

EXHIBIT A

[Purchase Agreement]

EXECUTION COPY

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made and entered into this 3rd day of May, 2003, by and among Fleming Companies, Inc., an Oklahoma corporation ("Fleming"), and Richmar Foods, Inc., a California corporation ("Richmar," and together with Fleming, "Seller"), and Save Mart Supermarkets, a California corporation ("Buyer"). (Each of Buyer and Seller shall be referred to herein individually as a "Party" and collectively as the "Parties").

WITNESSETH

WHEREAS, Seller is the lessee of certain real property and improvements identified on *Annex I* hereto (each, a "Store Property" and collectively, the "Store Properties") where Seller operates retail supermarkets;

WHEREAS, on April 1, 2003 Seller and twenty-seven (27) affiliated entities (collectively, the "Fleming Debtor Entities") voluntarily commenced cases under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, jointly administered under docket No. 03-10945 *et seq.* (collectively, the "Chapter 11 Case"); and

WHEREAS, Seller desires to sell, convey, transfer and assign to Buyer, and Buyer desires to acquire from Seller, the Acquired Assets, and Buyer has agreed to assume certain liabilities of Seller relating to the Acquired Assets and the operation of the Store Properties, all on the terms and subject to the conditions set forth herein.

NOW THEREFORE, the Parties hereto agree as follows:

ARTICLE I

Definitions and Interpretation

1.1 Definitions.

"AAA" is defined in *Section 16.3(b)(ii)*.

"Access Period" is defined in *Section 8.4(b)*.

"Acquired Assets" is defined in *Section 2.1*.

"Acquired Contracts" means the Leases and the agreements with third parties used by Seller primarily in its operation of the Store Properties that are listed on *Schedule 1.1(a)*.

"Acquired Leased Equipment" is defined in *Section 2.1(c)*.

"Affiliate" means any Person who, directly or indirectly, controls, is controlled by or is under common control with the relevant Party.

"Agreement" is defined in the introductory paragraph and *Section 16.5* of this Agreement.

"Allocation" is defined in *Section 4.8*.

"Alternative Transaction" means a transaction pursuant to which Seller obtains Bankruptcy Court authority to sell all or substantially all of the Acquired Assets to a Third Party and which has a fair market value at least \$1,216,000.00 greater than the Cash Purchase Price payable by Buyer hereunder and otherwise is on economic terms at least as favorable in the aggregate to Seller as those set forth in this Agreement.

"Amendment No. One to Facility Standby Agreement" is defined in *Section 9.8*.

"Ancillary Agreements" means the Assignment and Assumption Agreement, the Bill of Sale, the Amendment No. One to Facility Standby Agreement, the Liquor License Assets Transfer Agreement, the Asset Escrow Agreement, and the Franchise Agreement.

"Asset Escrow Agent" means a national banking association or title company mutually agreeable to the Parties, appointed pursuant to the terms of the Asset Escrow Agreement.

"Asset Escrow Agreement" is defined in *Section 4.4(c)*.

"Asset Purchase Price" is defined in *Section 4.1(a)*.

"Assignment and Assumption Agreement" means the Assignment and Assumption Agreement, dated as of the Closing Date, in substantially the form of *Exhibit A*.

"Assumed Liabilities" is defined in *Section 3.1*.

"Auction" means the auction that Seller will conduct at the time and place set forth in the Bidding Procedures Order.

"Avoidance Action" is defined in *Section 2.2(l)*.

"Bankruptcy Code" means title 11 of the United States Code.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware, having jurisdiction over Seller and its assets.

"Bidding Procedures" means the procedures set forth in the Bidding Procedures Order pursuant to which, among other things, an Alternative Transaction may be solicited, made and accepted.

"Bidding Procedures Order" means the order of the Bankruptcy Court, reasonably satisfactory in form and substance to Buyer and Seller, (i) approving the form of this Agreement pending the Sale Hearing, (ii) setting a deadline for the filing of objections to the entry of the Sale Order, (iii) scheduling the Auction, (iv) scheduling the Sale Hearing, (v) approving the Bidding Procedures and (vi) approving and implementing the provisions of Section 9.14 of this Agreement.

"Bill of Sale" means the Bill of Sale of Seller, dated as of the Closing Date, in substantially the form of *Exhibit B*.

"Business Day" means a day other than a Saturday, Sunday or legal holiday for commercial banking institutions in the State of New York.

"Buyer" is defined in the introductory paragraph of this Agreement.

"Buyer Ancillary Agreements" is defined in *Section 6.2*.

"Buyer's Medical Plan" is defined in *Section 9.2(c)*.

"CABC" is defined in *Section 9.5*.

"California Act" means Chapter 4 (commencing with Section 1400) to Part 4 of Division 2 of the California Labor Code (Assembly Bill 2957) relating to employment, mass layoffs, relocations and terminations.

"Cash Purchase Price" is defined in *Section 4.1*.

"Chapter 11 Case" is defined in the recitals of this Agreement.

"Closing" and "Closing Date" are defined in *Section 12.1(a)*.

"Closing Purchase Price" is defined in *Section 4.4(d)*.

"COBRA" means the Consolidated Omnibus Reconciliation Act of 1985.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Contract" means any written contract, agreement, lease, license, commitment or other legally binding written agreement.

"Cure Costs" is defined in *Section 3.3*.

"Delaware Courts" is defined in *Section 16.3(b)(iv)*.

"Dispute" is defined in *Section 16.3(b)*.

"Employee" means each active employee, full-time or part-time, of Seller (or an Affiliate of Seller) who, as of the date of this Agreement, is determined by Seller to have performed (during the 12-month period immediately preceding the date of this Agreement (or the period of the employee's employment with Seller and its Affiliates, if less)) substantially all of such employee's services in connection with or for the benefit of one or more of the Store Properties.

"Employee Benefit Plan" means any of the following arrangements (whether formal or informal, and whether written or unwritten) under which an employer has any liability to provide benefits or compensation to or on behalf of any employee, or the spouse or dependents of any employee:

(a) any employee benefit plan within the meaning of Section 3(3) of ERISA, and

(b) any other material profit-sharing, deferred compensation, incentive compensation, bonus, commission, stock option, stock purchase, severance pay, unemployment benefit, vacation pay, savings, dependent care, scholarship, accident, disability, weekly income, salary continuation or other compensation or fringe benefit plan or program.

"Employee Obligations" is defined in *Section 9.1(a)*.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation, and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Water Pollution Control Act, the Air Pollution Control Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act as well as all other federal, state or local laws, regulations or requirements, or such portions thereof, that are similar to the above-referenced laws or that otherwise govern chemicals, products, materials or wastes that pose risks to the environment.

"Equipment" is defined in *Section 2.1(c)*.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any entity that with the subject Person is:

(a) a member of a controlled group of corporations within the meaning of Section 414(b) of the Code;

(b) a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code;

(c) a member of an affiliated service group within the meaning of Section 414(m) of the Code; or

(d) a member of a group of organizations required to be aggregated under Section 414(o) of the Code.

"Exception Instruments" is defined in *Section 9.7(b)*.

"Excluded Assets" is defined in *Section 2.2*.

"Excluded Contracts" is defined in *Section 2.2(j)*.

"Excluded Equipment" is defined in *Section 2.2(c)*.

"Excluded Inventory" is defined in *Section 2.2(f)*.

"Excluded Liabilities" means every liability of Seller other than the Assumed Liabilities.

"Existing Surveys" is defined in *Section 9.7(c)*.

"Fifth Side Letter" means that certain side letter agreement to be entered into by the Parties, which terminates Buyer's obligations to reimburse Seller for any decrease in sales price for a Store Property in the event the FTC does not permit the sale of such Store Property to Buyer and Seller sells such Store Property to a third party.

"Files and Records" is defined in *Section 2.1(d)*.

"Final Closing Date" shall mean the date on which the last Closing of the transactions contemplated by this Agreement occurs.

"Final Closing Inventory Value" is defined in *Section 4.7(b)*.

"Financial Information" is defined in *Section 5.11*.

"Fleming" is defined in the introductory paragraph of this Agreement.

"Fleming Debtor Entities" is defined in the recitals of this Agreement.

"Franchise Agreement" is defined in *Section 9.9*.

"Governmental Entity" means any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign.

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

"Indemnifiable Losses" means any losses, liabilities, damages, costs and expenses (including reasonable out-of-pocket attorneys' fees and expenses) actually incurred in connection with any actions, suits, demands, assessments, judgments and settlements, in any such case (x) reduced by the amount of insurance proceeds recovered from any Person or entity with respect thereto and (y) excluding any such losses, liabilities, damages, costs and expenses to the extent that the underlying liability or obligation is the result of any action taken or omitted to be taken by any Person entitled to indemnification under this Agreement.

"Initial Asset Purchase Price" is defined in *Section 4.3(f)*.

"Initial Closing" and "Initial Closing Date" are defined in *Section 12.1(a)*.

"Initial Inventory Purchase Price" is defined in *Section 4.3(b)*.

"Intellectual Property" means any and all rights that may exist from time to time in this or any other jurisdiction under patent law, copyright law, publicity rights law, moral rights law, trade secret law, semiconductor chip law, unfair competition law or other similar protections, including but not limited to: (i) United States and foreign patents and patent applications of any kind, United States and foreign works of authorship, mask-works, copyrights, and copyright and mask work registrations and applications for registration, and any rights or licenses in the foregoing, and (ii) unpatented inventions (whether or not patentable), trade secrets, know-how and proprietary information, including but not limited to (in whatever form or medium), discoveries, ideas, compositions, formulas, computer programs (including source and object codes), computer software and computer software documentation (except for Pharmacy Records), database, drawings, designs, plans, proposals, specifications, photographs, samples, models, processes, procedures, data, information, manuals, reports, financial, marketing and business data, and pricing and cost information, correspondence and notes, and any rights or licenses in the foregoing which may be sublicensed to any Person who is not an Affiliate of Seller without the payment of compensation or other consideration to any Person.

"Inventory" is defined in *Section 2.1(b)*.

"Inventory Count" is defined in *Section 4.3(c)*.

"Inventory Date" is defined in *Section 4.3(c)*.

"Inventory Purchase Price" means the sum of the Initial Inventory Purchase Price and the Remaining Inventory Purchase Price.

"Inventory Service" is defined in *Section 4.3(c)*.

"Law" means any federal, state, provincial, local or foreign law, statute, rule, regulation or ordinance of any Governmental Entity.

"Leasehold Improvements" is defined in *Section 2.1(a)*.

"Leases" means those leases listed on *Annex I* hereto.

"Lien" means any lien, charge, mortgage, option, security interest, restriction or other encumbrance affecting title.

"Liquor Assets" is defined in *Section 2.1(h)*.

"Liquor Inventory" is defined in *Section 2.1(h)*.

"Liquor License Assets" is defined in *Section 2.1(h)*.

"Liquor License Assets Purchase Price" is defined in *Section 4.2(f)*.

"Liquor Licenses" is defined in *Section 2.1(h)*.

"Material Acquired Contracts" is defined in *Section 5.8*.

"Material Adverse Effect" means a material adverse effect on the operations of the Store Properties or the Acquired Assets, taken as a whole.

"Material Consents" is defined in *Section 5.4*.

"Mediation Notice" is defined in *Section 16.3(b)(ii)*.

"Medical Liabilities" is defined in *Section 9.2(c)*.

"New Employees" is defined in *Section 9.1(a)*.

"Non-Disclosure Agreement" means that agreement by and between Seller and Buyer, dated August 28, 2002.

"Non-Foreign Affidavit" is defined in *Section 13.4*.

"Notice of Dispute" is defined in *Section 16.3(b)(i)*.

"Order" means any writ, judgment, decree, injunction or similar order, writ, ruling, directive or other requirement of any Governmental Entity (in each such case whether preliminary or final).

"out of date or out of code" is defined on *Schedule 4.3(b)*.

"Owner's Policies" is defined in *Section 9.7(b)*.

"Parties" and "Party" are defined in the introductory paragraph of this Agreement.

"Periodic Taxes" is defined in *Section 15.5*.

"Permits" is defined in *Section 2.1(e)*.

"Permitted Exceptions" means (a) any Lien for Taxes not yet due or payable or being contested in good faith by appropriate proceedings (including any interest, penalties or additions to any such taxes or assessments), (b) mechanics', carriers', workmen's, repairmen's and other like Liens imposed by law arising or incurred in the ordinary course of business consistent with past practices, for which Seller has executed a bond to cover any such Lien, (c) utility easements for electricity, gas, water, sanitary sewer, surface water drainage or other general easements granted to Governmental Entities in the ordinary course of developing or operating a retail store in the manner such activities are conducted by Seller as of the date of this Agreement, (d) encumbrances consisting of zoning restrictions, easements and other restrictions on the use of the Store Properties, provided that such items do not materially adversely impair the continued use and operation of the Store Properties by Buyer in the same manner as such activities are conducted by Seller as of the date of this Agreement, (e) any laws, rules, regulations, statutes or ordinances affecting the Store Properties which do not materially adversely impair the continued operation of the Store Properties by Buyer in the same manner as such activities are conducted by Seller as of the date of this Agreement, (f) any utility company rights, easements and franchises and similar rights or easements granted to third parties for electricity, water, steam, gas, telephone or other service or the right to use and maintain poles, lines, wires, cables, pipes, boxes and other fixtures and facilities in, over, under and upon the Store Properties, provided that the same do not materially adversely affect the use of any Store Property in the same manner as such activities are conducted by Seller as of the date of this Agreement, and (g) the Leases and any superior lease or leases.

"Person" means any individual, corporation, partnership, joint venture, trust, limited liability company, business association or other entity or a Governmental Entity.

"Preliminary Closing Inventory Value" is defined in *Section 4.7(b)*.

"Preliminary Closing Liquor Inventory Value" is defined in *Section 4.7(d)*.

"Prohibited Area" is defined in *Section 9.3(a)*.

"Proration Periods" is defined in *Section 15.5*.

"Remaining Asset Purchase Price" is defined in *Section 4.4(b)*.

"Remaining Inventory Purchase Price" is defined in *Section 4.4(a)*.

"Required Permits" is defined in *Section 8.12*.

"Required Stores" means the Food 4 Less grocery stores located at the following addresses: (i) 2950 Delta Fair Blvd, Antioch, CA, (Food 4 Less #8836), (ii) 1955 W. Texas Street, Fairfield, CA (Food 4 Less #8837), (iii) 1550 N. Ben Maddox Way, Visalia, CA (Food 4 Less #8842), (iv) 1355 Shaw Avenue, Clovis, CA (Food 4 Less #8843), and (v) 1177 Fresno Street, Fresno CA (Food 4 Less #8845).

"Retail Food Store" is defined in *Section 9.3(a)*.

"Richmar" is defined in the introductory paragraph of this Agreement.

"ROFR Supply Agreement" is defined in *Section 9.12*.

