

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re FRESH & EASY NEIGHBORHOOD MARKET INC., <i>et al.</i> , ¹ <div style="text-align: center;">Debtors.</div>	: : : : : : : : : : :	Chapter 11 Case No. 13-12569 (KJC) (Jointly Administered)
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**DEBTORS' APPLICATION FOR AN ORDER (I) AUTHORIZING
THEM TO RETAIN AND EMPLOY THE JOINT VENTURE OF GORDON BROTHERS
GROUP, LLC AND CERTAIN OF ITS AFFILIATES AND TIGER CAPITAL GROUP,
LLC AND CERTAIN OF ITS AFFILIATES AS CONSULTANT, *NUNC PRO TUNC* AS
OF THE PETITION DATE AND (II) WAIVING COMPLIANCE WITH CERTAIN
INFORMATION REQUIREMENTS PURSUANT TO LOCAL RULE 2016-2(g)**

The above-captioned debtors (collectively, the "Debtors") hereby apply to the Court for entry of an order pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2014-1 and 2016-2(g) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") authorizing them to retain and employ the joint venture comprised of Gordon Brothers Group, LLC (together, with its affiliates, "GBG") and its joint venture partner Tiger Capital Group, LLC (together, with its affiliates, "TC"; GBG and TC together, as a joint venture proposed to serve as a consultant as described herein, "JV"), as a consultant in these chapter 11

¹ The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Fresh & Easy Neighborhood Market Inc. (7028) and Fresh & Easy Property Company LLC (9636). The address of each of the Debtors is 2120 Park Place, Suite 200, El Segundo, California 90245.

cases, *nunc pro tunc* as of September 30, 2013 (the "Petition Date").² In support of this Application, the Debtors submit (i) the Declaration of Michael D. Chartock, a principal and managing director of GBG (the "Chartock Declaration"), a copy of which is attached hereto as Exhibit A and (ii) the Declaration of Albert T. Nassi, a member and counsel of TC (the "Nassi Declaration") a copy of which is attached hereto as Exhibit B, which are incorporated herein, and further respectfully states as follows:

Background

1. On September 30, 2013 (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code.³ The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

2. Founded in 2006 as wholly-owned subsidiaries of Tesco PLC ("Tesco"), the Debtors operate a chain of Fresh & Easy grocery stores offering high-quality, wholesome, fresh prepared and ready-to-eat products at affordable prices. The Debtors currently operate 167 stores located in California, Arizona and Nevada. In addition to their stores portfolio, the Debtors operate a state of the art production facility in Riverside, California (the "Campus") including meat and produce facilities and a kitchen, each housed in its own building, providing Fresh & Easy-branded fresh food products. In close proximity to the Campus is one of the Debtors' two distribution centers, with the other inactive distribution center located in Stockton,

² TC is participating in JV primarily as a financial resource; TC is not expected to perform any of the consulting or other JV services described in this Application in connection with the Debtors' chapter 11 cases. Accordingly, this Application will address JV's suitability to serve as a consultant to Debtors based upon the qualifications of GBG as set forth herein.

³ This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

California. For the twelve months ending February 24, 2013, the Debtors generated approximately \$1.1 billion in revenue.

3. The Debtors have commenced these chapter 11 cases to effectuate a sale of a substantial portion of their assets on a going concern basis to a stalking horse bidder, YFE Holdings, Inc. (the "Proposed Buyer"), a company affiliated with The Yucaipa Companies, LLC, subject to any higher and better offers received in connection with a proposed sale process. The Debtors intend to liquidate all other assets not included in the proposed sale. The Debtors believe the proposed sale and the liquidation of the remaining portion of the Debtors' assets represents the best strategy to maximize value for the Debtors' various stakeholders.

4. By this Application, the Debtors seek to retain and employ JV as a consultant in these chapter 11 cases to assist the Debtors with their disposition of various real estate and other property not included in the proposed sale transaction, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rules 2014-1 and 2016-2(g), *nunc pro tunc* as of the Petition Date, pursuant to the engagement letter between Jones Day and JV, dated as of September 1, 2013, a copy of which is attached as Exhibit C hereto (the "Engagement Letter").⁴

Legal Basis for Relief Requested

JV's Qualifications

5. The Debtors seek to retain JV as their consultant because, among other things, GBG is a consulting firm with significant experience in the representation of debtors concerning the disposition of retail inventory, real estate and other retail assets in bankruptcy

⁴ Any references to or summaries of the Engagement Letter herein are qualified by the express terms of the Engagement Letter, which shall govern if there is any conflict between the Engagement Letter and the summaries provided herein.

proceedings. The Debtors believe that JV is well qualified to act as consultant to the Debtors in this bankruptcy case.

6. GBG has advised numerous chapter 11 debtors in connection with leasing issues related to their restructuring efforts, including in the following cases: In re Ultimate Acquisition Partners, LP, Case No. 11-10245 (MFW) (Bankr. D. Del Apr. 8, 2011); In re Borders Group, Inc., Case No. 11-10614 (MG) (Bankr. D. Del. Mar. 16, 2011); In re Blockbuster Inc., Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Nov. 23, 2010); In re Movie Gallery, Inc., Case No. 10-30696 (DOT) (Bankr. E.D. Va. Feb. 3, 2010); In re TSIC, Inc. f/k/a Sharper Image Corp., Case No. 08-10322 (KG) (Bankr. D. Del. July 23, 2009); In re Goody's LLC, Case No. 09-10124 (Bankr. D. Del. Feb. 12, 2009); In re Circuit City Stores, Inc., Case No. 08-35653 (KRH) (Bankr. E.D. Va. Jan. 9, 2009); In re Linens Holding Co., Case No. 08-10832 (CSS) (Bankr. D. Del. July 24, 2008). Because of the voluminous nature of the orders authorizing GBG or its affiliate(s) as consultants in the cases cited herein, such orders are not annexed to this Application. Copies of the orders approving GBG or its affiliate(s) as consultants in these cases will be made available upon request of Debtors' counsel.

7. Accordingly, the Debtors believe that JV's resources, capabilities, and experience will greatly assist the Debtors in their efforts to maximize value from their real estate leases and other assets.

Services to Be Provided by JV

8. Subject to further order of this Court, and consistent with the Engagement Letter, JV will provide the following consulting and advisory services:

- (a) Negotiating lease terminations with landlords of certain leased properties;
- (b) Preparing and implementing a marketing program to assign or sublease certain leases of leased properties;

- (c) Preparing and implementing a marketing program to sell certain of the Debtors' owned properties;
- (d) Assisting in selling furniture, fixtures and equipment (collectively, "FF&E") from the Debtors' stores;
- (e) Assisting the Debtors in connection with their procurement of "store closing" internal and external signs and similar promotional material in connection with the Debtors' closing of certain stores; and
- (f) Selling certain of the Debtors' non-retail fixed assets (e.g., affixed assets located at the Campus).

9. The services that JV will provide to the Debtors are necessary to enable the Debtors to maximize the value of their real estate leases, FF&E and other property and thereby the value of their estates. These services will not duplicate the services that other professionals are providing to the Debtors in these chapter 11 cases. Specifically, JV will carry out unique functions and will use reasonable efforts to avoid unnecessary duplication of services.

Professional Compensation

10. Subject to Court approval, in consideration of the services to be provided by JV, as more fully described in the Engagement Letter, the Debtors will compensate JV pursuant to the following fee structure (the "Fee Structure") (capitalized terms used in this paragraph 10 but not defined in such paragraph shall have the respective meanings ascribed to them in the Engagement Letter):

(a) Lease Terminations, Assignments and Subleases:

As set forth in Schedule B of the Engagement Letter and Section 12 of the Engagement Letter, a copy of each of which is attached as Exhibit D hereto.

(b) Store FF&E:

As set forth in Section 2(B) of the Engagement Letter, a copy of which is attached as Exhibit E hereto.

(c) Non-Retail Fixed Assets:

As set forth in Section 2(D) of the Engagement Letter, excerpted below:

Consultant will be the seller of such of the Company's non-retail fixed assets (e.g. affixed assets located at the campus locations) as designated by the Company during the Term. Consultant shall not charge Company a fee for such Service but Consultant (i) will be compensated by charging buyers a fifteen percent (15%) buyers premium for any such fixed assets sold, and (ii) will be reimbursed by the Company for any reasonable out-of-pocket expenses related to the sale of such fixed assets; provided that in the event any such non-retail fixed assets are sold under or pursuant to the Real Estate Services, Consultant shall not be entitled to a separate fee or premium under this Paragraph D.

(d) Retainer/Expense Reimbursement.

As set forth in Section 2(E) of the Engagement Letter, excerpted below:

On the Effective Date, the Company shall pay to the Consultant the amount of Five Hundred Thousand dollars (\$500,000.00), which the Consultant shall hold as a security retainer for all amounts due to it hereunder, whether in the nature of fees, reimbursement of expenses, or otherwise. Company shall reimburse Consultant for (i) its reasonable marketing and out-of pocket costs incurred in the provision of the Services, subject to a budget to be reasonably approved by the parties; and (ii) its reasonable travel expenses incurred in the provision of the Services, provided that Company has pre-approved such travel. Any reimbursable expenses shall be paid to Consultant within ten (10) business days after receipt of reasonably detailed invoices therefore.

11. To the best of the Debtors' knowledge, and as set forth in the Chartock Declaration, GBG has no agreement with any entity, other than with its joint venture partner TC, to share with such entity any compensation received by JV or GBG in connection with the Debtors' bankruptcy cases. To the best of the Debtors' knowledge, and as set forth in the Nassi Declaration, TC has no agreement with any entity, other than with its joint venture partner GBG, to share with such entity any compensation received by JV or TC in connection with the Debtors' bankruptcy cases.

The Fee Structure is Reasonable Pursuant to Section 328(a) of the Bankruptcy Code

12. Section 328(a) of the Bankruptcy Code authorizes a debtor to employ a professional under section 327 of the Bankruptcy Code "on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a).

13. The Debtors believe that the Fee Structure is fair and reasonable in light of industry practice, market rates both in and out of chapter 11 proceedings, JV's restructuring experience, and the scope of work to be performed pursuant to JV's retention. The Fee Structure was agreed upon by the parties after arms' length negotiations. JV's restructuring expertise, as well as its appraisal services and financial capabilities, some or all of which may be required by the Debtors during the term of JV's engagement, were important factors in setting the Fee Structure. In addition, the parties agreed upon the Fee Structure in anticipation that a substantial commitment of professional time and effort will be required by JV, which may foreclose JV from pursuing other business opportunities during its engagement by the Debtors.

