

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re : Chapter 11  
ACORN ELSTON, LLC :  
 : Case No. 10-14807 (SHL)  
 :  
Debtor. :  
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**STIPULATION, AGREEMENT AND ORDER BY AND AMONG  
ACORN ELSTON, LLC, ROAD BAY INVESTMENTS, LLC, AND JOHN B.  
COLEMAN, IN RESPECT OF (A) MOTION OF ROAD BAY INVESTMENTS,  
LLC FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC  
STAY PURSUANT TO 11 U.S.C. § 362(D)(1) AND BANKRUPTCY RULE 4001; (B)  
DEBTOR’S SECOND MOTION, AS AMENDED, FOR AN ORDER EXTENDING ITS  
EXCLUSIVE PERIODS WITHIN WHICH TO FILE AND SOLICIT ACCEPTANCES  
OF ITS CHAPTER 11 PLAN; AND (C) CERTAIN MATTERS RELATED THERETO**

This Stipulation, Agreement and Order (the “Stipulation”) is made by and among (i) Acorn Elston, LLC, as debtor and debtor in possession in the above-referenced chapter 11 case (the “Debtor”); (ii) Road Bay Investments, LLC (“Road Bay” or, the “Lender”), as successor to the interest of Allstate Life Insurance Company (“Allstate”) in that certain Mortgage Note, dated April 19, 2007 (the “Note”) and Mortgage, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing, dated as of April 19, 2007 (the “Mortgage”); and (iii) John B. Coleman, as guarantor of certain of the obligations of the Debtor pursuant to that certain Nonrecourse Carveout Guaranty Agreement, in favor of the Lender, dated April 19, 1997 (“Coleman” and, together with the Debtor and the Lender, the “Parties”).

A. General Background

WHEREAS, on September 11, 2010 (the “Commencement Date”), the Debtor filed a voluntary petition for relief (the “Bankruptcy Case”) under chapter 11 of title 11 of the

United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”);

WHEREAS, the Debtor remains a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code, provided that, since the Commencement Date, the Debtor’s assets have remained in the possession, custody, and control of, and continue to be managed and operated by, the receiver appointed by the Circuit Court of Cook County, Illinois County Department, Chancery Division (the “Illinois Court”), C. Michelle Panovich of Mid-America Asset Management, Inc. (the “Receiver”), pursuant to an order of the Illinois Court dated May 15, 2009 (the “Receiver Order”);

WHEREAS, as of the date hereof, no trustee, examiner, or statutory committee of unsecured creditors has been appointed in the Bankruptcy Case;

WHEREAS, the Debtor owns the real property, together with the buildings and improvements thereon, commonly known as Elston Plaza Shopping Center, located in Chicago, Illinois (“Elston Plaza”);

WHEREAS, on April 19, 2007, pursuant to the Mortgage, the Debtor pledged to the Lender Elston Plaza and certain related assets, all as more particularly described in the Mortgage (collectively, the “Collateral”);

WHEREAS, in connection with the execution of the Note and the Mortgage, on April 19, 1997, Coleman, sole shareholder and managing member of the Debtor, executed in his individual capacity that certain Nonrecourse Carveout Guaranty Agreement, in favor of the Lender, dated April 19, 1997 (the “Guaranty” and, the Guaranty together with the Note, the Mortgage, and all documents related thereto or executed in connection therewith, the “Loan Documents”);

WHEREAS, on or about September 25, 2009, Allstate assigned to its affiliate, Road Bay, the Loan Documents and all rights and its claims thereunder, and as of the date hereof, Road Bay has not sold, assigned, or otherwise transferred to any third party any portion of such claims;

WHEREAS, in addition to the claims of Road Bay under the Loan Documents, Road Bay also has acquired a total of nine (9) general unsecured trade claims against the Debtor, and as of the date hereof, Road Bay has not sold, assigned, or otherwise transferred to any third party any portion of any such claims;

B. Debtor's Authorization to Use Cash Collateral

WHEREAS, on January 19, 2011, the Court entered the Order (I) Authorizing the Use of Cash Collateral Nunc Pro Tunc to the Petition Date, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, (IV) Granting Relief Under Section 543(d) of the Bankruptcy Code Nunc Pro Tunc to the Petition Date and (V) Granting Related Relief [Docket No. 41] (as amended, extended, or supplemented from time to time, and as may be further amended, extended, or supplemented, the "Cash Collateral Order");

WHEREAS, pursuant to the Cash Collateral Order currently in effect, the Debtor is authorized to use the Lender's cash collateral through and including August 31, 2011, subject to the agreed budget attached to the Cash Collateral Order, and the other terms and provisions of the Cash Collateral Order;

C. Debtor's Motion to Extend Exclusive Periods

WHEREAS, pursuant to section 1121(b) of the Bankruptcy Code, the Debtor's initial exclusive period in which to file a chapter 11 plan was to expire on January 10, 2011 (the "Exclusive Filing Period"), and the Debtor's initial exclusive period in which to solicit

acceptances of such plan was to expire on March 10, 2011 (the “Exclusive Solicitation Period” and, together with the Exclusive Filing Period, the “Exclusive Periods”);

WHEREAS, by successive motions of the Debtor and pursuant to corresponding orders of the Court, the Exclusive Periods have been extended on several occasions;

WHEREAS, on February 28, 2011, the Debtor filed with the Court a motion seeking a further extension of its Exclusive Periods [Docket No. 55] (as subsequently amended and as may be further amended, the “Second Exclusivity Motion”);

WHEREAS, on March 10, 2011, the Lender filed with the Court an objection to the Second Exclusivity Motion [Docket No. 60] (the “Exclusivity Objection”);

WHEREAS, pursuant to an order of the Court dated March 9, 2011, the Court extended the Exclusive Filing Period and extended, to the extent necessary to avoid its expiration, the Exclusive Solicitation Period, “until an order is entered by the [Bankruptcy] Court disposing of the [Second Exclusivity] Motion” [See Docket No. 58 at 1-2];

WHEREAS, the Debtor has adjourned the hearing on the Second Exclusivity Motion to August 19, 2011 at 10:00 a.m. (Eastern Standard Time), and the Lender has consented to such adjournment;

D. Lender’s Motion for Relief from the Automatic Stay

WHEREAS, on April 7, 2011, the Lender filed with the Court the Motion of Road Bay Investments LLC for an Order Granting Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1) and Bankruptcy Rule 4001 [Docket No. 73] (the “Lift Stay Motion”);

WHEREAS, on May 3, 2011, the Debtor filed with the Court its Objection to the Lift Stay Motion [Docket No. 88] (the “Lift Stay Objection”);

WHEREAS, the Lender has adjourned the hearing on the Lift Stay Motion to August 19, 2011 at 10:00 a.m. (Eastern Standard Time), and the Debtor has consented to such adjournment;

WHEREAS, subsequent to the filing of the Lift Stay Motion, the Lift Stay Objection, the Second Exclusivity Motion, and the Exclusivity Objection, the Debtor, the Lender, and Coleman, engaged in extensive, good faith, arm's length negotiations in an effort to consensually resolve the Lift Stay Motion and the Second Exclusivity Motion, and certain other related matters (all such matters, the "Disputed Matters"), and through such efforts and negotiations, the Parties have reached agreement regarding a proposed resolution of the Disputed Matters, which agreement is embodied in that certain Acorn Elston/Road Bay Term Sheet, dated August 18, 2011 (the "Term Sheet"), a copy of which is attached hereto as Exhibit 1, and which, upon entry by the Court of this Stipulation, shall fully and finally resolve the Disputed Matters;

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

A. Cash Collateral, Lift Stay Motion, Second Exclusivity Motion

1. Upon the date that the Court "so orders" this Stipulation (such date, the "Stipulation Entry Date"), the Lift Stay Motion and the Exclusivity Motion are hereby adjourned *sine die*.

2. Upon the Stipulation Entry Date, the Debtor's Exclusive Periods are hereby extended through and including the earlier of (i) the Sale Process End Date (as defined below), and (ii) the Early Termination Date (as defined below).

3. Upon the Stipulation Entry Date, the Cash Collateral Order, with a budget to be agreed to by and among the Parties and the Receiver, shall be and hereby is deemed (i)

extended through and including the earlier to occur of (A) the Sale Process End Date, (B) the Early Termination Date, and (C) the occurrence of any Event of Default contained in the Cash Collateral Order, subject to the terms and provisions of the Cash Collateral Order; (ii) amended to provide that no adequate protection payments or other monies received by the Lender prior to or during the Bankruptcy Case shall reduce the Settlement Payment (as defined below); and (iii) modified to provide that the occurrence of any of the Events of Default set forth in Section 13(e) of the Cash Collateral Order shall automatically trigger the Lender's right to exercise its rights and remedies under the Cash Collateral Order, and under this Stipulation, without any notice being required or any notice or cure period having expired.

B. Milestone Schedule

4. The Debtor shall comply with the following milestones (each, a "Milestone") unless waived in writing by the Lender in its sole and absolute discretion, it being acknowledged by the Debtor, its estate, and Coleman that time is of the essence with respect to each and every Milestone:

(a) As of August 8, 2011, (the "Settlement Date"), the Debtor shall pursue (and, to the extent already in process, continue to pursue) the marketing of substantially all of the Debtor's assets (collectively, the "Assets") to prospective purchasers (collectively, the "Prospective Purchasers");

(b) Within forty-five (45) days after the Settlement Date (i.e., on or before September 22, 2011), the Debtor shall have (i) selected the Prospective Purchaser offering the best and highest aggregate purchase price for the Assets (such Prospective Purchaser, the "Successful Purchaser"), which aggregate purchase price (the "Sale Price") shall be in an amount not less than \$16,850,000 (it being understood by and among the Parties that, in the event the Sale Price equals or exceeds \$17.4 million, and as of the Closing the Lender has not received the

Jewel Release (as defined below), then \$400,000 of the Sale Price payable by the Successful Purchaser in accordance with Paragraph 8 hereof (not constituting Excess Sale Proceeds (as defined below) due to the Lender) shall be used to fund the Jewel Escrow upon the Closing); (ii) executed a binding term sheet with the Successful Purchaser with respect to the sale of the Assets at the Sale Price (the “Sale”), subject to due diligence and other standard contingencies; and (iii) if and to the extent that the proposed Sale of the Assets to the Successful Purchaser contemplates the provision of third-party financing, received an executed commitment letter(s) from a financial institution(s) with respect to any such contemplated third-party financing, subject to due diligence and other standard contingencies.

(c) Within sixty (60) days after the Settlement Date (i.e., on or before October 7, 2011), the Debtor shall have filed with the Court a motion consistent with the terms hereof, satisfactory to the Debtor and Coleman, and reasonably satisfactory to the Lender (the “Sale Motion”), seeking entry of the Sale Order;

(d) Within ninety (90) days after the Settlement Date (i.e., on or before November 7, 2011), (i) the Debtor shall have filed with the Court the definitive documentation evidencing (A) the proposed Sale to the Successful Purchaser, executed by the Debtor and the Successful Purchaser, and (B) the proposed funding of the Jewel Escrow, executed by the person or entity to provide such funding, in each case consistent with the Term Sheet and this Stipulation, satisfactory to the Debtor and Coleman, and reasonably satisfactory to the Lender (the “Definitive Documentation”); and (ii) the Successful Purchaser shall have completed all of its due diligence with respect to the proposed Sale, or if the Successful Purchaser has not completed its due diligence with respect to the proposed Sale as of such date, the Successful Purchaser shall have waived its right to terminate the Definitive Documentation on account of any such outstanding due diligence;

(e) Within five (5) business days after the date upon which the Definitive Documentation is filed with the Court, or if the Court is not available to hear the Sale Motion on such date, then the next available date upon which the Court is available to hear the Sale Motion, the Court shall have approved the Sale, and shall have entered the Sale Order; and

(f) Within fifteen (15) days after entry of the Sale Order by the Court, but in no event later than November 30, 2011, the consummation of the Sale (the "Closing") shall have occurred (such date, the "Sale Process End Date").

5. Upon the earlier of 12:01 a.m. (Eastern Standard Time) on (i) the first calendar day after the Sale Process End Date, in the event the Closing has not then occurred, or (ii) the fourth (4<sup>th</sup>) business day following the date upon which the Lender delivers to the Debtor, with copies to the Debtor's undersigned counsel and the Office of the United States Trustee for the Southern District of New York (and a copy filed by the Lender substantially simultaneously with the Court), written notice of the alleged failure by the Debtor to satisfy any Milestone, or any other alleged breach by the Debtor or Coleman of the Term Sheet or this Stipulation (such date, the "Early Termination Date"), (A) the Debtor's Exclusive Periods shall automatically terminate; (B) the Debtor and Coleman shall each be deemed to have agreed that the Lender is entitled to allowed claims against the Debtor's estate for, and the indefeasible payment of, the full amount of the Lender's claims under the Loan Documents, including, without limitation, the Lender Asserted Claim (as defined in the Cash Collateral Order), all outstanding principal, interest, fees, charges and costs, including fees and costs of professionals and advisors, without defense, offset or counterclaim (such claim, including, without limitation, the Lender Asserted Claim (the "Full Lender Claim")); (C) the Debtor and Coleman shall be deemed to have consented to entry of an order by the Court, in the form attached to the Term Sheet as Exhibit E1 or Exhibit E2 (whichever the Lender elects, in its sole discretion) and made a part of the Term

Sheet and this Stipulation, providing for, as selected by the Lender, (i) modification of the automatic stay to permit the Lender immediately to exercise all applicable remedies, including, without limitation, foreclosure, without defense, offset, or counterclaim, and/or (ii) the sale of the Assets to the Lender (or its assignee) free and clear of liens, interests and claims pursuant to section 363 of the Bankruptcy Code pursuant to a credit bid by the Lender in the amount of \$16,850,000; (D) the Debtor and Coleman shall be deemed to have consented to the Receiver delivering to the Lender, at the Lender's direction, all Cash Collateral (as defined in the Cash Collateral Order) in the Receiver's possession at that time, net of monthly operating expenses reflected in the budget approved by the Lender, and continuing to deliver Cash Collateral (as defined in the Cash Collateral Order) to the Lender in accordance with the terms of the Receiver Order; and (E) the Debtor and Coleman shall be deemed to have consented to the entry by the Illinois Court, at the Lender's request, of a foreclosure order in the form attached to the Term Sheet as Exhibit F, and made a part of the Term Sheet and this Stipulation, and shall be prohibited from asserting, and shall be deemed to have waived, any objection to the Lender's foreclosure in respect of any or all of the Debtor's Assets. For the avoidance of doubt, upon the earlier of the Sale Process End Date and the Early Termination Date, Coleman shall be deemed to have waived, in his individual capacity, any and all objections or defenses to any or all of the remedies and actions of the Lender set forth in the Term Sheet or provided herein, provided, however, that neither Coleman nor the Lender has or shall be deemed to have waived any rights or defenses that may currently exist under applicable non-bankruptcy law to contest the enforceability of the Guaranty, and any and all such rights and defenses are fully reserved and preserved.

6. In the event of a failure by the Debtor or Coleman (as applicable) to (i) remit the Settlement Payment (as defined below) to the Lender; (ii) deliver the Lender

Release (as defined below) to the Lender; (iii) deliver the Jewel Escrow and Indemnity (as defined below) to the Lender; or (iv) timely satisfy each of the Milestones in accordance with this Stipulation, or in the event the Debtor fails to comply with any of its other obligations under the Term Sheet or this Stipulation, then all of the Lender's rights in respect of the Debtor, the Assets, Coleman, and any other entity are fully reserved and preserved, the Lender shall not be bound by its undertakings in the Term Sheet and this Stipulation (other than as set forth in Paragraph 5 above, and the section of the Term Sheet captioned "Failure to Timely Meet Conditions"), the Lender shall not be required to deliver the Debtor Release (as defined below) or the Coleman Release (as defined below), and the provisions of the Term Sheet and this Stipulation shall not prejudice or be used against the Lender in any way in any proceeding or otherwise. For the avoidance of doubt, in the event such a failure occurs, the Debtor and Coleman will, nonetheless, be bound by their respective covenants and obligations contained in the Term Sheet and this Stipulation.

