paid by nationally recognized, overnight courier guaranteeing next Business Day delivery, (iii) on the 5th Business Day following the date on which the piece of mail containing such communication is posted, if sent by certified mail, postage prepaid, return receipt requested, and (iv) on confirmation of receipt when transmitted via facsimile; provided, that if confirmation of receipt is not received on a Business Day or is received after 5:00 p.m. New York, NY time on a Business Day, such notice or communication shall be deemed to have been received the following Business Day.

Section 7.5 Governing Law; Jurisdiction. 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. Without limiting any Party's right to appeal any order of the Bankruptcy Court, the Parties agree that if any dispute arises out of or in connection with this Agreement or any of the documents executed hereunder or in connection herewith, the Bankruptcy Court shall have exclusive personal and subject matter jurisdiction and shall be the exclusive venue to resolve any and all disputes relating to the transactions contemplated hereby and any of the documents executed hereunder or in connection herewith. Such court shall have sole jurisdiction over such matters and the Parties affected thereby and Buyer and each Seller each hereby consent and submit to such jurisdiction; provided, however, that if the Chapter 11 Case shall have closed and cannot be reopened, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the State of Delaware and any appellate court thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 7.4, unless another address has been designated by such Party in a notice given to the other Parties in accordance with the provisions of Section 7.4.

Section 7.6 Exhibits and Schedules; Construction; Interpretation. If and to the extent any information required to be furnished in any Section of the Disclosure Schedule is contained in this Agreement or in any other Section of the Disclosure Schedule, such information

shall be deemed to be included in all Sections of the Disclosure Schedule in which the information would otherwise be required to be included to the extent that the disclosure is reasonably apparent from its face to be applicable to such other Sections of the Disclosure Schedule. Disclosure of any fact or item in any Section of the Disclosure Schedule shall not be considered an admission by any Seller that such item or fact (or any non-disclosed item or information of comparable or greater significance) represents a material exception or fact, event or circumstance or that such item has had or would reasonably be expected to have a Seller Material Adverse Effect, that such item or fact will in fact exceed any applicable threshold limitation set forth in the Agreement and shall not be construed as an admission by any Seller of any non-compliance with, or violation of, any third party rights or any applicable Law of any Governmental Entity, such disclosures having been made solely for the purposes of creating exceptions to the representations made herein or of disclosing any information required to be disclosed under the Agreement. When a reference is made in this Agreement to an article, section, paragraph, clause, schedule or exhibit, such reference shall be deemed to be to this Agreement unless otherwise indicated. The text of all schedules is incorporated herein by reference. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” 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. As used in this Agreement: (a) the terms “hereof,” “herein,” and “herewith” and words of similar import will, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, (b) the word “if” and other words of similar import shall be deemed, in each case, to be followed by the phrase “and only if”, (c) any reference herein to “Dollars” or “\$” shall mean United States dollars, (d) the use of “or” herein is not intended to be exclusive (i.e., “or” shall mean and/or unless the context otherwise requires), (e) references herein to a Person are also to its successors and permitted assigns, and any reference herein to a Governmental Entity shall be deemed to include reference to any successor thereto, and (f) whenever the phrase “ordinary course of business” is used in this Agreement without being followed by the words “consistent with past practice”, it will be deemed to be followed by such words.

Section 7.7 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party and its successors and permitted assigns and, except as expressly set forth in Section 4.5(b), nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

Section 7.8 Severability. If any term or other provision of this Agreement is invalid, illegal or unenforceable, all other provisions of this Agreement shall remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

Section 7.9 AS IS CONDITION; DISCLAIMER OF WARRANTIES; EXCLUSIVITY OF REPRESENTATIONS AND WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ARTICLE 3, BUYER WILL BE ACQUIRING THE ASSETS ON THE CLOSING DATE IN THEIR THEN EXISTING CONDITION “AS

IS”, “WHERE IS”, SUBJECT TO ALL LEGAL REQUIREMENTS, ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION OF THE ASSETS MIGHT REVEAL, WITHOUT WARRANTIES, EITHER EXPRESS OR IMPLIED, “WITH ALL FAULTS” INCLUDING BOTH LATENT AND PATENT DEFECTS, AND THE EXISTENCE OF HAZARDOUS MATERIALS, IF ANY.