14. Accordingly, the Debtors submit that the Fee Structure is reasonable and market-based and should be approved pursuant to section 328(a) of the Bankruptcy Code.

Fee Applications

15. Local Rule 2016-2(g) provides that the Court may waive, "for cause," the requirement that a professional comply with the information requirements of Local Rule 2016-2(d). In the instant case, it is not the general practice for JV's professionals, or professionals at similar real estate advisory firms, to keep detailed time records similar to those kept by attorneys. Such firms do not bill their time on an hourly basis and generally are compensated on a transactional basis, as provided for in the Engagement Letter. The Fee Structure in the

Engagement Letter is results-oriented and directly related to benefits received by the Debtors' estates in each transaction.

16. Given the transactional nature of JV's engagement and the Fee Structure, the Debtors submit that recording and submitting detailed time entries for services rendered by JV in these cases is unnecessary and would be unduly burdensome to JV. Thus, pursuant to Local Rule 2016-2(g), JV should be exempted from the detailed information requirements set forth in Local Rule 2016(d).

17. In addition, in accordance with the Engagement Letter, JV should not be required to submit interim fee applications. Such additional scrutiny of JV's fees is unnecessary where, as set forth above, JV is to be paid only upon the successful completion of transactions beneficial to the Debtors' estates. Because the Fee Structure is reasonable pursuant to section 328(a) of the Bankruptcy Code, and in the light of the foregoing, the Debtors submit that additional review of JV's compensation under section 330 of the Bankruptcy Code is unwarranted.

18. Notwithstanding the foregoing, as is customary in this District, JV will submit a final fee application with the Bankruptcy Court, subject to review by the United States Trustee for the District of Delaware (the "U.S. Trustee") under the standard set forth in section 330 of the Bankruptcy Code.

Indemnification Provisions

19. The Engagement Letter provides that the Debtors shall indemnify and hold JV and its affiliates, and their respective officers, directors, employees, agents, and independent contractors harmless from and against all claims, demands, penalties, losses, liabilities or damages, including without limitation, reasonable attorney's fees and expenses, directly or indirectly asserted against, resulting from, or related to JV's services provided under the

Engagement Letter, unless solely resulting from JV's gross negligence or willful misconduct (the "Indemnification Provisions").

20. Notwithstanding the Indemnification Provisions set forth in the Engagement Letter, during the pendency of these chapter 11 cases, the order approving JV's retention (the "JV Retention Order") shall modify the terms of the Engagement Letter as follows.

- a. JV shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Letter for services, other than services and indemnification, contribution, or reimbursement that is approved by the Court;
- b. The Debtors shall have no obligation to indemnify JV, or provide contribution or reimbursement to JV, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from JV's gross negligence, fraud, willful misconduct, breach of fiduciary duty, if any, bad faith or self-dealing; (ii) for a contractual dispute in which the Debtors allege the breach of JV's contractual obligations, unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to In re United Artists Theatre Co., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which JV should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter as modified by this Order; and
- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, JV believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter (as modified by the JV Retention Order), including, without limitation, the advancement of defense costs, JV must file an application therefore in this Court, and the Debtors may not pay any such amounts to JV before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by JV for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify JV. All parties in interest shall retain the right to object to any demand by JV for indemnification, contribution or reimbursement.

21. The Debtors and JV believe that the Indemnification Provisions, as they will be modified by the JV Retention Order, are customary and reasonable for real estate

advisory engagements in chapter 11 cases in this District and other jurisdictions. See, e.g., In re Ultimate Acquisition Partners, LP, Case No. 11-10245 (MFW) (Bankr. D. Del Apr. 8, 2011) [Docket No. 607]; In re Borders Group, Inc., Case No. 11-10614(MG) (Bankr. D. Del. Mar. 16, 2011) [Docket No. 394]; In re Blockbuster Inc., Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Nov. 23, 2010) [Docket No. 570]; In re Movie Gallery, Inc., Case No. 10-30696 (DOT) (Bankr. E.D. Va. Feb. 3, 2010) [Docket No. 75]; In re TSIC, Inc. f/k/a Sharper Image Corp., Case No. 08-10322 (KG) (Bankr. D. Del. July 23, 2009) [Docket No. 1039]; In re Goody's LLC, Case No. 09-10124 (Bankr. D. Del. Feb. 12, 2009) [Docket No. 276]; In re Linens Holding Co., Case No. 08-10832 (CSS) (Bankr. D. Del. July 24, 2008) [Docket No. 1024].

22. The Debtors respectfully submit that the Indemnification Provisions, as modified by the JV Retention Order, are reasonable and in the best interests of the Debtors, their estates, and creditors. Accordingly, the Debtors request that the Court approve the Indemnification Provisions, as modified, as set forth above.

Disclosure Concerning Disinterestedness

23. In reliance on the Chartock Declaration, to the best of the Debtors' knowledge, information, and belief and except as set forth in the Chartock Declaration, (i) GBG has no connections with the Debtors, their creditors, the U.S. Trustee, any person employed in the Office of the U.S. Trustee, any United States Bankruptcy Judge for the District of Delaware, or any other party with an actual or potential interest in these chapter 11 cases or their respective attorneys or accountants; (ii) GBG is not a creditor, equity security holder, or insider of the Debtors, (iii) neither GBG nor any of its principals is or was, within two years of the Petition Date, a director, officer, or employee of the Debtors; and (iv) GBG does not have an interest materially adverse to the Debtors, their respective estates, or any class of creditors or equity

security holders by reason of any direct or indirect relationship to, connection with, or interest in the Debtors.

24. In reliance on the Nassi Declaration, to the best of the Debtors' knowledge, information, and belief and except as set forth in the Nassi Declaration, (i) TC has no connections with the Debtors, their creditors, the U.S. Trustee, any person employed in the Office of the U.S. Trustee, any United States Bankruptcy Judge for the District of Delaware, or any other party with an actual or potential interest in these chapter 11 cases or their respective attorneys or accountants; (ii) TC is not a creditor, equity security holder, or insider of the Debtors, (iii) neither TC nor any of its principals is or was, within two years of the Petition Date, a director, officer, or employee of the Debtors; and (iv) TC does not have an interest materially adverse to the Debtors, their respective estates, or any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in the Debtors.

25. Accordingly, the Debtors believe that JV is a "disinterested person," as defined in section 101(14) of the Bankruptcy Code and as required by section 327(a) of the Bankruptcy Code.

26. The disclosures identified above are based upon all information reasonably available to GBG and/or TC, as applicable, at this time. GBG and/or TC (as the case may be) will, to the extent necessary, file a supplemental Declaration as may be required if and when any other relationships exist or are modified during the term of the Engagement Letter.

Consent to Jurisdiction

27. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

Notice

28. Notice of this Application shall be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the parties included on the Debtors' consolidated list of twenty (20) largest unsecured creditors, as identified in their chapter 11 petitions; (iii) counsel to the Proposed Buyer; (iv) counsel to Tesco PLC; and (v) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Application is necessary.

No Prior Request

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

[The remainder of this page is intentionally blank.]

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit F: (i) granting the relief sought herein; and (ii) granting to the Debtors such other and further relief as the Court may deem proper.

Dated: October 3, 2013

Respectfully submitted,

/s/ James Dibbo

James Dibbo

Chief Financial Officer of the Debtors

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

<hr style="border: 0.5px solid black;"/> <div style="display: flex; justify-content: space-between;"><div style="width: 80%;"><p>In re</p><p>FRESH & EASY NEIGHBORHOOD MARKET INC., <i>et al.</i>,¹</p><p style="text-align: center;">Debtors.</p></div><div style="width: 15%; text-align: center;"><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p></div><div style="width: 5%; text-align: center;"><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p><p>:</p></div></div>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Chapter 11</p> <p>Case No. 13-12569 (KJC)</p> <p>(Jointly Administered)</p> <p>Hearing Date: October 24, 2013 at 11:00 a.m. (EDT)</p> <p>Obj. Deadline: October 17, 2013 at 4:00 p.m. (EDT)</p>
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NOTICE OF APPLICATION AND HEARING

PLEASE TAKE NOTICE that, on October 3, 2013, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Application for an Order (I) Authorizing Them to Retain and Employ the Joint Venture of Gordon Brothers Group, LLC and Certain of its Affiliates and Tiger Capital Group, LLC and Certain of its Affiliates as Consultant, Nunc Pro Tunc as of the Petition Date and (II) Waiving Compliance with Certain Information Requirements Pursuant to Local Rule 2016-2(g)* (the “Application”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Application must be in writing, filed with the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned proposed attorneys for the Debtors on or before **October 17, 2013 at 4:00 p.m. (EDT)**.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Application is scheduled before The Honorable Kevin J. Carey, United States Bankruptcy Judge for the

¹ The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Fresh & Easy Neighborhood Market Inc. (7028) and Fresh & Easy Property Company LLC (9636). The address of each of the Debtors is 2120 Park Place, Suite 200, El Segundo, California 90245.

District of Delaware, at the Bankruptcy Court, 824 North Market Street, 5th Floor, Courtroom 5,
Wilmington, Delaware 19801 **on October 24, 2013 at 11:00 a.m. (EDT).**

**IF NO OBJECTIONS TO THE APPLICATION ARE TIMELY FILED,
SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT
MAY GRANT THE RELIEF REQUESTED IN THE APPLICATION WITHOUT
FURTHER NOTICE OR HEARING.**

Dated: October 3, 2013
Wilmington, Delaware

Respectfully submitted,

/s/ William A. Romanowicz
Mark D. Collins (DE 2981)
John H. Knight (DE 3848)
Lee E. Kaufman (DE 4877)
Amanda R. Steele (DE 5530)
William A. Romanowicz (DE 5794)
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-and-

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Telephone: (212) 326-3939
Facsimile: (212) 755-7306

PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

Declaration of Michael D. Chartock

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
FRESH & EASY NEIGHBORHOOD	:	Case No. 13-12569 (KJC)
MARKET INC., <i>et al.</i> , ¹	:	
Debtors.	:	(Jointly Administered)

**DECLARATION OF MICHAEL D. CHARTOCK IN SUPPORT
OF DEBTORS' APPLICATION FOR AN ORDER (I) AUTHORIZING THEM TO
RETAIN AND EMPLOY THE JOINT VENTURE OF GORDON BROTHERS GROUP,
LLC AND CERTAIN OF ITS AFFILIATES AND TIGER CAPITAL GROUP, LLC AND
CERTAIN OF ITS AFFILIATES AS CONSULTANT, *NUNC PRO TUNC* AS OF THE
PETITION DATE AND (II) WAIVING COMPLIANCE WITH CERTAIN
INFORMATION REQUIREMENTS PURSUANT TO LOCAL RULE 2016-2(G)**

Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure

(the "Bankruptcy Rules"), Michael D. Chartock declares:

1. I am a Principal and a Managing Director of and General Counsel to Gordon Brothers Group, LLC (together, with its affiliates, "GBG"), a consulting firm that maintains offices at Prudential Tower, 800 Boylston Street, 27th Floor, Boston, MA 02199, and I am authorized to make this declaration on behalf of GBG (the "Declaration"). I submit this Declaration in support of the Debtors' Application for an Order (I) Authorizing Them to Retain and Employ the Joint Venture of Gordon Brothers Group, LLC and Certain of its Affiliates and Tiger Capital Group, LLC and Certain of Its Affiliates (together, with its affiliates, "TC"; GBG and TC together, as a joint venture proposed to serve as a consultant as described herein, "JV") as Consultant, *Nunc Pro Tunc* as of the Petition Date and (II) Waiving Compliance with Certain

¹ The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Fresh & Easy Neighborhood Market Inc. (7028) and Fresh & Easy Property Company LLC (9636). The address of each of the Debtors is 2120 Park Place, Suite 200, El Segundo, California 90245.