C. Sale Order

7. The order entered by the Court approving the Sale (the "Sale Order") shall (i) be consistent with the terms of the Term Sheet and this Stipulation; (ii) contain (among other terms) the provisions set forth on Exhibit D to the Term Sheet; (iii) be satisfactory to the Debtor and Coleman; and (iv) be reasonably satisfactory to the Lender. Further, the Sale Order shall provide for, among other things, (i) the Sale of the Assets to the Successful Purchaser by private sale pursuant to section 363(b) of the Bankruptcy Code, free and clear of all liens, interests and claims (except as otherwise provided in the Definitive Documentation), with such liens, interests, and claims to attach to the proceeds of the Sale pursuant to and in accordance with the Bankruptcy Code; (ii) assumption and assignment of all executory contracts and unexpired leases of the Debtor to the Successful Purchaser; (iii) direct payment, upon Closing, by the Successful

Purchaser to the Lender of cash equal to the amount of the Settlement Payment (as defined below), in full and final settlement, satisfaction, and discharge of any and all claims of the Lender against the Debtor, its estate, and Coleman, including, without limitation, any and all claims relating to the Note, the Mortgage, the Guaranty, any of the other Loan Documents, and/or Elston Plaza; (iv) release by the Lender of its security interests arising under the Mortgage; (v) effectuation of the Jewel Escrow and Indemnity (as defined below), and the Lender Release (as defined below); and (vi) effectuation of the Debtor Release (as defined below) and the Coleman Release (as defined below).

8. The “Settlement Payment” referenced in Paragraph 6 above and elsewhere in this Stipulation, and the corresponding provisions of the Term Sheet, which shall be incorporated into the Sale Order, means infeasible payment from the Successful Purchaser to the Lender, upon Closing, by wire transfer of immediately available funds, of cash equal to the amount of \$16,850,000, plus (ii) solely in the event the Sale Price exceeds \$16,850,000 (any such amount in excess of \$16,850,000, the “First Excess Sale Proceeds Amount”), one hundred percent (100%) of the First Excess Sale Proceeds Amount up to \$17,000,000, plus (iii) solely in the event the Sale Price exceeds \$17,400,000 (any such amount in excess of \$17,400,000, the “Second Excess Sale Proceeds Amount” and, together with the First Excess Sale Proceeds Amount, the “Excess Sale Proceeds”), fifty percent (50%) of the Second Excess Sale Proceeds Amount, plus (iv) any and all Adequate Protection Payments (as defined in the Cash Collateral Order) accrued but unpaid (including prorated portions thereof) as of the Closing; provided, for the avoidance of doubt, notwithstanding anything in the Term Sheet or this Stipulation to the contrary, (i) the First Excess Sale Proceeds Amount shall be triggered only in the event the Sale Price exceeds \$16,850,000; (ii) the Second Excess Sale Proceeds Amount shall be triggered only in the event that the Sale Price exceeds \$17,400,000; (iii) the Settlement Payment shall not

exceed the Full Lender Claim; and (iv) to the extent, if any, that the Settlement Payment exceeds the Full Lender Claim, such excess amount shall be paid by the Successful Purchaser to, and retained by, the Debtor.

9. The “Lender Release” referenced in Paragraph 6 above and elsewhere in this Stipulation, and the corresponding provisions of the Term Sheet, which shall be incorporated into the Sale Order, means a full release, waiver, and discharge of liability given by each of the Debtor, its estate (binding on all parties in interest including, without limitation, any chapter 7 or chapter 11 trustee appointed in the Bankruptcy Case), and Coleman, including, without limitation, in Coleman’s capacity as managing member and shareholder of the Debtor and in Coleman’s capacity as personal guarantor of certain of the obligations of the Debtor pursuant to the Guaranty, in favor of the Lender and its current and former officers, directors, employees, members, affiliates, advisors, attorneys, investors, professionals, accountants, investment bankers, consultants, agents and other representatives (including their respective current and former officers, directors, employees, members, affiliates, advisors, professionals and other representatives) of such entities (collectively, the “Lender Released Parties”) from any claims (including any avoidance claims arising under Chapter 5 of the Bankruptcy Code or otherwise), obligations, suits, judgments, damages, demands, debts, rights (including any right to surcharge the Lender’s Collateral), causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence in any way related to the Debtor, Coleman, the Bankruptcy Case, the Assets, the Sale Order and/or the subject matter of, or the transactions or events giving rise to, any claim or interest that is treated in the Sale Order that any such releasing entity or individual has, had or may have (collectively, the “Released Matters”).

10. The “Debtor Release” referenced in Paragraph 6 above and elsewhere in this Stipulation, and the corresponding provisions of the Term Sheet, which shall be incorporated into the Sale Order, means a full release, waiver and discharge of liability given by the Lender and Allstate, and any entity controlling, controlled by, or under common control with the foregoing, and the employees, officers, directors, and shareholders of the foregoing (collectively, the “Lender Releasing Parties”), to the Debtor, its estate, and to the current and former officers, directors, employees, members, affiliates, advisors, attorneys, investors, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective current and former officers, directors, employees, members, affiliates, advisors, professionals and other representatives) of the foregoing, with respect to the Released Matters.

11. The “Coleman Release” referenced in Paragraph 6 above and elsewhere in this Stipulation, and the corresponding provisions of the Term Sheet, which shall be incorporated into the Sale Order and, in addition, delivered by the Lender and Allstate (on behalf of themselves) to Coleman simultaneously with the Closing in accordance with Paragraph 14 hereof and the corresponding provision of the Term Sheet, means a full release, waiver and discharge of liability given by the Lender and Allstate (on behalf of themselves) to Coleman, and the current and former advisors, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective current and former officers, directors, employees, members, affiliates, advisors, professionals and other representatives) of Coleman, with respect to the Released Matters including, without limitation, the Guaranty (it being understood by and among the Parties that the Coleman Release to be effectuated pursuant to the Sale Order shall be provided by and on behalf of all of the Lender Releasing Parties in favor of Coleman).

12. The “Jewel Escrow and Indemnity” referenced in Paragraph 6 above and elsewhere in this Stipulation, and the corresponding provisions of the Term Sheet, which shall be incorporated into the Sale Order, means (i) the deposit in escrow upon the Closing pursuant to an escrow agreement in substantially the form attached as Exhibit B to the Term Sheet and made a part of the Term Sheet and this Stipulation (the “Jewel Escrow”), by the Successful Purchaser, or Coleman, of cash in the amount of \$400,000 (it being understood by and among the Parties that, in the event the Sale Price equals or exceeds \$17.4 million, and as of the Closing the Lender has not received the Jewel Release (as defined below), then \$400,000 of the Sale Price payable by the Successful Purchaser in accordance with Paragraph 8 hereof (not constituting Excess Sale Proceeds due to the Lender) shall be used to fund the Jewel Escrow upon the Closing), and (ii) the indemnity agreement substantially in the form attached as Exhibit A to the Term Sheet and made a part of the Term Sheet and this Stipulation, by the Debtor and Coleman, to indemnify the Lender and hold the Lender harmless from, any and all claims that Jewel Food Stores, Inc. (“Jewel”) may have against the Lender arising from and after the date hereof under Section 2.A. of that certain Settlement Agreement, dated August 14, 2009, between Jewel and Allstate (the “Jewel Settlement Agreement”) including, without limitation, any damages, costs and expenses associated therewith whether or not arising under Section 2.A. of the Jewel Settlement Agreement (the “Jewel Indemnity” and, such claims subject to the Jewel Indemnity, the “Subject Jewel Claims”); provided, the Jewel Indemnity does not and shall not be deemed to apply to, and the Subject Jewel Claims do not and shall not be deemed to include, any and all claims of Jewel (i) which accrue in the event that the Lender acquires title to Elston Plaza by way of foreclosure or deed-in-lieu of foreclosure, or (ii) in respect of a failure by the Lender to remit the funds contained in the Jewel Escrow to pay the Settlement Payment (as defined in the Jewel Settlement Agreement) to Jewel, in the event that, upon Closing of the Sale, such payment is due to Jewel in

accordance with Section 2.A. of the Jewel Settlement Agreement; provided further, that, pursuant to the Jewel Escrow and the Sale Order, all cash remaining in the Jewel Escrow shall be released to (i) the Debtor or its assignee upon receipt by the Lender of a full release, waiver and discharge of all Subject Jewel Claims that Jewel might have in respect of the Lender Released Parties, including, without limitation, any and all claims of Jewel against the Lender arising under Section 2.A. of the Jewel Settlement Agreement, such release to be in substantially the form of Exhibit C to the Term Sheet and made a part of the Term Sheet and this Stipulation (the “Jewel Release”), and the payment of all amounts due to the Lender under the Jewel Indemnity, or (ii) Jewel, if required by Jewel as a condition to its delivery of the Jewel Release to the Lender.

13. In accordance with the terms of the Term Sheet and this Stipulation, the Lender shall accept, in full and final settlement and satisfaction of any and all of its claims against the Debtor and Coleman, including, without limitation, any and all of its claims under the Loan Documents, all, but not less than all, of the Settlement Payment, the Lender Release, and the Jewel Escrow and Indemnity, provided that (i) each and every Milestone is timely satisfied in accordance with the Term Sheet and this Stipulation; and (ii) the Settlement Payment, the Lender Release, the Jewel Escrow, and the Jewel Indemnity are received by the Lender, by no later than the Sale Process End Date, time being of the essence in all respects for all purposes hereunder and under the Term Sheet.

D. Certain Conditions Precedent to Closing of the Sale

14. The conditions precedent to the Closing shall include: (i) the Sale Order shall (A) have been entered by the Court; (B) have become effective in accordance with its terms; and (C) not have been reversed, stayed, or modified, and the time period applicable with respect to the initiation of any appeal or motion for reconsideration or vacatur of the Sale Order

shall have expired (and no such appeal or motion shall be pending); (ii) all actions, documents, and agreements necessary to consummate the Sale shall have been executed; and (iii) the Cash Collateral Order shall be in full force and effect immediately prior to the Closing, shall not have terminated, and there shall be no ongoing Event of Default thereunder. For the avoidance of doubt, contemporaneously with the Closing, the Lender and Allstate (on behalf of themselves) shall deliver the fully-executed and effective Coleman Release to Coleman. Such effectuation of the Coleman Release by the Lender and Allstate shall be separate from, and in addition to, the effectuation of the Coleman Release by the Lender Releasing Parties provided in the Sale Order.

E. Further Assurances

15. The Parties shall execute and deliver such additional documents, instruments, conveyances, and assurances, and take such further actions, as may be reasonably requested by either Party to carry out the provisions of the Term Sheet and this Stipulation, and to give effect to the transactions contemplated under the Term Sheet and this Stipulation. No Party shall take any action in the Court or any other court, that is or would be inconsistent with the provisions of the Term Sheet and this Stipulation. The Debtor and Coleman agree that the Assets shall not be sold or transferred other than in accordance with the terms of the Term Sheet or this Stipulation. For the avoidance of doubt, the Sale to the Successful Purchaser shall not directly or indirectly be structured to avoid or reduce any benefits to which the Lender is entitled under the Term Sheet or this Stipulation, including, without limitation, amounts that would comprise the First Excess Sale Proceeds Amount or the Second Excess Sale Proceeds Amount.

F. Miscellaneous

16. Neither the Term Sheet, this Stipulation, nor the settlement provided for therein and herein, nor any statement made, action or position taken, or document prepared or executed in connection with the negotiation, execution or implementation of the Term Sheet or

this Stipulation, shall be deemed to be, or construed as, an admission by any Party of any liability, wrongdoing, act or matter or that any claim or defense has or lacks merit.

17. This Stipulation contains the entire stipulation by and between the Parties with respect to the subject matter hereof, and all prior understandings or stipulations, if any, are merged into this Stipulation. This Stipulation shall not be modified, altered or amended without the proper written consent of all Parties hereto.

18. This Stipulation shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws.

19. For purposes of construing this Stipulation, none of the Parties shall be deemed to have been the drafter of this Stipulation.

20. In the event of any inconsistency between the Term Sheet and this Stipulation, the terms and provisions of this Stipulation shall control.

21. This Stipulation may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Stipulation. Facsimile or other electronic copies of signatures on this Stipulation are acceptable, and a facsimile or other electronic copy of a signature on this Stipulation is deemed an original.

22. Each person signing this Stipulation represents and warrants that he or she has been duly authorized and has the requisite authority to execute and deliver this Stipulation on behalf of the Parties on whose behalf this Stipulation is executed and to bind the respective Parties to the terms and conditions of this Stipulation. This Stipulation shall be binding upon all successors and assigns of each of the Parties to this Stipulation.

23. Each of the Parties agrees to submit to the jurisdiction of the Court for any action to enforce or interpret this Stipulation, the Term Sheet or any of the Exhibits attached to the Term Sheet.

24. Except as otherwise provided herein in connection with the Settlement Date, this Stipulation, and the obligations of the Parties hereunder, shall be effective upon the Stipulation Entry Date.

IN WITNESS WHEREOF and in agreement herewith, the Parties, as with respect to the Debtor and the Lender by and through their undersigned counsel, and as with respect to Coleman on behalf of himself, have executed and delivered this Stipulation as of the date set forth below.

Dated: August 18, 2011  
New York, New York

CADWALADER, WICKERSHAM & TAFT LLP

BINGHAM McCUTCHEN LLP

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Attorneys for Road Bay Investments, LLC

JOHN B. COLEMAN

/s/ John B. Coleman  
John B. Coleman, in his individual capacity

SO ORDERED by the Court this 23<sup>rd</sup> day of August, 2011.

/s/ Sean H. Lane  
HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Term Sheet**

## Acorn Elston, LLC / Road Bay Investments, LLC Term Sheet

August 18, 2011

Reference is made to (i) that certain Mortgage Note, dated as of April 19, 2007 (the "Note") executed by Acorn Elston, LLC (the "Debtor") in favor of Road Bay Investments, LLC (the "Lender"), as successor-in-interest to Allstate Life Insurance Company, in the original principal amount of \$15,000,000; (ii) the Mortgage, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing, dated April 19, 2007 (the "Mortgage") executed by the Debtor in favor of the Lender; (iii) the Nonrecourse Carveout Guaranty Agreement, dated as of April 19, 2007 (the "Guaranty") executed by John B. Coleman ("Coleman") and, together with the Debtor and the Lender, the "Parties") in favor of the Lender (the Note, the Mortgage and the Guaranty, and all documents related thereto or executed in connection therewith, are hereinafter collectively referred to as the "Loan Documents"); (iv) the Order, dated May 15, 2009 (the "Receiver Order"), appointing C. Michelle Panovich as the Receiver (the "Receiver") for the Property; and (v) that certain Order (I) Authorizing the Use of Cash Collateral Nunc Pro Tunc to the Petition Date, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, (IV) Granting Relief Under Section 543(d) of the Bankruptcy Code Nunc Pro Tunc to the Petition Date and (V) Granting Related Relief, dated January 19, 2011 (ECF No. 41) (as amended, extended or supplemented from time to time, the "Cash Collateral Order"). Unless otherwise defined in this term sheet (the "Term Sheet") or otherwise noted, capitalized terms below shall have the definitions provided for in the Loan Documents.