(b) EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ARTICLE 3, NO WARRANTIES OR REPRESENTATIONS HAVE BEEN MADE OR ARE MADE, AND NO RESPONSIBILITY HAS BEEN OR IS HEREBY ASSUMED BY ANY SELLER, AND EACH SELLER EXPRESSLY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL SUCH OTHER WARRANTIES AND REPRESENTATIONS WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE CONDITION OR USE OF THE ASSETS, OR AS TO ANY OTHER FACT OR MATTER RELATED TO THE ASSETS OR ANY PORTION THEREOF, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO BUYER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA).

(c) WITHOUT LIMITING THE FOREGOING, EXCEPT TO THE EXTENT THAT THE SAME MAY BE OTHERWISE EXPRESSLY SET FORTH IN ARTICLE 3, NO WARRANTIES OR REPRESENTATIONS HAVE BEEN MADE OR ARE MADE, AND NO RESPONSIBILITY HAS BEEN OR IS HEREBY ASSUMED, BY SELLER (AND EACH SELLER EXPRESSLY DISCLAIMS, AND BUYER HEREBY WAIVES ALL SUCH OTHER WARRANTIES AND REPRESENTATIONS WHATSOEVER, EXPRESS OR IMPLIED), AS TO THE ENVIRONMENTAL CONDITION OF THE ASSETS INCLUDING THE PRESENCE OF HAZARDOUS MATERIALS, IF ANY, WHETHER LOCATED ABOVE OR BELOW GROUND, OR ON OR OFF THE PREMISES, OF THE STORE PROPERTIES. TO THE EXTENT THAT SELLERS PROVIDE TO BUYER ANY INFORMATION REGARDING ANY OF THE FOREGOING OR THE RESULTS OF ANY INSPECTION OR ANY ENGINEERING OR ENVIRONMENTAL REPORTS, SELLERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXCEPT TO THE EXTENT THAT THE SAME MAY BE OTHERWISE EXPRESSLY SET FORTH IN ARTICLE 3, WITH RESPECT TO THE CONTENT, ACCURACY, COMPLETENESS, METHODOLOGY OR ANY OTHER MATTER CONCERNING SUCH REPORTS.

(d) BUYER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION 7.9 WERE NEGOTIATED AND AGREED TO BY BUYER AND SELLERS AND WERE A MATERIAL FACTOR IN THE DETERMINATION OF THE AMOUNT OF THE PURCHASE PRICE OF THE ASSETS.

(e) In particular, and without limiting the generality of the foregoing, Buyer acknowledges and agrees that, in making its decision to enter into this Agreement and consummate the transactions contemplated hereby, it is not relying on any information or materials, oral, written or in electronic format, distributed or made available prior to the date hereof, in each case, other than matters set forth in this Agreement, including the Disclosure Schedule. With respect to any projection, forecast or business plan delivered by or on behalf

of Sellers or any of its Affiliates to Buyer, Buyer acknowledges that (i) there are uncertainties inherent in attempting to make such projections, forecasts and plans, (ii) it is familiar with such uncertainties, (iii) it is taking full responsibility for making its own evaluation of the adequacy and accuracy of all such projections, forecasts and plans so furnished to it, and (iv) it shall have no claim of any kind whatsoever against any Person with respect thereto.

(f) With respect to any appraisals or environmental reports of any Seller reviewed by Buyer in connection with the transactions contemplated hereunder, Buyer acknowledges and agrees that neither Sellers nor any of their agents has made or makes any representations or warranties to Buyer, and Sellers expressly disclaim all representations and warranties with respect to any appraisals or environmental reports of Sellers, including, but not limited to, any representations as to or concerning (i) the means, methodologies or protocols of the third party consultants, (ii) the accuracy or completeness of said reports, (iii) the scope of work upon which the reports are based, (iv) the appropriateness of the scope of work for the assessment of the market value of the Assets or the environmental matters relating to the Store Properties, as applicable, (v) the insurable value of the Assets, (vi) the replacement cost value of the Assets, (vii) the accuracy or reasonableness of the conclusions of the third party consultants, and/or (viii) any suggested or required remediation or other clean up of any Store Property. Sellers expressly disclaims any obligation or responsibility, express or implied, to update or supplement any reports.