Information Requirements Pursuant to Local Rule 2016-2(g) (the "Application")² on the terms and conditions set forth in the Application and the engagement letter between Debtors and JV annexed to the Application as Exhibit B (the "Engagement Letter"). Except as otherwise noted,³ I have personal knowledge of the matters set forth herein.

GBG's Qualifications

2. GBG is a consulting firm with significant experience in the representation of debtors concerning the disposition of retail inventory, real estate and other retail assets in bankruptcy proceedings. GBG has advised numerous chapter 11 debtors in connection with leasing issues related to their restructuring efforts, including in the following cases: In re Ultimate Acquisition Partners, LP, Case No. 11-10245 (MFW) (Bankr. D. Del. Apr. 8, 2011); In re Borders Group, Inc., Case No. 11-10614 (MG) (Bankr. D. Del. Mar. 16, 2011); In re Blockbuster Inc., Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Nov. 23, 2010); In re Movie Gallery, Inc., Case No. 10-30696 (DOT) (Bankr. E.D. Va. Feb. 3, 2010); In re TSIC, Inc. f/k/a Sharper Image Corp., Case No. 08-10322 (KG) (Bankr. D. Del. July 23, 2009); In re Goody's LLC, Case No. 09-10124 (Bankr. D. Del. Feb. 12, 2009); In re Circuit City Stores, Inc., Case No. 08-35653 (KRH) (Bankr. E.D. Va. Jan. 9, 2009); In re Linens Holding Co., Case No. 08-10832 (CSS) (Bankr. D. Del. July 24, 2008).

Services to Be Provided by GBG In Connection with Retention of JV

3. Subject to further order of this Court, and consistent with the Engagement Letter, GBG will provide the following consulting and advisory services in its JV role:

- a. Negotiating lease terminations with landlords of certain leased properties;

² Capitalized terms used but not otherwise defined herein have the meanings set forth in the Application.

³ Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at GBG and are based on information provided by them.

- b. Preparing and implementing a marketing program to assign or sublease certain leases of leased properties;
- c. Preparing and implementing a marketing program to sell certain of the Debtors' owned properties;
- d. Assisting in selling furniture, fixtures and equipment (collectively, "FF&E") from the Debtors' stores;
- e. Assisting the Debtors in connection with their procurement of "store closing" internal and external signs and similar promotional material in connection with the Debtors' closing of certain stores; and
- f. Selling certain of the Debtors' non-retail fixed assets (e.g., affixed assets located at the Campus).

Professional Compensation and Fee Applications

4. The Fee Structure provided for in the Engagement Letter is consistent with and typical of GBG's normal and customary billing practices for comparably-sized cases and complex transactions. Thus, GBG believes that the Fee Structure is both reasonable and market-based.

5. GBG has agreed to be compensated in these cases consistent with the terms and conditions described in the Engagement Letter, without the need to file separate monthly fee applications with the Court. However, as is customary in this District, JV will submit a final fee application with the Bankruptcy Court, subject to review by the United States Trustee for the District of Delaware (the "U.S. Trustee") under the standard set forth in section 330 of the Bankruptcy Code.

6. GBG has no agreement with any entity, other than with its joint venture partner TC, to share with such entity any compensation received by JV or GBG in connection with the Debtors' bankruptcy cases.

Connections and Eligibility

7. Except as otherwise described herein, to the best of my knowledge and belief, after reasonable inquiry, neither I, GBG, nor any principal or employee thereof: (a) are creditors, equity security holders, or insiders of either of the Debtors; (b) are (or within two (2) years before the date of the filing of the Debtors' chapter 11 petition were) a director or officer of either of the Debtors; nor (c), has any connection with the Debtors, the parties in interest known to GBG (collectively, the "Potential Parties in Interest"), their respective attorneys, or the U.S. Trustee (in each case as identified to us by the Debtors).

8. Except as otherwise disclosed herein, to the best of my knowledge and belief after reasonable inquiry, neither I, GBG, nor any principal or employee thereof, has represented any Potential Parties in Interest in connection with matters relating to the Debtors, their estates, assets, or businesses and will not represent other entities which are creditors of, or have other relationships to, the Debtors, in each case in matters relating to these chapter 11 cases.

9. As a part of a large and diverse business operation, GBG (inclusive of its subsidiaries, and affiliates) has previously, is currently, and may in the future appear or participate in numerous cases, proceedings, transactions and engagements involving professional advisors (e.g., attorneys, accountants, investment bankers and financial consultants) as well as principals (e.g., operating companies, investment funds or other "financial investors"). In such interactions, GBG (inclusive of its subsidiaries, and affiliates) may act as advisor, agent/consultant (whether on a fee or equity basis), or principal investor or party, and in each such capacity may be a co-advisor, consultant, or principal acting in concert with, or as a counterparty to, such other professional advisors and principals. Such professional advisors and principals involved in the foregoing interactions with GBG may be involved in these proceedings and may represent or may be Potential Parties in Interest in this case. Except as disclosed herein,

none of the interactions between or among GBG (inclusive of its subsidiaries, and affiliates), on the one hand, and any of such professional advisors and principal parties on the other hand, are matters directly connected or relating to the Debtors or this case. Further, except as disclosed in this Declaration, GBG (inclusive of its subsidiaries, and affiliates) has not represented, does not represent, nor will it represent any of such professional advisors or principal parties in connection with this case. GBG does not believe that any relationship, arrangement, investment, transaction or engagement with or relating to any of the professional advisors or other entities who may be involved in these proceedings will interfere with or impair the services to be rendered to the Debtors by JV in this case.

10. Insofar as other connections with Potential Parties in Interest are concerned, it is possible that one or more associates or staff members of GBG may have personal or social connections with certain Potential Parties in Interest.

11. The disclosures identified above are based upon all information reasonably available to GBG at this time.

12. The disclosures identified above are based upon all information reasonably available to GBG at this time. GBG will, to the extent necessary, supplement this Declaration as may be required if and when any other relationships exist or are modified during the term of the Engagement Letter.

Dated: October 3, 2013
Washington, D.C

Gordon Brothers Group, LLC

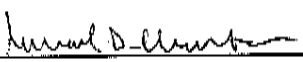

Michael D. Chartock
Principal, Managing Director and
General Counsel

EXHIBIT B

Declaration of Albert T. Nassi

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re	:	Chapter 11
	:	
FRESH & EASY NEIGHBORHOOD	:	Case No. 13-12569 (KJC)
MARKET INC., <i>et al.</i> , ¹	:	
	:	
Debtors.	:	(Jointly Administered)
	:	

**DECLARATION OF ALBERT T. NASSI IN SUPPORT
OF DEBTORS' APPLICATION FOR AN ORDER (I) AUTHORIZING THEM TO
RETAIN AND EMPLOY THE JOINT VENTURE OF GORDON BROTHERS GROUP,
LLC AND CERTAIN OF ITS AFFILIATES AND TIGER CAPITAL GROUP, LLC AND
CERTAIN OF ITS AFFILIATES AS CONSULTANT, *NUNC PRO TUNC* AS OF THE
PETITION DATE AND (II) WAIVING COMPLIANCE WITH CERTAIN
INFORMATION REQUIREMENTS PURSUANT TO LOCAL RULE 2016-2(G)**

Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure

(the "Bankruptcy Rules"), Albert T. Nassi declares:

1. I am member and counsel of Tiger Capital Group, LLC (together, with its affiliates, "TC"), an asset disposition firm and consultant that maintains offices at 84 State Street, Suite 420, Boston, MA 02109, and I am authorized to make this declaration on behalf of TC (the "Declaration"). I submit this Declaration in support of the Debtors' Application for an Order (I) Authorizing Them to Retain and Employ the Joint Venture of Gordon Brothers Group, LLC and Certain of its Affiliates (together, with its affiliates, "GBG"; GBG and TC together, as a joint venture proposed to serve as a consultant as described herein, "JV") and Tiger Capital Group, LLC and Certain of Its Affiliates as Consultant, *Nunc Pro Tunc* as of the Petition Date and (II) Waiving Compliance with Certain Information Requirements Pursuant to Local Rule 2016-

¹ The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Fresh & Easy Neighborhood Market Inc. (7028) and Fresh & Easy Property Company LLC (9636). The address of each of the Debtors is 2120 Park Place, Suite 200, El Segundo, California 90245.

2(g) (the "Application")² on the terms and conditions set forth in the Application and the engagement letter between Debtors and JV annexed to the Application as Exhibit C (the "Engagement Letter"). Except as otherwise noted,³ I have personal knowledge of the matters set forth herein.

Professional Compensation

2. The Fee Structure provided for in the Engagement Letter is consistent with and typical of TC's normal and customary billing practices for comparably-sized cases and complex transactions. Thus, TC believes that the Fee Structure is both reasonable and market-based.

3. JV has agreed to be compensated in these cases consistent with the terms and conditions described in the Engagement Letter, without the need to file separate monthly fee applications with the Court. However, as is customary in this District, JV will submit a final fee application with the Bankruptcy Court, subject to review by the United States Trustee for the District of Delaware (the "U.S. Trustee") under the standard set forth in section 330 of the Bankruptcy Code.