"Sale Hearing" means the hearing of the Bankruptcy Court to approve the transactions contemplated by this Agreement.

"Sale Order" means the order of the Bankruptcy Court, in form and substance reasonably satisfactory to Buyer and Seller, to be issued by the Bankruptcy Court pursuant to sections 363 and 365, and to the extent possible section 1146(c), of the Bankruptcy Code in a form substantially (i) approving this Agreement and the transactions contemplated hereby, (ii) approving the sale of the Acquired Assets to Buyer free and clear of all liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, (iii) approving the assumption and assignment to Buyer of any assumed Leases and Acquired Contracts and (iv) finding that Buyer is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

"Seller" is defined in the introductory paragraph of this Agreement.

"Seller Ancillary Agreements" is defined in *Section 5.2*.

"Seller Benefit Plans" is defined in *Section 5.12(a)*.

"Seller Gift Certificates" is defined in *Section 9.10*.

"Seller's 401(k) Plan" is defined in *Section 9.2(a)*.

"Seller's Knowledge" (or any similar phrase) means the actual knowledge of the individuals listed on *Schedule 1.1(b)*.

"Seller's Pension Plan" is defined in *Section 9.2(b)*.

"Seller's Prepaid Expenses" is defined in *Section 8.8*.

"Senior Officers" is defined in *Section 16.3(b)(i)*.

"Specific Store Property Value Schedule" is defined in *Section 4.1(a)*.

"Store Employees" is defined in *Section 9.1(a)*.

"Store Property" and "Store Properties" are defined in the recitals of this Agreement.

"Tax" and "Taxes" means all federal, state, provincial, local and foreign taxes, including any income, alternative or minimum, business and occupation, gross receipts, disability, unemployment compensation, social security, sales, use, ad valorem, value-added, transfer, franchise, profits, withholding, wage, payroll, employment, excise, stamp, real and personal property, environmental or other tax, together with all interest, penalties and additions with respect thereto.

"Tax Returns" means all federal, state, local and foreign tax returns, reports, forms, certificates and declarations of estimated tax reports, including attachments and schedules thereto or amendments thereof.

"Termination Fee" means an amount equal to \$966,000.00.

"Third Party" means any Person other than Seller, Buyer or any of their respective Affiliates.

"Third Party Intellectual Property" means any and all Intellectual Property owned by any Person, other than Seller, including Affiliates of Seller, without regard as to whether Seller has any rights therein or the right to assign such rights to Buyer.

"Title Commitments" is defined in *Section 9.7(b)*.

"Title Company" is defined in *Section 9.7(b)*.

"Trademarks" means trademarks, tradenames, applications for trademark registration, service marks, applications for service mark registration, domain names, registrations and applications for registrations pertaining to the foregoing owned by Seller or an Affiliate of Seller or licensed to Seller or an Affiliate of Seller by any person, any derivations of the foregoing, and all goodwill associated therewith.

"Transaction Taxes" is defined in *Section 15.4*.

"WARN Act" means the Worker Adjustment and Retraining Notification Act.

1.2 Interpretation When a reference is made in this Agreement to a Section, Schedule, Annex or Exhibit, such reference shall be to a Section, Schedule, Annex or Exhibit of this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "included, "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the phrase "without limitation." When used in this Agreement, the word "primarily" shall be deemed to be followed by the phrase "or exclusively." Unless otherwise indicated, all references to dollars refer to United States dollars. The Parties acknowledge that both Parties have participated in the drafting and preparation of this Agreement and the Ancillary Agreements and agree that any rule of construction to the effect that ambiguities are to be construed against the drafting party shall not be applied to the construction or interpretation of this Agreement or the Ancillary Agreements.

ARTICLE II

Purchase and Sale of Acquired Assets

2.1 Acquired Assets Subject to Agreement. Effective as of any Closing and upon the terms and subject to the conditions of this Agreement, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, assume and acquire from Seller, all of Seller's right, title and interest in, to and under the Acquired Assets that relate to each Store Property being conveyed to Buyer upon such Closing Date. "Acquired Assets" shall mean, as to each Store Property, the following (in each case, other than the Excluded Assets):

(a) Acquired Contracts and Leasehold Improvements. All of Seller's interest in the Acquired Contracts and in the leasehold improvements owned by Seller that are situated in or on each Store Property (collectively, the "Leasehold Improvements").

(b) Inventory. All saleable merchandise inventory located in or held for sale at each Store Property on the Closing Date for such Store Property (collectively, the "Inventory"); excluding, however, the Excluded Inventory and the Liquor Inventory.

(c) Equipment. All of the machinery, equipment, shopping carts, tools, furniture, furnishings, fixtures, forklifts, construction in progress, spare parts, shelf tags, aisle markers, electronic surveillance equipment and other tangible personal property owned by Seller, or leased by Seller that is subject to a lease that is an Acquired Contract (collectively, the "Acquired Leased Equipment"), located at each Store Property together with all rights of Seller against the manufacturers and/or suppliers of such equipment (collectively, the "Equipment"); excluding, however, any Liquor Assets.

(d) Files and Records. All nonproprietary and nonconfidential files, documents, papers, computer files and books and business records of Seller in any media relating to the Acquired Assets and located at each Store Property, excluding financial, operating and employee manuals and instructional, promotional and educational materials which are exclusive to Seller (collectively, the "Files and Records").

(e) Permits. All assignable governmental permits, licenses, consents and authorizations, related to the operation of each Store Property (collectively, the "Permits"); excluding, however, the Liquor Licenses. A list of the material permits and licenses related to the operation of each Store Property (other than the Liquor Licenses) is attached as *Schedule 2.1(e)*.

(f) Supplies. All supplies located at and used in connection with the operation of each Store Property.

(g) Subleases. All of Seller's interest in the leases and subleases listed on *Schedule 2.1(g)* pursuant to which Seller is providing retail space within each Store Property to unrelated third parties.

(h) Liquor License Assets. All of Seller's interest in the alcoholic beverage licenses for each Store Property (collectively, the "Liquor Licenses"), the liquor beverages (collectively, the "Liquor Inventory"), barware and other assets owned by Seller that cannot be transferred before the transfer of such Liquor Licenses (collectively, the "Liquor Assets" and, together with the Liquor Licenses and the Liquor Inventory, the "Liquor License Assets"). The Liquor Licenses are listed on *Schedule 2.1(h)*.

2.2 Excluded Assets. Buyer shall acquire from Seller only the Acquired Assets. Notwithstanding anything contained in *Section 2.1* hereof to the contrary, the properties, assets and rights of Seller described below (the "Excluded Assets") are expressly excluded from the transactions contemplated by this Agreement and do not comprise the Acquired Assets being transferred:

(a) Cash. All cash and cash equivalents, on hand, or in banks, certificates of deposit, bank or savings and loan accounts, U.S. government securities, and any other marketable securities of any kind or nature held by Seller, including at each Store Property.

(b) Accounts Receivable. All accounts receivable, notes receivable and other receivables with respect to the Acquired Assets related to each Store Property or the operation of the Store Properties. In the event that after any Closing of a Store Property, Buyer receives any payment at such Store Property or otherwise in respect of any accounts receivable, notes receivable or other receivable, Buyer shall segregate such payment from its own assets and shall promptly remit the same to Seller, without any deduction or set-off. Any such payment shall at all times remain the property of Seller, and Buyer acknowledges that it has no rights or interests with respect thereto.

(c) Equipment. All Equipment owned by third parties (other than the Acquired Leased Equipment) at each Store Property and listed on *Schedule 2.2(c)* and any handheld ordering machines (the "Excluded Equipment"). The Excluded Equipment shall be removed from each Store Property within fifteen (15) Business Days of the Closing Date for such Store Property by Seller at Seller's sole expense, provided that the timing of such removal is mutually agreed upon by the parties.

(d) Intellectual Property and Trademarks. Any Intellectual Property and Trademarks of Seller or its Affiliates and any Third Party Intellectual Property and any rights or licenses in the foregoing; excluding, however, the Acquired Contracts.

(e) Signs and Logos. Except for the Store Properties governed by the Franchise Agreement, all signs or personal property which contain the name (or trade derivative thereof) or logo of Seller, including all uniforms supplied to Seller's employees, which signs and personal property shall be removed by Seller from each Store Property in such time period as mutually agreed by the Parties at Seller's sole expense. Notwithstanding the foregoing sentence, an item of personal property shall not be considered an Excluded Asset if it contains the name (or trade derivative thereof) or logo of Seller and such name, derivative or logo is removable or may be effectively masked, if not otherwise removable. In these instances, either Buyer will remove only

the portion of the personal property that has the name, derivative of the name or logo or Buyer will mask the name, derivative of the name or logo. (For example, all identifying marks on shopping cart baskets will either be removed or masked, but the baskets will be held by Buyer as an Acquired Asset.) Upon the termination of the Franchise Agreement with respect to any Store Property, Buyer shall notify Seller prior to removing any exterior signs or sign fascia from such Store Property. Unless Seller promptly notifies Buyer that Seller wants to remove such signs and sign fascia (at Seller's expense), Buyer shall remove and dispose of all exterior signs and all sign fascia from all pylon, monument or other similar center signs in any manner Buyer deems appropriate, and Buyer shall have no liability to Seller by reason of such removal and disposition. The Parties may agree to jointly engage a Person to remove Seller's signs and install Buyer's signs in which case the Parties shall share equally the costs of such person or entity and any damages caused by such removal and installation.

(f) Excluded Inventory. All merchandise located at each Store Property that is out of date or out of code merchandise, out of season merchandise not saleable in the ordinary course of business, and all merchandise not in saleable condition (all of the foregoing herein referred to as the "Excluded Inventory"). In addition, Excluded Inventory shall include general merchandise not generally stocked at a Food Maxx grocery store if (i) the value of such merchandise exceeds \$1,000.00 for a single category of products at such Store Property and (ii) Buyer elects not to acquire such merchandise. The term "out of date or out of code" is defined on *Schedule 4.3(b)*. All Excluded Inventory will be removed by Seller from each Store Property within thirty (30) Business Days after the Inventory Count at such Store Property at the sole expense of Seller, provided that the timing of such removal is mutually agreed upon by the parties. None of the Excluded Inventory will comprise any part of the Inventory to be acquired by Buyer hereunder and will be excluded from any Inventory Count.

(g) Tax Refunds and Insurance Claims. Rights to any (i) Tax refunds or credits for Tax periods (or portions thereof) ending prior to the Closing Date for each Store Property, and (ii) insurance claims or rights to payment arising with respect to the Acquired Assets relating to a Store Property on or before the Closing Date for such Store Property.

(h) Records of Sale. All records prepared in connection with the sale of the Acquired Assets, including bids received from third parties and analyses relating to the Acquired Assets.

(i) Excluded Liabilities. All rights related to the Excluded Liabilities.

(j) Excluded Contracts. All contracts other than the Acquired Contracts (the "Excluded Contracts").

(k) Deposits. All deposits related to the Store Properties.

(l) Avoidance Actions. Any and all rights under this Agreement, and any and all rights, claims, counterclaims, demands and causes of action of Seller, including,

without limitation, avoidance claims or causes of action arising under the Bankruptcy Code or applicable state law, including, without limitation, all rights and avoidance claims of Seller arising under Chapter 5 of the Bankruptcy Code (an "Avoidance Action" and collectively the "Avoidance Actions").

2.3 Deemed Consents and Cures. For all purposes of this Agreement (including all representations and warranties of Seller contained herein), Seller shall be deemed to have obtained all required consents, as applicable, in respect of the assignment of any Acquired Asset and to have cured all defaults thereunder if, and to the extent that, pursuant to the Sale Order Seller is authorized to assume and assign any Acquired Assets to Buyer pursuant to section 365 of the Bankruptcy Code.

ARTICLE III

Assumption of Liabilities

3.1 Assumption of Liabilities. On the Closing Date for each Store Property, Buyer shall assume, pay, perform and discharge when due, only the following liabilities, responsibilities and obligations relating to the Acquired Assets associated with such Store Property and the operation of such Store Property (the "Assumed Liabilities"):

(a) Acquired Contracts. All of Seller's liabilities, responsibilities and obligations under the Acquired Contracts relating to such Store Property arising from and after the Closing Date for such Store Property.

(b) Operating Liabilities. All liabilities, responsibilities, obligations, costs and expenses with respect to claims arising in any way with respect to or as a result of the operation of such Store Property or the ownership of the Acquired Assets relating to such Store Property on or after the Closing Date for such Store Property, including, without limitation, any and all Taxes or tort claims arising out of or attributable to the operation of such Store Property or the ownership of the Acquired Assets on or after the Closing Date for such Store Property.

(c) Employment Matters. All liabilities, responsibilities and obligations relating to the New Employees of such Store Property on and after the Closing Date.

3.2 Excluded Liabilities. The Excluded Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. The Excluded Liabilities include the following:

(a) Liabilities Related to this Agreement. All liabilities, responsibilities and obligations of Seller under this Agreement and the Ancillary Agreements.

(b) Excluded Assets. All liabilities, responsibilities and obligations of Seller related primarily to any of the Excluded Assets.

(c) Taxes. Subject to *Section 15.5*, all Taxes of Seller or its Affiliates or Taxes attributable to the operation of each Store Property or ownership of Acquired Assets relating to such Store Property for all Tax periods (or portions thereof) ending prior to the Closing Date for such Store Property.

(d) Employment Matters. All liabilities, responsibilities and obligations of Seller under all Employee Benefit Plans of Seller and Affiliates of Seller and all Employee Obligations.

(e) Litigation and Claims. All liabilities, costs and expenses relating to the claims or actions referenced on *Schedule 5.7* associated with the Store Properties.

3.3 Cure Costs. To the extent that any Acquired Contract is subject to a cure (pursuant to section 365 of the Bankruptcy Code and described in the Sale Order or any Order of the Bankruptcy Court relating to such cure liability), Seller shall be responsible for any such cure (in the aggregate, the "Cure Costs") and Buyer agrees to pay such Cure Costs at or prior to the Closing and, pursuant to *Section 4.1(c)*, deduct such amount from the amount payable to Seller at the Closing.

ARTICLE IV

Consideration

4.1 Consideration. The total consideration to be paid by Buyer to Seller for the Acquired Assets (the "Cash Purchase Price") shall consist of:

(a) \$25,000,000.00 (the "Asset Purchase Price"), subject to reduction pursuant to *Section 4.6* for the value as set forth on *Schedule 4.1(a)* (the "Specific Store Property Value Schedule") of any Store Property not transferred to Buyer pursuant to *Section 4.6*; plus

(b) the Inventory Purchase Price, subject to adjustment pursuant to *Section 4.4(d)*; minus

(c) the Cure Costs.

4.2 Payment of Cash Purchase Price. Buyer shall pay the Cash Purchase Price as follows:

(a) The Initial Inventory Purchase Price will be paid to Seller at the Initial Closing by wire transfer of immediately available funds.