(g) TO THE EXTENT REQUIRED TO BE OPERATIVE, THE DISCLAIMERS OF WARRANTIES CONTAINED HEREIN ARE “CONSPICUOUS” DISCLAIMERS FOR PURPOSES OF ANY APPLICABLE LAW.

Section 7.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, portable document format or other electronic means shall be effective as delivery of a manually executed counterpart to this Agreement.

Section 7.11 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. EACH OF THE PARTIES EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY OF THE PARTIES MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 7.12 Survival.

The representations and warranties of each Seller and of Buyer contained in this Agreement or in any certificate delivered pursuant hereto (whether or not contained in ARTICLE 2 or ARTICLE 3) shall not survive, and shall terminate at, the Closing, and none of the Sellers nor Buyer shall have liability after the Closing for any breach of any of its representations or warranties contained in this Agreement or in any certificate delivered pursuant hereto. The covenants or other agreements of each Seller and of Buyer contained in this Agreement or in any certificate delivered pursuant hereto which are to be performed prior to Closing shall not survive, and shall terminate at, the Closing, and none of the Sellers nor Buyer shall have liability after the Closing for any breach of any such covenant or other agreement contained in this Agreement or in any certificate delivered pursuant hereto. The covenants and other agreements of each Seller and of Buyer contained in this Agreement or in any certificate delivered pursuant hereto which are to be performed after the Closing shall survive the Closing for the period contemplated by their terms (or if no such survival period is contemplated, then indefinitely).

Section 7.13 Time of Essence.

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 7.14 Non-Recourse.

All claims or causes of action (whether in contract or in tort, in law or in equity, by statute or otherwise) that may be based upon, arise out of or relate to this Agreement or the other Transaction Documents, or the negotiation, execution or performance of this Agreement or the other Transaction Documents (including any representation or warranty made in or in connection

with this Agreement or the other Transaction Documents or as an inducement to enter into this Agreement or the other Transaction Documents), may be made only against the Persons that are expressly identified as parties hereto and thereto. No Person who is not a named party to this Agreement or the other Transaction Documents, including any past, present or future director, officer, employee, incorporator, member, partner, stockholder, equityholder, controlling person, Affiliate, agent, attorney or representative of any named party to this Agreement or the other Transaction Documents (the “Non-Party Affiliates”) shall have any liability (whether in contract or in tort, in law or in equity, by statute or otherwise, or based upon any theory that seeks to impose liability of an entity party against its owners or Affiliates, including by or through theories of equity, agency, control, instrumentality, single business enterprise, piercing the veil or undercapitalization) for any obligations or liabilities arising under, in connection with or related to this Agreement or the other Transaction Documents (as the case may be) or for any claim based on, in respect of, or by reason of this Agreement or the other Transaction Documents (as the case may be) or the negotiation or execution hereof or thereof; and each Party waives and releases all such liabilities, claims and obligations against any such Non-Party Affiliates.

Section 7.15 Bankruptcy Court Approval.

The Parties acknowledge that this Agreement shall not become effective until it has been approved by the Bankruptcy Court pursuant to the Sale Order.

* * * * *

IN WITNESS WHEREOF, each of the Parties has caused this Asset Purchase Agreement to be duly executed on its behalf as of the day and year first above written.

[BUYER]

By: _____
Name:
Title:

MARSH SUPERMARKETS COMPANY, LLC

By: _____
Name:
Title:

[OTHER SELLERS]

Exhibit 1.1
Store Properties

Store No.	Store Name	Address

Exhibit A
Form of Bill of Sale

[See attached.]

Exhibit B
Form of Assignment and Assumption Agreement

[See attached.]