Set forth below is a summary of the terms pursuant to which the Lender, the Debtor, and Coleman are willing to settle the Lender's claims against the Debtor in the Debtor's chapter 11 case (the "Chapter 11 Case") pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and against Coleman in his individual capacity as guarantor of certain of the Debtor's obligations pursuant to the Guaranty. Such settlement shall be implemented pursuant to (i) a stipulation and order in form and substance satisfactory to the Parties (the "Stipulation and Order"), to be submitted to the Bankruptcy Court on or before August 18, 2011, and (ii) the Sale Order (as defined below). This Term Sheet is **for settlement purposes only-- subject to FRE 408 and any similar state court provisions-- and is not admissible in any proceeding for any purpose.** Until the Term Sheet is executed by all of the Parties, the terms contained herein and the Stipulation and Order remain subject to documentation, the review and approval of each of the Parties, as well as the internal approval of the Lender. After the Term Sheet is executed by all Parties, the effectiveness of the Term Sheet will remain subject only to approval of the Bankruptcy Court.

### Adjournment of Litigation

Upon the date that the Bankruptcy Court "so orders" the Stipulation and Order (the "Stipulation Entry Date"), and pursuant to the Stipulation and Order, (i) the Motion of Road Bay Investments LLC For an Order Granting Relief From the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1) and Bankruptcy Rule 4001, dated April 17, 2011 (the "Lift Stay Motion") and the Debtor's Second Motion, as Amended, For an Order Extending Its Exclusive Periods Within Which to File and Solicit Acceptances of Its Chapter 11 Plan, dated February 28, 2011, as amended shall be adjourned *sine die*; and (ii) the Debtor's exclusive periods in which to file and solicit acceptances of a plan of reorganization shall be extended through and including the earlier of (A) the Sale Process End Date (as defined below), and (B) the Early Termination Date (as defined below).

## Lender Consideration

In accordance with the terms of the Stipulation and Order, the Lender shall accept, in full and final settlement and satisfaction of any and all of its claims against the Debtor and Coleman, including, without limitation, any and all of its claims under the Loan Documents, all, but not less than all, of the Settlement Payment, the Lender Release and the Jewel Escrow and Indemnity (each as defined below), provided that (x) each and every Milestone (as defined below) is timely satisfied, and (y) the Settlement Payment, the Lender Release and the Jewel Escrow and Indemnity are received by Lender, by no later than the Sale Process End Date (as defined below), time being of the essence in all respects for all purposes hereunder and under the Stipulation and Order. The "Settlement Payment" shall mean indefeasible payment from the Successful Purchaser to the Lender, upon Closing (as defined below), by wire transfer of immediately available funds, of cash equal to the aggregate amount of (i) \$16,850,000, plus (ii) solely in the event the Sale Price (as defined below) exceeds \$16,850,000 (any such amount in excess of \$16,850,000, the "First Excess Sale Proceeds Amount"), one hundred percent (100%) of the First Excess Sale Proceeds Amount up to \$17,000,000, plus (iii) solely in the event the Sale Price (as defined below) exceeds \$17,400,000 (any such amount in excess of \$17,400,000, the "Second Excess Sale Proceeds Amount" and, together with the First Excess Sale Proceeds Amount, the "Excess Sale Proceeds"), fifty percent (50%) of the Second Excess Sale Proceeds Amount, plus (iv) any and all adequate protection payments accrued but unpaid (including prorated portions thereof) as of the Closing. For the avoidance of doubt, notwithstanding anything contained herein or in the Stipulation and Order to the contrary, (i) the First Excess Sale Proceeds Amount shall be triggered only in the event the Sale Price (defined below) exceeds \$16,850,000; (ii) the Second Excess Sale Proceeds Amount shall be triggered only in the event the Sale Price (defined below) exceeds \$17,400,000; (iii) the Settlement Payment shall not exceed the Full Lender Claim (as defined below) and (iv) to the extent, if any, that the Settlement Payment exceeds the Full Lender Claim, such excess amount shall be paid by the Successful Purchaser (as defined below) to, and retained by, the Debtor.

The Lender Release shall be incorporated into the Sale Order (as defined below), and shall mean a full release, waiver and discharge of liability given by each of the Debtor, its estate (binding on all parties in interest including, without limitation, any Chapter 11 or 7 trustee) and Coleman, including, without limitation, in Coleman's capacity as managing member and shareholder of the Debtor and in Coleman's capacity as personal guarantor of certain of the obligations of the Debtor pursuant to the Guaranty, in favor of the Lender and its current and former officers, directors, employees, members, affiliates, advisors, attorneys, investors, professionals, accountants, investment bankers, consultants, agents and other representatives (including their respective current and former officers, directors, employees, members, affiliates, advisors, professionals and other representatives) of such entities (collectively, the "Lender Released Parties") from any claims (including any avoidance

claims arising under Chapter 5 of the Bankruptcy Code or otherwise), obligations, suits, judgments, damages, demands, debts, rights (including any right to surcharge the Lender's collateral), causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence in any way relating to the Debtor, Coleman, the Chapter 11 Case, the Debtor's assets, the Sale Order (as defined below) and/or the subject matter of, or the transactions or events giving rise to, any claim or interest that is treated in the Sale Order (as defined below) that any such releasing entity or individual has, had or may have (collectively, the "Released Matters", and the release of the Lender Released Parties as set forth above, the "Lender Release").

The "Jewel Escrow and Indemnity" shall mean (i) the deposit in escrow upon the Closing pursuant to an escrow agreement in substantially the form of Exhibit B attached hereto and made a part hereof, by the Successful Purchaser, or Coleman, of cash in the amount of \$400,000 (it being understood by and among the Parties that, in the event the Sale Price equals or exceeds \$17.4 million, and as of the Closing the Lender has not received the Jewel Release (as defined below), then \$400,000 of the Sale Price payable by the Successful Purchaser in accordance with the section of this Term Sheet captioned "Lender Consideration", and Paragraph 8 of the Stipulation and Order (not constituting Excess Sale Proceeds due to the Lender), shall be used to fund the Jewel Escrow upon the Closing), and (ii) the indemnity agreement substantially in the form of Exhibit A attached hereto and made a part hereof by the Debtor and Coleman, to indemnify the Lender and hold the Lender harmless from, any and all claims that Jewel Food Stores, Inc. ("Jewel") may have against the Lender arising from and after the date hereof under Section 2.A. of that certain Settlement Agreement, dated August 14, 2009, between Jewel and Allstate (the "Jewel Settlement Agreement") including, without limitation, any damages, costs and expenses associated therewith whether or not arising under Section 2.A. of the Jewel Settlement Agreement (the "Jewel Indemnity" and, such claims subject to the Jewel Indemnity, the "Subject Jewel Claims"); provided, the Jewel Indemnity does not and shall not be deemed to apply to, and the Subject Jewel Claims do not and shall not be deemed to include, any and all claims of Jewel (i) which accrue in the event that the Lender acquires title to Elston Plaza by way of foreclosure or deed-in-lieu of foreclosure, or (ii) in respect of a failure by the Lender to remit the funds contained in the Jewel Escrow to pay the Settlement Payment (as defined in the Jewel Settlement Agreement) to Jewel, in the event that, upon Closing of the Sale, such payment is due to Jewel in accordance with Section 2.A. of the Jewel Settlement Agreement; provided further, that, pursuant to the Jewel Escrow and the Sale Order, all cash remaining in the Jewel Escrow shall be released to (i) the Debtor or its assignee upon receipt by the Lender of a full release, waiver and discharge of all Subject Jewel Claims that Jewel might have in

respect of the Lender Released Parties, including, without limitation, any and all claims of Jewel against the Lender arising under Section 2.A. of the Jewel Settlement Agreement, such release to be in substantially the form of Exhibit C attached hereto and made a part hereof (the "Jewel Release"), and the payment of all amounts due to the Lender under the Jewel Indemnity, or (ii) Jewel, if required by Jewel as a condition to its delivery of the Jewel Release to the Lender.

#### Reservation of Rights

In the event of a failure by the Debtor or Coleman (as applicable) hereunder to (i) remit the Settlement Payment to the Lender, (ii) deliver the Lender Release to the Lender, (iii) deliver the Jewel Escrow and Indemnity to the Lender, or (iv) timely satisfy each of the Milestones in accordance with the Stipulation and Order, or in the event the Debtor fails to comply with any of its other obligations under the Term Sheet, then all of the Lender's rights in respect of the Debtor, the Assets (as defined below), Coleman, and any other entity are fully reserved and preserved, Lender shall not be bound by its undertakings hereunder (other than as set forth in the section "Failure to Timely Meet Conditions" below and the corresponding provisions of the Stipulation and Order), Lender shall not be required to deliver a release to the Debtor or Coleman as provided hereunder, and the provisions hereof shall not prejudice or be used against the Lender in any way in any proceeding or otherwise.

#### Cash Collateral Use

Upon the Stipulation Entry Date, the Cash Collateral Order, with a budget to be agreed to by the Parties and the Receiver, shall (i) be modified to provide that the occurrence of any of the Events of Default (as defined in the Cash Collateral Order) set forth in Section 13(e) of the Cash Collateral Order shall automatically trigger the Lender's right to exercise its rights and remedies thereunder and under this Term Sheet without any notice being required or any notice or cure period having expired and (ii) be extended through the earliest to occur of (a) the Sale Process End Date, (b) the Early Termination Date, and (c) the occurrence of any termination event or default contained in the Cash Collateral Order, subject to the terms and provisions of the Cash Collateral Order. In addition, the Cash Collateral Order shall provide that no adequate protection payments or other monies received by the Lender prior to or during the Chapter 11 Case shall reduce the Settlement Payment.

#### Milestones

The Debtor shall comply with the following milestones (each, a "Milestone" and, collectively, the "Milestones"), unless waived in writing by the Lender in its sole and absolute discretion it being acknowledged by the Debtor, its estate and Coleman that time is of the essence with respect to each and every Milestone:

1. As of August 8, 2011 (the "Settlement Date"), the Debtor shall pursue (and, to the extent already in process, continue to pursue) the marketing of substantially all of the Debtors' assets (collectively, the "Assets") to prospective purchasers ("Prospective Purchasers");

2. Within forty-five (45) days after the Settlement Date (i.e., on or before September 22, 2011), the Debtor shall have (i) selected the Prospective Purchaser offering the best and highest aggregate purchase price for the Assets (such Prospective Purchaser, the "Successful Purchaser"), which aggregate purchase price (the "Sale Price") shall be in an amount not less than \$16,850,000 (it being understood by and among the Parties that, in the event the Sale Price equals or exceeds \$17.4 million, and as of the Closing the Lender has not received the Jewel Release (as defined below), then \$400,000 of the Sale Price payable by the Successful Purchaser in accordance with the section of this Term Sheet captioned "Lender Consideration", and Paragraph 8 of the Stipulation and Order (not constituting Excess Sale Proceeds due to the Lender), shall be used to fund the Jewel Escrow upon Closing); (ii) executed a binding term sheet with the Successful Purchaser with respect to the sale of the Assets at the Sale Price (the "Sale"), subject to due diligence and other standard contingencies; and (iii) if and to the extent that the proposed Sale of the Assets to the Successful Purchaser contemplates the provision of third-party financing, received an executed commitment letter(s) from a financial institution(s) with respect to any such contemplated third-party financing, subject to due diligence and other standard contingencies ((ii) and (iii), together, the "Sale Term Sheet").

3. Within sixty (60) days after the Settlement Date (i.e., on or before October 7, 2011), the Debtor shall have filed with the Bankruptcy Court a motion consistent with the terms hereof, satisfactory to the Debtor and Coleman, and reasonably satisfactory to the Lender, (the "Sale Motion") seeking entry of the Sale Order (as defined below);

4. Within ninety (90) days after the Settlement Date (i.e., on or before November 7, 2011), (i) the Debtor shall have filed with the Bankruptcy Court the definitive documentation evidencing (A) the proposed Sale to the Successful Purchaser, executed by the Debtor and the Successful Purchaser, and (B) the proposed funding of the Jewel Escrow upon Closing, executed by the person or entity to provide such funding, in each case consistent with the terms hereof and the Stipulation and Order, satisfactory to the Debtor and Coleman, and reasonably satisfactory to the Lender (the "Definitive Documentation"); and (ii) the Successful Purchaser shall have completed all of its due diligence with respect to the proposed Sale, or if the Successful Purchaser has not completed all of its due diligence with respect to the proposed Sale as of such date, the Successful Purchaser shall have waived its right to terminate the Definitive Documentation on account of any such outstanding due diligence;

5. Within five (5) business days after the date upon which the Definitive Documentation is filed with the Bankruptcy Court, or if the Bankruptcy Court is not available to hear the Sale Motion on such date, then the next available date upon which the Bankruptcy Court is available to hear the Sale Motion, the Bankruptcy Court shall have approved the Sale (the "Sale");

Hearing”) and shall have entered the Sale Order (as defined below); and

6. Within fifteen (15) days after entry of the Sale Order by the Bankruptcy Court, but in no event later than November 30, 2011, the consummation of the Sale (the “Closing”) shall have occurred (such date, the “Sale Process End Date”).

Sale Order: Miscellaneous

The order entered by the Bankruptcy Court approving the Sale (the “Sale Order”) shall be consistent with the terms hereof, shall contain (among other terms) the provisions set forth on Exhibit D attached hereto, shall be satisfactory to the Debtor and Coleman, and shall be reasonably satisfactory to the Lender and shall provide for, among other things, (i) the Sale of the Assets to the Successful Purchaser by private sale pursuant to section 363(b) of the Bankruptcy Code, free and clear of all liens, claims, and encumbrances (except as otherwise provided in the Definitive Documentation), with such liens, interests, and claims to attach to the proceeds of the Sale pursuant to and in accordance with the Bankruptcy Code; (ii) assumption and assignment of all executory contracts and unexpired leases of the Debtor to the Successful Purchaser; (iii) direct payment, upon Closing, by the Successful Purchaser to the Lender of cash equal to the amount of the Settlement Payment in full and final settlement, satisfaction and discharge of any and all claims of the Lender against the Debtor, its estate and Coleman, including, without limitation, any and all claims relating to the Note, the Mortgage, the Guaranty, any of the other Loan Documents, and/or the Property; (iv) release by the Lender of its security interests arising under the Mortgage; (v) effectuation of the Jewel Escrow and Indemnity, and the Lender Release; and (vi) effectuation of a full release, waiver and discharge of liability given by the Lender, Allstate Life Insurance Company, any entity controlling, controlled by, or under common control with the foregoing, and the employees, officers, directors, and shareholders of the foregoing (collectively, the “Lender Releasing Parties”), to the Debtor, its estate and Coleman, and (as applicable) the current and former officers, directors, employees, members, affiliates, advisors, attorneys, investors, professionals, accountants, investment bankers, consultants, agents and other representatives (including their respective current and former officers, directors, employees, members, affiliates, advisors, professionals and other representatives) of the foregoing, with respect to the Released Matters including, without limitation, the Guaranty (respectively, the “Debtor Release” and the “Coleman Release”).

The conditions precedent to the Closing shall include: the Sale Order shall have been entered by the Bankruptcy Court, become effective in accordance with its terms, not have been reversed, stayed or modified, and the time period applicable with respect to the initiation of any appeal or motion for reconsideration or vacatur of the Sale Order shall have expired (and no such appeal or motion shall be pending); (ii) all actions, documents, and agreements necessary to consummate the Sale shall have been executed; and (iii) the Cash Collateral Order shall be in full

force and effect immediately prior to the Closing, shall not have terminated, and there shall be no ongoing event of default thereunder.