4. TC has no agreement with any entity, other than with its joint venture partner GBG, to share with such entity any compensation received by JV or TC in connection with the Debtors' bankruptcy cases.

Connections and Eligibility

5. I and certain other of TC's principals hold equity interests in Albertsons, n/k/a New Albertsons, Inc. ("Albertsons"), which is one of the Debtors' competitors, in an entity

² Capitalized terms used but not otherwise defined herein have the meanings set forth in the Application.

³ Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at TC and are based on information provided by them.

other than TC. Neither TC nor any principal of TC have any management or control over Albertsons, and TC does not perform any services for Albertsons. Accordingly, I do not believe that my or any other TC principals' holdings preclude TC from being a disinterested party under the Bankruptcy Code.

6. Except as otherwise described herein, to the best of my knowledge and belief, after reasonable inquiry, neither I, TC, nor any principal or employee thereof: (a) are creditors, equity security holders, or insiders of either of the Debtors; (b) are (or within two (2) years before the date of the filing of the Debtors' chapter 11 petition were) a director or officer of either of the Debtors; nor (c), has any connection with the Debtors, the potential parties in interest known to TC, (collectively, the "Potential Parties in Interest"), their respective attorneys, or the U.S. Trustee (in each case as identified to us by the Debtors).

7. Except as otherwise disclosed herein, to the best of my knowledge and belief after reasonable inquiry, neither I, TC, nor any principal or employee thereof, has represented any Potential Parties in Interest in connection with matters relating to the Debtors, their estates, assets, or businesses and will not represent other entities which are creditors of, or have other relationships to, the Debtors, in each case in matters relating to these chapter 11 cases.

8. As a part of a large and diverse business operation, TC (inclusive of its subsidiaries, and affiliates) has previously, is currently, and may in the future appear or participate in numerous cases, proceedings, transactions and engagements involving professional advisors (e.g., attorneys, accountants, investment bankers and financial consultants) as well as principals (e.g., operating companies, investment funds or other "financial investors"). In such interactions, TC (inclusive of its subsidiaries, and affiliates) may act as advisor, agent/consultant (whether on a fee or equity basis), or principal investor or party, and in each such capacity may

be a co-advisor, consultant, or principal acting in concert with, or as a counterparty to, such other professional advisors and principals. Such professional advisors and principals involved in the foregoing interactions with TC may be involved in these proceedings and may represent or may be Potential Parties in Interest in this case. Except as disclosed herein, none of the interactions between or among TC (inclusive of its subsidiaries, and affiliates), on the one hand, and any of such professional advisors and principal parties on the other hand, are matters directly connected or relating to the Debtors or this case. Further, except as disclosed in this Declaration, TC (inclusive of its subsidiaries, and affiliates) has not represented, does not represent, nor will it represent any of such professional advisors or principal parties in connection with this case. TC does not believe that any relationship, arrangement, investment, transaction or engagement with or relating to any of the professional advisors or other entities who may be involved in these proceedings will interfere with or impair the services to be rendered to the Debtors by JV in this case.

9. Insofar as other connections with Potential Parties in Interest are concerned, it is possible that one or more associates or staff members of TC may have personal or social connections with certain Potential Parties in Interest.

10. The disclosures identified above are based upon all information reasonably available to TC at this time.

11. The disclosures identified above are based upon all information reasonably available to TC at this time. TC will, to the extent necessary, supplement this Declaration as may be required if and when any other relationships exist or are modified during the term of the Engagement Letter.

Dated: October 3, 2013
Westlake Village, CA

Tiger Capital Group, LLC

/s/ Albert T. Nassi

Albert T. Nassi
Member and Counsel

EXHIBIT C

Engagement Letter

AGREEMENT

For

SERVICES

Between

FRESH & EASY NEIGHBORHOOD MARKET INC.

And

A Joint Venture comprised of

GORDON BROTHERS GROUP, LLC

And

TIGER CAPITAL GROUP, LLC *Dmk*

AGREEMENT FOR SERVICES

This AGREEMENT FOR SERVICES ("Agreement") is made as of this 1st day of September, 2013 ("Effective Date") by and between a joint venture comprised of GORDON BROTHERS GROUP, LLC and TIGER CAPITAL (collectively "Consultant"), and FRESH & EASY NEIGHBORHOOD MARKET INC. ("Company"). *GROUP, LLC*

RECITALS

- A. Company leases or owns those certain real properties (individually a "Property" or collectively the "Properties") listed on Schedule A attached hereto. Company desires to (i) market and negotiate for the sale of owned Properties and the sublease, assignment or termination of leases of the leased Properties; (ii) sell furniture, fixtures and equipment located at the retail stores ("Stores") operated at the Properties; and (iii) assist the Company in connection with the Company's procurement of "store closing" internal and external signs and similar promotional material in connection with the Company's closure of the Stores.
- B. Company desires to retain Consultant to provide the services set forth in Recital "A" and as set forth in more detail in Paragraph 2 below (the "Services") under the terms and conditions contained herein, and Consultant is willing to provide such Services under such terms and conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the facts set forth in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term of Agreement. This Agreement shall remain in full force and effect for a term of twelve (12) months following the Effective Date (the "Term"). Thereafter, the Term shall be automatically extended for successive thirty (30) day periods until terminated by either party upon at least thirty (30) days prior written notice to the other party.
2. Services. During the term of engagement Consultant shall provide the following Services:
 - A. Real Estate.
 - Negotiate lease terminations with landlords of leased Properties.
 - Prepare and implement a marketing program to assign or sublease leases of leased Properties.
 - Prepare and implement a marketing program to sell the owned Properties.
 - Fees for Real Estate Services are set forth on Schedule B attached hereto.
 - Consultant shall not be responsible for any transactional costs and/or legal expenses incurred by Company in connection with Consultant's provision of the Services. Company shall reimburse Consultant for its reasonably incurred travel expenses in connection with the Real Estate Services, provided Company has pre-approved such travel. Allowed expenses shall be paid to Consultant within ten (10) business days of Company's receipt of an invoice therefore.
 - In providing the Real Estate Services, Consultant will work closely with Company's consultants, Alvarez & Marsal North America, LLC ("A&M"). In that regard, it is expected that: (i) Consultant and A&M will jointly be responsible for project management, overall strategy, negotiations with potential bulk buyers, and reporting and deal documentation (although Consultant with Company's counsel will take the lead on

AGREEMENT FOR SERVICES

deal documentation); (ii) Consultant will primarily be responsible for marketing, negotiations with individual location buyers/replacement tenants, and negotiations with landlords; and (iii) A&M will primarily be responsible for analytics and reporting and data management and solely be responsible for Property management.

B. Store FF&E.

- At any time and from time to time during the Term, the Company may request that Consultant assist it in selling Store furniture, fixtures, and equipment. The Company shall designate in writing the items of Store furniture, fixtures, and equipment that it wishes to sell (and, for the avoidance of doubt, the Company is free to include/exclude items in its sole discretion, and to sell or otherwise dispose of excluded items, including by contracting with others to do so on its behalf). Notwithstanding the foregoing, Consultant shall not have any obligation to sell, handle, or clean-out/remove any furniture, fixtures, and equipment containing hazardous materials (including, without limitation, Freon), nor shall the Consultant be responsible for selling, disposing of or cleaning-out/removing any furniture, fixtures, and equipment that, at such time, contains any hazardous materials. With respect to all Store furniture, fixtures, and equipment that the Company does wish the Consultant to assist it in selling ("FF&E"), Consultant shall assist with the marketing and sale of such FF&E, and the Company shall pay Consultant a commission equal to (i) twenty percent (20%) of the first \$5.0 million of gross sales of FF&E net only of sales tax plus (ii) five percent (5%) of any additional gross sales of FF&E net only of sales taxes ("FF&E Commission"). On a weekly basis, the Company shall pay Consultant the portion of the FF&E Commission earned on account of sales of FF&E made during each prior week. For the avoidance of doubt, in the event that any Store furniture, fixtures and equipment which are not specifically designated as FF&E in accordance with this Paragraph B are disposed of or transferred in connection with a transaction under or pursuant to the Real Estate Services, Consultant shall not be entitled to a separate fee under this Paragraph B.
- The Company shall reimburse Consultant for its marketing and sales expenses associated with the sale of FF&E, not to exceed an amount to be mutually agreed upon based upon the composition and location of the FF&E as determined by the Company ("FF&E Expense Budget"). The Company shall make such reimbursements weekly upon the receipt of reasonable documentation therefore.
- Consultant shall have the right to abandon any unsold Store furniture, fixtures; and equipment (including without limitation FF&E) at the Stores at the conclusion of the Term, without liability to the Company, any landlord or any other third party; provided however, that at the Company's request, Consultant would be pleased to assist the Company in cleaning-out/removing any unsold Store furniture, fixtures, and equipment (including without limitation FF&E) in which case the Company and Consultant would need to mutually agree upon an increase to the FF&E Expense Budget to reflect any such clean-out/removal expenses to be incurred by Consultant.
- Company shall be solely responsible for the collection, reporting and payment of all sales and similar taxes related to the sale of FF&E and Consultant shall have no responsibility therefore.

C. Signs. Consultant shall assist the Company in connection with the Company's procurement of "store closing" internal and external signs and similar promotional material in connection with the Company's closure of the Stores. Consultant shall invoice the Company for the actual cost of such signage (without any "lift" or other premium). The Company (and not Consultant) shall be solely responsible for the content and manner of use of such signage. Upon the Effective Date, the Company shall advance a sum to Consultant equal to the estimated costs to produce and deliver signage to the Stores. The Company and Consultant

AGREEMENT FOR SERVICES

thereafter shall reconcile such advance based on the actual costs as set forth on statements and invoices.

- D. Non-Retail Fixed Assets. Consultant will be the seller of such of the Company's non-retail fixed assets (e.g. affixed assets located at the campus locations) as designated by the Company during the Term. Consultant shall not charge Company a fee for such Service but Consultant (i) will be compensated by charging buyers a fifteen percent (15%) buyers premium for any such fixed assets sold, and (ii) will be reimbursed by the Company for any reasonable out-of-pocket expenses related to the sale of such fixed assets; provided that in the event any such non-retail fixed assets are sold under or pursuant to the Real Estate Services, Consultant shall not be entitled to a separate fee or premium under this Paragraph D.

In providing the Services, Consultant will reasonably consult and cooperate with the advisors of the Company and its affiliates.