(b) An amount equal to the Initial Asset Purchase Price less the Cure Costs associated with the Store Properties that are the subject of the Initial Closing, will be paid to Seller at the Initial Closing by wire transfer of immediately available funds.

(c) The Remaining Inventory Purchase Price will be paid to the Asset Escrow Agent at the Initial Closing by wire transfer of immediately available funds, as set forth in *Section 4.4*.

(d) The Remaining Asset Purchase Price less the Cure Costs associated with the Store Properties that do not transfer at the Initial Closing will be paid to the Asset Escrow Agent at the Initial Closing by wire transfer of immediately available funds, as set forth in *Section 4.4*.

4.3 Sale of the Inventory, the Inventory Count, Computation of the Initial Inventory Purchase Price and Computation of the Initial Asset Purchase Price.

(a) Sale of Inventory. The legal title to the Inventory and the Liquor Inventory located at a Store Property, except for any Excluded Inventory, shall be transferred to Buyer at the Closing for such Store Property pursuant to a Bill of Sale.

(b) Initial Inventory Purchase Price. The "Initial Inventory Purchase Price" shall be an amount equal to the aggregate purchase price for the Inventory and the Liquor Inventory of each Store Property that is to be transferred at the Initial Closing. Should there be any conflict or inconsistency between the provisions contained in this Agreement and the provisions of *Schedule 4.3(b)*, the provisions of this Agreement shall control.

(c) Inventory Count. A physical count of the Inventory (other than the Excluded Inventory) shall be made by Buyer, Seller and an independent inventory service mutually agreed to by the Parties (the "Inventory Service"). Seller will be responsible for contacting the Inventory Service and scheduling the physical count. The Inventory Service shall make a physical accounting of the Inventory and the Liquor Inventory (collectively, the "Inventory Count") at each Store Property on the Closing Date for each Store Property as set forth on *Schedule 12.1(a)* hereto or such other time period mutually agreeable to Buyer and Seller (the "Inventory Date"), in accordance with mutually agreed upon instructions consistent with the inventory procedures set forth on *Schedule 4.3(b)*. Both Parties shall have their respective representatives present and available during each Inventory Count. These representatives will attempt, in good faith, to resolve any disputes respecting quantity or pricing which may arise during the Inventory Count. Excluded Inventory shall be identified and will be removed by Seller at Seller's expense within thirty (30) Business Days after the conclusion of the Inventory Count for a particular Store Property. Buyer and Seller shall each pay one half (1/2) of the cost of the Inventory Service and will be invoiced separately. Departments not inventoried by the Inventory Service shall be inventoried by appropriate store personnel at mutually agreed upon times and in the presence of representatives of Buyer and Seller. Each Store Property will close at a mutually agreeable time.

(d) Inventory Count Documentation. The Inventory Service shall provide to each Party inventory extension documentation at the conclusion of the Inventory Count for a particular Store Property, which documentation shall be used by the Parties to calculate (i) the Initial Inventory Purchase Price for those Store Properties that are

transferred at the Initial Closing, and (ii) the Remaining Inventory Purchase Price for those Store Properties that are transferred after the Initial Closing. The Initial Inventory Purchase Price shall be payable in accordance with **Section 4.2(a)**, the Remaining Inventory Purchase Price shall be released from escrow in accordance with **Section 4.4(d)**.

(e) Inventory In Transit. With respect to inventory for a particular Store Property which is not received at such Store Property on or prior to the Closing Date for such Store Property, (i) if such inventory is from a third-party distributor, Buyer agrees to accept such inventory as agreed to by the Parties prior to the Closing Date of such Store Property, and (ii) if such inventory is distributed by Seller, Buyer shall have the option to purchase all, but not less than all, of such inventory, and to pay the amount of such cost to Seller. Any payments made by Buyer pursuant to **Section 4.3(e)(ii)** shall be made to Seller in immediately available funds within two (2) Business Days of receipt of the inventory. In the event Buyer elects not to purchase the inventory pursuant to clause (ii) above, such inventory shall remain the property of Seller and shall not be deemed part of the Inventory transferred hereunder and shall be promptly delivered to Seller in the same condition as received.

(f) Initial Asset Purchase Price. The "Initial Asset Purchase Price" shall be an amount equal to the value applicable to each Store Property (as set forth on the Specific Store Property Value Schedule) that is to be transferred at the Initial Closing. The Initial Asset Purchase Price shall be payable in accordance with **Section 4.2(b)**.

4.4 Remaining Inventory Purchase Price, Remaining Asset Purchase Price, and Escrow Procedures.

(a) Remaining Inventory Purchase Price. "Remaining Inventory Purchase Price" shall be equal to \$7,200,000.00 less the Initial Inventory Purchase Price. The Remaining Inventory Purchase Price shall be payable in accordance with **Section 4.2(c)**.

(b) Remaining Asset Purchase Price. "Remaining Asset Purchase Price" shall equal the Asset Purchase Price less the Initial Asset Purchase Price. The Remaining Asset Purchase Price shall be payable in accordance with **Section 4.2(d)**.

(c) Escrowed Amount. At the Initial Closing, Buyer, Seller and the Asset Escrow Agent shall enter into an escrow agreement (the "Asset Escrow Agreement", in the form attached hereto as **Exhibit F**) and Buyer shall deposit the Remaining Inventory Purchase Price and the Remaining Asset Purchase Price with the Asset Escrow Agent in accordance with the terms of the Asset Escrow Agreement.

(d) Adjustments and Release of Escrow. The Parties agree that on each Closing Date Seller shall deliver to each of the Asset Escrow Agent and Buyer a document that aggregates (i) the value of all Inventory Counts for Store Properties that are transferred on such Closing Date and (ii) the value applicable to all Store Properties (as set forth on the Specific Store Property Value Schedule) that are transferred on such Closing Date (such aggregate sum, the "Closing

Purchase Price"). Upon the Parties approval of the Closing Purchase Price, the Asset Escrow Agent shall release to Seller (i) the Closing Purchase Price for such Closing Date and (ii) all interest earned on such Closing Purchase Price. Such payments shall be made by wire transfer of immediately available funds and shall be made on the Closing Date for each Store Property. If at any time the amount in the escrow account is less than the value of the Closing Purchase Price on the Closing Date relating to such Closing Purchase Price, Buyer shall pay to Seller the amount of any deficiency by wire transfer of immediately available funds on such Closing Date. If after the Final Closing Date and after all sums have been paid to Seller pursuant to this *Section 4.4(d)* and *Section 4.7* there are any funds remaining in the escrow account, then the Asset Escrow Agent shall release to Buyer any such remaining funds.

4.5 Reserved.

4.6 Modification of Store Properties. In the event any Governmental Entity with jurisdiction over the enforcement of antitrust laws (i) has instituted or threatened to institute an action challenging or seeking to enjoin the sale of any Store Property, which such action has not been withdrawn or terminated and which, in the reasonable opinion of Buyer and Seller, constitutes a significant risk of divestiture or (ii) prohibits or indicates it will prohibit the sale of any Store Property, the Parties agree promptly to (A) terminate the Agreement with respect to any such Store Property, (B) reduce the Asset Purchase Price by the amount of consideration allocable to such Store Property pursuant to the Specific Store Property Value Schedule, (C) reduce the Inventory Purchase Price by \$800,000.00 for such Store Property, and (D) increase the Asset Purchase Price by the amount of the Cure Costs associated with such Store Property. In addition, the Parties agree to adjust those provisions of this Agreement that need to be adjusted, as necessary, due to any termination of a Store Property pursuant to this *Section 4.6*.

4.7 Remaining Inventory Purchase Price Adjustments.

(a) In the event an Inventory Count is scheduled to be conducted at a Store Property but the Required Permits and/or the temporary liquor permit for such Store Property have not been obtained by the date of the scheduled Inventory Count, the Parties agree that the Inventory Count shall be conducted but the Closing for such Store Property shall occur on the Business Day following receipt of the Required Permit and/or temporary liquor permit, as applicable.

(b) No later than ten (10) Business Days after the Closing Date for such Store Property, Seller shall prepare and deliver to Buyer a notice setting forth the value of the Inventory and the Liquor Inventory as of the Closing Date for such Store Property (the "Preliminary Closing Inventory Value") and the inventory supporting data to support such value. The Preliminary Closing Inventory Value shall be determined by the following calculation: (i) the value of the Inventory and the Liquor Inventory pursuant to the Inventory Count, plus (ii) all Inventory and the Liquor Inventory purchased from the period beginning on the date of the Inventory Count through the Closing Date for such Store Property, less (iii) all sales of Inventory and the Liquor Inventory from the period beginning on the date of the Inventory Count through the Closing Date for such Store Property. If, within five (5) Business Days following its receipt of the Preliminary

Closing Inventory Value, Buyer does not dispute such amount, such value shall be deemed to be the value of the Inventory and the Liquor Inventory on the Closing Date for such Store Property (the "Final Closing Inventory Value"). In the event Buyer has any dispute with regard to the calculation of the Preliminary Closing Inventory Value, the Parties shall attempt to resolve such dispute within fifteen (15) Business Days following Buyer's receipt of the Preliminary Closing Inventory Value. If, at the end of the fifteen (15) day period the Parties shall have failed to reach a written agreement, the matter shall be resolved in accordance with **Section 16.3**.

(c) The Parties agree that on the later of (i) the next Business Day after the last Inventory Count has been completed and (ii) the date the Final Closing Inventory Value is determined for all such Store Properties that are subject to this **Section 4.7**, Seller shall deliver to each of the Asset Escrow Agent and Buyer documentation showing the Final Closing Inventory Value for all such Store Properties that are subject to this **Section 4.7** and the value of the Inventory and the Liquor Inventory pursuant to the Inventory Counts for such Store Properties, which shall be approved by the Parties before the release of funds from escrow. If the aggregate value of the Final Closing Inventory Values for such Store Properties exceeds the aggregate value of the Inventory and the Liquor Inventory pursuant to the Inventory Counts for such Store Properties, the Asset Escrow Agent shall release such excess to Seller and, to the extent there is any deficiency in the escrow account, Buyer shall pay to Seller an amount equal to any such deficiency. If the aggregate value of the Inventory and the Liquor Inventory pursuant to the Inventory Counts for such Store Properties exceeds the aggregate Final Closing Inventory Values, such amount shall continue to be held in escrow until all funds owing to Seller under this **Section 4.7(c)** and **Section 4.4(d)** are paid in full and after such funds are paid to Seller, the Asset Escrow Agent shall release to Buyer any such remaining funds. Each of the payments set forth in this **Section 4.7(c)** shall be made by wire transfer of immediately available funds.

4.8 Allocation of Cash Payments. Prior to or at the Final Closing Date, the Parties shall agree to the allocation of the appropriate portions of the Cash Purchase Price, Assumed Liabilities and other relevant items (including, for example, adjustments to the Cash Purchase Price) among the Acquired Assets, including goodwill and other assets, in accordance with Code Section 1060 and the Treasury regulations promulgated thereunder and any comparable provisions of state or local law, as appropriate (the "Allocation"), which Allocation shall be binding upon the Parties and which shall be attached to this Agreement as **Schedule 4.8**. Buyer and Seller and their respective Affiliates shall report, act and file Tax Returns (including, but not limited to Internal Revenue Service Form 8594) in all respects and for all purposes consistent with such Allocation. Each Party shall furnish the other Party with such cooperation and existing information as is reasonably requested by the other Party in connection with the preparation of the Allocation described in this **Section 4.8**. Buyer and Seller covenant and agree that (i) neither Buyer nor Seller shall assert that this **Section 4.8** was not separately bargained for at arm's length and in good faith, and (ii) neither Buyer nor Seller will take any position before any Governmental Entity, in any judicial proceeding,

or in any Tax Return that is in any way inconsistent with such Allocation unless otherwise required by Law.

ARTICLE V

Representations and Warranties of Seller

Seller represents and warrants to Buyer as follows:

5.1 Organization, Standing and Power. Fleming is a corporation duly organized, validly existing and in good standing under the laws of the State of Oklahoma and is qualified to do business and is in good standing in the State of California. Richmar is a corporation duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business and is in good standing in the State of California. Seller has the requisite power and authority to own, lease, operate and transfer its properties, including the Acquired Assets, and to conduct the business conducted by the Store Properties as currently conducted.

5.2 Authority.

(a) Seller has all corporate power and authority necessary to execute this Agreement and the Ancillary Agreements to which it is or will be a party (the "Seller Ancillary Agreements") and to consummate the transactions contemplated thereby and by this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by Seller have been duly authorized by all necessary corporate action, and the execution and performance of the Seller Ancillary Agreements by Seller will be authorized by all necessary corporate action prior to the Initial Closing. Subject to Bankruptcy Court approval and entry of the Sale Order, this Agreement constitutes, and upon execution of each of the Seller Ancillary Agreements such agreements will constitute, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

(b) Notwithstanding anything to the contrary contained herein, no provision of this Agreement is binding upon Seller unless and until this Agreement is approved by the Bankruptcy Court.

5.3 No Breach or Conflict. Except (i) as would not have a Material Adverse Effect, (ii) in connection with the Chapter 11 Case, and (iii) as set forth on *Schedule 5.3*, neither the execution, delivery or performance of this Agreement and the Seller Ancillary Agreements, nor the consummation of the transactions contemplated hereby and thereby, will (a) cause Seller to breach any material Law or Order that is applicable to the Store Properties, (b) conflict with or result in a violation of Seller's Certificate of Incorporation or Bylaws, (c) conflict with or result in a breach of or default under any Material Acquired Contract or give rise to the modification of, termination of or acceleration of payment under a Material Acquired Contract, (d) result in the creation of any material Lien (other than a Permitted Exception), or give to others any interest or rights, in or with respect to any of the Acquired Assets, or (e) breach or give any Person the right to challenge any of the contemplated transactions or to exercise any remedy or

obtain any relief under any legal requirement or any order to which Seller or any of the Acquired Assets may be subject.

5.4 Material Consents. *Schedule 5.4* contains a list of (i) Material Acquired Contracts pursuant to which a Person's consent to the execution, delivery or performance of this Agreement by Seller is legally or contractually required, and (ii) each Governmental Entity which must consent to the execution, delivery or performance of this Agreement by Seller, except where the failure to obtain any such consent of such Person or Governmental Entity would not have a Material Adverse Effect or would not materially adversely effect the ability of Seller to consummate the transactions contemplated hereunder (the "Material Consents").