For the avoidance of doubt, contemporaneously with the Closing, the Lender and Allstate (on behalf of themselves) shall deliver to Coleman, as personal guarantor of certain obligations of the Debtor pursuant to the Guaranty, a fully executed, unconditional, binding, and effective release of all obligations of Coleman in any way related to the Guaranty. Such effectuation of the Coleman Release by the Lender and Allstate shall be separate from, and in addition to, the effectuation of the Coleman Release by the Lender Releasing Parties provided in the Sale Order.

Failure to Timely  
Meet Conditions

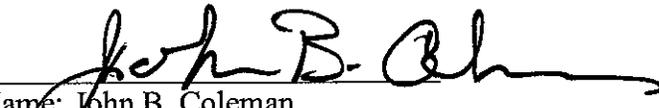
Upon the earlier of 12:01 a.m. (EST) on (i) the first calendar day after the Sale Process End Date, in the event the Closing has not then occurred, or (ii) the fourth (4<sup>th</sup>) business day following the date upon which the Lender delivers to the Debtor, with copies to the Debtor's counsel and the Office of the United States Trustee for the Southern District of New York (and a copy filed by the Lender substantially simultaneously with the Bankruptcy Court), written notice of the alleged failure by the Debtor to satisfy any Milestone or any other alleged breach by the Debtor or Coleman of this Term Sheet or the Stipulation and Order (such date, the "Early Termination Date"), (A) the Debtor's exclusive right to file a plan of reorganization in the Chapter 11 Cases shall automatically terminate; (B) the Debtor and Coleman shall each be deemed to have agreed that the Lender is entitled to allowed claims for, and the indefeasible payment of, the full amount of Lender's claims under the Loan Documents, including without limitation the Lender Asserted Claim (as defined in the Cash Collateral Order), all outstanding principal, interest, fees, charges and costs, including fees and costs of professionals and advisors, without defense, offset or counterclaim (such claim, including, without limitation, the Lender's Asserted Claim (as defined in the Cash Collateral Order) the "Full Lender Claim"); (C) the Debtor and Coleman shall be deemed to have consented to entry of an order by the Bankruptcy Court, in the form attached hereto as **Exhibit E1** and **E2** (whichever is applicable) and made a part hereof, providing for, as selected by the Lender (i) modification of the automatic stay to permit the Lender immediately to exercise all applicable remedies, including without limitation, foreclosure, without defense, offset or counterclaim, and/or (ii) the sale of the Assets to the Lender (or its assignee) free and clear of liens, interests and claims pursuant to Bankruptcy Code Section 363 via a credit bid by Lender in the amount of \$16,850,000; (D) the Debtor and Coleman shall be deemed to have consented to the Receiver delivering to the Lender, at the Lender's direction, all Cash Collateral (as defined in the Cash Collateral Order) in the Receiver's possession at the time, net of monthly operating expenses reflected in the budget approved by Lender, and continuing to deliver Cash Collateral (as defined in the Cash Collateral Order) to the Lender in accordance with the terms of the Receiver Order; and (E) the Debtor and Coleman shall be

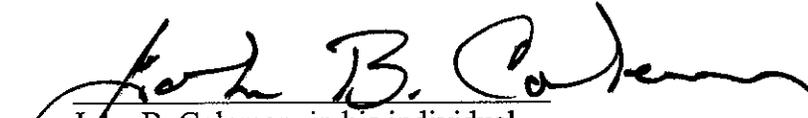
deemed to have consented to the entry by the Circuit Court of Cook County, Illinois County Department, Chancery Division of a foreclosure order in the form attached hereto as **Exhibit F** and made a part hereof and shall be prohibited from asserting, and shall be deemed to have waived, any objection to Lender's foreclosure in respect of any or all of the Debtor's assets. For the avoidance of doubt, upon the earlier of the Sale Process End Date and the Early Termination Date, Coleman shall have been deemed to have waived, in his individual capacity, any and all objections or defenses to any or all of the remedies and actions of the Lender as provided in the Term Sheet or the Stipulation and Order, provided, however, that neither Coleman nor the Lender shall be deemed to have waived any rights or defenses that may currently exist under applicable non-bankruptcy law as to the enforceability of the Guaranty, and all such rights and defenses are fully reserved and preserved.

#### Further Assurances

The Parties each shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably requested by either Party to carry out the provisions of the Term Sheet and this Stipulation, and to give effect to the transactions contemplated under the Term Sheet and the Stipulation. No Party shall take any action in the Bankruptcy Court or any other court, that is inconsistent with the provisions of the Term Sheet and the Stipulation. The Debtor and Coleman agree that the Assets shall not be sold or transferred other than in accordance with the terms of the Term Sheet or the Stipulation. For the avoidance of doubt, the Sale to any Successful Purchaser shall not directly or indirectly be structured to avoid or reduce any benefits to which Lender is entitled hereunder, including, without limitation, amounts that would comprise the First Excess Sale Proceeds Amount or the Second Excess Sale Proceeds Amount.

ACORN ELSTON LLC, as Debtor  
and Debtor-in-Possession

By:   
Name: John B. Coleman  
Title: Managing Member

  
John B. Coleman, in his individual  
capacity

ROAD BAY INVESTMENTS, LLC

By: \_\_\_\_\_  
Name:  
Title: Authorized Signatory

ACORN ELSTON LLC, as Debtor  
and Debtor-in-Possession

By: \_\_\_\_\_  
Name: John B. Coleman  
Title: Managing Member

\_\_\_\_\_  
John B. Coleman, in his individual  
capacity

ROAD BAY INVESTMENTS, LLC



By: Edgar B. Alvarado  
Name: \_\_\_\_\_  
Title: Authorized Signatory

By: Wilder  
Name: \_\_\_\_\_  
Title: Authorized Signatory

**Exhibit A**

## INDEMNITY AGREEMENT

This Indemnity Agreement is dated as of \_\_\_\_\_ 2011, by Acorn Elston LLC, as debtor and debtor-in-possession ("Acorn Elston"), having an address at \_\_\_\_\_, and John B. Coleman, an individual, having an address at \_\_\_\_\_ ("Coleman" and together with the Acorn Elston, the "Indemnitors") to and for the benefit of Road Bay Investments LLC ("Road Bay"), a \_\_\_\_\_ limited liability company having an address at \_\_\_\_\_ and Allstate Life Insurance Company, a \_\_\_\_\_ insurance company having an address at \_\_\_\_\_ ("Allstate" and, together with Road Bay, the "Indemnitee").

### RECITALS

WHEREAS, on April 19, 2007, Allstate made a loan (the "Prepetition Loan") to Acorn Elston in the principal amount of \$15,000,000, as evidenced by that certain Mortgage Note, dated April 19, 2007 (the "Note") executed by Acorn Elston in favor of Allstate;

WHEREAS, to secure its obligations under the Note, pursuant to a Mortgage, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing, dated as of April 19, 2007 (the "Mortgage" and together with the Note and any other document or instrument executed in connection therewith evidencing Allstate's rights in respect of the Prepetition Loan, collectively, the "Loan Documents"), Acorn Elston granted to Allstate security interests and liens in and on, *inter alia*, Acorn Elston's real property, personal property (including rents) and fixtures comprising the property commonly known as Elston Plaza (the "Property"), all as more fully described in the Mortgage;

WHEREAS, in connection with the execution of the Note and the Mortgage, on April 19, 1997, Coleman, sole shareholder and managing member of the Debtor, executed in his individual capacity that certain Nonrecourse Carveout Guaranty Agreement, in favor of the Lender, dated April 19, 2007 (the "Guaranty");

WHEREAS, Acorn Elston defaulted on certain of its obligations under the Loan Documents and, consequently, on or about May 4, 2009, Allstate commenced a foreclosure action against Acorn Elston and other parties by filing a complaint in the Circuit Court of Cook County, Illinois County Department, Chancery Division (the "State Court"), captioned (following amendment of the original complaint) *Road Bay Investments, LLC v. Acorn-Elston, LLC, et al.*, Case No. 09 CH 16402 (the "Foreclosure Proceeding");

WHEREAS, on September 25, 2009, Allstate sold and assigned the Loan Documents and all of its rights thereunder and related thereto to its wholly-owned affiliate, Road Bay;

WHEREAS, on or about March 10, 2010, the State Court entered partial summary judgment against Acorn Elston, finding that, among other things, Acorn Elston is in default under the Note and the Mortgage for failure to pay real estate taxes and failure to discharge or

bond over certain mechanic's liens and determining the total amount due and owing to Road Bay as of June 15, 2009 under the Note to be \$15,929,856.68;

WHEREAS, on May 1, 2010, the Note and Mortgage matured;

WHEREAS, on September 10, 2010, Road Bay served Acorn Elston with a Notice of Motion for Entry of a Judgment of Foreclosure and Sale;

WHEREAS, on September 11, 2010 (the "Petition Date"), Acorn Elston filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and is currently a debtor and debtor-in-possession in Chapter 11 Case No. 10-14807 (SHL) (the "Chapter 11 Case");

WHEREAS, Road Bay has timely filed a proof of secured claim in the Chapter 11 Case in the amount of not less than \$17,964,543.29 with respect to the Note and Mortgage and has an allowed secured claim against Acorn Elston in the amount of \$ \_\_\_\_\_;

WHEREAS, Jewel Food Stores, Inc. ("Jewel") has filed a proof of claim in the Chapter 11 Case alleging a secured claim against Acorn Elston in the amount of \$760,889.11;

WHEREAS, on August 14, 2009, Road Bay entered into a Settlement Agreement (the "Jewel Settlement Agreement") with Jewel which, among other things, settled Jewel's alleged claim against the Property in the event that title to the Property is transferred to a "Successor Landlord" (as defined under the Jewel Settlement Agreement); and

WHEREAS, pursuant to that certain Stipulation, Agreement and Order, dated August \_\_, 2011, by and among Acorn Elston, Coleman and Road Bay, and entered by the Bankruptcy Court on August \_\_, 2011 [Docket No. \_\_] (the "Stipulation and Order"), Road Bay has consented to the Sale (as defined in the Stipulation and Order), and Acorn Elston and Coleman have each agreed, jointly and severally, to (i) indemnify Road Bay and Allstate against any and all of the Subject Jewel Claims (as defined in the Stipulation and Order), and (ii) deposit in escrow the aggregate amount of \$400,000 in cash (the "Escrow Amount"), to be held in accordance with (x) the Escrow Agreement, dated of even date herewith, between the Indemnitors and Road Bay, and (y) the Stipulation and Order.

NOW, THEREFORE, in consideration of the matters described above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitors agree as follows:

1. Indemnitors shall, at their sole expense, each, jointly and severally, indemnify and keep indemnified and to defend, hold and save harmless each Indemnitee (and each Indemnitee's officers, directors, employees, agents, attorneys and financial advisors (collectively, the "Indemnitee Representatives")) against and from any and all of the Subject Jewel Claims (as defined in the Stipulation and Order).

2. Upon written demand by any Indemnitee, Indemnitors shall defend any investigation, action or proceeding in connection with any claim or liability, or alleged claim or liability, that would, if determined adversely to such Indemnitee, be covered by the foregoing indemnification provision set forth in paragraph 1 hereof, such defense to be at the sole cost and expense of Indemnitors and by counsel selected by Indemnitors but reasonably approved by such Indemnitee. In the alternative, an Indemnitee may select its own defense counsel at the expense of Indemnitors, provided that such Indemnitee determines in good faith that the conduct of its defense by Indemnitor's counsel could be materially prejudicial to its interests or that other reasonable grounds exist to question the effectiveness, quality or responsiveness of the conduct of such defense by Indemnitor's counsel. Nothing contained herein shall be construed as requiring any Indemnitee to expend funds or incur costs to defend any claim in connection with the matters contained herein. The obligations of Indemnitors hereunder shall specifically include the obligation to expend its own funds, to incur costs in its own name, and to perform actions as may be necessary to protect the Indemnitees from the necessity of expending their own funds, incurring costs or performing any actions in connection with the matters contained herein.

3. Indemnitees shall have no obligation to defend against any of the Subject Jewel Claims. Without limiting the indemnification provisions hereof, the Indemnitors may settle any Subject Jewel Claim asserted by Jewel against the Indemnitors, but, to the extent that claim or action is asserted against any one of the Indemnitees or any Indemnitee Representative, the Indemnitors may settle the same only with the Indemnitees' prior written consent.

4. The Indemnitees shall terminate this Indemnity Agreement on the date the Indemnitees receive the Jewel Release (as defined in the Stipulation and Order) and all amounts due to Lender under this Indemnity Agreement have been paid. On such date, the Indemnitees shall execute and deliver to the Indemnitors an instrument effecting such termination.

5. The obligations hereunder are joint and several, and a release or discharge of any one or more Indemnitor, or any impairment or limitation of this Indemnity in favor of any one or more Indemnitor, shall not in any way be deemed a release or discharge of, or limitation or impairment in favor of, any other Indemnitor. The unenforceability of this instrument against one Indemnitor shall not affect or impair the obligations hereunder of the remaining Indemnitor. The obligations hereunder are independent from any other obligations either Indemnitor may have in favor of the Indemnitees. Each Indemnitor waives any right or claim of right to cause a marshaling of its assets or to cause Indemnitee to proceed against any security before proceeding under this Indemnity Agreement.

6. If Indemnitors fail to indemnify the Indemnitees as provided herein, the Indemnitees shall each be subrogated to any rights any Indemnitor may have against Jewel or any other third party relating to the matters covered by this Indemnity Agreement.

7. The rights of the Indemnitees under this Indemnity Agreement are in addition to any other rights and remedies of the Indemnitees, or any one of them, against the Indemnitors, or any one of them, under any other document or instrument now or hereafter executed by any of the Indemnitors, or at law or in equity, and shall not be deemed a waiver of

any such rights. The Indemnitors each waive the right to require the Indemnitees to apply the Escrow Amount to reduce or satisfy any Subject Jewel Claim asserted or incurred hereunder.

8. To the extent an Indemnitee pays, suffers or incurs any expense in defense or settlement of a Subject Jewel Claim, the Indemnitors shall pay to the Indemnitee, within seven (7) business days after demand therefor, interest (at the rate of 5.0% per annum) on any payment due from the Indemnitors to an Indemnitee hereunder from the date such payment is demanded by such Indemnitee to and including the date of payment.

10. In the event that the Bankruptcy Court determines, pursuant to a final, non-appealable order, that (i) any Indemnitee is entitled to indemnification by any Indemnitor pursuant to this Indemnity Agreement, and (ii) such Indemnitor has failed to provide such indemnification in violation of this Indemnity Agreement, then the Indemnitors shall pay the Indemnitee's reasonable out of pocket attorneys' fees and all other reasonable out of pocket expenses incurred in obtaining such enforcement of this instrument or the collection of any amounts due on account thereof.

11. Notwithstanding anything to the contrary contained herein, nothing contained herein is intended to be, nor shall it be deemed, a waiver of any rights or defenses of Coleman that may currently exist under applicable non-bankruptcy law to contest the enforceability of the Guaranty, and any and all such rights and defenses are fully reserved and preserved.

12. In the event of any inconsistency between the Stipulation and Order, and this Indemnity Agreement, the terms of the Stipulation and Order shall control.

13. This Agreement may not be amended, supplemented or otherwise modified without the prior written consent of the parties hereto and, if necessary, approval of the Bankruptcy Court.