3. Retainer/Expense Reimbursement. On the Effective Date, the Company shall pay to the Consultant the amount of Five Hundred Thousand dollars (\$500,000.00), which the Consultant shall hold as a security retainer for all amounts due to it hereunder, whether in the nature of fees, reimbursement of expenses, or otherwise. Company shall reimburse Consultant for (i) its reasonable marketing and out-of-pocket costs incurred in the provision of the Services, subject to a budget to be reasonably approved by the parties; and (ii) its reasonable travel expenses incurred in the provision of the Services, provided that Company has pre-approved such travel. Any reimbursable expenses shall be paid to Consultant within ten (10) business days after receipt of reasonably detailed invoices therefore.
4. Exclusive. During the term of this Agreement, Consultant shall have the sole and exclusive authority to perform the Services. All third-party inquiries regarding the Services made to Company or any representative of Company concerning those Services shall be re-directed to Consultant.
5. Real Estate Documents. Company shall: (i) within five (5) business days after the Effective Date, (a) provide to Consultant an electronic spreadsheet for leased Properties with a list of contact information for landlords, premises size, expiration dates and option periods, rents, real estate taxes and other charges payable pursuant to leases, and (b) provide to Consultant an electronic spreadsheet for owned Properties with a list of locations, addresses and sizes and copies of the Company's most recent title reports, with copies of exceptions, surveys, environmental reports and property condition reports; and (ii) assist and cooperate with Consultant whenever reasonably necessary by making Company personnel available to Consultant for consultation, and providing other information and data reasonably necessary for the performance of the Services.
6. Publicity. Consultant may use the Company's name and logo to identify Company as one of Consultant's clients.
7. Approval of Real Estate Contracts. All of the terms and conditions of each and every proposed lease modification agreement, assignment, sublease, termination agreement, Property sale agreement or other agreement involving a Property proposed by Consultant shall be subject to approval by Company, which approval may be withheld in Company's sole discretion.
8. Default. If either party materially fails to perform its obligations in accordance with the terms hereof, and does not cure such failure within ten (10) business days of written notice of such default, the other party shall have the right to terminate this Agreement by notice of termination to the non-performing party, effective ten (10) calendar days after the date such notice is given. In

AGREEMENT FOR SERVICES

no event shall Consultant's liability to Company hereunder exceed the amount of any fees paid or payable to Consultant hereunder.

9. Assignment. Consultant shall not have the right to assign this Agreement without Company's consent, which consent may be withheld in Company's sole discretion.
10. Notices. All notices, requests, consents, approvals, payments in connection with this Agreement, or communications which either party desires or is required or permitted to give or make to the other party under this Agreement shall be deemed to have been given, made and delivered, only when made or given in writing and personally served; deposited in the United States mail, certified or registered mail, postage prepaid; sent by email, upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); sent by telecommunication, when transmitted to the applicable fax number and an appropriate answer back is received; or sent by reputable overnight courier (e.g., UPS or Federal Express) and addressed to the parties as follows:

To Company:

Fresh & Easy Neighborhood Market Inc.
2120 Park Place, Suite 200
El Segundo, CA 90245
Attn: Mary Kasper
General Counsel
Tel: (310) 341-1435
Fax: (310) 341-1501
E-mail: mary.kasper@freshandeasy.com

With a copy to:

Pillsbury Winthrop Shaw Pittman LLP
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Attn: Christopher Patay
Tel: (213) 488-7282
Fax: (213) 629-1033
Email: christopher.patay@pillsburylaw.com

and

Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway
New York, NY 10036
Attn: Christopher Mirick
Tel: (212) 858-1333
Fax: (212) 973-7492
Email: christopher.mirick@pillsburylaw.com

To Consultant:

Gordon Brothers Group, LLC
Prudential Tower
800 Boylston Street, 27th Floor
Boston, MA 02199
Attn: Michael Chartock
General Counsel
Tel: 617-210-71116

AGREEMENT FOR SERVICES

Fax: 617-531-7906

E-mail: mchartock@gordonbrothers.com

11. Compliance With Laws. Consultant agrees to comply with all applicable federal, state and local laws, regulations, and codes in the performance of the Services and this Agreement. In furtherance of the Real Estate Services, Consultant may associate with licensed real estate brokers in the states in which the Properties are located.
12. Survival of Fee. In the event Company, or its successors or assigns, enters into any transaction with a landlord of a Property or other party during the term of this Agreement, the result of which would entitle Consultant to a fee for Real Estate Services pursuant to this Agreement, then Consultant shall be entitled to its fee pursuant to the terms of this Agreement. If Consultant has conducted documented substantive negotiations with a landlord or other party prior to the termination of this Agreement and an agreement with such landlord or other party is entered into within one hundred eighty (180) days after the termination of this Agreement, which agreement ultimately leads to the consummation of a transaction(s), the result of which would otherwise have entitled Consultant to a fee for Real Estate Services pursuant to this Agreement, then Consultant shall be entitled to a fee for such transaction(s) in accordance with the terms of this Agreement. Consultant must provide to Company, as part of its otherwise required reporting, a written list of such parties with whom it had documented substantive negotiations within ten (10) business days after termination of this Agreement.
13. Use and Access. The Company shall provide Consultant with access to, and peaceful use and occupancy of, all Properties as necessary for Consultant to perform the Services hereunder, without charge to Consultant. The Consultant shall have the right to use all assets and services currently available to Company, and necessary to perform the Services hereunder, such as computer systems, without charge to Consultant. The Company also shall make available to Consultant Company employees and personnel (to be designated as of the Effective Date) necessary for Consultant to perform the Services hereunder, including but not limited to authorized employees and personnel necessary to make binding decisions about transactions (e.g. sales of inventory) contemplated hereunder.
14. Covenants Representations and Warranties of Company. Company covenants, represents and warrants that:
 - (i) All FF&E will be in the Properties on the Effective Date;
 - (ii) All FF&E is owned by the Company free of any liens claims or encumbrances;
and
 - (iii) Company has obtained any consents and approvals, if any, needed to consummate this Agreement.
15. Bankruptcy Filing. If, during the Term, the Company files a voluntary petition for bankruptcy protection pursuant to the United States Bankruptcy Code (a "Bankruptcy Case"), Company shall promptly use good faith efforts to (i) assume this Agreement in the Bankruptcy Case and (ii) with respect to all fees payable to Consultant, other than fees for owned property sales that are paid at closing, obtain an order from the court with jurisdiction over the Bankruptcy Case (the "Court") that Consultant's fees shall be payable pursuant to Section 506 (c) of the Bankruptcy Code from the proceeds of any secured party's collateral. Consultant acknowledges that the timing and manner of payment of all amounts due to it hereunder, whether in the nature of fees, reimbursement of expenses, or otherwise, may be subject to such procedures as the Court shall establish.

AGREEMENT FOR SERVICES

16. Insurance/Risk of Loss.

A. Each of the Company and Consultant shall maintain (at each party's respective expense) comprehensive liability insurance covering injuries to persons and property in or in connection with the Stores, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Each party shall use commercially reasonable efforts to have: (a) the other party named as an additional insured on all such insurance of the other party; (b) all such insurance be non-cancelable and non-changeable except upon 30 days' prior written notice to the other party; and (c) certificates of all such insurance delivered to the other party as soon as practicable following the execution of this Agreement.

B. Notwithstanding any other provision of this Agreement, the Company and Consultant agree: (i) that Consultant shall not be deemed to be in possession or control of the Stores, the Properties or any assets located therein or associated therewith, or of the Company's employees, and that Consultant does not assume any of the Company's obligations or liabilities with respect to such Stores, Properties, assets, or employees; and (ii) the Company shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Stores and Properties, and merchandise sold in the Stores, before, during and after the Term, except to the extent any such claim arises from the gross negligence, willful misconduct, fraud or unlawful acts of Consultant.

17. Indemnification.

A. Consultant shall indemnify and hold the Company and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, "**Company Indemnified Parties**") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

(i) Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;

(ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of the Company by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives; or

(iii) the gross negligence, willful misconduct, fraud or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives.

B. The Company shall indemnify and hold Consultant, its affiliates and their respective officers, directors, employees, consultants, and independent contractors (collectively, "**Consultant Indemnified Parties**") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

(i) The Company's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;

(ii) any claims by any party engaged by the Company as an employee or independent

AGREEMENT FOR SERVICES

contractor arising out of such engagement, except where due to the negligence, willful misconduct, fraud or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives;

(iii) any consumer warranty or products liability claims relating to any inventory or furniture, fixture, and equipment asset; and/or

(iv) the gross negligence, willful misconduct, fraud or unlawful acts of the Company, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives.

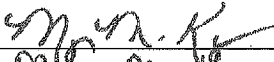
18. Waivers and Amendments. Waiver by either party of any default by the other party shall not be deemed a waiver of any other default. No provision of this Agreement shall be deemed waived, amended, or modified by either party, unless it is in writing and signed by both parties.
19. Severability. If any provision, or any portion of any provision, contained in this Agreement is held unenforceable, then it shall, to that extent alone, be deemed omitted and this Agreement shall be construed as if such unenforceable provision had never been contained herein.
20. Survival. The terms, conditions, indemnities and warranties contained in this Agreement that are intended to survive the expiration or termination of this Agreement shall survive.
21. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior agreements, representations, statements, negotiations, understandings, and undertakings are superseded by this Agreement.
22. Counterpart Execution/Facsimile and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute one document. Facsimile and electronic signatures on this Agreement and any document contemplated hereby shall be deemed to be original signatures. The persons signing this Agreement on behalf of Company and Consultant represent that they have the authority to enter into this Agreement and can bind Company and Consultant.
23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives effective as of the Effective Date.

COMPANY:

FRESH & EASY NEIGHBORHOOD MARKET INC.

By: 
Name: Mary M. Kaspea
Title: Vice President, General Counsel
& Secretary

CONSULTANT:

GORDON BROTHERS GROUP, LLC

By: _____
Name: _____
Title: _____

TIGER CAPITAL

By: _____
Name: _____
Title: _____

Schedules

Schedule A Properties
Schedule A-1 Leased Properties
Schedule A-2 Claim Reduction Properties
Schedule A-3 Owned Properties

Schedule B Real Estate Compensation
Schedule B-1 Original Prospects

AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives effective as of the Effective Date.

COMPANY:

FRESH & EASY NEIGHBORHOOD MARKET INC.