Exhibit C
Form of Assignment and Assumption of Lease

[See attached.]

Exhibit D
Form of Sale Order

[See attached.]

EXHIBIT D

Core Stores

Marsh

Core Stores

store				
#	Street Address	City, State	Zip Code	Landlord
2	5802 West U.S. 52	New Palestine, IN	46163	Yingchun Cui
3	1825 Kinser Pike	Bloomington, IN	47404	H&R Canada
13	315 14th St.	Logansport, IN	46947	M&G Equities
14	2140 East 116th Street	Carmel, IN	46032	H&R Canada
20	843 E. Main St.	Brownsburg, IN	46112	SBMC Indiana C/O
21	10679 N. Michigan Rd.	Zionsville, IN	46077	H&R Canada
27	2410 N. Salisbury	W. Lafayette, IN	47906	Kelly John Good
31	1013 Forest Ave.	Marion, IN	46952	H&R Canada
33	1107 S. Shannon	Van Wert, OH	45891	Van Wert Plaza, LLC
34	5 Boone Village	Zionsville, IN	46077	RSE Realty
37	14450 Mundy Drive	Noblesville, IN	46060	Lustbader-Ruskin Investments
38	5624 Georgetown Rd.	Indianapolis, IN	46254	Cross Creek LLC
40	11625 Fox Road	Indianapolis, IN	46236	H&R Canada
41	5151 E. 82nd Street	Indianapolis, IN	46250	Spirit Realty Capital Inc
42	1815 Albany Street	Beech Grove, IN	46107	AAG
44	2904 S. State Rd. 135	Greenwood, IN	46143	Marsh Greenwood, LLC
45	3075 E. 25th St.	Columbus, IN	47201	Pardieck Development
49	621 N. University Blvd.	Middletown, OH	45042	Mandzak Enterprises
54	123 S. Kingston Dr.	Bloomington, IN	47401	Crane Partners, LLC
59	982 N. Market	Troy, OH	45373	900 N. Market, LLC
66	208 Southway Blvd E.	Kokomo, IN	46902	Madison BJ Partners LLC
71	1711 N. Walnut	Hartford City, IN	47348	MSI Walnut Street Hartford
74	223 Aukerman	Eaton, OH	45320	Isaac Malekan
75	1500 W. McGalliard	Muncie, IN	47304	Danari Muncie Plaza, Inc.
77	2250 Teal Rd.	Lafayette, IN	47905	Lafayette Station
78	1515 S State Road 37	Elwood, IN	46036	Carter Development
83	6965 W. 38th St.	Indianapolis, IN	46254	AAG
89	899 E. Jefferson	Tipton, IN	46072	Tipton Investment Properties
90	1435 W. 86th St.	Indianapolis, IN	46260	Sitehawk Property
93	2350 Broadripple Ave.	Indianapolis, IN	46220	Stan Blumenfeld
95	1800 Burlington Dr.	Muncie, IN	47302	JessJen Realty, LLC
96	715 S. Tillotson	Muncie, IN	47302	H&R Canada
101	3015 W. US 36	Pendleton, IN	46064	H&R Canada
109	227 W. Michigan Street	Indianapolis, IN	46204	Axis FC, LLC
116	12520 E. 116th St.	Fishers, IN	46037	KO Capital One, LLC
206	4755 East 126th Street	Carmel, IN	46033	O'Malias Investment
209	320 North New Jersey St	Indianapolis, IN	46204	GP-CM Lockerbie Partners, LLC
311	2810 Nichol Ave.	Anderson, IN	46011	Barb Investment
318	1508 Virginia Ave.	Connersville, IN	47331	Thomas O. Hecht
325	501 National Road West	Richmond, IN	47374	Iron Pad Property

327 736 W. Main Street	Greensburg, IN	47240 B & K, Inc.
328 1900 N. Walnut Ave.	Muncie, IN	47303 Wise Food Company
338 1500 Plaza Drive	Hamilton, OH	45013 Twinbrook Plaza, LLC
343 1401 N Washington St.	Kokomo, IN	46901 MSI Washington St. Kokomo