14. Any demand or other communication (a "Notice") under this Indemnity Agreement shall be made in writing, signed by the party giving such Notice and shall be sent by first class mail, postage prepaid, addressed to the party for whom it is intended, at the address listed in the preamble of this Indemnity Agreement. In the event that a Notice is provided to the Indemnitors under this Indemnity Agreement, such Notice shall also be provided substantially simultaneously by overnight mail, and electronic mail, to:

Cadwalader, Wickersham & Taft LLP  
Attn: John J. Rapisardi, Esq., Zachary H. Smith, Esq.  
One World Financial Center  
New York, NY 10281  
john.rapisardi@cwt.com  
zachary.smith@cwt.com

In the event that a Notice is provided to the Indemnitees under this Indemnity Agreement, such Notice shall also be provided substantially simultaneously by overnight mail, and electronic mail, to:

Bingham McCutchen LLP  
Attn: Ronald J. Silverman, Esq., Jonathan B. Alter, Esq.  
399 Park Avenue  
New York, NY 10022  
ronald.silverman@bingham.com  
jonathan.alter@bingham.com

15. This Indemnity Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York without reference to the principles of conflicts of laws.

16. This instrument shall be continuing, irrevocable and binding upon each Indemnitor and the successors of each Indemnitor. This instrument shall inure to the benefit of each Indemnitee and the successors and assigns of each Indemnitee.

17. If any term of this Indemnity Agreement or any application of such term shall be invalid, illegal or unenforceable, the remainder of this Indemnity Agreement and any other application of such term shall remain effective.

18. Each of the parties hereto hereby irrevocably consents to the jurisdiction of the United States Bankruptcy Court for the Southern District of New York in connection with any action, suit or other proceeding arising out of or relating to this Indemnity Agreement or any action taken or omitted hereunder, and waives any claim of forum non conveniens and any objections as to laying of venue. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS INDEMNITY AGREEMENT, OR ITS PERFORMANCE UNDER OR THE ENFORCEMENT OF THIS INDEMNITY AGREEMENT.

19. No provision of this Indemnity Agreement may be changed, waived or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver or termination is sought.

20. Each of the parties hereto hereby represents and warrants to the others that (i) this Indemnity Agreement has been duly authorized, executed and delivered on its behalf, that Acorn Elston has been authorized and directed by the Bankruptcy Court to execute and deliver this Indemnity Agreement, and that this Indemnity Agreement constitutes its legal, valid and binding obligation, and (ii) the execution, delivery and performance of this Indemnity Agreement by it does not and will not violate any applicable law or regulation.

IN WITNESS WHEREOF, the Indemnitors have caused this instrument to be executed as of the date first written above.

Indemnitors:

ACORN ELSTON, LLC, as debtor and debtor-in-possession

By:

\_\_\_\_\_  
Name: John B. Coleman  
Title: Managing Member

\_\_\_\_\_  
John B. Coleman, an individual

**Exhibit B**

## ESCROW AGREEMENT

This Escrow Agreement is dated as of \_\_\_\_\_, 2011, by and among Acorn Elston LLC, a debtor and debtor-in-possession ("Acorn Elston"), having an address at \_\_\_\_\_, John B. Coleman ("Coleman"), an individual, having an address at \_\_\_\_\_, and Road Bay Investments, LLC ("Road Bay"), a \_\_\_\_\_ limited liability corporation, having an address at \_\_\_\_\_.

### RECITALS

WHEREAS, on April 19, 2007, Allstate made a loan (the "Prepetition Loan") to Acorn Elston in the principal amount of \$15,000,000, as evidenced by that certain Mortgage Note, dated April 19, 2007 (the "Note") executed by Acorn Elston in favor of Allstate;

WHEREAS, to secure its obligations under the Note, pursuant to a Mortgage, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing, dated as of April 19, 2007 (the "Mortgage" and together with the Note and any other document or instrument executed in connection therewith evidencing Allstate's rights in respect of the Prepetition Loan, collectively, the "Loan Documents"), Acorn Elston granted to Allstate security interests and liens in and on, *inter alia*, Acorn Elston's real property, personal property (including rents) and fixtures comprising the property commonly known as Elston Plaza (the "Property"), all as more fully described in the Mortgage;

WHEREAS, in connection with the execution of the Note and the Mortgage, on April 19, 1997, Coleman, sole shareholder and managing member of the Debtor, executed in his individual capacity that certain Nonrecourse Carveout Guaranty Agreement, in favor of the Lender, dated April 19, 2007 (the "Guaranty");

WHEREAS, Acorn Elston defaulted on certain of its obligations under the Loan Documents and, consequently, on or about May 4, 2009, Allstate commenced a foreclosure action against Acorn Elston and other parties by filing a complaint in the Circuit Court of Cook County, Illinois County Department, Chancery Division (the "State Court"), captioned (following amendment of the original complaint) *Road Bay Investments, LLC v. Acorn-Elston, LLC, et al.*, Case No. 09 CH 16402 (the "Foreclosure Proceeding");

WHEREAS, on September 25, 2009, Allstate sold and assigned the Loan Documents and all of its rights thereunder and related thereto to its wholly-owned affiliate, Road Bay;

WHEREAS, on or about March 10, 2010, the State Court entered partial summary judgment against Acorn Elston, finding that, among other things, Acorn Elston is in default under the Note and the Mortgage for failure to pay real estate taxes and failure to discharge or bond over certain mechanic's liens and determining the total amount due and owing to Road Bay as of June 15, 2009 under the Note to be \$15,929,856.68;

WHEREAS, on May 1, 2010, the Note and Mortgage matured;

WHEREAS, on September 10, 2010, Road Bay served Acorn Elston with a Notice of Motion for Entry of a Judgment of Foreclosure and Sale;

WHEREAS, on September 11, 2010 (the "Petition Date"), Acorn Elston filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and is currently a debtor and debtor-in-possession in Chapter 11 Case No. 10-14807 (SHL) (the "Chapter 11 Case");

WHEREAS, Road Bay has timely filed a proof of secured claim in the Chapter 11 Case in the amount of not less than \$17,964,543.29 with respect to the Note and Mortgage and has an allowed secured claim against Acorn Elston in the amount of \$ \_\_\_\_\_;

WHEREAS, Jewel Food Stores, Inc. ("Jewel") has filed a proof of claim in the Chapter 11 Case alleging a secured claim against Acorn Elston in the amount of \$760,889.11;

WHEREAS, on August 14, 2009, Road Bay entered into a Settlement Agreement (the "Jewel Settlement Agreement") with Jewel which, among other things, settled Jewel's alleged claim against the Property in the event that title to the Property is transferred to a "Successor Landlord" (as defined under the Jewel Settlement Agreement); and

WHEREAS, pursuant to that certain Stipulation, Agreement and Order, dated August \_\_, 2011, by and among Acorn Elston, Coleman and Road Bay, and entered by the Bankruptcy Court on August \_\_, 2011 [Docket No. \_\_] (the "Stipulation and Order"), Road Bay has consented to the Sale (as defined in the Stipulation and Order), and Acorn Elston and Coleman have each agreed, jointly and severally, to (i) indemnify Road Bay and Allstate against any and all of the Subject Jewel Claims (as defined in the Stipulation and Order) in accordance with the Stipulation and Order and that certain Indemnity Agreement by and among the parties hereto, dated as of even date, and (ii) deposit in escrow the aggregate amount of \$400,000 in cash (the "Escrow Amount"), to be held by Road Bay in accordance with (x) this Escrow Agreement, and (y) the Stipulation and Order.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

Section 1. Deposit into Escrow. Pursuant to the Stipulation and Order, on the date of the Closing (as defined in the Stipulation and Order), the Successful Purchaser (as defined in the Stipulation and Order), or Coleman, shall deposit with Road Bay cash in the amount of \$400,000 in immediately available funds (the "Escrow Property").

Section 2. Escrow Account. Road Bay will hold the Escrow Property in a separate non-interest-bearing account (the "Escrow Account") maintained for the purposes and on the terms and subject to the conditions set forth in this Escrow Agreement and the Stipulation

and Order. Except as otherwise provided in Section 3, Road Bay will hold the Escrow Property as a trust fund, not subject to any voluntary lien or attachment of any creditor.

Section 3. Distributions of Escrow Property. The Escrow Property shall be deposited into the Escrow Account solely for the purposes set forth in Paragraph 12 of the Stipulation and Order, and shall be distributed as follows:

a. If and to the extent Road Bay determines, in good faith, that any Indemnitee or Indemnitee Representative (each as defined in the Indemnity Agreement) is entitled to indemnification pursuant to the Stipulation and Order and the Indemnity Agreement, then Road Bay shall provide written notice to Acorn Elston and Coleman of such indemnification claim (an "Indemnification Claim") and the amount of such Indemnification Claim. Any such notice shall be provided by Road Bay in accordance with Section 6(d) hereof.

b. Acorn Elston and/or Coleman shall have the right to dispute any such Indemnification Claim within five (5) business days following receipt of such notice from Road Bay. Such dispute shall (i) be in writing addressed to Road Bay, (ii) signed by or on behalf of Acorn Elston and/or Coleman, as applicable, (iii) state the basis for such objection with reasonable specificity, and (iv) be sent by or on behalf of Acorn Elston and/or Coleman to the Lender, within such five (5) business day period.

c. If Road Bay does not receive an objection from Acorn Elston or Coleman in accordance with the requirements of Section 3(b) hereof, then Road Bay shall immediately distribute from the Escrow Account to itself an amount sufficient to satisfy the Indemnification Claim.

d. If Road Bay receives a timely objection from Acorn Elston or Coleman in accordance with Section 3(b) hereof, then Road Bay shall distribute from the Escrow Account to itself an amount sufficient to satisfy the portion, if any, of the Indemnification Claim that is not in dispute, and (ii) Road Bay shall take no further action with respect to the Indemnification Claim that is subject to dispute unless and until it shall receive either (A) joint written instructions signed by each of Acorn Elston, Coleman and Road Bay or (B) a copy of a final judgment, decree or order of the Bankruptcy Court (a "Final Order") determining that Road Bay or Allstate is entitled to indemnification under the Indemnification Agreement. Upon receipt of such Final Order, Road Bay shall promptly distribute from the Escrow Account to itself an amount equal to the amount authorized to be paid to Road Bay pursuant to the Final Order.

e. If the amount necessary to satisfy any Indemnification Claim or portion thereof is (i) not the subject of an timely objection provided in accordance with Section 3(b) hereof (and the five (5) business day time period for any such objection has expired in accordance herewith), or (ii) the subject of an objection and a subsequent Final Order disposing of such objection, and in either case is in excess of the Escrow Property then held in the Escrow Account, then Road Bay shall distribute the full amount of the Escrow Property then held in the Escrow Account to itself.

f. Notwithstanding anything herein to the contrary, pursuant to the Stipulation and Order and this Section 3(f), all cash remaining in the Escrow Account shall be released to (i) Acorn Elston or its assignee or upon receipt by the Lender of the Jewel Release (as defined in the Stipulation and Order) and satisfaction of all amounts due to the Lender under this Agreement, or (ii) Jewel, if required by Jewel as a condition to its delivery of the Jewel Release to the Lender.

Section 4. Termination. This Agreement shall terminate on the earlier of (i) the date the entire balance of the Escrow Property held in the Escrow Account is distributed in accordance with Section 4 of this Escrow Agreement, and (ii) the tenth (10th) anniversary of the date of this Escrow Agreement.

Section 5. Road Bay's Duties and Responsibilities. The duties, responsibilities and obligations of Road Bay with respect to the Escrow Property shall be limited to those expressly set forth herein (which the parties agree are purely ministerial in nature) and no other duties, responsibilities or obligations shall be inferred or implied against it. Road Bay shall not be required to comply with any direction or instruction with respect to the subject matter of this Escrow Agreement other than those contained herein, or in the Stipulation and Order, or delivered in accordance with this Agreement or the Stipulation and Order. If at any time Road Bay is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Escrow Property (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Escrow Property), Road Bay is authorized to comply therewith in any manner it or legal counsel of its own choosing deems appropriate; and if Road Bay complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, Road Bay shall not be liable to Acorn Elston or Coleman, or to any other person or entity, even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. Road Bay shall not be under any duty to give the Escrow Property held by it hereunder any greater degree of care than it gives its own similar property and shall not be required to invest any funds held hereunder except as directed in this Escrow Agreement. Except for Road Bay's own willful misconduct, bad faith or gross negligence in acting as the escrow agent hereunder, Road Bay shall have no liability of any kind whatsoever for its good faith performance of, or from having refrained in good faith from performing, any duties imposed upon it under this Escrow Agreement or for any of its acts or omissions hereunder in its capacity as escrow agent, provided, for the avoidance of doubt, nothing contained herein is intended to nor shall it be deemed to modify any of the obligations of Road Bay under the Stipulation and Order.

Section 6. Miscellaneous.

a. This Escrow Agreement, together with the Stipulation and Order, embodies the entire agreement and understanding among the parties relating to the subject matter hereof.

b. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to the principles of conflicts of laws.

c. Each of the parties hereto hereby irrevocably consents to the jurisdiction of the United States Bankruptcy Court for the Southern District of New York in connection with any action, suit or other proceeding arising out of or relating to this Escrow Agreement or any action taken or omitted hereunder, and waives any claim of forum non conveniens and any objections as to laying of venue. Each party further waives personal service of any summons, complaint or other process and agrees that service thereof may be made by certified or registered mail directed to such person at such person's address for purposes of notices hereunder. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS ESCROW AGREEMENT, OR ITS PERFORMANCE UNDER OR THE ENFORCEMENT OF THIS AGREEMENT.

d. Any demand or other communication (a "Notice") under this Escrow Agreement shall be made in writing, signed by the party giving such Notice and shall be sent by first class mail, postage prepaid, addressed to the party for whom it is intended, at the address listed in the preamble of this Escrow Agreement. In the event that a Notice is provided to the Indemnitors (as defined in the Indemnity Agreement) under this Escrow Agreement, such Notice shall also be provided substantially simultaneously by overnight mail, and electronic mail, to:

Cadwalader, Wickersham & Taft LLP  
Attn: John J. Rapisardi, Esq., Zachary H. Smith, Esq.  
One World Financial Center  
New York, NY 10281  
john.rapisardi@cwt.com  
zachary.smith@cwt.com

In the event that a Notice is provided to the Indemnitees under this Escrow Agreement, such Notice shall also be provided substantially simultaneously by overnight mail, and electronic mail, to:

Bingham McCutchen LLP  
Attn: Ronald J. Silverman, Esq., Jonathan B. Alter, Esq.  
399 Park Avenue  
New York, NY 10022  
ronald.silverman@bingham.com  
jonathan.alter@bingham.com

e. This Escrow Agreement and the rights and obligations hereunder of parties hereto may not be assigned except with the prior written consent of the other parties hereto. This Escrow Agreement shall be binding upon and inure to the benefit of each party's

respective successors and permitted assigns. Except as expressly provided herein, no other person shall acquire or have any rights under or by virtue of this Escrow Agreement. This Escrow Agreement is intended to be for the sole benefit of the parties hereto, and (subject to the provisions of this Paragraph 6(e)) their respective successors and permitted assigns, and none of the provisions of this Escrow Agreement are intended to be, nor shall they be construed to be, for the benefit of any third person.

f. Notwithstanding anything to the contrary contained herein, nothing contained herein is intended to be, nor shall it be deemed, a waiver of any rights or defenses of Coleman that may currently exist under applicable non-bankruptcy law to contest the enforceability of the Guaranty, and any and all such rights and defenses are fully reserved and preserved.

g. In the event of any inconsistency between the Stipulation and Order, and this Escrow Agreement, the terms of the Stipulation and Order shall control.

h. This Escrow Agreement may not be amended, supplemented or otherwise modified without the prior written consent of the parties hereto and, if necessary, approval of the Bankruptcy Court.

i. This Escrow Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

j. Each of the parties hereto hereby represents and warrants to the others that (i) this Escrow Agreement has been duly authorized, executed and delivered on its behalf, that Acorn Elston has been authorized and directed by the Bankruptcy Court to execute and deliver this Escrow Agreement, and that this Escrow Agreement constitutes its legal, valid and binding obligation, and (ii) the execution, delivery and performance of this Escrow Agreement by it does not and will not violate any applicable law or regulation.

k. The invalidity, illegality or unenforceability of any provision of this Escrow Agreement shall in no way affect the validity, legality or enforceability of any other provision; and if any provision is held to be unenforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the day and year first above written.