By: _____
Name: _____
Title: _____

CONSULTANT:

GORDON BROTHERS GROUP, LLC

By: Mark T. Duffton
Name: Mark T. Duffton
Title: Chief Executive Officer
DTM Real Estate, A Gordon Brothers Group Co.
TIGER CAPITAL GROUP, LLC ^{PM}

By: Daniel M. Kane
Name: Daniel M. Kane
Title: Managing Member

Schedules

Schedule A Properties
Schedule A-1 Leased Properties
Schedule A-2 Claim Reduction Properties
Schedule A-3 Owned Properties

Schedule B Real Estate Compensation
Schedule B-1 Original Prospects

SCHEDULE A

PROPERTIES

The Properties consist of:

(a) 146 store locations, which are comprised of:

(i) 93 leased Properties (see Schedule A-1) (of which 45 have been identified as the initial Properties for which the Consultant is to seek to negotiate reductions in claims and are listed for ease of reference on Schedule A-2); and

(ii) 53 owned Properties (see Schedule A-3);

(b) the distribution center located in Stockton, California; and

(c) the kitchen facility located in Stockton, California.

SCHEDULE A-1

LEASED PROPERTIES

	Name	City	Region
1.	Brown Rd & Recker Rd	Mesa	Phoenix
2.	42nd & Jackson	Indio	Riverside
3.	Valley & Ash	Escondido	San Diego
4.	Greenfield & Warner	Gilbert	Phoenix
5.	Avondale Blvd. & Van Buren St.	Avondale	Phoenix
6.	Arizona & Chandler Hts	Chandler	Phoenix
7.	7th Street & Thunderbird Rd	Phoenix	Phoenix
8.	Gantzel & Ocotillo	Queen Creek	Phoenix
9.	Tulare St & R St	Fresno	Central Valley
10.	Mack & Franklin	Sacramento	Sacramento
11.	210 Fwy & Riverside	Rialto	San Bernardino
12.	Buena Vista Rd & White Ln	Bakersfield	Central Valley
13.	Buffalo Drive & Sahara Ave	Las Vegas	Las Vegas
14.	Highway 46 & Griffith Ave	Wasco	Central Valley
15.	Stanford Ranch & Sunset	Rocklin	Sacramento
16.	Coffee Rd & Hageman Rd	Bakersfield	Central Valley
17.	Fred Waring Dr & Jefferson St	La Quinta	Riverside
18.	Haven Ave & Town Center Dr	Rancho Cucamonga	San Bernardino
19.	Boulder Hwy & Russell Rd	Las Vegas	Las Vegas
20.	Herndon Ave & Milburn Ave	Fresno	Central Valley
21.	J St & Cross Ave	Tulare	Central Valley
22.	Harding Way & Grant St	Stockton	Central Valley
23.	Sunrise & Coloma	Rancho Cordova	Sacramento

	Name	City	Region
24.	Watt Ave & El Camino Ave	Sacramento	Sacramento
25.	Tulare Ave & Laspina St	Tulare	Central Valley
26.	Whitmore Ave & Crows Landing Rd	Modesto	Central Valley
27.	Academy Ave & 7th St	Sanger	Central Valley
28.	Hacienda Ave & Palm Dr	Desert Hot Springs	Riverside
29.	Rittenhouse Rd & Ocotillo Rd	Queen Creek	Phoenix
30.	Cleveland Ave & Schnoor Ave	Madera	Central Valley
31.	Florida Avenue & Lyon Avenue	Hemet	Riverside
32.	Lincoln & Western	Anaheim	Orange County
33.	Warm Springs & Eastern	Las Vegas	Las Vegas
34.	Main St & Ellsworth	Mesa	Phoenix
35.	Beach Bvd & Terry Dr	Huntington Beach	Orange County
36.	Ann & Decatur	Las Vegas	Las Vegas
37.	Dysart Rd & Thomas Rd	Avondale	Phoenix
38.	Perris & Alessandro	Moreno Valley	Riverside
39.	35th Ave & Greenway Rd	Phoenix	Phoenix
40.	Foothill & San Antonio	Upland	San Bernardino
41.	Monterey Ave & Highway 111	Palm Desert	Riverside
42.	59th Ave & Olive Ave	Glendale	Phoenix
43.	Gilbert Rd & Southern Ave	Mesa	Phoenix
44.	Main & Topaz	Hesperia	San Bernardino
45.	Cecil Ave & High St	Delano	Central Valley
46.	Horizon Ridge & Stephanie	Henderson	Las Vegas
47.	Shaw Ave & Willow Ave	Clovis	Central Valley
48.	19th Avenue & Greenway Rd	Phoenix	Phoenix
49.	Northgate & San Juan Ave	Sacramento	Sacramento

	Name	City	Region
50.	Tropicana Ave & Eastern Ave	Las Vegas	Las Vegas
51.	Harbor Blvd & Edinger Ave	Fountain Valley	Orange County
52.	43rd Ave. & Bell Rd.	Glendale	Phoenix
53.	Gilbert Rd. & Guadalupe Rd.	Gilbert	Phoenix
54.	Sahara Ave & Decatur Blvd	Las Vegas	Las Vegas
55.	Natoma St & Blue Ravine	Folsom	Sacramento
56.	Greenback & Madison	Folsom	Sacramento
57.	Stewart & Nellis	Las Vegas	Las Vegas
58.	1st St & Bullard Ave	Fresno	Central Valley
59.	Highland & Del Rosa	San Bernadino City	San Bernardino
60.	Alondra Ave & Downey Ave	Paramount	Los Angeles
61.	Saratoga Ave & Payne Ave	San Jose	San Francisco
62.	Almaden & Curtner	San Jose	San Francisco
63.	Lincoln & Sterling	Lincoln	Sacramento
64.	Calle Tampico & Desert Club Dr	La Quinta	Riverside
65.	Vegas Dr & Jones Blvd	Las Vegas	Las Vegas
66.	Lake Mead Blvd & Hollywood Blvd	Las Vegas	Las Vegas
67.	Desert Inn Rd & Pecos McLeod Dr	Las Vegas	Las Vegas
68.	Eastern Ave & Fremont St	Las Vegas	Las Vegas
69.	Del Paso Rd & Commerce Way	Sacramento	Sacramento
70.	Francisquito & Puente	Baldwin Park	Los Angeles
71.	35th Ave & Camelback Rd	Phoenix	Phoenix
72.	McCarran Blvd & Prater Way	Sparks	Reno
73.	Oakdale Rd & Lancey Dr	Modesto	Central Valley
74.	Mowry & Blacow	Fremont	San Francisco
75.	Artesia Blvd & Carmenita Rd	Cerritos	Los Angeles

	Name	City	Region
76.	Cooper Rd. & Warner Rd.	Gilbert	Phoenix
77.	51st Ave. & Glendale Ave.	Glendale	Phoenix
78.	Ball Road & Walker Street	Cypress	Orange County
79.	Riverside Dr & Archibald Ave	Ontario	San Bernardino
80.	Coffee Rd & Sylvan Ave	Modesto	Central Valley
81.	Hatch Rd & Herndon Ave	Ceres	Central Valley
82.	Heacock St & Ironwood Ave	Moreno Valley	Riverside
83.	Douglas Blvd & Auburn-Folsom Blvd	Granite Bay	Sacramento
84.	Fremont Ave & Mary Ave	Sunnyvale	San Francisco
85.	Euclid St & Broadway	Anaheim	Orange County
86.	Marconi Ave & Walnut Ave	Sacramento	Sacramento
87.	2nd St & Madison Ave	El Cajon	San Diego
88.	Mission Gorge & Cuyamaca	Santee	San Diego
89.	Tavern Rd & Alpine Blvd	Alpine	San Diego
90.	Camino de la Reina & Camino del Este	San Diego	San Diego
91.	Wood Ranch Pky & Country Club Dr	Simi Valley	Ventura County
92.	Olivera Rd & Port Chicago Hwy	Concord	San Francisco
93.	Crenshaw Blvd & Jefferson Blvd	Los Angeles	Los Angeles

SCHEDULE A-2

CLAIM REDUCTION PROPERTIES

	Name	City	Region
1.	Brown Rd & Recker Rd	Mesa	Phoenix
2.	42nd & Jackson	Indio	Riverside
3.	Ann & Decatur	Las Vegas	Las Vegas
4.	Dysart Rd & Thomas Rd	Avondale	Phoenix
5.	Valley & Ash	Escondido	San Diego
6.	35th Ave & Greenway Rd	Phoenix	Phoenix
7.	Monterey Ave & Highway 111	Palm Desert	Riverside
8.	Greenfield & Warner	Gilbert	Phoenix
9.	Avondale Blvd. & Van Buren St.	Avondale	Phoenix
10.	Arizona & Chandler Hts	Chandler	Phoenix
11.	7th Street & Thunderbird Rd	Phoenix	Phoenix
12.	Gantzel & Ocotillo	Queen Creek	Phoenix
13.	Stanford Ranch & Sunset	Rocklin	Sacramento
14.	Saratoga Ave & Payne Ave	San Jose	San Francisco
15.	Fred Waring Dr & Jefferson St	La Quinta	Riverside
16.	Lincoln & Sterling	Lincoln	Sacramento
17.	Calle Tampico & Desert Club Dr	La Quinta	Riverside
18.	Sunrise & Coloma	Rancho Cordova	Sacramento
19.	Watt Ave & El Camino Ave	Sacramento	Sacramento
20.	Hacienda Ave & Palm Dr	Desert Hot Springs	Riverside
21.	Rittenhouse Rd & Ocotillo Rd	Queen Creek	Phoenix
22.	Mission Gorge & Cuyamaca	Santee	San Diego
23.	Beach Blvd & Terry Dr	Huntington Beach	Orange County

	Name	City	Region
24.	Main & Topaz	Hesperia	San Bernardino
25.	Cecil Ave & High St	Delano	Central Valley
26.	Horizon Ridge & Stephanie	Henderson	Las Vegas
27.	Shaw Ave & Willow Ave	Clovis	Central Valley
28.	Tulare St & R St	Fresno	Central Valley
29.	Highland & Del Rosa	San Bernadino City	San Bernardino
30.	210 Fwy & Riverside	Rialto	San Bernardino
31.	Alondra Ave & Downey Ave	Paramount	Los Angeles
32.	Buena Vista Rd & White Ln	Bakersfield	Central Valley
33.	Buffalo Drive & Sahara Ave	Las Vegas	Las Vegas
34.	Highway 46 & Griffith Ave	Wasco	Central Valley
35.	Coffee Rd & Hageman Rd	Bakersfield	Central Valley
36.	Haven Ave & Town Center Dr	Rancho Cucamonga	San Bernardino
37.	Boulder Hwy & Russell Rd	Las Vegas	Las Vegas
38.	Herndon Ave & Milburn Ave	Fresno	Central Valley
39.	J St & Cross Ave	Tulare	Central Valley
40.	Oakdale Rd & Lancey Dr	Modesto	Central Valley
41.	Harding Way & Grant St	Stockton	Central Valley
42.	Tulare Ave & Laspina St	Tulare	Central Valley
43.	Whitmore Ave & Crows Landing Rd	Modesto	Central Valley
44.	Academy Ave & 7th St	Sanger	Central Valley
45.	Cleveland Ave & Schnoor Ave	Madera	Central Valley