5.5 Leased Real Property.

(a) Seller has delivered to Buyer a true and complete copy of each Lease and all amendments thereto, including, without limitation, all superior leases. Seller is not a party to any oral real property leases with respect to the Store Properties. To the best of Seller's Knowledge, each Lease (i) is valid, binding, enforceable and in full force and effect, subject to Bankruptcy Court approval; (ii) the assignment of each Lease to Buyer pursuant to this Agreement does not require the consent of any other party to the Lease, except as set forth on *Schedule 5.4*, and the assignment of the Leases to Buyer will not cause the Leases to cease to be valid, binding, enforceable and in full force and effect or cause a modification after the Closing for such Store Property of the terms existing under any of the Leases as of the Closing Date for such Store Property; (iii) except for any breach or defaults in connection with or as a result of the Chapter 11 Case, Seller is not in material breach or default under any Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a material breach or default by Seller, or which would permit the termination, modification or acceleration of rent under any Lease, in each case, except for such breaches that would not be likely to have a Material Adverse Effect; (iv) except for any disputes in connection with the Chapter 11 Case, to Seller's Knowledge, there are no material disputes with respect to any Lease; (v) no security deposit or portion thereof deposited by Seller with respect to any Lease has been applied in respect of a breach or default by Seller under any Lease which has not been re-deposited in full, except for any deposits that the lack thereof would not result in a Material Adverse Effect; and (vi) except as set forth on *Schedule 5.5(a)*, Seller has not assigned, subleased, mortgaged, deeded in trust or otherwise transferred or encumbered any Lease or any interest therein, except for any Permitted Exceptions or except in connection with the Chapter 11 Case.

(b) To Seller's Knowledge, there are no pending condemnation or eminent domain proceedings with respect to any of the Store Properties.

(c) To Seller's Knowledge, the current use of the Store Properties does not violate in any material respect any Lease or any instrument of record or agreement affecting any of the Store Properties. To Seller's Knowledge there is no violation of any covenant, condition, restriction, easement, agreement or Order of any Governmental Entity having jurisdiction over the Store Properties that affects the use or occupancy thereof.

(d) Except as set forth on *Schedule 5.5(d)*, to Seller's Knowledge, all improvements at the Store Properties are in compliance with all applicable laws, rules, and regulations, including, without limitation, all federal, state, and local laws, rules, and regulations concerning access for and use by disabled individuals.

5.6 Tangible Assets. All tangible Acquired Assets used in the operation of the Store Properties, whether owned or leased, are being transferred to Buyer "as is", "where is" and "with all faults".

5.7 Claims, Litigation and Disputes. Except (a) as set forth on *Schedule 5.7*, (b) for actions, proceedings or investigations affecting the retail food merchandising industry in general, and (c) for the Chapter 11 Case, there is no claim, litigation, action or legal proceeding before a Governmental Entity or, to Seller's Knowledge, threatened against Seller, adversely affecting (i) Seller's ability to perform its obligations hereunder, (ii) the rights granted under the Acquired Contracts, (iii) the ownership, use, maintenance or operation of the Acquired Assets and the Store Properties by Seller, or (iv) the Store Employees, that in any such case if determined adversely to Seller, would reasonably be expected to have a Material Adverse Effect.

5.8 Acquired Contracts. Except as set forth in *Schedule 5.8*, or except as would not have a Material Adverse Effect, (i) to Seller's Knowledge, each Material Acquired Contract is valid, binding upon Seller and in full force and effect, and (ii) except for any breach or default in connection with or as a result of the Chapter 11 Case, neither Seller, nor, to Seller's Knowledge, any other party to any Material Acquired Contract is in material breach thereof or default thereunder and there does not exist, to Seller's Knowledge, any event, occurrence, condition, or act that, with the giving of notice, the lapse of time, or the happening of any further event or condition, would become a material breach or default under any Material Acquired Contract. As of the date hereof, to Seller's Knowledge, Seller has not received any written notice of the intention of any party to terminate any Material Acquired Contract. The term "Material Acquired Contract" means any Acquired Contract that provides for aggregate future annual payments to or from Seller in excess of \$100,000.

5.9 Compliance With Laws. Except as disclosed on *Schedule 5.9*, the Store Properties are in compliance with all material Laws applicable to the Store Properties, except in any such case where the failure to be in compliance would not have a Material Adverse Effect. To Seller's Knowledge, Seller has not received any written notice within the past 12 months relating to violations or alleged violations or defaults under any applicable Law or Order, where the failure to cure could result in a Material Adverse Effect.

5.10 Taxes. Except as disclosed on *Schedule 5.10*,

(a) To the extent that under applicable Law the failure of this representation to be true or correct could result in a Lien upon or claim against the Acquired Assets or in a claim against Buyer as transferee or owner of the Acquired Assets: (i) Seller has filed or has caused to be filed on a timely basis all Tax Returns that are or were required to be filed with respect to the Acquired Assets and the operation of the Store Properties; (ii) all such Tax Returns accurately reflect all liabilities required to be reflected thereon; and (iii) all Taxes due and payable by Seller with respect to the Acquired Assets and the operation of the Store Properties as shown in such Tax Returns have been paid.

(b) To the extent that under applicable Law the failure of this representation to be true or correct could result in a Lien upon or claim against the Acquired Assets or in a claim against Buyer as transferee or owner of the Acquired Assets: (i) Seller has not requested or consented to extend to a date later than the Initial Closing Date the time in which any Tax may be assessed or collected by any Governmental Entity with respect to the Acquired Assets and the operation of the Store Properties; (ii) no deficiency or proposed adjustment which has not been settled or otherwise resolved for any amount of Tax has been proposed, asserted or assessed by any Governmental Entity against Seller with respect to the Acquired Assets and the operation of the Store Properties and there is no action, suit, taxing authority proceeding or audit now in progress, pending or, to Seller's Knowledge, threatened against or with respect to Seller with respect thereto; (iii) there are no Liens for Taxes (other than for current Taxes not yet due and payable) upon the Acquired Assets; and (iv) Buyer will not be required to deduct and withhold any amount pursuant to Section 1445(a) of the Code upon the transfer of the Acquired Assets to Buyer.

5.11 Financial Information. Seller has provided to Buyer, to the extent available, copies of total sales for each of the Store Properties for the 16 weeks ended April 19, 2003, each of which was prepared from the books and records of account of Seller kept in the normal course of business (the "Financial Information"). Since the Store Properties represent only a portion of the operations of Seller, the Financial Information is based on the extensive use of estimates and allocations. Seller believes these estimates and allocations have been performed on a reasonable basis. However, since Buyer may operate under new contracts and other conditions that will significantly impact the future operations of, and revenues relating to, the Store Properties, and since the Store Properties represent only a portion of the operations of Seller, the Financial Information may not be representative of the operating results of the Store Properties during future periods.

5.12 Employees and Related Matters.

(a) *Schedule 5.12(a)* sets forth a complete and correct list of all Employee Benefit Plans maintained or contributed to by Seller or any ERISA Affiliate in respect of or for the benefit of Employees (the "Seller Benefit Plans"). Seller has made available to Buyer true, complete and correct copies of the Seller Benefit Plan documents, summary plan descriptions and all related documents.

(b) *Schedule 5.12(b)* sets forth a complete and correct list of all store Employees, including their position, hire date and current salary or hourly rate.

(c) Except as set forth on *Schedule 5.12(c)*, (i) none of the Employees are represented by a labor union or labor organization; (ii) Seller is not subject and is not a party to any collective bargaining agreement covering any Employee; (iii) there are no labor strikes, slowdowns, work stoppages or lockouts currently pending or, to Seller's Knowledge, threatened against Seller with respect to any Employees; (iv) to Seller's Knowledge, during the two years preceding the date of this Agreement, there have not been any labor union organizational campaigns by or directed at any Employees; (v) there is no unfair practice complaint pending against Seller with respect to any Employees or, to Seller's Knowledge, threatened before the National Labor Relations Board or any other Governmental Entity; and (vi) there is no grievance regarding unfair labor practices or collective bargaining pending against or involving Seller with respect to any Employees.

5.13 Environmental Matters. The operations conducted by Seller on its leased real properties related exclusively to the Store Properties are currently being conducted under all environmental, health and safety permits, licenses and other authorizations required under all applicable Environmental Laws to operate the Store Properties as they are being operated, except for such permits, licenses and other authorizations, the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect. All such permits, licenses and authorizations are in full force and effect. To Seller's Knowledge within the last 12 months: (i) no written notice, notification, demand, request for information, citation, summons or order has been issued to Seller with respect to any such properties, (ii) no written complaint has been filed against Seller, (iii) no material penalty has been assessed and (iv) no investigation or review is pending or threatened by any Governmental Entity with respect to any alleged failure by Seller to have any material environmental, health or safety permit, license or other authorization required under any applicable Environmental Law in connection with the operation of the Store Properties. Seller will give Buyer a copy of all environmental reports or similar documents that are in Seller's possession and concern each of the Store Properties including, without limitation, all environmental impact reports, environmental surveys, and similar documents.

5.14 Brokerage Fees. Except for The Food Partners, L.L.C., whose fee will be paid by Seller pursuant to a separate agreement, no Person acting on behalf of Seller is entitled to any brokerage or finder's fee or commission in connection with the transactions contemplated by this Agreement.

5.15 Disclaimer. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND THE ANCILLARY AGREEMENTS, NEITHER SELLER NOR ANY OF ITS AFFILIATES MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE STORE PROPERTIES, THE ACQUIRED ASSETS (INCLUDING THE VALUE, CONDITION OR USE OF ANY ACQUIRED ASSET) OR OTHERWISE WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO BUYER, WHETHER ON BEHALF OF SELLER OR ITS AFFILIATES, INCLUDING AS TO (A) MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE, (B) THE OPERATION OF THE STORE PROPERTIES BY BUYER AFTER ANY CLOSING IN ANY MANNER, OR (C) THE PROBABLE SUCCESS OR PROFITABILITY OF THE OWNERSHIP, USE OR OPERATION OF THE ACQUIRED ASSETS BY BUYER AFTER ANY CLOSING. Seller makes no representations or warranties with respect to any estimates, projections, forecasts or forward-looking information provided to Buyer. There is no assurance that any estimated, projected or forecasted results will be achieved. Neither Seller nor any other Person will have or be subject to any liability or indemnification obligation to Buyer or any other Person resulting from the distribution to Buyer, or Buyer's use of, any such information, including any information, document or material made available to Buyer in "data rooms," management presentations, functional "break out" discussions, site visits, responses to questions submitted by or on behalf of Buyer, whether orally or in writing, or in any other form in expectation of the transactions contemplated by this Agreement.

ARTICLE VI

Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

6.1 Organization, Standing and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of California, has the requisite power and authority to conduct its business as currently conducted and as contemplated by this Agreement, and to own, lease, operate or hold the Acquired Assets and to conduct the operations of the Store Properties.

6.2 Authority. Buyer has all corporate power and authority necessary to execute this Agreement and the Ancillary Agreements to which it is or will be a party (the "Buyer Ancillary Agreements") and to consummate the transactions contemplated thereby and by this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action of Buyer, and the execution and performance of the Buyer Ancillary Agreements will be authorized by all necessary corporate action prior to the Initial Closing. This Agreement constitutes, and upon execution each of the Buyer Ancillary Agreements will constitute, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, such enforcement subject to bankruptcy, insolvency, reorganization, moratorium, or similar laws of general application affecting creditors' rights and the application of general principles of equity.

6.3 No Breach or Conflict. Subject to any requisite HSR Act filings, the execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements and consummation of the transactions contemplated thereby and by this Agreement will not (a) cause Buyer to breach any material Law or Order, (b) conflict with or result in a violation of the Articles of Incorporation or Bylaws of Buyer, or (c) conflict with or result in a material breach of any of the terms, conditions or provisions of any Contract or Permit to which Buyer is a party or by which it may be bound, or constitute a default thereunder, which breach, conflict, default or creation would materially affect Buyer's ability to perform its obligations hereunder or under the Buyer Ancillary Agreements or result in a claim against Seller.

6.4 Third-Party Consents. Subject to compliance with the HSR Act, each Person whose consent to the execution, delivery or performance of this Agreement and the Buyer Ancillary Agreements is legally or contractually required has been obtained, except for those that if not obtained would not have a material adverse effect on Buyer or would not materially adversely effect Buyer's ability to perform its obligations under this Agreement.

6.5 Claims, Litigation and Disputes. Except for actions, proceedings or investigations affecting the retail food merchandising industry in general, there is no claim or litigation or investigative proceeding pending or, to the knowledge of Buyer, threatened against Buyer which would materially affect Buyer's ability to perform its obligations hereunder and under the Buyer Ancillary Agreements.

6.6 Financing. Buyer has adequate cash on hand and will continue to have adequate cash on hand at each Closing to enable it to fulfill its obligations under this Agreement and the Ancillary Agreements. Buyer has sufficient financial resources to operate the Store Properties after the Initial Closing Date, including sufficient financial resources to satisfy any applicable requirement relating to financial capacity or capital imposed by any Governmental Entity in any state in which the Store Properties conduct their business.

6.7 Brokerage Fees. No Person or other entity acting on behalf of Buyer is entitled to any brokerage or finder's fee or commission in connection with the transactions contemplated by this Agreement or the Buyer Ancillary Agreements.

6.8 Buyer's Investigation. Buyer represents that it is a sophisticated entity that was advised by knowledgeable counsel and financial advisors. Notwithstanding anything in this Agreement to the contrary, Buyer acknowledges that it is accepting the Acquired Assets in their present condition and locations and with their present operating capabilities. Buyer acknowledges that Seller makes no warranty, express or implied, as to the condition of the Acquired Assets except as expressly set forth in this Agreement. Buyer has not relied upon, and Seller shall not be liable for or bound in any manner by, any express or implied verbal or written information, warranties, guarantees, promises, statements, inducements, representations or opinions pertaining to the Store Properties or the Acquired Assets, except as may be contained in this Agreement and certificates delivered hereunder.

6.9 Use of Store Properties. Buyer intends to use each of the Store Properties listed on *Schedule 6.9* for a retail supermarket.