ACORN ELSTON, LLC, as debtor and debtor-in-possession

By: \_\_\_\_\_  
Name: John B. Coleman  
Title: Managing Member

\_\_\_\_\_  
John B. Coleman

ROAD BAY INVESTMENTS, LLC.

By: \_\_\_\_\_  
Name:  
Title: Authorized Signatory

**Exhibit C**

## RELEASE

This Release is made and entered into by the undersigned, JEWEL FOOD STORES, INC. ("Jewel"), a party to that certain Settlement Agreement, dated as of August 14, 2009 (the "Settlement Agreement"), by and among Jewel and Allstate Life Insurance Company ("Allstate"), with respect to any and all claims Jewel asserts against Allstate, and/or its wholly owned affiliated Road Bay Investments, LLC ("Road Bay" and, together with Allstate and Jewel, the "Stipulating Parties"), and/or certain other Released Parties (as defined below), in respect of certain real property and improvements owned by Acorn Elston, LLC ("Acorn Elston") and commonly known as Elston Plaza Shopping Center, located in Chicago, Illinois (the "Property").

In exchange for good and valuable consideration provided by the Stipulating Parties, the sufficiency of which is hereby acknowledged, and in accordance with that certain Stipulation, Agreement and Order, dated August \_\_, 2011, by and among Acorn Elston, John B. Coleman, and Road Bay, and entered by the United States Bankruptcy Court for the Southern District of New York on August \_\_, 2011 [Docket No. \_\_] (the "Stipulation and Order"), Jewel, on behalf of itself and all of its successors and assigns (collectively, the "Releasing Parties"), hereby release, waive and discharge Road Bay and Allstate and their past and present officers, directors, shareholders, servants, agents, attorneys, advisors, accountants, assigns, heirs, parent companies, affiliates, subsidiaries, divisions, partners, joint venturers, principals, managers, employees, representatives, successors and predecessors-in-interest, licensees, investors and assigns and each person or entity acting for or on behalf of any of them (collectively, including Road Bay and Allstate, the "Released Parties") from all past, present and future legal actions, choses in action, causes of action, rights, demands, obligations, claims, suits, judgments, liabilities, encumbrances, lawsuits, adverse consequences, amounts paid in settlement, costs, fees, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind, character or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under the United States Bankruptcy Code and applicable non-bankruptcy law, and any and all alter-ego, lender liability, indemnification or contribution theories of recovery, and interest or other costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, liquidated or unliquidated, matured or unmatured, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue, whether held in a personal or representative capacity occurring from the beginning of time to and including the date hereof related in any way, directly or indirectly, arising out of, and/or connected with any or are based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the date hereof in connection with or related to, the Settlement Agreement, Acorn Elston, Acorn Elston's chapter 11 case or the Property, which any Releasing Party had, has or may have against any or all of the Released Parties (collectively, the "Released Claims").

Such release will be effective notwithstanding that any Releasing Party or other person or entity may hereafter discover facts in addition to, or different from, those which that party now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and the Releasing Parties are hereby expressly

deemed to have waived any and all rights that they may have under any statute or common law principle which would limit the effect of the foregoing release, waiver, and discharge to those Released Claims actually known or suspected to exist on the date hereof.

THIS RELEASE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

In witness hereof, the undersigned has caused this Release to be executed by its duly authorized representative as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

JEWEL FOOD STORES, INC.

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

**Exhibit D**

The following provisions (among others) shall be included in the Sale Order, with blanks completed appropriately and defined terms to be consistent with the defined terms used in the Sale Order. For the avoidance of doubt, the terms set forth below are not exhaustive of the terms that the Debtor, Coleman, or the Lender may require to be included in the Sale Order, provided that the terms of the Sale Order shall be consistent with the Term Sheet and the Stipulation.

(i) The Lender holds a valid claim against the Debtor's estate in the amount of \$ \_\_\_\_\_, which claim is secured by a valid, first priority, perfected security interest in, and lien on, the Assets, and the Lender is entitled to the immediate and indefeasible payment, in cash, by wire transfer of immediately available funds, of the Settlement Payment on the date of the Closing.

(ii) The Settlement Payment aggregates \$ \_\_\_\_\_, consisting of (a) \$16,850,000 plus (b) \$ \_\_\_\_\_, representing one hundred percent (100%) of the First Excess Sale Proceeds Amount plus (c) \$ \_\_\_\_\_, representing fifty percent (50%) of the Second Excess Sale Proceeds Amount plus (d) \$ \_\_\_\_\_, representing pro-rated adequate protection amounts due and owing to the Lender as of the date of the Closing.

(iii) The Successful Purchaser shall and hereby is directed to pay the Settlement Payment directly to the Lender, in cash, by wire transfer of immediately available funds on the date of the Closing.

(iv) The Successful Purchaser (on behalf of the Debtor), or Coleman, as applicable, is hereby authorized and directed to deposit with the Lender the Jewel Escrow and the Jewel Indemnity, which shall be held by the Lender pursuant to the terms of the Escrow Agreement.

(v) Notwithstanding any other provision of the Sale Order, in exchange for accepting the Settlement Payment in full and final satisfaction of any and all of its claims against the Debtor and Coleman including, without limitation, any and all claims against the Debtor and Coleman relating to the Note, the Mortgage, the Guaranty and the Assets, and/or other good and valuable consideration, as of the date of the Sale Order, the Debtor, its estate and Coleman, including, without limitation, in Coleman's capacity as managing member and shareholder of the Debtor and in Coleman's capacity as personal guarantor of certain of the obligations of the Debtor pursuant to the Guaranty (collectively, the "Releasing Parties"), shall each be deemed to have unconditionally, irrevocably and forever, released the Lender, and its current and former officers, directors, employees, members, affiliates, advisors, attorneys, investors, professionals, accountants, investment bankers, consultants, agents and other representatives (including their respective current and former officers, directors, employees, members, affiliates, advisors, professionals and other representatives) (collectively, the "Released Parties") from all obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Closing (including prior to the Commencement Date) in any way relating to the Note, the Mortgage, the Guaranty, the Assets, the Bankruptcy Case, the Sale, any action by the Released Parties in exercising its rights or remedies arising under or in connection

with the foregoing, the negotiations, formulation, or preparation of the Term Sheet, the Stipulation and Order or the documents evidencing the Sale, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place before the Closing and that could have been asserted at any time up to immediately prior to the Closing (the “Released Claims” and, the release by the Releasing Parties of the Released Claims as set forth herein, the “Lender Release”).

The Lender Release will be effective notwithstanding that any Releasing Party or other person or entity may hereafter discover facts in addition to, or different from, those which that party now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and the Releasing Parties are hereby expressly deemed to have waived any and all rights that they may have under any statute or common law principle which would limit the effect of the foregoing release, waiver, and discharge to those Released Claims actually known or suspected to exist on the date hereof.

Entry of this Order shall constitute the Bankruptcy Court’s approval, pursuant to Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code, of the Lender Release and further shall constitute the Bankruptcy Court’s finding that the Lender Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the Released Claims released by the Releasing Parties; (c) in the best interests of the Debtor and all holders of claims against and equity interests in the Debtor; (d) fair, equitable and reasonable; (e) given and made after reasonable investigation by the Debtor and after notice and opportunity for hearing; and (f) a bar to the Releasing Parties asserting any Released Claim against the Released Parties.

**Exhibit E-1**

BINGHAM McCUTCHEN LLP  
Ronald J. Silverman  
Carol Weiner Levy  
399 Park Avenue  
New York, NY 10022  
Tel: 212.705.7000  
Fax: 212.752.5378

*Counsel for Road Bay Investments, LLC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re	)	Chapter 11 Case No.
ACORN ELSTON LLC,	)	10-14807 (SHL)
Debtor.	)	

**ORDER GRANTING TO ROAD BAY INVESTMENTS, LLC  
IMMEDIATE RELIEF FROM THE AUTOMATIC STAY**

Upon the Stipulation and Order, dated August \_\_, 2011 (the "Stipulation"),<sup>1</sup> between and among the above-captioned debtor and debtor-in-possession (the "Debtor"), John B. Coleman ("Coleman"), and Road Bay Investments, LLC ("Road Bay"), a copy of which Stipulation is attached hereto as Exhibit A and made a part hereof; and Road Bay having elected under the Stipulation to obtain relief from the automatic stay in the Debtor's chapter 11 case; and good and sufficient notice of the occurrence of the Early Termination Date under the Stipulation having been provided in accordance with the Stipulation by the Lender to the Debtor, the U.S. Trustee, and as otherwise required under the Stipulation; and no other or further notice of this Order being

<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Stipulation.

required; and the Court having found that the relief granted herein is appropriate; and good and sufficient cause appearing therefore, the Court hereby **FINDS** that:

A. The Court has jurisdiction to grant the relief herein pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief granted herein are sections 105(a) and 362(d) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).

B. Pursuant to the Stipulation, as of the date hereof, Road Bay is deemed to have an allowed claim against the Debtor for outstanding principal, accrued and unpaid prepetition interest and fees and expenses in the amount of \$ \_\_\_\_\_,<sup>2</sup> which claim is secured by a perfected first priority security interest in the Assets.

C. The Stipulation provides, among other things, that if the Debtor fails to timely meet any Milestone (as that term is defined in the Stipulation), then Road Bay, as Lender, subject to the terms and provisions of the Stipulation, has the right to elect to either have (i) the automatic stay lifted with respect to the Assets so that Road Bay can enforce its remedies against the Assets, including, without limitation, proceeding to a foreclosure sale in the State Court Action, or (ii) the Assets sold to Road Bay or its assignee, free and clear of all liens, claims and interests, in exchange for Road Bay’s credit bid of \$16,850,000.

D. The Debtor has failed to timely meet certain of the Milestones set forth in the Stipulation.

E. Road Bay has provided written notice of the missed Milestone(s) referred to in the immediately preceding paragraph, to the Debtor, the U.S. Trustee, and as otherwise required

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<sup>2</sup> Pursuant to a Proof of Claim filed with this Court on June 30, 2011, Road Bay asserts that its prepetition claim against the Debtor aggregates not less than \$17,964,543.29.

under the Stipulation, and the three (3) business day notice period afforded to the Debtor under the Stipulation (during which notice period the Lender is precluded from exercising any of its rights or remedies with respect to the Debtor, its estate, and/or the Assets) has expired.

F. In accordance with the Stipulation, Road Bay has elected to have the automatic stay lifted pursuant to Section 362(d)(1) of the Bankruptcy Code.

G. Accordingly, this Court finds that cause exists under Section 362(d)(1) of the Bankruptcy Code to vacate the automatic stay with respect to the Assets which constitute Road Bay's collateral under the Loan Documents.

Based on the foregoing, it is hereby **ORDERED** that:

1. The automatic stay imposed pursuant to Section 362(a) of the Bankruptcy Code is hereby modified and relief is granted to Road Bay pursuant to Section 362(d)(1) of the Bankruptcy Code to permit Road Bay to exercise any and all of its remedies under its Note and Mortgage, including, without limitation, with the State Court in the Foreclosure Action, or otherwise with respect to the Assets, and to pursue any other rights it may have as a secured creditor under applicable non-bankruptcy law.

2. Road Bay is entitled to assert the balance of its claim against the Debtor and enforce its rights and remedies with respect thereto in accordance with the Loan Documents and as provided by the Bankruptcy Code and applicable non-bankruptcy law.

3. Nothing in this Order shall be deemed to affect, modify or restrict Road Bay's rights or remedies against Coleman as guarantor of certain of the Debtor's obligations under the Note and Mortgage pursuant to the Guaranty, all of which rights and remedies are expressly reserved and preserved.

4. Nothing in this Order shall be deemed to affect, modify, restrict, or waive any rights or defenses of Coleman under applicable non-bankruptcy law as to the enforceability of the Guaranty, all of which rights and defenses are expressly reserved and preserved.

5. The benefits of this Order shall inure to Road Bay and any of its agents, affiliates, successors, and assigns.

6. The Court shall retain jurisdiction with respect to the interpretation and implementation of this Order.

7. The 14-day stay of the effectiveness of the order granting relief ordinarily imposed under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure hereby is waived and shall not apply.

Dated: \_\_\_\_\_, 2011

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HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit E-2**

BINGHAM McCUTCHEN LLP  
Ronald J. Silverman  
Carol Weiner Levy  
399 Park Avenue  
New York, NY 10022  
Tel: 212.705.7000  
Fax: 212.752.5378

*Counsel for Road Bay Investments, LLC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re	)	Chapter 11 Case No.
ACORN ELSTON LLC,	)	10-14807 (SHL)
Debtor.	)	

**ORDER APPROVING SALE OF THE DEBTOR'S ASSETS  
TO ROAD BAY INVESTMENTS, LLC**

Upon the Stipulation and Order, dated August \_\_, 2011 (the "Stipulation"),<sup>1</sup> between and among the above-captioned debtor and debtor-in-possession (the "Debtor"), John B. Coleman ("Coleman"), in Coleman's capacity as guarantor of certain of the obligations of the Debtor pursuant to the Guaranty, and Road Bay Investments, LLC ("Road Bay"), a copy of which is attached hereto as Exhibit A and made a part hereof; and Road Bay having elected under the Stipulation to purchase the Debtor's Assets pursuant to Section 363(b), (f) and (k) of the Bankruptcy Code; and good and sufficient notice of the occurrence of the Early Termination Date under the Stipulation having been provided in accordance with the Stipulation by the Lender to the Debtor, the United States Trustee, as otherwise required under the Stipulation, and

<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Stipulation.

all counterparties to executory contracts and unexpired leases to which the Debtor is a party; and no other or further notice of this Order being required; and the Court having found that the relief granted herein is appropriate; and good and sufficient cause appearing therefore, the Court hereby **FINDS** that:

A. The Court has jurisdiction to grant the relief herein pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief granted herein are sections 105(a), 363(b), (f) and (k) and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).

B. Pursuant to the Stipulation, as of the date hereof, Road Bay is deemed to have an allowed claim against the Debtor for outstanding principal, accrued and unpaid prepetition interest and fees and expenses in the amount of \$ \_\_\_\_\_,<sup>2</sup> which claim is secured by a perfected first priority security interest in the Assets.

C. The Stipulation provides, among other things, that if the Debtor fails to timely meet any Milestone (as that term is defined in the Stipulation), then Road Bay, as Lender, subject to the terms and provisions of the Stipulation, has the right to elect to either have (i) the automatic stay lifted with respect to the Assets so that Road Bay can enforce its remedies against the Assets, including, without limitation, proceeding to a foreclosure sale in the State Court Action, or (ii) the Assets sold to Road Bay or its assignee (as applicable, the “Purchaser”), free and clear of all liens, claims and interests, in exchange for Road Bay’s credit bid of \$16,850,000.

D. The Debtor has failed to timely meet certain of the Milestones set forth in the Stipulation.

---

<sup>2</sup> Pursuant to a Proof of Claim filed with this Court on June 30, 2011, Road Bay asserts that its prepetition claim against the Debtor aggregates not less than \$17,964,543.29.

E. Road Bay has provided written notice of the missed Milestone(s) referred to in the immediately preceding paragraph, to the Debtor, the U.S. Trustee, and as otherwise required under the Stipulation, and the three (3) business day notice period afforded to the Debtor under the Stipulation (during which notice period the Lender is precluded from exercising any of its rights or remedies with respect to the Debtor, its estate, and/or the Assets) has expired.

F. In accordance with the Stipulation, Road Bay has elected for the Purchaser to purchase the Debtor's Assets for a credit bid by Road Bay of \$16,850,000 pursuant to Sections 363(b), (f) and (k) of the Bankruptcy Code.

G. Accordingly, this Court finds that, pursuant to Section \_\_\_ of the Stipulation and Sections 363(b), (f) and (k) of the Bankruptcy Code, Road Bay is hereby deemed to have bid a portion of its allowed secured claim against the Debtor in the amount of \$16,850,000 for the purchase of the Assets by the Purchaser.

Based on the foregoing, it is hereby **ORDERED** that:

1. The Assets are hereby sold to the Purchaser, free and clear of all liens, claims and encumbrances, other than proof of claim number 3 (as amended by proof of claim number 4) filed with the Bankruptcy Court by Jewel Food Stores, Inc. ("Jewel") as a secured judgment claim in the amount of \$760,889.11 (the "Jewel Claim"), in exchange for a credit bid purchase price equal to \$16,850,000 (the "363 Sale").

2. The Court orders that:

(a) the Debtor is hereby authorized and directed to take any and all action necessary or appropriate to effectuate the 363 Sale and to transfer the Assets to the Purchaser;

(b) this Order constitutes the legal, valid, and effective transfer of the Assets to the Purchaser without the need for any other documentation, including, without limitation, a deed of sale, and shall vest the Purchaser with all right, title, and interest of the Debtor in and to the Assets free and clear of all lien, claims or interests of any kind or nature whatsoever other than the Jewel Claim;

(c) pursuant to section 365 of the Bankruptcy Code, the Debtor is hereby deemed to have assumed and assigned to the Purchaser all unexpired leases and other executory contracts related to the Assets and is authorized and directed to execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deems necessary to assign and transfer such unexpired leases and other executory contracts, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied;

(d) the consideration provided by Road Bay for the Assets purchased by the Purchaser pursuant to the 363 Sale shall be deemed to constitute 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;

(e) the consideration provided by Road Bay for the Assets purchased by the Purchaser pursuant to the 363 Sale is fair and reasonable and the 363 Sale may not be avoided under section 363(n) of the Bankruptcy Code;

(f) this Order shall be effective as a determination that, except for the Jewel Claim, all liens, claims and interests of any kind or nature whatsoever existing as to the Assets prior to the date of this Order have been unconditionally released, discharged and terminated as to the Purchaser (including its successors and assigns) and their respective properties (including, without limitation, the Assets), and that the conveyances described herein have been effected;

(g) this Order shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons who may be required by operation of law, the duties of their office, contract, or otherwise, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets;

(h) each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to record the 363 Sale;

(i) the Purchaser shall not have any liability or responsibility for any liability of the Debtor arising under or related to the Assets. Without limiting the generality of the foregoing, the Purchaser shall not be liable for any claims against the Debtor and the Purchaser shall not have successor or vicarious liabilities of any kind or character, including, but not limited to, under any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the date of the 363 Sale, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any liabilities of the Debtor arising prior to the 363 Sale, including, but

not limited to, tax liabilities arising in connection with, or in any way relating to, the operation of the Assets prior to the 363 Sale. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, releases which the Court holds shall be deemed to have been given in favor of the Purchaser by all holders of claims or interests against or in the Debtor or its assets;

(j) nothing in this Order shall be construed to release, discharge, enjoin or preclude the enforcement of any environmental liability to the extent arising or continuing after the 363 Sale to a governmental unit to which any entity would be subject as the owner or operator of the Assets after the 363 Sale; and

(k) the 363 Sale is undertaken by Road Bay and the Purchaser without collusion and in good faith as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the 363 Sale shall not affect the validity of the 363 Sale (including, without limitation, the assumption and assignment of any of the unexpired leases or executory contracts related to the Assets), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Assets and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

3. Road Bay is entitled to assert the balance of its claim against the Debtor and enforce its rights and remedies with respect thereto, all as provided by the Bankruptcy Code and applicable non-bankruptcy law.

4. Nothing in this Order shall be deemed to affect, modify or restrict Road Bay's rights or remedies against Coleman as guarantor of certain of the Debtor's obligations under the Note and Mortgage pursuant to the Guaranty, all of which rights and remedies are expressly reserved and preserved.

5. Nothing in this Order shall be deemed to affect, modify, restrict, or waive any defenses or rights of Coleman under applicable non-bankruptcy law as to the enforceability of the Guaranty, all of which defenses and rights are expressly reserved and preserved.

6. The benefits of this Order shall inure to Road Bay and any of its agents, affiliates, successors, and assigns.

7. The Court shall retain jurisdiction with respect to the interpretation and

implementation of this Order.

8. The 14-day stay of the effectiveness of the order granting relief ordinarily imposed under Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure hereby is waived and shall not apply.

Dated: \_\_\_\_\_, 2011

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HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit F**

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

ROAD BAY INVESTMENTS, LLC, a )  
Delaware limited liability company, )

Plaintiff, )

v. )

Case No. 09 CH 16402

ACORN ELSTON, LLC, a Delaware limited )  
liability company, JOHN B. COLEMAN, V3 )  
COMPANIES OF ILLINOIS LTD, an Illinois )  
corporation, FIRST CHOICE EXTERIORS )  
PROFESSIONAL CO., an Illinois corporation, )  
DELAWARE CORPORATE )  
CONSTRUCTION, INC., an Illinois )  
corporation, HARD SURFACE SOLUTIONS, )  
INC., an Illinois corporation, T&W EDMIER )  
CORP., an Illinois corporation, BALANCED )  
ENVIRONMENTS, INC., an Illinois )  
corporation, METRO COMMERCIAL REAL )  
ESTATE, INC., an Illinois corporation, NEAL )  
GERBER & EISENBERG, LLP, an Illinois )  
limited partnership, PHILLIP J. RILEY )  
ARCHITECTS, INC. an Illinois corporation, )  
JOSEPH A. SCHUDT & ASSOCIATES, INC., )  
an Illinois corporation, JEWEL FOOD )  
STORES, INC., an Ohio corporation, )  
UNKNOWN OWNERS AND NON-RECORD )  
CLAIMANTS, )

Hon. Darryl Simko

Defendants. )

**STIPULATION FOR ENTRY OF JUDGMENT OF FORECLOSURE AND SALE**

Plaintiff Road Bay Investments, LLC (hereinafter "Plaintiff" or "Road Bay"), and Defendants Acorn Elston, LLC, a Delaware Limited Liability Company (hereinafter "Acorn Elston"), and John B. Coleman (hereinafter "Coleman") (collectively "Defendants"), pursuant to this Stipulation for Entry of Judgment of Foreclosure and Sale ("Stipulation") hereby stipulate and agree as follows:

### Recitations

1. Plaintiff and Defendants are parties to the above captioned foreclosure action pending in the Circuit Court of Cook County Illinois, County Department, Chancery Division (hereinafter the “instant action” or the “foreclosure action”).

2. The Plaintiff and Defendants agree that the Court has jurisdiction over all the parties to the instant action who are interested in the real property legally described herein, and the subject matter hereof, and that all interested parties, who have not been defaulted, are before the Court.

3. On September 11, 2010, Defendant Acorn Elston filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), captioned In re Acorn Elston, LLC, Case No. 10-14807 (SHL) (hereinafter “the Bankruptcy Proceeding”). Road Bay, Acorn Elston and Coleman subsequently entered into a Term Sheet and a Stipulation and Order which were approved by the Bankruptcy Court on August \_\_, 2011. See Bankruptcy Court Docket No. \_\_.

4. Pursuant and subject to the terms of the Stipulation and Order, upon the occurrence of the Early Termination Date (as defined therein), among other things, (i) the automatic stay extant in the Bankruptcy Proceeding pursuant to section 362 of title 11 of the United States Code is to be lifted pursuant to an order entered by the Bankruptcy Court (the “Lift Stay Order”); (ii) Road Bay is immediately authorized to exercise all applicable remedies, including without limitation, foreclosure of the mortgage that is the subject of the instant action without defense, offset or counterclaim, and (iii) Acorn Elson and Coleman are deemed to have consented to the entry by the Court in the instant action of the Judgment of Foreclosure and Sale (the “Judgment”) attached hereto as Exhibit “B” and incorporated herein and shall be prohibited

from asserting, and shall be deemed to have waived, any objection to Road Bay's foreclosure in respect of any or all of Acorn Elston's assets; provided that pursuant to the Stipulation and Order, all rights and defenses of Coleman under applicable non-bankruptcy law that may currently exist to contest the enforceability of the Guaranty are reserved and preserved.

#### Agreement

5. In consideration of Plaintiff's agreement to enter into the Term Sheet and the Stipulation and Order and for other good and valuable consideration, receipt of which is hereby acknowledged, Defendants hereby agree to entry of the Judgment in the instant action in the form attached hereto as Exhibit B in favor of the Plaintiff free and clear of all claims, liens, and interests of said Defendants and of all persons claiming by, through or under said Defendants as of the date of entry of the Judgment, and said Defendants further waive any objection to the foreclosure action in respect to any and all of Acorn Elston's assets.

6. Acorn Elston and Coleman hereby waive any right that they may have to an evidentiary hearing in connection with the entry of Judgment in this action.

7. Acorn Elston and Coleman shall vacate the Property (as defined in the Complaint) and shall deliver possession of the Property to the Plaintiff contemporaneously with the entry of an order confirming the sale in the instant action. At that same time, the Defendants shall also deliver to the Plaintiff possession of the tangible personal property.

8. Acorn Elston and Coleman agree not to take any action that would interfere with title to and possession of the Property vesting in and being delivered to the Plaintiff in accordance with the terms of this Stipulation.

9. Acorn Elston and Coleman waive any and all rights they may have at law or in equity to (a) move to open the Judgment; (b) seek to set aside or modify the Judgment or move

for reconsideration thereof; or (c) appeal the entry of the Judgment pursuant to this Stipulation. Without limiting the generality of the foregoing, Acorn Elston and Coleman waive any and all rights they may have under Section 5/2-1401 of the Illinois Code of Civil Procedure, 735 ILCS §5/2-1401, regarding the Judgment. Acorn Elston and Coleman acknowledge that these waivers are made knowingly, intelligently, and without duress, and that the Defendants have consulted with counsel of their choosing prior to executing this Stipulation.

10. Nothing contained herein or contemplated hereby shall effect a transfer, conveyance or foreclosure of the membership interests, or any interest therein, in Acorn Elston or be construed to impose successor liability upon the Plaintiff.

11. Nothing contained herein or contemplated hereby shall be deemed, or is intended to constitute, a waiver by Coleman or Plaintiff of any rights or defenses that may currently exist under applicable non-bankruptcy law to contest the enforceability of the Guaranty, and any and all such rights and defenses are reserved and preserved.

12. This Stipulation shall be binding upon the Plaintiff and the Defendants, and its and their administrators, representatives, managers, predecessors, successors and assigns.

13. This Stipulation may be executed in counterparts, each of which shall be an original, and which counterparts shall together constitute but one and the same instrument.

14. The parties acknowledge and agree that the Judgment shall be accorded preclusive effect under the doctrines of *res judicata* and collateral estoppel under law and it is the intent of the parties hereto that such Judgment has such preclusive effect with respect to all issues relating to the allegations in the Complaint.

15. The Plaintiff and Defendants agree that this Court shall retain jurisdiction of the above-entitled action for the purpose of enforcing the attached Judgment of Foreclosure and

Sale, by further orders and sanctions as the Court shall deem fair and just, including for purposes of issuing an Order of Possession to put Plaintiff in possession of the Property pursuant to the terms and conditions contained herein.

16. There is no just reason to delay the enforcement of the Judgment contemplated herein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Plaintiff, ROAD BAY INVESTMENTS, LLC      Defendant ACORN ELSTON, LLC

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Defendant JOHN B. COLEMAN

By: \_\_\_\_\_  
John B. Coleman

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

ROAD BAY INVESTMENTS, LLC, a )  
Delaware limited liability company, )  
 )  
Plaintiff, )

v. )

Case No. 09 CH 16402

ACORN ELSTON, LLC, a Delaware limited )  
liability company, JOHN B. COLEMAN, V3 )  
COMPANIES OF ILLINOIS LTD, an Illinois )  
corporation, FIRST CHOICE EXTERIORS )  
PROFESSIONAL CO., an Illinois corporation, )  
DELAWARE CORPORATE )  
CONSTRUCTION, INC., an Illinois )  
corporation, HARD SURFACE SOLUTIONS, )  
INC., an Illinois corporation, T&W EDMIER )  
CORP., an Illinois corporation, BALANCED )  
ENVIRONMENTS, INC., an Illinois )  
corporation, METRO COMMERCIAL REAL )  
ESTATE, INC., an Illinois corporation, NEAL )  
GERBER & EISENBERG, LLP, an Illinois )  
limited partnership, PHILLIP J. RILEY )  
ARCHITECTS, INC. an Illinois corporation, )  
JOSEPH A. SCHUDT & ASSOCIATES, INC., )  
an Illinois corporation, JEWEL FOOD )  
STORES, INC., an Ohio corporation, )  
UNKNOWN OWNERS AND NON-RECORD )  
CLAIMANTS, )  
 )  
Defendants. )

Hon. Darryl Simko

**JUDGMENT OF FORECLOSURE AND SALE**

This cause came to be heard on the Verified Second Amended Complaint to Foreclose Mortgage and for Other Relief ("Complaint") filed by Road Bay Investments, LLC (hereinafter "Plaintiff" or "Road Bay"), with the consent of defendants, Acorn-Elston, LLC ("Acorn-Elston") and John B. Coleman ("Coleman"), and on Plaintiff's Motion for Entry of a Judgment of Foreclosure and Sale, and the Court, being fully advised in the premises, finds:

1. All defendants have been properly joined pursuant to the Illinois Mortgage Foreclosure Law, 735 Ill. Comp. Stat. 5/15-1101 *et seq.* (the "Act"), and have appeared or been duly and properly served with summons or by publication in strict accordance with the Illinois Code of Civil Procedure.

2. Due and proper notice has been given to all parties entitled thereto during the progress of this cause, as required by law, including, but not limited to, notice of the motion for this judgment.

3. This Court has jurisdiction over all of the parties to this cause and the subject matter hereof, and all material allegations of the Compliant are true and proved.

4. Unknown Owners and Non-Record Claimants are, and have previously been found by this Court to be, in default for their failure to answer or otherwise plead and the Complaint is confessed against such defendants.

5. On September 11, 2010, Defendant Acorn Elston filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), captioned *In re Acorn Elston, LLC*, Case No. 10-14807 (SHL) (hereinafter "the Bankruptcy Proceeding"). Road Bay, Acorn Elston and Coleman subsequently entered into a Term Sheet and a Stipulation and Order which were approved by the Bankruptcy Court on August \_\_, 2011. See Bankruptcy Court Docket No. \_\_.

6. Pursuant and subject to the terms of the Stipulation and Order, upon the occurrence of the Early Termination Date (as defined therein), among other things, (i) the automatic stay extant in the Bankruptcy Proceeding pursuant to section 362 of title 11 of the United States Code is to be lifted pursuant to an order entered by the Bankruptcy Court (the "Lift Stay Order"); (ii) Road Bay is immediately authorized to exercise all applicable remedies,

including without limitation, foreclosure of the mortgage that is the subject of the instant action without defense, offset or counterclaim, and (iii) Acorn Elson and Coleman are deemed to have consented to the entry by this Court of this Judgment of Foreclosure and Sale (the "Judgment") and shall be prohibited from asserting, and shall be deemed to have waived any objection to Road-Bay's foreclosure in respect of any or all of Acorn Elston's assets; provided that, pursuant to the Stipulation and Order, all rights and defenses of Coleman under applicable non-bankruptcy law that may currently exist to contest the enforceability of the Guaranty are reserved and preserved.

7. It appears to the Court that the Early Termination Date has occurred and the Lift Stay Order has been entered by the Bankruptcy Court.

8. Acorn Elson owns the property commonly known as "Elston Plaza" and located at 3227-3237 West Addison Street and 3500-3700 North Kedzie Avenue, Chicago, Illinois (the "Property").

9. On or about April 19, 2007, Allstate Life Insurance Company ("Allstate") made a loan to Acorn Elson in the stated principal amount of \$15,000,000 (the "Loan").

10. The Loan is evidenced by that certain Mortgage Note dated April 19, 2007 (the "Note") from Acorn Elson, as maker, to Allstate, as holder, in the amount of the Loan, which provides, in part, that Acorn Elson promises to repay Allstate the outstanding indebtedness in accordance with the terms of the Note.

11. As collateral security for the Note, Acorn Elson executed and delivered to Allstate a Mortgage, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing dated April 19, 2007, and recorded with the Cook County Recorder of Deeds on April 24, 2007 as Document Number 0711439017 (the "Mortgage").

12. As collateral security for the Note, Acorn Elston also executed and delivered to Allstate an Assignment of Leases and Rents dated April 19, 2007, and recorded with the Cook County Recorder of Deeds on April 24, 2007 as Document Number 0711439018 (the "Assignment of Leases").

13. To further secure the Note, Coleman executed and delivered to Allstate a Nonrecourse Carveout Guaranty Agreement dated April 19, 2007 (the "Nonrecourse Guaranty").

14. Under Section 1.06 of the Mortgage, Acorn Elston is required "to pay any and all taxes, bonds, assessments, fees, liens, charges, fines, and any accrued interest or penalty thereon, and any and all other items which are attributable to or affect the Property (collectively, "Impositions") by making payment prior to delinquency directly to the payee thereof and promptly furnish copies of paid receipts for these to [the mortgage-holder]."

15. Information concerning said Mortgage:

- (a) Nature of the instrument: Mortgage
- (b) Date of Mortgage: April 19, 2007
- (c) Name of the Mortgagor: Acorn Elston, LLC
- (d) Name of the Mortgagee: Road Bay Investments, LLC, pursuant to the Assignment of Mortgage, dated September 25, 2009, from Allstate Life Insurance Company
- (e) Date and place of recording: April 24, 2007, in the Office of the Recorder of Deeds of Cook County, Illinois
- (f) Identification of Recording: Document No. 0711439017
- (g) Interest subject to the mortgage: Fee simple
- (h) Amount of original indebtedness, including subsequent advances made under the mortgage:

Original indebtedness:	\$15,000,000.00
Real Estate Taxes and Lien Settlements Paid by Allstate as Protective Advances:	835,788.13

TOTAL: \$15,835,788.13

- (i) Legal description of Mortgaged Premises and common address:  
The legal description of the Mortgaged Premises is attached to the Complaint as Exhibit A.

Common Address: 3227–3237 West Addison Street and 3500–3700 North Kedzie Avenue, Chicago, Illinois  
PIN: 13-23-402-011 and 13-23-402-021

- (j) Statement as to default: (i) Date of default: March 31, 2009; (ii) default has occurred for failure to pay real estate taxes on the Property pursuant to Section 1.06 of the Mortgage and for failure to discharge or bond over the Mechanic's Liens on the Property pursuant to Sections 1.06 and 1.09 of the Mortgage.

- (k) Name of present owner(s) of the real estate: Acorn Elston, LLC

16. Plaintiff has exercised its option under the Loan Documents and declared the entire indebtedness evidenced and secured thereby to be immediately due and payable.

17. Road Bay is the assignee and the legal holder of the Mortgage, by assignment from Allstate and is entitled to foreclose the Mortgage pursuant to the terms of those documents and the Act.

18. The Court will address the additional interest, including any post maturity interest, and the additional attorneys' fees, costs and expenses incurred by Road Bay and its predecessor in interest, Allstate, in connection with the confirmation of the sale.

19. There was, as of September 10, 2010, due and owing to Road Bay upon said Mortgage, the sum of \$17,964,543.29, together with interest on a portion of said amount, \$15,835,788.13, at the rate of 10.93% per annum from September 10, 2010 until entry of the foreclosure judgment, and from the date of any foreclosure judgment entered forward, legal interest on the entire balance then due. A statement of the amount due Road Bay as of September 10, 2010 is as follows:

Principal Balance	\$15,000,000.00
Interest on the Principal to September 10, 2010	2,257,558.30
Protective Advances Paid by Allstate	835,788.13
Interest on Protective Advances	104,323.93
Legal fees May 2009 through May 2010	222,397.90
Late fees	44,475.00
Less Amounts Received from Receiver	(500,000.00)
TOTAL:	<u>\$17,964,543.29</u>

20. Road Bay has a lien on the Property described for the said aggregate sum of \$17,964,543.29 with interest on a portion of said amount, \$15,835,788.13, at the rate of 10.93% per annum from September 10, 2010 until entry of the foreclosure judgment, and from the date of any foreclosure judgment entered forward, legal interest on the entire balance then due, which lien is prior and superior to all other liens, claims or rights of every other person.

21. Pursuant to Section 3.09 of the Mortgage, Acorn Elston has waived its rights of redemption. Further, Acorn Elston's right of reinstatement expired not later than 90 days after Acorn Elston filed its appearance in this proceeding on September 3, 2009.

22. This is a foreclosure of a mortgage on commercial real estate and not a foreclosure of a mortgage on residential real estate.

23. The Court finds that Acorn Elston is in default under the Note, and further is personally liable to Road Bay on Count II in the minimum amount of \$908,186.03, as of September 10, 2010, plus any such other and further amounts that are due, or that may become due Road Bay from Acorn Elston on Count II, under the Note and Mortgage. The Court further finds that Coleman is liable to Road Bay on Count III under the Nonrecourse Guaranty in the minimum amount of \$908,186.03, as of September 10, 2010, plus any such other and further amounts that are due, or may become due, Road Bay from Coleman on Count III under the Nonrecourse Guaranty.

24. On October 1, 2009, this Court entered a default judgment against defendants Metro Commercial Real [Estate], Inc., Unknown Owners, and Non-Record Claimants. On June 25, 2010, the Court amended this default order nunc pro tunc to reflect the full name of Metro Commercial Real Estate, Inc. In addition, the Court has granted partial summary judgments establishing the priority of Plaintiff's Mortgage as to defendants, Jewel Food Stores, Inc. (on September 8, 2009), Neal Gerber & Eisenberg LLP (also on September 8, 2009), V-3 Companies of Illinois, Ltd. (on October 1, 2009), Delaware Corporate Construction, Inc. (on November 12, 2009), and Phillip J. Riley Architects, Inc. (on November 12, 2009).

25. Plaintiff has settled the lien claims of all of the other defendants relating to the Property. On February 22, 2010, defendant First Choice Exteriors Professional Co. executed and delivered a release of its \$27,000 lien against the Property in exchange for a payment of \$10,000 by Road Bay. On March 27, 2010, defendant T&W Edmier Corp. executed and delivered a release of its \$7,997.50 lien claim against the Property in exchange for a payment of \$5,000 by Road Bay. On April 26, 2010, defendants Hard Surface Solutions, Inc. and Balanced Environments, Inc. executed and delivered releases of their liens for \$226,208.00 and \$84,624.00 against the Property in exchange for payments of \$72,775.00 and \$27,225.00 respectively by Road Bay. On June 5, 2010, defendant Joseph A. Schudt & Associates, Inc. executed and delivered a release of its lien for \$64,064.78 against the Property in exchange for payment of \$35,000.00 by Road Bay. All of these releases have been recorded against the Property. These payments by Plaintiff to settle the claims of the mechanic's lien claimants are protective advances and additional indebtedness secured by the Mortgage.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. This Court has jurisdiction of the subject matter of this cause and of all parties hereto.

B. All defendants were served with Summons or by publication or have otherwise appeared in strict accordance with the Illinois Code of Civil Procedure; and Unknown Owners and Non-Record Claimants shall be and are hereby defaulted for want of answer or response to the Complaint herein and said Complaint is hereby taken as confessed against each defendant. As for defendants Acorn Elston and Coleman, Road Bay's Motion for Partial Summary Judgment was granted previously and Acorn-Elson and Coleman have consented to the entry by this Court of this Judgment. Said Motion and the verified allegations of the Complaint were supported and proved by competent evidence, including, without limitation, unrebutted affidavits and business records. There exists no genuine issue of material fact and Road Bay is entitled to judgment as a matter of law.

C. On the action to foreclose the Mortgage in Count I of the Complaint, Judgment is entered in favor of Road Bay and against Acorn Elston in the amount of \$17,964,543.29, together with interest on a portion of said amount, \$15,835,788.13, at the rate of 10.93% per annum from September 10, 2010 until entry of the foreclosure judgment, and, from the date of any foreclosure judgment entered forward, legal interest on the entire balance then due.

D. Unless any of the defendants shall by seven (7) days from the date of this Judgment, pay or cause to be paid the amount due to Road Bay as found in paragraph 17 of the findings made in this judgment, together with all interest, costs, fees and expense as provided in said paragraph 17, and such other sums as are required to be paid by Section 15-1603(d) of the Act, then the Sheriff of Cook County, Illinois is hereby appointed to sell the Property, together with all personal property, equipment, improvements, fixtures and appurtenances thereto or

thereupon, or so much of said property which may be divisible and sold separately without material injury to the parties in interest, or as much thereof as may be necessary to pay the amount found to be due herein together with all costs of suit, including said Sheriff's fees and disbursements, at public sale to the highest bidder for each in Room 701, Richard J. Daley Center, or at such other place as the Court may hereafter designate.

E. Road Bay shall give public notice of the time, place and terms of such sale by previously advertising the same once in each week for three (3) consecutive calendar weeks (Sunday through Saturday) in a newspaper circulated to the general public in Cook County, Illinois in the section where legal notices are commonly placed, with a separate advertisement, which shall be in a different newspaper, in the section of such newspaper in which real estate, other than real estate being sold in a legal proceeding, is commonly advertised to the general public, provided, that the separate advertisement in the real estate section need not include a legal description. The first such notice shall be published at least twenty-one days prior to the sale but not more than forty-five days prior to the sale and the last not less than seven days prior to the sale. The Sheriff may at any time and from time to time, at the written direction of Road Bay, its assignees or nominees, adjourn the sale upon advising all persons present by proclamation of the date, time and place upon which the adjourned sale shall be held and by giving the same terms of the adjourned sale as herein set forth. No further notice or publication shall be required, except that for any adjourned sale that is to be conducted more than sixty days after the date on which it was first to be held, notice shall again be given in the manner provided for above. Road Bay, or its assignees or nominees, may become the purchaser at the sale. If Road Bay, its assignees or nominees, is the successful bidder, the amount due Road Bay plus all

costs and fees hereunder, shall be taken as a credit on the bid except for amounts due the Sheriff pursuant to Paragraph G below.

F. The Sheriff, upon holding the sale, shall issue the duplicate certificate of sale and deliver it to the Recorder of Deeds for recording, and shall execute and deliver to the purchaser a receipt of sale and, with all convenient speed, file a report of sale and distribution with the Court for its approval and confirmation. The Court shall then conduct a hearing and, concluding that the sale was conducted according to law, the Court shall enter an order confirming the sale. Upon confirmation of the sale, the Sheriff shall issue the certificate of sale to the purchaser and this certificate shall be freely assignable. Also, the Sheriff shall, upon the request of the holder of the certificate of sale, execute and deliver to the holder a deed sufficient to convey title. Upon delivery of the deed, title for the property shall pass to the grantee named therein. This conveyance shall be an entire bar to, and shall be free and clear of, all claims, including, but not limited to, all liens, encumbrances, interests, counterclaims or defenses of any kind (collectively, the "Claims"), of the parties to the foreclosure and all persons claiming thereunder and all Claims of Unknown Owners and any Non-Record Claimants.

G. Out of the proceeds of such sale the Sheriff shall retain his fees, disbursements and commission and see that all taxable costs and expenses are paid to the person or persons entitled thereto.

H. The Sheriff shall then pay to Road Bay the amount so found due Road Bay as specified in paragraph 17 of the above findings, with interest as aforesaid, to the extent the proceeds remaining may suffice.

I. If, after payment in full of the sums due as aforesaid, there remains any surplus, the Sheriff shall deposit the surplus with the Court pending further order of the Court.

J. In case the proceeds of sale are not sufficient to pay Road Bay's liens in full and there remains a deficiency in the amount due to Road Bay, Road Bay shall be entitled to a finding of a deficiency against Acorn Elston and to a lien upon the rents, profits and avails arising out of the Property until the date of the delivery of the deed to the purchaser or holder of the aforesaid certificate of sale.

K. Pursuant to Section 15-1509, after (i) confirmation of sale, and (ii) payment of the purchase price and any other amounts required to be paid by the purchaser at sale, and delivery of the deed, title to the mortgaged property shall pass to the grantee named therein, and all debts and all persons claiming by or through or under any creditor, lien claimant or defendant, shall be forever barred and foreclosed of and from any and all right, title and equity or statutory right of redemption and claim of any kind, in and to the premises, or any portion thereof, that shall have been sold and which shall not have been redeemed according to law.

L. The Court further finds that Acorn Elston is in default under the Note, and further is liable to Road Bay in the minimum amount of \$908,186.03, as of September 10, 2010, on Count II of the Complaint, plus any such other and further amounts that are due, or that may become due Road Bay from Acorn Elston on Count II, under the Note and Mortgage. The Court finds that Coleman is liable to Road Bay on Count III of the Complaint under the Nonrecourse Guaranty in the minimum amount of \$908,186.03, plus any such other and further amounts that are due, or may become due, Road Bay from Coleman on Count III under the Nonrecourse Guaranty.

M. The Court reserves and retains jurisdiction of the subject matter of this cause and of all parties hereto for the purpose of advising and instructing the Sheriff in relation to his duties and of passing upon the acts and doings of the Sheriff, and directing the disposition of any funds

in his hands or which may come into his hands and requiring him to account for the same until such time as he might be discharged.

N. The Court also reserves and retains jurisdiction of the subject matter of this cause and of the parties hereto for purposes of: (i) determining what other amounts may be due and owing Plaintiff from Acorn Elston and Coleman (such as for additional attorneys' fees, expenses, costs and additional interest, including post-maturity interest); (ii) enforcing this Judgment; and (iii) entering such other and further orders, not inconsistent with the provisions of this Judgment, as the Court may deem advisable.

O. Nothing contained herein or contemplated hereby shall be deemed, or is intended to constitute, a waiver by Coleman or Plaintiff of any rights or defenses that may currently exist under applicable non-bankruptcy law to contest the enforceability of the Guaranty, and any and all such rights and defenses are reserved and preserved.

P. Leave is granted to withdraw all evidentiary exhibits, as true and correct copies thereof are attached to the complaint and no further copies need be filed.

Q. Pursuant to Illinois Supreme Court Rule 304(a), the Court finds that there is no just reason for delaying the enforcement of or an appeal from this Judgment.

Dated: \_\_\_\_\_

ENTER:

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Judge

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