SCHEDULE A-3

OWNED PROPERTIES

	Name	City	Region
1.	Alma School Road & University Drive	Mesa	Phoenix
2.	32nd St. & Greenway Rd	Phoenix	Phoenix
3.	Sossaman Rd. & Southern Ave	Mesa	Phoenix
4.	Stapley & McKellips	Mesa	Phoenix
5.	Dysart Rd. & Greenway Rd	El Mirage	Phoenix
6.	Frederick & Cottonwood	Moreno Valley	Riverside
7.	50th & Van Buren	Coachella	Riverside
8.	Lake Pleasant Pkwy & Jomax Rd	Peoria	Phoenix
9.	Bradshaw Rd & Old Placerville Rd	Sacramento	Sacramento
10.	Washington St & Wildcat Dr	Palm Desert	Riverside
11.	Mountain View & Redlands	Loma Linda	San Bernardino
12.	91st Ave & Northern Ave	Peoria	Phoenix
13.	Pecos Ridge Pkwy & Eastern Ave	Henderson	Las Vegas
14.	H St & Planz Rd	Bakersfield	Central Valley
15.	Van Buren Blvd & Colorado Ave	Riverside	Riverside
16.	Las Vegas Blvd & Lake Mead Blvd	North Las Vegas	Las Vegas
17.	Las Vegas Blvd & Pecos Rd	Las Vegas	Las Vegas
18.	Cotton Ln. & Greenway Rd	Surprise	Phoenix
19.	10th Ave & Fargo Ave	Hanford	Central Valley
20.	Ashlan Ave & Cornelia Ave	Fresno	Central Valley
21.	Shaw Ave & Fowler Ave	Clovis	Central Valley
22.	Oakwood & Springs	Vallejo	San Francisco
23.	Laurel Rd & O'Hara Ave	Oakley	San Francisco

	Name	City	Region
24.	Cedar Ave & Shields Ave	Fresno	Central Valley
25.	Pyramid Way & Eagle Canyon Dr	Reno	Reno
26.	34th St & Broadway	Sacramento	Sacramento
27.	McCarran Blvd & Northtown Lane	Reno	Reno
28.	Elk Grove Florin & Calvine	Elk Grove	Sacramento
29.	Twin Cities Rd & Carillon Rd	Galt	Sacramento
30.	Meadowview Rd & Freeport Blvd	Sacramento	Sacramento
31.	Los Altos Pkwy & Sparks Blvd	Sparks	Reno
32.	48th St & Carefree Hwy	Cave Creek	Phoenix
33.	99th Ave & Lower Buckeye Rd	Phoenix	Phoenix
34.	Greenway Rd & Tatum Blvd	Phoenix	Phoenix
35.	Camelback Rd & 83rd Ave	Phoenix	Phoenix
36.	Pinal & McCartney	Casa Grande	Phoenix
37.	Craig Rd & Allen Ln	North Las Vegas	Las Vegas
38.	Evergreen St & El Camino Ave	Sacramento	Sacramento
39.	H De La Rosa Sr St & Nestles Rd	Soledad	San Francisco
40.	Hwy 53 & Dam Rd	Clearlake	San Francisco
41.	35th Ave & Deer Valley Rd	Phoenix	Phoenix
42.	Miller Rd & Southern Ave	Buckeye	Phoenix
43.	Ventura & Gonzales	Oxnard	Ventura County
44.	Pacific Ave & Benjamin Holt Dr	Stockton	Central Valley
45.	CA-165 & CA-152	Los Banos	Central Valley
46.	3rd St & Carroll Ave	San Francisco	San Francisco
47.	Blue Diamond & Durango	Clark County	Las Vegas
48.	Missouri Flat Rd & Forni Rd	Placerville	Sacramento
49.	Long Beach Blvd & Pluma Street	Lynwood	Los Angeles

	Name	City	Region
50.	Del Monte Ave & Palo Verde Ave	Monterey	San Francisco
51.	Cotton Ln & Yuma Rd	Goodyear	Phoenix
52.	Copper Ave & Maple Ave	Fresno	Central Valley
53.	Hwy 49 & Hwy 104	Sutter Creek	Sacramento

SCHEDULE B
REAL ESTATE COMPENSATION

Lease Terminations, Assignments and Subleases.

- (i) In connection with the lease of (i) any Property listed on Schedule A-2 and (ii) any other Property as to which Company has directed Consultant to conduct claim reduction negotiations, for each such lease which is terminated, Consultant shall earn and be paid a fee ("**Claim Reduction Fee**") in the dollar amount equal to 2.0% of the amount by which the Termination Cost, as defined below, for the applicable lease, is less than the Threshold Amount, as defined below, for that lease. "**Termination Cost**" for a lease termination, assignment or sublease means the amount of consideration paid to a landlord to effect a lease termination; assignment or sublease. "**Threshold Amount**" means the full amount of a claim calculated, as of the effective date of the lease termination, pursuant to Section 502(b)(6) of the United States Bankruptcy Code, that the landlord would have had with regard to the lease if the lease had been rejected as of the lease termination date in a case under the Bankruptcy Code, whether or not the Company is in fact a debtor in a case under the Bankruptcy Code at that time.
- (ii) For each lease of a Property that is listed on Schedule A-1 that is assigned or subleased, Consultant shall earn and be paid a fee in the dollar amount equal to the sum of (x) 2.0% of the Gross Proceeds, as defined below, paid to Company to effect the assignment or sublease, plus (y) a Claim Reduction Fee, as defined above. "**Gross Proceeds**" means the amount of all consideration paid to or on behalf of the Company to effect the assignment or sublease. For assignments and sublease transactions, Termination Cost, if any, will be reduced by the amount of rent or other lease charges scheduled to be paid by the assignee or subtenant.
- (iii) For each closed sale of an owned Property, except the Stockton, CA distribution center ("**Stockton DC**") and the Stockton, CA kitchen facility ("**Stockton Kitchen**"), Consultant shall earn and be paid a fee in the dollar amount equal to 3.0% of the gross purchase price. As to the Stockton DC and the Stockton Kitchen, Company has advised Consultant that Company intends to enter into a "stalking horse" agreement with one of the parties listed on Schedule B-1 or any of its affiliates (the "**Original Prospects**"). Consultant shall prepare and implement a marketing program to obtain the highest and best bid against the stalking horse bidder, subject, if applicable, to Court-approved procedures in the Bankruptcy Case. If the Stockton DC sale closes, then Consultant shall earn and be paid a fee in the dollar amount equal to either (i) if one of the Original Prospects is the winning bidder, 0.75% of the gross purchase price; or (ii) if the winning bidder is not one of the Original Prospects, 0.75% of the gross purchase price for the first \$50.0 million of gross purchase price plus 2.0% of any additional gross purchase price. If the Stockton Kitchen sale closes, then Consultant shall earn and be paid a fee in the dollar amount equal to either (i) if one of the Original Prospects is the winning bidder, 0.75% of the gross purchase price; or (ii) if the winning bidder is not one of the Original Prospects, 0.75% of the gross purchase price for the first \$7.0 million of gross purchase price plus 2.0% of any additional gross purchase price.

Payment of Fees. Fees shall be earned as set forth above. Fees for owned Property transactions shall be payable at closing and for leased Property transactions shall be payable within ten business days after receipt of an invoice from Consultant therefore.

SCHEDULE B-1
ORIGINAL PROSPECTS

1. KTR Partners
2. Panattoni Development
3. Hillwood Enterprises
4. Pitco Foods
5. Ares Management
6. Medline Industries, Inc.
7. Fortress Investment Group
8. TPG Capital

EXHIBIT D

**Schedule B to the Engagement Letter;
Section 12 to the Engagement Letter**

(Note: capitalized terms used in this Exhibit D but not defined in such Exhibit shall have the respective meanings ascribed to them in the Engagement Letter)

Schedule B to the Engagement Letter

Real Estate Compensation

Lease Terminations, Assignments and Subleases.

- (i) In connection with the lease of (i) any Property listed on Schedule A-2 and (ii) any other Property as to which Company has directed Consultant to conduct claim reduction negotiations, for each such lease which is terminated, Consultant shall earn and be paid a fee ("**Claim Reduction Fee**") in the dollar amount equal to 2.0% of the amount by which the Termination Cost, as defined below, for the applicable lease, is less than the Threshold Amount, as defined below, for that lease. "**Termination Cost**" for a lease termination, assignment or sublease means the amount of consideration paid to a landlord to effect a lease termination, assignment or sublease. "**Threshold Amount**" means the full amount of a claim calculated, as of the effective date of the lease termination, pursuant to Section 502(b)(6) of the United States Bankruptcy Code, that the landlord would have had with regard to the lease if the lease had been rejected as of the lease termination date in a case under the Bankruptcy Code, whether or not the Company is in fact a debtor in a case under the Bankruptcy Code at that time.
- (ii) For each lease of a Property that is listed on Schedule A-1 that is assigned or subleased, Consultant shall earn and be paid a fee in the dollar amount equal to the sum of (x) 2.0% of the Gross Proceeds, as defined below, paid to Company to effect the assignment or sublease, plus (y) a Claim Reduction Fee, as defined above. "**Gross Proceeds**" means the amount of all consideration paid to or on behalf of the Company to effect the assignment or sublease. For assignments and sublease transactions, Termination Cost, if any, will be reduced by the amount of rent or other lease charges scheduled to be paid by the assignee or subtenant.
- (iii) For each closed sale of an owned Property, except the Stockton, CA distribution center ("**Stockton DC**") and the Stockton, CA kitchen facility ("**Stockton Kitchen**"), Consultant shall earn and be paid a fee in the dollar amount equal to 3.0% of the gross purchase price. As to the Stockton DC and the Stockton Kitchen, Company has advised Consultant that Company intends to enter into a "stalking horse" agreement with one of the parties listed on Schedule B-1 or any of its affiliates (the "Original Prospects"). Consultant shall prepare and implement a marketing program to obtain the highest and best bid against the stalking horse bidder, subject, if applicable, to Court-approved procedures in the Bankruptcy Case. If the Stockton DC sale closes, then Consultant shall earn and be paid a fee in the dollar amount equal to either (i) if one of the Original Prospects is the winning bidder, 0.75% of the gross purchase price; or (ii) if the winning bidder is not one of the Original Prospects, 0.75% of the gross purchase price for the first \$50.0 million of gross purchase price plus 2.0% of any additional gross purchase price. If the Stockton Kitchen sale closes, then Consultant shall earn and be paid a fee in the dollar amount equal to either (i) if one of the Original Prospects is the winning bidder, 0.75% of the gross purchase price; or (ii) if the winning bidder is not one of the Original Prospects, 0.75% of the gross purchase price for the first \$7.0 million of gross purchase price plus 2.0% of any additional gross purchase price.