ARTICLE VII

Seller's Covenants

Except and to the extent Buyer may otherwise permit in writing, Seller covenants and agrees as follows:

7.1 Conduct of Business Pending Closing. Subject to any obligations as a debtor in possession under the Bankruptcy Code and except as otherwise expressly contemplated by any Order of the Bankruptcy Court or with the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed) or except as contemplated on *Schedule 7.1*, from the date hereof until the Closing for a Store Property, Seller shall continue to operate such Store Property substantially in the manner as heretofore conducted. Without limiting the generality of the foregoing, subject to any obligations as a debtor in possession under the Bankruptcy Code and except as otherwise expressly contemplated by this Agreement, any Order of the Bankruptcy Court or with the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed), with respect to each Store Property, from the date hereof until the Closing, Seller shall:

- (a) Use, preserve and maintain the Acquired Assets at such Store Property on a basis consistent with past practice and not cause damage to or destruction or loss of any of such Acquired Assets;
- (b) Continue to maintain the insurance covering the Acquired Assets at such Store Property in effect as of the date of this Agreement;
- (c) Pay all debts and obligations incurred by it in the operation of the Store Property in the ordinary course of business consistent with Seller's practice since April 1, 2003;
- (d) Not commit any act or omit to do any act, nor permit any act or omission to act, which may cause a material breach of any of the Material Acquired Contracts related to such Store Property;
- (e) Maintain its books, accounts and records with respect to such Acquired Assets and the Store Property in the usual manner and on a basis consistent with past practice;
- (f) Not enter into any agreement or agreements for the sale of a material amount of any of the Acquired Assets relating to such Store Property, except as provided in *Section 9.14* or except for sales of Equipment, provided that, any item of Equipment sold shall be replaced with an item of Equipment of like value and quality;
- (g) Not, without prior consent of Buyer, grant any raises or bonuses to Employees, except (i) in the ordinary course of business and in accordance with past

practices, (ii) the raises or bonuses set forth on *Schedule 7.1(g)*, or (iii) raises, bonuses, or other fringe benefits provided in any key employee retention plan or other employee incentive or severance plan that may be approved by the Bankruptcy Court prior to the Closing, or amend any existing or enter into any new collective bargaining agreements with Employees;

(h) Attempt to maintain Inventory (other than Excluded Inventory) for such Store Property in a manner adequate to support customer demand;

(i) Not create, assume or permit to exist any Lien upon the Acquired Assets relating to such Store Property except for Permitted Exceptions; and

(j) Except as provided in *Section 9.14*, not enter into any contract or agreement to do any of the foregoing.

7.2 Reserved.

7.3 Further Assurances. Subject to the terms and conditions of this Agreement, Seller will use all reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws and regulations to consummate and make effective the transactions contemplated by this Agreement, the Ancillary Agreements and the other documents and instruments to be delivered pursuant hereto.

7.4 Schedule Updates. No later than five Business Days prior to the anticipated Initial Closing Date (but no earlier than 10 days prior to the anticipated Initial Closing Date), Seller shall deliver to Buyer updated Schedules to this Agreement to reflect changes occurring following the date of this Agreement, which updated Schedules shall be deemed to modify the representations and warranties of Seller set forth in this Agreement unless such changes would have a Material Adverse Effect, other than material adverse effects relating to or resulting from (a) economic conditions applicable to industry-wide occurrences, (b) the execution of this Agreement or the transactions contemplated hereby, or (c) any change or effect resulting, directly or indirectly, from the commencement or continuation of the Chapter 11 Case.

7.5 Reserved.

7.6 Removal of Excluded Inventory and Excluded Equipment. Seller shall coordinate the removal of the Excluded Inventory and the Excluded Equipment with Buyer in order to minimize disruption to the operation of the business at each of the Store Properties and Seller shall remove such items in a manner so as to avoid damage to the Store Properties from such removal.

7.7 Bankruptcy Actions.

(a) As promptly as practicable after the date hereof, Seller will file with the Bankruptcy Court a motion, supporting papers and a proposed Bidding Procedures Order, seeking the Bankruptcy Court's approval of, *inter alia*, this Agreement pending the Sale Hearing,

the scheduling of the Sale Hearing, the Auction, the Bidding Procedures, the terms of *Section 9.14* of this Agreement and Seller's observance and performance of such terms during the pendency of the Chapter 11 Case.

(b) As promptly as practicable after the execution of this Agreement, Seller will file with the Bankruptcy Court a motion, supporting papers and a form of Sale Order, all in form and substance reasonably satisfactory to Buyer after its review prior to their filing, seeking the Bankruptcy Court's approval of this Agreement, Seller's performance under this Agreement and the assignment and the purchase of the Acquired Assets.

7.8 Equipment List. Prior to the Initial Closing, Seller shall prepare and deliver to Buyer an itemized listing of the Equipment at each Store Property. Buyer may participate in the preparation of this listing at its option.

ARTICLE VIII

Covenants of Buyer

Except and to the extent Seller may otherwise permit in writing, Buyer covenants and agrees as follows:

8.1 Third-Party Consents. Buyer shall give all notices to Governmental Entities and any other Person required to be given by it in connection with the transactions contemplated hereby. In order to facilitate the orderly assignment and transfer of all rights and privileges necessary to own and operate the Store Properties, Buyer shall proceed after the execution of this Agreement to timely prepare, file and prosecute each request and application therefor together with such information as may be necessary and appropriate to effect such approvals. Buyer acknowledges that it may need to enter into direct agreements with franchising authorities, other Governmental Entities or other third parties.

8.2 Discharge of Assumed Liabilities. Buyer shall pay, perform and discharge the Assumed Liabilities as they become due, including, without limitation, the discharge and performance when due of each and every obligation of Seller to be satisfied or performed on or after the applicable Closing Date relating to the Acquired Contracts.

8.3 Confidentiality. Buyer covenants and agrees that for a period of two years after the Final Closing Date, it will not, directly or indirectly, except in connection with the transactions contemplated hereby or to the extent required by Law, regulatory process or proceeding or Order (provided prior timely notice has been provided to Seller to permit Seller to limit such disclosure or to seek appropriate protective orders), make use of or divulge, or permit any of its agents or employees to make use of or divulge, nonpublic information concerning the business, financial or other affairs of or any of the methods of doing business used by Seller or any of its Affiliates. The obligations contained in this *Section 8.3* are in addition to and independent of the obligations contained in the Non-Disclosure Agreement.

8.4 Access.

(a) Seller, Seller's counsel and any other professionals employed in the Chapter 11 Case shall, for a period of three years from the Final Closing Date, have access to, and the right to copy, at its expense, for bona fide business purposes or for purposes related to the continued administration of the Chapter 11 Case and during usual business hours upon reasonable prior notice to Buyer, all books and records relating to the operation of each Store Property prior to the Closing for each Store Property. Buyer may discard or destroy any such books or records, provided that Buyer shall so notify Seller and allow Seller, within 30 days of such notification, to elect to take possession of such books and records.

(b) For a period of 180 days after Closing (the "Access Period"), upon reasonable advance notice to Buyer, Seller and its officers, attorneys and other representatives, as well as the attorneys and other representatives of any official committee in the Chapter 11 Case, shall have reasonable access to the Store Properties during normal business hours to inspect or copy records, data or other information for periods prior to the Closing Date as reasonably necessary to comply with orders of the Bankruptcy Court and other administrative requirements in connection with the conduct of the Chapter 11 Case, including, without limitation, objecting to claims and liquidating causes of action, or to wind up Seller's affairs. Any other provision of this Agreement notwithstanding, Seller's rights under this **Section 8.3** are fully assignable by Seller to any official committee, trustee, litigation trust or similar Person empowered by the Bankruptcy Court or applicable law to discharge any administrative rights or duties in the Chapter 11 Case.

8.5 Bonds, Letters of Credit, Etc. Buyer shall take all necessary steps, and execute and deliver all necessary documents, to ensure that on the Initial Closing Date Buyer has in place the bonds, letters of credit, indemnity agreements and similar items necessary in connection with the Acquired Contracts, if any, including such bonds, letters of credit, indemnity agreements and similar items set forth on **Schedule 8.5** or necessary to cause the release of Seller from any and all obligations related to the foregoing.

8.6 Further Assurances. Subject to the terms and conditions of this Agreement, Buyer will use all reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws and regulations to consummate and make effective the transactions contemplated by this Agreement, the Ancillary Agreements and the other documents and instruments to be delivered pursuant hereto.

8.7 Intellectual Property. Buyer shall promptly return to Seller and shall not use any Intellectual Property, including any Third Party Intellectual Property, or any Trademarks of which Buyer acquires possession in connection with the Acquired Assets and which is not the subject of an Acquired Contract that has been rightfully transferred to Buyer.

8.8 Deposits; Prepaid Expenses. From the date hereof until the date that is 45 days after the Closing Date for each Store Property, Buyer shall replace all of Seller's security, vendor, utility, leasehold, and other similar deposits, prepaid rent and prepaid expenses related to the Acquired Assets for such Store Property (collectively, "Seller's Prepaid Expenses") with Buyer's deposits or prepayments and shall use its commercially reasonable efforts to cause Seller to be released from all liability under such Seller's Prepaid Expenses for events which occur on

and after the Closing Date for such Store Property. No later than 45 days after the Closing Date for such Store Property, Buyer shall reimburse Seller for the full amount of all Seller Prepaid Expenses applicable to such Store Property as of such Closing Date.

8.9 Reserved.

8.10 Temporary Liquor Permit. At least ten (10) Business Days prior to the Closing, Buyer shall apply to transfer the Liquor Licenses for each Liquor License listed on *Schedule 2.1(h)* and Buyer agrees to use its best efforts to timely obtain the temporary liquor permits. In addition, prior to the Closing Date for a Store Property, Buyer agrees to provide Seller an update with respect to the status of the temporary liquor permit for each Store Property, as may reasonably be requested by Seller.

8.11 Reserved.

8.12 Required Permit Applications. Except to the extent already obtained, no later than five (5) Business Days after the later to occur of (i) the date hereof and (ii) the date Buyer receives the information from Seller that is required to be provided, if any, with respect to each Store Property, Buyer shall timely make the following applications in the appropriate jurisdiction for each Store Property: (A) the application for California Women Infant and Children Supplemental Nutrition Program, (B) the application for Food Stamp Program, and (C) any city business license applications (collectively, the "Required Permits"). In addition, Buyer agrees to use its best efforts to timely obtain the Required Permits and, prior to the Closing Date for a Store Property, Buyer agrees to provide Seller an update with respect to the status of the Required Permits for each Store Property, as may reasonably be requested by Seller.

ARTICLE IX

Additional Agreements

9.1 Employees of Seller in the Store Properties.

(a) Store Employees. Buyer shall offer employment to a sufficient number of the personnel of each Store Property (the "Store Employees") effective as of the Closing Date for such Store Property so as not to trigger any WARN Act or California Act notice obligations to those Store Employees not offered employment by Buyer. Buyer shall indemnify and hold harmless Seller from any and all liability arising under the WARN Act and the California Act with respect to the transactions carried out pursuant to this Agreement. Except as set forth above, all obligations and liabilities to the Store Employees arising or accruing prior to the Closing Date, including wages, earned vacations, employee benefits, severance payments, withholding and reporting obligations, all laws relating to the employment of labor and the employer's share of payroll or other employment taxes and other obligations (collectively, the "Employee Obligations"), shall be the obligation of Seller, and all such Employee Obligations arising or accruing from and after the Closing Date and thereafter to those Store Employees who are hired by

Buyer (the "New Employees") shall be the obligation of Buyer. At such time as the initial public disclosure is made of the transaction contemplated by this Agreement in accordance with **Section 17.12** hereof, Buyer's representatives shall be permitted to meet and speak with the Store Employees. Seller hereby specifically agrees not to transfer any of the Store Employees (including without limitation the Store Employees which manage the operations of the Store Properties) to any other locations of Seller not comprising the Store Properties between the date hereof and the Closing. Buyer shall deliver to Seller within ten (10) Business Days after the Closing Date for each respective Store Property a complete list of all Store Employees at such Store Property to whom Buyer has offered employment.

(b) Buyer's Obligation to Store Employees. Buyer shall be liable to and responsible for the New Employees for all Employee Obligations arising and accruing from and after the Closing Date (premised upon Buyer's and not Seller's plans in respect of such Employee Obligations). Buyer shall hold Seller harmless from and indemnify Seller against, any and all such Employee Obligations to such New Employees.

(c) No Third Party Beneficiaries. The obligations of Seller and Buyer hereunder to the New Employees are for the sole benefit of either Seller or Buyer, and no inference should be drawn that any New Employee is a beneficiary of any of the terms, provisions and obligations hereunder; and the ability to enforce the obligations of Seller and/or Buyer hereunder with respect to such New Employees shall be the right of either Seller or Buyer, as applicable, but not any New Employee.

(d) Agreement to Cooperate. Subject to any restrictions that would limit Seller's participation or disclosure of material, Seller agrees to cooperate with Buyer prior to the Final Closing Date to the extent reasonably necessary for Buyer to evaluate Seller Benefit Plans in connection with Buyer's evaluation of which Store Employees it wishes to offer employment to.

9.2 Benefit Plans.

(a) Seller's 401(k) Plan. Seller sponsors a defined contribution plan which provides, in part, deferrals of compensation under Section 401(k) of the Code entitled "Fleming Companies, Inc. Matching 401(k) Plan" (the "Seller's 401(k) Plan"). The Store Employees for each Store Property will be deemed 100% vested and nonforfeitable in their respective benefits in Seller's 401(k) Plan as of the Closing for such Store Property. Effective as of the Closing for each Store Property, Seller shall cause all accruals of benefits in respect of the Store Employees for such Store Property under Seller's 401(k) Plan to cease.

(b) Seller's Pension Plan. Seller sponsors a pension plan entitled "Fleming Companies, Inc. Pension Plan" ("Seller's Pension Plan"). The Store Employees of each Store Property will be deemed 100% vested and nonforfeitable in their respective benefits in Seller's Pension Plan as of the Closing for such Store Property. Effective as of the Closing for each Store Property, the Store Employees for such Store Property shall be

deemed, for all purposes in applying Seller's Pension Plan, to have terminated their service with Seller on that date. Benefits earned under Seller's Pension Plan as of each Closing shall be paid and distributed in accordance with the terms of Seller's Pension Plan. No further benefits shall accrue under Seller's Pension Plan with respect to the Store Employees after each Closing Date.

(c) Benefit Plans. The Store Employees of each Store Property shall cease active participation in the Seller's Benefit Plans as of the Closing for such Store Property. In no event shall any Store Employee of a Store Property continue to be covered under Seller's Benefit Plans after the Closing for such Store Property except as required by applicable Law, including, without limitation, COBRA. Seller agrees that it shall make the appropriate COBRA notice to the Store Employees.

Buyer shall be liable for and agrees to indemnify and hold Seller harmless from any and all costs, expenses, payments, claims and liabilities of whatever nature associated with or related to any medical expenses and liabilities (the "Medical Liabilities") attributable to the New Employees of each Store Property which were or are attributable to medical services provided to the New Employees under Buyer's medical plan. Buyer's responsibility to any New Employee for Medical Liabilities shall be limited to the coverage provided under Buyer's medical and health care plans which are applicable to Buyer's similarly situated employees.

(d) Vacation. Buyer agrees with Seller to provide vacation seniority to all of the full-time New Employees of each Store Property, i.e., each full-time New Employee shall be able to tack service with Buyer with his/her employment with Seller for the sole purpose of determining his/her number of days of vacation accruing after the Closing of such Store Property.

9.3 Non-Competition

(a) As a condition to entering into this Agreement, Seller hereby agrees, and shall cause its Affiliates to agree, not to (and to cause its Affiliates not to) own, operate, license, franchise, commence construction of, or control, directly or indirectly, any price impact retail supermarkets or pharmacies (a "Retail Food Store") within a radius of four miles of any of the Store Properties that transfer to Buyer (the "Prohibited Area") for five (5) years following the Initial Closing Date; provided, however, Seller or its Affiliates may acquire and operate a Retail Food Store in the Prohibited Area (i) through judicial or administrative process from a retail grocery store owner/operator indebted to Seller or an Affiliate of Seller, (ii) through assignment in lieu of judicial or administrative process from a retail grocery store owner/operator indebted to Seller or an Affiliate of Seller, or (iii) by the exercise of a right of first refusal or similar right of acquisition of a retail grocery store from a retail grocery store owner/operator. Provided, further, that this **Section 9.3** shall not prohibit Seller or its Affiliates from (i) owning and operating limited assortment retail stores, including without limitation the stores currently owned and operated by Seller under the name yes!LESS® or any stores owned by third parties and operated under franchise or license agreements with Seller or any of its Affiliates or (ii)

owning and operating any Store Property that does not transfer to Buyer pursuant to the provisions of *Section 4.6*.

(b) Seller agrees that the period of time provided in *Section 9.3(a)*, and the territorial restrictions of the Prohibited Area and other provisions and restrictions set forth above, are necessary to protect Buyer in the use and employment of the goodwill associated with the Store Properties and the Acquired Assets.

(c) Seller agrees that damages cannot compensate Buyer in the event of a violation of the above restrictive covenants, and that in such event injunctive relief shall be essential for the protection of Buyer. Accordingly, Seller agrees and consents that, in the event any of said restrictive covenants shall be violated or breached, Buyer shall be entitled to obtain injunctive relief upon proper showing against the party or parties violating such covenants, upon due notice, in addition to such further or other relief as may appertain at equity or law and without the posting of any security or bond. Procurement of such an injunction by Buyer shall not be considered an election of remedies or a waiver of any right to assert any other remedies which Buyer has at law or in equity. No waiver of any breach or violation hereof shall be implied from forbearance or failure by Buyer to take action thereon. Seller agrees that, if any provision hereof shall be adjudicated to be invalid or unenforceable, such provision shall be deleted from this Agreement with all other provisions remaining in full force and effect, but such deletion is to apply only with respect to the operation of such provision in the particular jurisdiction in which such adjudication is made; provided, further, that to the extent any provision hereof is deemed unenforceable by virtue of its scope in terms of area or length of time, but may be made enforceable by limitations thereon, Seller agrees that the same shall be enforceable to the fullest extent permissible under the laws and public policies applied in such jurisdiction in which the enforcement is sought.

(d) Buyer acknowledges and agrees that Seller and its Affiliates conduct wholesale distribution operations and that the provisions of this *Section 9.3* do not apply to Seller's or its Affiliates' ownership and operation of such wholesale distribution business.

9.4 Consents and Permits. At the request of Buyer from time to time, Seller hereby agrees for a period not to exceed 90 days following the Final Closing Date to use its good faith efforts at Buyer's cost and expense to assist Buyer in obtaining all Permits required for Buyer's ownership and operation (including maintenance and repairs) of the Store Properties following the date of this Agreement. The licenses (other than the Liquor Licenses) held for use primarily in relation to the Store Properties and owned by Seller shall, if requested by Buyer and provided Buyer has made application in Buyer's name and in substantial compliance with all applicable rules and regulations therefor, be transferred to Buyer to the extent (but only to the extent) (i) such licenses are transferable in accordance with Law by Seller, and (ii) such licenses relate primarily to the Store Properties.

9.5 Liquor License Application. With respect to any liquor (or similar) license, liquor assets or liquor or other alcoholic beverage inventory conveyed hereunder, the Parties shall

comply with all applicable Laws. Buyer agrees to complete and file the Liquor License transfer applications with the California Department of Alcoholic Beverage Control (the "CABC") no later than ten (10) Business Days after the date hereof. The Parties shall cooperate in executing and delivering any documentation necessary to effect the Liquor License transfer applications. The Parties acknowledge and agree that the Liquor License Assets for each Store Property shall be transferred upon the approval of the CABC. If the CABC fails to approve the transfer of the Liquor License Assets, then, except as otherwise agreed to by the Parties in writing, the failure shall not (i) constitute a default by Seller of this Agreement, (ii) affect or impair the terms or conditions of this Agreement, or (iii) provide Buyer with any rights or remedies to rescind, cancel or modify this Agreement or the transactions contemplated hereby.

9.6 Reserved.

9.7 Buyer's Rights of Access.

(a) Access and Right of Inspection Between the date of this Agreement and the Closing Date, Buyer shall have reasonable access to (i) the Store Properties and (ii) as reasonably related to the Store Properties or the Acquired Assets, those representatives of Seller set forth on *Schedule 9.7*, and, to the extent permitted by Law, Seller shall furnish to Buyer such nonproprietary, nonconfidential information related to the Store Properties as Buyer shall from time to time reasonably request for the purposes of inspecting the Store Properties and preparing for the transition of the Store Properties from Seller to Buyer; *provided, however*, that any such investigation shall be conducted (a) during normal business hours, (b) in such a manner as not to interfere with the operation of the Store Properties by Seller, and (c) with respect to any physical inspection of any Store Property, after giving reasonable notice to Seller. With respect to its right to inspect the Store Properties, Buyer may make a market analysis of each Store Property and may make inquiries to Governmental Entities for purposes of its due diligence review. Without the prior written consent of Seller, which consent shall not be unreasonably withheld, Buyer shall not conduct any environmental test of the soil, groundwater or ambient air at or under any Store Property and, in the event Seller grants its consent to any such test, any report regarding such test shall contain a statement that the report was prepared for the benefit of, and may be relied upon by, Seller and Buyer. Buyer agrees to repair any material damage to each Store Property due to such inspection and to indemnify and hold Seller harmless of and from any claim for physical damages or physical injuries arising from Buyer's inspection of each Store Property, and notwithstanding anything to the contrary in this Agreement, such obligations to repair and to indemnify shall survive the Final Closing Date or any termination of this Agreement. Except for the contact permitted in this *Section 9.7*, Buyer will not contact any employee, customer or supplier of Seller with respect to this Agreement without the prior written consent of Seller. Buyer acknowledges that any information made available to Buyer pursuant to this *Section 9.7* is subject to the terms of the Non-Disclosure Agreement and *Section 8.3*.

(b) Commitment for Title Insurance. As soon as possible after the date hereof, Buyer may cause Chicago Title (the "Title Company") to deliver to Buyer: (a) a

current title commitment covering a Store Property (collectively, the "Title Commitments"), showing all matters affecting title to such Store Property and binding the Title Company to issue at the applicable Closing a standard California form Leasehold Policy of Title Insurance for such Store Property (collectively, the "Owner's Policies"), and (b) legible copies of all instruments (the "Exception Instruments") referenced in Schedule B of each Title Commitment.

(c) Survey. Seller has previously delivered to Buyer copies of Seller's most current survey, if any, of each Store Property (collectively, the "Existing Surveys"). Buyer, at Buyer's option and expense, shall have the right to enter upon each Store Property prior to the Closing Date to have the Existing Surveys updated or to prepare new surveys (collectively, the "New Surveys") of each Store Property.

9.8 Amendment to Facility Standby Agreement. Simultaneously with the execution of this Agreement, the Parties agree to enter into an amendment to that certain Facility Standby Agreement, dated as of January 28, 2003, by and between the Parties (the "Amendment No. One to Facility Standby Agreement" in the form attached hereto as *Exhibit C*) pursuant to which Seller shall be the supplier of food, grocery and related products to the Store Properties.

9.9 Interim Franchise Licenses. The Parties agree to enter into an interim franchise license to use the Food 4 Less name for a period of 180 days following the Closing Date of each Store Property pursuant to the terms and conditions of an interim franchise agreement (the "Franchise Agreement") in the form to be agreed upon by the Parties within ten (10) Business Days from the date hereof and to be attached hereto as *Exhibit I*. If Buyer elects to extend the term of the Franchise Agreement with respect to any Store Property, Buyer and Seller may enter into a franchise agreement on terms mutually agreeable to the Parties.

9.10 Gift Certificates. The Parties agree that to the extent authorized by the Bankruptcy Court, Buyer shall honor all gift certificates issued by Seller and its franchisees ("Seller Gift Certificates") that are presented for payment to any of the Store Properties following the Closing for such Store Property. Within ten (10) Business Days after the end of each month in which Seller Gift Certificates are received for payment at Store Properties following the Closing for such Store Properties, Buyer shall submit to Seller an accounting of the total amount of such Seller Gift Certificates honored by such Store Properties during the prior month and Seller shall reimburse Buyer for such total amount.

9.11 Utilities. Promptly following the Closing of each Store Property, the Parties shall notify the gas, water, telephone, electric and other utility companies servicing such Store Property that Buyer shall be responsible for the payment of, and shall promptly pay all obligations incurred therefor on or after the Closing Date for such Store Property. In the event that any provider of phone, gas, water, electric or other utilities seeks payment from Seller of unpaid phone, gas, water, electric or other utilities at any Store Property for any services rendered prior to the Closing Date for such Store Property, Buyer shall pay such unpaid amounts as promptly as permitted under the Bankruptcy Code (after reasonable notice from Seller), and Seller shall reimburse Buyer for the cost of such payments.

9.12 Right of First Refusal and Supply Agreement. In the event one of Seller's retailers who is doing business as Food 4 Less in California from Bakersfield north to the California/Oregon border notifies Seller of its intent to sell such retailer's store or stores, which triggers Seller's right of first refusal with respect to such retail store or stores, Seller agrees to notify Buyer within five (5) Business Days after receipt of such notice. Seller's notice shall include the notice from the retailer and all documentation sent with such notice as well as the relevant provision or provisions under the agreement by which such right of first refusal arises, provided that if any such documentation is subject to a confidentiality agreement, Seller shall be allowed to excerpt or redact the material as necessary. In the event Buyer wants Seller to exercise such right of first refusal, Buyer shall notify Seller within twenty (20) Business Days of Buyer's receipt of the notice from Seller and, subject to Bankruptcy Court approval, Seller shall exercise such right of first refusal on Buyer's behalf and assign any such interest Seller receives upon such exercise to Buyer. In the event Buyer requests Seller to exercise any right of first refusal, Buyer agrees to (i) indemnify Seller for any claim, loss, damage, or expense incurred with respect to Buyer's exercise of the right of first refusal and (ii) enter into a distribution agreement with Seller for such retail store (a "ROFR Supply Agreement") on substantially the same terms and conditions as the Amendment No. 1 to Facility Standby Agreement, including volume requirements per square foot as calculated pursuant to Amendment No. 1 to Facility Standby Agreement, except that any ROFR Supply Agreement shall have a term that is the greater of (i) three (3) years and (ii) the remaining term of the Amendment No. 1 to Facility Standby Agreement. If on the twenty-first (21st) Business Day after Buyer's receipt of notice from Seller (i) Buyer has not notified Seller, Buyer shall be deemed to waive any and all rights as provided in this **Section 9.12** as to the store or stores included in Seller's notice or (ii) Buyer notifies Seller that it does not intend to exercise its rights with respect to Seller's right of first refusal, then from and after the twenty-first (21st) Business Day after Buyer's receipt of notice from Seller, Seller shall have the right to exercise such right of first refusal for its own behalf in accordance with the terms of such right. If Seller elects not to exercise its right of first refusal and the retailer whose store or stores were the subject of the notice does not then sell the stores and they again become subject to a right of first refusal on the behalf of Seller, the terms and conditions of this **Section 9.12** will continue to apply.

9.13 Infringement.

(a) Notwithstanding anything in this Agreement to the contrary, Seller shall have no obligation to defend, indemnify or hold harmless Buyer or any of its Affiliates from damages, costs or expenses resulting from any obligation, suit or proceeding based upon any claim that any activity subsequent to the Closing Date engaged in by Buyer, a customer of Buyer's or anyone claiming under Buyer constitutes direct or contributory infringement, misuse or misappropriation of or inducement to infringe any Third Party Intellectual Property.

(b) Buyer shall defend, indemnify and hold harmless Seller and any of its Affiliates from and against any and all Indemnifiable Losses resulting from any obligation, proceeding or suit based upon any claim alleging or asserting direct or contributory infringement, misuse or misappropriation of or inducement to infringe by, Seller or any of its Affiliates of any Third Party Intellectual Property to the extent that such claim is based on, or would not have arisen but for, activity conducted or engaged in

subsequent to the Closing Date by Buyer, a customer of Buyer's or anyone claiming under Buyer.

9.14 Right to Market; Alternative Transaction. The Parties agree that Seller shall have the right, with the assistance of its representatives, to market the Store Properties to Third Parties. The Parties agree that Seller shall be entitled to consider and enter into one or more Alternative Transactions with Third Parties consistent with its fiduciary obligations as a debtor in possession in the Chapter 11 Case.

9.15 Interest Payment. In the event the Governmental Authority reviewing the Parties' HSR filings does not permit Buyer to purchase at least one of the Store Properties, the Parties agree that the Escrow Agent under the Escrow Agreement dated as of January 28, 2003 between the Parties shall release \$10,000.00 to Buyer in accordance with the terms of any Bankruptcy Court Order, if applicable.

ARTICLE X

Conditions to Seller's Obligations

The obligation of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, prior to or at the Closing for any Store Property, of each of the following conditions unless waived by Seller in writing:

10.1 Buyer's Representations and Warranties. Each representation and warranty made by Buyer in *Article VI* hereto shall be true and correct in all material respects on and as of the Initial Closing Date with the same effect as though each such representation or warranty had been made or given on and as of the Initial Closing Date, other than representations and warranties made as of a specific date, which shall be true and correct as of such specific date.

10.2 Buyer's Covenants. Buyer shall have performed and complied, in all material respects, with all of the covenants set forth herein which are to be performed or complied with by it before or as of the Closing Date for any Store Property.

10.3 Consents. Any waiting period (and any extension thereof) under the HSR Act applicable to the purchase of the Acquired Assets contemplated hereby shall have expired or shall have been terminated, and no action shall have been instituted by any Governmental Entity with jurisdiction over the enforcement of antitrust laws challenging or seeking to enjoin the consummation of the transfer of the Acquired Assets as contemplated by this Agreement or the Ancillary Agreements which such action shall not have been withdrawn or terminated.

10.4 Buyer's Deliveries. At the Initial Closing, Buyer shall have executed and delivered to Seller the Buyer Ancillary Agreements and other documents and items referred to in *Article XIV* hereof.

10.5 No Proceedings. No action, suit or proceeding which has a reasonable likelihood of success is pending or threatened by or before any Governmental Entity to enjoin, restrain,

prohibit or obtain substantial damages in respect of the transfer of the Acquired Assets as contemplated by this Agreement or the Ancillary Agreements, or which would be reasonably likely to prevent or make illegal the consummation of any transactions contemplated by this Agreement.

10.6 Liquor License Transfer Applications and Permit. At the Initial Closing, Buyer shall have applied for the Liquor License transfer applications and obtained temporary permits from the CABC for the Store Properties included in the Initial Closing.

10.7 Bankruptcy Condition. The Bidding Procedures Order and the Sale Order shall have been entered by the Bankruptcy Court, and such orders shall be in form and substance reasonably satisfactory to Seller. At a minimum, the Sale Order shall (i) provide that the Acquired Assets are being sold to Buyer free and clear of all liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and (ii) find that Buyer is a good faith purchaser entitled to the protection of section 363(m) of the Bankruptcy Code. Any motion for rehearing or reconsideration of the Bidding Procedures Order or the Sale Order shall have been denied or withdrawn, and the time allowed under Federal Rules of Bankruptcy Procedure 6004(g) for appeals of the Bidding Procedures Order or the Sale Order shall have expired without any appeal having been taken or, if the Bidding Procedures Order or the Sale Order shall have been appealed, no stay shall be in effect.

10.8 Seller's Board Approval. Seller's Board of Directors shall have approved the transactions contemplated by this Agreement no later than May 6, 2003.

ARTICLE XI

Conditions to Buyer's Obligations

The obligation of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, prior to or at the Closing for any Store Property, of each of the following conditions unless waived by Buyer in writing:

11.1 Seller's Representations and Warranties. Each representation and warranty made by Seller in *Article V* hereof shall be true and correct in all material respects on and as of the Initial Closing Date with the same effect as though each such representation and warranty had been made or given on and as of the Initial Closing Date other than (i) representations and warranties made as of a specific date, which shall be true and correct as of the earlier of such specific date or the Initial Closing Date, and (ii) any breach of a representation or warranty that (a) has not, individually or in the aggregate, resulted in a Material Adverse Effect, or (b) is related to or resulted from either (x) economic conditions applicable to industry-wide occurrences, (y) the execution of this Agreement or the transactions contemplated hereby, or (z) commencement or continuation of the Chapter 11 Case.

11.2 Seller's Covenants. Except as would not have a Material Adverse Effect, Seller shall have performed and complied with all of the covenants set forth herein which are to be performed by or complied with by it before or as of the Closing Date for any Store Property.

11.3 Consents. Any waiting period (and any extension thereof) under the HSR Act applicable to the purchase of the Acquired Assets contemplated hereby shall have expired or shall have been terminated, and no action shall have been instituted by any Governmental Entity with jurisdiction over the enforcement of antitrust laws challenging or seeking to enjoin the consummation of the transfer of the Acquired Assets as contemplated by this Agreement or the Ancillary Agreements which such action shall not have been withdrawn or terminated.

11.4 Seller's Deliveries. At the Initial Closing, Seller shall have executed and delivered to Buyer the Seller Ancillary Agreements and other documents referred to in *Article XIII* hereof.

11.5 No Proceedings. No action, suit or proceeding which has a reasonable likelihood of success is pending or threatened by or before any Governmental Entity to enjoin, restrain, prohibit or obtain substantial damages in respect of the transfer of the Acquired Assets as contemplated by this Agreement or the Ancillary Agreements, or which would be reasonably likely to prevent or make illegal the consummation of any transactions contemplated by this Agreement or the Ancillary Agreements.

11.6 Bankruptcy Condition.

(a) The Bidding Procedures Order and the Sale Order shall have been entered by the Bankruptcy Court and such orders shall be in form and substance reasonably satisfactory to Buyer. The Sale Order shall (i) approve this Agreement and the transactions contemplated hereby, (ii) provide that the Acquired Assets are being sold to Buyer free and clear of all liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, (iii) approve the assumption and assignment to Buyer of the Assumed Leases and Assumed Contracts and (iv) find that Buyer is a good faith purchaser entitled to the protection of section 363(m) of the Bankruptcy Code. Any motion for rehearing or reconsideration of the Bidding Procedures Order or the Sale Order shall have been denied or withdrawn, and the time allowed for appeals under Federal Rules of Bankruptcy Procedure 6004(g), the Bidding Procedures Order or the Sale Order shall have expired without any appeal having been taken or, if the Bidding Procedures Order or the Sale Order shall have been appealed, no stay shall be in effect.

(b) Notwithstanding *Section 11.6(a)*, nothing in this Agreement shall preclude Buyer or Seller from consummating the transactions contemplated herein if Buyer, in its sole discretion, waives the requirement that the Bidding Procedures Order, the Sale Order or any other Order shall have become final orders. No notice of such waiver of this or any other condition to Closing need be given except to Seller, it being the intention of the parties hereto that Buyer shall be entitled to, and is not waiving, the protection of section 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of law if the Closing occurs in the absence of final orders.

11.7 Buyer's Board Approval. Buyer's Board of Directors shall have approved the transactions contemplated by this Agreement no later than May 6, 2003.

ARTICLE XII

Closing and Termination

12.1 Closing.

(a) The initial closing of the transactions contemplated by this Agreement (the "Initial Closing" and the date on which the Initial Closing occurs is referred to herein as the "Initial Closing Date") shall be held on the seventh (7th) Business Day after the date of entry of the Sale Order by the Bankruptcy Court. Subject to the satisfaction or waiver of the conditions set forth in *Articles X and XI*, unless otherwise agreed to in writing by the Parties, the Initial Closing and any Closing, will take place on the dates established in accordance with *Schedule 12.1(a)*. The Initial Closing or any Closing, as the case may be, will take place at a location mutually agreed to by the Parties at 2:00 p.m. Pacific Standard Time on such date. Each date on which a closing (each a "Closing") of the transactions contemplated by this Agreement as they relate to a Store Property occurs is referred to herein as a "Closing Date."

(b) Seller and Buyer shall meet in person or by telephone on the date preceding the Initial Closing Date and each Closing Date, as the case may be, to conduct a pre-Closing at which all deliveries to be made at the Initial Closing or the Closing, as the case may be, will be reviewed by the Parties and placed in escrow. At 11:59 p.m. in the jurisdiction in which the corresponding Store Property operates on the date preceding the Initial Closing Date, or the Closing Date, as the case may be, Seller shall terminate its operation of such Store Property. At 12:01 a.m. in the jurisdiction in which such Store Property operates on the Initial Closing Date or the Closing Date, as the case may be, Buyer shall commence operation of the Store Property. At 2:00 p.m. on the Initial Closing Date or the Closing Date, as the case may be, Pacific Standard Time, all instruments and payments held in escrow shall be distributed and disbursed to Seller and Buyer, and the Initial Closing or any Closing, as the case may be, shall be consummated.

12.2 Termination This Agreement (and the transactions contemplated hereby) may not be terminated with respect to any Store Property except as follows:

(a) Upon the mutual written consent of Seller and Buyer;

(b) By Seller, if (i) Buyer is in material breach of this Agreement, and (ii) such breach has not been cured within 10 days following the delivery of notice thereof to Buyer;

(c) By Buyer, if (i) Seller is in material breach of this Agreement, (ii) such breach has not been cured within 10 days following the delivery of notice thereof to Seller and (iii) such breach constitutes a Material Adverse Effect;

(d) By either Party, if the Initial Closing has not occurred on or before June 17, 2003, unless such date has been extended by the mutual, written agreement of the Parties and provided that the terminating party is in compliance with the terms of this Agreement;

(e) By either Party, if any Governmental Authority with jurisdiction over the antitrust laws notifies the Parties that it will not permit the sale of at least the Required Stores pursuant to this Agreement;

(f) By either Party, if the Parties have not received any approval or denial from the Governmental Authority that is currently reviewing the Parties' HSR filings by close of business on May 23, 2003, which date is subject to extension as agreed by the Parties;

(g) By either Party, if the Bankruptcy Court approves an Alternative Transaction; or

(h) By Buyer, if the Bankruptcy Court has not approved the Fifth Side Letter by the close of business on May 23, 2003.

12.3 Effect of Termination

(a) Upon the termination of this Agreement with respect to any Store Property in accordance with **Section 12.2** hereof, and except as set forth in **Sections 12.3(b)** and **12.4** below, the Parties shall be relieved of any further obligations or liability under this Agreement other than (1) confidentiality obligations contained in **Section 8.3** and **Section 16.12**, (2) confidentiality obligations under the Non-Disclosure Agreement, (3) the expense allocation provisions under **Section 16.1**, (4) the jurisdiction provisions of **Section 16.3**, and (5) obligations for breaches of this Agreement occurring prior to such termination.

(b) Notwithstanding anything to the contrary contained herein, the provisions of this **Section 12.3** and **Article XVI** shall survive any termination of this Agreement.

12.4 Termination Fee. If the Bidding Procedures Order has been entered and has become a final order and this Agreement is terminated pursuant to Section 12.2(g), Seller shall pay the Termination Fee to Buyer in immediately available funds upon the closing of the Alternative Transaction. The Termination Fee shall be paid as an administrative expense of Seller pursuant to Section 507(a)(1) of the Bankruptcy Code. The Termination Fee shall be payable out of the cash proceeds resulting from the closing of the Alternative Transaction. Seller hereby acknowledges that the Termination Fee shall survive termination of this Agreement. Any such fee paid or payable as aforesaid is in the nature of liquidated damages and is in lieu of any other payments or damages hereunder; provided, however, that this does not waive any pre-petition claim Buyer may have with respect to \$4,800,000.00 paid by Buyer to Seller as a Cash Deposit pursuant to

that certain Asset Purchase Agreement, dated as of November 13, 2002, by and among the Parties.

ARTICLE XIII

Seller's Deliveries at the Initial Closing

At the Initial Closing, Seller shall deliver the following to Buyer:

13.1 Bring-Down Certificate. A bring-down certificate executed by an executive officer of Seller certifying that the conditions specified in *Sections 11.1* and *11.2* have been satisfied.

13.2 Secretary's Certificate. A certificate executed on behalf of Seller by Seller's Secretary or Assistant Secretary certifying as to the incumbency, and authenticating the signatures of, officers executing this Agreement and certificates delivered hereunder on behalf of Seller, and certifying as to the adoption and continuing effect of appropriate resolutions authorizing Seller's execution, delivery and performance of this Agreement.

13.3 Seller Ancillary Agreements. The Seller Ancillary Agreements duly executed by Seller.

13.4 Non-Foreign Affidavit. Seller shall deliver to Buyer a non-foreign affidavit (the "Non-Foreign Affidavit") in the form of *Exhibit E* confirming that it is not a "foreign corporation" for purposes of Section 1445 of the Code. In the event Seller fails to deliver an appropriate Non-Foreign Affidavit, Buyer shall withhold the appropriate amount of U.S. Federal and state Tax from the Cash Purchase Price (and pay such amount to the appropriate Governmental Entity) and Seller shall remain obligated to proceed with the Closing.

ARTICLE XIV

Buyer's Deliveries at the Initial Closing

At the Initial Closing, Buyer shall deliver the following to Seller:

14.1 Cash Payment. The Cash Purchase Price as specified in *Section 4.2(a)* and *(b)* hereof shall be paid to Seller. The Remaining Asset Purchase Price as specified in *Section 4.2(d)* hereof and the Remaining Inventory Purchase Price as specified in *Section 4.2(c)* hereof shall be paid to the Asset Escrow Agent in accordance with the terms of this Agreement and the Asset Escrow Agreement.

14.2 Bring-Down Certificate. A bring-down certificate executed by an executive officer of Buyer certifying that the conditions specified in *Sections 10.1* and *10.2* have been satisfied.

14.3 Secretary's Certificate. A certificate executed on behalf of Buyer by Buyer's Secretary or Assistant Secretary certifying as to the incumbency, and authenticating the signatures of, officers executing this Agreement and certificates delivered hereunder on behalf of Buyer, and certifying as to the adoption and continuing effect of appropriate resolutions authorizing Buyer's execution, delivery and performance of this Agreement.

14.4 Buyer Ancillary Agreements. The Buyer Ancillary Agreements duly executed by Buyer.

ARTICLE XV

Tax Matters

15.1 Filing of Returns. In connection with the preparation and filing of Tax Returns as of and after the Initial Closing Date, Buyer and Seller shall cooperate and exchange information as reasonably required to accomplish the matters contemplated by this *Article XV*.

15.2 Access to Books and Records. After the Initial Closing, upon reasonable notice, and subject to *Section 8.3* hereof, each Party will give to the representatives, employees, counsel and accountants of the other Party, access, during normal business hours, to records relating to periods prior to or including the Initial Closing Date, and will permit such persons to examine and copy such records, in each case to the extent reasonably requested by the other Party in connection with Tax and financial reporting matters, audits, legal proceedings, governmental investigations and other business purposes (including such financial information and any receipts evidencing payment of Taxes as may be requested by Seller to substantiate any claim for Tax credits or refunds); *provided, however*, that nothing herein will obligate any Party to take actions that would unreasonably disrupt the normal course of its business or violate the terms of any Contract to which it is a party or to which any of its assets is subject. Seller and Buyer will cooperate with each other in the conduct of any Tax audit or similar proceedings involving or otherwise relating to the Acquired Assets or the Store Properties (or the income therefrom or assets thereof) with respect to any Tax and each will execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this *Section 15.2*.

15.3 Reserved.

15.4 Transaction Taxes. To the extent the transactions contemplated by this Agreement are not exempt under Section 1146(c) of the Bankruptcy Code, Buyer and Seller shall each pay 50% of any sales, use, stamp, transfer, documentary, registration, business and occupation and other similar taxes (including related penalties (civil or criminal), additions to tax and interest) imposed by any Governmental Entity with respect to the transfer of the operations of the Store Properties and any Acquired Assets to Buyer ("Transaction Taxes"), regardless of whether the Tax authority seeks to collect such taxes from Seller or Buyer. Buyer and Seller shall also be responsible for (i) defending or pursuing any proceedings related to such Transaction Taxes and (ii) paying any expenses related thereto. Each Party shall give prompt written notice to the other Party of any proposed adjustment or assessment of any Transaction Taxes with respect to the transactions contemplated hereby and in the Ancillary Agreements. In

any proceedings, whether formal or informal, each Party shall permit the other Party to participate in the defense of such proceeding with respect to such Transaction Taxes, and shall take all actions and execute all documents required to allow such participation.

15.5 Tax Prorations for Periodic Taxes. As to any Acquired Asset acquired by Buyer, Seller and Buyer shall apportion the liability for real and personal property taxes, ad valorem taxes, and similar taxes ("Periodic Taxes") for all Tax periods including but not beginning or ending on the Closing Date for the Store Property to which such Acquired Assets relate (all such periods of time being hereinafter called "Proration Periods"). The Periodic Taxes described in this **Section 15.5** shall be apportioned between Seller and Buyer as of the applicable Closing Date, with Buyer liable for that portion of the Periodic Taxes equal to the Periodic Tax for the Proration Period multiplied by a fraction, the numerator of which is the number of days remaining in the applicable Proration Period including and after the applicable Closing Date, and the denominator of which is the total number of days covered by such Proration Period. Seller shall be liable for that portion of the Periodic Taxes for a Proration Period for which Buyer is not liable under the preceding sentence. Buyer and Seller shall pay or be reimbursed for real and personal property taxes (including instances in which such property taxes have been paid before the applicable Closing Date) on this prorated basis. If a payment on a tax bill is due after the applicable Closing, the Party that is legally required to make such payment shall make such payment and promptly forward an invoice to the other party for its pro rata share, if any. If the other Party does not pay the invoice within 30 calendar days of receipt, the amount of such payment shall bear interest at the rate of 6% per annum. The Party responsible under applicable Law for paying a Tax described in this **Section 15.5** shall be responsible for administering the payment of (and any reimbursement for) such Tax. For purposes of this **Section 15.5**, the Proration Period for ad valorem taxes and real and personal property taxes shall be the fiscal period for which such taxes were assessed by the Tax jurisdiction.

15.6 Tax Returns; Payment of Taxes other than Transaction Taxes and Periodic Taxes. Seller will (i) prepare and timely file with each applicable Tax authority all Tax Returns which include all income, gains, losses, deductions and credits attributable to the Store Properties, the Acquired Assets, and the operations relating thereto for any period or portion of a period ending before the respective Closing Dates for such Store Properties and (ii) make timely payments of all Taxes required to be reflected on such Tax Returns and all other Taxes relating to the Store Properties, the Acquired Assets, and the operations relating thereto for any taxable period or portion of a Proration Period ending the day before the respective Closing Dates for such Store Property. Buyer will (a) prepare and timely file with each applicable tax authority all Tax Returns which include all income, gains, losses, deductions and credits attributable to the Store Properties, the Acquired Assets and the operations relating thereto for any period or portion of a period after the respective Closing Dates for such Store Properties and (b) make timely payments of, and indemnify and hold the Company harmless against, all Taxes required to be reflected on such Tax Returns and all other Taxes relating to the Store Properties, the Acquired Assets, and the operations relating thereto for any taxable period or portion of a Proration Period beginning on the respective Closing Dates for such Store Properties. The determination of the portion of any Taxes imposed on or connected with the Store Properties, the Acquired Assets, or the operations relating thereto which is allocable to the portion of a Proration Period ending the day before the respective Closing Dates for such Store Properties and to the portion of a Proration

Period beginning on the respective Closing Dates for such Store Properties, shall be made, in the case of all Taxes other than Transaction Taxes and Periodic Taxes, by assuming that the portion of a Proration Period ending the day before the Closing Date and the portion of a Proration Period beginning on the Closing Date constitute separate taxable periods and by taking into account the actual taxable events occurring during such separate periods.

15.7 Tax Refunds. Any Tax refunds (including any interest related thereto) received by Buyer, its affiliates or successors relating to Tax periods (or portions thereof) ending before an applicable Closing Date shall be for the account of Seller, and Buyer shall pay over to Seller any such amount within five (5) Business Days of receipt thereof. Buyer shall, if Seller so requests and at Seller's direction and expense, file or cause its Affiliates to file for and obtain any Tax refunds with respect to Tax periods or portions thereof ending before any applicable Closing Date.

ARTICLE XVI

Miscellaneous

16.1 Expenses. Except as otherwise expressly provided for elsewhere in this Agreement, each Party hereto shall pay its own expenses and costs relating to the negotiation, execution and performance of this Agreement. Seller and Buyer shall each bear all of its cost and expense incurred in securing the appropriate governmental approvals to the assignment of the Acquired Contracts.

16.2 Governing Law. This Agreement shall be governed by the laws of the State of Delaware regardless of the laws that might otherwise govern under applicable conflicts of law principles.

16.3 Jurisdiction; Disputes; Mediation, Arbitration

(a) Until the Fleming Debtor Entities' Chapter 11 Case is closed with the Bankruptcy Court, Buyer and Seller irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court for the purposes of any suit, action or other proceeding arising out of this Agreement or any of the Ancillary Agreements or any transaction contemplated hereby or thereby. Buyer and Seller irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or any of the Ancillary Agreements or the transactions contemplated hereby or thereby in the Bankruptcy Court and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Further, the Parties agree to and hereby waive the right to a jury trial for any action, cause of action or claim arising under or in any way related to this Agreement. The Parties agree that the Bankruptcy Court SHALL NOT HAVE THE POWER TO AWARD CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING LOST

PROFITS) unless the Bankruptcy Court determines that this limitation, under the circumstances, violates public policy.

(b) Once the Fleming Debtor Entities' Chapter 11 Case is closed with the Bankruptcy Court, any dispute, controversy or claim of whatever nature arising out of or relating to this Agreement or any Ancillary Agreement (the "Dispute") shall be resolved in the manner set forth below:

(i) Referral to Senior Officers. Either Party may deliver to the other Party written notice of the Dispute with supporting documentation as to the circumstances leading to the Dispute (the "Notice of Dispute"). The Notice of Dispute shall include a schedule of the availability of the notifying Party's senior officers duly authorized to settle the Dispute (the "Senior Officers") during the thirty (30) day period following the delivery of the Notice of Dispute. Within three (3) Business Days after delivery of the Notice of Dispute, the other Party shall provide a schedule of the availability of such other Party's Senior Officers during the remainder of the thirty (30) day period following the delivery of the Notice of Dispute. Following delivery of the Senior Officers' schedules of availability, the Senior Officers shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute amicably.

(ii) Mediation. If the Dispute is not resolved within thirty (30) days of the delivery of the Notice of Dispute, then either Party may submit the Dispute to mediation in Delaware by a sole mediator in accordance with the Commercial Mediation Rules of the American Arbitration Association ("AAA"). The AAA shall appoint the Mediator within three (3) Business Days of the delivery of the request for mediation (the "Mediation Notice").

(iii) Arbitration. If the Dispute is not resolved within thirty (30) days of the delivery of the Mediation Notice, then either party may submit the Dispute to final and binding arbitration in Delaware in accordance with the Commercial Arbitration Rules of the AAA. To the extent they are available, arbitrators shall be selected from the AAA with food industry experience. In any dispute involving a claim in excess of \$1,000,000, three arbitrators shall be employed. Absent a showing of good cause, the hearing shall be conducted within 90 days from the service of the statement of claim. All proceedings shall be governed by the Federal Arbitration Act.

Each Party shall bear the expense of their own attorneys, experts and out of pocket costs as well as fifty percent of the expense of administration and arbitrator fees.

The Parties agree that the arbitrators SHALL NOT HAVE THE POWER TO AWARD CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS) unless the arbitrator(s) or a court of competent

jurisdiction determines that this limitation, under the circumstances, violates public policy.

Depositions, other than those taken in lieu of live testimony, shall not be taken except upon the arbitrator(s) finding of special need. Parties shall be entitled to conduct document discovery in accordance with a procedure where responses to information requests shall be made within twenty days from their receipt.

Either Party shall be entitled to pursue remedies for emergency judicial relief in any court of competent jurisdiction, except that immediately following the preliminary adjudication of such request for emergency relief, the Parties hereby consent to a stay of the judicial proceedings pending a determination of the dispute on the merits by arbitration as herein provided.

(iv) Anything to the contrary contained herein notwithstanding, if for any reason the provisions of this **Section 16.3** regarding resolution of disputes should be determined to be unenforceable by a court of competent jurisdiction, Buyer and Seller irrevocably submit to the exclusive jurisdiction of any Delaware state court and any United States Federal court located in Delaware (collectively the "Delaware Courts") for the purposes of any suit, action or other proceeding arising out of this Agreement or any of the Ancillary Agreements or any transaction contemplated hereby or thereby. Buyer and Seller irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or any of the Ancillary Agreements or the transactions contemplated hereby or thereby in the Delaware Courts and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Further, the parties agree to and hereby waive the right to a jury trial for any action, cause of action or claim arising under or in any way related to this Agreement.

16.4 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, delivered by overnight courier or transmitted by facsimile, or five days after mailed, certified or registered mail, with postage prepaid addressed as follows (or to such other person or address as the Party to receive such notice may have designated from time to time by notice in writing pursuant hereto):

If to Seller:

Fleming Companies, Inc.
1945 Lakepointe Drive
Lewisville, Texas 75029
Attn: General Counsel
Fax Number: (972) 906-1860

With a copy to:

Baker Botts L.L.P.
2001 Ross Avenue
Dallas, Texas 75201
Attn: C. Neel Lemon
Fax Number: (214) 661-4954

and

Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60601
Attn: Geoffrey A. Richards
Fax Number: (312) 861-2200

If to Buyer:

Save Mart Supermarkets
P.O. Box 4278
Modesto, California 95352-4278
Attn: Chairman and CEO
Fax Number: (209) 577-3857

With a copy to:

Save Mart Supermarkets
P.O. Box 4278
Modesto, California 95352-4278
Attn: Vice President – Human Resources and Law
Fax Number: (209) 577-3857

16.5 Definition of Agreement. Unless the context clearly otherwise requires, as used herein, the term "Agreement" means this Agreement and the Schedules, Annexes and Exhibits hereto. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Paragraph or other subdivision.

16.6 Headings, Gender. The headings to Articles and Sections of this Agreement are for reference only and shall not be used in construing or interpreting the provisions hereof or otherwise affect the meaning hereof. The use of the neuter pronoun "it" shall also refer to, as appropriate, the masculine and/or feminine gender. The use of the singular herein shall, where appropriate, be deemed to include the plural and vice versa.

16.7 Counterparts; Third Party Beneficiaries. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. No provision of this Agreement, other than as expressly provided in an indemnification provision, is intended to (i) confer upon any Person other than the Parties hereto and their successors and permitted assigns, any rights or remedies hereunder, (ii) relieve or discharge the obligation or liability of any third party or (iii) give any third party any right of subrogation or action against Seller or Buyer.

16.8 Entire Agreement. This Agreement, the Ancillary Agreements and the Non-Disclosure Agreement embody the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersede all prior agreements and understandings related to the subject matter hereof. There are no representations, warranties, covenants, promises or agreements on the part of either Party to the other hereto which are not explicitly set forth herein.

16.9 Modifications. Any modification, amendment or waiver of or with respect to any provision of this Agreement or any agreement, instrument or document delivered pursuant hereto shall not be effective unless it shall be in writing and signed by an authorized representative of each of Seller and Buyer and shall designate specifically the terms and provisions so modified.

16.10 Assignment and Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but (except as provided for in this *Section 16.10*) neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by Buyer or Seller without the prior written consent of the other (i) except that the rights and interests hereunder may be assigned to a trustee appointed under chapter 11 or chapter 7 of the Bankruptcy Code and (ii) this Agreement may be assigned to any entity pursuant to a confirmed chapter 11 plan.

16.11 Schedules. Any matter disclosed on any one Schedule hereto shall be deemed to be disclosed on all other Schedules hereto.

16.12 Public Announcements; Confidentiality. Prior to the Final Closing Date, Seller and Buyer will consult with each other before issuing or prior to the issuance by any Affiliate of, and will provide each other the opportunity to review and comment upon, any press release or other public statements (or relevant portions thereof) relating to the transactions contemplated by this Agreement and shall not issue, and shall ensure that their respective Affiliates shall not issue, any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange. The obligations contained in this *Section 16.12* are in addition to and independent of the obligations contained in the Non-Disclosure Agreement.

16.13 Right to Specific Performance. The Parties acknowledge that the unique nature of *Section 8.3* (Confidentiality), *Section 8.4* (Access), *Section 8.7* (Intellectual Property), *Section 9.1* (Employees), *Section 9.3* (Non-Competition), *Section 9.4* (Consents and Permits), *Section 9.12* (Right of First Refusal and Supply Agreement) and *Section 9.13* (Infringement) may render

money damages an inadequate remedy for the breach by either Party of its obligations pursuant to such sections. Each Party agrees that in the event of such breach, (i) the non-breaching Party may, upon proper action instituted by it, be entitled to seek a decree of specific performance of this Agreement related to one of the specific sections noted in this **Section 16.13**, and (ii) such rights are cumulative and in addition to any other remedy to which the Parties may be entitled at law or equity.

16.14 Bulk Sales Laws. Buyer and Seller waive compliance with applicable Laws under any version of Article 6 of the Uniform Commercial Code adopted by any state or any similar law relating to the sale of inventory, equipment or other assets in bulk in connection with the sale of the Acquired Assets or the operation of the Store Properties.

16.14 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

16.15 No Survival of Representations, Warranties, Covenants and Agreements. Each and every representation and warranty of Seller contained in this Agreement shall expire with, and be terminated and extinguished by the Closing or the termination of this Agreement pursuant to the terms hereof. In addition, upon the expiration and extinguishment of such representations and warranties, neither Seller nor any of its Affiliates shall have any liability whatsoever arising out of or with respect to this Agreement or any breach of any covenant, except for the following covenants, which shall survive the Closing until performance is no longer required by the express provisions contained in such covenants: Article III, **Section 7.6** (Removal of Excluded Inventory and Excluded Equipment), **Section 8.2** (Buyer's Discharge of Assumed Liabilities), **Section 8.3** (Confidentiality), **Section 8.4** (Access), **Section 8.7** (Intellectual Property), **Section 8.8** (Deposits; Prepaid Expense), **Section 9.1** (Employees), **Section 9.3** (Non-Competition), **Section 9.4** (Consents and Permits), **Section 9.9** (Interim Franchise Licenses), **Section 9.10** (Gift Certificates), **Section 9.11** (Utilities), **Section 9.12** (Right of First Refusal and Supply Agreement), **Section 9.13** (Infringement), and Article XVI.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties, acting through their duly authorized representatives, have executed this Agreement as of the date first above written.

FLEMING COMPANIES, INC.,
an Oklahoma corporation

By: William May
Name: William E. May, Jr.
Title: Executive Vice President

RICHMAR FOODS, INC.,
a California corporation

ker By: Kenneth Fuhman
Name: Kenneth Fuhman
Title: Chief Financial Officer

SAVE MART SUPERMARKETS,
a California corporation

By: _____
Name: Robert M. Piccinini
Title: CEO and President

IN WITNESS WHEREOF, the Parties, acting through their duly authorized representatives, have executed this Agreement as of the date first above written.

FLEMING COMPANIES, INC.,
an Oklahoma corporation

By: _____
Name: _____
Title: _____

RICHMAR FOODS, INC.,
a California corporation

By: _____
Name: _____
Title: _____

SAVE MART SUPERMARKETS,
a California corporation

By:  _____
Name: Robert M. Piccinini
Title: CEO and President

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TO OBTAIN COPIES OF THESE SCHEDULES, EXHIBITS AND ANNEXES

PLEASE CONTACT DEBTORS' COUNSEL