Payment of Fees. Fees shall be earned as set forth above. Fees for owned Property transactions shall be payable at closing and for leased Property transactions shall be payable within ten business days after receipt of an invoice from Consultant therefore.

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Schedule B-1

ORIGINAL PROSPECTS

1. KTR Partners
2. Panattoni Development
3. Hillwood Enterprises
4. Pitco Foods
5. Ares Management
6. Medline Industries, Inc.
7. Fortress Investment Group
8. TPG Capital

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Section 12 to the Engagement Letter

12. Survival of Fee. In the event Company, or its successors or assigns, enters into any transaction with a landlord of a Property or other party during the term of this Agreement, the result of which would entitle Consultant to a fee for Real Estate Services pursuant to this Agreement, then Consultant shall be entitled to its fee pursuant to the terms of this Agreement. If Consultant has conducted documented substantive negotiations with a landlord or other party prior to the termination of this Agreement and an agreement with such landlord or other party is entered into within one hundred eighty (180) days after the termination of this Agreement, which agreement ultimately leads to the consummation of a transaction(s), the result of which would otherwise have entitled Consultant to a fee for Real Estate Services pursuant to this Agreement, then Consultant shall be entitled to a fee for such transaction(s) in accordance with the terms of this Agreement. Consultant must provide to Company, as part of its otherwise required reporting, a written list of such parties with whom it had documented substantive negotiations within ten (10) business days after termination of this Agreement.

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EXHIBIT E

Section 2(B) to the Engagement Letter

Section 2B to the Engagement Letter

2.B. Store FF&E.

- At any time and from time to time during the Term, the Company may request that Consultant assist it in selling Store furniture, fixtures, and equipment. The Company shall designate in writing the items of Store furniture, fixtures, and equipment that it wishes to sell (and, for the avoidance of doubt, the Company is free to include/exclude items in its sole discretion, and to sell or otherwise dispose of excluded items, including by contracting with others to do so on its behalf). Notwithstanding the foregoing, Consultant shall not have any obligation to sell, handle, or clean-out/remove any furniture, fixtures, and equipment containing hazardous materials (including, without limitation, Freon), nor shall the Consultant be responsible for selling, disposing of or cleaning-out/removing any furniture, fixtures, and equipment that, at such time, contains any hazardous materials. With respect to all Store furniture, fixtures, and equipment that the Company does wish the Consultant to assist it in selling ("**FF&E**"), Consultant shall assist with the marketing and sale of such FF&E, and the Company shall pay Consultant a commission equal to (i) twenty percent (20%) of the first \$5.0 million of gross sales of FF&E net only of sales tax plus (ii) five percent (5%) of any additional gross sales of FF&E net only of sales taxes ("**FF&E Commission**"). On a weekly basis, the Company shall pay Consultant the portion of the FF&E Commission earned on account of sales of FF&E made during each prior week. For the avoidance of doubt, in the event that any Store furniture, fixtures and equipment which are not specifically designated as FF&E in accordance with this Paragraph B are disposed of or transferred in connection with a transaction under or pursuant to the Real Estate Services, Consultant shall not be entitled to a separate fee under this Paragraph B.
- The Company shall reimburse Consultant for its marketing and sales expenses associated with the sale of FF&E, not to exceed an amount to be mutually agreed upon based upon the composition and location of the FF&E as determined by the Company ("**FF&E Expense Budget**"). The Company shall make such reimbursements weekly upon the receipt of reasonable documentation therefore.
- Consultant shall have the right to abandon any unsold Store furniture, fixtures, and equipment (including without limitation FF&E) at the Stores at the conclusion of the Term, without liability to the Company, any landlord or any other third party; provided however, that at the Company's request, Consultant would be pleased to assist the Company in cleaning-out/removing any unsold Store furniture, fixtures, and equipment (including without limitation FF&E) in which case the Company and Consultant would need to mutually agree upon an increase to the FF&E Expense Budget to reflect any such clean-out/removal expenses to be incurred by Consultant.
- Company shall be solely responsible for the collection, reporting and payment of all sales and similar taxes related to the sale of FF&E and Consultant shall have no responsibility therefore.

EXHIBIT F

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re	:	Chapter 11
	:	
FRESH & EASY NEIGHBORHOOD	:	Case No. 13-12569 (KJC)
MARKET INC., <i>et al.</i> , ¹	:	
	:	
Debtors.	:	(Jointly Administered)

**ORDER (I) AUTHORIZING THE DEBTORS TO RETAIN
AND EMPLOY THE JOINT VENTURE OF GORDON BROTHERS
GROUP, LLC AND CERTAIN OF ITS AFFILIATES AND TIGER CAPITAL GROUP,
LLC AND CERTAIN OF ITS AFFILIATES AS CONSULTANT, *NUNC PRO TUNC* AS
OF THE PETITION DATE AND (II) WAIVING COMPLIANCE WITH CERTAIN
INFORMATION REQUIREMENTS PURSUANT TO LOCAL RULE 2016-2(g)**

This matter coming before the Court on the Application of the Debtors for an Order (I) Authorizing Them to Retain and Employ the Joint Venture Comprised of Gordon Brothers Group, LLC and Certain of its Affiliates and Tiger Capital Group, LLC and Certain of its Affiliates (such joint venture, "JV") as Real Estate Consultants, *Nunc Pro Tunc* as of the Petition Date and (II) Waiving Compliance with Certain Information Requirements Pursuant to Local Rule 2016-2(g) (the "Application"),² filed by the above-captioned debtors (collectively, the "Debtors"); the Court having reviewed the Application, the Chartock Declaration and the Nassi Declaration, and having considered the statements of counsel and evidence adduced with respect to the Application at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334,

¹ The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Fresh & Easy Neighborhood Market Inc. (7028) and Fresh & Easy Property Company LLC (9636). The address of each of the Debtors is 2120 Park Place, Suite 200, El Segundo, California 90245.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Application.

(ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) notice of the Application and the Hearing was sufficient under the circumstances and (v) JV is a "disinterested person," as defined in section 101(14) of the Bankruptcy Code and as required by section 327(a) of the Bankruptcy Code in that (A) neither GBG nor TC has any connection with the Debtors, their creditors, the U.S. Trustee, any person employed by the office of the U.S. Trustee or any other party with an actual or potential interest in these chapter 11 cases or their respective attorneys or accountants, except as set forth in the Chartock Declaration and Nassi Declaration, (B) neither GBG nor TC is a creditor, equity security holder or insider of the Debtors, (C) neither GBG nor TC is, nor was, within two years of the Petition Date, a director, officer or employee of the Debtors and (D) neither GBG nor TC has nor represents an interest materially adverse to the interest of the estates or of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with or interest in, the Debtors; and the Court having determined that the legal and factual bases set forth in the Application, the Chartock Declaration and the Nassi Declaration, and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY FOUND THAT:

1. The Application is GRANTED as set forth herein.
2. The Debtors are authorized to retain and employ JV as their consultant in these chapter 11 cases, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rules 2014-1 and 2016-2(g), on the terms and conditions set forth in the Application and the Engagement Letter, *nunc pro tunc* as of the Petition Date.

3. The Debtors are authorized to compensate JV in accordance with the terms and conditions described in the Engagement Letter, pursuant to section 328(a) of the Bankruptcy Code.

4. JV shall not be required to maintain contemporaneous time records or file interim fee applications with the Court pursuant to sections 330 and 331 of the Bankruptcy Code, but JV will be required to file a final fee application, including a summary statement of all compensation and disbursements for which the payment or reimbursement is sought or was already paid by the Debtors; provided, however that the U.S. Trustee shall have the right to object to any of JV's compensation or reimbursement based on the reasonableness standard provided in section 330 of the Bankruptcy Code, rather than section 328(a) of the Bankruptcy Code.

5. The information requirements of Local Rule 2016-2(d) are waived pursuant to Local Rule 2016-2(g), and JV shall not be required to maintain records of detailed time entries in connection with professional services rendered under the Engagement Letter.

6. The Debtors shall be bound by the Indemnification Provisions set forth in the Engagement Letter, subject, during the pendency of these chapter 11 cases, to the following:

- a. JV shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Letter for services, other than services and indemnification, contribution, or reimbursement that is approved by the Court;
- b. The Debtors shall have no obligation to indemnify JV, or provide contribution or reimbursement to JV, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from JV's gross negligence, fraud, willful misconduct, breach of fiduciary duty, if any, bad faith or self-dealing; (ii) for a contractual dispute in which the Debtors allege the breach of JV's contractual obligations, unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which JV should not receive indemnity,

contribution or reimbursement under the terms of the Engagement Letter as modified by this Order; and

- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, JV believes that it is entitled to the payment of any amounts by the Debtors on account of the 'Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter (as modified by the JV Retention Order), including, without limitation, the advancement of defense costs, JV must file an application therefore in this Court, and the Debtors may not pay any such amounts to JV before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by JV for indemnification, contribution or reimbursement, and not a provision limiting the duration of the 'Debtors' obligation to indemnify JV. All parties in interest shall retain the right to object to any demand by JV for indemnification, contribution or reimbursement.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application, including, without limitation, to pay JV's fees as provided in the Engagement Letter.

8. The payment by Debtors to JV of the Retainer advance referenced in the Application shall be deemed effective without further notice, motion or order of the Court. Further, upon entry of an Order approving JV's final fee application, the payment of any fees, expenses or other reimbursements to JV in accordance with the Engagement Letter shall constitute, with respect to each such payment, a final reconciliation and a release of all claims and liabilities against JV.

9. To the extent that this Order is inconsistent with the Engagement Letter, the terms of this Order shall govern.

10. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2013
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE