IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

C&S WHOLESALE GROCERS, LLC, Plaintiff, v. THE KROGER COMPANY, Defendant.	)	C.A. No. N25C-02-077-PAW [CCLD] **PUBLIC VERSION EFILED ON MARCH 14, 2025**

COMPLAINT

Plaintiff C&S Wholesale Grocers, LLC ("C&S"), by and through its attorneys, hereby brings this action against Defendant The Kroger Company ("Kroger," and together with C&S, the "Parties") and alleges as follows:

PRELIMINARY STATEMENT

1. This action involves Kroger's breach of its agreement to pay C&S a $125 million termination fee as required under the April 22, 2024 Amended and Restated Asset Purchase Agreement (the "April 2024 Agreement"). A true and accurate copy of the April 2024 Agreement is attached as **Exhibit 1**.

2. The April 2024 Agreement set forth terms under which C&S agreed to purchase a divestiture package of retail stores and other assets upon the closing of a merger (the "Merger") between Kroger and Albertsons Companies, Inc. ("Albertsons"). Divesting some assets in connection with a merger can help merging parties obtain federal and state antitrust regulatory approval for a merger transaction.

3. One critical provision of the April 2024 Agreement was the Parties' agreement that Kroger would pay C&S a $125 million fee (the "Termination Fee") if the April 2024 Agreement was terminated. *See* **Exhibit 1**, April 2024 Agreement § 11.3. The Termination Fee was intended to compensate C&S for its significant time, expenses, investment, and forgone opportunities in preparing for the agreed-upon divestiture in the event that the April 2024 Agreement was terminated. The Termination Fee was a reasonable accommodation for C&S, which was required to incur significant expenses and devote substantial effort to preparing to integrate the divested assets and to assisting in defending multiple pending government actions seeking to enjoin the Merger. If the 2024 Agreement was terminated, C&S needed assurance it would be compensated for those expenses. As part of the April 2024 Agreement, the Parties also entered into a broad release of all claims between them arising prior to, or contemporaneously with, April 22, 2024—the date of the agreement. *Id.* at § 13.15.

4. After the Merger was enjoined by multiple courts, Kroger terminated the April 2024 Agreement with C&S.

5. However, despite the unambiguous terms of Section 11.3(a) of the April 2024 Agreement, Kroger refused to pay C&S the Termination Fee. Kroger's refusal to comply with the terms of the April 2024 Agreement is a clear breach. C&S

therefore brings this action to enforce its rights and recover the Termination Fee and other amounts it is owed under the April 2024 Agreement.

6. C&S is a family business that has successfully operated in the grocery industry for more than a century. In 2021, three years after reaching the milestone of 100 years of operations, C&S sought to strategically expand its business. Accordingly, when Kroger and Albertsons announced in October 2022 their plan to merge, C&S saw a transformative opportunity. Specifically, Kroger planned to divest some retail grocery stores in connection with the Merger to facilitate obtaining antitrust regulatory approval. C&S believed that acquiring this divestiture package would transform C&S's business and assist Kroger and Albertsons in obtaining regulatory approval of the Merger.

7. From the moment C&S threw its hat in the ring for consideration as divestiture buyer, C&S worked diligently to negotiate with Kroger a divestiture plan that would be feasible, benefit the Parties and the consumer markets at issue, and address antitrust concerns from federal and state regulators.

8. On September 8, 2023, C&S, Kroger, and Albertsons signed an initial Asset Purchase Agreement (the "First APA"), agreeing that C&S would purchase a specific set of 413 stores and supporting assets from Kroger for approximately $1.8 billion (the "original divestiture package").

9. From late 2023 through early 2024, federal and state regulators raised concerns regarding the original divestiture package. Specifically, they questioned whether the original divestiture package would allow C&S to compete effectively in the retail grocery market, because if C&S could not do so, competition and consumers would be harmed. Regulators also questioned whether the original divestiture package included a sufficient number of retail grocery stores in general and in specific locations to address potential competition concerns.

10. Instead of engaging with the regulators and working with C&S and Albertsons to develop a new divestiture package that addressed regulators' concerns, Kroger—the party responsible for managing the regulatory approval process—obfuscated and delayed for months, ignoring suggestions from C&S and Albertsons to improve the original divestiture package to address the issues raised by the regulators.

11. Kroger's strategy resulted in regulators filing three separate antitrust actions in early 2024 seeking to enjoin the Merger: the Federal Trade Commission, joined by nine attorneys general, brought an action in federal court in the District of Oregon; and the attorneys general of Washington State and Colorado filed separate actions in those states.

12. With these litigations pending, C&S worked diligently to negotiate with Kroger in an attempt to improve the divestiture package and address the issues raised

by regulators. On April 22, 2024, C&S, Kroger, and Albertsons entered into a new agreement—the April 2024 Agreement—which set out a new divestiture package designed to address many of the regulators' concerns. Under the April 2024 Agreement, C&S agreed to buy 579 Kroger and Albertsons stores, along with supporting assets, for approximately $2.8 billion.

13. The April 2024 Agreement wholly superseded and replaced the First APA. *See* **Exhibit 1**, April 2024 Agreement at 1; *see also id.* at § 13.3.

14. Critically for C&S, the April 2024 Agreement provided for a $125 million Termination Fee payable to C&S in the event of termination of the April 2024 Agreement—a significant increase from the $50 million termination fee provided under the First APA—expressly to compensate C&S "for the efforts and resources expended and the opportunities foregone while negotiating [the April 2024 Agreement] . . . and for preparing for the" divestiture. *See id.* at § 11.3(a).

15. After the Parties executed the April 2024 Agreement, C&S continued to play a key role in the three litigations and diligently prepared for the anticipated divestiture. C&S devoted extensive, costly, and time-consuming efforts to prepare for the integration of divested assets. C&S also cooperated extensively with counsel for Kroger and Albertsons to prepare for and participate in the three regulatory actions, requiring among other things, that its senior business leaders dedicate significant time for travel, depositions, testimony, and extensive preparation. C&S

made all these investments—and did not pursue other opportunities—because it relied on the terms of the April 2024 Agreement and Kroger's promises therein. Specifically, C&S relied on the contractual guarantee that, if the divestiture transaction closed, C&S would be rewarded for its efforts by successfully acquiring assets that it believed would transform its business. And C&S also relied on the contractual guarantee that, if the divestiture transaction did not close, C&S would be compensated in part for its efforts by receiving the Termination Fee.

16. Despite C&S's best efforts, on December 10, 2024, the United States District Court for the District of Oregon and the King County Superior Court in Washington State issued decisions enjoining the Merger. The very next day, Kroger notified C&S that it was terminating the April 2024 Agreement.

17. Kroger further asserted in its December 11, 2024 Notice of Termination that it would not pay the Termination Fee as required by the April 2024 Agreement. Not surprisingly, Kroger failed to identify any reason for its refusal to pay the Termination Fee it owed C&S—because there is none. C&S committed significant resources—time, energy, attention, and money—in a good-faith effort to help the Merger succeed, and it focused on the divestiture transaction instead of pursuing other potential opportunities for the strategic growth of C&S's business. Kroger agreed in the April 2024 Agreement that if it terminated the April 2024 Agreement, it would compensate C&S in part for those costs and lost opportunities by paying

the Termination Fee. Now, Kroger refuses to live up to its agreement, violating the clear terms of the April 2024 Agreement and reneging on its obligation to pay the Termination Fee that it owes C&S.

18. C&S brings this action to enforce the April 2024 Agreement and obtain the Termination Fee and other amounts to which it is unambiguously entitled.

THE PARTIES

19. C&S is a Delaware limited liability company with its principal place of business located at 7 Corporate Drive, Keene, New Hampshire 03431.

20. C&S is one of the largest grocery wholesalers by revenue in the United States, and the eighth largest privately owned U.S. company, with over $20 billion in annual sales and approximately 13,000 employees. As of 2024, C&S owned and operated 43 distribution centers and 25 retail supermarkets, and it supported more than 130 franchised supermarket locations across the United States.

21. The Kroger Company is an Ohio corporation with its principal place of business at 1014 Vine Street, Cincinnati, Ohio 45202.

22. Kroger is a food retailer that operates more than 2,700 retail grocery stores predominantly located in the Midwest, Southeast, and Western United States. Kroger operates these retail stores under a variety of store names (known as "banners"). It also operates manufacturing facilities that produce private-label

products. In 2024, Kroger had revenue of more than $150 billion and employed approximately 414,000 workers.

JURISDICTION AND VENUE

23. Jurisdiction of this Court is proper under Article IV, Section 7, of the Delaware Constitution and 10 *Del. C.* § 541.

24. This case qualifies for assignment to the Superior Court Complex Commercial Litigation Division because the amount in controversy exceeds $1,000,000.

25. Personal jurisdiction over Kroger and venue in this Court are proper under Section 13.7(b) of the April 2024 Agreement, which states that any action "based upon" or "arising . . . out of" the April 2024 Agreement "shall be brought in the Delaware Chancery Court[] or . . . any other court of the State of Delaware located in New Castle County, Delaware . . ." The Parties submitted to the exclusive jurisdiction of the courts of the State of Delaware.

26. The laws of the State of Delaware govern all claims and causes of action arising out of the April 2024 Agreement. *See* **Exhibit 1**, April 2024 Agreement § 13.7(a).

BACKGROUND

I. The Companies Involved.

A. Plaintiff C&S.

27. C&S is one of the nation's largest grocery wholesalers, with decades of industry experience and billions of dollars in annual sales. C&S provides various supply chain services—such as warehouse management, trucking logistics, inventory purchasing, and interfacing with packaged goods companies and vendors—to its grocery store customers nationwide.

28. C&S was founded in 1918 by Israel Cohen in Worcester, Massachusetts, as a family-owned supplier to independent grocery stores. C&S remains a family business today: Rick Cohen, Israel Cohen's grandson, currently serves as its executive chairman.

29. Through its wholesale business, C&S runs a nationwide supply chain network that serves more than 7,600 grocery stores across the United States—ranging from 80,000-square-foot grocery stores to small carnicerias, and from widespread chain stores to independent businesses.

30. C&S also currently operates more than two dozen retail supermarkets, including stores under the Piggly Wiggly and Grand Union banners, in addition to supporting more than 130 franchised supermarkets. It also operates 43 distribution

centers across the United States, servicing thousands of supermarkets, retail chain stores, military bases, and independent grocers.

B. Defendant Kroger.

31. Founded in 1883, Kroger is the largest traditional supermarket company in the United States.

32. In addition to supermarkets under the Kroger name, Kroger operates retail grocery stores under the Ralphs, Harris Teeter, and Dillons banners. Kroger operates a variety of store formats, including supermarkets, digital shopping options, price-impact warehouse stores, and multidepartment stores.

C. Non-Party Albertsons.

33. Albertsons is a Delaware corporation headquartered in Boise, Idaho.

34. Albertsons is one of the largest food and drug retailers in the United States. As of September 2024, Albertsons operated more than 2,200 stores and 310 pharmacies across 34 states and the District of Columbia.

II. The April 2024 Agreement Imposes Unambiguous Obligations On Kroger.

35. On April 22, 2024, after months of negotiation, C&S, Kroger, and Albertsons executed the April 2024 Agreement. The April 2024 Agreement provided for a divestiture package that C&S would purchase in connection with the Kroger-Albertsons Merger—so long as the Merger was consummated. Specifically, the April 2024 Agreement provided that C&S would purchase a combination of 579

retail grocery stores along with supporting assets for approximately $2.8 billion. *See* **Exhibit 1**, April 2024 Agreement § 2.3.

36. Pursuant to Section 13.3, the April 2024 Agreement "contain[s] the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersede[s] all contemporaneous or prior agreements, negotiations, commitments, and writings among the Parties with respect to the subject matter hereof and thereof."

37. The April 2024 Agreement listed the specific stores and supporting assets that C&S would acquire, along with a host of other details about the Parties' obligations to each other before and after the Kroger-Albertsons Merger would—hopefully—close.

38. In particular, the April 2024 Agreement specified that the Parties were to "reasonably cooperate with each other" and "use . . . their respective reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under any applicable Law to consummate and make effective the transactions contemplated by this Agreement. . . " **Exhibit 1**, April 2024 Agreement § 6.2(a).

39. But for the reasons detailed below, at the time the Parties executed the April 2024 Agreement, it was clear that C&S would be required to incur significant additional expenses and devote significant time and effort to prepare for the potential

closure of the divestiture transaction and to support Kroger and Albertsons in three separate government actions seeking to enjoin the Merger. And there was risk that the Merger would not be permitted to close, and that C&S would never acquire the divested assets.

40. By April 2024, C&S had already invested significant resources in the Merger and the divestiture transaction, with much more needed as it continued to work towards planning for the integration of the new assets. And C&S had avoided pursuing other strategic opportunities while it continued working to achieve approval of the divestiture. So C&S negotiated for a reasonable termination fee—the Termination Fee at issue here—that Kroger would be required to pay C&S if the Merger did not close.

41. The Parties agreed that if the Merger failed to consummate and Kroger terminated the April 2024 Agreement, then Kroger would pay C&S $125 million within five business days of Kroger's termination—a significant increase from the $50 million termination fee that Kroger had previously agreed to pay C&S under the First APA. *See* **Exhibit 1**, April 2024 Agreement § 11.3(a). There were only two situations in which Kroger would not be required to pay the Termination Fee: 1) if C&S failed to obtain a commitment for the financing it required to acquire the divested assets by a specified date; or 2) if, at the time Kroger terminated the April 2024 Agreement, C&S was in "material breach of any of its representations,

warranties, covenants or agreements contained *in this Agreement*"—that is, any representations, warranties, covenants, or agreements C&S made or undertook in the April 2024 Agreement. *Id*. (emphasis added).

42. The Parties agreed that any payment of the Termination Fee "shall be deemed to be liquidated damages in a reasonable amount that will compensate [C&S] for the efforts and resources expended and the opportunities foregone while negotiating this Agreement and the other Transaction Documents and for preparing for the Transactions, which amount would otherwise be impossible to calculate with precision and shall not be a penalty." *Id.*

43. Kroger also agreed that if it failed to pay the Termination Fee when it was due, it would owe interest to C&S at "the prime rate set forth in *The Wall Street Journal* in effect on the date" Kroger was supposed to make the payment, and that Kroger would compensate C&S for reasonable attorneys' fees and expenses C&S incurred to collect any Termination Fee Kroger was required to, but refused to, pay, up to $2,500,000. *Id.* at § 11.3(b).

44. Under the unambiguous terms of the April 2024 Agreement, Kroger owes C&S the Termination Fee: Kroger terminated the April 2024 Agreement, the Merger did not close, and C&S—despite its significant time, efforts, investment, and foregone opportunities—did not acquire the assets that would have been divested as part of the Merger. Under those circumstances, the April 2024 Agreement

requires—as Kroger promised—that Kroger pay C&S the Termination Fee, as well as interest for every day Kroger fails to pay, and reasonable attorneys' fees C&S incurs to compel Kroger to honor its contractual commitments.

45. Kroger has breached its obligations under the April 2024 Agreement by failing to pay the Termination Fee. As Section 11.3(b) of the April 2024 Agreement makes clear, the Termination Fee was an integral and binding part of the divestiture deal.

46. Kroger's attempt to evade its obligations is even more egregious in light of Kroger's conduct in connection with the failed Merger. C&S devoted substantial effort, time, money, and attention in seeking to get the divestiture across the finish line. Kroger, however, repeatedly chose to ignore regulators' concerns, ultimately resulting in the failure to obtain the necessary approvals.

III. C&S Seized The Opportunity To Acquire Divested Grocery Stores And Assets In Connection With The Kroger-Albertsons Merger.

A. The Kroger-Albertsons Merger Was A Strategic Opportunity For C&S.

47. Beginning in 2019, the grocery market began to undergo significant structural changes. And later, in the face of these changes and following the COVID-19 pandemic's significant impact on the grocery industry—C&S began to implement a multi-prong strategic plan to ensure its long-term growth.

48. C&S's plan involved obtaining new customers, pursuing targeted acquisitions where it could add value, and actively seeking out opportunities to transform and diversify its business and create scale.

49. C&S was in the process of searching for and evaluating such transformational opportunities in October 2022, when Kroger and Albertsons announced that Kroger had agreed to purchase Albertsons for nearly $25 billion.

50. It was obvious that Kroger and Albertsons likely would need to divest some assets as part of the Merger. Kroger and Albertsons are market leaders in the retail grocery industry: Kroger is the nation's largest grocer and Albertsons is one of the nation's largest grocers. The two companies compete directly in their overlapping geographic markets.

51. For these reasons, an adequate divestiture could help allay antitrust concerns from federal and state regulators by helping to maintain competition post-Merger.

52. There were many reasons why C&S was an ideal candidate to buy divested assets from Kroger and Albertsons, including, among other things: C&S's deep experience and expertise in the industry; its existing scale and extensive business partnerships; its ability to build a new business based on assets Kroger and Albertsons would divest; the limited geographic overlap between C&S's existing retail operations and the geographies in which Kroger and Albertsons stores were

concentrated; and C&S's ability to acquire all the divested assets in a single transaction rather than multiple buyers acquiring subsets of the divested assets. In fact, C&S had already acted as the divestiture buyer in connection with another retail grocery merger in the recent past and was well-positioned to play the same role in the Kroger-Albertsons Merger.

B. C&S And Kroger Negotiated The First APA (Later Superseded By The April 2024 Agreement) For C&S To Acquire Assets Divested After The Merger.

53. Kroger's financial advisors at Wells Fargo reached out to C&S, along with, on information and belief, other third parties, to share information regarding a potential divestiture package. Kroger proposed an initial divestiture package of 238 retail grocery stores, with no other assets or support.

54. It was clear that the initial proposed package needed to be improved, for multiple reasons. C&S was investing significant resources in acquiring the divestiture package; for the deal to be economically rational, the divestiture package needed to include assets and support sufficient to allow C&S to operate the divested stores successfully. And it was essential that the divestiture package enable C&S to compete effectively with Kroger in the retail grocery market post-Merger, to alleviate any concerns from federal or state regulators about the Merger's potential anticompetitive effects.

55. Between December 2022 and Summer 2023, C&S negotiated for improvements to Kroger's initial proposal with respect to the potential divestiture package that would eventually be memorialized in the First APA. Kroger alone worked with C&S to negotiate the terms of the divestiture deal.

56. Throughout this time, Kroger conducted diligence in connection with its selection of a buyer, both requesting and receiving diligence information from C&S. Specifically, C&S was contacted by Kroger's advisors at Citibank and Wells Fargo, who asked questions about C&S's business, industry experience, infrastructure, potential financing, management, and other related information. In answering these questions, C&S provided diligence information to Kroger and its advisers. Throughout the bid process, Kroger informed C&S that it was considering and evaluating other potential divestiture buyers in parallel with its evaluation of C&S.

57. Ultimately, Kroger selected C&S as the divestiture buyer. As Rodney McMullen, the Chief Executive Officer of Kroger, explained during testimony at the trial in Colorado state court, Kroger "had committed to divesting the stores to somebody that would recognize the labor contracts, somebody that has a long history in the industry[,] . . . somebody that would be able to scale operations as well, . . . somebody that would be a strong competitor as well[,] . . . and somebody with a good balance sheet . . . . [W]hen you look at all of those things, C&S was the only

party that you could do a check mark for every one of those different things." Mr. McMullen testified that C&S was "an outstanding company."

C. The Parties Signed The First APA, Which The April 2024 Agreement Later Superseded.

58. On September 8, 2023, C&S, Kroger, and Albertsons executed the First APA, under which C&S agreed to buy a specific set of 413 stores and supporting assets for approximately $1.8 billion. As noted, the First APA was the initial agreement between the Parties—it was later superseded by the April 2024 Agreement, which set out a new divestiture package that C&S ultimately agreed to purchase and imposed new obligations on the Parties.

59. While negotiating the First APA and its original divestiture package, C&S invested significant efforts in working with Kroger to improve the initial 238-store proposal. Although Kroger resisted many of C&S's requests, C&S negotiated with Kroger for a divestiture package that could enable C&S to compete successfully with Kroger post-Merger and satisfy regulatory scrutiny.

IV. In The Months Before The Parties Executed The April 2024 Agreement, Regulators Identified Serious Issues With The Original Divestiture Package.

A. Regulators Identified Specific Issues With The Original Divestiture Package.

60. Over Fall and Winter 2023—once the original divestiture package was finalized and the First APA signed in September 2023—C&S threw itself into

planning to integrate the assets in the original divestiture package into its business, so that it would be prepared for the Merger to close. It worked with its outside consultants, traveled to visit stores, and prepared for the business transition associated with this transformative transaction. C&S also developed a comprehensive, extremely detailed business plan to operate the assets in the original divestiture package and compete with Kroger post-Merger.

61. Once the original divestiture package was announced, federal and state regulators requested to speak with C&S to ask questions regarding the original divestiture package and C&S's business plan to operate the divested assets. C&S worked diligently to provide truthful and complete answers to questions from federal and state regulators regarding the original divestiture package. This included providing information and documents to federal and state regulators in response to information requests, meeting with federal and state regulators in person and remotely, providing witness testimony, and engaging in numerous other burdensome, time-consuming, and expensive efforts.

62. During this time, a variety of regulators—including the Federal Trade Commission ("FTC") and multiple state regulators—expressed skepticism that the original divestiture package set out in the First APA was sufficient to address the regulators' competition concerns, and conveyed specific concerns about specific aspects of the divestiture package.

63. For example, regulators emphasized that the original divestiture package did not contain enough stores in several specific geographic markets to allow C&S to compete effectively with the post-Merger enterprise in those markets. Regulators also repeatedly asked Kroger to provide and explain the analysis it had used to select the specific stores included in the original divestiture package.

64. Regulators also identified specific concerns with the "rebannering" requirements of the original divestiture package. The original divestiture package anticipated that C&S would acquire locations that had, until that point, operated under a variety of different established grocery store brand names or "banners." In many cases, the original divestiture package would require C&S to "rebanner" those locations. The process of rebannering is expensive, time-consuming, and requires closing the affected location completely while rebannering is in progress. And it is well-established that consumers maintain strong affinity for specific retail grocery store banners and often shift their shopping behavior away from a location after it is rebannered, especially if it is rebannered with a name that is unfamiliar in the geographic market. The original divestiture package required C&S to incur significant costs (and temporary store-closure time) to implement rebannering and required C&S to move stores away from familiar banners to unfamiliar new banners in many geographic markets. Regulators expressed concerns that the rebannering

costs and consequences represented too significant an execution risk for the original divestiture package.

65. Regulators further identified issues with the private-label brand assets included in the original divestiture package. Private-label products—products sold under brands owned by a grocery store operator itself, rather than under a national third-party "name brand"—are generally sold at a substantial discount to equivalent name-brand products and represent a significant portion of retail grocery store sales and profits. Some private-label brands are well-established brands with significant consumer recognition and loyalty. Under the First APA, C&S would acquire a limited portfolio of private-label intellectual property as part of the divestiture package—but it would *not* receive the right to use well-known private labels, such as "Signature" and "O Organics," meaning C&S would either need to make significant investments to grow lesser-known private-label brands included in the original divestiture package or otherwise introduce unfamiliar private-label brands into the stores it acquired. Regulators expressed concern that the limited private-label assets included in the original divestiture package created additional risk that consumers might hesitate to purchase products with a new private-label brand and shift their shopping activity away from C&S's newly acquired stores, threatening the long-term competitive strength of the divested stores.

66. Regulators also identified issues with the distribution infrastructure assets in the original divestiture package. The First APA provided that C&S would acquire new retail grocery stores scattered across the country in geographic markets where C&S had little or no preexisting presence. Regulators expressed concern that C&S's limited distribution infrastructure in those geographies created execution risk to C&S's ability to guarantee regular and timely deliveries of fresh, frozen, and dry-goods products to its stores in those geographies.

67. Additionally, regulators pointed to the information technology ("IT") dimensions of the original divestiture package as a serious risk. Running a retail grocery business is a complex enterprise involving enormous quantities of data related to—among other things—consumer shopping activity and promotional offerings, as well as complex systems including inventory, pricing, ordering and supply chain management, fuel sales, and pharmacy operations. Kroger and Albertsons both used complicated, costly, proprietary systems developed over many years to operate their stores and service offerings. C&S, Kroger, and Albertsons understood that C&S would require support and a transition period to launch the new IT systems required for the retail grocery locations it would acquire. But under the First APA, C&S was not acquiring the existing Kroger or Albertsons IT systems, and Kroger would provide only limited support for a limited period for these all-important IT components of the retail grocery operation. Regulators expressed

concern that these limitations would deny C&S the IT capacity necessary to run the divested assets successfully, due both to the short amount of time C&S had to develop its own IT infrastructure and the limited IT infrastructure Kroger would provide at the end of the transition period.

68. C&S had prepared specific, detailed plans to address the potential execution risks that regulators were identifying as concerns. For example, C&S budgeted hundreds of millions of dollars for the cost of rebannering and included detailed assumptions in its deal model—which were based on rigorous analysis of the effect of rebannering on consumer activity—to account for the impact rebannering would likely have on shopping activity at rebannered stores. C&S had developed similar plans to address all the other issues on which regulators focused while evaluating the original divestiture package. But regulators continued to express concerns that these and other aspects of the original divestiture package created unacceptable risks.

B. Leading Up To The April 2024 Agreement, Significant Regulatory Objections And Concerns Threatened To Derail The Divestiture.

69. When faced with these specific critiques from federal and state regulators, Kroger failed to work effectively to persuade the regulators that the original divestiture package would succeed, or to address the specific concerns that they raised through recurring communications.

70. There is no doubt that Kroger was on notice of the myriad regulatory concerns it faced. The FTC expressed its concerns to Kroger in multiple meetings and written communications over the course of Fall and Winter 2023. Kroger was similarly on notice of concerns from state regulators, which it received in the same and similar meetings, as well as through written communications.

71. But in the face of mounting regulatory scrutiny, Kroger refused to play ball—declining time and time again the opportunity to meaningfully work to improve the divestiture package as regulators raised new concerns about potential risks.

72. For example, over the course of Fall and Winter 2023, it became apparent from interactions with regulators that Kroger, which had reserved for itself the right to select all the specific retail grocery locations included in the original divestiture package, had failed to employ an economic analysis that would satisfy regulators to identify the appropriate locations to divest.

73. Even when Kroger offered to make minor adjustments to the original divestiture package by adding a handful of stores, Kroger failed to provide any robust explanation as to why it selected those stores. And regulators repeatedly noted that Kroger had not adequately explained how it selected the stores included in the original divestiture package or shared the analysis that drove Kroger's

selections. On information and belief, Kroger was keeping many of the highest-performing stores for itself.

74. Through Fall and Winter 2023, federal and state regulators reiterated serious concerns about the structure of the original divestiture package set out in the First APA, the ability of the original divestiture package to make C&S an effective competitor post-Merger, and the ability of the original divestiture package to reduce any anticompetitive consequences of the Merger and protect consumer welfare.

75. Kroger unilaterally decided largely to disregard the regulators' feedback and failed to revise the original divestiture package to address the regulators' concerns.

C. Before The April 2024 Agreement, C&S Prepared For The Closing Of The Divestiture Even While Regulatory Objections Threatened To Derail It.

76. In preparation for the potential divestiture to close, C&S continued to devote significant efforts and resources, including additional analysis of the specific assets included in the package, extensive travel to visit particular locations, and coordination with Kroger and Albertsons to prepare for the transfer and integration of these assets into C&S's business. C&S also retained the additional services—at significant cost—of consultants and experts, including the global firms KPMG, Bain & Company, Consolidated Affiliates, and others, to counsel C&S on integrating the divested assets. At the same time, C&S was working to identify personnel who

would move to C&S along with the divested assets, planning for IT transfer and integration, preparing for transition services between C&S and Kroger post-Merger, and making other complex business preparations for this large transaction. C&S communicated frequently with Kroger personnel and Albertsons personnel in the course of these substantial preparations.

77. For example, C&S communicated with Susan Morris, a seasoned Albertsons retail grocery executive, with respect to preparing for integrating the divested assets into C&S. C&S, Kroger, and Albertsons agreed that Ms. Morris would join C&S post-divestiture to run C&S's retail grocery business.

78. On December 20, 2023, the FTC expressed concerns that the original divestiture package would not enable C&S to effectively compete in the retail grocery market, outlining eight key areas where they believed the divestiture was deficient. Kroger dismissively referred to these regulatory concerns as a "Christmas wish list" and declined to address the FTC's feedback. Despite the overwhelming evidence that regulators viewed the original divestiture package as inadequate, Kroger refused to make any significant changes.

79. Kroger only made changes to the original divestiture package when faced with a request by the FTC that Kroger run its economic analysis "from scratch" without including any of the stores in the original package. Only after this forceful indication by the FTC that the original divestiture package was unworkable did

Kroger present alternative proposals that included minor revisions. But despite the regulators' instruction that Kroger go back to the drawing board to construct a new divestiture package, Kroger's new proposals contained similar deficiencies to the initial proposal and were insufficient to satisfy the concerns regulators had expressed. For example, Kroger's revised proposals contained more stores, but Kroger did not address the regulators' fundamental concerns with rebannering, distribution centers, private label offerings, IT infrastructure, and store geography.

80. The FTC's concerns culminated on February 22, 2024, when, on information and belief, it held a so-called "last rites" meeting with Kroger where it made clear that litigation was imminent. On information and belief, during that "last rites" meeting, the FTC communicated that it was preparing to sue to enjoin the Merger, although it provided Kroger with a final opportunity to improve the divestiture package before suit. Kroger turned that chance down.

D. Kroger Failed To Obtain Approval For The Merger Under The Original Divestiture Package And Regulators Sued To Prevent The Merger—Leading The Parties To Negotiate The April 2024 Agreement.

81. Kroger failed to obtain regulatory approval of the Merger, and federal and state regulators filed three separate suits in Washington State, Colorado, and Oregon, each seeking to enjoin the consummation of the Merger.

82. Washington State filed suit on January 16, 2024. *State of Washington v. The Kroger Co., et. al.*, No. 24-2-00977-9 SEA ("Washington AG Action").

83. Colorado filed suit on February 14, 2024. *State of Colorado et al. v. The Kroger Co. et al.*, No. 2024-CV-30459 ("Colorado AG Action").

84. The FTC filed its complaint in the District of Oregon, joined by nine attorneys general, on February 26, 2024. *See generally Fed. Trade Comm'n v. Kroger Co.*, No. 3:24-CV-00347-AN, Dkt. 1 (D. Or. Feb. 26, 2024) ("FTC Action").

85. Even after the filing of three separate complaints brought by, collectively, the FTC and eleven attorneys general, Kroger refused to acknowledge that the original divestiture package was insufficient. In a March 4, 2024 letter, Kroger again asserted that it did "not concede" that the original divestiture package was "inadequate." Kroger took this position despite the fact that multiple states and the FTC had already sued in three courts to prevent Kroger from finalizing the Merger precisely because, among other things, the original divestiture package was insufficient.

V. After Federal And State Regulators Sued, C&S Negotiated The April 2024 Agreement With Kroger.

86. Beginning in January 2024, C&S began to negotiate a new divestiture package with Kroger in the hopes of addressing the regulators' concerns so the Merger could go forward.

87. Kroger initially attempted to negotiate mere revisions to the original divestiture package, but it quickly became clear that it was necessary to create a completely new divestiture package from the ground up. The new divestiture package needed to remove stores that had been included in the original package, add stores that had been omitted, and build a new set of supporting assets and services to facilitate C&S's successful operation of the divested stores. This was a completely new package, and it required a completely new agreement.

88. On April 22, 2024, the Parties executed the April 2024 Agreement. As set out above in Part II of this Complaint, the April 2024 Agreement superseded the First APA and reflected a new set of obligations and rights between and among the Parties, including a brand-new deal between the Parties for C&S to acquire a new package of divested assets. *See* **Exhibit 1**, April 2024 Agreement § 13.3.

89. The new deal set out in the April 2024 Agreement included a requirement that, if the divestiture failed to close, Kroger would pay C&S a $125 million Termination Fee to compensate C&S "for the efforts and resources expended and the opportunities foregone while negotiating [the April 2024 Agreement] . . . and for preparing for the" divestiture. *See id*. at § 11.3 (Termination Fee). Previously, under the First APA, Kroger had agreed to pay C&S a significantly smaller termination fee of $50 million if the divestiture transaction did not close. By the time of the April 2024 Agreement, C&S had already incurred significant costs

and devoted significant effort towards planning for the integration of the divested assets and advocating for the divestiture transaction to regulators, and it was clear that significantly more cost and effort would be required to prepare for the acquisition of the divested assets and to litigate the three separate government actions seeking to enjoin the Merger. The April 2024 Agreement incorporated a significantly increased Termination Fee of $125 million in light of those considerations.

90. And, because of the complicated history and disagreements that preceded the April 2024 Agreement, the new deal also provided that Kroger and Albertsons released C&S, and C&S released Kroger and Albertsons, of all "Claims, demands, obligations, Liabilities, setoffs, counterclaims, Actions, and causes of action" arising prior to or contemporaneous with the April 2024 Agreement. *Id.* at § 13.15 (Mutual Release). Each party retained only the right to bring claims "unrelated to" the Merger or the divestiture transaction and the right to sue if the other committed some act of "Fraud," which was specifically defined and narrowly limited in Article I of the April 2024 Agreement to mean "actual and intentional fraud . . . in respect of the making of" specific "representations and warranties" set out in designated articles of the April 2024 Agreement. *Id*.; *see also id*. at Art. 1.1, p. 18.

VI. The Parties Worked To Win At Trial To Consummate The Transaction.

A. The Parties Prepared To Defend The Merger In Three Separate Government Actions.

91. After executing the April 2024 Agreement, the Parties turned their focus to the three federal and state regulatory actions that were scheduled to take place later in 2024.

92. The FTC hearing in Oregon was scheduled to begin on August 26, 2024; the Washington State trial was scheduled to begin on September 16, 2024; and the Colorado trial was scheduled to begin on September 30, 2024.

93. C&S worked diligently alongside Kroger to prepare for and participate in proceedings for these government actions. Not only did it spend significant resources with its outside counsel coordinating with Kroger and preparing to defend the divestiture deal, but C&S executives themselves dedicated hundreds of hours to preparing for and testifying at depositions and the proceedings, involving extensive preparation with Kroger's counsel and cross-country travel.

94. At the proceedings for the government actions, C&S's leaders testified forcefully that they would be able to compete effectively against Kroger post-Merger with the divested assets. For example, when C&S Senior Vice President Alona Florenz was asked during the Colorado proceeding how confident she felt that C&S would be able "to successfully run and operate the divestiture stores," she responded:

"Very confident. Someone described our business plan as voluminous. We spent a lot of time developing this plan. And we secured the right leadership . . . . We made certain . . . that we had the right kind of package, banner names, the distribution network. So, very confident." And C&S's Chief Executive Officer Eric Winn testified, "We're going to be . . . a top-ten retailer. Big enough that scale will bring some advantages, and yet small enough that we can be more agile and a bit more—or maybe a lot more—responsive to the individual needs of the communities we will serve. . . . So our itemization, our promotional programs, the personalization . . . will be much more tailored to the communities we serve . . . ."

95. Kroger's leading executives and outside counsel repeatedly expressed their genuine appreciation for C&S's and its witnesses' efforts in defending the divestiture deal. For example, after a trial day in which C&S Senior Vice President Florenz testified, Kroger General Counsel Christine Wheatley hugged her and expressed gratitude for Ms. Florenz's testimony. Following Ms. Florenz's testimony on multiple separate trial days, Kroger's lead outside counsel, Mark Perry and two members of his team—Bambo Obaro and Camilla Brandfield-Harvey—sent Ms. Florenz email messages, similarly thanking Ms. Florenz for her testimony. Mr. Obaro stated that Ms. Florenz had been "excellent," and Ms. Brandfield-Harvey noted that Ms. Florenz had "[c]rushed it[,]" comparing her to a "quarterback[.]" C&S CEO Winn received similar praise from Matt Wolff, another outside counsel

for Kroger, following Mr. Winn's testimony in connection with all three government actions.

B. C&S Simultaneously Prepared For The Merger And Divestiture To Close.

96. Throughout Summer and Fall 2024, while preparing and advocating for the transaction in the proceedings for the pending government actions, C&S simultaneously devoted significant time and resources to prepare for the divestiture transaction in the hope that the Merger would ultimately close, honoring its obligations under the April 2024 Agreement.

97. C&S poured substantial resources into its preparations—working with leading third-party advisors, preparing for Kroger's and Albertsons's technology to be integrated with C&S's post-divestiture IT infrastructure, and collaborating with Kroger and Albertsons to prepare for staffing and HR transitions. These efforts required significant expense and substantial time and attention from C&S. And while devoting these significant efforts to preparing for the potential integration of the divested assets, C&S also could not pursue any other potential strategic opportunities.

98. C&S meticulously met its obligations to prepare for closing the transaction even while the future of the deal was in doubt due to the pending litigations. Nevertheless, Kroger repeatedly demanded that C&S work to meet

arbitrary "ready dates" for the close of the transaction, which required C&S to incur significant unnecessary costs. And while C&S diligently sought thousands of required permits and authorizations from local regulatory agencies and licensing authorities, many of those licensing authorities expressed to C&S that they were unwilling to engage or consider applications while the litigations were pending because there was no certainty that the transaction would ever close, or that C&S would ever actually need these permits. Similarly, Kroger and Albertsons, who were required under the April 2024 Agreement to obtain the consent of landlords to effect lease transfers to C&S as part of the divestiture, struggled to obtain those consents while the pending government actions posed the prospect that the divestiture would never occur.

99. All of C&S's significant efforts and expenses were undertaken in reliance on the terms of the April 2024 Agreement: if the Merger and the divestiture transaction succeeded, C&S would be compensated for its efforts and costs incurred by acquiring all the assets in the divestiture package; if the Merger and the divestiture transaction failed, C&S would be compensated in part by receiving the Termination Fee.

VII. The Parties Discussed A Potential New Structure For The C&S Termination Fee; Kroger Never Suggested That C&S Would Not Be Entitled To The Termination Fee.

100. The April 2024 Agreement provides that C&S could walk away from the divestiture transaction "at any time prior to the Closing" if the Closing did not occur before November 15, 2024.

101. As the proceedings for the government actions continued to unfold in Oregon, Washington State, and Colorado, it became clear that the Parties would not be able to consummate the transaction by this November 15, 2024 walk-away date.

102. The Parties therefore negotiated over potential revisions to the April 2024 Agreement in light of the ongoing government actions. In particular, C&S proposed that Kroger agree to increase the Termination Fee above the amount set in the April 2024 Agreement in exchange for extending the November 15 deadline. C&S proposed this increase to the Termination Fee in light of the significant costs it had incurred and continued to incur in planning for integration. Specifically, in the months leading up to November 15, these costs had increased to millions of dollars per week, and any extension would even further increase C&S's expenses.

103. Kroger never suggested at any time during these negotiations—or at any time prior to this since the April 2024 Agreement was executed—that C&S in any way had breached the April 2024 Agreement or otherwise was not entitled to the Termination Fee. In fact, far from disputing or otherwise questioning whether

C&S would be owed the Termination Fee, Kroger proposed a counteroffer whereby it would increase the Termination Fee in exchange for a 90-day extension of the walk-away date.

104. The Parties ultimately did not agree on a formal extension of the November 15 deadline or an increase to the Termination Fee. Rather, the Parties agreed to work together to control their ongoing expenses while waiting for rulings in the pending government actions.

105. Kroger's conduct at all times after the April 2024 Agreement—including in connection with negotiations related to extending the walk-away date—reinforced that Kroger understood that, if regulators successfully blocked the Merger from closing, C&S would be entitled to the Termination Fee under the plain terms of the April 2024 Agreement. C&S relied on the contractual guarantee that it would receive the Termination Fee—and on Kroger's conduct reaffirming that Kroger believed that C&S was entitled to the Termination Fee—by incurring significant costs and making significant additional efforts to support the Merger and divestiture transaction and forgoing the ability to pursue other opportunities. Kroger was aware that C&S was incurring those costs, making those efforts, and forgoing other opportunities it might have pursued. Kroger was aware that C&S was taking all those steps in reliance on the contractual guarantee that C&S would receive the

Termination Fee if the Merger and divestiture transaction failed—and Kroger knew that its conduct caused C&S to reasonably rely on that contractual guarantee.

VIII. Washington And Oregon Courts Enjoined The Merger; Kroger Terminated The Merger Agreement With Albertsons.

106. On August 26, 2024, the preliminary injunction hearing in the FTC Action began, lasting for 15 court days, with closing arguments on September 17, 2024. *See* FTC Action, Dkt. 418; FTC Action, Dkt. 474. The court ultimately issued an order enjoining the Merger on December 10, 2024. FTC Action, Dkt. 521.

107. Trial in the Washington AG Action began on September 16, 2024, and concluded on October 23, 2024. On December 10, 2024—the same day as the court in the FTC Action issued its decision—the court in the Washington AG Action also issued an injunction blocking the Merger. Washington AG Action, Dkt. 919.

108. Trial in the Colorado AG Action began on September 30, 2024, and concluded on October 24, 2024. When the courts in the FTC and Washington AG Actions enjoined the Merger on December 10, the court in the Colorado AG Action ordered the Parties to submit briefing on whether the motions pending before it were moot. Colorado AG Action, Dec. 13, 2024 Order (requesting supplemental briefing).

109. The courts enjoining the Merger found that the structure of the divestiture package that Kroger developed made it inevitable that the Merger would

fail: the divestiture package did not include appropriate assets to reduce the Merger's anti-competitive effects or to enable C&S to compete effectively with Kroger post-Merger.

IX. Kroger Attempted To Evade Its Obligation To Pay The Termination Fee To C&S.

110. On December 11, 2024—the very next day after the Oregon and Washington courts issued injunctions prohibiting the Merger from closing—Kroger sent a letter to C&S and Albertsons stating that the Merger agreement was terminated as of December 11, 2024, and that Kroger was therefore terminating the April 2024 Agreement pursuant to Section 11.1(a)(vi). Kroger therefore was required to pay C&S the Termination Fee within five business days of December 11. **Exhibit 1**, April 2024 Agreement § 11.3(a). But in the same letter, Kroger asserted that it would *not* pay the Termination Fee on the purported basis that "C&S is in material breach of its covenants and agreements in the Asset Purchase Agreement, including under Section 6.2"—which provides that the Parties "shall" devote "reasonable best efforts" to obtaining regulatory approval of the divestiture transaction.

111. This assertion is meritless. Since the April 2024 Agreement, C&S had undertaken significant efforts to meet and exceed its obligations under Section 6.2. C&S dedicated significant resources to prepare to integrate the divested assets in the hope that the Merger would close, working tirelessly internally and with advisers as

well as with Kroger and Albertsons for integration. And C&S also invested significant resources to help defend the Merger in multiple government actions, with C&S's seniormost executives devoting significant time to travel, preparation, and testimony, while C&S coordinated with Kroger, Albertsons, and their counsel to organize and mount trial defenses.

112. On December 13, 2024, C&S responded to Kroger that it had "fully complied with its obligations under the APA in all respects," and was therefore entitled to the Termination Fee.

113. On December 14, 2024, the next day, Albertsons filed a lawsuit against Kroger seeking damages including, but not limited to, the $600 million termination fee that Kroger owed *Albertsons* pursuant to the controlling Merger agreement. *See Albertsons Cos., Inc. v. The Kroger Co.*, No. 2024-1276-LWW (Del. Ch. Dec. 14, 2024).

114. On December 18, 2024—the day Kroger was required to pay the Termination Fee to C&S under Section 11.3(a) of the April 2024 Agreement—Kroger responded to C&S and doubled down on its assertions that C&S breached its obligations under Section 6.2 of the April 2024 Agreement. Without any support, Kroger claimed that "C&S repeatedly failed to abide by" the "clear and unambiguous contractual commitments" to "cooperate with Kroger, and to use reasonable best efforts in connection with securing regulatory approval of the

transaction and satisfying conditions for closing." Once again, this assertion was meritless. Even in the face of mounting regulatory uncertainty and Kroger's refusal to address regulatory concerns, C&S devoted significant resources and made every effort to prepare for closing.

115. In its December 18, 2024 letter, Kroger further asserted that C&S engaged in "unauthorized and undisclosed communications" with Albertsons "regarding the divestiture package, which violates C&S's contractual obligations." This, too, was without merit. The April 2024 Agreement does not require C&S to seek permission from *Kroger* to speak with Albertsons personnel.

116. Further evidencing that it has no basis to refuse to pay the required Termination Fee, Kroger's letters wrongly suggest that Kroger can refuse to pay based on events or conduct that occurred *prior* to the April 2024 Agreement. In particular, Kroger suggests that, allegedly due to C&S's conduct from *before* April 22, 2024, C&S was in breach of its obligation under Section 6.2(a) of the April 2024 Agreement, which specified that "[e]ach of [C&S] and [Kroger and Albertsons] *shall* reasonably cooperate with each other . . . [and] use . . . reasonable best efforts . . . to consummate and make effective the transactions contemplated by this Agreement" and called on C&S "to use its reasonable best efforts to demonstrate that [C&S] is an acceptable purchaser of the Transferred Assets and that [C&S] will compete effectively using the Transferred Assets."

117. But the April 2024 Agreement is unambiguous: Kroger can only refuse to pay the Termination Fee to C&S if, at the time Kroger terminated the April 2024 Agreement, C&S was "in material breach" of the "representations, warranties, covenants or agreements *contained in this Agreement*"—i.e., in the April 2024 Agreement itself. **Exhibit 1**, April 2024 Agreement § 11.3(a) (emphasis added). It is a logical impossibility that anything C&S did *before* the date of the April 2024 Agreement could constitute a "material breach" of the obligation imposed in the April 2024 Agreement that it "*shall*"—in the future, after the date of the April 2024 Agreement—use its "reasonable best efforts" to achieve approval of the divestiture transaction. *Id.* at § 6.2(a).

118. Furthermore, the Parties agreed to release all claims, liabilities, setoffs, counterclaims, and causes of action "arising contemporaneously with or prior to the date of" the April 2024 Agreement. *Id.* at § 13.15. And as described above, Kroger had engaged in substantial negotiations in November 2024 with C&S while the government actions were pending regarding an *increase* of the Termination Fee in exchange for C&S agreeing to extend the walk-away date. This is fundamentally irreconcilable with the false claim that Kroger believed C&S had breached its obligations under the April 2024 Agreement and was not entitled to the Termination Fee at all.

119. And in any case, C&S fulfilled its obligations at all times through its significant good-faith efforts to prepare for the divestiture and help the divestiture close as set forth above.

120. On December 23, 2024, C&S responded, explaining again that C&S is unambiguously entitled to the Termination Fee under the plain language of the April 2024 Agreement. In an effort to avoid unnecessary litigation, C&S provided Kroger with an additional ten days to comply with its Termination Fee obligations pursuant to the April 2024 Agreement. Kroger failed to comply with its obligation by that deadline as well.

121. To this day, Kroger has failed to comply with its obligations under Section 11.3 of the April 2024 Agreement.

COUNT I

(Breach of Contract, Amended and Restated Asset Purchase Agreement § 11)

122. C&S repeats and incorporates all the allegations set forth in the preceding paragraphs herein.

123. The Parties entered into the April 2024 Agreement, which is a binding contract, on April 22, 2024.

124. C&S fully performed its covenants and agreements under the April 2024 Agreement.

125. Section 11.3(a) of the April 2024 Agreement provides that Kroger shall pay C&S a $125,000,000 Termination Fee "within five (5) business days of such termination" by Kroger pursuant to, among others, Section 11.1(a)(vi).

126. On December 11, 2024, Kroger sent C&S a Notice of Termination pursuant to Section 11.1(a)(vi) of the April 2024 Agreement. Accordingly, pursuant to Section 11.3(a) of the April 2024 Agreement, Kroger was required to pay the Termination Fee to C&S within five business days of December 11, 2024—no later than December 18, 2024.

127. Because Kroger has refused to this day to pay the Termination Fee to C&S, Kroger is in breach of Section 11.3(a) of the April 2024 Agreement. C&S is entitled to receive the Termination Fee.

128. Pursuant to Section 11.3(b) of the April 2024 Agreement, C&S is also entitled to interest on the amount of the Termination Fee from December 18, 2024 until the date Kroger pays the Termination Fee "at an annual rate equal to the prime rate set forth in *The Wall Street Journal* in effect on" December 18, 2024 (the "Applicable Interest").

129. C&S is further entitled to attorneys' fees and expenses under Section 11.3(b) of the April 2024 Agreement, which provides that "if, in order to obtain payment of the [] Termination Fee and any Applicable Interest, [C&S] commences an Action that results in judgment for [C&S] for such amount, [Kroger]

shall pay [C&S] its reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such Action (up to a maximum aggregate amount of $2,500,000)[.]"

PRAYER FOR RELIEF

WHEREFORE, and based on the foregoing, C&S respectfully requests that the Court grant the following relief:

a. Enter judgment in C&S's favor, finding that Kroger breached the April 2024 Agreement and C&S is entitled to the Termination Fee set forth in Section 11.3(a);

b. Award C&S damages in the amount of $125,000,000;

c. Award C&S interest as provided in the April 2024 Agreement;

d. Award C&S attorneys' fees and costs as provided in the April 2024 Agreement; and

e. Award all such other relief as this Court deems just and proper.

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Dated: February 11, 2025

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2025, copies of the *Public Version of Plaintiff's Complaint* were caused to be served upon all counsel of record via File & Serve*Xpress*.

/s/ Louis F. Masi
Louis F. Masi (#7233)

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

C&S WHOLESALE GROCERS, LLC, Plaintiff, v. THE KROGER COMPANY, Defendant.	)))))))))	C.A. No. N25C-02-077-PAW [CCLD] **PUBLIC VERSION EFILED ON MARCH 14, 2025**

EXHIBIT 1 TO COMPLAINT

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Exhibit 1

AMENDED AND RESTATED

ASSET PURCHASE AGREEMENT

by and among

THE KROGER CO.,

and

ALBERTSONS COMPANIES, INC.,

as the Sellers,

and

C&S WHOLESALE GROCERS, LLC,

as Buyer

Dated as of April 22, 2024

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AMENDED AND RESTATED
ASSET PURCHASE AGREEMENT

This AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (this "Agreement"), is made as of April 21, 2024 (the "A&R Date"), by and among The Kroger Co., a corporation organized under the Laws of Ohio ("Kettle Seller"), Albertsons Companies, Inc., a corporation organized under the Laws of Delaware ("Acorn Seller"), and C&S Wholesale Grocers, LLC, a limited liability company organized under the Laws of Delaware ("Buyer"). Each of (a) Kettle Seller and Acorn Seller are referred to herein individually as a "Seller", and collectively as the "Sellers", and (b) the Sellers and Buyer may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, on October 13, 2022 Acorn Seller, Kettle Seller, and Kettle Merger Sub, Inc., entered into an Agreement and Plan of Merger (as amended, supplemented, or modified, the "Merger Agreement"), pursuant to which Kettle Merger Sub, Inc. will merge with and into Acorn Seller, with Acorn Seller surviving (such transaction, the "Primary Acquisition").

WHEREAS, in order to resolve certain issues raised by Governmental Entities in connection with the Primary Acquisition, Kettle Seller, Acorn Seller and Buyer entered into that certain Asset Purchase Agreement (the "Original Asset Purchase Agreement"), dated as of September 8, 2023 (the "Original Execution Date").

WHEREAS, to address issues raised by Governmental Entities regarding the Primary Acquisition and the Original Asset Purchase Agreement, each Seller and Buyer have agreed to amend and restate the Original Asset Purchase Agreement in its entirety.

WHEREAS, following the Primary Acquisition Closing, (a) each Seller wishes to sell to Buyer, and Buyer wishes to purchase from such Seller, certain of the assets of such Seller, on the terms and subject to the conditions set forth herein, and (b) Buyer wishes to assume, and each Seller wishes Buyer to assume, certain of such Seller's Liabilities on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the Parties, intending to be legally bound hereby, do agree as follows:

ARTICLE I
DEFINITIONS AND CONSTRUCTION

1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings ascribed to such terms under this Article I, unless otherwise specifically indicated:

"Access Agreements" means, collectively, (i) that certain Access Agreement, dated as of October 3, 2023, between Kettle Seller and Buyer and (ii) that certain Access Agreement, dated October 3, 2023, between Acorn Seller and Buyer.

"Accountant" has the meaning set forth in Section 2.4(b)(iii).

"Accounting Principles" means the accounting methods, policies, principles, practices, bases and procedures, including classification and estimation methodologies adopted, and judgments and assumptions used in preparation of the financial statements of Kettle Seller and Acorn Seller, respectively, that have been publicly disclosed as of the Original Execution Date and which such financial statements have been prepared in accordance with GAAP.

"Acorn Americold Distribution Center" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Americold Distribution Center Agreement" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Dairy" refers to the portion of the Denver Owned DC located at 4301 Forest Street, Denver, CO.

"Acorn Distribution Center Leases" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Distribution Centers" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Fuel Centers" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Housing" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Leased Distribution Centers" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Leased Fuel Centers" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Leased Stores" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Leases" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Offices" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Owned Distribution Centers" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Owned Fuel Centers" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Owned Stores" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Real Property Leases" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Recorded Leased Stores" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Recorded Leases" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Registered Intellectual Property" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Seller" has the meaning set forth in the Preamble.

"Acorn Seller Average Accuracy Factor" has the meaning set forth in Schedule 2.4.

"Acorn Supermarkets" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Trademark License Agreement" means an intellectual property license agreement substantially in the form of Exhibit I.

"Acorn Transferred Contracts" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Transferred Customer Data" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Transferred Data" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Transferred Intellectual Property" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Acorn Transferred IT Assets" has the meaning set forth in the definition of Transferred Acorn Assets set forth in this Section 1.1.

"Action" means any civil, criminal, or administrative action, claim, suit, litigation, proceeding, arbitration, mediation, audit, hearing, investigation or dispute by or before any Governmental Entity.

"Additional Rents" has the meaning set forth in Section 7.7(c).

"Affiliate" means, as to any specified Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person. For purposes of this definition, "control," "controls," "controlled by," or "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such Person, whether through direct or indirect ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, following the Primary Acquisition Closing, except with respect to Article IV, Acorn Seller and its subsidiaries shall be Affiliates of Kettle Seller, and following the Closing of the Transactions any references to Kettle Seller and/or its Affiliates shall be deemed to include Acorn Seller and its subsidiaries.

"Agreed Employee Selection Principles" has the meaning set forth in Section 9.1(a).

"Agreement" has the meaning set forth in the Preamble.

"Alaska MEPP" means the Alaska United Food & Commercial Workers Pension Fund.

"Alcohol" has the meaning set forth in Section 2.8(b).

"Alcohol and Tobacco Licenses" has the meaning set forth in Section 2.8(b).

"Allocation Schedule" has the meaning set forth in Section 2.7.

"Ancillary Assets" means, with respect to the Acorn Supermarkets, the Acorn Distribution Centers, or the Kettle Supermarkets, as applicable:

(a) to the extent that they may be assigned, transferred, or re-issued by the applicable Seller, all Permits directly used or held for use primarily in the operation of such Transferred Supermarkets or Transferred Distribution Centers, as applicable (including, for avoidance of doubt, all fuel, pharmacy, liquor, tobacco, gambling and similar licenses related thereto) (the "Transferred Permits"); *provided*, *however*, that any Permit that is not directly used or held for use primarily in the operation of such Transferred Supermarkets or such Transferred Distribution Centers shall be considered an "Enterprise Contract" for the purposes of Section 7.8;

(b) all (i) rights, privileges, easements, and interests appurtenant to such Transferred Supermarkets or Transferred Distribution Centers, as applicable, including, for the avoidance of doubt, (x) all public roads and rights of way adjacent to such real property and all abutters and access rights thereto and (y) any real property or interest therein that is material, from a legal, financial or operational perspective, to a Transferred Supermarket or a Transferred Distribution Center and for which the benefits or burdens thereof are reflected in the Profit and Loss Statements, (ii) all buildings, structures, installations, trade fixtures, building equipment and other improvements located on or attached to such Transferred Supermarkets or Transferred Distribution Centers, as applicable, and to the extent assignable or transferable by such Seller, all rights and warranties of any manufacturer or vendor with respect thereto, and (iii) all title documents, surveys, related construction plans and documents, and related real estate files with respect to such Transferred Supermarkets or Transferred Distribution Centers, as applicable;

(c) the security deposits, prepaid rent, and prepaid expenses previously paid by such Seller to fulfill such Seller's obligations under the Transferred Leases and, to the extent transferable, other deposits related to the Transferred Supermarkets or Transferred Distribution Centers, as applicable;

(d) other than, and excluding the Excluded Assets, including the Excluded Inventory, and without duplication of the Store Inventory or Distribution Center Inventory, all fixed assets and tangible personal property, owned by such Seller and used or held for use primarily in connection with the business of such Transferred Supermarkets or Transferred Distribution Centers, as applicable, including all tools, equipment, machinery, instruments, spare parts, improvements, furnishings, IT Assets, and similar items of equipment owned by such Seller and used primarily in the business of, and located at, such Transferred Supermarkets, or used primarily in the business of, and located at, such Transferred Distribution Centers, as applicable, and in each case, to the extent assignable or transferable by such Seller, all rights and all warranties of any manufacturer or vendor with respect thereto;

(e) other than the Excluded Inventory, all of such Seller's Store Inventory as of the Measurement Time;

(f) to the extent assignable or transferable, all rights to the telephone and facsimile lines and numbers of the Transferred Supermarkets or Transferred Distribution Centers, as applicable;

(g) except to the extent prohibited by Law, all prescription files owned and used by such Seller which are associated with the Transferred Pharmacies;

(h) the automobiles, trucks, tractors, and trailers associated with the Acorn Distribution Centers, in each case, to the extent set forth on Schedule 1.1(h)-A (the "Transferred Vehicles"); and

(i) all Cash in Drawers.

"Ancillary Licenses" has the meaning set forth in Section 2.8(b).

"Archived Records" has the meaning set forth in Section 7.7(b)(i).

"Arizona Office" has the meaning set forth in Section 6.14.

"Arizona Office Term Sheet" means the lease terms for the Arizona Office, substantially in the form of Exhibit M.

"Assignment and Bill of Sale Agreement" means the agreement for the assignment and conveyance to Buyer and/or its designee(s) of all rights of each Seller and each Affiliate of a Seller in, to and under the Transferred Contracts and the Transferred Assets (for the avoidance of doubt, not including Distribution Center Inventory), and the assumption by Buyer or such designee of the Assumed Liabilities, to be entered into between one or more of Kettle Seller or its Affiliates, as applicable, and Buyer and/or its designee(s) on the Closing Date, substantially in the form of

Exhibit A; *provided* that, to the extent reasonably requested by Buyer with respect to any Property or group of Properties, Sellers shall provide a separate Assignment and Bill of Sale Agreement for that Property (or group of Properties), and if Buyer makes any such request, references herein to the term Assignment and Bill of Sale Agreement will be understood to include the master agreement and all such separate agreements, together as a group.

"Assumed CBAs" has the meaning set forth in Section 9.3(b).

"Assumed Liabilities" means the following Liabilities of Kettle Seller and its respective Affiliates (other than the Excluded Liabilities) to the extent arising from, related to, or in connection with the Transferred Assets, which shall be assumed by Buyer at the Closing:

(a) any Liabilities (other than Liabilities relating to Taxes) in respect of or relating to the Transferred Assets, including the use, ownership, possession, operation, construction, redevelopment, sale, or lease of the Transferred Assets (or the conduct of the business of the Transferred Assets), solely to the extent arising out of, based upon, or resulting from, any fact, circumstance, occurrence, breach or continuing breach, condition, act or omission first occurring on or after the Closing Date or otherwise to the extent relating to the period beginning on or after, or arising after, the Closing Date;

(b) subject to the allocation and proration provisions of Article VIII, all Liabilities relating to Taxes with respect to the Transferred Assets in respect of taxable periods, or portions thereof, beginning on or after the Closing Date (but excluding (i) any Taxes that are subject to Lease Prorations under Section 2.6 and (ii) Transfer Taxes that are to be borne by Sellers as set forth in Section 8.1);

(c) all Liabilities due and payable or arising under, or to be performed under, the Transferred Contracts, Transferred Leases, Transferred Recorded Lease, and Retail Leases subject to the Retail Lease Assignment or otherwise assigned to Buyer at the Closing on or after the Closing Date but solely with respect to Liabilities accruing during the period beginning on or after, or to the extent related to the period beginning on or after, or arising after, the Closing Date;

(d) all Liabilities arising out of or relating to any Action, regardless of when commenced or made and irrespective of the legal theory asserted, arising out of or relating to the Transferred Assets but solely to the extent relating to actions taken or omissions by Buyer or any of its Affiliates on or after the Closing Date;

(e) all Liabilities expressly described as being assumed by Buyer in Section 9.1 (excluding the Pre-Closing Bonus Amount and including the Final Assumed Time-Off Balance) and all Liabilities with respect to the Transferred Employees to the extent arising, existing, accruing, or otherwise attributable to the period beginning on or after, or arising after, the Closing Date (which, for the avoidance of doubt, shall not include any cash bonuses paid by Buyer pursuant to Section 9.1(f)) and all Liabilities arising out of, relating to, or in connection with, the Schedule 9.2 Participating MEPPs to the extent required to be borne by Buyer under Section 4204 of ERISA in accordance with Section 9.2;

(f) all Liabilities otherwise expressly assumed pursuant to the terms and conditions of the Transaction Documents; and

(g) all Liabilities arising from the presence of Hazardous Materials in compliance with Environmental Laws at Closing or the release of Hazardous Materials to the extent first occurring after the Closing at, on, under or migrating from any of the Transferred Assets.

"Assumed Pension Plan" has the meaning set forth in Section 9.4.

"Assumed Time-Off" has the meaning set forth in Section 9.1(g).

"Base Price" has the meaning set forth in Section 2.3.

"Bonding Requirement" means standby letters of credit, guarantees, indemnity bonds and other financial commitment credit support instruments issued to Third Parties by or on behalf of any Seller or any of its controlled Affiliates regarding any of the Transferred Assets.

"Books and Records Inventory" has the meaning set forth in Schedule 2.4.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in New York, New York.

"Buyer" has the meaning set forth in the Preamble.

"Buyer 401(k) Plan" has the meaning set forth in Section 9.1(l).

"Buyer Banner Transition Period" means the period starting from the Closing Date until the date that is eighteen (18) months following the Closing Date; *provided*, *however*, that prior to the end of such eighteen (18) month period, Buyer may extend such period for an additional period of six (6) months by delivering written notice of such six (6) month extension to Sellers; *provided*, *further*, that prior to the end of such six (6) month extension period, Buyer may extend such first extension period for two additional periods of six (6) months by delivering written notice of each such six (6) month extension to Sellers, and only if during such second and third extension term Buyer uses a Variation (as defined in the Trademark License Agreements, and subject to Seller's consent not to be unreasonably withheld, conditioned or delayed). Without limiting the foregoing, Buyer may, but is not obligated to, use the following Variations without further consent from Sellers: (a) "[Seller Retained Banner] by [C&S] or [Transferred Banner]" (*e.g.*, "Vons by C&S" or "Vons by QFC"), or (b) solely in the applicable Territory (as defined in the Trademark License Agreements, respectively) covered by the exclusive license granted to Buyer under the applicable Trademark License Agreements, "[Seller Retained Banner] by [Albertsons] or [Safeway]" (*e.g.*, "Vons by Albertsons" in California).

"Buyer Enforcement Expenses" has the meaning set forth in Section 11.3(b).

"Buyer Indemnitees" has the meaning set forth in Section 12.2(a).

"Buyer Material Adverse Effect" means, with respect to Buyer, any event, occurrence, effect, matter, change, development or state of facts that would, individually or in the aggregate, prevent or materially impair Buyer's ability to consummate the Transactions.

"Buyer Non-Governmental Consents" means the consents, approvals, waivers, or authorizations set forth on Schedule 5.4(b).

"Buyer Releasee" has the meaning set forth in Section 13.15(d).

"Buyer Releasor" has the meaning set forth in Section 13.15(d).

"Buyer Required Regulatory Approvals" means the consents, approvals, waivers, or authorizations set forth on Schedule 5.4(a).

"Buyer Transaction Expenses" has the meaning set forth in Section 13.1.

"CAM Expenses" has the meaning set forth in Section 2.6.

"Cash in Drawers" means, as of the Closing, all cash kept in the register or till or otherwise located at any of the Transferred Supermarkets.

"CBAs" has the meaning set forth in Section 4.15(b).

"CCPA" has the meaning set forth in the definition of Privacy Requirements set forth in this Section 1.1.

"Chosen Courts" has the meaning set forth in Section 13.7(b).

"Claim" means any and all (a) claims, (b) demands, or (c) causes of action (in the case of clause (c), relating to or resulting from an Action).

"Claim Notice" has the meaning set forth in Section 12.6(a).

"Clearances" means any regulatory clearances necessary under applicable Competition/Investment Laws for the consummation of the Primary Acquisition.

"Closing" has the meaning set forth in Section 3.1.

"Closing Date" has the meaning set forth in Section 3.1.

"Closing Lease Proration Schedule" has the meaning set forth in Section 2.6(b).

"Code" means the U.S. Internal Revenue Code of 1986.

"Colorado Division Office" has the meaning set forth in Section 6.15.

"Colorado Division Office Term Sheet" means the lease terms for the Colorado Division Office, substantially in the form of Exhibit N.

"Competition/Investment Law" means any Law that is designed or intended to prohibit, restrict or regulate (a) foreign investment or (b) antitrust, monopolization, restraint of trade or competition, including for the avoidance of doubt, any Antitrust Law (as such term is defined in the Merger Agreement).

"Confidential Information" has the meaning set forth in Section 6.5(c).

"Confidentiality Agreement" means the confidentiality agreement, dated as of November 23, 2022, by and among Buyer, Kettle Seller and Acorn Seller.

"Consent" means any and all consents, approvals, clearances, ratifications, permissions, authorizations or waivers from Third Parties, including from any Governmental Entity and any notice to any Governmental Entity.

"Consent Decree" means that certain Decision and Order before the FTC in connection with the Primary Acquisition.

"Contract" means all legally binding agreements, contracts, leases (whether for real or personal property), purchase orders, letters of credit, guarantees, and commitments, whether written or oral, to which any of the Sellers or their respective Affiliates is a party or by which any of the Sellers or their respective Affiliates or any of the Transferred Assets are bound.

"Controlled Substances Inventory" has the meaning set forth in Section 6.7.

"Controlled Substances Inventory Count" has the meaning set forth in Section 6.7.

"Copyrights" has the meaning set forth in the definition of Intellectual Property set forth in this Section 1.1.

"Covered Benefits" has the meaning set forth in Section 9.1(b).

"CPA" has the meaning set forth in the definition of Privacy Requirements set forth in this Section 1.1.

"Customer" means an individual person or household that, as of the Closing, has purchased products, goods or services from any of the Transferred Supermarkets or Retained Stores.

"Dairy Employees" means those individuals employed by Acorn Seller exclusively or primarily engaged in providing services at Acorn Dairy.

"Dairy Plant Inventory" has the meaning set forth in the definition of Inventory set forth in this Section 1.1.

"Dairy Plant Inventory Book Value" means the net book value of the Dairy Plant Inventory, taking into account any financial reserves therefor maintained by Acorn Seller, calculated consistent with GAAP and Acorn Seller's current and past practices for the twelve (12) months prior to the Closing, and for the avoidance of doubt, excluding any product deemed unsaleable (out of code, short coded, discontinued or obsolete).

"Dairy Plant Inventory Price" means, with respect to Dairy Plant Inventory Book Value as of the Final DC Inventory Date, as adjusted for variances pursuant to Section 2.5(c)(ii).

"Damages" means (a) all damages, settlement amounts, penalties, losses, costs and expenses, and (b) all other Liabilities directly relating to Claims, including, in each case, reasonable and documented out-of-pocket attorneys' fees, court costs, and other actual reasonable and documented out-of-pocket expenses owed to a Third Party as may be reasonably necessary to defend or investigate an Action or a Claim (whether involving a Third Party Claim or a Claim solely between the Parties to enforce the provisions hereof); *provided*, *however*, that Damages shall not include, in each case of clause (a) or (b): incidental, punitive, multiple, indirect, or consequential damages, diminution in value, damages for lost profits, revenue, or income, loss of business reputation or opportunity, or other special damages, in each case, regardless of whether such Damages were reasonably foreseeable, except to the extent awarded by a court to a Third Party pursuant to a Third Party Claim; *provided*, *further*, that Damages shall not include, in each case of clause (a) or (b): internal management, administrative, or overhead costs that a party reasonably incurred in connection with the administration, supervision, or performance of actions taken in response to such Claims.

"Data Room" means the electronic data room for "Project Walnut" maintained by Datasite, as constituted as of the day prior to the A&R Date, containing documents and materials relating to the Transferred Assets.

"DC Inventory Book Value" means the aggregate value of the Distribution Center Inventory (other than any Dairy Plant Inventory) attributable to the Transferred Supermarkets at any given Transferred Distribution Center based on the most recent vendor invoice cost for each item of such Distribution Center Inventory (including freight into such Transferred Distribution Center), *less* applicable vendor allowances for each item of such Distribution Center Inventory.

"DC Inventory Price" means, with respect to any Transferred Distribution Center, the DC Inventory Book Value of the Distribution Center Inventory (other than the Dairy Plant Inventory Book Value of the Dairy Plant Inventory) attributable to the Transferred Supermarkets at such Transferred Distribution Center as of the Final DC Inventory Date, as adjusted for variances pursuant to Section 2.5(c)(ii).

"DC Transfer" has the meaning set forth in Section 2.5(a).

"DC Transition Date" has the meaning set forth in Section 2.5(a).

"DC Transition Notice" has the meaning set forth in Section 2.5(a).

"Deed" has the meaning set forth in Section 3.2(i).

"Denver Owned DC" has the meaning set forth in Schedule 6.12(a).

"Denver Subdivision" has the meaning set forth in Section 6.12(a).

"Disputed Items" has the meaning set forth in Section 2.4(b)(iii).

"Distribution Center Inventory" has the meaning set forth in the definition of Inventory set forth in this Section 1.1.

"Distribution Center Inventory Bill of Sale" means the agreement for the assignment and conveyance to Buyer and/or its designee(s) of all rights of each Seller and each Affiliate of a Seller in, to, and under the Distribution Center Inventory for any particular Transferred Distribution Center, substantially in the form of Exhibit L.

"Distribution Center Leases" means the Acorn Distribution Center Leases.

"District Resource Employees" has the meaning set forth in Section 9.1(a).

"Division Resource Employees" means (a) all individuals employed by Kettle Seller (or one of its controlled Affiliates) exclusively or primarily engaged in supporting the QFC division of Kettle Seller, (b) all individuals employed by Acorn Seller exclusively or primarily engaged in supporting the southwest division of Acorn Seller, (c) all individuals employed by Acorn Seller exclusively or primarily engaged in supporting the Haggen division of Acorn Seller, and (d) all individuals employed by Acorn Seller exclusively or primarily engaged in supporting the Safeway (Denver) division of Acorn Seller.

"Domain Names" has the meaning set forth in the definition of Intellectual Property set forth in this Section 1.1.

"Employees" means (a) all individuals employed by a Seller (or one of its controlled Affiliates) exclusively or primarily engaged in connection with the Transferred Supermarkets or the Transferred Distribution Centers, including (i) the Store Employees, the District Resource Employees and the Dairy Employees and (ii) the Groceryworks.com employees identified on Schedule 1.1(w)-1, (b) all Division Resource Employees, and (c) all Functional Expert Employees in each case, inclusive of those individuals absent from work due to short-term disability, long-term disability, circumstances covered by workers' compensation, military leave, Family and Medical Leave Act leave or other leave of absence, but excluding the individuals set forth or described on Schedule 1.1(w)-2. For the avoidance of doubt, each category identified in clauses (a), (b) and (c) in the prior sentence may not be mutually exclusive.

"Employee Census Information" has the meaning set forth in Section 4.15(a).

"Encumbrance" means any lien, mortgage, security interest, pledge, easement or similar encumbrance.

"Enforceability Exceptions" has the meaning set forth in Section 4.3.

"Enterprise Contract" has the meaning set forth in Section 7.8(a).

"Environmental Laws" means any Law relating to pollution, protection of the environment or natural resources or health and safety (but only as the latter relates to exposure to Hazardous Materials).

"ERISA" means the Employee Retirement Income Security Act of 1974, including the rules and regulations promulgated thereto.

"Estimated Closing Statement" means a written statement delivered pursuant to Section 2.4(a) setting forth Seller's good-faith calculations of the Estimated Store Inventory Adjustment, the Estimated Fuel Inventory Adjustment, and the corresponding Estimated Inventory Adjustments, in each case, as of the Inventory Measurement Time (which shall be prepared in accordance with the Accounting Principles and Inventory Procedures).

"Estimated Fuel Inventory" means the estimate of the Fuel Inventory (in gallons) set forth in the Estimated Closing Statement (as the same may be updated and redelivered in accordance with Section 2.4(a)).

"Estimated Fuel Inventory Adjustment" means the amount, which may be positive or negative, equal to the (a) Estimated Fuel Inventory, *minus* the Target Fuel Inventory, *times* (b) the average cost of Fuel Inventory of the Sellers (calculated as the total Fuel Inventory of the Sellers, in dollars, *divided by* the total Fuel Inventory of the Sellers, in gallons), as of the Inventory Measurement Time.

"Estimated Inventory Adjustments" means (a) the Estimated Store Inventory Adjustment (which may be a negative number), *plus* (b) the Estimated Fuel Inventory Adjustment (which may be a negative number).

"Estimated Store Inventory" means the estimate of the Store Inventory as of the Inventory Measurement Time set forth in the Estimated Closing Statement (as the same may be updated and redelivered in accordance with Section 2.4(a)), calculated as follows: (a) the Books and Records Inventory for Kettle Seller *multiplied by* the Kettle Seller Average Accuracy Factor, *plus* (b) the Books and Records Inventory for Acorn Seller *multiplied by* the Acorn Seller Average Accuracy Factor, *plus* (c) the Final Acorn Perishable Inventory Valuation as set forth in Schedule 2.4.

"Estimated Store Inventory Adjustment" means the amount, which may be positive or negative, equal to (x) if the Estimated Store Inventory exceeds the Target Store Inventory, then the greater of (i) the Estimated Store Inventory, *minus* the Target Store Inventory Upper Threshold, or (ii) zero, and (y) if the Estimated Store Inventory is less than the Target Store Inventory, then the lesser of (i) the Estimated Store Inventory, *minus* the Target Store Inventory Lower Threshold, or (ii) zero.

"Exchange Act" means the Securities Exchange Act of 1934, or any successor federal statute.

"Excluded Assets" means, without duplication, all assets of the Sellers and their respective Affiliates that are not expressly included in the Transferred Assets, including:

(a) any of Sellers' (or its Affiliates') other supermarkets, stores, pharmacies, distribution centers, fuel centers, administrative offices and facilities and all assets or properties located thereon (excluding (i) the Transferred Supermarkets, (ii) the Transferred Distribution Centers, (iii) Transferred Offices, (iv) Acorn Housing and (v) the other Transferred Assets) (collectively, the "Retained Stores");

(b) any asset of Sellers that is (i) not primarily related to the operation of the Transferred Supermarkets and (ii) not primarily related to the operation of the Transferred Distribution Centers, in each case, including, for the avoidance of doubt: (A) all Organizational Documents, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates, and other documents relating to the Sellers' organization, maintenance, existence, and operation of such Seller, (B) all books and records related to (I) Taxes paid or payable by Sellers, (II) any Tax Liabilities (other than the Assumed Liabilities), or (III) any Tax refund, federal and state income Tax deposits or other corporate Tax attributes, (C) all books and records related to any Excluded Liabilities, (D) all books and records related to: (I) any insurance policies and (II) historical financial information (excluding any such information included in the Transferred Data), and (E) all Personnel Records related to the Retained Employees (items (A) through (E) collectively, the "Excluded Records");

(c) capital stock of Sellers or any of Sellers' Affiliates;

(d) all cash, checks, money orders, funds in time and demand deposits or similar accounts, marketable securities, short-term investments, and other cash equivalents and liquid investments, in each case, of the Sellers (other than the Cash in Drawers on the Closing Date);

(e) all licenses, permits, franchises, approvals, authorizations, clearances, certifications, or similar rights issued, granted, or given by, any Governmental Entity or pursuant to any Law owned, held, or held for use by any Seller or its Affiliates (other than the Transferred Permits);

(f) subject to the assignment of insurance proceeds to Buyer pursuant to Section 7.2, all insurance policies and binders and all rights thereunder, including all rights to recoveries, refunds, and credits and to make claims thereunder;

(g) all of Sellers' (or its Affiliates') rights under this Agreement or any other Transaction Document;

(h) the Excluded Contracts, all Contracts other than the Transferred Contracts, and all of Sellers' rights under any Contracts primarily related to any Excluded Asset;

(i) any other rebate, payment, reimbursement, or refund arising from the operation of any Transferred Supermarket (or their business) prior to the Closing;

(j) all of Sellers' automobiles, trucks, tractors, and trailers (other than the Transferred Vehicles);

(k) all (i) Seller Names, the Seller Retained Banners, the Seller Retained Private Labels, and the Seller Retained Recipes and (ii) any other Intellectual Property owned or controlled by Sellers or any of their Affiliates which is not Transferred Intellectual Property (clauses (i) and (ii), collectively, "Excluded Intellectual Property"), in each case of clauses

(i) and (ii), subject to the rights granted to Buyer and its Affiliates in Section 7.4 and in each of the Trademark License Agreements;

(l) all leased equipment located at or in or used in the Transferred Supermarkets or Transferred Distribution Centers, as applicable, and all leased in-store processors, front-end systems, point-of-sale-systems (including self-checkout equipment), credit card readers, computers, computer equipment, hardware, software, peripherals, pin pads, direct access storage devices, and electronic funds transfer devices (including, for the avoidance of doubt, all Coinstar, Redbox, ATM, vending, lottery, and other similar machines); *provided*, *however*, that the applicable lease of such equipment, to the extent not an Enterprise Contract, and to the extent assignable, shall be a Transferred Contract; *provided*, *further*, that to the extent such lease of such equipment is an Enterprise Contract or is not assignable, such lease shall be addressed as set forth in Section 2.8 or Section 7.8, as applicable;

(m) any assets of, or other funding vehicle related to, a Seller Benefit Plan and any Contract related thereto;

(n) any (i) books and records that Sellers are required by Law to retain the original copies thereof, that primarily relate to the Excluded Liabilities or any other Excluded Asset; *provided*, *however*, that Buyer shall have the right, at its sole expense, to upon written request, upon reasonable advance notice to Kettle Seller, (A) receive electronic copies of any such retained books and records that are in electronic form (and only in the format that such books and records are then in), and (B) make copies of any portions of such retained books and records that are in physical form, in each case, to the extent related to the Transferred Assets or Assumed Liabilities; *provided*, *further*, that to the extent Buyer makes more than one request for information in this clause (n)(i) and solely to the extent such information has been previously provided by Sellers, then any subsequent requests for such information shall be at Buyer's cost and expense, and (ii) information management systems of Sellers;

(o) all (i) inventory of Sellers other than the Store Inventory or the Distribution Center Inventory, and (ii) items set forth on Schedule 1.1(o) (the items in this clause (o), collectively, the "Excluded Inventory");

(p) all assets, furniture, fixtures, or equipment of any Third Party tenants or subtenants under the Retail Leases located at, or in, the Transferred Supermarkets or Transferred Distribution Centers, as applicable;

(q) all claims, counterclaims, defenses, causes of action, demands, judgments, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind against any Third Party, to the extent relating to the Transferred Assets or Assumed Liabilities in connection with events occurring on or prior to the Closing (other than any Proceeds explicitly contemplated to be transferred to Buyer under this Agreement);

(r) all claims, counterclaims, defenses, causes of action, demands, judgments, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind

against any Third Party, to the extent relating to any Excluded Liabilities or the Excluded Assets;

(s) subject to any access rights pursuant to Section 7.7, all Customer data and information, apart from that which is expressly included in the Transferred Customer Data;

(t) any refund or credit of any Tax that is an Excluded Liability or any Taxes for which any Seller is responsible;

(u) all provider agreements for Medicare and Medicaid programs, including all applicable provider numbers;

(v) all accounts receivable, notes receivable, and other indebtedness due and owed by any Third Party to any of the Sellers or their respective Affiliates arising from, or held in connection with, the operation of the Transferred Supermarkets or Transferred Distribution Centers by or on behalf of the Sellers or any of their respective Affiliates, determined as of the Measurement Time; and

(w) the matters, employees, or items set forth on Schedule 1.1(w).

"Excluded Contracts" means the Contracts set forth on Schedule 1.1(h).

"Excluded Intellectual Property" has the meaning set forth in the definition of Excluded Assets set forth in this Section 1.1.

"Excluded Inventory" has the meaning set forth in the definition of Excluded Assets set forth in this Section 1.1.

"Excluded Liabilities" means the following Liabilities of the Sellers and their Affiliates arising from, related to, or in connection with:

(a) the Excluded Assets;

(b) all Liabilities to the extent arising out of any defaults or breaches by the Sellers or any of their respective Affiliates under the Transferred Contracts, Transferred Leases, Transferred Recorded Leases, or Retail Leases occurring prior to the Closing Date (other than any Liabilities in respect of the matters set forth on Schedule 2.2);

(c) except to the extent such Liabilities constitute Assumed Liabilities, all Liabilities arising out of or relating to any Action, regardless of when commenced or made and irrespective of the legal theory asserted, arising out of, or relating to, any Transferred Asset, to the extent relating to actions taken or omissions by any of the Sellers or any of their respective Affiliates prior to the Closing Date; *provided*, *however*, that for the avoidance of doubt any Liabilities with respect to Environmental Law, Hazardous Materials, or other environmental matters are exclusively addressed in clause (d) of this definition;

(d) except to the extent such Liabilities constitute Assumed Liabilities, all Liabilities relating to any Environmental Law arising out of Seller's ownership or operation of the Transferred Assets prior to the Closing Date including to the extent relating to (i) Seller noncompliance with any Environmental Laws, (ii) the release or presence of Hazardous Materials at any location to which the Sellers or any of their respective Affiliates sent or arranged to send Hazardous Materials or waste for disposal or recycling, (iii) the release of Hazardous Materials at or from any Transferred Asset prior to the Closing at concentrations requiring remediation under Environmental Laws, but excluding any Liabilities associated with Hazardous Materials migrating after the Closing Date onto a Transferred Asset unrelated to Seller's operations at such Transferred Asset;

(e) subject to the allocation and proration provisions of Article VIII, all Liabilities relating to Taxes with respect to any of the Transferred Assets, in respect of taxable periods, or portions thereof, ending before the Closing Date (including, for the avoidance of doubt, any Taxes (including Transfer Taxes) resulting from any sale or other transfer described in Section 6.1(c), but excluding (i) any Taxes that are subject to Lease Prorations under Section 2.6 and (ii) Transfer Taxes that are to be borne by Buyer as set forth in Section 8.1), and all Liabilities for income Taxes of Sellers;

(f) (i) any Seller Benefit Plan and all Liabilities related thereto, (ii) all Liabilities arising out of, relating to, or in connection with any Participating Multiemployer Plan (other than Liabilities relating to Buyer's obligations under Section 9.2 respecting Schedule 9.2 Participating MEPPs), or any other Multiemployer Plans to which each Seller (or any of its controlled Affiliates) contributes, other than any Liabilities incurred by Buyer or its Affiliates arising out of and directly related to their participation in any Participating Multiemployer Plan, (iii) the employment or engagement (or termination thereof) of any Retained Employees, Former Employees or other current or former employees, contractors, consultants, officers, directors, or other service providers of the Sellers or their Affiliates, regardless of when arising and all Liabilities related thereto, (iv) Transferred Employees and their dependents and beneficiaries arising out of, or relating to, the Transferred Assets prior to the Closing and all Liabilities related thereto, except in each case, for any such Liabilities expressly described as being assumed by Buyer in Section 9.1;

(g) all accounts payable, notes payable and other indebtedness owed or incurred by any of the Sellers or their respective Affiliates to any Third Party arising from, or owed in connection with, the Transferred Assets, including Inventory, by or on behalf of the Sellers or any of their respective Affiliates, as of the Measurement Time; and

(h) any transaction expenses of the Sellers or obligations in respect of change of control arrangements, transaction bonuses, retention payments, severance payments and similar obligations which vest or become payable to any Employee at or prior to the Closing.

"Excluded Records" has the meaning set forth in the definition of Excluded Assets set forth in this Section 1.1.

"Exclusive Customer Transferred Data" means all Transferred Data that exclusively relates (as determined based on information reasonably available to Sellers in the eight (8) weeks prior to the Closing) to the Transferred Assets, regardless of when such Transferred Data is generated, including, for the avoidance of doubt, Transferred Customer Data that relates to those Customers that have exclusively shopped (whether physically or through e-commerce channels) at Transferred Supermarkets in the 36 months prior to the Closing.

"Final Assumed Time-Off Balance" has the meaning set forth in Section 9.1(g).

"Final Closing Statement" means the Post-Closing Statement that is deemed final in accordance with Section 2.4(b)(ii) or the Post-Closing Statement resulting from the determinations made by the Accountant in accordance with Section 2.4(b)(v), as applicable.

"Final DC Inventory Date" has the meaning set forth in Section 2.5(c)(ii).

"Financing" has the meaning set forth in Section 6.11(a).

"Financing Commitment Deadline" has the meaning set forth in Section 6.11(a).

"Financing Commitments" has the meaning set forth in Section 6.11(a).

"Financing Information" means all information with respect to the business, operations, financial condition, projections and prospects of the Transferred Assets and Assumed Liabilities as may be reasonably required by the Financing Parties, including (a) written store level profits and losses for the Transferred Supermarkets and the Transferred Distribution Centers prepared in good faith using substantially the same accounting methods, practices, principles, policies, and procedures used in the preparation of such sales figures for prior periods in the ordinary course of business, (b) such other information as is reasonably necessary for the preparation of a quality of earnings with respect to the Transferred Assets, and (c) documentation and other information with respect to the Transferred Assets that is required in connection with any financing by U.S. regulatory authorities and under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, in each case, to the extent that such information is reasonably required in connection with any financing or of the type customarily reasonably required for financings contemplated by Section 6.11.

"Financing Parties" has the meaning set forth in Section 6.11(b)(i).

"Former Employee" means any individual who was employed by a Seller (or one of its controlled Affiliates) exclusively or primarily engaged in connection with (i) the Transferred Supermarkets, the Transferred Distribution Centers or the Acorn Dairy, (ii) supporting the QFC division of Kettle Seller, (iii) supporting the southwest division of Acorn Seller, (iv) supporting the Haggen division of Acorn Seller, or (v) supporting the Safeway (Denver) division of Acorn Seller, and, in each case of the foregoing clauses (i) through (v), any such individual whose employment therewith terminated prior to the Closing Date.

"Forward-Looking Statements" has the meaning set forth in Section 5.10(c).

"Foundational Work Information Period" has the meaning set forth in Section 7.12(b).

"Foundational Work Vendor Details" has the meaning set forth in Section 7.12(b).

"Fraud" means with respect to any Party, the actual and intentional fraud which constitutes common law fraud under the Laws of the State of Delaware (and not a negligent misrepresentation or omission, or any form of fraud premised on negligence or recklessness) by such Party in respect of the making of representations and warranties pursuant to Article IV (in the case of a Seller) or Article V (in the case of Buyer).

"FTC" means the U.S. Federal Trade Commission or any successor entity thereto.

"FTC Order" means any proposed final judgment the FTC may file, with Sellers' consent as to its contents, in a court of law or equity or pursuant to the FTC's administrative process in connection with the Transactions and the Primary Acquisition, contemplating the sale of Transferred Assets to Buyer as contemplated by this Agreement.

"Fuel Inventory" has the meaning set forth in the definition of Inventory set forth in this Section 1.1.

"Fuel Rewards Program" means any fuel rewards program of Acorn Seller or Kettle Seller pursuant to which customers may accrue rebates or rewards and which may be redeemed at a Transferred Fuel Center.

"Functional Expert Employees" has the meaning set forth in Section 9.1(a).

"Fundamental Representations" means (a) with respect to each Seller, the representations in Section 4.1 (*Organization and Qualification*), Section 4.2 (*Authority*), Section 4.3 (*Binding Effect*), and Section 4.20 (*Brokers*), and (b) with respect to Buyer, the representations in Section 5.1 (*Organization and Qualification*), Section 5.2 (*Authority*), Section 5.3 (*Binding Effect*), and Section 5.9 (*Brokers*).

"GAAP" means U.S. generally accepted accounting principles.

"Gambling Licenses" has the meaning set forth in Section 2.8(b).

"Governmental Entity" means any United States or foreign federal, state, local, or provincial government or other political subdivision thereof, any entity, authority, body, agency, securities exchange, or commission exercising executive, legislative, judicial, regulatory, self-regulatory, or administrative functions of any such government or political subdivision, any court, tribunal, commission, board or judicial or arbitral body of competent jurisdiction, and any supranational organization of sovereign status exercising such functions for such sovereign states.

"Hazardous Materials" means any substance or waste regulated under any Environmental Law as "hazardous," "toxic," a "pollutant," a "contaminant," or words of similar meaning and regulatory effect, and including, without limitation, petroleum compounds, toxic mold, perfluoroalkyl and polyfluoroalkyl substances, asbestos and asbestos-containing materials, and polychlorinated biphenyls.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921 et seq.).

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

"HT Pension Plan" has the meaning set forth in Section 9.5.

"Identifies" or "Identified" or "Identification" has the meaning set forth in Section 7.1(b).

"Inactive Employee" has the meaning set forth in Section 9.1(c).

"Indemnification Claim" has the meaning set forth in Section 12.6(a).

"Indemnified Party" has the meaning set forth in Section 12.6(a).

"Indemnifying Party" has the meaning set forth in Section 12.6(a).

"Indemnity Deductible" has the meaning set forth in Section 12.4(a)(ii).

"Intellectual Property" means all rights worldwide in and to (a) all patents (including design patents and utility models), patent applications, registrations and invention disclosures, including any provisionals, continuations, continuations-in-part, divisionals, substitutions, revisions, renewals, reissues, extensions and reexaminations thereof (collectively, "Patents"), (b) all trademarks, service marks, trade dress, trade names, service names, brand names, logos, social media accounts, corporate names and other identifiers of origin, together with the common law rights and goodwill associated with any of the foregoing, and all applications, registrations, applications and renewals thereof (collectively, "Trademarks"), (c) Internet domain names, uniform resource locators and all registrations for any of the foregoing (collectively, "Domain Names"), (d) published and unpublished works of authorship (including data, databases, and other compilations of information), together with all copyrights therein and thereto, registrations and applications therefor, and any renewals, extensions and reversions thereof, and the common law rights and moral rights associated with the foregoing ("Copyrights"), (e) trade secrets, know-how and other confidential or proprietary information (collectively, "Trade Secrets"), (f) rights to software and technology, (g) social media, profiles, accounts, and handles, including those made available through Facebook, Twitter, X, Instagram, Threads, SnapChat, TikTok and other and similar platforms, and (h) all other proprietary or other intellectual property rights.

"Inventory" means (a) fuel inventory owned by such Seller and located at the Kettle Fuel Center or Acorn Fuel Center, as applicable (the "Fuel Inventory"), (b) all inventory, including private label inventory and supplies, and including pharmacy inventory and all prescription drugs, in each case owned by such Seller (the "Pharmacy Inventory"), located at the Acorn Supermarkets or the Kettle Supermarkets, as applicable (the "Store Inventory"), and (c) all inventory owned by such Seller, including private label inventory and supplies (including containers, labels and packaging items), located at the Acorn Distribution Centers, as applicable, as well as finished saleable inventory, Work-in-Process (WIP) inventory, and raw material and packaging inventory located at the Acorn Dairy (the "Dairy Plant Inventory" and, clause (c), collectively, the "Distribution Center Inventory"), in each case of the foregoing clauses (a) through (c), as

determined in accordance with the Accounting Principles, the Inventory Procedures (in the case of Store Inventory and Fuel Inventory), and pursuant to this Agreement.

"Inventory Measurement Time" means 11:59 p.m. (Eastern Time) on the Saturday immediately preceding the Closing Date.

"Inventory Procedures" means the methods, policies, principles, practices, bases, and procedures set forth in Schedule 2.4 and, with respect to Controlled Substances Inventory, Section 6.7.

"IP Assignment Agreement" means that certain Intellectual Property Assignment and Assumption Agreement to be made and entered into in connection with the Closing of the Transactions, by and among Kettle Seller, Acorn Seller and Buyer in the form substantially set forth in Exhibit G.

"IRS" means the Internal Revenue Service or any successor entity thereto.

"IT Assets" means all computer systems, technology devices, servers, workstations, networks, routers, hubs, switches, data communications lines, hardware, software and all other information technology equipment, and all associated documentation thereto.

"Joint Retail Lease" means those certain Retail Leases which relate to both the Excluded Assets and the Transferred Assets.

"Kettle Fuel Centers" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Leased Fuel Centers" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Leased Stores" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Leases" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Office" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Office Lease" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Owned Fuel Centers" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Owned Stores" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Real Property Leases" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Recorded Leased Stores" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Recorded Leases" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Registered Intellectual Property" has the meaning set forth in the definition of Kettle Transferred Assets set forth in this Section 1.1.

"Kettle Seller" has the meaning set forth in the Preamble.

"Kettle Seller Average Accuracy Factor" has the meaning set forth in Schedule 2.4.

"Kettle Supermarkets" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Transferred Contracts" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Transferred Customer Data" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Transferred Data" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Transferred Intellectual Property" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Kettle Transferred IT Assets" has the meaning set forth in the definition of Transferred Kettle Assets set forth in this Section 1.1.

"Law" means any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, Order, regulation, ruling, treaty or requirement issued, enacted, adopted, promulgated, implemented, or otherwise put into effect by or under, the authority of any Governmental Entity.

"Lease Assignment" means the lease assignment and assumption agreement with respect to each of the Transferred Leases, to be entered into between one or more of Kettle Seller or its Affiliates, as applicable, and Buyer, on the Closing Date, substantially in the form of Exhibit D.

"Lease Proration Schedule" has the meaning set forth in Section 2.6(b).

"Lease Prorations" has the meaning set forth in Section 2.6(a).

"Leased Real Property" has the meaning set forth in Section 4.13(a).

"Leave" means absence from work on account of sickness, short- or long-term disability, workers' compensation leave, military leave, pregnancy or maternity leave, paternity leave, parental leave, or any other statutory leave (including, but not limited to, under the Family Medical Leave Act or such other applicable employment legislation) or other approved leave of absence or for whom an obligation to recall, rehire, or otherwise return to employment exists under a contractual obligation or Law.

"Liability" means, with respect to any Person, any liability, indebtedness, or obligation of or by such Person of any type, whether accrued, absolute, asserted, un-asserted, billed, unbilled, contingent, due or become due, matured, unmatured, liquidated, unliquidated, known, or unknown.

"Licensed Intellectual Property" means the Intellectual Property licensed by any Sellers or their respective Affiliates to Buyer (a) pursuant to the Trademark License Agreements, and (b) pursuant to Section 7.4.

"Look Back Date" means the date that is three (3) years prior to the Original Execution Date.

"Made Available Employees" has the meaning set forth in Section 9.1(n).

"Mandatory Cure Items" means, if and to the extent still existing as of the Closing, (a) mortgages, deeds of trust, collateral assignments of leases and rents, Uniform Commercial Code financing statements and other liens and encumbrances to secure debt; (b) monetary liens encumbering the Property or any portion thereof which are in favor of or for the benefit of any Affiliate of any Seller; (c) any violation of the requirements (including any zoning, building, health, safety, fire or other code or regulation) of any state, county, municipality or other governing body that would prohibit, or would be reasonably likely to prohibit, Buyer's ability to operate the applicable Property for its current use (including by preventing or posing a material impediment to Buyer's ability to obtain any license, permit or other approval necessary for such operation following the Closing); and (d) all other monetary encumbrances and liens encumbering the Property caused or created by a Seller or any person claiming by, through or under a Seller which are in liquidated amounts and which may be satisfied solely by the payment of money (including the preparation or filing of appropriate satisfaction instruments in connection therewith) unless such amounts are being taken into account in determining the Purchase Price pursuant to Section 2.3 or Section 2.6.

"Marked Materials" has the meaning set forth in Section 7.4(a).

"Material Adverse Effect" means any event, occurrence, effect, matter, change, development or state of facts that is materially adverse to the Transferred Assets and Assumed Liabilities, taken as a whole; *provided*, *however*, that, none of the following shall be deemed, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Effect: (a) changes or conditions affecting the retail grocery industry generally; (b) general business, economic, regulatory, political, financial, congressional appropriation, or market conditions in the United States or elsewhere in the world; (c) any generally applicable change in Law, in GAAP (or other accounting rules), or in the interpretation of any of the foregoing, and any

actions taken to comply with any such changes; (d) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (e) the disruption of or, in financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index or the debt markets); (f) any epidemic, pandemic, or other outbreak of illness, including as a result of the COVID-19 virus (or variant thereof) or other virus, illness, or disease, or any actions by a Governmental Entity related to the foregoing items in this clause (f); (g) any outbreak of any military conflict, declared or undeclared war, armed hostilities, or acts of foreign or domestic terrorism (including cyber-terrorism); (h) the failure to meet internal or published projections, forecasts, estimates, milestones or budgets, or other measures of financial or operating performance, including any change in the market price or trading volume of the stock of either Seller (for the avoidance of doubt, any underlying cause for any such failure shall not be excluded by this clause (h)); (i) the announcement or pendency of the Transactions or any action required to be taken by any of the Sellers pursuant to the express terms of this Agreement, and the impact thereof on relationships, contractual or otherwise, with customers, suppliers, vendors, lenders, investors, licensors, licensees, venture partners or employees; (j) the identity of, or any facts or circumstances relating to Buyer or its respective Affiliates, including, in any such case, the impact thereof on relationships, contractual or otherwise, with customers, suppliers, vendors, lenders, investors, licensors, licensees, venture partners or employees; (k) any litigation or other Action brought in connection with this Agreement, the Merger Agreement or any of the Transactions or the Primary Acquisition; (l) any acts of omissions by Buyer or any of its Affiliates; or (m) any Excluded Asset or Excluded Liability; *provided*, *however*, that with respect to the foregoing clauses (a) through (g), such event, occurrence, effect, matter, change, development or state of facts shall be taken into account in determining whether a Material Adverse Effect has or is occurring to the extent it has a disproportionate effect on the Transferred Assets and the Assumed Liabilities, taken as a whole, when compared to other participants or assets in the retail grocery industry.

"Measurement Time" means 11:59 p.m. Eastern Time on the day immediately prior to the Closing Date.

"Merger Agreement" has the meaning set forth in the Recitals.

"Minimum Cash Amount" has the meaning set forth in Section 6.9.

"Multiemployer Plan" means a multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA.

"Non-Governmental Consents" means those consents, approvals, waivers, authorizations, or filings set forth on Schedule 4.4(b).

"Nonassigned Asset" has the meaning set forth in Section 2.8(a).

"Nonassigned Lease" has the meaning set forth in Section 2.8(a).

"Notice of Objection" has the meaning set forth in Section 2.4(b)(ii).

"Offer Employees" has the meaning set forth in Section 9.1(b).

"Offering Documentation" has the meaning set forth in Section 6.11(b)(iii).

"Operating Licenses" has the meaning set forth in Section 2.8(b).

"Order" means any judgment, decision, decree, consent decree, writ, injunction, ruling or order of any Governmental Entity that is binding on any Person or its property under applicable Laws.

"Organizational Documents" means, as to any Person, its certificate of incorporation and by-laws, its certificate of formation and limited liability company agreement, partnership agreement, or limited partnership agreement, or any equivalent documents under the Law of such Person's jurisdiction of organization.

"Original Asset Purchase Agreement" has the meaning set forth in the Preamble.

"Original Execution Date" has the meaning set forth in the Preamble.

"Outside Completion Date" has the meaning set forth in Section 6.12(b).

"Overall Indemnity Cap" has the meaning set forth in Section 12.4(b).

"Owned Real Property" has the meaning set forth in Section 4.13(b).

"Participating Multiemployer Plan" has the meaning set forth in Section 4.16(e).

"Party" or "Parties" has the meaning set forth in the Preamble.

"Patents" has the meaning set forth in the definition of Intellectual Property set forth in this Section 1.1.

"PBM Contracts" means those Contracts entered into with a pharmacy benefit manager.

"Per Claim Amount" has the meaning set forth in Section 12.4(a)(i).

"Permits" means all licenses, permits, franchises, approvals, authorizations, clearances, certifications, or similar rights issued, granted, or given by, any Governmental Entity or pursuant to any Law, in each case, that is necessary for the ownership of the Transferred Assets.

"Permitted Encumbrance" means: (a) statutory liens arising out of operation of Law with respect to a Liability incurred in the ordinary course of business; (b) Encumbrances arising out of or imposed in the ordinary course of business consistent with past practice pursuant to Laws applicable to the retail grocery industry in any territory where the Transferred Supermarkets are located; (c) Encumbrances for Taxes, assessments and other governmental charges not yet due, payable or delinquent; (d) with respect to the Transferred Contracts, Transferred Leases, Transferred Recorded Leases and Retail Leases, the express terms and conditions set forth in the Transferred Contracts, Transferred Leases, Transferred Recorded Leases and Retail Leases; (e) landlords', lessors', merchants', materialmen's, warehousemen's, carriers', workers', or repairmen's Encumbrances or similar Encumbrances arising or incurred in the ordinary course of

business; (f) with respect to Transferred Supermarkets or Transferred Distribution Centers, as applicable, Encumbrances, including easements, covenants, conditions and restrictions, memoranda of leases or other items of record, in each case, that (i) are shown on any title reports or commitments (A) (x) made available to Buyer prior to March 25, 2024, or (y) which are for Transferred Distribution Centers and made available to Buyer prior to the A&R Date, or (B) (x) made available to Buyer prior to the A&R Date, or (y) that have been ordered, but not yet received, by Sellers prior to the A&R Date, which reports or commitments will be made available to Buyer by Sellers as soon as practicable upon receipt from the Title Company and that, in each case of clause (B)(x) or (B)(y), also appear on the title policies currently held by the applicable Seller (or affiliate thereof that holds fee or leasehold title to the applicable Transferred Supermarket or Transferred Distribution Center) with respect to the Transferred Supermarket or Transferred Distribution Center in question, or (ii) arising after the A&R Date as a result of actions by Sellers and their respective Affiliates that are permitted or required of them by the terms of this Agreement during the period between the A&R Date and the Closing Date; (g) any right, interest, Encumbrance, or title of a lessor or sublessor under any lease or similar agreement, in the property being leased; (h) non-exclusive licenses, covenants or other rights to or under or sublicenses of Intellectual Property; (i) imperfections or irregularities in the chain of title for Intellectual Property evident from the records of the applicable Governmental Entity maintaining the applications or registrations thereof; (j) Encumbrances that will be discharged prior to Closing; (k) any Encumbrances set forth on Schedule 1.1(b); and (l) other minor imperfections of title or Encumbrances, if any, that, individually and in the aggregate, do not impair, and are not reasonably likely to impair, in any material respect, the value, financeability or continued use and operation of the Transferred Assets to which they relate; provided, that in no event shall a Mandatory Cure Item constitute a Permitted Encumbrance unless Sellers shall have satisfied their requirements in respect thereof as set out in Section 7.10.

"Person" means any person or entity, whether an individual, trustee, corporation, limited liability company, general partnership, limited partnership, trust, unincorporated organization, business association, firm, joint venture or Governmental Entity.

"Personal Information" means any and all information held by the Sellers or their respective Affiliates that (a) identifies or could be used to identify an individual person, or (b) that constitutes "personal information," "personal data," "personally identifiable information," "PII" or any similar term as defined or otherwise protected under applicable Laws relating to privacy and data protection.

"Personnel Records" means any record kept by Kettle Seller or Acorn Seller in the ordinary course of business with respect to individual employees in their capacities as employees, including records used to identify such individual employee and records related to such individual employee's performance, promotion, transfer, compensation, or disciplinary action.

"Pharmacy Inventory" has the meaning set forth in the definition of Inventory set forth in this Section 1.1.

"Pharmacy Licenses" has the meaning set forth in Section 4.19.

"Post-Closing Adjustment Amount" means the amount, which may be positive or negative, equal to the sum of (a) the Store Inventory (as determined and set forth in the Final Closing Statement), *minus* the Estimated Store Inventory, *plus* (b) the Fuel Inventory (as determined and set forth in the Final Closing Statement), *minus* the Estimated Fuel Inventory.

"Post-Closing Statement" means the written statement delivered pursuant to Section 2.4(b)(i) setting forth Buyer's good-faith calculations of the Store Inventory, Fuel Inventory and the corresponding Post-Closing Adjustment Amount, in each case, as of the Inventory Measurement Time (which shall be prepared in accordance with the Accounting Principles and Inventory Procedures).

"Pre-Approved Counsel" means (a) in the case of Kettle Seller, Weil, Gotshal & Manges LLP ("Weil") and (b) in the case of Buyer, Sullivan & Cromwell LLP ("S&C").

"Pre-Closing Bonus Amount" has the meaning set forth in Section 9.1(f).

"Primary Acquisition" has the meaning set forth in the Recitals.

"Primary Acquisition Closing" means the consummation of the Primary Acquisition.

"Privacy Requirements" means any and all (a) Laws (including the California Consumer Privacy Act (as amended by the California Privacy Rights (the "CCPA"), the Colorado Privacy Act and its implementing regulations (the "CPA"), the Utah Consumer Privacy Act (the "UCPA"), the Virginia Consumer Data Protection Act (the "VCDPA"), and the Washington My Health My Data Act (the "WMHMDA")), legal requirements and self-regulatory guidelines applicable to the Transferred Assets relating to the Processing of any Personal Information included in the Transferred Assets ("Privacy Laws") and (b) company policies (internal or external), and (c) contractual obligations, in each case, relating to the Processing of any Personal Information included in the Transferred Assets.

"Proceeds" has the meaning set forth in Section 2.9(b).

"Process" or "Processing" means the receipt, collection, compilation, use, storage, processing, sharing, safeguarding, security (technical, physical, or administrative), disposal, destruction, disclosure or transfer (including cross-border) of any data, including Personal Information.

"Profit and Loss Statements" has the meaning set forth in Section 4.6(a).

"Property" means, individually and collectively, as applicable, any Acorn Supermarket, Acorn Distribution Center (including the Acorn Dairy), Acorn Office, Acorn Housing, Kettle Office, or Kettle Supermarket.

"Property-Specific Materials" has the meaning set forth in Section 3.3.

"Proration Overpayment" has the meaning set forth in Section 2.6(b).

"Proration Period" has the meaning set forth in Section 8.2.

"Proration Underpayment" has the meaning set forth in Section 2.6(b).

"Protected Health Information" means all individually identifiable health information in any form or media, as defined by HIPAA and its implementing regulations as of the date hereof.

"Purchase Price" has the meaning set forth in Section 2.3.

"Qualifying Offer" has the meaning set forth in Section 9.1(b).

"R&W Cap Amount" has the meaning set forth in Section 12.4(b).

"Recipe Lookback Period" means the period from September 8, 2023 until the Closing.

"Recorded Lease Assignment" means the lease assignment and assumption agreement with respect to each of the Transferred Recorded Leases, to be entered into between one or more of Kettle Seller or its Affiliates, as applicable, and Buyer, on the Closing Date, substantially in the form of Exhibit F.

"Registered" means issued by, registered with, renewed by or the subject of a pending application before any Governmental Entity, Internet domain name registrar or social media platform, including Facebook, Twitter, X, Instagram, Threads, SnapChat, TikTok, and other similar platforms.

"Related Parties" has the meaning set forth in Section 13.14.

"Representatives" means, with respect to any Person, any (a) Affiliate or (b) director, officer, member, manager, trustee, employee, equity holder, advisor (legal, financial, or otherwise), agent, or similar representative of such Person or any of such Person's Affiliates, and with respect to both clauses (a) and (b), each of their respective predecessors, successors, and permitted assigns.

"Required Estoppels" has the meaning set forth in Section 6.11(d)(ii).

"Required Regulatory Approvals" means those consents, notices, approvals, waivers, authorizations, or filings, set forth on Schedule 4.4(a).

"Retail CAM Reconciliation" has the meaning set forth in Section 2.6(a)(iii).

"Retail Lease Assignment" means the lease assignment and assumption agreement with respect to the Store Specific Retail Leases and any Joint Retail Lease that primarily relates to the Transferred Assets, to be entered into between one or more of Kettle Seller or its Affiliates, as applicable, and Buyer, on the Closing Date, substantially in the form of Exhibit E (it being understood and agreed that, for all purposes hereof, a Joint Retail Lease will be considered primarily related to Transferred Assets if more than 50% of the retail occupancies covered by the Joint Retail Lease are located at Transferred Assets and will be considered primarily related to Excluded Assets if 50% or more of the retail occupancies covered by the Joint Retail Lease are located at Excluded Assets).

"Retail Lease Rent Roll" has the meaning set forth in Section 4.13(c).

"Retail Leases" means all leases of real property where the applicable Seller is a lessor or sublessor.

"Retained Bakery" has the meaning set forth in Section 6.12(a).

"Retained Employee" shall mean any individual employed by a Seller that is not a Transferred Employee.

"Retained Stores" has the meaning set forth in the definition of Excluded Assets in this Section 1.1.

"Reverse Transition Services Agreement" means that certain Reverse Transition Services Agreement, made and entered into in connection with the Closing of the Transactions, by and among Kettle Seller and Buyer in the form substantially set forth in Exhibit K.

"Review Period" has the meaning set forth in Section 2.4(b)(ii).

"Safeway Pension Plan" has the meaning set forth in Section 9.4.

"Safeway Trademark License Agreement" means the intellectual property license agreement substantially in the form of Exhibit J.

"Schedule 9.2 Participating MEPPs" has the meaning set forth in Section 9.2(a).

"Schedule 9.2 Participating MEPP Buyer Indemnified Matters" has the meaning set forth in Section 9.2(e).

"Schedules" has the meaning set forth in Section 1.2(g).

"Security Incident" means any actual or suspected unauthorized access to, or acquisition, modification, use, destruction, loss or disclosure of any Personal Information that is included in the Transferred Assets or IT Assets material to the operation of the Transferred Supermarkets, Transferred Distribution Centers or Transferred Offices, in each case, maintained by or on behalf of any of the Sellers or their respective Affiliates.

"Seller" and "Sellers" have the meanings set forth in the Preamble.

"Seller 401(k) Plan" has the meaning set forth in Section 9.1(l).

"Seller Banner Transition Period" means the period starting from the Closing Date until the date that is eighteen (18) months following the Closing Date; *provided*, *however*, that prior to the end of such eighteen (18) month period, Sellers may extend such period for an additional period of six (6) months by delivering written notice of such six (6) month extension to Buyer; *provided*, *further*, that prior to the end of such six (6) month extension period, Sellers may extend such first extension period for two additional periods of six (6) months by delivering written notice of each such six (6) month extension to Buyer, and only if during such second and third extension term

Sellers use a Variation (as defined in the Trademark License Agreements, such Variation subject to Buyer's consent not to be unreasonably withheld, conditioned or delayed). Without limiting the foregoing, Seller may, but is not obligated to, use the following Variations without further consent from Buyer: "[Transferred Banner] by [Seller Retained Banner]" (*e.g.*, "Mariano's by JewelOsco" or "QFC by Safeway"), in each case, except for Variations containing or confusingly similar to "Albertsons" or "Safeway" in the applicable Territory (as defined in the Trademark License Agreements, respectively) covered by the exclusive license granted to Buyer under the applicable Trademark License Agreements.

"Seller Benefit Plan" has the meaning set forth in Section 4.16(a).

"Seller Indemnitee" has the meaning set forth in Section 12.3(a).

"Seller Names" means the Trademarks (whether or not registered) and Domain Names, or any Trademarks confusingly similar to any of the foregoing, owned by any of the Sellers or their respective Affiliates, in each case, other than any Trademarks or Domain Names specifically included in the Transferred Intellectual Property (including in the Transferred Banners or the Transferred Private Labels).

"Seller Releasee" has the meaning set forth in Section 13.15(d).

"Seller Releasor" has the meaning set forth in Section 13.15(d).

"Seller Retained Banners" means the banners owned by Sellers and their respective Affiliates, associated marketing materials and collateral (including any such websites and the content hosted on such websites), and all Intellectual Property embodied in the foregoing, excluding, for the avoidance of doubt, the Transferred Banners.

"Seller Retained Private Labels" means the private labels owned by Sellers and their respective Affiliates, associated marketing materials and collateral (including any such websites and the content hosted on such websites), and all Intellectual Property embodied in the foregoing, excluding, for the avoidance of doubt, the Transferred Private Labels.

"Seller Retained Recipes" means (a) the recipes, formulations and other instructions for preparing or cooking a particular food product (including the description and measure of ingredients required for such preparation or cooking, and the methods of combining and processing such ingredients), in each case, that are owned by any Seller or any of its Affiliates as of the Closing, and (b) all Intellectual Property owned by any Seller or any of its Affiliates in and to any of the foregoing in clause (a).

"Seller Retained Licensed Recipes" means the Seller Retained Recipes that are or were used by Sellers or any of their respective Affiliates in the Recipe Lookback Period to produce the products marketed and sold under the Transferred Private Labels.

"Seller Termination Fee" has the meaning set forth in Section 11.3(a).

"Separated Denver DC" has the meaning set forth in Section 6.12(a).

"Sound MEPP" means Revised Pension Plan of the Sound Retirement Trust.

"Specified Division Office" means each of the Kettle Seller's QFC office in Seattle, Washington and the Acorn Seller's Haggen Office.

"Statement of Sales End Date" has the meaning set forth in Section 4.6(a).

"Store Employees" means those Employees providing services at the store-level or distribution center-level.

"Store Inventory" has the meaning set forth in the definition of Inventory set forth in this Section 1.1.

"Store Specific Retail Lease" the meaning set forth in Section 4.13(c).

"Target Fuel Inventory" has the meaning set forth on Schedule 2.4.

"Target Store Inventory" has the meaning set forth on Schedule 2.4.

"Target Store Inventory Lower Threshold" has the meaning set forth on Schedule 2.4.

"Target Store Inventory Upper Threshold" has the meaning set forth on Schedule 2.4.

"Tax Return" means any report, declaration, return, information return, claim for refund, document, or statement relating to Taxes, including any schedule or attachment thereto, and including any amendments thereof.

"Taxes" means any federal, state, local or foreign income, gross receipts, branch profits, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, gasoline and motor fuel, ad valorem, value added, alternative or add-on minimum or estimated tax or other tax, including any interest, penalty or addition thereto, imposed by a Governmental Entity.

"Tech Stack Foundational Work" has the meaning set forth in Section 7.12(a).

"Tech Stack Non-Foundational Work" has the meaning set forth in Section 7.12(a).

"Tech Stack Infrastructure" means the infrastructure configuration that mirrors Acorn's infrastructure configuration as it exists as of the Closing Date to enable the Tech Stack Copy (as defined in the Transition Services Agreement) to operate, as set forth under the heading "Tech Stack Infrastructure" on Exhibit O-I.

"Tenant" has the meaning set forth in Section 4.13(a).

"Termination Date" has the meaning set forth in Section 11.1(a)(ii).

"Third Party" means any Person other than the Parties or their respective Affiliates.

"Third Party Claim" has the meaning set forth in Section 12.6(b).

"Third Party Implementation Partner" means (a) Deloitte Touche Tohmatsu Limited, with respect to work related to the Kettle HCM System Configuration; (b) Tata Consultancy Services Limited, with respect to any other work related to the Tech Stack Implementation; or (c) any other third party provider that the Parties may mutually agree on with respect to work related to the Tech Stack Implementation as contemplated in the Transition Services Agreement.

"Third Party Implementation Partner Agreement" has the meaning set forth in Section 7.12(e).

"Third Party Reports" or "Third Party Report" has the meaning set forth in Section 6.11(d)(i).

"Title Company" has the meaning set forth in Section 6.11(d)(i).

"Trade Secrets" has the meaning set forth in the definition of Intellectual Property set forth in this Section 1.1.

"Trademark License Agreements" means collectively the Acorn Trademark License Agreement and the Safeway Trademark License Agreement.

"Trademarks" has the meaning set forth in the definition of Intellectual Property set forth in this Section 1.1.

"Transaction Amounts" means all amounts, collectively, that are expressly required to be paid by Buyer pursuant to this Agreement and all fees and expenses of Financing Parties payable by the Buyer and its Affiliates in connection with the Transactions.

"Transaction Documents" means, collectively, this Agreement, the Assignment and Bill of Sale Agreement(s), the Confidentiality Agreement, the Schedules, the Transition Services Agreement, the Deeds, the Lease Assignments, the Trademark License Agreements, the Recorded Lease Assignments, the Retail Lease Assignment, the IP Assignment Agreements, and the Reverse Transition Services Agreement, and all of the certificates, instruments, and agreements required to be delivered by any of the Parties at the Closing.

"Transactions" means all of the transactions provided for in, or contemplated by, this Agreement and the other Transaction Documents.

"Transfer Date" has the meaning set forth in Section 9.1(c).

"Transfer Shortfall" means the amount, if any, by which the Transferred PBO exceeds the 414(l) Amount.

"Transfer Taxes" means all transfer, real estate, documentary, stamp duty, sales, use, registration, filing, conveyance, gasoline and motor fuel Taxes, and any similar Taxes, including any interest, penalty, or addition thereto (not including Taxes on net income or gain).

"Transferred Acorn Assets" means the following assets:

(a) all of the stores listed on Schedule 2.1(a)-A, and all real property and improvements owned by Acorn Seller or its Affiliates associated with such stores (collectively, the "Acorn Owned Stores");

(b) all of the fuel centers listed on Schedule 2.1(b)-A, and in each case, all real property and improvements associated with such fuel centers (including any convenience stores and/or car washes associated with such fuel centers) (collectively, the "Acorn Owned Fuel Centers");

(c) all of the leasehold interests in the leased stores pursuant to the real property leases listed on Schedule 2.1(c)-A (such leases, collectively, the "Acorn Real Property Leases", and such stores, the "Acorn Leased Stores"; the Acorn Real Property Leases, collectively with the Acorn Fuel Center Leases and Acorn Distribution Center Leases, but excluding any Acorn Recorded Leases, the "Acorn Leases");

(d) all of the leasehold interests in the leased stores pursuant to the real property leases listed on Schedule 2.1(d)-A (collectively, such leases, including, for the avoidance of doubt, any leases on Schedule 2.1(d)-A for Acorn Leased Distribution Centers and Acorn Leased Fuel Center, collectively, the "Acorn Recorded Leases", and the stores leased pursuant to the Acorn Recorded Leases, but excluding any Acorn Distribution Center Leases and Acorn Fuel Center Leases, the "Acorn Recorded Leased Stores");

(e) all of the owned distribution centers listed on Schedule 2.1(e)-A, including the Acorn Dairy, and all real property and improvements owned by Acorn Seller or its Affiliates associated with such distribution centers (the "Acorn Owned Distribution Centers"), all of the leasehold interests in the leased distribution centers listed on Schedule 2.1(e)-A (such leases, the "Acorn Distribution Center Leases", and such leased distribution centers the "Acorn Leased Distribution Centers,") and the distribution center operated pursuant to that certain warehousing and services agreement listed on Schedule 2.1(e)-A (such agreement, the "Acorn Americold Distribution Center Agreement", and such distribution center, the "Acorn Americold Distribution Center" and together with the Acorn Owned Distribution Centers, and the Acorn Leased Distribution Centers, the "Acorn Distribution Centers");

(f) all of the leasehold interests in the leased fuel centers pursuant to the leases listed on Schedule 2.1(f)-A (such leases, collectively, the "Acorn Fuel Center Leases", and such fuel centers, collectively, the "Acorn Leased Fuel Centers", and the Acorn Leased Fuel Centers together with the Acorn Owned Fuel Centers, collectively the "Acorn Fuel Centers"; and the Acorn Fuel Centers together with the Acorn Leased Stores, the Acorn Recorded Leased Stores and the Acorn Owned Stores, and the pharmacies, store cafes, and other related business(es) located at such locations, the "Acorn Supermarkets");

(g) [Reserved.]

(h) all of the Ancillary Assets primarily related to, or used in or held for use primarily in connection with the operation of the Acorn Supermarkets or the Acorn Distribution Centers as applicable, except to the extent constituting Excluded Assets;

(i) the Contracts set forth on Schedule 4.10(a)-(A) (such Contracts, the "Acorn Transferred Contracts");

(j) all of the leasehold interests in the leased offices listed on Schedule 2.1(i)-A (the "Acorn Offices");

(k) the employee housing listed on Schedule 2.1(k)-A (the "Acorn Housing"), all real property and improvements owned by Acorn Seller or its Affiliates associated with such housing, and all fixed assets and tangible personal property, owned by such Seller, as applicable;

(l) (A) the Registered Intellectual Property set forth on Schedule 2.1(l)-A (the "Acorn Registered Intellectual Property"), (B) all Intellectual Property (other than Registered Intellectual Property) used or held for use primarily in the operation of solely the Acorn Supermarkets, and Acorn Distribution Centers, as applicable, and (C) to the extent not included in clauses (A) or (B), the Transferred Banners and Transferred Private Labels, in each case of clauses (A) through (C), that is owned by Acorn Seller or any of its controlled Affiliates (collectively, "Acorn Transferred Intellectual Property"); *provided*, *however*, that for the avoidance of doubt, the term "Acorn Transferred Intellectual Property" includes only Intellectual Property owned by Acorn Seller or any of its controlled Affiliates, and does not include third party Intellectual Property used by Acorn Seller or any of its controlled Affiliates in connection with the Acorn Transferred Intellectual Property;

(m) all IT Assets owned or purported to be owned by Acorn Seller and its Affiliates that are primarily related to, or used in or held for use primarily in connection with the operation solely of the Acorn Supermarkets, Acorn Distribution Centers or Acorn Offices, including any laptops used by Transferred Employees (the "Acorn Transferred IT Assets");

(n) all claims, counterclaims, defenses, causes of action, demands, judgments, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind against any Third Party, to the extent relating to any Assumed Liabilities or the Transferred Assets in connection with events occurring after the Closing;

(o) reasonably accessible copies of the amount maintained by Acorn Seller pursuant to Acorn Seller's standard data retention policies of (i) all electronic records (including all data and other information stored on discs, tapes or other media) of Acorn Seller, and (ii) all books and records in physical format, in each case of (i) and (ii), in such format maintained by such Acorn Seller immediately preceding the Closing Date, and relating to the assets, properties, business and operations of the Transferred Assets, including, for the avoidance of doubt, to the extent applicable, (x) historical financial and operating information, including that which is primarily related to the Acorn Supermarkets,

Acorn Distribution Centers or Acorn Offices, (y) raw Customer data and information, including historical clickstream data and transaction data, including e-commerce transactions fulfilled in Transferred Assets and customer contact history with respect to direct mailers and digital mail and (z) data that is derived from loyalty promotion or loyalty points associated with co-branded credit card programs for Customers of the Transferred Assets and other similar information related to Customer purchases at the Acorn Supermarkets ((y) and (z) together, the "Acorn Transferred Customer Data" and each of (i) and (ii), inclusive of (x) – (z), collectively, the "Acorn Transferred Data"); *provided*, *however*, that for the avoidance of doubt, the term Acorn Transferred Customer Data shall not include any data and information derived through any data analytics tools or such tools themselves, as applicable; *provided*, *however*, that in all cases, the Transferred Data shall exclude the Excluded Records and shall, in each case, be transferred solely to the extent permitted by applicable Laws and Privacy Requirements;

(p) all Personnel Records related to Transferred Employees and any other current employees of the Acorn Supermarkets, Acorn Distribution Centers, Acorn Dairy and Acorn Offices; *provided*, *however*, that Acorn Seller shall be entitled to retain a copy of all such Personnel Records, *provided*, *further*, that all such Personnel Records, shall be transferred in a manner that materially complies with applicable Privacy Requirements;

(q) to the extent assignable, all guaranties, warranties, indemnities, and similar rights in favor of Sellers to the extent primarily related to any Transferred Asset; and

(r) the assets, properties, or rights listed on Schedule 2.1(r)-A.

"Transferred Assets" means the Transferred Acorn Assets and the Transferred Kettle Assets, collectively.

"Transferred Banners" means the "Carrs", "Quality Food Centers", "Mariano's" and "Haggen" banners, associated marketing materials and collateral (including any such websites and the content hosted on such websites), and all Intellectual Property embodied in the foregoing.

"Transferred Contracts" means the Acorn Transferred Contracts and the Kettle Transferred Contracts, collectively; *provided*, *however*, that, for the avoidance of doubt, the Transferred Contracts do not include any Transferred Leases, Transferred Recorded Leases or Retail Leases.

"Transferred Customer Data" means the Acorn Transferred Customer Data and the Kettle Transferred Customer Data, collectively.

"Transferred Non-Customer Data" means the Transferred Data, other than the Transferred Customer Data.

"Transferred Data" means the Acorn Transferred Data and the Kettle Transferred Data, collectively.

"Transferred Distribution Centers" means, the Acorn Distribution Centers.

"Transferred Employee" has the meaning set forth in Section 9.1(b).

"Transferred Fuel Centers" means the Acorn Fuel Centers together with the Kettle Fuel Centers.

"Transferred Intellectual Property" means the Acorn Transferred Intellectual Property and the Kettle Transferred Intellectual Property, collectively.

"Transferred IT Assets" means the Acorn Transferred IT Assets and the Kettle Transferred IT Assets, collectively.

"Transferred Kettle Assets" means the following assets:

(a) all of the stores listed on Schedule 2.1(a)-K, and all real property and improvements owned by Kettle Seller or its Affiliates associated with such stores (collectively, the "Kettle Owned Stores");

(b) all of the fuel centers listed on Schedule 2.1(b)-K and all real property and improvements associated with such fuel centers (including any convenience stores and/or car washes associated with such fuel centers) (collectively, the "Kettle Owned Fuel Centers");

(c) all of the leasehold interests in the leased stores pursuant to the real property leases listed on Schedule 2.1(c)-K (such leases, collectively, the "Kettle Real Property Leases", and such stores, the "Kettle Leased Stores"; the Kettle Real Property Leases, collectively, with the Kettle Fuel Center Leases, but excluding any Kettle Recorded Leases, the "Kettle Leases");

(d) all of the leasehold interests in the leased stores pursuant to the real property leases listed on Schedule 2.1(d)-K (such leases, including, for the avoidance of doubt, any leases on Schedule 2.1(d)-K for Kettle Leased Fuel Centers, collectively, the "Kettle Recorded Leases", and the stores leased pursuant to the Kettle Recorded Leases, but excluding any Kettle Fuel Center Leases, the "Kettle Recorded Leased Stores");

(e) Intentionally Omitted.

(f) all of the leasehold interests in the leased fuel centers pursuant to the leases listed on Schedule 2.1(f)-K (such leases, collectively, the "Kettle Fuel Center Leases", and such fuel centers, collectively, the "Kettle Leased Fuel Centers", and the Kettle Leased Fuel Centers together with the Kettle Owned Fuel Centers, collectively the "Kettle Fuel Centers"; and the Kettle Fuel Centers together with the Kettle Leased Stores, the Kettle Recorded Leased Stores and the Kettle Owned Stores, and the pharmacies, store cafes, and other related business(es) located at such locations, the "Kettle Supermarkets");

(g) [Reserved.]

(h) all of the Ancillary Assets primarily related to, or used in or held for use primarily in connection with the operation of the Kettle Supermarkets, except to the extent constituting Excluded Assets;

(i) the Contracts set forth on Schedule 4.10(a)-(K) (such Contracts, the "Kettle Transferred Contracts");

(j) all of the leasehold interests in the leased office listed on Schedule 2.1(i)-K (the "Kettle Office" and such leasehold interest, the "Kettle Office Lease");

(k) (A) the Registered Intellectual Property set forth on Schedule 2.1(k)-K (the "Kettle Registered Intellectual Property"), (B) all other Intellectual Property (other than Registered Intellectual Property) used or held for use primarily in the operation of solely the Kettle Supermarkets and Kettle Office, as applicable, and (C) to the extent not included in clause (A) or (B), the Transferred Banners and the Transferred Private Labels, in each case of clauses (A) through (C), that is owned by Kettle Seller or any of its controlled Affiliates (collectively, the "Kettle Transferred Intellectual Property"); *provided*, *however*, that for the avoidance of doubt, the term "Kettle Transferred Intellectual Property" includes only Intellectual Property owned by Kettle Seller or any of its controlled Affiliates, and does not include third party Intellectual Property used by Kettle Seller or any of its controlled Affiliates in connection with the Kettle Transferred Intellectual Property;

(l) all IT Assets owned or purported to be owned by Kettle Seller and its controlled Affiliates that are primarily related to, or used in or held for use primarily in connection with the operation of solely the Kettle Supermarkets or Kettle Office, including any laptops used by the Transferred Employees (the "Kettle Transferred IT Assets");

(m) all claims, counterclaims, defenses, causes of action, demands, judgments, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind against any Third Party, to the extent relating to any Assumed Liabilities or the Transferred Assets, arising from and following the Closing;

(n) reasonably accessible copies of the amount maintained by Kettle Seller pursuant to Kettle Seller's standard data retention policies of (i) all electronic records (including all data and other information stored on discs, tapes or other media) of Kettle Seller, and (ii) copies of all books and records in physical format, in each case of (i) and (ii), in such format maintained by such Kettle Seller immediately preceding the Closing Date, and relating to the assets, properties, business, and operations of the Transferred Assets, including, for the avoidance of doubt, and to the extent applicable, (x) historical financial and operating information, including that which is primarily related to the Kettle Supermarkets and Kettle Office, (y) raw Customer data and information, including historical clickstream data and historical transaction data, including e-commerce transactions fulfilled in Transferred Assets and customer contact history with respect to direct mailers and digital mail, and (z) data that is derived from loyalty promotion or loyalty points associated with co-branded credit card programs for Customers of the Transferred Assets and other similar information related to Customer purchases at the Kettle Supermarkets ((y) and (z) together, the "Kettle Transferred Customer Data" and each of (i) and (ii), inclusive of (x) – (z), collectively, the "Kettle Transferred Data"); *provided*, *however*, that, for the avoidance of doubt, the term Kettle Transferred Customer Data shall not include any data and information derived through any data analytics tools (including any data or analytics relating to 84.51) or such tools themselves; *provided*, *however*, that

in all cases, the Transferred Data shall exclude the Excluded Records and shall, in each case, be transferred solely to the extent permitted by applicable Laws and Privacy Requirements;

(o) all Personnel Records related to Transferred Employees and any other current employees of the Kettle Supermarkets and Kettle Office; *provided*, *however*, that Kettle Seller shall be entitled to retain a copy of all such personnel records, *provided*, *further*, that all such Personnel Records shall be transferred in a manner that materially complies with applicable Privacy Requirements;

(p) to the extent assignable, all guaranties, warranties, indemnities, and similar rights in favor of Sellers to the extent primarily related to any Transferred Asset; and

(q) the assets, properties, or rights listed on Schedule 2.1(q)-K.

"Transferred Lease or REA CAM Reconciliation" has the meaning set forth in Section 2.6(a)(i).

"Transferred Lease Rent Roll" has the meaning set forth in Section 4.13(a).

"Transferred Leases" means, with respect to (a) Acorn Seller, the Acorn Leases, and (b) Kettle Seller, the Kettle Leases.

"Transferred Offices" means, with respect to (a) Acorn Seller, the Acorn Offices, and (b) Kettle Seller, the Kettle Office.

"Transferred Permits" has the meaning set forth in the definition of Ancillary Assets set forth in this Section 1.1.

"Transferred Pharmacies" means the pharmacy counters or business located in or connected with any Transferred Supermarkets and any other related assets and equipment that customers would reasonably associate with such businesses.

"Transferred Private Labels" means the "Open Nature", "Waterfront Bistro", "Debi Lilly Design", "ReadyMeals", and "Primo Taglio," private labels, associated marketing materials and collateral (including any such websites and the content hosted on such websites), and all Intellectual Property embodied in the foregoing but, in each case of the foregoing brands, excluding all Seller Retained Recipes which shall not be transferred, assigned, or conveyed hereunder.

"Transferred Recorded Leases" means, with respect to (a) Acorn Seller, the Acorn Recorded Leases, and (b) Kettle Seller, the Kettle Recorded Leases.

"Transferred Registered Intellectual Property" means the Acorn Registered Intellectual Property and the Kettle Registered Intellectual Property, collectively.

"Transferred Supermarkets" means, with respect to (a) Acorn Seller, the Acorn Supermarkets, and (b) Kettle Seller, the Kettle Supermarkets.

"Transferred Vehicles" has the meaning set forth in the definition of Ancillary Assets set forth in this Section 1.1.

"Transition Services Agreement" means that certain Transition Services Agreement, to be entered into between Kettle Seller and Buyer on the Closing Date, substantially in the form of Exhibit B.

"Treasury Regulations" means except where the context indicates otherwise, the permanent, temporary, or proposed regulations of the Department of the Treasury under the Code as these regulations may be lawfully changed from time to time.

"UCPA" has the meaning set forth in the definition of Privacy Requirements set forth in this Section 1.1.

"Unallocated District Resource Roles" has the meaning set forth in Section 4.15(a).

"Unallocated Functional Expert Roles" has the meaning set forth in Section 4.15(a).

"UST" has the meaning set forth in Section 3.2(j).

"UST Reimbursement Program" has the meaning set forth in Section 6.10(a).

"Utility" has the meaning set forth in Section 2.6(a)(ii).

"VCPA" has the meaning set forth in the definition of Privacy Requirements set forth in this Section 1.1.

"WARN Act" has the meaning set forth in Section 4.15(c).

"Weil" has the meaning set forth in the definition of Pre-Approved Counsel set forth in this Section 1.1.

"Withdrawal Event" means, with respect to the Schedule 9.2 Participating MEPPs, a partial withdrawal (as defined in Section 4205 of ERISA) or a complete withdrawal (as defined in Section 4203 of ERISA).

"WMHMDA" has the meaning set forth in the definition of Privacy Requirements set forth in this Section 1.1.

1.2 Interpretation Provisions.

(a) Unless the express context otherwise requires:

(i) the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement;

(ii) references to a specific Article, Section, Subsection, or Exhibit, shall refer, respectively, to Articles, Sections, Subsections, or Exhibits of this Agreement unless otherwise specified;

(iii) references to a Schedule, shall be to the Schedules of this Agreement;

(iv) the terms "include", and "including", and variations thereof, are not limiting but rather shall be deemed to be followed by the words "without limitation";

(v) the word "or" shall be inclusive and not exclusive (for example, the phrase "A or B" means "A or B or both", not "either A or B but not both"), unless used in conjunction with "either" or the like;

(vi) the word "within" with respect to a particular day or date shall mean a period ending at the end of such day or date;

(vii) each reference to "days" shall be to calendar days;

(viii) references to a Law is to it as amended from time to time and, as applicable, is to corresponding provisions of successor Laws (and for the avoidance of doubt, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statutes or regulations);

(ix) references to any Contract shall be to such Contract as amended, supplemented, waived or otherwise modified from time to time;

(x) references to "written" or "in writing" include in electronic form;

(xi) the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders; and

(xii) references to a Person are also to such Person's permitted successors and assigns.

(b) The Parties participated jointly in the negotiation and drafting of this Agreement and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. If an ambiguity or question of intent or interpretation arises, then this Agreement will accordingly be construed as drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party to this Agreement by virtue of the authorship of any of the provisions of this Agreement.

(c) The captions and headings of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement. The Schedules and Exhibits to this Agreement are a material part hereof and shall be treated as if fully incorporated into the

body of this Agreement. All terms defined in this Agreement shall have their defined meanings when used in any Exhibit or Annex to this Agreement or to any Schedule.

(d) The phrase "Seller's Knowledge" (or similar phrases) means (i) in the case of Kettle Seller, the knowledge of the individuals listed on Schedule 1.2(d)(i), and (ii) in the case of Acorn Seller, the knowledge of the individuals listed on Schedule 1.2(d)(ii), in each case, including the knowledge such individuals would have acquired in the exercise of due inquiry to such Person's direct reports in connection with the making of the representations and warranties in this Agreement.

(e) The phrase "Buyer's Knowledge" (or similar phrases) means the knowledge of the following individuals: William Boyd, Alona Florenz, Brian Hubbard, Kevin McNamara and Eric Winn, including the knowledge such individuals would have acquired in the exercise of due inquiry to such Person's direct reports in connection with the making of the representations and warranties in this Agreement.

(f) If a date specified herein for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

(g) Any matter, fact or circumstance disclosed by the information set out in the amended and restated disclosure schedules to this Agreement (the "Schedules") shall be deemed to be a disclosure for the purposes of the Section or subsection of this Agreement to which it corresponds in number (and each other Section and subsection of this Agreement, to the extent it is reasonably apparent on its face that such disclosure applies or would apply to such other Section(s) and subsection(s)). The disclosure of any matter in any Schedule shall expressly not be deemed to constitute an admission by any Party, or to otherwise imply, that any such matter is material for the purposes of this Agreement, could or would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect or is required to be disclosed under this Agreement. No warranty, representation or other assurance is given by the Sellers or any of their Affiliates with respect to the accuracy of, or the absence of or any omission from, the information set out in the Schedules or any of the documents and information included in the Data Room, other than the express representations and warranties set forth in Article IV.

(h) The phrases "made available to Buyer," "provided to Buyer" or other similar phrases shall mean made and remaining available to Buyer in the Data Room on or prior to the A&R Date and not removed or altered on or prior to the execution and delivery of this Agreement.

1.3 Performance of Obligations by Affiliates. Any obligation of a Seller under or pursuant to this Agreement may be satisfied, met or fulfilled, in whole or in part, at such Seller's sole and exclusive option, either by such Seller directly, or by any Affiliate of such Seller that such Seller causes to satisfy, meet or fulfill such obligation, in whole or in part; *provided*, *however*, that this Section 1.3 shall not be construed to relieve such Seller from any of its obligations under this Agreement.

ARTICLE II
SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Transferred Assets; Excluded Assets.

(a) On the terms and subject to the conditions set forth in this Agreement, at and effective as of the Closing, Kettle Seller shall, or shall cause its Affiliates to, sell, convey, assign, transfer and deliver to Buyer or its Affiliates, and Buyer shall purchase and accept, all of Kettle Seller's or its Affiliates' right, title, and interest, as of the Closing, in and to the Transferred Assets (for the avoidance of doubt, excluding Distribution Center Inventory, which shall be transferred in accordance with Section 2.5), in each case, free and clear of all Encumbrances (other than Permitted Encumbrances). Accordingly, Kettle Seller will, or will cause its controlled Affiliates to, execute and deliver at Closing, the Assignment and Bill of Sale Agreement(s).

(b) Kettle Seller and its Affiliates shall retain all of their existing right, title and interest in and to (and for the avoidance of doubt, the Transferred Assets shall not include) the Excluded Assets, which shall be excluded from the sale, conveyance, assignment, transfer, and delivery to Buyer under this Agreement and the other Transaction Documents.

2.2 Assumption of Liabilities; Excluded Liabilities. On the terms and subject to the conditions set forth in this Agreement, at and effective as of the Closing, (a) Buyer shall expressly assume, and agree to pay or otherwise perform or discharge when due, the Assumed Liabilities, (b) except as specifically provided in this Agreement or any other Transaction Document, Buyer shall not assume nor be obligated to pay, perform, or otherwise discharge any Excluded Liability, and (c) Kettle Seller and its Affiliates, as applicable, will remain liable to pay, perform, and discharge when due, all Excluded Liabilities.

2.3 Purchase Price. On the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the Transferred Assets and the assumption of the Assumed Liabilities, at the Closing, Buyer shall pay to Kettle Seller (or its designee), an amount in cash equal to (a) $2,761,000,000 (the "Base Price"), *plus* (b) the Estimated Inventory Adjustment, which shall be subject to adjustment following the Closing pursuant to Section 2.4, *plus* (c) the Proration Overpayment (if any) and *minus* (d) the Proration Underpayment (if any), which, in each case, shall be subject to adjustment following the Closing pursuant to Section 2.6, *minus* (e) the Final Assumed Time-Off Balance (such amount of clauses (a) through (e), as adjusted, the "Purchase Price").

2.4 Inventory Adjustment.

(a) Closing Inventory Estimate. At least three (3) Business Days prior to the anticipated Closing Date, Kettle Seller shall deliver to Buyer an Estimated Closing Statement, together with supporting documentation used by Kettle Seller in calculating the amounts set forth therein. Kettle Seller shall, and shall cause its respective Affiliates, upon reasonable prior notice from Buyer and subject to execution of customary work paper access letters if requested by accountants of Kettle Seller, to (i) provide Buyer and its authorized representatives, in connection with Buyer's review of the Estimated Closing Statement, with access during normal business hours to the books and records and work papers of Kettle Seller, related to the preparation of the

Estimated Closing Statement, and (ii) reasonably cooperate with and assist Buyer and its authorized representatives in connection with the review of such materials, including by making available its and its Affiliates' employees, accountants and other personnel to the extent reasonably requested, and related to the preparation of the Estimated Closing Statement. If Buyer notifies Kettle Seller in writing of an objection to the Estimated Closing Statement or any of the amounts included in the calculation of the Estimated Inventory Adjustments set forth therein at least one (1) Business Day prior to the Closing Date, then Buyer and Kettle Seller shall seek in good faith to agree to revisions to the Estimated Closing Statement to resolve such objection and Kettle Seller shall update and redeliver the Estimated Closing Statement to reflect any such agreements no later than the Business Day immediately prior to the Closing Date. If Buyer has validly provided notice of an objection to the Estimated Closing Statement pursuant to this Section 2.4(a), and Buyer and Kettle Seller fail to mutually agree upon revisions to the Estimated Closing Statement on or prior to the Business Day immediately prior to the Closing Date, then: (A) neither Buyer nor Kettle Seller shall delay the Closing because of such failure and (B) the amounts set forth in Kettle Seller's proposed draft of the Estimated Closing Statement (as adjusted in accordance with the immediately preceding sentence) shall be the amounts used in the determination of the Estimated Inventory Adjustments and shall govern the payments to be made at the Closing on the Closing Date. The agreement of the Parties to revisions to the Estimated Closing Statement or the failure of the Parties to agree to such revisions shall not constitute a waiver or limitation of a Party's rights and obligations pursuant to Section 2.4(c).

(b) Post-Closing Determination.

(i) Delivery of the Post-Closing Statement. No later than ninety (90) days after the Closing Date, Buyer shall deliver to Kettle Seller a Post-Closing Statement, together with supporting documentation used by Buyer in calculating the amounts set forth therein. From and after delivery of the Post-Closing Statement until the determination of the Final Closing Statement, Buyer shall, and shall cause its Affiliates, upon reasonable prior notice from Kettle Seller and subject to execution of customary work paper access letters if requested by accountants of Buyer, to (A) provide Kettle Seller and its authorized representatives, in connection with Kettle Seller's review of the Post-Closing Statement, with access during normal business hours to the books and records and work papers of Buyer, related to its review of the Post-Closing Statement, and (B) reasonably cooperate with and assist Kettle Seller and its authorized Representatives in connection with the review of such materials, including by making available its employees, accountants and other personnel to the extent reasonably requested, and related to its review of the Post-Closing Statement.

(ii) Notice of Objection. If Kettle Seller has any objection to the Post-Closing Statement or any of the amounts included in the calculation of the Purchase Price set forth therein, it shall deliver to Buyer a written statement setting forth in reasonable detail the particulars of such disagreement, including the specific items in the Post-Closing Statement that are in dispute and the nature and amount of any disagreement so identified (such written statement, a "Notice of Objection"), on or before the date that is forty-five (45) days after its receipt of the Post-Closing Statement (such period, the "Review Period"). If Kettle Seller delivers a Notice of Objection to Buyer within the Review Period, Kettle Seller and Buyer shall work in good faith to resolve Kettle Seller's objections within the thirty (30) day period following the delivery of the Notice of Objection. If Kettle Seller fails to deliver a Notice of Objection within the Review Period, the Post-

Closing Statement shall be deemed to have been accepted by Kettle Seller and shall be deemed final and binding upon all of the Parties and shall be deemed the Final Closing Statement.

(iii) Selection of the Accountant. In the event that Kettle Seller and Buyer are unable to resolve Kettle Seller's objections in the Notice of Objection within the thirty (30) day period (or such longer period as may be agreed by Buyer and Kettle Seller) after the delivery of such Notice of Objection, the resolution of all of such unresolved objections ("Disputed Items") shall be submitted to Ernst & Young LLP (or such other accounting firm of recognized national standing in the United States as may be mutually selected by Buyer and Kettle Seller) (the "Accountant") which shall resolve such objections and determine the amounts of Store Inventory, Fuel Inventory, and the corresponding Post-Closing Adjustment Amount, in each case, as of the Inventory Measurement Time. Kettle Seller and Buyer shall execute any agreement reasonably required by the Accountant for its engagement hereunder.

(iv) Submission of Disputed Items. Each of Buyer and Kettle Seller shall, promptly (but in any event within ten (10) Business Days) following the formal engagement of the Accountant, provide the Accountant with a single written submission setting forth its respective calculations of and assertions regarding the Disputed Items (which submissions the Accountant shall promptly distribute to the other Party) and upon receipt thereof, each of Kettle Seller and Buyer shall be entitled (no later than five (5) Business Days following receipt of the other Party's initial submission) to submit to the Accountant a single written response to such other Party's initial submission setting forth such Party's objections or rebuttals to the calculations and/or assertions set forth in such initial submission (which responses the Accountant shall promptly distribute to the other applicable Party). There shall be no *ex parte* communications between Kettle Seller (or its representatives) or Buyer (or its representatives), on the one hand, and the Accountant, on the other hand, relating to the Disputed Items and unless requested by the Accountant in writing, no Party shall present any additional information or arguments to the Accountant, either orally or in writing.

(v) Accountant's Determination. The Accountant shall be instructed to render its determination with respect to the Disputed Items as soon as reasonably possible (which the Parties agree shall not be later than forty-five (45) days following the formal engagement of the Accountant). The Accountant shall act as an expert and not as an arbitrator to determine solely the Disputed Items based solely on the submissions and responses of Buyer, on the one hand, and Kettle Seller, on the other hand, without independent investigation and solely in accordance with the terms and definitions of this Agreement, including the Accounting Principles and Schedule 2.4. In resolving any Disputed Items, the Accountant shall not assign a value to any item greater than the greatest value for such item claimed by either Party or less than the smallest value for such item claimed by either Party. The Parties agree that the determination of the Accountant with respect to any Disputed Items is not intended to permit the introduction of different judgments, accounting methods, policies, principles, practices, procedures, classifications or estimation methodologies for the purposes of determining the Purchase Price, and the Accountant shall not conduct an independent investigation but shall instead base its determination on the written submissions of the Parties delivered pursuant to this Section 2.4(b)(v) with respect to the Disputed Items. The determination of the Accountant pursuant to this Section 2.4(b)(v) shall be binding and final for purposes of this Agreement. The Post-Closing Statement resulting from the

determinations with respect to the Disputed Items made by the Accountant pursuant to this Section 2.4(b)(v) shall be deemed the Final Closing Statement.

(vi) Accountant's Fees and Expenses. The Accountant shall allocate its fees and expenses between Buyer and Kettle Seller based upon the percentage of the contested amount submitted to the Accountant that is ultimately awarded to Buyer, on the one hand, or Kettle Seller, on the other hand, such that Buyer bears a percentage of such fees and expenses equal to the percentage of the contested amount awarded to Kettle Seller and Kettle Seller bears a percentage of such fees and expenses equal to the percentage of the contested amount awarded to Buyer. For example, if Kettle Seller challenges items underlying the calculation of the Final Closing Statement in the net amount of one million dollars ($1,000,000), and the Accountant determines that Kettle Seller has a valid claim for four hundred thousand dollars ($400,000) of the one million dollars ($1,000,000), Kettle Seller shall bear sixty percent (60%) of the fees and expenses of the Accountant and Buyer shall bear forty percent (40%) of the fees and expenses of the Accountant. For the avoidance of doubt, the fees and disbursements of the representatives of each Party incurred in connection with the preparation or review of the Post-Closing Statement and any Notice of Objection as well as any submissions and responses to the Accountant, as applicable, shall be borne by such Party.

(c) Payment of Post-Closing Adjustment Amount. Within five (5) Business Days following the determination of the Final Closing Statement:

(i) if the Post-Closing Adjustment Amount is a positive number, Buyer shall pay to Seller an amount equal to the Post-Closing Adjustment Amount;

(ii) if the Post-Closing Adjustment Amount is a negative number, Seller shall pay an amount to Buyer equal to the absolute value of the Post-Closing Adjustment Amount; and

(iii) if the Post-Closing Adjustment Amount is zero, neither Buyer nor Seller shall have any payment obligation pursuant to this Section 2.4(c).

(iv) Any payment made pursuant to this Section 2.4(c) shall be made by wire transfer of immediately available funds, pursuant to the instructions previously delivered by Buyer or Kettle Seller, as applicable. Any such payment shall, for tax purposes, be deemed to be an adjustment to Purchase Price.

(d) Exclusive Remedy. Notwithstanding anything to the contrary set forth in this Agreement, the process set forth in this Section 2.4 shall be the sole and exclusive remedy of the Parties for any disputes related to items required to be included or reflected in the calculation of the Purchase Price (other than the Proration Overpayment or Proration Underpayment).

2.5 Distribution Center Inventory.

(a) DC Transition Notice. Following the Closing, Buyer shall deliver a written notice (each such notice, a "DC Transition Notice") to Sellers indicating its readiness to take over procurement and other services with respect to each Transferred Distribution Center, including the Acorn Dairy, and setting forth the date on which each such transition shall occur, which date shall

in any event be no later than the date that is twelve (12) months after the Closing Date (each such date, a "DC Transition Date"). At and effective as of such DC Transition Date, Kettle Seller shall, or shall cause its Affiliates to, sell, convey, assign, transfer and deliver to Buyer or its Affiliates, and Buyer shall purchase and accept, all of Kettle Seller's or its Affiliate's right, title, and interest, as of the Closing, in and to the Distribution Center Inventory at the applicable Transferred Distribution Center (each, a "DC Transfer") for the price set forth in Section 2.5(b), in each case, free and clear of all Encumbrances (other than Permitted Encumbrances).

(b) Deferred Inventory Purchase Price. On the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the Distribution Center Inventory at the applicable Transferred Distribution Center, on each applicable DC Transition Date, Buyer shall pay to Kettle Seller (or its designee), (i) the DC Inventory Price for any Distribution Center Inventory attributable to the Transferred Supermarkets, and (ii) with respect to any Distribution Center Inventory that is not attributable to the Transferred Supermarkets, at the applicable Transferred Distribution Center, nominal consideration of $0.01; *provided* that, in lieu of payment on the applicable DC Transition Date, the Dairy Plant Inventory Price shall be credited against the Service Fees (as defined in the Reverse Transition Services Agreement) payable by Kettle Seller or its Affiliates under the Reverse Transition Services Agreement, in arrears on a monthly basis, based upon Kettle Sellers' or its Affiliates consumption of Dairy Plant Inventory within each month, as described in more detail in the Reverse Transition Services Agreement. Kettle Seller will, or will cause its controlled Affiliates to, execute and deliver as of each such DC Transition Date, a Distribution Center Inventory Bill of Sale with respect to such Distribution Center Inventory.

(c) Inventory Count; Sampling Variances.

(i) The Parties agree that during the seven (7) day period prior to each DC Transition Date, Kettle Seller and Buyer shall hire an independent third party inventory counting firm to conduct, or shall cause to be conducted, a physical cycle count of a mutually agreed number of Distribution Center Inventory sections within such Transferred Distribution Center (or, with respect to the inventory count for the Acorn Dairy, such other inventory count and recount procedures that the Parties may agree, consistent with Acorn Seller's past practices for the Dairy Plant). In advance of the physical count, Buyer and Kettle Seller shall review and mutually agree on the applicable inventory count and recount procedures for such Transferred Distribution Center. Buyer may have representatives present during the physical counts to observe the procedures utilized and perform test counts, but shall not unduly interfere with the independent inventory counting firm's conduct with respect to the physical inventory process. The cost of such independent inventory counting firm shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Kettle Seller.

(ii) Between the date of the physical count and the Saturday immediately preceding the DC Transition Date for a Transferred Distribution Center (the "Final DC Inventory Date") for any Transferred Distribution Center, Buyer will validate the accuracy of Kettle Seller's book inventory balances reflected in the DC Inventory Book Value for such Distribution Center Inventory utilizing a test count sampling methodology to be agreed upon between Buyer and Kettle Seller. If the results of the sampling on the Final DC Inventory Date for any Transferred Distribution Center, as compared to the DC Inventory Book Value of the

Distribution Center Inventory at such Transferred Distribution Center on the Final DC Inventory Date, results in a variance that is within 0.5% of the then-current DC Inventory Book Value, the Parties shall not adjust the DC Inventory Book Value for purposes of the DC Inventory Price. If such sampling results in a variance that is greater than 0.5% of the then-current DC Inventory Book Value, then the DC Inventory Book Value for purposes of the DC Inventory Price shall be adjusted, upward or downward as the context requires, by the dollar amount equal to the variance. By way of example only, if the sampling on the Final DC Inventory Date, as compared to the then-current DC Inventory Book Value of Distribution Center Inventory at any Transferred Distribution Center, reveals a negative variance of 0.8%, then the DC Inventory Book Value used to calculate the DC Inventory Price for such Distribution Center Inventory shall be reduced by a dollar amount equal to the DC Inventory Book Value, *multiplied by* 0.8%. If such DC Inventory Book Value were $36,000,000, then such amount shall be reduced by 0.8% (or $288,000) in that example.

2.6 Lease Prorations. The Parties agree and acknowledge that all obligations of Sellers and their respective Affiliates with respect to all (x) rent (other than percentage rent which is addressed in Section 7.6) and (y) common area charges, operating cost pass-throughs, Taxes, utility charges and all other monetary obligations (collectively, the "CAM Expenses") shall be (A) credited to Buyer or charged to Buyer, as applicable, with respect to the period on and after Closing Date, and (B) credited to Sellers or charged to Sellers, as applicable, with respect to the period ending on the day prior to the Closing Date. Such prorations and/or adjustments shall be made to the Base Price as follows:

(a) The following prorations and/or adjustments in this Section 2.6(a) shall be referred to herein as the "Lease Prorations":

(i) On the Closing Date, all CAM Expenses under (x) the Transferred Leases, the Transferred Recorded Leases and Distribution Center Leases, as applicable, and (y) in the case of any Property subject to a reciprocal easement agreement or other similar instrument, under each such instrument, shall be prorated between Buyer and Sellers as of the Measurement Time. The Base Price shall be increased by an amount equal to any deposits and/or pre-paid rent paid by any Seller or its Affiliates under any such lease or agreement as of the Closing Date and shall be decreased by an amount equal to any deposits and/or rent outstanding as of the Closing Date and applicable to the period prior to the Closing Date. Prior to the Closing, Sellers together shall complete and deliver to Buyer an estimate of a reconciliation of all CAM Expenses referenced in this Section 2.6(a)(i) for the period from January 1 of the calendar year in which the Closing occurs to the Closing Date (a "Transferred Lease or REA CAM Reconciliation"). If and to the extent that the Transferred Lease or REA CAM Reconciliation reveals a Seller or any of its Affiliates has, in connection with any lease included in the Transferred Assets, a credit due for CAM Expenses paid for the period prior to Closing, then the Base Price shall be increased by an amount equal to such estimated credit. If and to the extent that the Transferred Lease or REA CAM Reconciliation reveals that a Seller or any of its Affiliates has paid less than the full amount that will be due in respect of CAM Expenses for the period prior to Closing, the Base Price shall be decreased by an amount equal to such deficit.

(ii) Utilities for the Owned Real Property and any Leased Real Property for which Utilities are paid directly to the applicable Utility provider, including, without limitation, water, sewer, electric, and gas (each, a "Utility"), shall be prorated as of the Measurement Time

based upon the last reading of meters prior to the Closing Date; *provided*, *however*, that for the avoidance of doubt no utility charges that are accounted for as CAM Expenses and pro rated as provided under Section 2.6(a)(i) shall be prorated under this Section 2.6(a)(ii). The Sellers shall endeavor to obtain meter readings as of the day before the Closing Date, and if such readings are obtained, there shall be no proration of the charges reflected thereon. The Sellers shall pay at Closing the charges for Utilities at such Owned Real Property or such Leased Real Property for the period to the day preceding the Closing Date, and Buyer shall pay the bills therefor for the period subsequent thereto. If for any reason such changeover in billing is not practicable as of the Closing Date as to any Utility, such Utility shall be apportioned on the basis of actual current readings or, if such readings have not been made, on the basis of the most recent bills that are available. If any utility company providing Utilities to such Owned Real Property or such Leased Real Property will not issue separate bills, the Base Price will be reduced by the Sellers' portion of such Utilities. If a Seller has paid any Utilities in advance, then the Base Price will be increased by an amount equal to such payment.

(iii) All obligations of Sellers and their respective Affiliates with respect to all CAM Expenses under any Retail Lease included in the Transferred Assets shall be prorated between Buyer and Sellers as of the Measurement Time. Prior to the Closing, Sellers together shall complete and deliver to Buyer an estimate of a reconciliation of all CAM Expenses referenced in this paragraph (B) for the period from January 1 of the calendar year in which the Closing occurs to the Closing Date (a "Retail CAM Reconciliation"). If and to the extent that the Retail CAM Reconciliation reveals a Seller or any of its Affiliates has, in connection with any such lease included in the Transferred Assets, undercollected CAM Expenses from its tenants that such tenants are not responsible for paying directly, then the Base Price shall be increased by an amount equal to such amount undercollected. If and to the extent that the Retail CAM Reconciliation reveals that a Seller or any of its Affiliates has, in connection with any such Retail Lease included in the Transferred Assets, overcollected CAM Expenses from its tenants, the Base Price shall be decreased by an amount equal to such amount overcollected.

(iv) The Base Price shall be decreased by the amount of any deposits under such Retail Leases included in the Transferred Assets in effect on the Closing Date, or any portion thereof, which are in Kettle Seller's possession and refundable to the tenant as of the Closing Date, *plus* the amount of any prepaid rent for periods from and after the Closing Date.

(b) At least three (3) Business Days prior to the Closing Date, Kettle Seller shall deliver, or cause to be delivered, to Buyer a schedule (i) identifying and allocating the Lease Prorations and (ii) setting forth any adjustments to the Base Price to be made pursuant to such Lease Prorations (the "Lease Proration Schedule"). Buyer shall have the opportunity to review such Lease Proration Schedule and Buyer and Kettle Seller shall cooperate and negotiate in good faith to agree upon the Lease Proration Schedule as of the Closing Date, at which point such schedule shall become final for purposes of this Agreement (the "Closing Lease Proration Schedule"). If (i) the Closing Lease Proration Schedule would result in Lease Prorations that would increase the Base Price, then the amount of such Lease Prorations shall be referred to as a "Proration Overpayment", and (ii) the Closing Lease Proration Schedule would result in Lease Prorations that would decrease the Base Price, then the amount of such Lease Prorations shall be referred to as a "Proration Underpayment." The Lease Prorations shall be based on actual, current payments by Kettle Seller or its Affiliates and to the extent the actual amounts are not available,

the Lease Prorations shall be estimated as of the Measurement Time based on actual amounts for the most recent comparable billing period. The Closing Lease Proration Schedule shall be considered final and not subject to re-proration following the Closing, except as set forth in Section 2.6(c).

(c) Buyer and Sellers acknowledge that the final information necessary to determine the final amounts that should have been used in the reconciliations described in Section 2.6(a) will not be known until after the end of the calendar year in which Closing occurs, and the Parties agree that as and when final information is known, they will make such further adjustments between them to account for any inaccuracies in the estimated reconciliation amounts (including reimbursing the other Party promptly for any overpayment or underpayment that has occurred). Each of Buyer and Sellers agrees to cooperate, and to cause their respective Affiliates to cooperate, as reasonably requested by the other, to provide notices, invoices and other information on a timely basis, and to take such other actions as are reasonably requested, to enable the Parties to finalize these post-closing adjustments within nine (9) months of the end of the calendar year in which Closing occurs. Any such payment shall, for tax purposes, be deemed to be an adjustment to the Purchase Price.

2.7 Purchase Price Allocation. Within ninety (90) days after the Post-Closing Statement is finalized pursuant to Section 2.4(b), Buyer shall prepare and deliver to Kettle Seller for the Kettle Seller's review an allocation of the Purchase Price, the Assumed Liabilities, and any other amounts treated as consideration for U.S. federal income tax purposes among the Transferred Assets in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (the "Allocation Schedule"). For the avoidance of doubt, neither Party shall treat any portion of the Pre-Closing Bonus Amount paid by Buyer as an Assumed Liability (contingent or otherwise) for U.S. federal income (or applicable state and local income) Tax purposes. If within thirty (30) days from the delivery of the Allocation Schedule to Kettle Seller, Kettle Seller notifies Buyer of any dispute regarding any allocation set forth on the Allocation Schedule, Buyer and Kettle Seller shall cooperate in good faith to resolve such dispute. If the Buyer and Kettle Seller agree to the Allocation Schedule, (a) the Allocation Schedule shall be final, binding, and conclusive on Buyer and Kettle Seller and (b) Buyer and Kettle Seller shall not take any position inconsistent therewith in preparing any Tax Returns, IRS Form 8594 or any other Tax forms or filings. If the Buyer and Kettle Seller fail to resolve any dispute within fifteen (15) days after Kettle Seller timely notifies Buyer of such dispute, each of Buyer and Kettle Seller shall be permitted to use its own allocation of the Purchase Price. For the avoidance of doubt, the DC Inventory Price (taking into account variances pursuant to Section 2.5(c)(ii)) shall be allocated to the Distribution Center Inventory.

2.8 Third Party Consents; Powers of Attorney.

(a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Transferred Contract, Transferred Lease, Transferred Recorded Lease, Retail Lease or any other Transferred Asset that is not assignable or transferable without the Consent of any Third Party to the extent that such Consent shall not have been obtained prior to the Closing; *provided*, *however*, that the applicable Seller shall, and shall cause its Affiliates to, use, prior to the Closing Date, commercially reasonable efforts to obtain, and Buyer shall use its commercially reasonable efforts to assist and cooperate with such Seller in connection therewith, all necessary Consents to the assignment and transfer thereof (and, without

limiting the foregoing, Sellers agree that if any Transferred Lease or Transferred Recorded Leases includes an extension or renewal right that, by its terms, is personal to the existing tenant, then, provided that Buyer identifies any such Transferred Lease or Transferred Recorded Lease by written notice to Sellers provided within twenty (20) Business Days after the A&R Date, which written notice identifying any Transferred Lease or Transferred Recorded Leases with any such extension or renewal right that is personal to the existing tenant and requesting that Seller use commercially reasonable efforts to cause Buyer to receive the benefit of such extension or renewal right, Sellers will use commercially reasonable efforts to obtain a consent that includes extending that extension or renewal right to the new tenant; *provided*, *further*, that (x) none of the Sellers or any of their respective Affiliates shall be required to commence any litigation and (y) notwithstanding anything in this Agreement to the contrary, neither Seller or any of their respective Affiliates shall be required to make any payment of any fees, expense "profit sharing" payments or other consideration (including increased or accelerated payments) or concede anything of monetary or economic value, or amend, supplement, or otherwise modify any such Contract, or otherwise make any accommodation, in each case, in this clause (y) except where it is contingent on the Closing and has been consented to by Buyer (such consent not to be unreasonably withheld conditioned or delayed) or is an accommodation or modification that will not be binding on Buyer following Closing. With respect to any Transferred Lease, Transferred Recorded Lease, or Retail Lease that is not assigned or transferred to Buyer at the Closing by reason of this Section 2.8 (a "Nonassigned Lease"), the Parties shall negotiate in good faith to reach a mutually acceptable resolution that will remedy the situation for Buyer resulting from unavailability of the Nonassigned Lease (whether by providing access to reasonably equivalent substitute space at no additional cost to Buyer, an appropriate adjustment to the Purchase Price or otherwise). With respect to any Transferred Contract or any other Transferred Asset (excluding any Nonassigned Lease) that is not assigned or transferred to Buyer at the Closing by reason of this Section 2.8 (a "Nonassigned Asset"), for a period beginning on the Closing Date and ending on the earlier of (i) the time such requisite Consent is obtained and the foregoing is transferred and assigned to Buyer and (ii) the twelve (12) month anniversary of the Closing Date, Kettle Seller shall, and shall cause its Affiliates to, use commercially reasonable efforts to provide to Buyer substantially comparable benefits thereof and shall enforce, at the request of and for the benefit of Buyer, any rights of Kettle Seller or its Affiliates arising thereunder against any Third Party, including the right to seek any available remedies or to elect to terminate in accordance with the terms thereof upon the advice of Buyer. As a condition to Kettle Seller or one of its Affiliates providing Buyer with the benefits of any Nonassigned Asset, subject to applicable Law, Buyer shall perform, at the direction of Kettle Seller, the obligations of Kettle Seller or any of its Affiliates thereunder. The Sellers shall hold in trust and pay to Buyer promptly upon receipt thereof, all income, proceeds and other monies received by the Sellers or any of their Affiliates in connection with any Nonassigned Asset (net of any Taxes and any other costs, fees and other expenses imposed upon or incurred by the Sellers or any of their Affiliates) in connection with the arrangements under this Section 2.8(a). Once authorization, approval, consent or waiver for the sale, assignment, sublease, transfer, conveyance or delivery of any Transferred Contract or any other Transferred Asset not sold, assigned, subleased, transferred, conveyed or delivered at the Closing is obtained, the Sellers shall assign, transfer, convey and deliver such asset to Buyer at no additional cost.

(b) Buyer shall use its reasonable best efforts to file such applications to acquire or to obtain in its own name, as soon as reasonably practicable following (x) the A&R Date, (y) receipt from Kettle Seller, Acorn Seller or their respective Affiliates of the information

necessary to submit applications for the Operating Licenses, including copies of the existing Operating Licenses related to or necessary for the operation of the Transferred Assets, and (z) public disclosure of such Transferred Supermarket to the relevant Governmental Entity, store or store employee, newspaper or third party to the extent reasonably necessary, with respect to disclosure of such Transferred Supermarket to the relevant store and store employees, and legally required, with respect to disclosure to the relevant Governmental Entity, newspaper or other third party, in each case, for Buyer to obtain such Operating License (and Buyer and Kettle Seller shall coordinate and cooperate in good faith with respect to outreach to the applicable Governmental Entity, store or store employee, newspaper or other applicable third party with respect thereto), such permits, licenses and/or other approvals as may be necessary to (i) sell beer, wine and/or liquor ("Alcohol") or tobacco products in the Transferred Supermarkets following the Closing (the "Alcohol and Tobacco Licenses"), (ii) sell pharmaceuticals and/or operate a pharmacy in the Transferred Supermarkets following the Closing, including the Pharmacy Licenses and entry into any PBM Contracts, (iii) sell lottery tickets and gaming products in the Transferred Supermarkets following the Closing (the "Gambling Licenses") or (iv) otherwise operate the Transferred Assets in the manner operated by Kettle Seller and its Affiliates immediately prior to the Closing (the "Ancillary Licenses", and collectively with the Alcohol and Tobacco Licenses, the Pharmacy Licenses and the Gambling Licenses, the "Operating Licenses"), and in each case, *provided*, that, in the event Buyer is unable to acquire each of the Operating Licenses (other than the PBM Contracts) pursuant to Section 2.1(a) or to obtain such Operating Licenses (other than the PBM Contracts) in its own name, at or prior to Closing, and to the extent the granting by the applicable Seller of any such limited power of attorney as hereinafter provided will not violate any applicable Law, Kettle Seller agrees to reasonably cooperate to and to the extent permitted by applicable Law, grant Buyer or its designee, to the extent permitted by applicable Law, a limited power of attorney under Kettle Seller's applicable Operating Licenses, in each case, so as to allow Buyer or its designee the right to operate under such Seller's applicable Operating Licenses until the earlier of: (A) in the case of Alcohol and Tobacco Licenses, the issuance to Buyer (in Buyer's name) of any and all such Alcohol and Tobacco Licenses necessary to sell Alcohol or tobacco products in the Transferred Supermarkets where Alcohol or tobacco products are presently sold by Kettle Seller or its Affiliates, (B) in the case of Pharmacy Licenses, the issuance to Buyer (in Buyer's name) of any and all such Pharmacy Licenses necessary to operate a pharmacy in the Transferred Supermarkets, (C) in the case of Gambling Licenses, the issuance to Buyer (in Buyer's name) of any and all such Gambling Licenses necessary to sell gambling and lottery tickets in the Transferred Supermarkets, (D) in the case of any Ancillary Licenses, the issuance to Buyer (in Buyer's name) of any and all such Ancillary License necessary to operate the Transferred Assets in the manner operated by Kettle Seller and its Affiliates immediately prior to the Closing, or (E) in the case of all Operating Licenses (other than the PBM Contracts), until the twelve (12) month anniversary of the Closing. Kettle Seller shall use commercially reasonable efforts to maintain such applicable Operating Licenses in full force and effect during Buyer's operations thereunder. Following the A&R Date, the Parties shall agree in good faith on the timeline for Buyer's submission of applications for Operating Licenses and shall cooperate with respect to the preparation of such applications.

(c) Buyer shall use its commercially reasonable efforts to enter into its own PBM Contracts as promptly as practicable following the A&R Date; *provided*, that, to the extent Buyer is unable to procure such PBM Contracts prior to the Closing, the Parties shall cooperate to implement additional arrangements or structures to ensure that Buyer has proper PBM Contract coverage at or prior to the Closing.

2.9 Risk of Loss; Casualty and Condemnation.

(a) Prior to the Closing, all risk of loss with respect to the Transferred Assets shall be on Seller up to the Closing. From and after the Closing, Buyer shall bear all risk of loss associated with the Transferred Assets and shall be solely responsible for procuring adequate insurance to protect the Transferred Assets against any such loss.

(b) If, prior to the Closing, any Transferred Supermarkets, Transferred Distribution Centers, Transferred Offices or Acorn Housing are damaged or destroyed, by fire or other casualty, or subject to a taking, then if the Closing occurs and to the extent such damage has not been restored to its former condition, then the applicable Seller shall promptly remit to Buyer any insurance proceeds or condemnation awards received by such Seller (or its Affiliate) in respect of any such damage or destruction ("Proceeds") on the later of (i) the Closing, and (ii) the third (3rd) Business Day after such Seller's (or its Affiliate's) receipt of such Proceeds, and shall, upon request of Buyer, if any such Proceeds have not yet been received as of Closing, assign to Buyer, effective upon the Closing, such Seller's rights (or such Affiliate's rights) to receive any such Proceeds. For the avoidance of doubt, such remittance or assignment shall be subject to any rights of the applicable landlord or its lender(s) as to any affected Transferred Supermarket, Transferred Distribution Center, Transferred Offices or Acorn Housing. This Agreement shall stay in full force and effect with respect to any Transferred Supermarket, Transferred Distribution Centers, Transferred Offices or Acorn Housing subject to a casualty, condemnation, or taking; *provided*, *however*, that if, prior to the Closing, any of the Transferred Distribution Centers, Transferred Offices or Acorn Housing is so damaged or destroyed, by fire or other casualty, or subject to a taking, such that the operations of such Transferred Distribution Center, Transferred Offices or Acorn Housing are materially impacted as of the Closing Date, then the Parties agree to work together in good faith to find a mutually acceptable solution with respect thereto and such Seller shall either (i) substitute any distribution center or office in the same geographic area that is substantially comparable in value and operational capacity to the affected Transferred Distribution Center, Transferred Office or Acorn Housing being so replaced, if such a substitute exists and is owned or leased by a Seller or any of their respective controlled Affiliates and is able to be transferred to Buyer; or (ii) if no such substitute exists, restore such Transferred Distribution Center, Transferred Offices or Acorn Housing to substantially the same condition as it was in prior to such casualty or condemnation and enter into commercial arrangements reasonably acceptable to Buyer to provide Buyer with distribution services reasonably similar to those that would have been provided to the Buyer by such Transferred Distribution Center, Transferred Office or Acorn Housing until such Transferred Distribution Center, Transferred Offices or Acorn Housing has been restored (*provided*, that Buyer shall make any Proceeds with respect to such Transferred Distribution Center, Transferred Offices or Acorn Housing available to Seller for such restoration and reasonably cooperate with such restoration); *provided*, *however*, that if the Transferred Distribution Center, Transferred Offices or Acorn Housing is not reasonably likely to be repaired or restored within ninety (90) days following the Closing to an operating condition substantially

similar as it was in immediately prior to such casualty or condemnation, then Buyer may specify that Sellers substitute another distribution center or office for such Transferred Distribution Center, Transferred Offices or Acorn Housing subject to such casualty or condemnation, to the extent such a substitute is able to be transferred to Buyer, as set forth in clause (i) above. The foregoing shall represent Buyer's sole and exclusive rights and recourse with respect to an event described in this Section 2.9. Notwithstanding anything to the contrary in this Section 2.9(b), any remittance or assignment of Proceeds under this Section 2.9(b) shall not include any proceeds to the extent attributable to lost rents or similar costs applicable to any period prior to the Closing, nor any uncollected Proceeds that any Seller (or its applicable controlled Affiliate) may be entitled to receive from such damage, destruction, or taking, and shall not be reduced by (A) the amount of all costs incurred by such Seller (or its applicable controlled Affiliate) in connection with any repair or any damage or destruction, (B) the collection costs of such Seller (or its applicable controlled Affiliate) with respect to any Proceeds, and (C) any amounts required to be paid to the applicable landlord under the applicable Transferred Lease or to any lender pursuant to any financing, as applicable, in each case, with respect to such damage, destruction, or taking.

2.10 Bulk Transfer Laws. Buyer acknowledges that the Sellers and their respective controlled Affiliates have not taken, and do not intend to take, any action required to comply with any applicable bulk sale or bulk transfer Laws or similar Laws of any jurisdiction. Buyer hereby waives compliance by the Sellers and their respective controlled Affiliates with the provisions of any bulk sale or bulk transfer Laws or similar Laws of any jurisdiction in connection with the Transactions.

2.11 [Reserved.]

2.12 Tax Withholding. Subject to the proviso below, Buyer shall be entitled to deduct and withhold from the consideration otherwise payable in connection with the Transactions, to any Person such amounts that Buyer is required under applicable Law to deduct and withhold with respect to any such payments and if any amounts are so deducted or withheld, Buyer shall timely pay the full amount deducted or withheld to the relevant Governmental Entity in accordance with applicable Law; *provided*, that if each Seller delivers a Form W-9 to Buyer at or prior to the Closing, Buyer acknowledges and agrees that, under applicable Law in effect on the A&R Date, no amount would be required to be deducted and withheld from the Purchase Price and the DC Inventory Price paid to Sellers, and accordingly, in the absence of a change in applicable Law as provided below, Buyer shall not deduct or withhold, and if Buyer believes that any such amount is required to be deducted or withheld as a result of a change in applicable Law after the A&R Date, Buyer shall provide Seller with notice (which shall include the authority, basis and method of calculation of the proposed deduction or withholding) as soon as becoming aware of any such requirement to deduct and withhold, and the Parties shall use their respective commercially reasonable efforts in seeking to reduce or eliminate any such withholding or deduction. To the extent that amounts are so withheld or deducted, and duly and timely paid over to the appropriate Governmental Entity, such withheld or deducted amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

ARTICLE III
CLOSING

3.1 Closing. On the terms and subject to the conditions set forth in this Agreement, the sale, conveyance, assignment, transfer and delivery of the Transferred Assets (for the avoidance of doubt, other than the Distribution Center Inventory) and the assumption of the Assumed Liabilities contemplated by this Agreement (collectively, the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 at 10:00 A.M., New York City time, on the date that is the first (1st) Business Day (*e.g.,* Monday), of the week following the date that is five (5) Business Days after the date on which the satisfaction or waiver of the conditions precedent to Closing specified in Article X (other than those conditions that by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or waiver of such conditions) occurs, or at such other time and place as Buyer and the Sellers mutually agree in writing. The date on which the Closing occurs is referred to herein as the "Closing Date."

3.2 Kettle Seller Closing Deliveries. At the Closing, the Kettle Seller shall deliver, or cause to be delivered, to Buyer the following:

(a) a duly executed copy of the Assignment and Bill of Sale Agreement;

(b) duly executed copies of the Lease Assignments;

(c) a duly executed copy of the Acorn Trademark License Agreement;

(d) a duly executed copy of the Safeway Trademark License Agreement;

(e) a duly executed copy of the Retail Lease Assignment;

(f) a duly executed copy of the IP Assignment Agreement;

(g) a duly executed copy of the Reverse Transition Services Agreement;

(h) duly executed copies of the Recorded Lease Assignments, each in form and in sufficient counterparts to facilitate filing or recording with the applicable Governmental Entities;

(i) for each Owned Real Property, a duly executed original copy of the bargain and sale, limited or special warranty deed as applicable, for such property (each, a "Deed" and, collectively, the "Deeds"), each substantially similar to the corresponding form for the applicable jurisdiction as set forth in Exhibit C attached hereto;

(j) if applicable, a duly executed Underground Storage Tank ("UST") Change of Ownership Form for the Kettle Fuel Centers, in a form reasonably acceptable to Buyer;

(k) a duly executed notice issued to each of the tenants pursuant to a Retail Lease;

(l) pursuant to Section 2.8(b), to the extent applicable, a power of attorney necessary for Buyer's operation under Kettle Seller's Operating Licenses following the Closing;

(m) duly executed certification conforming to the requirements of Treasury Regulations Section 1.1445-2(b)(2) from each relevant Seller;

(n) a duly executed copy of the Transition Services Agreement;

(o) a certificate, dated as of the Closing Date, signed by a duly authorized officer of Kettle Seller, certifying the fulfillment of the conditions set forth in Sections 10.2(a), 10.2(b) and 10.2(c);

(p) a certificate, dated the Closing Date, signed by a duly authorized officer of Acorn Seller, certifying the fulfillment of the conditions set forth in Sections 10.2(a), 10.2(b) and 10.2(c);

(q) an owner's title affidavit for each Owned Real Property in the form set forth as Exhibit Q, executed by the applicable Seller or Affiliate thereof that is conveying title, and, if Buyer has obtained a survey for any Owned Real Property that is certified as of a date that is more than 180 days prior to the Closing Date, the owner's title affidavit for such Owned Real Property will include the following additional clause: "Since [*the last date of field work of the applicable survey*], to the actual knowledge of Owner, there has been no alteration to the boundary lines and no subdivision of the Premises, and no physical additions of buildings or alterations or other material improvements that would affect the building footprint of the Premises.";

(r) a W-9 tax certificate for each Seller and, if applicable, each Affiliate of such Seller that is not a disregarded entity (for income tax purposes) and that is delivering any real estate or any leasehold or other interest therein to Buyer or a designee thereof on the Closing Date;

(s) a duly executed original certification by the relevant Seller that each Transferred Lease Rent Roll and Retail Lease Rent Roll delivered pursuant to Section 4.13 is true, correct and complete as of five (5) Business Days prior to the Closing Date, or identifying any update necessary to make such Transferred Lease Rent Roll or Retail Lease Rent Roll true, correct and complete as of a date not more than five (5) Business Days prior to the Closing Date;

(t) a duly executed copy of the CBA Assignment and Assumption Agreement in the form set forth as Exhibit H; and

(u) such other instruments and agreements as necessary or appropriate to transfer the Transferred Assets and Assumed Liabilities to Buyer (including, without limitation, such other customary documents as may be reasonably required by the title company or any other title insurer issuing coverage in connection with the transfer or financing of the Transferred Assets) and otherwise comply with Sellers' obligations under this Agreement and the other Transaction Documents, in each case, in form and substance reasonably acceptable to Buyer.

3.3 Additional Kettle Seller Closing Deliveries. In addition to the items set forth in Section 3.2, Sellers agree to deliver, or cause to be delivered, to Buyer or its designees the item described in clause (a) below, and to use commercially reasonable efforts to deliver each of the

items described in clauses (b)–(e) below (such items, the "Property-Specific Materials"), it being agreed that any such items that are delivered to or otherwise remain at the management office of the Property to which they relate will be considered delivered for this purpose:

(a) all Required Estoppels received by either Seller or any representatives thereof;

(b) originals, or, if originals are unavailable, copies of the specifications, technical manuals and similar materials for the Properties to the extent same are in possession or control of either Seller or any Affiliate thereof;

(c) originals or, if originals are unavailable, copies of all books and records relating to the operation of the Properties and maintained by Sellers during the Sellers' ownership thereof, to the extent the same are in the possession or control of either Seller or any Affiliate thereof (and are not Excluded Assets);

(d) originals, or, if originals are unavailable, copies of all permits, licenses and approvals relating to the ownership, use or operation of the Properties, to the extent same are in the possession or control of either Seller or any Affiliate thereof (and are not Excluded Assets);

(e) originals of all letters of credit delivered by the tenants under any of the Retail Leases subject to the Retail Lease Assignment or otherwise assigned to Buyer at the Closing as security for their obligations thereunder (it being agreed that the Sellers also will cooperate as reasonably requested by Buyer to facilitate having each such letter of credit reissued in favor of Buyer or its designee promptly following Closing); and

(f) keys and combinations for locks and safes located at any of the Properties if and to the extent in the possession or control of either Seller.

Sellers agree that if, following the Closing Date, Buyer determines that any items of Property-Specific Materials exist but were not delivered as contemplated above, Sellers will, and will cause their respective Affiliates to, use commercially reasonable efforts to locate such items and deliver them to Buyer promptly upon request therefor.

3.4 Buyer Closing Deliveries. At the Closing, Buyer shall deliver, or cause to be delivered, to the Sellers the following:

(a) an amount equal to the amount set forth in the Estimated Closing Statement to Kettle Seller by wire transfer of immediately available funds to a bank account or accounts designated by Kettle Seller at least three (3) Business Days prior to the Closing Date;

(b) duly executed copies of the Assignment and Bill of Sale Agreement for the Transferred Assets;

(c) duly executed copies of the Lease Assignments;

(d) a duly executed copy of the Acorn Trademark License Agreement;

(e) a duly executed copy of the Safeway Trademark License Agreement;

(f) a duly executed copy of the Retail Lease Assignment;

(g) a duly executed copy of the IP Assignment Agreement;

(h) a duly executed copy of the Reverse Transition Services Agreement;

(i) duly executed copies of the Recorded Lease Assignments, each in form and in sufficient counterparts to facilitate filing or recording with the applicable Governmental Entities;

(j) duly executed original copies of the Deeds, each in form and in sufficient counterparts to facilitate filing or recording with the applicable Governmental Entities;

(k) a duly executed notice issued to each of the tenants pursuant to a Retail Lease;

(l) a duly executed copy of the Transition Services Agreement;

(m) a duly executed copy of the CBA Assignment and Assumption Agreement in the form set forth as Exhibit H;

(n) a certificate, dated the Closing Date, signed by a duly authorized officer of Buyer, certifying the fulfillment of the conditions set forth in Sections 10.3(a) and 10.3(b); and

(o) such other instruments and agreements as necessary or appropriate to assume the Transferred Assets and Assumed Liabilities and otherwise comply with Buyer's obligations under this Agreement and the other Transaction Documents.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Kettle Seller (solely with respect to itself, the Transferred Kettle Assets and, to the extent specified in Section 4.8, Intellectual Property; IT Assets) and Acorn Seller (solely with respect to itself, the Transferred Acorn Assets, and, to the extent specified in Section 4.8, Intellectual Property; IT Assets), severally and not jointly, hereby represent and warrant to Buyer, except as set forth in the corresponding sections or subsections of the Schedules, that:

4.1 Organization and Qualification. Such Seller (a) is either duly organized or incorporated (as applicable), validly existing and in good standing (where such concept exists) under the Laws of its jurisdiction of organization or incorporation (as applicable), (b) has all requisite corporate (or similar entity) power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, and (c) is duly qualified or licensed to do business and is in good standing as a foreign corporation (or other entity) in each jurisdiction in which its ownership, leasing or operation of the Transferred Assets or where the conduct of its business requires such qualification or license, except, in the case of clauses (b) and (c), where such failure to be so qualified, licensed or in good standing, or to have such power or authority,

would not reasonably be expected to result in a Material Adverse Effect or prevent, materially delay, or materially impair the consummation of the Transactions.

4.2 Authority. Such Seller has all requisite corporate (or similar organizational) power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance by such Seller of this Agreement and each of the other Transaction Documents to which it is a party has been duly and validly authorized by such Seller. As of the Closing, such Seller (or its applicable Affiliate) will have the requisite corporate (or similar organizational) power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which such Seller (or its applicable Affiliate) will be a party, and perform its obligations hereunder and thereunder and to consummate the Transactions.

4.3 Binding Effect. This Agreement and each of the other Transaction Documents to which such Seller is a party (or will be a party when executed and delivered by the parties thereto after the A&R Date and assuming the due authority, execution and delivery by Buyer and its applicable Affiliates), constitutes (and in the case of such other Transaction Document executed and delivered after the A&R Date, will constitute) a valid and legally binding obligation of such Seller enforceable against such Seller in accordance with this Agreement's or each of the other Transaction Document's respective terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, or moratorium Laws, other similar Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance or other equitable remedies (regardless of whether enforcement is sought in a proceeding at law or equity) (the foregoing exceptions, the "Enforceability Exceptions").

4.4 Regulatory Approvals and Non-Governmental Consents.

(a) No consent, notice, approval, waiver, authorization, or filing is required to be obtained by such Seller from, or to be given by such Seller to, or made by such Seller with, any Governmental Entity, in connection with the execution, delivery, or performance by such Seller of its material obligations under this Agreement or the other Transaction Documents except for such consent, notice, approval, waiver, authorization, or filing that if failed to be obtained, given, or made, would not be reasonably expected to result in a Material Adverse Effect or prevent, materially delay or materially impair the consummation of the Transactions.

(b) Except (i) under Contracts that are terminable upon ninety (90) days or less notice without payment of any fee, and (ii) for such consents, approvals, waivers, or authorizations of which the failure to obtain would not reasonably be expected to result in a Material Adverse Effect, no consent, approval, waiver, or authorization is required to be obtained by such Seller from, or to be given by such Seller to, or made by such Seller with, any Person (excluding any Governmental Entity), in connection with the execution, delivery, or performance by such Seller of this Agreement and the other Transaction Documents.

4.5 Non-Contravention. The execution, delivery, and performance by such Seller of this Agreement, and the execution, delivery, and performance by such Seller (or its applicable Affiliate) of the other Transaction Documents to which such Seller (or such applicable Affiliate) is a party, and the consummation by such Seller (or such applicable Affiliate) of the Transactions,

do not and will not: (a) contravene or conflict with any provision of the Organizational Documents of such Seller (or such applicable Affiliate); (b) assuming the receipt of all Required Regulatory Approvals and Non-Governmental Consents, (i) constitute a breach or result in a default under, or give to any Third Party any rights of termination, amendment, acceleration or cancellation under, any Transferred Contract or Contract to which any of the Transferred Assets is subject, or (ii) result in the creation of any Encumbrance (other than any Permitted Encumbrance) upon any of the Transferred Assets; or (c) assuming the receipt of all Required Regulatory Approvals and Non-Governmental Consents, violate or result in a breach of or constitute a default under any Law to which such Seller (or such applicable Affiliate) or any of the Transferred Assets is subject; which, except in the case of each of the foregoing clauses (b) and (c), would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

4.6 Financial Information.

(a) The written store level profits and losses for the Acorn Supermarkets for the fiscal years ended February 26, 2022 and February 25, 2023, and the fiscal year to date ending January 27, 2024, and the Kettle Supermarkets for the fiscal years ended January 29, 2022, January 28, 2023, and February 3, 2024 (such date, the "Statement of Sales End Date") and the written distribution center level profits and losses for the Transferred Distribution Centers for such periods, as applicable (such statements, collectively, the "Profit and Loss Statements"), (i) have been made available to Buyer, (ii) are correct and complete in all material respects, (iii) have been prepared in good faith using substantially the same accounting methods, practices, principles, policies, and procedures used in the preparation of such sales figures for prior periods in the ordinary course of business, in each case, in all material respects, and (iv) present, in all material respects, a reasonable representation of the store level profits and losses for such Transferred Supermarkets and a reasonable representation of the distribution center level profits and loses for such Transferred Distribution Centers. Such Seller maintains internal controls to provide reasonable assurance that transactions are recorded as necessary to permit preparation of the information described in the foregoing sentence of this Section 4.6.

(b) All Inventory (except that would be immaterial in amount or effect) included in the Transferred Assets is of usable quality, and all slow-moving and/or obsolete units of Inventory have been written off or written down to their appropriate value in accordance with applicable Accounting Principles. All such Inventory is owned by the applicable Seller free and clear of all liens (except Permitted Encumbrances) and was acquired or produced by such Seller in the ordinary course of business consistent with past practice.

4.7 Transferred Assets; Sufficiency. As of the A&R Date, except as would not reasonably be expected to be material to the Transferred Assets, taken as a whole, each Seller has, and at the Closing, such Seller shall transfer to Buyer, good and valid title to all of the Transferred Assets, in each case free and clear of all Encumbrances, other than Permitted Encumbrances. At the Closing, assuming receipt of all Required Regulatory Approvals, the Transferred Assets, together with the services provided under the Transition Services Agreement, constitute in all material respects all of the assets and services (other than (a) Intellectual Property, (b) Enterprise Contracts and PBM Contracts, (c) any services expressly excluded under the Transition Services Agreement, and (d) for Permits which are non-transferable and which Buyer must itself obtain) which are used in, held for the use of or necessary in the conduct of the businesses of the

Transferred Supermarkets, Transferred Distribution Centers, Acorn Dairy, Acorn Housing and Transferred Offices, as such businesses have been conducted during the twelve (12) month period prior to the A&R Date. Each Transferred Asset that is material to the business of the Transferred Assets is in good working order (ordinary wear and tear excepted), is free from any material defect and has been maintained in all material respects in accordance with generally accepted industry standards, and all the Transferred Assets are suitable in all material respects for the purposes for which they are used.

4.8 Intellectual Property; IT Assets.

(a) Other than the Trademarks exclusively licensed to Buyer pursuant to the Trademark License Agreements, the Transferred Registered Intellectual Property includes (i) all Registered Intellectual Property owned by the Sellers or any of their respective Affiliates that are used or held for use primarily in the operation of the business of solely the Transferred Distribution Centers, Transferred Supermarkets and Transferred Offices, and (ii) all Registered Intellectual Property included in the Transferred Banners and Transferred Private Labels; *provided*, *however*, that this Section 4.8(a) shall not be construed as a representation or warranty of non-infringement.

(b) The Sellers and their respective controlled Affiliates have the authority to grant the licenses and other rights purported to be granted to Buyer under the Licensed Intellectual Property as contemplated in the Trademark License Agreements and the licenses granted pursuant to Section 7.4(c).

(c) Except as would not reasonably be expected, individually or in the aggregate, to result in material Liability to the operation of the business of the Transferred Supermarkets, Transferred Distribution Centers and Transferred Offices taken as a whole:

(i) all requisite filings and fees necessary to maintain each item of the Transferred Registered Intellectual Property and Licensed Intellectual Property through Closing have been timely filed with and paid to the relevant Governmental Entity or domain name registrar, as applicable.

(ii) The Transferred Intellectual Property and Licensed Intellectual Property are subsisting, the issuances and registrations included therein are valid and, to Seller's Knowledge, enforceable;

(iii) the Sellers or their respective controlled Affiliates solely and exclusively own all right, title and interest in and to all Transferred Intellectual Property and Licensed Intellectual Property, free and clear of all Encumbrances (other than Permitted Encumbrances). There is, and since the Look Back Date, there has been, no claim, action, suit, proceeding, notice or investigation pending or, to Seller's Knowledge, threatened by any Third Party contesting the validity, ownership or enforceability of any of the Transferred Intellectual Property or Licensed Intellectual Property;

(iv) the Sellers or their respective Affiliates have sufficient rights to use all Transferred Intellectual Property and the Licensed Intellectual Property that are used in or necessary for the conduct of the business of the Transferred Distribution Centers, Transferred Supermarkets and Transferred Offices. Subject to the Transition Services Agreement, the

transitional license granted pursuant to Section 7.4(c) and the Trademark License Agreements, all of such rights shall survive consummation of the transactions contemplated by this Agreement without material change. Other than any Intellectual Property provided pursuant to the Transition Services Agreement and the licenses granted pursuant to Section 7.4(c), the Transferred Intellectual Property, Licensed Intellectual Property and Intellectual Property licensed to Sellers pursuant to the Transferred Contracts constitute all of the Intellectual Property used, held for use or necessary for the business of the Transferred Distribution Centers, Transferred Supermarkets and Transferred Offices as such businesses have been conducted during the twelve (12) month period prior to the A&R Date;

(v) (A) the operation of the business of the Transferred Distribution Centers, Transferred Supermarkets and Transferred Offices, does not infringe, misappropriate or otherwise violate the Intellectual Property of any Third Party, and since the Look Back Date has not, infringed, misappropriated or otherwise violated the Intellectual Property of any Third Party, and (B) to Seller's Knowledge, since the Look Back Date, no Third Party has infringed, misappropriated or otherwise violated and no Third Party is infringing, misappropriating, or otherwise violating any Transferred Intellectual Property or Licensed Intellectual Property. In each case of the foregoing, since the Look Back Date, Sellers have not made or received any such claims, actions, suits, proceedings, investigations, notices or, to Seller's Knowledge, threats alleging such infringement, misappropriation or other violation;

(vi) Sellers and their respective Affiliates have taken commercially reasonable measures to protect and preserve the confidentiality and value of all Trade Secrets included in the Transferred Intellectual Property, to Seller's Knowledge, there has not been any unauthorized use or disclosure of such Trade Secrets; and

(vii) other than those IT Assets provided pursuant to the Transition Services Agreement, the Transferred IT Assets are sufficient for the current needs of the operation of the business of the Transferred Distribution Centers, Transferred Supermarkets and Transferred Offices. The Transferred IT Assets and, to Seller's Knowledge, all other IT Assets used in the operation of the business of the Transferred Distribution Centers, Transferred Supermarkets, and Transferred Offices (A) have not malfunctioned, failed or otherwise experienced any unauthorized access, alteration or use, and (B) are free from any bugs, defects, "back doors," "drop dead devices," "time bombs," "Trojan horses," "viruses," "worms," "spyware," "malware," "ransomware" or any other disabling or malicious code.

(d) Seller or one of its Affiliates owns or has a valid right to access and use all material IT Assets (including the Transferred IT Assets) which IT Assets are adequate for and operate and perform in all material respects as required in connection with the operation of the business of solely the Transferred Supermarkets, Transferred Distribution Centers and Transferred Offices, as such businesses have been conducted during the twelve (12) month period prior to the A&R Date, except as would not reasonably be expected, individually or in the aggregate, to result in material Liability to the operation of the business of the Transferred Supermarkets, Transferred Distribution Centers and the Transferred Offices, taken as a whole.

4.9 Data Privacy.

(a) Except as would not reasonably be expected to be material to the Transferred Assets, taken as a whole:

(i) since the Look Back Date, with respect to any Personal Information included in the Transferred Assets, each Seller and, solely with respect to the business of the Transferred Assets, its controlled Affiliates: (A) has complied with all Privacy Requirements; (B) has implemented commercially reasonable safeguards designed to protect such Personal Information against loss, theft, or unauthorized disclosure; (C) has not experienced any Security Incidents involving such Personal Information; and (D) has neither received any written complaint, notice or inquiry alleging noncompliance with any Privacy Requirements nor been required to notify a Governmental Entity or any affected individual of any actual or suspected Security Incident;

(ii) each Seller and, solely with respect to the business of the Transferred Assets, its controlled Affiliates (A) is, and for the past five (5) years has been, in compliance with HIPAA and all contractual commitments relating to privacy and security of Protected Health Information; (B) has entered into appropriate contractual arrangements, including business associate agreements, as required by HIPAA; (C) has implemented appropriate policies and procedures consistent with industry standards to ensure compliance with HIPAA and the protection of Protected Health Information; (D) has not experienced any breaches of unsecured Protected Health Information; and (E) neither received any written complaint, notice or inquiry alleging noncompliance with HIPAA nor been required to notify a Governmental Entity or any affected individual of any actual or suspected breach of unsecured Protected Health Information; and

(iii) the transfer and other Processing of Personal Information in connection with the transactions contemplated by this Agreement will not violate any Privacy Requirements as they currently exist or as they existed at any time during which any of the Personal Information was collected, obtained or otherwise Processed.

4.10 Material Contracts.

(a) Except for the Excluded Contracts, Schedule 4.10(a) sets forth a list of all Transferred Contracts as of the A&R Date. Correct and complete copies of each such Transferred Contract have been made available to Buyer or its Representatives.

(b) Except as would not be reasonably expected to be material to the Transferred Assets, taken as a whole, each of the Transferred Contracts represents a valid and binding obligation of one or more of such Seller or its controlled Affiliates party thereto and, to such Seller's Knowledge, each other party thereto, and is enforceable against such Seller or its Affiliate and, to such Seller's Knowledge, each other party thereto, in accordance with its terms, and is in full force and effect, subject to the Enforceability Exceptions. Except as would not be reasonably expected, to be material to the Transferred Assets, taken as a whole, neither such Seller nor any of its Affiliates or, to such Seller's Knowledge, any other party thereto is in breach of or default under, or has provided or received any written notice of any intention to terminate, any of the Transferred Contracts, or has committed or failed to perform any act which, with or without notice, lapse of time or both would constitute a breach of or default under any of the Transferred

Contracts.

4.11 Compliance with Law; Permits.

(a) Such Seller's use of the Transferred Assets is not, and since the Look Back Date, has not been, in violation of any applicable Laws except as would not be material to the Transferred Assets taken as a whole. Since the Look Back Date, such Seller has not received any notice or communication of any material noncompliance with any applicable Laws related to such Seller's use of the Transferred Assets, which compliance remains unresolved, except as would not be material to the Transferred Assets, taken as a whole.

(b) A true, complete and accurate list of the material Permits, (including an illustrative list of the Pharmacy Licenses), necessary to enable the Sellers to operate the Transferred Supermarkets in all material respects as presently conducted, is set forth on Schedule 4.11(b). The Sellers have all Permits with respect to the operation of the Transferred Assets as they are now being operated, each of which is valid and in full force and effect, except for instances where the failure to do or be so would not be reasonably expected, individually or in the aggregate, to be material to the Transferred Assets, taken as a whole.

4.12 Litigation. As of the A&R Date, (a) there is no, and since the Look Back Date, there has not been any, Action pending or threatened in writing against or affecting such Seller (or any of its Affiliates) relating to the Transferred Assets that would reasonably be expected to result in a Material Adverse Effect, and (b) such Seller is not (and none of its Affiliates is) subject to any Order relating to the Transferred Assets that would reasonably be expected to result in a Material Adverse Effect.

4.13 Real Property.

(a) Schedule 4.13(a)-A sets forth a correct and complete list, as of the A&R Date, of those Transferred Leases, Transferred Recorded Leases, Distribution Center Leases or Transferred Offices if any, which are leased and/or subleased to a Seller or one of its controlled Affiliates (for each such lease, the "Tenant") by any Person. Such Seller has made available to Buyer a correct and complete copy of each lease described on Schedule 4.13(a)-A and all amendments and supplements thereto. With respect to each such lease, except as would not be reasonably expected, individually or in the aggregate, to be adverse in any material respect to the Transferred Assets, taken as a whole: (i) assuming due authorization and delivery by the other party thereto, such lease is in full force and constitutes the valid and legally binding obligation of the applicable Tenant, and to such Seller's Knowledge, the counterparty thereto, enforceable against such Tenant, and to such Seller's Knowledge, the counterparty thereto, in each case, in accordance with its terms and conditions, subject to the Enforceability Exceptions; (ii) such Seller or its relevant Affiliate that is the Tenant has good and valid leasehold or subleasehold interest in the Leased Real Property leased pursuant to the applicable lease, free and clear of all Encumbrances, except Permitted Encumbrances; (iii) neither such Tenant, nor to such Seller's Knowledge, the counterparty thereto, has violated any provision of, or taken or failed to take any act which, with or without notice, lapse of time, or both, would constitute a default under the provisions of such lease, and neither Seller nor any of such Seller's Affiliates has received any notice in writing that it has breached, violated or defaulted under any such lease where such breach,

violation or default remains uncured; (iv) all required security deposits have been paid to and, to such Seller's Knowledge, are being held by the applicable landlord in compliance with the applicable lease and applicable Law; (v) no material construction, alteration or other work due to be performed by any landlord pursuant to such lease to ready the applicable premises for use by the Tenant remains to be performed thereunder and all construction allowances or other sums to be paid to such Tenant and all amounts owed by such Tenant to outside contractors or other Third Parties for work performed by or at the request of such Tenant have been paid in full to the extent currently due and payable; (vi) such Seller or the relevant Tenant has not vacated or abandoned such lease or given written notice to landlord of its intent to do so; and (vii) none of such Seller or any Affiliate of such Seller has subleased or otherwise granted any Person the right to use or occupy any property leased by the Tenant under such lease (the "Leased Real Property") except for (A) the Retail Leases that do not grant control to any such other Person of the entirety of the applicable Leased Real Property, which Retail Leases are further described in Section 4.13(c) below, and (B) the affiliate subleases which will be terminated immediately preceding Closing, which are identified on Schedule 4.13(a)-B hereto. Schedule 4.13(a)-C sets forth a complete and correct schedule with the following information for each lease of real property referred to on Schedule 4.13(a)-A (such schedule, a "Transferred Lease Rent Roll") as of the A&R Date: (i) the street address of the Property to which the lease relates; (ii) the expiration date; (iii) the monthly fixed rent; and (iv) any delinquency in the payment of rent under such lease together with the amount of time for which such delinquency has been outstanding.

(b) Schedule 4.13(b) sets forth a correct and complete list, as of the A&R Date, of each parcel of real property owned by a Seller or one of its controlled Affiliates that is a Kettle Owned Store, Kettle Owned Fuel Center, Acorn Owned Store, Acorn Owned Fuel Center, Acorn Owned Distribution Center, Transferred Office, or Acorn Housing, as applicable (collectively, the "Owned Real Property"). The Seller that owns (or whose controlled Affiliate owns) each such parcel of Owned Real Property has made available to Buyer a correct and complete copy of each deed by which such Seller or its Affiliate acquired the Owned Real Property, and copies of all title insurance policies and surveys with respect to the Owned Real Property, in each case, to the extent in such Seller's possession or control. With respect to each parcel of Owned Real Property: (i) the relevant Seller or its controlled Affiliate has, and on the Closing Date will have, good, valid and marketable fee simple title, free and clear of all Encumbrances (except Permitted Encumbrances); (ii) none of any Seller or any controlled Affiliate thereof has leased or otherwise granted to any Person the right to use or occupy any Owned Real Property or any portion thereof, except pursuant to the Retail Leases with Retail Lease tenants listed on Schedule 4.13(c) on the Retail Lease Rent Roll (defined below); and (iii) except as set forth on Schedule 4.13(b) hereto, there are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein and no such options or other rights will exist as of the Closing Date.

(c) Schedule 4.13(c) includes (A) a complete and accurate list, each Retail Lease, of the applicable store number and tenant thereunder and (B) sets forth a complete and correct schedule of each Retail Lease that relates solely to the Transferred Assets (and for the avoidance of doubt, is not otherwise a Joint Retail Lease) (each a "Store Specific Retail Lease") with the following information for each such Retail Lease (such schedule, a "Retail Lease Rent Roll") as of the A&R Date: (i) the name of the tenant; (ii) the street address of the Property to which such Store Specific Retail Lease relates; (iii) the expiration date; (iv) the monthly fixed rent;

and (v) any delinquency in the payment of rent under such Store Specific Retail Lease together with the amount of time for which such delinquency has been outstanding. With respect to each Retail Lease, to Seller's Knowledge, (x) such Retail Lease constitutes the valid and legally binding obligation of the applicable Seller (or its Affiliate as landlord thereunder) and, to such Seller's Knowledge, the counterparty thereto, enforceable against such Seller (or its Affiliates, as applicable) and, to such Seller's Knowledge, the counterparty thereto in accordance with its terms and conditions, subject to the Enforceability Exceptions, (y) neither such Seller (or its relevant Affiliate that is the landlord) nor, to such Seller's Knowledge, the counterparty thereto is in breach or default under such Retail Lease, and (z) no Seller (or its Affiliate as landlord) under such Retail Lease has received or provided any written notice of any event or occurrence that has not been resolved and that has resulted or would reasonably be expected to result (with the giving of notice, the lapse of time or both) in a default with respect to any such Retail Lease, except as would not be reasonably expected to be material to the Transferred Assets, taken as a whole. A true, correct and complete copy of each Retail Lease has been made available to Buyer and its Representatives prior to the A&R Date.

(d) There are no condemnation proceedings or other proceedings in eminent domain pending or, to the applicable Seller's Knowledge, threatened in writing, affecting any of the Owned Real Property or the Leased Real Property.

4.14 Taxes. Except as would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect:

(a) There are no Encumbrances for Taxes upon any of the Transferred Assets, other than Permitted Encumbrances.

(b) The Sellers have timely filed all Tax Returns in respect of the Transferred Assets. All such Tax Returns (to the extent relating to the Transferred Assets) were correct and complete in all respects. All Taxes due on such Tax Returns have been paid (whether or not shown on such Tax Returns).

(c) Neither Seller is a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

4.15 Employees and Labor Matters.

(a) As soon as practicable and no later than thirty (30) days following the A&R Date, Sellers will provide Buyer with an updated Schedule 4.15(a)(i) which shall set forth a correct and complete list of each role that will perform services to one or more Transferred Supermarkets at the district level (the "Unallocated District Resource Roles"), setting forth (v) the proposed district number, (w) composite stores, (x) resource region, (y) resource entity, and (z) number of resources. As soon as practicable and no later than thirty (30) days following the A&R Date, Sellers will provide Buyer with an updated Schedule 4.15(a)(ii) which shall set forth a correct and complete anonymized list, as of the A&R Date, of each Division Resource Employee (which list shall be de-anonymized at the Closing), in each case, separately identifying the applicable Division Resource Employee's (w) employer entity, (x) function, (y) job title and/or position, and (z) resource mapping. Such Schedule 4.15(a)(ii), shall also include, for each Division Resource

Employee, (i) whether classified as exempt or non-exempt for wage and hour purposes, (ii) whether paid on a salary, hourly or a commission basis, (iii) current annual base salary, base hourly rate of pay or commission rate, as applicable, (iv) full or part time status, (v) current target annual incentive opportunity and actual bonus(es) paid within the past twelve (12) months, (vi) status (*i.e.*, active or inactive and if inactive, type of leave and estimated duration), (vii) the dollar amount of accrued, unused paid time off or vacation balance, (viii) any transaction bonuses and other amounts to be paid to such Employee in connection with the Transaction, (ix) corporate hire date and, if different, the most recent hire date, (x) work location, (xi) work authorization or visa status (if applicable) and (xii) union affiliation (if applicable) (such information as updated, the "Employee Census Information"). As soon as practicable and no later than thirty (30) days following the A&R Date, Sellers will provide Buyer with an updated Schedule 4.15(a)(iii) which shall set forth (I) a correct and complete list of subject matter expertise functions and sub-functions requested by Buyer that, as of the date such schedule is provided, have not been fulfilled by an individual employed by a Seller (or one of its controlled Affiliates) (the "Unallocated Functional Expert Roles"), setting forth (x) the employer entity, (y) function, and (z) position, and (II) Employee Census Information for subject matter expertise functions and sub-functions requested by Buyer, that as of the date such schedule is provided, have been fulfilled by an individual employed by a Seller (or one of its controlled Affiliates), to the extent not covered by Schedule 4.15(a)(ii).

(b) Schedule 4.15(b) sets forth a list of all labor or collective bargaining agreements or other material agreements with a labor union or like organization that any of the Sellers (or any of their controlled Affiliates) is party to or otherwise bound by and which covers or otherwise relates to the Transferred Assets (such agreements, the "CBAs"). To the Sellers' Knowledge, there are no activities or proceedings by any individual or group of individuals, including representatives of any labor organizations or labor unions, to organize any Employees. Sellers have made available to Buyer accurate and complete copies of each CBA listed on Schedule 4.15(b). The execution and delivery of this Agreement, shareholder or other approval of this Agreement and the consummation of the Transactions contemplated by this Agreement, either alone or in combination with another event, will not entitle any third party (including any labor organization or Governmental Entity) to any payments under any of the CBAs, and the Sellers and their controlled Affiliates are in compliance in all material respects with their obligations arising under any CBAs.

(c) There are no strikes, work stoppages, work slowdowns, lockouts or other labor dispute, material arbitration or material grievance, unfair labor practice charges, or complaints pending or, to such Seller's Knowledge, threatened against or involving the Transferred Assets, including any unfair labor practice charges, grievances or complaints threatened by or on behalf of any employee or group of employees exclusively or primarily engaged in connection with the Transferred Assets. Each of the Sellers and their controlled Affiliates is in compliance in all material respects with all applicable Laws respecting labor, employment and employment practices, terms and conditions of employment, wages and hours (including classification of employees, discrimination, harassment and equitable pay practices), and occupational safety and health. None of the Sellers nor any of their controlled Affiliates has incurred any material liability or material obligation relating to or involving the Transferred Assets under the Worker Adjustment and Retraining Notification Act (the "WARN Act") and the regulations promulgated thereunder or any similar state or local Law that remains unsatisfied. None of the Sellers nor any of their controlled Affiliates are delinquent in payments to any of the

Employees for any wages, salaries, overtime, commissions, bonuses or other direct compensation for any services performed by them, in each case, that would be material to any of the Transferred Supermarkets, the Transferred Distribution Centers or the Transferred Offices.

(d) Since the Look Back Date, none of the Sellers nor any of their controlled Affiliates (i) have been involved in any legal proceedings relating to, held liable for or been a party to any settlement agreements relating to allegations of sexual harassment or misconduct by any Employee at or above the district level, and (ii) no allegations of sexual harassment have been made against any Employee at or above district level.

4.16 Seller Benefit Plans.

(a) Schedule 4.16(a) sets forth a list of all material Seller Benefit Plans. "Seller Benefit Plan" means (i) all "employee benefit plans," as defined in Section 3(3) of ERISA, and (ii) any benefit or compensation plan, program, policy, practice, agreement, contract, arrangement or other obligation, whether or not in writing and whether or not funded, in each case, which is sponsored or maintained by, or required to be contributed to, or with respect to which any potential liability is borne by the Sellers or any of their Affiliates and in which any Employees participate, including, but not limited to, those providing for employment, consulting, severance pay, termination or change in control, salary continuation, bonus, cash or equity incentive, retirement, pension (other than a Multiemployer Plan), profit sharing, insurance, medical, welfare, retention or deferred compensation, fringe or other benefits or arrangements of any kind.

(b) A correct and complete copy of each of such Seller Benefit Plans, in each case as in effect on the A&R Date, has been made available to Buyer.

(c) (1) Each such Seller Benefit Plan complies, and has been administered in compliance in all material respects with its terms and all requirements of applicable Laws, including, without limitation, ERISA and the Code and (2) in all but *de minimis* respects all contributions or other amounts payable by such Seller or its applicable Affiliates with respect to such Seller Benefit Plan in respect of current or prior plan years have been paid or accrued in accordance with generally accepted accounting principles.

(d) Such Seller Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS to be qualified under Section 401(a) of the Code and, to such Seller's Knowledge, nothing has occurred that would adversely affect the qualification or tax exemption of any such Seller Benefit Plan.

(e) Schedule 4.16(e) sets forth a list of all Multiemployer Plans to which each Seller (or any of its controlled Affiliates) contributes, and which cover any of the Employees (each such Multiemployer Plan, a "Participating Multiemployer Plan") and separately denotes which such Participating Multiemployer Plans are endangered, critical or declining status as defined in Section 305 of ERISA. With respect to any Participating Multiemployer Plan, (i) all contributions by the Sellers or any of their respective Affiliates have been made with respect to each Participating Multiemployer Plan in respect of current or prior plan years, and (ii) none of the Sellers or any of their respective Affiliates has been notified in writing by the sponsor of a Participating Multiemployer Plan that such Multiemployer Plan is insolvent, has incurred a mass withdrawal or

has been terminated, within the meaning of Title IV of ERISA. With respect to each Participating Multiemployer Plan, the Sellers have made available to Buyer (A) all material correspondence to or from the applicable Participating Multiemployer Plan received since the Look Back Date, (B) to the extent the Sellers have obtained them, true and complete calculations of the liability reasonably expected to be imposed on the Sellers or any of their respective controlled Affiliates (based on the assumptions stated therein) in the event of any partial or complete withdrawal with respect to all current and former employees for whom the Sellers (or their respective Affiliates) had an obligation to contribute to such Participating Multiemployer Plan, and who performed services with respect to the Transferred Assets.

(f) Neither the execution and delivery of this Agreement, shareholder or other approval of this Agreement nor the consummation of the Transactions, either alone or in combination with another event, (i) entitle any Employee to severance pay or any material increase in severance (other than due to Buyer's failure to fulfill its obligations under Section 9.1) pay or (ii) accelerate the time of payment or vesting, or materially increase the amount of compensation due to any such Employee.

(g) Neither the execution and delivery of this Agreement, shareholder or other approval of this Agreement nor the consummation of the Transactions, either alone or in combination with another event, result in the payment of any amount that could, individually or in combination with any other such payment, constitute an "excess parachute payment" as defined in Section 280G(b)(1) of the Code.

(h) None of the Sellers nor any of its controlled Affiliates has any obligation to provide, and no Seller Benefit Plan or other agreement provides any Employee, Former Employee or current or former individual consultant or independent contractor who performs services related to the Transferred Assets, with the right to, a gross up, indemnification, reimbursement or other payment for any excise or additional taxes, interest or penalties incurred pursuant to Section 409A or Section 4999 of the Code or due to the failure of any payment to be deductible under Section 280G of the Code.

4.17 Absence of Certain Developments. Except as required by this Agreement or by any of the other Transaction Documents, between the Statement of Sales End Date and the A&R Date, (a) there has not occurred any event or events that, individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect and (b) such Seller has operated the Transferred Assets in the ordinary course of business consistent with past practice, and (c) none of such Seller and its controlled Affiliates has taken any action with respect to the Transferred Assets that would have required the approval of Buyer under Section 6.1(b) if such action had been taken after the A&R Date.

4.18 Environmental Matters. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect: (a) the Transferred Assets and their operation are, and since the Look Back Date have been in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining, and complying with all Permits required under applicable Environmental Laws, other than such contamination that is being addressed in accordance with applicable Environmental Laws; (b) none of the Transferred Assets has any Hazardous Material contamination requiring reporting, investigation or

remediation pursuant to any Environmental Law; (c) none of the Transferred Assets is subject to any Order relating to liability or obligations under any Environmental Law; and (d) there are no Actions pending or, to such Seller's Knowledge, threatened, against such Seller or any controlled Affiliate with respect to the Transferred Assets alleging that such Seller is violating or is responsible for a Liability under Environmental Laws. Sellers have made available to Buyer copies of all material environmental reports and assessments that have been created or generated since January 1, 2018, in their possession relating to the Transferred Assets.

4.19 Healthcare Regulatory. Except as specifically excluded hereunder or not legally permitted to be transferred to Buyer, the Transferred Pharmacies possess all material permits, licenses, provider numbers, authorizations, exemptions, orders, consents, approvals, registrations, franchises or the like held by the Sellers or their respective Affiliates, and necessary for the lawful conduct of the business of the Transferred Pharmacies under and pursuant to all applicable Laws having, asserting or claiming jurisdiction over it or any part of the business of the Transferred Pharmacies (the "Pharmacy Licenses"). All Pharmacy Licenses have been legally obtained and maintained and are valid and in full force and effect. The Sellers and their respective Affiliates are in compliance in all material respects with all of the terms and conditions of the Pharmacy Licenses. No outstanding material violations are or have been recorded in respect of any of the Pharmacy Licenses. No material Action is pending or, to Seller's Knowledge, threatened, to suspend, revoke, withdraw, modify or limit any of the Pharmacy Licenses, and, to Seller's Knowledge, there is no fact, error or admission relevant to any Pharmacy License that would permit the suspension, revocation, withdrawal, modification or limitation or result in the threatened suspension, revocation, withdrawal, modification or limitation, or any loss of any Pharmacy License.

4.20 Brokers. Other than the fees and expenses payable to Citigroup Markets Inc., Wells Fargo Securities, LLC, Credit Suisse Securities (USA) LLC, and Goldman Sachs & Co. LLC, none of the Sellers or any of their respective Affiliates has incurred, nor will it incur, directly or indirectly, any Liability for any brokers' or finders' fees or agents' commissions or any similar charges in connection with this Agreement or the consummation of the Transactions for which Buyer or its Affiliates will be liable.

4.21 Material Enterprise Contracts. Schedule 4.21 sets forth all Enterprise Contracts that are material to the Transferred Supermarkets, Transferred Distribution Centers, Acorn Housing and Transferred Offices, as of the A&R Date (which for the avoidance of doubt shall be deemed to be the top twenty (20) vendors and suppliers of such Seller).

4.22 Exclusivity of Representations.

(a) SELLERS ACKNOWLEDGE AND AGREE THAT BUYER HAS MADE NO REPRESENTATION OR WARRANTY WHATSOEVER RELATED TO THE TRANSFERRED ASSETS OR THE OTHER TRANSACTIONS AND SELLERS HAVE NOT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, EXCEPT, IN EACH CASE, FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE V, THE TRANSACTION DOCUMENTS TO BE ENTERED INTO AT THE CLOSING AND THE CERTIFICATE DELIVERED BY BUYER PURSUANT TO SECTION 3.4(n).

(b) Sellers are entering into this Agreement and the other Transaction Documents not in reliance on any representation or warranty of Buyer or any of its Affiliates not expressly set forth in Article V. In light of the warranties made to the Sellers by Buyer in Article V, Sellers are relinquishing any right to any claim (whether in warranty, contract, tort (including negligence or strict liability) or otherwise) based on any warranties other than those expressly set forth in Article V. EACH SELLER (ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES) AGREES THAT THE WARRANTIES GIVEN BY BUYER IN ARTICLE V ARE IN LIEU OF, AND EACH SELLER (ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES) HEREBY EXPRESSLY WAIVES ALL RIGHTS TO, ANY IMPLIED WARRANTIES THAT MAY OTHERWISE BE APPLICABLE BECAUSE OF THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY OTHER STATUTE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to the Sellers that:

5.1 Organization and Qualification. Buyer (a) is either duly organized or incorporated (as applicable), validly existing and in good standing (where such concept exists) under the Laws of its jurisdiction of organization or incorporation (as applicable), (b) has all requisite corporate (or similar entity) power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, and (c) is duly qualified or licensed to do business and is in good standing as a foreign corporation (or other entity) in each jurisdiction in which its ownership or operation of its respective properties and assets or where the conduct of its business requires such qualification or license, except, in the case of clause (c), where such failure to be so qualified, licensed, or in good standing, or to have such power or authority, would not reasonably be expected to result in a Buyer Material Adverse Effect.

5.2 Authority. Buyer has all requisite corporate (or similar organizational) power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is a party, and to perform its obligations hereunder and thereunder. The execution, delivery, and performance by Buyer of this Agreement and each of the other Transaction Documents to which it is a party have been duly and validly authorized by Buyer. As of the Closing, Buyer (or its applicable Affiliate) will have the requisite corporate (or similar organizational) power and authority to execute and deliver this Agreement and each of the Transaction Documents to which Buyer (or its applicable Affiliate) will be a party, and perform its obligations hereunder and thereunder and to consummate the Transactions.

5.3 Binding Effect. This Agreement and each of the other Transaction Documents to which Buyer is a party (or will be a party when executed and delivered by the parties thereto after the A&R Date and assuming the due authority, execution, and delivery by the parties thereto), constitutes (and in the case of such other Transaction Document executed and delivered after the A&R Date, will constitute) a valid and legally binding obligation of Buyer enforceable against Buyer in accordance with this Agreement's or each of the other Transaction Document's respective terms, except as enforceability may be limited by the Enforceability Exceptions.

5.4 Regulatory Approvals and Non-Governmental Consents.

(a) No consent, notice, approval, waiver, authorization, or filing is required to be obtained by Buyer from, or to be given by Buyer to, or made by Buyer with, any Governmental Entity or securities exchange, in connection with the execution, delivery, or performance by Buyer of its material obligations under this Agreement or the other Transaction Documents except for such consent, notice, approval, waiver, authorization, or filing that if failed to be obtained, given, or made would not reasonably be expected to result in a Buyer Material Adverse Effect.

(b) Except (i) as set forth on Schedule 5.4(b) (the "Buyer Non-Governmental Consents"), and (ii) for such consents, approvals, waivers, or authorizations of which the failure to obtain would not, either individually or in the aggregate, reasonably be expected to result in a Buyer Material Adverse Effect, no consent, notice, approval, waiver, or authorization is required to be obtained by Buyer from, or to be given by Buyer to, or made by Buyer with, any Person (excluding any Governmental Entity or securities exchange), as a result of the execution, delivery, or performance by Buyer of this Agreement and the other Transaction Documents.

5.5 Non-Contravention. The execution, delivery, and performance by Buyer of this Agreement, and the execution, delivery, and performance by Buyer of the other Transaction Documents to which Buyer is a party, and the consummation by Buyer of the Transactions, do not and will not (a) contravene or conflict with any provision of the Organizational Documents of Buyer; (b) assuming the receipt of all Buyer Required Regulatory Approvals and Buyer Non-Governmental Consents constitute a breach or result in a default under, or give to any Third Party any rights of termination, amendment, acceleration or cancellation under, any Contract to which Buyer is a party or otherwise bound; or (c) assuming the receipt of all Buyer Required Regulatory Approvals and Buyer Non-Governmental Consents, violate or result in a breach of or constitute a default under, any Law to which Buyer is subject; which, except in the case of each of the foregoing clauses (b) and (c) would not reasonably be expected, individually or in the aggregate, to result in a Buyer Material Adverse Effect.

5.6 [Reserved.]

5.7 Solvency. Assuming the representations and warranties of the Sellers contained in Article IV of this Agreement are true, correct, and complete, in all material respects, and after giving effect to the consummation of the Transactions (including any financings being entered into in connection therewith), Buyer:

(a) will be solvent (in that both the fair value of its assets will not be less than the sum of its debts and other Liabilities and that the present fair saleable value of its assets will not be less than the amount required to pay its probable Liability on its recourse debts as they mature or become due);

(b) will not have incurred debts beyond its ability to pay as they mature or become due; and

(c) will have adequate capital to carry on its respective businesses.

5.8 Litigation. As of the A&R Date, (a) there is no, and since the Look Back Date, there has not been any, Action pending or threatened in writing against or affecting Buyer (or any of its Affiliates) that would reasonably be expected to result in a Buyer Material Adverse Effect, and (b) Buyer is not (and none of its Affiliates is) subject to any Order that would reasonably be expected to result in a Buyer Material Adverse Effect.

5.9 Brokers. Buyer has not incurred, nor will it incur, directly or indirectly, any Liability for any brokers' or finders' fees or agents' commissions or any similar charges in connection with this Agreement or the consummation of the Transactions for which any of the Sellers or their respective Affiliates will be liable.

5.10 Exclusivity of Representations.

(a) BUYER ACKNOWLEDGES AND AGREES THAT SELLERS HAVE MADE NO REPRESENTATION OR WARRANTY WHATSOEVER RELATED TO THE TRANSFERRED ASSETS OR THE TRANSACTIONS AND BUYER HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, EXCEPT, IN EACH CASE, FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE IV, THE OTHER TRANSACTION DOCUMENTS TO BE ENTERED INTO AT THE CLOSING AND THE CERTIFICATE DELIVERED BY SELLERS PURSUANT TO SECTION 3.2(o), SECTION 3.2(p) AND SECTION 3.4(n).

(b) Buyer is relying on its own investigation, examination and valuation of the Transferred Assets and effecting the Transactions. Prior to the A&R Date, Buyer has made all material inspections and investigations of the Transferred Assets. Buyer is purchasing the Transferred Assets and entering into this Agreement and the other Transaction Documents based on the results of its inspections and investigations, and not in reliance on any representation or warranty of the Sellers or any of their respective Affiliates not expressly set forth in Article IV. In light of the warranties made to Buyer by the Sellers in Article IV, Buyer is relinquishing any right to any claim (whether in warranty, contract, tort (including negligence or strict liability) or otherwise) based on any warranties other than those expressly set forth in Article IV. Buyer acknowledges and agrees that, except as otherwise expressly set forth in this Agreement and the other Transaction Documents, the Transferred Assets are sold "as is, where is" and Buyer and its Affiliates agree to accept the Transferred Assets at the Closing in the condition they are in and at the place they are located on the Closing Date based on their own inspection, examination and determination with respect to all matters, and without reliance upon any express or implied representations or warranties of any nature made by, on behalf of or imputed to the Sellers. BUYER (ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES) AGREES THAT THE WARRANTIES GIVEN BY THE SELLERS IN ARTICLE IV ARE IN LIEU OF, AND BUYER (ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES) HEREBY EXPRESSLY WAIVES ALL RIGHTS TO, ANY IMPLIED WARRANTIES THAT MAY OTHERWISE BE APPLICABLE BECAUSE OF THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY OTHER STATUTE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(c) In connection with Buyer's investigation of the Transferred Assets, Buyer has received from the Sellers (or any of their respective Affiliates or Representatives) various

forward-looking statements regarding the Transferred Assets (as may include any estimates, assumptions, projections, forecasts or plans) (the "Forward-Looking Statements"). Buyer acknowledges and agrees that: (i) there are uncertainties inherent in attempting to make the Forward-Looking Statements; (ii) Buyer and its Representatives are familiar with such uncertainties; (iii) Buyer is taking full responsibility for making its own investigation, examination and valuation of the Transferred Assets and has employed outside professionals (including its Representatives) to assist it with the foregoing; (iv) Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Forward-Looking Statements; (v) Buyer and its Representatives are not relying on any Forward-Looking Statement in any manner whatsoever; and (vi) with respect to the foregoing, Buyer and its Representatives shall have no claim (whether in warranty, contract or tort (including negligence or strict liability)) against the Sellers or any of their respective Affiliates. Buyer acknowledges and agrees that the Sellers make no representation or warranty with respect to any Forward-Looking Statement (including the reasonableness of the assumptions underlying any of the Forward-Looking Statements).

ARTICLE VI
PRE-CLOSING COVENANTS AND AGREEMENTS

6.1 Conduct Prior to Closing.

(a) Except (x) as required by Law, (y) for emergency operations or (z) as specifically set forth in Schedule 6.1, from and after the A&R Date until the Closing (or the earlier termination of this Agreement), unless Buyer shall otherwise consent in writing (such consent, not to be unreasonably withheld, conditioned, or delayed; *provided*, *however*, that any requests for consent by Seller or its Affiliates made as a result of a requirement by the FTC or any other Governmental Entity shall, in each case, be deemed reasonable), each Seller shall, and shall cause its controlled Affiliates to, use commercially reasonable efforts to:

(i) conduct the businesses of the Transferred Supermarkets, Transferred Distribution Centers, Transferred Offices, Acorn Dairy and Acorn Housing, in all material respects in the ordinary course of business consistent with past practice;

(ii) preserve the present business operations, organization, and goodwill of the Transferred Supermarkets, Transferred Distribution Centers, Transferred Offices and Acorn Housing;

(iii) preserve the present relationships with tenants, landlords, vendors, suppliers, and lessors of the Transferred Supermarkets, Transferred Distribution Centers, Transferred Offices and Acorn Housing; and

(iv) maintain the insurance policies currently in effect with respect to the Owned Real Property (or replacements continuing similar coverage).

(b) Except (x) as required by Law or (y) as set forth in Schedule 6.1, from and after the A&R Date until the Closing (or the earlier termination of this Agreement), unless Buyer shall otherwise consent in writing (such consent, not to be unreasonably withheld, conditioned, or delayed; *provided*, *however*, that any requests for consent by Seller or its Affiliates made as a result of a requirement by the FTC or any other Governmental Entity shall, in each case, be deemed

reasonable), no Seller or controlled Affiliate thereof shall, solely as it relates to the Transferred Assets or, with respect to Section 6.11(b)(i) and Section 6.1(b)(xiv), Licensed Intellectual Property:

(i) except in the ordinary course of business, (A) mortgage, lease to a third party, pledge or otherwise grant any Encumbrance (other than a Permitted Encumbrance) on any Transferred Asset or Licensed Intellectual Property or (B) sell, transfer, license, permit to lapse, or otherwise dispose of any Transferred Asset (other than a transfer to Buyer of Transferred Supermarkets, Transferred Distribution Centers, the Acorn Housing and Specified Division Offices);

(ii) terminate (A) any Transferred Contract (other than a Contract which expires on its own terms prior to Closing), (B) any Retail Lease, other than as a result of a material default by the tenant thereunder or a Retail Lease that expires on its own terms prior to the Closing or (C) any Transferred Lease, Transferred Recorded Lease, any lease of a Transferred Distribution Center or the Acorn Americold Distribution Center Agreement;

(iii) (x) enter into any (A) Contract primarily related to the Transferred Assets and which will be binding on the Transferred Assets following the Closing, except in the ordinary course of business or (B) subject to the provisos below, any new Retail Lease or Retail Lease renewal or (y) amend or modify any lease for any Transferred Offices, Transferred Contract, Transferred Lease, Transferred Recorded Leases or any lease of any Transferred Distribution Center or the Acorn Americold Distribution Center Agreement (it being understood that none of the foregoing limitations will prevent either Seller or any Affiliate thereof from exercising any as of right extension of the term by which it leases any of the Property or otherwise entering into amendments in the ordinary course of business consistent with past practice so long as such amendments do not decrease the rights or increase the obligations of tenant thereunder in any material respect); *provided*, *however*, that in each case of the foregoing clause (x) and clause (y), each Seller may enter into new Retail Leases, or any amendment, modification, extension or renewal of the Retail Leases, or any extension of renewal of the Transferred Leases or Transferred Recorded Leases, or any extension of renewal of the Transferred Leases or Transferred Recorded Leases, in each case, in the ordinary course of business and consistent with past practice and not on less favorable terms in any material respect than those of existing Retail Leases, Transferred Leases, or Transferred Recorded Leases, as applicable; *provided*, *further*, that in no event will any Seller or any controlled Affiliate thereof (I) enter into, amend or renew any Retail Lease in a manner that would require payment of any lease costs (including, without limitation, leasing commissions, tenant improvement costs or tenant improvement allowances) that will not have been paid in full prior to the Closing Date, or (II) enter into any Retail Lease with any Seller or any Affiliate of any Seller (which is not terminated on or prior to the Closing); *provided*, *further*, that nothing in this Section 6.1(b)(iii) shall prohibit, prevent, or otherwise restrict any Seller or any of its Affiliates from entering into separate arrangements or agreements with any Person (*provided*, that the same will not be binding upon Buyer or if Buyer's affiliates or any of their designated transferees following Closing) in order to obtain such Person's consent in accordance with Section 2.8;

(iv) close or cease operations of any Transferred Supermarket or Transferred Distribution Center (other than with respect to those distribution centers described on

Schedule 6.1(b)), other than temporary cessation of operations for emergency reasons with prior written notice (to the extent practicable) to Buyer;

(v) other than as required by any CBA or Seller Benefit Plan, or as needed in the reasonable good faith judgement of such Seller to avoid a strike, slowdown, labor stoppage, or other material interruption with regard to the provision of labor by union employees, *provided*, *however*, that such Seller will keep Buyer reasonably informed of any such change made to avoid such a labor dispute, (A) increase the compensation or consulting fees, bonus, pension, welfare, fringe or other benefits, severance or termination pay of any Employee, except increases in base salary or wage rate (w) for (i) Employees below the level of "director" and (ii) Employees at or above the level of "director" who are reasonably expected to become Transferred Employees, in connection with the applicable Seller's ordinary course merit cycle that do not exceed four percent (4%) individually, (x) for Employees at or above the level of "director" who are not reasonably expected to become Transferred Employees, in connection with the applicable Seller's ordinary course merit cycle that do not exceed ten percent (10%) individually, (y) in connection with such Seller's ordinary course promotion practice, that do not exceed ten percent (10%) individually; *provided*, that no more than ten percent (10%) of Employees may be promoted in accordance with this Section 6.1(b)(v)(A)(y) or (z) as otherwise permitted under clause (B) below, (B) increase the coverage or benefits under or establish, adopt, amend, terminate or commence participation under any Seller Benefit Plan (or any benefit plan that if in existence as of the date hereof would be a Seller Benefit Plan), other than (x) as would not result in a material increase in cost of such coverage or benefits and (y) the establishment or renewal of health and welfare plans applicable generally to employees of such Seller and its Affiliates where Employees are eligible to participate on terms consistent with similarly situated employees of such Seller and its Affiliates, (C) take any action to accelerate the vesting or lapsing of restrictions or payment of compensation or benefits to any Employee under any Seller Benefit Plan, (D) hire any Employee with an annual salary or wage rate in excess of $100,000, except for individuals hired to fill positions that become open subsequent to the date of this Agreement as a result of an Employee's departure or termination in accordance with Section 6.1(b)(v)(F) below, in a manner that provides compensation and benefits that are substantially comparable to those that the applicable Seller has historically made available to employees in similar positions, (E) change the terms of employment of any individual so that they become, or cease to be classified, as an Employee hereunder, (F) terminate the employment of any Employee, other than (i) terminations in the ordinary course of business where the applicable Seller works to backfill such position in a manner that complies with Section 6.1(b)(v)(D) above and (ii) in the case of Employees designated at the level of "director" or above, only terminations for cause or poor performance shall be permitted without Buyer's express consent, or (G) become a party to, establish, adopt, amend, commence participation in or terminate any CBA; *provided*, *however*, that nothing in this Section 6.1(b)(v) shall limit or restrict such Seller's ability to (I) negotiate, discuss, or otherwise engage with, any union or pursuant to any CBAs in effect as of the date hereof, or (II) amend any CBA (and any employment arrangement thereunder) in a manner that would not impact the Transferred Supermarkets and the Transferred Distribution Centers in a disproportionate and adverse manner relative to other stores or distribution centers owned and operated by such Seller and its controlled Affiliates with respect to such unions, CBAs, or employment arrangement thereunder;

(vi) transfer or relocate any material fixtures or equipment from any Transferred Asset, other than removals or relocations of obsolete fixtures and equipment in the

ordinary course of business; *provided*, that the same are replaced with fixtures and equipment, as applicable, of equal or greater value and utility;

(vii) materially change methods or practices with respect to retail pricing, cost complement, promotions, coupon offers, or advertising except in the ordinary course of business, consistent with past practice;

(viii) materially change methods or practices with respect to Inventory (other than in the ordinary course of business, consistent with past practice, or as described on Schedule 6.1(b) or in preparation to provide the services described under the Transition Services Agreement);

(ix) incur any indebtedness for borrowed money related to the Transferred Assets that would constitute an Assumed Liability;

(x) settle any Claims or actions related to the Transferred Assets or the Assumed Liabilities where Buyer would be obligated to pay in excess of $5,000,000 (net of insurance proceeds) or if such settlement of Claims or actions would impact the operation or use of any of the Transferred Assets in any material respect compared to the operation or use of the Excluded Assets;

(xi) fail in any material respect to make any capital expenditures, including any renovations, in accordance with the capital expenditure plan set forth in Schedule 6.1(b)(xi);

(xii) apply for or consent to any material change or modification with respect to the zoning, development or use of any Transferred Asset, other than in the ordinary course of business;

(xiii) terminate or permit termination or expiration of any material Permit except in the ordinary course of business;

(xiv) sell, assign, license or otherwise transfer, abandon, cancel, permit to expire or lapse (I) any Transferred Intellectual Property, other than non-exclusive licenses in the ordinary course of business or, (II) to the extent it would conflict with the licenses and other rights granted or contemplated to be granted under this Agreement and the other Transaction Documents, any Licensed Intellectual Property; or

(xv) agree or enter into any agreement or commitment with respect to any of the foregoing.

(c) Nothing in this Section 6.1 shall prohibit any sale or other transfer of tangible assets (whether real or movable) from one Seller or any of its Affiliates to a Seller or any of its Affiliates, provided that such sale or transfer would not adversely affect Buyer, including with respect to obtaining any title policies for the Properties.

6.2 Governmental Consents and Approvals.

(a) Each of Buyer and Sellers shall reasonably cooperate with each other and shall use, and shall cause each of their respective Affiliates to use their respective reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under any applicable Law to consummate and make effective the transactions contemplated by this Agreement, including avoiding or eliminating any impediment under any Competition/Investment Law that may be asserted by any Governmental Entity or any other Third Party so as to enable the Parties to consummate and make effective the Transactions as promptly as practicable. Buyer understands that it and this Agreement are both subject to investigation by Governmental Entities, and that the Primary Acquisition has been challenged in various Actions by Governmental Entities, and that Sellers are entering into this Agreement to obtain the Clearances in connection with the Primary Acquisition. Buyer agrees that it will use its reasonable best efforts to demonstrate that Buyer is an acceptable purchaser of the Transferred Assets and that Buyer will compete effectively using the Transferred Assets. Nothing in this Agreement shall prevent Sellers from complying with an Order by, or agreement with, any Governmental Entity in connection with a Competition/Investment Law, and no Seller shall be considered in breach of this Agreement for taking actions to comply with any such Order or Agreement.

(b) Each Party (i) shall submit, to the extent necessary, all necessary filings and notifications under any applicable Competition/Investment Law as promptly as practicable but in no event later than fifteen (15) Business Days following the A&R Date, unless otherwise mutually agreed in writing by the Parties and (ii) as promptly as practicable, shall provide any additional information requested by any Governmental Entity under any applicable Competition/Investment Law.

(c) Subject to applicable legal limitations and the instructions of any Governmental Entity, each Party hereby agrees, solely with respect to the Transactions between the Parties contemplated hereby, to (i) cooperate and consult with the other Party; (ii) furnish to the other Party such necessary information and assistance as the other Party may reasonably request in connection with its preparation of any notifications or filings with Governmental Entities (*provided*, that the Sellers and Buyer may, as each determines is reasonably necessary, designate competitively sensitive material provided to the other pursuant to this Section 6.2(c) as "Outside Counsel Only," and such materials and the information contained therein shall be given only to the outside legal counsel and outside advisors (including bankers, economists, consultants and financial advisors) of the recipient and will not be disclosed by such outside counsel to directors, officers or employees of the recipient unless express permission is obtained in advance from the source of the materials or its legal counsel).

(d) Buyer shall reasonably assist and cooperate with Sellers to obtain the Clearances and/or an Order from a Governmental Entity allowing the consummation of the Transactions and shall use its reasonable best efforts to obtain any orders, consents, clearances or approvals, in each case, that are required under or in connection with any Competition/Investment Law to consummate the Transactions prior to the Termination Date. Each Seller and Buyer shall promptly notify the other if the FTC staff informs either Seller or Buyer that (i) the FTC staff will require the transfer to Buyer hereunder of any asset other than the Transferred Assets specified in Section 2.1 or (ii) the FTC staff will prohibit the transfer to Buyer hereunder of any such Transferred Asset.

(e) For all Actions pending, instituted, or threatened challenging the Primary Acquisition or the Transactions as violating any Competition/Investment Law or if any decree, Order, judgment, or injunction (whether temporary, preliminary, or permanent) is entered, enforced, or attempted to be entered or enforced by any Governmental Entity that would make the Primary Acquisition or the Transactions illegal or otherwise delay or prohibit the consummation of the Primary Acquisition or the Transactions, Buyer and Kettle Seller shall contest and defend any such Action to avoid entry of, or to have vacated, lifted, reversed, repealed, rescinded, or terminated, any decree, order, judgment, or injunction (whether temporary, preliminary, or permanent) that prohibits, prevents, or restricts consummation of the Primary Acquisition or the Transactions and shall advocate in support of the Primary Acquisition and the Transactions.

(f) For the avoidance of doubt, in the event that a Governmental Entity disapproves of any provision of this Agreement or the other Transaction Documents or seeks to impose new or different obligations on Buyer or Sellers with respect to the Transactions, and the proposed Consent Decree is withheld pending modification of any such provision or agreement as to such new or different obligations, Buyer and Sellers shall use their respective reasonable best efforts to modify or agree to such provisions as may be necessary to satisfy the Governmental Entity's requirements.

(g) Kettle Seller shall be responsible for all fees owed to any Governmental Entity, including any fees payable by Buyer, in connection with any filings made pursuant to Competition/Investment Laws in accordance with this Section 6.2.

(h) Nothing in this Agreement shall, or shall be deemed to, modify the rights and obligations solely between the Sellers with respect to each other under the Merger Agreement.

6.3 Access. From the Original Execution Date until the earlier of the Closing Date and the termination of this Agreement pursuant to Section 11.1, subject to applicable Competition/Investment Law, each Seller shall, and shall cause its controlled Affiliates to, reasonably cooperate with Buyer and its Representatives in their investigation of the Transferred Assets and Assumed Liabilities as Buyer shall deem reasonably necessary or advisable, including in order to obtain Third Party Reports and otherwise prepare for the consummation of the Transactions and integration of the Transferred Assets by Buyer following the Closing, and shall (a) afford Buyer and its Representatives reasonable access (subject to entry into amended Access Agreements or new access agreements on the same form as the Access Agreements), during regular business hours, upon reasonable advance notice, (i) to District Resource Employees, Division Resource Employees and Functional Expert Employees (solely as permitted by

Section 9.1), the Transferred Contracts, the assets (including the Properties) and the books and records included in the Transferred Assets, or as provided in Section 9.1(a) and Section 9.1(c); *provided*, that, without limiting the other provisions set forth in this Section 6.3 or other clean team agreements between the Parties, access to any Customer data or information shall be provided through a clean room, and (ii) the Properties for the purpose of conducting customary diligence thereon and obtaining Third Party Reports, as more particularly described in Section 6.11(d)(v), and (b) furnish, or cause to be furnished, to Buyer copies of any financial and operating data and other information (including information concerned with the Transferred Assets, Assumed Liabilities and Employees) that is reasonably available and primarily related to the Transferred Assets, including, at Buyer's request, any Customer data and information that would at Closing constitute Transferred Data and is related to Customer purchases at the Transferred Supermarkets or through e-commerce channels that are delivered through the Transferred Supermarkets, *provided* that (x) any such copies of Customer data or information shall be anonymized or de-identified (such that the Customer data are not linkable to any individual or household but relationships within Customer data (*e.g.*, that there exists a household relationship between de-identified Customers) can be recognized and understood, solely to the extent permitted by applicable Law, including, for the avoidance of doubt, the Privacy Laws), (y) prior to Closing, such Customer data or information shall be made available to Buyer through a clean room and (z) the Parties shall cooperate in good faith to determine a reasonable timing and scope of detail for when such Customer data and information shall be provided prior to the Closing; *provided*, *however*, that in no event shall Buyer or any of its Representatives have access to any information (A) with respect to which access would be prohibited or required to be restricted by applicable Law or any legal privilege would be jeopardized, in each case, as advised by such Seller's counsel, (B) disclose any information if such Seller (or its applicable Affiliate) reasonably determines upon the advice of counsel that such information should not be disclosed due to its competitively sensitive nature; *provided*, that Sellers shall use commercially reasonable efforts to implement appropriate measures to, as reasonably promptly as practicable, permit such access and the furnishing of such information and documents in a manner to remove the basis for the objection, including by arrangement of appropriate "counsel-to-counsel" disclosure, clean room procedures, redaction and other customary procedures or entry into a customary joint defense agreement, or (C) that in the reasonable judgment of such Seller, would (I) result in the disclosure of any Trade Secrets of such Seller or any of its Affiliates or of Third Parties or (II) violate any obligation of such Seller with respect to confidentiality to any other Person (including any tenant or other occupant) so long as such Seller shall have used reasonable efforts to obtain the consent of the applicable Third Party to such disclosure; *provided*, *further*, that the foregoing shall not require such Seller, or its applicable controlled Affiliates to permit any invasive environmental sampling or testing with respect to the Transferred Supermarkets or any Transferred Distribution Centers (subject to Section 6.11(d)(v)). Buyer agrees that any investigation undertaken pursuant to the access granted under this Section 6.3 shall be conducted in such a manner as not to unreasonably interfere with the operation of such Seller's business and that if Buyer requests information pursuant to this Section 6.3 which has already been provided by a Seller or its Affiliates to Buyer, Buyer shall pay the reasonable out-of-pocket costs of such Seller or its Affiliates in re-providing such information to Buyer. No investigation under this Section 6.3 shall (x) alter any representation or warranty given hereunder by such Seller or any condition to the obligations of the Parties under this Agreement or (y) modify any section of the Schedules. For the avoidance of doubt, all

information received under this Section 6.3 shall be governed by Section 6.5 and the Confidentiality Agreement.

6.4 Replacement of Insurance, Bonds, and Other Credit Support. On or prior to the Closing, Buyer shall use its reasonable best efforts to either (at the election of the applicable Seller): (a) provide, or cause to be provided, replacement guarantees, standby letters of credit, and other assurances of payment with respect to the Bonding Requirements, in form and substance satisfactory to the applicable Seller and any landlords, banks, or other counterparty thereto, and both prior to and following the Closing, Buyer and such Seller shall cooperate to cause any Bonding Requirements provided for by such Seller or its Affiliates to be terminated (and returned to such Seller) and for the applicable Seller or its Affiliates to be fully and unconditionally released from any Damages with respect to the Bonding Requirements; or (b) to the extent that a Bonding Requirement is not provided for on the Closing, then, upon Closing, (i) Buyer shall, or shall cause its Affiliates to, provide to the applicable Seller or its Affiliates a back-to-back guarantee from Buyer, in form and substance satisfactory to such Seller, which guarantee shall remain in place for the duration of such Bonding Requirement, (ii) Buyer shall use its reasonable best efforts to, as promptly as practicable, cause such Bonding Requirement to be provided for and to cause such Seller and its Affiliates to be fully and unconditionally released from any Damages with respect to the Bonding Requirements, and (iii) the applicable Seller or its Affiliates shall maintain such Bonding Requirement until the earlier of the date on which it is provided for and twelve (12) months after the Closing Date.

6.5 Publicity; Continued Application of Confidentiality Agreement.

(a) The initial press release with respect to the transactions contemplated by this Agreement shall be a joint press release. Thereafter, except as may be required to comply with the requirements of any applicable Law or the rules of any stock exchange upon which such Party's capital stock is traded, from and after the A&R Date, (i) no Party shall make any press release or similar public announcement or communication relating to this Agreement, or the Transactions contemplated hereby (including commenting on any rumors or speculation) unless specifically consented to in writing in advance by each Seller and Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed and (ii) Buyer shall not make any press release or similar public announcement or communication regarding the Merger Agreement or the Primary Acquisition (including commenting on any rumors or speculation) unless specifically consented to in writing by Sellers. If any announcement is required by applicable Law to be made by any Party, prior to making such announcement, such Party will, to the extent permitted and practicable, deliver a draft of such announcement to the other Parties and shall give such other Parties a reasonable opportunity to comment thereon. In no event shall the foregoing be construed to restrict or prevent Kettle Seller, Acorn Seller or Buyer from making any internal announcements or communicating with its and its Affiliates' investors or equity holders regarding the Transactions, or from disclosing and communicating such information to its Affiliates, and its and their respective Representatives.

(b) The Confidentiality Agreement shall continue in full force and effect in accordance with its terms until the Closing. If this Agreement is, for any reason, terminated prior to the Closing, this Section 6.5 and the Confidentiality Agreement shall survive the termination of

this Agreement and continue in full force and effect with the terms hereof and thereof. The terms of this Section 6.5 shall, notwithstanding Section 12.1, survive the consummation of the Closing.

(c) For three (3) years after the Closing each Seller shall treat as confidential, shall not disclose to any other Person and shall safeguard any confidential or proprietary information relating to the business, financial or other affairs (including future plans and targets) to the extent relating to the Transferred Assets, including any Transferred Data (the "Confidential Information"), by using the same degree of care, but no less than a reasonable standard of care, to prevent the unauthorized use, dissemination or disclosure of such Confidential Information as each Seller or its respective Affiliates used with respect thereto prior to the execution of this Agreement; *provided*, *however*, that notwithstanding the foregoing, Sellers shall be permitted to disclose Confidential Information (i) that such Seller is requested or required to disclose by judicial or administrative process or pursuant to applicable Law, (ii) information that is available to the public on the Closing Date or thereafter becomes available to the public other than as a result of a breach of this Section 6.5(c), (iii) to the extent requested or consented to in writing by Buyer (not to be unreasonably withheld, conditioned or delayed), (iv) in connection with the defense or prosecution of any Action, suit or other proceeding (including, any action, suit or other proceeding arising from or relating to this Agreement, the Merger Agreement, or any of the Transaction Documents or the transactions contemplated hereby or thereby), or (v) that is general information about the Transferred Assets (including its and their performance) as part of their normal financial reporting or review procedures and in connection with normal fundraising, investment, marketing, informational or reporting activities.

6.6 Business Contacts. During the period from the A&R Date until the earlier of the Closing or the termination of this Agreement pursuant to Section 11.1, Buyer hereby agrees that it is not authorized to, and shall not, and shall cause its Representatives not to, contact any employees (except as permitted in this Section 6.6 or in Section 9.1), vendors, customers, suppliers, landlords, or licenses or other material business relation of any Seller (or any of its controlled Affiliates) in connection with or pertaining to any subject matter of this Agreement or the Transactions except with the prior written consent of such Seller (which may be withheld for any reason or no reason in such Seller's sole discretion).

6.7 Transferred Pharmacy Inventory. The Parties agree that on the day prior to the Closing Date, Kettle Seller shall conduct, or shall cause to be conducted, a physical count, and Buyer may have representatives present during such physical count, of (a) the class of Pharmacy Inventory which is required to be counted pursuant to the federal Controlled Substances Act and its implementing regulations and (b) Pharmacy Inventory which is required to be counted pursuant to the requirements of any other applicable laws (clauses (a) and (b), collectively, "Controlled Substances Inventory"), located at or in each Transferred Supermarket and Transferred Distribution Center (the "Controlled Substances Inventory Count"). To conduct such Controlled Substances Inventory Count, the pharmacies at the Transferred Supermarkets (and the portion of the Transferred Distribution Center applicable to Controlled Substances Inventory) will close, and Seller shall make a physical accounting (or shall cause a physical accounting to be made) of the Controlled Substances Inventory on the day prior to the Closing Date, or at such other time prior to the Closing mutually agreed to by Buyer and the applicable Seller, in accordance with the Inventory Procedures. The Controlled Substances Inventory will be transferred from the applicable Seller (or its applicable Affiliate) to Buyer consistent with and on the forms required by applicable

Law. With respect to Pharmacy Inventory, all supplies in full case and broken units, including labels, paper bags, and polyfilm, shall be left on the premises and transferred and assigned to Buyer as part of the Transferred Assets, and shall constitute part of the Inventory.

6.8 Prescription Files. Buyer and Sellers agree to cooperate with one another in connection with the transfer of existing pharmacy records from Sellers to Buyer at the Closing in accordance with applicable Law. Without limitation, Sellers and Buyer agree that prior to the Closing Date, they shall cooperate to prepare for the transfer, on and following the Closing Date, of the prescription dispensing records, other patient records and Protected Health Information located at the Transferred Pharmacies for at least two (2) years immediately prior to the Closing Date in accordance with HIPAA and other applicable Laws and in a manner which ensures the confidentiality, integrity and security of the pharmacy prescription dispensing records, other patient records, Protected Health Information and the continuity of pharmacy services at the Transferred Pharmacies at substantially the same level as that offered by Sellers. Buyer shall respond to individuals' requests to exercise their rights under HIPAA, including by responding to requests for accountings of disclosures of Protected Health Information for periods after the Closing in accordance with HIPAA. In addition, Buyer shall maintain the prescription files and all Protected Health Information transferred by Sellers in accordance with HIPAA. Sellers acknowledge and agree that, notwithstanding the foregoing, Buyer shall not assume any legal obligations of Sellers under HIPAA relating to uses and disclosures of Protected Health Information prior to the Closing. All inquiries and responses by Buyer relating to patient rights under HIPAA relating to uses or disclosures of Protected Health Information made prior to the Closing shall be forwarded to Kettle Seller in accordance with Section 13.2. Additionally, Buyer agrees to promptly make all applications and post such notices as may be required by applicable Law for the transfer of, or Buyer's application for, the Pharmacy Licenses. To the extent required by applicable Law or Drug Enforcement Agency regulations in context of the Transactions, Sellers will undertake and deliver to Buyer an inventory of "controlled substances" located at the Transferred Pharmacies prior to the Closing Date. The provisions of this Section 6.8 shall survive the Closing.

6.9 Cash in Drawers. At the Closing, Kettle Seller shall cause (a) each Acorn Supermarket to have an amount of Cash in Drawers equal to or greater than $30,000 and (b) each Kettle Supermarket to have an amount of Cash in Drawers equal to or greater than $10,000 (each of (a), and (b), a "Minimum Cash Amount"). Notwithstanding anything to the contrary in Section 6.1, Kettle Seller and Acorn Seller shall prior to the Closing be permitted and entitled to sweep, distribute, or transfer any cash or cash equivalents from the Transferred Supermarkets, in excess of the Minimum Cash Amount.

6.10 Environmental Reimbursements, Policies, Plans and Release.

(a) Buyer agrees that following the Closing it shall use commercially reasonable efforts to operate the Transferred Fuel Centers in a manner which does not impair the Transferred Fuel Centers' eligibility and/or ability to recover funds from any state leaking underground storage tank reimbursement program or under other similar compliance, clean up or reimbursement programs or funds (collectively, a "UST Reimbursement Program").

(b) Each Seller shall, at the Closing, assign and transfer (provided such benefits

and coverage are assignable) to Buyer, all of such Seller's rights and interest in, under and to any UST Reimbursement Program pertaining to the Transferred Assets. Notwithstanding the prior sentence, Sellers do not assign and shall not be required to assign such Seller's right to receive reimbursement of such Seller's costs incurred prior to the Closing Date.

6.11 Financing; Financing Cooperation.

(a) Buyer shall use reasonable best efforts to obtain financing commitment letters (the "Financing Commitments") within ninety (90) days following Buyer's receipt of the information and materials specified in Schedule 6.11(a) (the "Financing Commitment Deadline") for the financing (which may be in the form of debt (including sale-leaseback transactions) or equity or any combination of debt and equity, in each case, as the Buyer may determine in its sole discretion) in the amount required, when added together with the available cash and other sources of immediately available funds of Buyer as of the Closing Date, to fund the Purchase Price and the other Transaction Amounts on the Closing Date (the "Financing"). Buyer shall keep the Sellers informed on a reasonably current basis of the status of its efforts to obtain the Financing Commitments and to arrange and consummate the Financing and shall promptly (and in any event within three (3) Business Days of the execution thereof) deliver copies of any Financing Commitments (together with any fee letter related thereto (which may be redacted only for confidential provisions related to fees, flex terms and other economic terms, none of which adversely affect the conditionality, enforceability, availability, termination or aggregate principal amount of the Debt Financing) to the Sellers.

(b) Subject to Section 6.11(c), the Sellers shall, and shall cause their respective controlled Affiliates to, and shall use their reasonable best efforts to cause each of their respective Representatives to, use reasonable best efforts to provide all customary cooperation reasonably requested by Buyer in connection with obtaining the Financing Commitments and the arrangement, syndication and consummation of the Financing, including:

(i) at reasonable times, upon reasonable advanced notice and at locations mutually agreed upon (which may be virtual), causing members of management of the Sellers and their respective Affiliates with appropriate seniority and expertise to participate in a reasonable number of meetings (including one-on-one meetings or conference calls with parties acting as or potentially acting as arrangers, lenders, underwriters, initial purchasers or placement agents in connection with the Financing or the Financing Commitments or otherwise providing, arranging or underwriting any Financing (collectively, the "Financing Parties" and each a "Financing Party")), presentations, road shows, drafting sessions, due diligence sessions and sessions with prospective lenders, investors and rating agencies;

(ii) furnishing Buyer and the Financing Parties with the Financing Information;

(iii) providing reasonable and customary assistance in the preparation of (A) materials for any rating agency presentations and (B) any offering documents, syndication documents and materials, including lender and investor presentations, rating and bank books, information memoranda (confidential and public), private placement memoranda, offering memoranda, registration statements, prospectuses and other similar documents (collectively, the

"Offering Documentation"), including by providing documentation and information for due diligence purposes, in each case solely with respect to information relating to the Transferred Assets and Assumed Liabilities then held by such Seller or its subsidiaries;

(iv) using reasonable best efforts to cause such Seller's independent accountants to provide, consistent with customary practice or requirements of Regulation S-K under the Exchange Act, customary assistance and cooperation to Buyer and its Affiliates in connection with any Financing, including using reasonable best efforts to cause each of the Seller's independent accountants to (A) participate in a reasonable number of accounting due diligence sessions, (B) provide any necessary customary consents to use their audit reports relating to the applicable Seller in any Offering Documentation and (C) provide any necessary or reasonably requested customary comfort letters containing "negative assurance" comfort with respect to financial information relating to the Transferred Assets and Assumed Liabilities in connection with any Financing (including using reasonable best efforts to cause such Seller's independent accountants to provide drafts of such comfort letters as such independent accountants are prepared to issue upon completion of customary procedures), in each case, on customary terms and consistent with their customary practice;

(v) cooperating with internal and external legal counsel to Buyer or any Financing Party in connection with providing factual information in connection with providing customary back-up certificates and information regarding any legal opinion that such legal counsel may be required to deliver in connection with the Financing Commitments;

(vi) providing customary authorization letters authorizing the distribution of information relating to the Transferred Assets and Assumed Liabilities then held by such Seller or its subsidiaries to any Financing Party and containing a customary representation to the Financing Parties as to the presence or absence of material non-public information relating to such Seller and its Affiliates;

(vii) using reasonable best efforts to assist in the preparation of definitive debt financing agreements and any other credit agreements, pledge and security documents, certificates with respect to solvency, representation and authorization letters to accountants and auditors, customary closing certificates and any other certificates, letters and documents as may be reasonably requested by Buyer, to the extent, and solely to the extent, relating to the Transferred Assets and Assumed Liabilities then held by such Seller or its subsidiaries (provided that any obligations contained in such documents shall be effective no earlier than as of the Closing);

(viii) obtaining on behalf of Buyer the Third Party Reports pursuant to and in accordance with Section 6.11(d) below;

(ix) granting access to the Owned Real Property and the Leased Real Property to Buyer and any prospective or actual purchasers from or lenders to buyer in connection with obtaining the Financing during normal business hours and upon reasonable prior notice, a reasonable number of times prior to Closing;

(x) (A) permitting the Financing Parties and other prospective lenders involved in the Financing Commitments to conduct collateral audits and appraisals and evaluate

the Transferred Assets and policies and procedures relating thereto for the purposes of establishing collateral arrangements as of the Closing (and providing all relevant information or documentation reasonably requested in connection therewith) and (B) assisting Buyer to establish or maintain, for the Transferred Assets, in connection with the delivery of a "borrowing base" certificate and the Financing Commitments, cash management procedures and bank accounts;

(xi) using reasonable best efforts to otherwise reasonably facilitate the granting of a security interest (and the perfection thereof) in the collateral for any Financing (provided that any such security interest shall be effective no earlier than the Closing);

(xii) using reasonable best efforts to cooperate with the Financing Parties to complete a field examination and inventory appraisal to the extent necessary or advisable to obtain the Financing, which field appraisals shall be conducted during normal business hours and upon reasonable prior notice;

(xiii) consenting to the use of their and their respective Affiliates' logos in connection with the Financing; *provided*, that such logos are used solely in a manner that is not intended to, nor reasonably likely to, harm or disparage the Sellers or their respective Affiliates or the Sellers' or their respective Affiliates' reputation or goodwill; and

(xiv) assisting in the preparation of customary pro forma financial information for the Transferred Assets to the extent reasonably requested by the Financing Parties; *provided*, that Buyer shall not be responsible for the preparation of any pro forma financial statements and related notes thereto.

(c) No obligations of the Sellers or any of their respective Affiliates or any of their respective directors, officers, other employees and agents or other Representatives under any certificate, document or instrument delivered pursuant to Section 6.11(b) or Section 6.11(d) shall be required to be effective until the Closing Date. In addition, notwithstanding anything in Section 6.11(b) or Section 6.11(d) to the contrary, in fulfilling its obligations pursuant to Section 6.11(b) or Section 6.11(d), none of the Sellers, their respective Affiliates or their respective directors, officers, other employees and agents or other Representatives shall be required to (i) pay any commitment or other fee, expense, provide any security or incur any Liability or obligation that is not reimbursed by Buyer hereunder (other than any obligation expressly set forth in Section 6.11(b) or Section 6.11(d)) in connection with the Financing or any other financing prior to the Closing Date; (ii) provide any cooperation that would unreasonably interfere with the ongoing business or operations of the Sellers and their respective Affiliates. Buyer shall indemnify and hold harmless the Sellers and their respective Affiliates (and their respective Representatives) from and against any and all losses, damages, claims, costs or expenses actually suffered or incurred by them in connection with the Financing or any other financing (including the arrangement thereof and any cooperation required or provided in connection therewith); (iii) take any action that could cause any representation or warranty in this Agreement to be breached or cause any condition to Closing to fail to be satisfied or would otherwise cause any breach of this Agreement; (iv) make any change in any fiscal period; (v) take any action that could cause any breach of any applicable Law or any Contract to which such Seller or any of its subsidiaries is a party; (vi) provide or be responsible for (A) the preparation of any pro forma financial information, (B) any description of all or any component of the Financing or

(C) projections, risk factors and other Forward-Looking Statements relating to any component of the Financing. In addition, none of the Sellers, their respective Affiliates or their respective directors, officers, other employees and agents or other Representatives shall be required shall be required to (I) enter into, execute, or approve any agreement or other documentation prior to the Closing or agree to any change or modification of any existing agreement or other documentation that would be effective prior to the Closing (other than the execution of customary authorization and representation letters) or (II) deliver any certificate or take any other action that would reasonably be expected to result in personal liability to a director, officer or other personnel, deliver any legal opinion or otherwise provide any information or take any action to the extent it could result in (x) a loss or waiver of any privilege or (y) in the disclosure of any trade secrets, customer-specific data or competitively sensitive information not otherwise required to be provided under this Agreement or the violation of any confidentiality obligation; *provided*, *however*, that each applicable Seller shall use reasonable best efforts to provide an alternative means of disclosing or providing such information, and in the case of any confidentiality obligation, such Seller shall, to the extent permitted by such confidentiality obligations, notify Buyer if any such information that Buyer has specifically identified and requested is being withheld as a result of any such obligation of confidentiality.

(d) In addition to the obligations of the Sellers pursuant to Section 6.11(b) in connection with any other Financing, upon Buyer's request, Seller and their respective Affiliates shall:

(i) cooperate as reasonably requested by Buyer with Buyer's efforts in obtaining the following with respect to each Property as determined by Buyer (collectively, the "Third Party Reports" and each, a "Third Party Report"): (A) a current ALTA survey of the real estate owned or, at Buyer's option, leased by Sellers including, without limitation, such Table A items as may be requested by Buyer and all items shown on Exhibit B-II of the corresponding title commitments, (B) fee or leasehold title commitments, as applicable, together with copies of the documents for all underlying exceptions from the New York office of Chicago Title Insurance Company, located at 711 Third Avenue, New York, New York, Attn: John Caruso (the "Title Company") (it being agreed that, as of the A&R Date, Seller has made available to Buyer all such commitments with respect to the Owned Real Property, to the extent received by Seller as of the A&R Date, and shall continue to promptly make available to Buyer any commitments received following the A&R Date), (C) fee or leasehold title insurance policies, as applicable, from the New York office of Chicago Title Insurance Company, located at 711 Third Avenue, New York, New York, Attn: John Caruso, with such endorsements as Buyer may reasonably request and in a form otherwise reasonably approved by Buyer (including with respect to reinsurance or coinsurance requirements), (D) zoning reports (and, if elected by Buyer, zoning opinions covering any uses of any such Property), (E) environmental reports (including Phase I environmental reports and, subject to Section 6.11(d)(v) below, Phase II environmental reports), (F) property condition reports for all improvements located at the Property, (G) FIREEA appraisals, (H) useful life studies and (I) such other information or Third Party Reports as are specified by Buyer acting reasonably;

(ii) request and use commercially reasonable efforts to obtain from (A) any party to any reciprocal easement agreement or agreement of covenants, conditions and restrictions which appears on any title commitment and (B) any landlord of any Leased Real Property, an estoppel certificate, running in favor of Buyer (or its designee) and Buyer's actual

and prospective purchasers and/or lenders, each in form and substance requested by Buyer acting reasonably (collectively, the "Required Estoppels");

(iii) request and use commercially reasonable efforts to obtain subordination, non-disturbance and attornment agreements in favor of Buyer from each landlord of any Leased Real Property (including any Transferred Distribution Center or portion thereof that is held by a Seller or its Affiliate pursuant to a lease), in each case in form and substance proposed by Buyer acting reasonably;

(iv) request and use commercially reasonable efforts to obtain amendments to any leases at any Leased Real Property (including any Transferred Distribution Center or portion thereof that is held by a Seller or its Affiliates pursuant to a lease) if required to (A) permit assignment of the applicable lease or sublease to the Buyer or its designated Affiliate (and, if applicable in the case of a sale-leaseback transaction, Buyer's designee), (B) solely with respect to the leases being so amended include customary leasehold mortgagee protections reasonably acceptable to Buyer (including, without limitation, a provision requiring the applicable landlord to offer the mortgagee a new lease following any termination of the existing lease), (C) solely with respect to the leases being so amended, permit subletting of the applicable Leased Real Property in its entirety for the remainder of the term (together with any extensions thereto) and (D) solely with respect to the leases being so amended, require the applicable landlord to execute and deliver a subordination, non-disturbance and attornment agreement in favor of Buyer; and

(v) with reasonable notice permit Buyer and its Affiliates, actual and potential investors and lenders, and their respective agents, representatives, consultants, inspectors and employees reasonable access during business hours to and entry upon the applicable Property to perform and complete their respective due diligence examinations, reviews and inspections, *provided*, that no such inspections shall be invasive without the prior consent of the Seller that directly or indirectly owns that Property, which consent may be withheld such Seller's sole discretion; *provided*, *however*, that the relevant Seller's consent will not be unreasonably withheld, conditioned or delayed if Buyer or any of its Representatives identifies any environmental condition at a Property that does, or has the potential to, impair the use, value or financeability of the Property in any material respect and Buyer, acting reasonably and in consultation with its advisers, determines that intrusive sampling or testing is warranted; *provided*, *further,* that any testing conducted pursuant to this Section 6.11(d)(v) shall be subject to limitations set forth in any applicable lease. Without Seller's prior written consent, which may be withheld in Seller's sole and absolute discretion, Buyer shall not contact any tenants or landlords of any Owned Real Property or Leased Real Property for any purpose, including the purpose of effectuating clauses (ii), (iii) and (iv) above.

(vi) Notwithstanding anything to the contrary contained in this Section 6.11(d), no Seller nor any of its Affiliates shall be deemed in default under this Agreement, in the event that any of the Third Party Reports, estoppels, subordination non-disturbance and attornment agreements, amendments, examinations, review or investigations contemplated by this Section 6.11(d) shall not be provided, entered into, delivered or completed on or prior to the Termination Date so long as Seller or its Affiliate shall have used commercially reasonable efforts

to assist with Buyer's efforts to obtain same, in each case, solely to the extent required by this Section 6.11(d).

6.12 Denver Owned Distribution Center.

(a) The Acorn distribution center complex located at 4301 Forest Street, Denver, CO, 4401 Forest Street, Denver CO, 4350-4360 Dahlia Street, Denver, CO, and 4500 Dahlia Street, Denver, CO (the "Denver Owned DC"), shall be separated by Sellers, at the sole cost and expense of Kettle Seller (including payment of or reimbursement by Sellers to Buyer for all reasonable out-of-pocket costs and expenses actually incurred by Buyer in connection therewith), into distinct parcels and tax lots, such that the bakery located at 4500 Dahlia Street, Denver, CO, as described in more detail in Schedule 6.12(a) (the "Retained Bakery"), is completely separate and independent from the remainder of the Denver Owned DC for all tax, operating and other purposes (the remainder of the campus, the "Separated Denver DC") and that each separate parcel has its own address (such separation, the "Denver Subdivision"). Between the A&R Date and the Closing Date, the Parties shall cooperate reasonably and in good faith to develop the requisite documents implementing and governing the separation of the Denver Owned DC, including an agreed site plan for the separate lots reflecting the relocation of the various assets, as contemplated on Schedule 6.13. In fulfilling this undertaking, Sellers shall take all reasonably necessary action to ensure that (i) the Denver Subdivision results in complete separation of the Separated Denver DC and the Retained Bakery such that the Retained Bakery has its own area for employee parking and car and truck access to the adjacent road and is not dependent upon the Separated Denver DC for access, parking, utilities, operating equipment, safety elements, security or any other features or services; (ii) security fencing is installed along the boundary line separating the Retained Bakery and the Separated Denver DC so that the Separated Denver DC is fully fenced in a manner providing the same level of restricted access to the Separated Denver DC as exists for the entire Denver Owned DC today; and (iii) the Denver Subdivision is implemented in a way that does not involve or result in the imposition of any zoning or other land use limitation or restriction upon the Separated Denver DC from the zoning and other land use opportunities available to the Separated Denver DC as it exists as of the A&R Date. The Sellers covenant to take the lead, and to use commercially reasonable efforts to work with Buyer, to develop and finalize the foregoing arrangements on mutually agreed terms promptly following the A&R Date and to submit all requisite applications and other materials that are reasonably necessary to obtain the requisite consents, waivers and other approvals for the foregoing separation as soon as practical following the A&R Date, with the objective of causing the subdivision of the Denver Owned DC to be completed prior to or concurrent with the Closing. For the avoidance of doubt, to the extent the Denver Subdivision is completed prior to or concurrent with the Closing, the Retained Bakery shall not constitute a Transferred Asset, and if the Denver Subdivision is completed following the Closing, the Retained Bakery shall constitute a Transferred Asset, subject to the provisions set forth in Section 6.12(b) and Section 6.12(c).

(b) If the Denver Subdivision is not completed as described in Section 6.12(a) above by the Closing Date and at Closing Kettle Seller certifies to Buyer in writing that it has determined, in good faith after consultation with local Colorado counsel and to the extent necessary, other relevant professional advisors, that it is commercially reasonable to anticipate Sellers being able to complete the Denver Subdivision as described in Section 6.12(a) above no later than nine (9) months following the Closing (such date, the "Outside Completion Date"), then

on the Closing Date (i) Kettle Seller shall transfer the entire Denver Owned DC, including all personal property and other ancillary assets associated with the Denver Owned DC, to Buyer or its designee as otherwise provided in this Agreement and, concurrently therewith Buyer or its designee shall lease the land and improvements constituting the Retained Bakery (*i.e.*, the portion that would have been separated if the Denver Subdivision had been completed) back to Kettle Seller or its designee on terms, to be memorialized in documents developed by Buyer and Sellers working together in good faith promptly following the date hereof, with Sellers and their outside counsel preparing the initial draft documents promptly following the date hereof for Buyer's review and comment, that reflect: (A) fixed rent of $1.00 per annum, (B) other terms consistent with what would exist in an arm's length commercial lease but, if different, reflecting to the extent practicable the allocation of Liabilities, obligations and responsibilities as they would have existed if the Denver Subdivision had been completed by the Closing Date and (C) for certainty, shall include customary terms to facilitate the financing by Buyer or its designee of the Denver Owned DC; (ii) if necessary because the relevant systems, utilities or other services cannot, as a practical matter, be obtained by the landlord and the tenant separately prior to completion of the Denver Subdivision, the Parties shall enter into interim operating and service agreements that memorialize the manner in which they will each have access to, and maintain or provide for the other, certain safety systems, utilities and other services necessary for the continued utilization of their respective areas at the Denver Owned DC and how the costs and other burdens of those arrangements will be borne consistent with the principles in clause (i) above; and (iii) the Sellers shall continue to work using commercially reasonable efforts to obtain the requisite consents and approvals for the Denver Subdivision, and, if the subdivision is completed as described in Section 6.12(a) above prior to the Outside Completion Date, then concurrent with such subdivision the Parties shall implement a deed transfer of the land for the Retained Bakery back to Sellers and termination of the interim lease and the arrangements reflected in any interim operating and service agreements relating to Sellers' use of the Retained Bakery site as soon after the Closing as reasonably practical. The Parties shall cooperate (including, where applicable, in negotiating and coming to terms with respect to each the aforementioned agreements, as applicable) reasonably and in good faith to carry out the foregoing and the intents and purposes hereof.

(c) If the Denver Subdivision is not completed as described in Section 6.12(a) above by the Outside Completion Date, then the parties shall cooperate so that, on or before the Outside Completion Date, (i) Sellers will vacate the leased premises, leaving the same broom clean and otherwise in condition no less favorable than existed as of the Closing Date (ordinary wear and tear excepted) (ii) the interim lease will terminate and the arrangements provided for in any access or interim operating and service agreements then in effect shall expire as described in clause (iii) of Section 6.12(b) above and (iii) Buyer or its designee shall be entitled to retain for itself the Retained Bakery, and none of Buyer or any such designee shall have any further obligation whatsoever to the Sellers with respect to the Retained Bakery. Time is of the essence with respect to each provision of this Section 6.12 and the obligations of this Section 6.12 shall survive the Closing until fulfilled.

6.13 Notices of Lease-Related Documents. Without limitation of any of Buyer's rights of approval from and after the A&R date until the Closing Date under this Agreement (including pursuant to Section 6.1), Seller shall use commercially reasonable efforts to provide Buyer reasonable advance written notice of, and the opportunity to consult with Seller, if applicable, regarding, (a) any amendments, modifications and/or supplements to any Transferred Lease,

Transferred Recorded Lease, lease of a Transferred Distribution Center or the Acorn Americold Distribution Center Agreement or Retail Lease (provided, that, solely with respect to such amendments, modifications and/or supplements that are entered into in the ordinary course of business, a failure to deliver such amendments, modifications and/or supplements shall not be deemed a breach by Seller of its obligations under this Section 6.13 so long as Seller has used commercially reasonable efforts to comply with such obligations), (b) any option notices or renewals to be exercised or delivered in connection with any Transferred Lease, Transferred Recorded Lease, lease of a Transferred Distribution Center or the Acorn Americold Distribution Center Agreement or Retail Lease and (c) any notices of default issued by Seller or received by Seller in respect of any Transferred Lease, Transferred Recorded Lease, lease of a Transferred Distribution Center or the Acorn Americold Distribution Center Agreement or Retail Lease. For any action or decision in the foregoing clauses (a)–(c) for which Buyer does not have an approval right, Sellers shall consider in good faith the views of the Buyer in respect thereof prior to taking such action or making such decision.

6.14 Arizona Office. On the Closing Date, Kettle Seller shall lease a portion of the building located at 20227 North 27th Avenue, Phoenix, Arizona for the Transferred Employees in Phoenix, Arizona (the "Arizona Office"), which portion shall include a sufficient number of desks and sufficient square footage to accommodate one-hundred and twenty percent (120%) of the Transferred Employees in Phoenix, Arizona, to Buyer or its designee for a period of two (2) years as described in the term sheet attached hereto as Exhibit M; *provided*, that any lease terms not addressed in Exhibit M shall be on commercially reasonable market terms for space such as this as shall be mutually agreed between the Parties acting in good faith prior to Closing. For avoidance of doubt, the Arizona Office shall not constitute a Transferred Asset.

6.15 Colorado Division Office. On the Closing Date, Kettle Seller shall lease the land and improvements constituting 6900 S. Yosemite Street, Centennial, Colorado (the "Colorado Division Office") to Buyer or its designee for a period of two (2) years as described in the term sheet attached hereto as Exhibit N; *provided*, that any lease terms not addressed in Exhibit N shall be on commercially reasonable market terms for a space such as this as shall be mutually agreeable by the Parties acting in good faith prior to Closing. For avoidance of doubt, the Colorado Division Office shall not constitute a Transferred Asset.

6.16 Alaska Distribution Center. Following the term of the supply chain transition services with respect to Alaska provided under the Transition Services Agreement, and subject to any applicable extensions thereof, Buyer shall have the option (at its sole discretion) to become a wholesale customer of the Sellers in Alaska on arm's length terms consistent with J.B. Gottstein's past practices for a period of twelve (12) months (such twelve (12) month period may be extendable for a single twelve (12) month additional term at Buyer's election); *provided*, however, that nothing in this Section 6.17 shall require the Sellers to provide assortment that is not consistent with the assortment previously provided by Kettle Seller to Buyer pursuant to the terms of the supply chain services with respect to Alaska under the Transition Services Agreement.

ARTICLE VII

POST-CLOSING COVENANTS AND AGREEMENTS

7.1 Wrong-Pockets; Payments.

(a) Wrong-Pockets. If at any time after the Closing it is discovered that (i) Buyer and its Affiliates hold, directly or indirectly, any Excluded Assets or Excluded Liabilities or (ii) Kettle Seller and its Affiliates hold, directly or indirectly, any of the Transferred Assets, Assumed Liabilities owned by the Sellers or their respective Affiliates or other assets, including Registered Intellectual Property owned by the Sellers or their respective Affiliates (other than the Transferred Banners and Transferred Private Labels), that are used or held for use primarily in the operation of the Transferred Supermarkets, Transferred Distribution Centers, Acorn Housing or Transferred Offices as of the Closing and should have been included as Transferred Assets or Assumed Liabilities, then Buyer, on the one hand, or the Sellers, on the other hand, will promptly transfer (or caused to be transferred) such assets or assume (or cause to be assumed) such liabilities to or from (as the case may be) the other Party, without further consideration from the other Party. Prior to any such transfer, the Party possessing any such asset or liability will hold it in trust for the other Party. The Parties acknowledge and agree that in connection with any transfer and conveyance contemplated by this Section 7.1(a), each shall and shall cause its Affiliates to fully cooperate with each other in connection therewith.

(b) Notwithstanding the foregoing in Section 7.1(a), and except as pursuant to any of the Transaction Documents (including, for clarity, pursuant to Section 7.7(a) and the Transition Services Agreement), from and after the A&R Date until the date that is six (6) months following the termination of the Transition Services Agreement, in the event that Kettle Seller or any of its Affiliates discovers or reasonably suspects that any data exclusively included in the Excluded Assets ("Excluded Data") has been provided to Buyer or any of its Affiliates, Kettle Seller shall be entitled to take all reasonable steps to correct the error, including by requesting that Buyer either return or confirm in writing the deletion or destruction of such Excluded Data. Upon receiving any request by Kettle Seller for the return, deletion or destruction of such Excluded Data, Buyer shall promptly, but not later than sixty (60) Business Days after the date of such request, fulfill the terms of Kettle Seller's request; *provided*, that Sellers shall pay or reimburse Buyer the reasonable out-of-pocket costs incurred by Buyer in connection therewith. If Buyer identifies, discovers or otherwise learns of ("Identifies," "Identified" or "Identification") such Excluded Data in the possession or control of Buyer or any of its Affiliates, it shall (i) promptly, but no later than thirty (30) Business Days after such Identification, notify Kettle Seller in writing of such Identification, including a brief description of the nature of such Excluded Data; and (ii) no later than sixty (60) Business Days after the date of such notification, return or confirm in writing the deletion or destruction of such Excluded Data. With respect to any such Excluded Data, Buyer and its Affiliates shall be bound by the obligations related to protection, non-use and non-disclosure of Confidential Information, as set forth in Section 6.5 of this Agreement and Article 9 of the Transition Services Agreement, respectively. For the avoidance of doubt, Kettle Seller shall retain all right, title and interest in such Excluded Data, and the provision of Excluded Data to Buyer or any of its Affiliates shall not constitute any grant to Buyer or its Affiliates of any right, title, interest or license to use such Excluded Data for any purpose whatsoever. The provisions of this Section 7.1(b) shall survive any termination or expiration of this Agreement and remain the valid and binding obligations of the Parties until twelve (12) months following the termination of the Transition Services Agreement.

(c) Notwithstanding the foregoing in Section 7.1(a), and except as pursuant to any of the Transaction Documents (including, for clarity, pursuant to Section 7.7(a) and the Transition Services Agreement), from and after the A&R Date until the date that is six (6) months following the termination of the Transition Services Agreement, in the event that, Buyer discovers or reasonably suspects that any Transferred Data exclusively included in the Transferred Assets has been retained by Kettle Seller or any of its Affiliates, Buyer shall be entitled to take all reasonable steps to correct the error, including by requesting that Kettle Seller or any of its Affiliates either return or confirm in writing the deletion or destruction of such Transferred Data. Upon receiving any request by Buyer for the return, deletion or destruction of such Transferred Data, Kettle Seller or any of its Affiliates shall promptly, but not later than sixty (60) Business Days after the date of such request, fulfill the terms of Buyer's request. If Kettle Seller or any of its Affiliates Identifies such Transferred Data in the possession or control of Kettle Seller or any of its Affiliates, it shall (i) promptly, but no later than thirty (30) Business Days after such Identification, notify Buyer in writing of such Identification, including a brief description of the nature of such Transferred Data; and (ii) no later than sixty (60) Business Days after the date of such notification, return or confirm in writing the deletion or destruction of such Transferred Data. With respect to any such Transferred Data, Kettle Seller or any of its Affiliates shall be bound by the obligations related to protection, non-use and non-disclosure of Confidential Information, as set forth in Section 6.5 of this Agreement and Article 9 of the Transition Services Agreement, respectively. For the avoidance of doubt, Buyer shall retain all right, title and interest in such Transferred Data, and the provision of Transferred Data to Kettle Seller or any of its Affiliates shall not constitute any grant to Kettle Seller or any of its Affiliates of any right, title, interest or license to use such Transferred Data for any purpose whatsoever. The provisions of this Section 7.1(c) shall survive any termination or expiration of this Agreement or the Transition Services Agreement.

(d) If at any time after the Closing, Buyer or any of its Affiliates receives any payments in respect of the Excluded Assets, Buyer will promptly remit such payments to Kettle Seller and if Kettle Seller or its Affiliates receives any payment in respect of the Transferred Assets, Kettle Seller will promptly remit such payments to Buyer.

(e) Payments Under Transferred Contracts. Until the first (1st) anniversary of the Closing Date:

(i) if any of the Sellers or their respective Affiliates receives any deposit or payment (whether before or after Closing) that relates to obligations under any Transferred Contract, Transferred Lease, Transferred Recorded Lease or Retail Lease to be performed or satisfied in whole or in part after the Closing, then such Seller (or its designee) shall pay to Buyer, within twenty (20) Business Days following the later of the Closing Date and the date such Seller or its Affiliate receives such deposit or payment, an amount equal to the portion of such deposit or payment that relates to such obligations to be performed or satisfied after the Closing;

(ii) if any of Buyer or its Affiliates receives any deposit or payment that relates to obligations under any Transferred Contract, Transferred Lease, Transferred Recorded Lease or Retail Lease that were performed, or are to be performed or satisfied in whole or in part prior to the Closing, then Buyer shall pay to the Kettle Seller, within twenty (20) Business Days following the date Buyer or its Affiliate receives such deposit or payment, an amount equal to the

portion of such deposit or payment that relates to such obligations that were performed, or are to be performed or satisfied prior to the Closing;

(iii) if Kettle Seller or its Affiliates receives any good or service prior to the Closing under any Transferred Contract which is billed to Buyer after the Closing, at Buyer's option, Kettle Seller shall either (A) reimburse Buyer for the amount of such payment within twenty (20) Business Days following the date of such request, or (B) remit such good to Buyer; and

(iv) if any of the Sellers or their respective Affiliates makes any deposit or payment prior to the Closing in respect of supplies of goods not received prior to the Closing under any Transferred Contract, Buyer shall reimburse and remit to Kettle Seller or its Affiliate, within twenty (20) Business Days following later of the Closing Date and the date on which Buyer receives notice and documentation thereof, an amount equal to the portion of such deposit or payment that relates to the goods to be received after the Closing by Buyer.

7.2 Insurance.

(a) At the Closing, the Sellers shall, and shall cause their Affiliates to, assign, to the extent assignable, to Buyer all proceeds under any of the Sellers' or any of their Affiliates' third party insurance policies to the extent related to any Assumed Liability to the extent arising out of, based upon or resulting from any fact, circumstance, occurrence, breach or continuing breach, condition, act or omission occurring prior to the Closing Date (other than in the case where insurance proceeds are directly or indirectly funded by the Sellers through self-insurance or other similar arrangement). The Sellers agree to use commercially reasonable efforts to obtain any necessary consents or approvals of any insurance company or other third party relating to any such assignment.

(b) From and after the Closing, the Transferred Assets and the Assumed Liabilities shall cease to be insured by the Sellers' or their Affiliates' insurance policies or by any of their self-insurance programs or other similar arrangements, and Buyer (i) agrees to arrange for its own insurance policies (including self-insurance or similar arrangements funded directly or indirectly by Buyer or any of its Affiliates) with respect to the Transferred Assets and the Assumed Liabilities covering all periods from and after the Closing and (ii) without prejudice to any right to indemnification under this Agreement or any other Transaction Documents, and other than as set forth in Section 2.9 and Section 7.2(a), agrees not to seek, through any means, to benefit from any of the Sellers' or its Affiliates' insurance policies which may provide coverage for claims relating in any way to the Transferred Assets and Assumed Liabilities.

7.3 Removal of Excluded Assets. As promptly as practicable following the Closing (and in any event within thirty (30) days of the Closing Date), Buyer shall remove, at the sole cost and expense of Kettle Seller, all of the Excluded Assets that are located at the Transferred Supermarkets and Transferred Distribution Centers and, Kettle Seller shall arrange for transportation of such Excluded Assets (at Kettle Seller's expense) to a location designated by Kettle Seller.

7.4 Change of Name; Licenses to Intellectual Property.

(a) As soon as reasonably practicable after Closing and in any event, (i) with respect to the Seller Names, within six (6) months after the Closing, and (ii) with respect to the Seller Retained Banners and Seller Retained Private Labels, within the Buyer Banner Transition Period, in each case, Buyer shall and shall cause its Affiliates to use reasonable best efforts to cease and discontinue all (A) uses of the Seller Names in external and public-facing corporate documentation and signage and corporate entity names; and (B) external and public-facing uses of the Seller Retained Private Labels and Seller Retained Banners, including eliminating Seller Retained Private Labels and Seller Retained Banners, from external and public-facing Transferred Assets and destroying or disposing of any external and public-facing printed or written materials bearing the foregoing, including any signage, vehicles, facilities, schedules, stationary, packaging materials, displays, promotional materials, manuals, forms, software or other materials (collectively, "Marked Materials"); *provided*, *however*, that Buyer and its Affiliates shall not be obligated to recall any Transferred Assets or Marked Materials that were distributed or provided to third parties prior to Closing, and may use or display the Seller Names, Seller Retained Private Labels and Seller Retained Banners in accordance with the terms of this Section 7.4, the Transition Services Agreement, and the Trademark License Agreement. Thereafter, Buyer acknowledges that it and its Affiliates have no rights whatsoever to use such Seller Names, Seller Retained Banners, and Seller Retained Private Labels, in each case, except as otherwise permitted in this Agreement, the Transition Services Agreement and Trademark License Agreements.

(b) As soon as reasonably practicable after Closing and in any event, within the Seller Banner Transition Period, Sellers shall and shall cause their respective Affiliates to use reasonable best efforts to cease and discontinue all external and public-facing uses of the Transferred Banners and Transferred Private Labels, including eliminating the Transferred Banners and Transferred Private Labels, from external and public-facing Excluded Assets and destroying or disposing of any external and public-facing Marked Materials bearing the foregoing; *provided*, *however*, that Seller and their respective Affiliates shall not be obligated to recall any Excluded Assets or Marked Materials that were distributed or provided to third parties prior to Closing, and may use or display Transferred Banners and Transferred Private Labels in accordance with the terms of this Section 7.4. Thereafter, each of the Sellers acknowledges that it and its respective Affiliates have no rights whatsoever to use such Transferred Banners and Transferred Private Labels, except as otherwise permitted in this Agreement.

(c) Effective upon the Closing, Sellers, on behalf of themselves and their respective Affiliates, hereby grant Buyer and its Affiliates a worldwide, non-exclusive, non-transferable (except in connection with a sale of all or substantially all of the assets to which the license relates), non-sublicensable (except to third party service providers or contractors in connection with services provided to or on behalf of Buyer or its Affiliates), fully-paid up, royalty-free license to (i) use and display the Seller Names for six (6) months immediately following the Closing in connection with legal name changes, as applicable and necessary, of the Transferred Supermarkets, Transferred Distribution Centers or Transferred Offices and other uses in corporate documentation and signage; *provided*, *however*, that Buyer and its Affiliates will use the Seller Names in substantially the same manner such Seller Names were used or displayed on or prior to the Closing (and natural evolutions thereof), and (ii) use and display the Seller Retained Banners and Seller Retained Private Labels during the Buyer Banner Transition Period in connection with the operation of the business of the Transferred Supermarkets, Transferred Distribution Centers and Transferred Offices, including on any Inventory or Marked Materials included in the

Transferred Assets as of the Closing (A) subject to the immediately following sentence, in substantially the same manner such Seller Retained Banners and Seller Retained Private Labels were used or displayed on or prior to the Closing (and natural evolutions thereof) and (B) on goods and services of a similar or higher quality to those used and displayed with the Seller Retained Banners and Seller Retained Private Labels immediately prior to the Closing. The Parties agree that, for purpose of the foregoing license granted in Section 7.4(c)(ii), the phrases: "[Seller Retained Banner] by [C&S] or [Transferred Banner]" (*e.g.*, "Vons by C&S" or "Vons by QFC");, or solely in the applicable Territory (as defined in the Trademark License Agreements, respectively) covered by the exclusive license granted to Buyer under the applicable Trademark License Agreements, "[Seller Retained Banner] by [Albertsons] or [Safeway]" (*e.g.*, "Vons by Albertsons" in California), in each case, constitute use of the Seller Retained Banners in substantially the same manner such Seller Retained Banners were used on or prior to the Closing (and natural evolutions thereof). Any goodwill arising from the use or display of the Seller Names, Seller Retained Banners and Seller Retained Private Labels by Buyer or its Affiliates pursuant to this Section 7.4(c) will inure to the benefit of the Sellers and their respective Affiliates, unless otherwise allocated in the Trademark License Agreements. The Parties agree that during the Buyer Banner Transition Period, the Parties will work together in good faith to minimize customer confusion and disruption with respect to Buyer and its Affiliates' transitional use and display during the Buyer Banner Transition Period of the Seller Retained Banners and Seller Retained Private Labels (including with respect to online and digital uses and displays). For the avoidance of doubt, the Modified Brand Principles (as defined in the Trademark License Agreements) do not, and shall not, apply to the use and display by Buyer or any of its Affiliates of the Seller Retained Banners and the Seller Retained Private Labels pursuant to this Section 7.4(c).

(d) Effective upon the Closing, Buyer on behalf of itself and its Affiliates, hereby grants to Sellers and their respective Affiliates a worldwide, non-exclusive, non-transferable (except in connection with a sale of all or substantially all of the assets to which the license relates), non-sublicensable (except to third party service providers or contractors in connection with services provided to or on behalf of Sellers or their Affiliates), fully paid-up, royalty-free license to use and display the Transferred Banners and Transferred Private Labels for the Seller Banner Transition Period, in each case, in connection with the operation of the Retained Stores, including on any Inventory or Marked Materials included in such Retained Stores as of Closing (i) subject to the immediately following sentence, in substantially the same manner such Transferred Banners and Transferred Private Labels were used or displayed on or prior to the Closing (and natural evolutions thereof) and (ii) on goods and services of a similar or higher quality to those used and displayed with the Transferred Banners and Transferred Private Labels immediately prior to the Closing. The Parties agree that, for purposes of the foregoing license granted in this Section 7.4(d), the phrases "[Transferred Banner] by [Seller Retained Banner]" (*e.g.*, "Mariano's by JewelOsco" or "QFC by Safeway"), in each case, except for Variations containing or confusingly similar to "Albertsons" or "Safeway" in the applicable Territory (as defined in the Trademark License Agreements, respectively) covered by the exclusive license granted to Buyer under the applicable Trademark License Agreements, constitute use of the Transferred Banners in substantially the same manner such Transferred Banners were used on or prior to the Closing (and natural evolutions thereof). Any goodwill arising from the use or display of the Transferred Banners and Transferred Private Labels by Buyer or its Affiliates pursuant to this Section 7.4(d) will inure to the benefit of Buyer and its Affiliates, unless otherwise allocated in the Trademark License Agreements. The Parties agree that during the Seller Banner Transition

Period, the Parties will work together in good faith to minimize customer confusion and disruption with respect to Sellers and their respective Affiliates' transitional use and display during the Seller Banner Transition Period of the Transferred Banners and Seller Transferred Private Labels (including with respect to online and digital uses and displays). For the avoidance of doubt, no modification of any brand principles implemented by Buyer with respect to the Transferred Banners shall apply to the use and display by the Sellers or any of their Affiliates of the Transferred Banners and the Transferred Private Labels pursuant to this Section 7.4(d).

(e) Effective upon the Closing, with respect to any Trade Secrets (other than Seller Retained Licensed Recipes (the license to which is set forth in Section 7.4(f)) and Customer data), (i) owned, as of the Closing, solely by Sellers or their Affiliates, (ii) used in, or otherwise practiced or exploited by, the operation of the business of the Transferred Supermarkets, Transferred Distribution Centers and Transferred Offices, in each case, as of the Closing, and (iii) for which Buyer and its Affiliates will not receive, under the Transition Services Agreement or Section 7.4(c), a service or other right as a replacement for such Trade Secrets, Sellers, on behalf of themselves and their respective Affiliates, hereby grant Buyer and its Affiliates a non-exclusive, worldwide, perpetual, irrevocable, fully paid-up, royalty-free, non-transferable (except in connection with a sale of all of the business (or a portion of the business in an entire state) to which this license relates), non-sublicensable (except to (i) third party service providers, joint venture entities and franchisees of Buyer and its Affiliates, in each case, in connection with the business of the Transferred Supermarkets, Transferred Distribution Centers or Transferred Offices; and (ii) acquirers or successors-in-interest of all or a portion of the business of the Transferred Supermarkets, Transferred Distribution Centers or Transferred Offices) and non-terminable license to use or otherwise exploit such Trade Secrets in the operation of the business of the Transferred Distribution Centers, Transferred Supermarkets and Transferred Offices (and natural evolutions thereof), in each case, in substantially the same manner that such Trade Secrets were used or exploited as of the Closing by Sellers or their Affiliates in the operation of the business of the Transferred Distribution Centers, Transferred Supermarkets and Transferred Officers.

(f) Effective upon the Closing, Sellers, on behalf of themselves and their respective Affiliates, hereby grant Buyer and its Affiliates a non-exclusive, worldwide, perpetual, irrevocable, fully paid-up, royalty-free, non-transferable (except in connection with a sale of all of the business (or a portion of the business in an entire state) to which this license relates), non-sublicensable (except to (i) third party service providers, joint venture entities and franchisees of Buyer and its Affiliates, in each case, in connection with their respective businesses; and (ii) acquirers or successors-in-interest of all or a portion of the business of Buyer or its Affiliates) and non-terminable license to use, improve, modify, create derivative works of and otherwise exploit the Seller Retained Licensed Recipes in connection with the business of Buyer and its Affiliates, including the operation of the business of the Transferred Supermarkets, Transferred Distribution Centers and Transferred Offices (and natural evolutions thereof). After the Closing, as between the Parties (including their respective Affiliates), (i) any improvements and modifications to, and derivative works of, any of the Seller Retained Licensed Recipes created or developed by or on behalf of Buyer or any of its Affiliates shall, subject to Sellers' and their respective Affiliates' respective ownership of the Seller Retained Licensed Recipes, be solely owned by Buyer and its Affiliates, and Seller and its Affiliates shall have no right, title or interest in or to such improvements, modifications and derivative works, and (ii) any improvements and modifications to, and derivative works of, any of the Seller Retained Licensed Recipes created or developed by

or on behalf of any Seller or any of its Affiliates shall be owned by such Seller and its Affiliates, and Buyer and its Affiliates shall have no right, title, or interest in or to such improvements, modifications and derivative works. Neither Party (nor any of its Affiliates) shall have any obligation to disclose, license or otherwise provide or make available to the other Party (or any of its Affiliates), any improvements, modifications to, or derivative works of, any of the Seller Retained Licensed Recipes, created or developed after the Closing by or on behalf of such Party (or any of its Affiliates).

(g) During the Buyer Banner Transition Period, except as otherwise provided in this Section 7.4, from and after the Closing, Buyer shall not, and shall not authorize any Affiliate or Third Party to (i) register or make an application to register any Trademarks which are the same or confusingly similar to the Seller Names or the Trademarks included in the Seller Retained Banners and Seller Retained Private Labels, except as otherwise permitted under the Trademark License Agreements, or (ii) use any of the Seller Names, Seller Retained Banners and Seller Retained Private Labels in the operation of the business of the Transferred Supermarkets, in each case, except as otherwise permitted in this Agreement and the Transition Services Agreement.

(h) During the Seller Banner Transition Period, except as otherwise provided in this Section 7.4, from and after the Closing, Sellers shall not, and shall not authorize any Affiliate or Third Party to (i) register or make an application to register any Trademarks which are the same or confusingly similar to the Trademarks included in the Transferred Banners and Transferred Private Labels or (ii) use any such Trademarks in the operation of the business of the Retained Stores, in each case, except as otherwise permitted in this Agreement or the Transition Services Agreement.

(i) The Parties acknowledge and agree that notwithstanding anything to the contrary herein, after Closing, neither Buyer, Sellers, nor their respective Affiliates shall be prevented, restricted or otherwise limited from (i) stating the historical relationship between or among the Parties for informational purposes (and in a non-trademark manner), which statements are factually accurate, (ii) retaining copies of any books, records and other archival materials that, as of Closing, contain or display the Seller Names or Trademarks included in the Seller Retained Banners, Seller Retained Private Labels, Transferred Banners, or Transferred Private Labels, as applicable, in each case, *provided*, that such copies are used solely for internal or archival purposes (and not public display), (iii) using or displaying the Seller Names or Trademarks included in the Seller Retained Banners, Seller Retained Private Labels, Transferred Banners, or Transferred Private Labels, as applicable, in each case, to the extent necessary (A) to comply with applicable Laws or (B) for litigation, regulatory or corporate filings and documents filed by the Parties or its Affiliates with any Governmental Entity, or (iv) making any use or display of any such Seller Names or Trademarks that would otherwise constitute "fair use" under applicable Law.

7.5 Gift Cards; Fuel Rewards. From and after the Closing, for so long as loyalty program related services are provided by Kettle Seller and its Affiliates to Buyer pursuant to the terms and conditions of the Transition Services Agreement, then Buyer and Kettle Seller shall use commercially reasonable efforts to, on a monthly basis, conduct a reconciliation of gift cards, Fuel Rewards Programs, loyalty points, and other customer loyalty programs, and to the extent not covered or contemplated by the Transition Services Agreement and the services provided

thereunder, promptly remit to each other any amounts owed to the other Party with respect to such programs.

7.6 Percentage Rent Payments. Following the Closing, percentage rent payable under each Transferred Lease that contains a percentage rent provision shall be prorated at the end of the current lease year for each such Transferred Lease which provides for the payment of percentage rent, and the percentage rent payable, if any, shall be paid by Buyer when due and Kettle Seller shall promptly reimburse Buyer a portion thereof determined by multiplying (i) a fraction, the numerator of which is the amount of Kettle Seller's or its Affiliates' gross annual sales at such Kettle Leased Store or Acorn Leased Store, as applicable, from the first day of such lease year to (and excluding) the Closing Date, and the denominator of which is the gross annual sales at such Kettle Leased Store or Acorn Leased Store, as applicable, for the entire lease year, *multiplied by* (ii) the amount of percentage rent actually due under such Transferred Lease for such Kettle Leased Store or Acorn Leased Store, as applicable. Kettle Seller, upon the request of Buyer, shall promptly provide Buyer with such information as Buyer shall be required to submit to the applicable landlord under such Transferred Leases in connection with the payment of percentage rent with respect to such Kettle Leased Store or Acorn Leased Store, as applicable.

7.7 Post-Closing Access; Record Retention.

(a) Post-Closing Access.

(i) From and after the Closing, subject to applicable Law, upon reasonable notice from any of the Parties, for purposes of complying with any Tax, financial reporting, or regulatory requirements (other than in connection with a dispute, claim or litigation between Buyer and Sellers or any of their respective Affiliates), subject to any applicable Competition/Investment Law, upon Kettle Seller's reasonable request, Buyer shall, and shall cause its Affiliates to, afford Kettle Seller and its officers and other authorized Representatives, during normal business hours, reasonable access to the books and records to the extent related to the Transferred Assets (but not including any Customer data and information) and Assumed Liabilities, with respect to the periods or occurrences prior to the Closing.

(ii) From and after the Closing, for a period of twelve (12) months following the Closing Date, Kettle Seller shall, and shall cause its Affiliates to, provide Buyer and its Affiliates with copies of (A) all "T-Log data" in Sellers' possession as of the Closing Date, concerning the period that is three (3) years prior to the Closing Date, and (B) all other raw Customer data (excluding "T-Log data") in Sellers' possession as of the Closing Date, concerning the period that is the length of time required by the applicable Seller's currently existing retention policies in effect as of the date hereof (including archived data that is reasonably accessible), in each case, and related to the Acorn Transferred Customer Data and Kettle Transferred Customer Data that would be necessary to support critical marketing and merchandising functions related to the Transferred Supermarkets in its possession; *provided*, *however*, that such copies shall not include any data and information derived through any data analytics tools (including any data or analytics relating to 84.51) or such tools themselves.

(b) Archives, Preservation and Destruction.

(i) Copies of any books and records, in any form or media, that are included in the Transferred Assets (other than books and records included in the Excluded Assets) that are stored, as of the Closing Date, by or on behalf of Kettle Seller in any facilities of Kettle Seller or its Affiliates or any third party records storage facility ("Archived Records") are, subject to this Section 7.7(b), permitted to be retained by Kettle Seller in such facility, or a successor thereto, until the earlier of (a) their transfer to Buyer pursuant to this Agreement, the Transition Services Agreement or any other Transaction Document, (b) the deletion or destruction of such Archived Records in accordance with the company-wide policies and procedures of Kettle Seller as of the Closing Date or (c) the termination of all of Kettle Seller's legal obligations, including contractual obligations, to retain such Archived Records. Without limiting the foregoing, Kettle Seller and its Affiliates shall have the right to retain copies of books and records to the extent that they are reasonably related to any Excluded Assets or Excluded Liabilities or otherwise necessary for Kettle Seller and its Affiliates to comply with their legal obligations, including obligations under this Agreement and any of the other Transaction Documents. Unless otherwise consented to in writing by Kettle Seller, Buyer shall not, and shall cause its Affiliates not to, for a period of seven (7) years following the Closing Date, destroy, alter, or otherwise dispose of any of the books, records, and Contracts of Buyer and its Affiliates with respect to the Transferred Assets with respect to any period prior to the Closing without first offering to surrender to Kettle Seller such books records, and Contracts, or any portion thereof which Buyer or any of its Affiliates may intend to destroy, alter, or dispose of.

(ii) Buyer may request access to Archived Records from Kettle Seller and its Affiliates at any time by delivering to Kettle Seller or its Affiliate a written request setting forth in reasonable detail the Archived Records requested by Buyer. Upon receipt of such a request for Archived Records, Kettle Seller or its Affiliate shall be entitled, but shall have no obligation, to: (A) review the requested Archived Records, (B) redact any information that is not related to any Transferred Asset or Assumed Liability or otherwise to address reasonable privilege or confidentiality concerns, and (C) except to the extent such Archived Records relate exclusively to any Transferred Asset or Assumed Liability, retain the original Archived Record and furnish to Buyer a copy thereof. Subject to the immediately preceding sentence, Kettle Seller and its Affiliates shall fulfill each request for Archived Records pursuant to this Section 7.7(b), by promptly and delivering, at Buyer's sole cost and expense, to Buyer (x) an electronic copy of the requested Archived Records, and (y) for any Archived Records that relate exclusively to any Transferred Asset or Assumed Liability, the paper or other tangible embodiment thereof.

(iii) Subject to Section 7.7(d) following the Closing Date and the following sentence in this Section 7.7(b)(iii), Kettle Seller and its Affiliates shall have no right to (A) use, retain or otherwise Process any Transferred Non-Customer Data, or use, or otherwise Process (and following the termination of the Transition Services Agreement, to retain) any Exclusive Customer Transferred Data alone or in combination with any data included in the Excluded Assets, including in connection with Kettle Seller's retained loyalty programs or Customer insights, for competitive purposes, to create new analytics or to imbed into any models at an aggregated level except solely to the extent necessary to comply with Kettle Seller's legal obligations, including obligations under this Agreement, the Transition Services Agreement, or the other Transaction Documents. Upon fulfillment of such obligations, Kettle Seller and its Affiliates shall cease any and all use related to the business of the Retained Stores of such Transferred Non-Customer Data or Exclusive Customer Transferred Data from all applicable IT

Assets and any other repositories where such Transferred Non-Customer Data or Exclusive Customer Transferred Data is stored or retained. Notwithstanding the foregoing, the Parties acknowledge and agree that (y) Kettle Seller and its Affiliates shall have the right to use, retain and otherwise Process any Transferred Customer Data that is not Exclusive Customer Transferred Data, including in connection with Kettle Seller's retained loyalty programs and Customer insights and (z) Sellers and any of their respective Affiliates are expressly permitted to continue the distribution of coupons and mailers that were distributed within sixteen (16) weeks of the Closing Date (it being acknowledged and agreed by the Parties that such coupons and mailers cannot be altered, modified, canceled, or destroyed with less than thirteen (13) weeks prior notice). Notwithstanding anything to the contrary herein, as promptly as practicable following the expiration or termination of the Transition Services Agreement but no later than ninety (90) days thereafter, except solely to the extent necessary to comply with the Sellers' and their respective Affiliates' obligations under this Agreement, the Transition Services Agreement, or the other Transaction Documents, and subject to Section 7.7(d), as applicable, Sellers shall, and shall cause their respective Affiliates to, (A) delete, remove and expunge from all IT Assets included in the Excluded Assets, and destroy and otherwise dispose, as applicable, the Exclusive Customer Transferred Data and all copies thereof in possession or control and (B) at Buyer's request, certify to Buyer in writing compliance with the foregoing clause (A).

(c) If pursuant to the terms and conditions of any Retail Lease included in the Transferred Assets, any tenants are required to pay percentage rent, escalation or pass-through charges for real estate taxes, operating expenses, or other charges, cost-of-living adjustments or other charges of a similar nature ("Additional Rents") and any Additional Rents are collected by Buyer after the Closing which are attributable in whole or in part to any period prior to the Closing, then Buyer shall promptly pay to Kettle Seller its proportionate share thereof, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof.

(d) Notwithstanding any of the foregoing in this Section 7.7, Section 6.3, and as otherwise set forth in this Agreement or any other Transaction Document, the Parties acknowledge and agree that certain exceptions agreed to by the Parties are set forth in the Transition Services Agreement as required in order to facilitate services relating to the Transferred Data under the Transition Services Agreement.

7.8 Enterprise Level Contracts; Joint Retail Leases.

(a) Buyer acknowledges that the Sellers or their respective Affiliates are a party to, or beneficiary of any Contracts which relate in part to the business of the Transferred Assets and in part to any other business or operations of the Sellers or any of their respective Affiliates (each, an "Enterprise Contract") and Buyer agrees that (i) such Enterprise Contracts shall not be assigned in any way to Buyer (and shall be an Excluded Asset) and (ii) except to the extent expressly provided for in the Transition Services Agreement (and only for so long as expressly provided therein), Buyer shall not be entitled to any of the benefits provided in any Enterprise Contract following the Closing. To the extent necessary or advisable, for a period of twelve (12) months after the Closing Date, Buyer shall use commercially reasonable efforts to (A) assist the Sellers with any amendment of any Enterprise Contract, so that such Enterprise Contract reflects that, following the Closing, the Transferred Assets will no longer be held by the Sellers or their Affiliates and (B) enter into new agreements directly between the Buyer and any applicable third

parties to replace or materially replicate such Enterprise Contracts, as necessary, so that following such amendment or withdrawal of the Transferred Assets therefrom there shall be no further rights or obligations or liabilities under the existing Enterprise Contract on the part of Sellers with respect to the Transferred Assets. For the avoidance of doubt, "Enterprise Contracts" shall not include any Joint Retail Leases, which shall be subject to Section 7.8(c).

(b) With respect to Enterprise Contracts with Third Parties, Kettle Seller agrees (i) to cooperate with, and to use reasonable best efforts to assist, for a period of twelve (12) months following the Closing Date, at Buyer's expense, (A) Buyer in negotiating and entering into new Contracts with the relevant counterparties as determined by Buyer, in order for Buyer to receive similar benefits and services to those provided to the Sellers prior to the Closing under the applicable Enterprise Contract as such benefits and services are used or held for use in connection with the business of the Transferred Assets, or (B) at Seller's election and to the extent permitted by the counterparty thereto, the assignment of the rights and obligations (or a portion thereof) under such Enterprise Contract related to the business of the Transferred Assets to Buyer, or (ii) to otherwise establish reasonable and lawful arrangements (which shall be for a period no longer than twelve (12) months following the Closing Date) designed to provide Buyer the rights and obligations under such Enterprise Contract; *provided*, *however*, that nothing in this Section 7.8 shall require (or be construed to require) or otherwise imply or represent or warrant, that Buyer will receive the same or similar pricing or other terms under such Enterprise Contracts as that received by any Seller or its respective Affiliates.

(c) Joint Retail Leases.

(i) Buyer acknowledges that the Sellers or their respective Affiliates are a party to certain Retail Leases that constitute Joint Retail Leases and, as such, relate in part to the Transferred Assets and in part to the Excluded Assets, and Buyer agrees that such Joint Retail Leases (except any Joint Retail Leases that primarily relate to the Transferred Assets) shall not be assigned to Buyer (and shall be an Excluded Asset); *provided*, *that*, following the Closing, Buyer or its designee shall be entitled to the benefits under any such Joint Retail Leases following the Closing and reasonably allocable to space leased thereunder located at the Transferred Assets as if Buyer (or its designee) were the landlord thereunder, and, in furtherance of the foregoing, Sellers shall pass through (or cause to be passed through) and pay (or cause to be paid) all rents received by Sellers or its Affiliates (or its or their agents or representatives) to the extent relating to the post-Closing period and reasonably allocable to space leased at the Transferred Assets under any Joint Retail Lease, and, further, Sellers shall cooperate as reasonably requested from time to time by Buyer (or its designee), at Buyer's expense, to enforce the landlord's rights thereunder with respect to the occupancies at the Transferred Assets provided that Buyer shall be obligated to reimburse Seller for any out-of-pocket expenses incurred by Seller under such Joint Retail Leases following the Closing and reasonably allocable to space leased thereunder located at the Transferred Assets.

(ii) Moreover, for a period commencing on the A&R Date and continuing until twelve (12) months after the Closing Date, Sellers agree to cooperate with, and to use reasonable best efforts to assist, at Buyer's expense, with the following with respect to any Joint Retail Leases of the type described in the immediately preceding paragraph: (1) Buyer in negotiating and entering into new retail leases with the relevant counterparties as determined by Buyer, in order for the Transferred Assets that are subject to such Joint Retail Leases to receive

similar benefits and services (including rents and other charges, as applicable) to those provided to such Transferred Assets under such Joint Retail Leases, or (2) at Buyer's election and to the extent permitted by the counterparty thereto, the partial assignment (with respect to the applicable space leased thereunder at the Transferred Assets) to Buyer (or its designee) of any such Joint Retail Leases (i.e., Joint Retail Leases relating primarily to the Excluded Assets); *provided* that (x) none of the Sellers or any of their respective Affiliates shall be required to commence any litigation in furtherance of this clause (2) and (y) notwithstanding anything in this Agreement to the contrary, neither Seller or any of their respective Affiliates shall be required to make any payment of any fees, expense "profit sharing" payments or other consideration (including increased or accelerated payments) or concede anything of monetary or economic value, or amend, supplement, or otherwise modify any such Joint Retail Lease, or otherwise make any accommodation, in each case, in furtherance of this clause (2).

(iii) The parties further acknowledge and agree that Sellers or their respective Affiliates are party to certain Joint Retail Leases that primarily relate to the Transferred Assets and shall be assigned to Buyer as contemplated herein and in the Retail Lease Assignment; *provided*, that, following the Closing, Seller shall be entitled to the benefits under any such Joint Retail Leases accruing following the Closing and reasonably allocable to space leased thereunder located at the Excluded Assets as if Seller were the landlord thereunder, and, and in furtherance of the foregoing, Buyer shall pass through (or cause to be passed through) and pay (or cause to be paid) all rents received by Buyer or its Affiliates (or its or their agents or representatives) to the extent relating to the post-Closing period and reasonably allocable to space leased at the Excluded Assets under any Joint Retail Lease, and, further, Buyer shall cooperate as reasonably requested from time to time by Sellers, at Sellers' expense, to enforce the landlord's rights thereunder with respect to the occupancies at the Excluded Assets; provided that Sellers shall be obligated to reimburse Buyer for any out-of-pocket expenses incurred by Buyer under such Joint Retail Lease following the Closing and reasonably allocable to space leased thereunder and located at the Excluded Assets.

(iv) Moreover, for a period commencing on the A&R Date and continuing until twelve (12) months after the Closing Date, Buyer agrees to cooperate with, and to use reasonable best efforts to assist, at Sellers' expense, with the following with respect to any such Joint Retail Leases described in the immediately foregoing paragraph: (1) Sellers in negotiating and entering into new retail leases with the relevant counterparties as determined by Sellers, in order for the Excluded Assets that are subject to such Joint Retail Leases to receive similar benefits and services (including rents and other charges, as applicable) to those provided to such Excluded Assets under such Joint Retail Leases, or (2) at Seller's election and to the extent permitted by the counterparty thereto, the partial assignment (with respect to the applicable space leased thereunder at the Excluded Assets) to Sellers of any such Joint Retail Leases (i.e., Joint Retail Leases relating primarily to the Transferred Assets); *provided* that (x) none of the Buyer or any of their respective Affiliates shall be required to commence any litigation in furtherance of this clause (2) and (y) notwithstanding anything in this Agreement to the contrary, neither Buyer nor any of their respective Affiliates shall be required to make any payment of any fees, expense "profit sharing" payments or other consideration (including increased or accelerated payments) or concede anything of monetary or economic value, or amend, supplement, or otherwise modify any such Joint Retail Lease, or otherwise make any accommodation, in each case, in furtherance of this clause (2).

7.9 Non-Solicit. For a period of twelve (12) months after the Closing Date, neither Sellers nor any of their respective Affiliates shall, directly or indirectly, (a) induce, encourage or solicit any Transferred Employee who was an Offer Employee, or any Made Available Employee who becomes employed by Buyer or its Affiliates on or following the Closing Date, to leave the employ of Buyer or its Affiliates or (b) hire or assist any other Person in hiring such Transferred Employee or Made Available Employee, other than such Transferred Employee (i) who has not been an employee of Buyer or its Affiliates for at least three (3) months and who has not been solicited, directly or indirectly, by the hiring Seller or any of its Affiliates prior to the end of such three (3) months or (ii) who was terminated by Buyer or its Affiliates; *provided*, that this Section 7.9 shall not apply to (A) any general mass solicitations of employment not specifically directed toward employees of Buyer or its Affiliates, which general solicitations are expressly permitted or (B) hiring by the Sellers or their respective Affiliates of such Transferred Employee who seeks employment with either of the Sellers or their respective Affiliates without solicitation by such Seller or any of its Affiliates. Each Seller acknowledges and agrees that its obligations set forth in this Section 7.9 are reasonable in scope and duration, and an essential element of this Agreement and that, but for the agreement among the Sellers and Buyer in this Section 7.9, Buyer would not have entered into this Agreement.

7.10 Title to Owned Real Property. On or prior to the Closing, Sellers shall pay or discharge and, if applicable, cause to be removed from the record all Mandatory Cure Items with respect to each Owned Real Property; *provided*, *however*, that with respect to any Mandatory Cure Items (as defined in clause (a) of the definition thereof) with respect to any Owned Real Property and with respect to which all underlying obligations have been satisfied or otherwise discharged such that no amount remains outstanding, the inability to remove such Mandatory Cure Item from record shall not be a breach of this Section 7.10 if (i) the Sellers have used commercially reasonable efforts to remove such Mandatory Cure Item but have not been able to do so and (ii) Sellers, at Sellers' sole cost and expense, instead cause the Title Company to issue affirmative insurance with respect to such Mandatory Cure Item (including, without limitation, through issuance of an ALTA Endorsement 34) or otherwise to insure over same, in which case such other insurance coverage shall be subject to Buyer's reasonable approval.

7.11 Transition Services. Prior to the Closing, Sellers shall keep Buyer reasonably informed and consult with Buyer with respect to transition planning matters, including with respect to obtaining any licenses, consents, waivers and approvals necessary or appropriate for Sellers' provision of transition services or otherwise to prepare for the transition following the Closing. Sellers shall not incur or pay any costs with respect thereto without the prior written consent of Buyer (such consent, not to be unreasonably withheld, conditioned, or delayed); *provided*, that all such costs shall be reimbursed by Buyer pursuant to the Transition Services Agreement and subject to Section 2.10(f) thereof following the Closing.

7.12 Tech Stack Foundational Work.

(a) Prior to the Closing, Buyer shall, at its sole cost and expense, use commercially reasonable efforts to: (i) obtain the third party licenses necessary for the operation of the Tech Stack Copy (as defined in the Transition Services Agreement) that are set forth under "Tech Stack Infrastructure" on Exhibit O-I; (ii) conduct (or engage a Third Party Implementation Partner to conduct) certain configuration activities to set-up and maintain the Tech Stack

Infrastructure as set forth on Exhibit P ((i) and (ii) collectively, the "Tech Stack Foundational Work"); and (iii) obtain the other third party licenses necessary or reasonably useful for the operation of the Tech Stack Copy that are set forth under the heading "Third Party IT Assets" on Exhibit O-II (the "Tech Stack Non-Foundational Work"); *provided*, that, if Buyer or the Sellers discovers or reasonably suspects that any third party license necessary for the operation of the Tech Stack Copy was inadvertently omitted from Exhibit O-II and that should have been covered by Section 7.12(a)(iii), Buyer and the Sellers shall negotiate in good faith to reach a mutually acceptable resolution; and *provided*, *further*, that if Buyer is unable to or reasonably anticipates that it would be unable to complete the configuration activities contemplated in Section 7.12(a)(ii) prior to the Closing, Sellers shall use commercially reasonable efforts to assist Buyer with respect to such activities and the Parties shall negotiate in good faith to reach a mutually acceptable and reasonable resolution.

(b) Without limiting the foregoing, Sellers (i) shall provide to Buyer, within fourteen (14) days following the date hereof (the "Foundational Work Information Period"), written details as to the parameters and other specifications required to be licensed from each of the third party vendors set forth under "Tech Stack Infrastructure" on Exhibit O-I (the "Foundational Work Vendor Details"); (ii) without limiting (i), shall use its commercially reasonable efforts to assist Buyer in obtaining any third party license set forth on Exhibit O-I and Exhibit O-II and setting up and maintaining the Tech Stack Infrastructure, including discussing with Buyer and providing details as to the scope of services to be covered by, and any applicable technical requirements of, such third party licenses and setting up joint meetings with Buyer, Sellers and applicable third party vendors (including the third party vendors that are set forth under "Tech Stack Infrastructure" on Exhibit O-I) to discuss any technical requirements with respect to the scope of services or configurations to be provided by such third party vendors; *provided*, *however*, (A) Buyer shall be responsible for any reasonable out-of-pocket, documented costs incurred by Sellers with respect to the foregoing assistance to the extent that Buyer has consented to the incurrence of such costs and (B) Sellers shall not be obligated to engage or participate in any contractual negotiations with any such third party vendors; and (iii) shall use commercially reasonable efforts to provide any applicable bug fixes for the Seller owned scripts described in Exhibit P and otherwise ensure that such scripts are fully functional as required by the configuration activities contemplated in Section 7.12(a)(ii). Further, Sellers shall, as promptly as practicable but in any event within fourteen (14) days following the date hereof, provide to Buyer (x) a work plan (which shall be discussed by the Parties in good faith and which they shall mutually agree on (such agreement, not to be unreasonably withheld, conditioned, or delayed)), which will detail specific dates prior to which Buyer would be required to obtain each of the third party licenses included in the Tech Stack Non-Foundational Work so as not to cause any delay in the Tech Stack Readiness Date (as set forth in the Transition Services Agreement) and (y) a schedule and reasonable detail of the IT Assets used by Sellers in the operation of the Denver dairy manufacturing systems. The Parties shall thereafter discuss and negotiate in good faith the treatment of such IT Assets described in the foregoing (y), including whether such IT Assets should be included on Exhibit O-II and within the scope of Tech Stack Non-Foundational Work.

(c) Provided that Sellers have complied with their obligations set forth in the foregoing Section 7.12(b), Buyer acknowledges and agrees that, notwithstanding anything in this Agreement, the Transition Services Agreement or otherwise, if, prior to the Closing, Buyer is unable to obtain the third party licenses necessary for the operation of the Tech Stack Copy as set

forth in Section 7.12(a)(i) (which, for the avoidance of doubt, shall not include the Tech Stack Non-Foundational Work or the activities contemplated in Section 7.12(a)(ii)), none of the Sellers or any Third Party Implementation Partner has any obligation under this Agreement, the Transition Services Agreement or the Third Party Implementation Partner Agreement to (i) create or have created the Tech Stack Copy or the Tech Stack Implementation (as defined in the Transition Services Agreement) or (ii) provide or otherwise make available to Buyer or any of its Affiliates, the Tech Stack Copy or the Tech Stack Implementation; *provided*, *further*, that if Sellers have not provided the Foundational Work Vendor Details within the Foundational Work Information Period, Buyer's obligation to conduct the Tech Stack Foundational Work and Tech Stack Non-Foundational Work by the Closing, as contemplated by Section 7.12, shall automatically be extended for the duration of any delay by Seller beyond the Foundational Work Information Period.

(d) Effective as of the date of this Agreement, Acorn Seller, on behalf of itself and its Affiliates, hereby grants Buyer and its Affiliates a limited, non-exclusive, fully paid-up, royalty-free, worldwide, non-transferable, non-sublicensable license (except to third party service providers or contractors (including the Tech Stack Implementation Partner solely as necessary for Buyer to set up and maintain the Tech Stack Infrastructure)) under the Intellectual Property owned by Acorn Seller and set forth on Exhibit P solely as necessary for Buyer to set up and maintain the Tech Stack Infrastructure as set forth in Section 7.12(a)(ii) in preparation for Buyer's receipt and operation of the Tech Stack Copy in accordance with the Transition Services Agreement. The foregoing license shall immediately and automatically terminate upon the Closing (subject to any extension period contemplated in this Section 7.12 for any delay by Seller beyond the Foundational Work Information Period).

(e) Third Party Implementation Partner Agreement. Prior to the Closing, Sellers shall use commercially reasonable efforts to enter into an agreement with the Third Party Implementation Partner (such agreement, the "Third Party Implementation Partner Agreement"), with such agreement to be effective as of the Closing, pursuant to which Sellers, on behalf of themselves and their respective Affiliates, will grant a non-exclusive, irrevocable, royalty-free, fully paid-up, worldwide license until the end of the Tech Stack Copy License Period (as defined in the Transition Services Agreement) to the applicable Third Party Implementation Partner to any software included in the Core Acorn/Kettle Intellectual Property (as defined in the Transition Services Agreement) and incorporated into or embodied in the Tech Stack Implementation, which license will include the right for such Third Party Implementation Partner to access, use, copy and modify the source code of such software solely to the extent reasonably necessary to create the Tech Stack Copy and set up, operate and maintain (including providing bug fixes) the Tech Stack Implementation. Without limiting the foregoing, Sellers shall use commercially reasonable efforts to communicate with and coordinate with the Third Party Implementation Party with respect to any applicable activities contemplated to be covered by the Provider Pre-Readiness Cost Estimates so as to ensure there is no duplication of work by the Third Party Implementation Party.

ARTICLE VIII
TAX MATTERS

8.1 Transfer Taxes. Buyer and Sellers agree to share all Transfer Taxes incurred in connection with the Transactions (other than any Transfer Taxes resulting from any sale or other

transfer described in Section 6.1(c)) and the administrative costs of preparing the documentation therefor equally (i.e., fifty percent (50%) by Buyer and fifty percent (50%) by Sellers). Sellers and Buyer shall cooperate as reasonably requested by each of them. Buyer and Kettle Seller shall jointly retain Ernst & Young LLP to prepare and file all Tax Returns as may be required to comply with the provisions of Tax Laws relating to such Transfer Taxes on a timely basis. Ernst & Young LLP shall deliver a copy of each such Tax Return to each of Kettle Seller and Buyer prior to the filing thereof for the prompt review and approval of each of them. The Parties shall cooperate with each other in good faith to minimize the amount of such Transfer Taxes, *provided*, that such cooperation does not require any change in the terms of this Agreement or otherwise result in any cost or other liability upon the Party that is being asked to cooperate, unless the requesting Party agrees to pay fifty percent (50%) of any such cost or liability.

8.2 Proration of Taxes. Each of (a) real estate Taxes and assessments, and (b) other periodic Taxes imposed upon or assessed directly against the Transferred Assets (including personal property Taxes and similar Taxes), in each case, for the Tax period in which the Closing occurs (the "Proration Period") and excluding Transfer Taxes, shall be apportioned and prorated between Kettle Seller and Buyer as of the Closing Date with (i) Buyer bearing the expense of Buyer's proportionate share of such Taxes which shall be equal to the *product of* (A) a fraction, the numerator of which is the amount of such Taxes, and the denominator being the total number of days in the Proration Period, *multiplied by* (B) the number of days in the portion of the Proration Period that begins on the Closing Date through the end of the Proration Period, and (ii) Kettle Seller bearing the remaining portion of such Taxes. If the Closing shall occur before a new real estate or personal property Tax rate is fixed for the applicable property, or if the amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration of Taxes for such property at the Closing shall be upon the basis of the old Tax rate for the preceding fiscal year applied to the latest assessed valuation. Promptly after the new Tax rate is fixed, the apportionment of Taxes shall be recomputed by the Parties and any discrepancy resulting from such re-computation and any errors or omissions in computing apportionments at the Closing shall be promptly corrected and the property Party reimbursed (by wire transfer of immediately available funds) within thirty (30) days following such re-computation. For the avoidance of doubt, Taxes that are subject to Lease Prorations under Section 2.6 shall not be subject to proration under this Section 8.2.

ARTICLE IX
EMPLOYEE MATTERS

9.1 Transferred Employees.

(a) In no event later than sixty (60) days prior to the Closing Date (which may be modified by mutual agreement between Kettle Seller and Buyer), Sellers shall (x) select individuals employed by a Seller (or one of its controlled Affiliates) to fill the Unallocated District Resource Roles (the "District Resource Employees") and Unallocated Functional Expert Roles (the "Functional Expert Employees") and (y) determine in-scope roles, if any, that will be filled by the Division Resource Employees designated on Schedule 4.15(a)(ii) as "Unallocated" (sometimes referred to as currently "unmapped" division resources), in each case, in accordance with the principles set forth on Schedule 9.1(a) (all such agreed upon criteria, the "Agreed Employee Selection Principles"). As soon as practicable after the completion of the selection

process set forth in the foregoing sentence and in no event later than sixty (60) days prior to the Closing Date (or as otherwise mutually agreed between Kettle Seller and Buyer), Seller shall identify the District Resource Employees and Functional Expert Employees and provide Buyer, for each such identified Employee, with Employee Census Information, along with Employee Census Information for each Division Resource Employee, which in each case, shall be updated as of a reasonably practicable date and shall include each such Employee's name. To the extent that Sellers (i) select individual employed by a Seller (or one of its controlled Affiliates) to fill such roles or (ii) determine such in-scope roles filled by Division Resource Employees designated as "Unallocated" in accordance with the foregoing, in either case, prior to such sixty (60) day period, Sellers will provide the Employee Census Information for such selected employees on a reasonably prompt basis. In addition, prior to Closing, Sellers will provide Buyer with sufficient information regarding all Employees (to the extent not otherwise provided in accordance with the foregoing) in order to effectuate Buyer's obligations under this Section 9.1 and Section 9.3.

(b) Subject to Schedule 9.1, as soon as administratively practicable prior to the Closing Date, Buyer shall, or shall cause an Affiliate of Buyer, to (i) deliver a written offer of employment, which offer shall be effective on the Closing Date, to each active District Resource Employee, Division Resource Employee (excluding, for the avoidance of doubt, any Division Resource Employee, designated on Schedule 4.15(a)(ii) as "Unallocated" who Buyer, in its sole discretion, elects not to extend such an offer of employment) and Functional Expert Employee (collectively, the "Offer Employees"), subject to such Offer Employee's employment through the Closing Date and passing Buyer's employee screening and hiring policies and procedures applicable in the ordinary course of business to other similarly situated new hire employees (including, a background check, verification or employment eligibility and drug testing), for an at-will position that unless otherwise agreed with the applicable Offer Employee, (A) has job duties comparable to those applicable to such Offer Employee's position immediately prior to the Closing Date; (B) for Offer Employees employed at a location that is a Transferred Asset, has a primary office or work location as such Offer Employee's place of work immediately prior to the Closing Date; and (C) provides for a base salary, annual (or other short-term) cash bonus opportunities and medical, dental, vision, life insurance, disability and 401(k) benefits (the "Covered Benefits") that, taken as a whole, are no less favorable in the aggregate than the base salary, annual (or other short-term) cash bonus opportunities and the Covered Benefits provided to such Employee immediately prior to the Closing Date (excluding, for this purpose, retiree medical and health retirement accounts and retiree life insurance benefits) (each such offer that complies with (A) through (C) above and otherwise complies in all respects with applicable Law, a "Qualifying Offer") and (ii) deliver a written notice of new employment to each active Store Employee and Dairy Employee confirming the general compensation and employment terms that it intends to offer to such Employee, that shall be deemed automatically accepted by the applicable Store Employee or Dairy Employee unless such Employee resigns or rejects such offer (in each case, in writing) prior to the Closing Date and solely to the extent a new immigration verification and/or employment eligibility confirmation with Buyer is required under applicable Law, passing Buyer's policies and procedures regarding immigration verification or employment eligibility. Each Offer Employee who accepts a Qualifying Offer and each Store Employee and each Dairy Employee who does not resign or otherwise reject Buyer's offer of employment in writing prior to the Closing Date are referred to herein as the "Transferred Employees" effective on the Closing Date. Notwithstanding anything to the contrary in this Section 9.1(b), the requirements of this Section 9.1(b) shall not apply to Transferred Employees who are covered by an Assumed CBA.

(c) Any Employee who is inactive as of the Closing Date as a result of being on short- or long-term disability, workers compensation or otherwise on a leave of absence and unavailable to commence work immediately after the applicable Closing Date (each, an "Inactive Employee") shall not be offered employment by Buyer effective as of the Closing Date in accordance with Section 9.1(b). Sellers (or Sellers' short or long-term disability plan or workers compensation plan, as applicable) shall continue to keep such Inactive Employee in full or partial pay status consistent with the applicable plans and past practice. If and when an Inactive Employee is ready, willing, and able to return to active work from leave, (i) the applicable Seller shall notify Buyer as soon as reasonably practicable and (ii) Buyer shall offer employment to such Inactive Employee as soon as reasonably practicable following such notification; *provided*, *however*, that Buyer's obligation to extend offers shall not apply to any Inactive Employee who does not return to active work within six (6) months following the Closing Date or if longer, the expiration of any legally protected leave of absence period during which the applicable Seller would return such Inactive Employee to active employment under the applicable Seller policy. Such offers shall be subject to the same terms as set forth in Section 9.1(b). If such Inactive Employee accepts employment and actually commences employment with Buyer (the date on which such employment with Buyer commences, the "Transfer Date"), he or she shall be a Transferred Employee for all purposes hereunder; *provided*, that any references to Closing or Closing Date shall be deemed to mean the Transfer Date of such Transferred Employees. For the avoidance of doubt, nothing herein shall require Buyer to offer employment, in connection with the applicable Closing or thereafter, to any Offer Employees on an unapproved leave of absence as of the applicable Closing Date.

(d) The Parties hereby agree to treat Buyer as a "successor employer" and each Seller as a "predecessor," within the meaning of Sections 3306(b)(1) and 3121(a)(1) of the Code, with respect to the Transferred Employees solely for purposes of Taxes imposed under the United States Federal Unemployment Tax Act or the United States Federal Insurance Contributions Act.

(e) Buyer agrees that in connection with its employment of the Transferred Employees (other than any Transferred Employees who are covered by an Assumed CBA), Buyer shall for the twelve (12) month period following the Closing Date (or if earlier, until the termination of such Transferred Employee's employment), provide each Transferred Employee with: (i) base salary or base wage, annual (or other short-term) cash bonus opportunities and Covered Benefits that, taken as a whole, are no less favorable in the aggregate than the base salary or base wage, annual (or other short-term) cash bonus opportunities and the Covered Benefits provided by the Sellers immediately prior to the Closing (excluding, for this purpose, retiree medical and health retirement accounts and retiree life insurance benefits); and (ii) for Offer Employees, severance payments and benefits that are no less favorable in the aggregate than the practice, plan or policy in effect for such Transferred Employees immediately prior to the Closing and disclosed on Schedule 9.1(e).

(f) Immediately prior to the Closing, the Sellers shall determine the aggregate amount of the Employees' annual (or other short-term) cash bonus entitlements in respect of the portion of the applicable performance period that has elapsed as of the Closing Date (the portion of such amount applicable to Transferred Employees, the "Pre-Closing Bonus Amount"). At the time annual (or other short-term) cash bonuses are paid to similarly situated employees of Buyer and its Affiliates, Buyer shall, or shall cause one of its Affiliates to pay to each Transferred Employee who remains employed by Buyer or an Affiliate thereof and eligible for such payment

(determined in accordance with the terms of Buyer's annual or other short-term cash bonus plan or program) the sum of (i) his or her respective portion of the Pre-Closing Bonus Amount and (ii) the amount of such Transferred Employee's cash bonus entitlement in respect of the portion of the applicable performance following the Closing Date (in accordance with the terms of Buyer's annual or other short-term cash plan or program and after giving effect to the covenant set forth in Section 9.1(e)); *provided*, that the aggregate amount paid to the Transferred Employees shall not be less than the Pre-Closing Bonus Amount. As soon as practicable thereafter, Buyer shall provide Kettle Seller with written notice, together with sufficient written evidence, of payment of the Pre-Closing Bonus Amount and Kettle Seller shall, not later than thirty (30) days following the receipt of such written notice, reimburse Buyer, by check or wire transfer of immediately available funds, in an amount equal to the Pre-Closing Bonus Amount. For the avoidance of doubt, as and when finally determined, the payment of the Pre-Closing Bonus Amount from Seller to Buyer, shall be treated as adjustments to the final Purchase Price for U.S. federal income Tax purposes (and all applicable state and local Tax purposes).

(g) Subject to applicable state Laws, the terms of the Assumed CBAs and agreements with any unions representing the Transferred Employees, Buyer shall agree to assume all accrued but unused and unpaid vacation, sick leave, personal days or other paid time off to which the Transferred Employees are entitled as of the Closing, in each case, as reflected in each Seller's financial records in accordance with GAAP, consistently applied for the period up to the Closing Date (collectively, the "Assumed Time-Off"). The dollar amount of the Assumed Time-Off as of the Closing Date, less any amounts payable to the Transferred Employees upon a termination of employment with Sellers at or prior to the Closing pursuant to applicable state Laws, the terms of the Assumed CBAs and agreements with any unions representing the Transferred Employees, shall be the "Final Assumed Time-Off Balance." At least five (5) Business Days prior to the Closing Date, Kettle Seller shall deliver, or cause to be delivered, to Buyer a schedule identifying the Final Assumed Time-Off Balance in reasonable detail. Subject to, and to the extent consistent with, any obligations imposed by any Assumed CBA or related agreement, Buyer shall allow the Transferred Employees to use the vacation, sick leave, personal days or other paid time off to which the Transferred Employees are entitled as of the Closing in accordance with the terms of the applicable program sponsored by Sellers and its Affiliates in effect as of immediately prior to the Closing (which shall be in addition to, and not in lieu of, any vacation accrued under the applicable vacation, sick leave, personal days or other paid time off plans or policies of Buyer or its Affiliates following the Closing).

(h) Sellers acknowledge and agree that they are responsible for paying to the Transferred Employees, Seller Benefit Plans and/or Participating Multiemployer Plans, and shall pay to the Transferred Employees, Seller Benefit Plans and/or Participating Multiemployer Plans at or prior to the Closing Date, all compensation, contributions and benefits accrued up to the Closing Date to the extent required by all Laws, the Seller Benefit Plans, and applicable CBAs. If a benefit contribution or premium attributable to an entire month (or other period of time) of coverage for Transferred Employees is due and payable prior to the Closing Date, Sellers or their respective Affiliates shall pay the entire contribution amount and Buyer or one of its Affiliates shall reimburse such Seller or its Affiliate for an amount proportionate to any portion of the time period that such Transferred Employees were employed by Buyer. If a benefit contribution or premium attributable to an entire month (or other period of time) of coverage for Transferred Employees is due and payable following the Closing Date, Buyer or its Affiliate shall pay the

entire contribution amount and Sellers or one of their respective Affiliates shall reimburse such Buyer or its Affiliate for an amount proportionate to any portion of the time period that such Transferred Employees were employed by Sellers. Sellers shall retain all liabilities with respect to any and all Employees who do not become Transferred Employees, except as set forth in Section 9.1(j).

(i) From and after the Closing Date, Buyer or its applicable Affiliate shall use reasonable best efforts to, (i) waive any limitation on health and welfare coverage of each Transferred Employee and his or her eligible dependents due to pre-existing conditions, waiting periods, active employment requirements and requirements to show evidence of good health under any applicable health and welfare plan of Buyer or an applicable Affiliate to the extent such Transferred Employees participated in a comparable Seller Benefit Plan prior to the Closing Date, (ii) credit each such Transferred Employee with all deductible payments, co-payments and co-insurance paid by such employee under any Seller Benefit Plan prior to the Closing Date during the year in which the Closing Date occurs for the purpose of determining the extent to which any such employee has satisfied any applicable deductible and whether such employee has reached the out-of-pocket maximum under any plan of Buyer or an applicable Affiliate for such year and (iii) give full credit for service with any of the Sellers, their Affiliates or predecessors for purposes of eligibility, vesting and benefit accrual under Buyer's employee benefit plans, programs and arrangements, except for (A) benefit accruals under any defined benefit pension plan, (B) for purposes of qualifying for subsidized early retirement benefits or retiree medical benefits, (C) to the extent it would result in a duplication of benefits and (D) if such service was not recognized under the corresponding Seller Benefit Plan.

(j) Buyer and its Affiliates will be solely responsible for all obligations and Liabilities for severance or termination pay or benefits under any plan, program, policy or applicable Law, with respect to or related to (i) the Transferred Employees, (ii) any Employee who does not receive an offer of employment from Buyer or its Affiliates in breach of Section 9.1(b), and (iii) any Offer Employee who receives an offer of employment from Buyer or its Affiliates that does not constitute a Qualifying Offer in breach of Section 9.1(b). For the avoidance of doubt, Sellers will be solely responsible for all obligations and Liabilities for any other such severance or termination pay or benefits that either (A) arise prior to the Closing Date or (B) are not covered by the preceding sentence. For the avoidance of doubt, neither Buyer nor its Affiliates shall be responsible for any severance or termination pay or benefits payable to those individuals employed by a Seller (or one of its controlled Affiliates) who are not selected to fill the Unallocated District Resource Roles and Unallocated Functional Expert Roles and do not receive an offer of employment from Buyer or its Affiliates.

(k) The parties hereto agree to cooperate in good faith to determine whether any notification may be required under the WARN Act as a result of the transactions contemplated by this Agreement, including by sharing in a timely manner information about involuntary terminations of employment that may trigger such notification requirements. Buyer shall be responsible for any obligation under the WARN Act with respect to employment losses (as defined by the WARN Act) experienced by any Transferred Employee which occur after the Closing Date. The Sellers shall be responsible for any obligation under the WARN Act with respect to employment losses experienced by any employee of either Seller or their respective Affiliates which occurs on or before the Closing Date. Buyer covenants that it does not currently plan or

contemplate any plant closings, reductions in force, or terminations of Transferred Employees that would trigger the WARN Act or any other similar Law, rule, or regulation of any Governmental Entity.

(l) Effective as of the Closing Date, Buyer shall, or shall cause its Affiliates to establish, to the extent it does not currently exist, a defined contribution plan with a 401(k) feature, or cause an existing defined contribution plan with a 401(k) feature to cover the Transferred Employees who were participants in, or eligible to participate in, the applicable 401(k) plan made available by the Sellers and their Affiliates to the Transferred Employees (the "Seller 401(k) Plans") prior to the Closing Date. Immediately prior to the Closing Date, Sellers shall take all steps reasonably necessary to fully vest the Transferred Employees' account balances under the Seller 401(k) Plans. Buyer shall, or shall cause its Affiliates to permit Transferred Employees to make rollover distributions of "eligible rollover distributions" (within the meaning of Section 401(a)(31) of the Code) from a Seller 401(k) Plan to a 401(k) plan maintained by Buyer or one of its Affiliates (the "Buyer 401(k) Plan"). In furtherance of the foregoing, Buyer shall, or shall cause its Affiliates to, use reasonable best efforts to permit any Transferred Employee who is a participant in a Seller 401(k) Plan and who has a loan outstanding as of the Closing Date to rollover the note evidencing the loan, *provided*, that such rollover is made within a reasonable period of time following the Closing Date.

(m) Nothing contained herein, express or implied, (i) is intended to confer upon any Employee any right to continued employment for any period, (ii) shall constitute an amendment to or any other modification of any employee benefit plan or any program, policy or arrangement of the Sellers or their Affiliates, (iii) shall prevent Buyer or any of its Affiliates, after the Closing Date, from amending or terminating any of its benefit plans in accordance with their terms or from terminating the employment of any Transferred Employee at any time or (iv) shall create any third party beneficiary rights in any Employee or any beneficiary or dependent thereof or any collective bargaining representative thereof, with respect to the compensation, terms and conditions of employment and/or benefits that may be provided to any Transferred Employee by Buyer or any of its Affiliates or under any benefit plan which the Buyer any of its Affiliates may maintain.

(n) Schedule 9.1(n) sets forth a list of individuals employed by a Seller (or one of its controlled Affiliates) who will be made available to Buyer for the period between the A&R Date and the Closing Date (the "Made Available Employees") to support the integration planning efforts of Buyer. Sellers and Buyer agree to cooperate in good faith to agree upon customary arrangements with respect to the Made Available Employees necessary or advisable under applicable Law to support such integration planning efforts. Buyer may discuss all matters related to the transactions contemplated by this Agreement, including, any Confidential Information, with such Made Available Employees. Buyer may, in its sole discretion, offer employment to such Made Available Employees and Sellers agree to use commercially reasonable efforts to facilitate the offers of employment to such Made Available Employees; *provided*, that any such offers of employment shall only relate to the period from and after the Closing Date and Buyer agrees it shall not hire any Made Available Employees prior to the Closing Date. Additionally, (i) prior to the Closing, (A) Buyer and Kettle Seller may mutually agree on individuals employed or otherwise engaged by a Seller (or one of its controlled Affiliates), who are expected to perform substantial services under the Transition Services Agreement from and after the Closing Date, and the

provisions of this Section 9.1 shall apply to such individuals as if such individuals were Functional Expert Employees and (B) Kettle Seller shall provide to Buyer (x) a list of individuals employed or otherwise engaged by a Seller (or one of its controlled Affiliates) who are expected to perform substantial services under the Transition Services Agreement from and after the Closing Date and who are eligible to receive offers of employment from Buyer after the delivery of such list, and thereupon, if Buyer elects to provide any such individual with a Qualifying Offer, then in such circumstances such individual shall be treated as a Functional Expert Employee pursuant to this Section 9.1, and (y) a list of all roles by function which are expected to perform substantial services under the Transition Services Agreement from and after the Closing Date and (ii) following the Closing and prior to the expiration of the Transition Services Agreement, Buyer, in its sole discretion, may make offers of employment to any of the individuals employed or otherwise engaged by a Seller (or its controlled Affiliates) who are then currently performing substantial services under the Transition Services Agreement and Sellers agree to use commercially reasonable efforts to facilitate the offers of employment to such individuals; *provided*, *however*, that neither Kettle Seller (nor its applicable Affiliate) shall be required to terminate the employment of such employee to whom such offer is made. The Parties acknowledge and agree that certain individuals employed or otherwise engaged by a Seller (or one of its controlled Affiliates), as mutually agreed to between the Parties, shall be part of the transition team and may be hired by Buyer following expiration of the Transition Services Agreement.

(o) On or prior to the Closing Date, Sellers shall configure all HCM systems and related applications related to the Transferred Employees to which shall be utilized to provide human resource services to Buyer under the Transition Services Agreement to comply with applicable Laws and regulations (including those of the Office of Federal Contract Compliance Programs) and, shall use commercially reasonable efforts to configure such systems and applications to Buyer's existing procedures, including those applicable to the Buyer 401(k) plan, deductions for any deferred compensation plans of Buyer and file integration systems; *provided*, *however*, that the implementation of any such configurations that are not directly related to ensuring compliance with applicable Law shall be provided in a manner that is substantially consistent with that utilized by Sellers as of the A&R Date or subject to the applicable Seller's consent (such consent, not to be unreasonably withheld, conditioner, or delayed).

9.2 MEPPs.

(a) Sellers and Buyer intend that a Withdrawal Event from the Alaska MEPP and the Sound MEPP, and any Participating Multiemployer Plans listed on Schedule 9.2 (if any) (the foregoing plans, collectively, the "Schedule 9.2 Participating MEPPs") with respect to the operations of the Transferred Supermarkets, Transferred Distribution Centers and Transferred Offices shall not occur because of the consummation of the transactions contemplated by this Agreement, by reason of compliance with all of the applicable requirements of Section 4204 of ERISA. In this regard, the Parties acknowledge and agree that the sale of assets under this Agreement constitutes a bona fide, arm's length sale of assets between unrelated parties, and the Parties intend that this Agreement be covered and satisfy all of the requirements of Section 4204 of ERISA. With respect to any Schedule 9.2 Participating MEPP, Sellers and Buyer agree to the following:

(b) To the extent needed to comply with Section 4204(a)(1)(A) of ERISA,

Buyer shall assume the obligation to contribute to each applicable Schedule 9.2 Participating MEPP with respect to the Transferred Assets for substantially the same number of contribution base units (as defined in Section 4001(a)(11) of ERISA) for which the applicable Seller and its Affiliates had an obligation to contribute to each such Schedule 9.2 Participating MEPP.

(c) Prior to the first day of the plan year of each Schedule 9.2 Participating MEPP beginning after the Closing Date, Buyer shall make a timely request for all potential exemptions or variances from the bonding requirements under PBGC Regulation Section 4204.11-13, and such request shall be subject to Sellers reasonable comments and requested modifications. To the extent any such Participating MEPP denies such exemption or variance request, Buyer shall provide to each Schedule 9.2 Participating MEPP for the first plan year beginning after the Closing Date and for each of the four plan years thereafter, a bond or place an amount in escrow (or letter of credit or other security that is acceptable to the MEPP) that complies with Section 4204(a)(1)(B) of ERISA, in an amount equal to 100% of the greater of: (i) the average annual contribution that Seller and its Affiliates were required to make with respect to the Transferred Assets to the applicable Schedule 9.2 Participating MEPP for the three plan years preceding the plan year in which the Closing Date occurs, or (ii) the annual contribution that Seller and its Affiliates were required to make with respect to the Transferred Assets to the applicable Schedule 9.2 Participating MEPP for the last plan year completed before the plan year in which Closing Date occurs. Any such bond or escrow (or letter of credit or other security) shall provide that it shall be paid to the applicable Schedule 9.2 Participating MEPP if Buyer withdraws from such MEPP, or fails to make a contribution to the applicable MEPP when due, at any time during the five full plan years beginning after the Closing Date. Buyer shall deliver to the applicable Schedule 9.2 Participating MEPP, by the date required by Section 4204 of ERISA and the regulations thereunder, with copies to Seller, either the bond letter of credit or evidence of the establishment of an escrow described in the preceding sentence. Kettle Seller shall reimburse Buyer for the cost and expenses attributable to such bond, escrow, letter of credit or other security, and shall make payment within thirty (30) days of written notice from Buyer of the cost (including an annual renewal fee or cost if applicable). Notwithstanding the foregoing, Kettle Seller shall have the sole right, subject to the applicable Schedule 9.2 Participating MEPP's approval, to choose whether the foregoing requirement is satisfied through a bond, amount in escrow (or letter of credit or other security) and shall have the right to negotiate all fees and contractual terms of any such agreements with a bond provider or escrow agent (and, if applicable, with the MEPP as a third party beneficiary) and shall reimburse Buyer for all the costs and expenses borne by Buyer, rather than directly by Seller, attributable to such bond, escrow, letter of credit or other security. In the event that the amounts are held in an escrow or similar arrangement funded by Sellers, and Buyer defaults following a withdrawal or fails to make a contribution during the applicable period under Section 4204 of ERISA and payment of escrow or similar arrangement is made to the applicable MEPP from such funds, the Buyer shall reimburse Kettle Seller for the full amount of the payment, such reimbursement to be made to Kettle Seller within thirty (30) days following the date of payment to the applicable MEPP, and Buyer shall refund Kettle Seller all amounts held in escrow or similar arrangement within thirty (30) days following the end of the period during which such escrow or similar arrangement is required under Section 4204(a)(1)(B) of ERISA (i.e. within thirty (30) days following the end of the applicable MEPP's fifth (5th) plan year beginning after the Closing Date.

(d) In the event Buyer withdraws from the applicable Schedule 9.2 Participating MEPP in a complete withdrawal, or there occurs a partial withdrawal with respect to

the Transferred Assets, during the five (5) plan years beginning after the Closing Date and the withdrawal liability of Buyer to the applicable Schedule 9.2 Participating MEPP is not paid, Sellers shall be secondarily liable to such MEPP, only to the extent required by Section 4204 of ERISA, for any withdrawal liability Sellers would have had to such MEPP with respect to the Transferred Assets but for Section 4204 of ERISA. Buyer agrees to provide Seller with reasonable advance notice of any action or event which would reasonably be expected to result in the imposition of withdrawal liability contemplated hereunder, and, in any event, Buyer shall immediately furnish Seller with a copy of any notice of withdrawal liability Buyer or its Affiliates may receive with respect to any Schedule 9.2 Participating MEPP, together with all pertinent details. In the event that any such withdrawal liability shall be assessed against Buyer or its affiliates, Buyer further agrees to provide Seller with reasonable advance notice (but not less than 60 days advance notice) of any intention on the part of Buyer or such Affiliate not to make full payment of any withdrawal liability when the same shall become due and payable.

(e) Buyer agrees that, to the extent Buyer is required to contribute to the applicable Schedule 9.2 Participating MEPP for the five (5) plan years beginning after the Closing Date, Buyer will make such contributions on a timely basis. Notwithstanding the provisions of Section 9.2(d) and Section 4204 of ERISA, or anything else contained in this Agreement to the contrary, Buyer hereby expressly agrees to indemnify Sellers and each of their Affiliates against, and agrees to hold each of them harmless from, any and all secondary withdrawal liability Seller or any of its Affiliates incurs under Section 9.2(d) and Section 4204 of ERISA, or any and all withdrawal liability and other losses and damages incurred or suffered by Sellers or any such Affiliate as a result of a failure by Buyer to satisfy the requirements of this Section 9.2 (such matters, the "Schedule 9.2 Participating MEPP Buyer Indemnified Matters"). Sellers and their respective Affiliates hereby expressly agree to indemnify Buyer and its Affiliates for any and all partial withdrawal liability Buyer incurs under Section 4205(a)(1) of ERISA to a Schedule 9.2 Participating MEPP other than the Alaska MEPP and the Sound MEPP within the five (5) plan years beginning after the Closing Date as a result of reductions in Sellers' or their Affiliates' contribution base units prior to the Closing Date.

(f) Buyer shall, or shall cause its Affiliates to, notify the applicable MEPP of the transactions contemplated by this Agreement and to provide such MEPP with any information that such MEPP requires to demonstrate compliance with the terms of Section 4204 of ERISA.

(g) Buyer and Sellers agree to meet and confer in good faith within thirty (30) days following the A&R Date to develop a list of Participating Multiemployer Plans in which any of Sellers have appointed persons or selected candidates who serve as employer trustees and in which Buyer is projected to become a significant contributor following Closing and should itself appoint persons or select candidates to serve as employer trustees. Following the development of such list and during a reasonable period following Closing, the applicable Seller will use its best efforts to provide Buyer the opportunity to appoint one or more persons or select one or more candidates to serve as an employer trustee in connection with each of the listed Participating Multiemployer Plans.

9.3 Collective Bargaining.

(a) Prior to the Closing Date, each of the Sellers or their respective Affiliates shall negotiate, bargain, discuss, or otherwise engage with any unions, works councils, labor representatives or like organizations as required by applicable Laws or pursuant to the terms of CBAs in effect, subject to Schedule 9.3.

(b) Effective as of the Closing Date, subject to Schedule 9.3, Buyer shall assume each CBA governing the terms and conditions of the Transferred Employees represented by a union or other labor organization, hereinafter referred to as the "Assumed CBAs," and execute and deliver to the Sellers an Assumption Agreement in the form attached hereto as Exhibit H. For the avoidance of doubt, subject to applicable Law, Sellers shall retain any and all rights, interests and obligations that arose under the Assumed CBAs prior to the Closing. Other than as set forth in Section 9.1(c) above or Schedule 9.3, Buyer shall offer, and shall be deemed to have offered, employment to each of the represented Employees employed immediately prior to the Closing Date and in good standing to commence immediately following the Closing Date. Each such offer of employment shall be governed by the terms and conditions established in the Assumed CBAs. Such represented employees shall be deemed to have accepted their offers of employment following the Closing Date, subject to Schedule 9.3. For the avoidance of doubt, Buyer shall not be required to provide an offer to or employ any represented Employees who are no longer in good standing with Sellers and their respective Affiliates prior to Closing or who fail to satisfy the required Buyer employment policies and procedures, or who are not eligible for employment under any Law.

(c) Prior to the Closing Date, each of the Sellers or any of their respective Affiliates shall be responsible for fulfilling any obligations to bargain or otherwise negotiate with a labor union, works council or like organization that may arise in connection with the Closing, including bargaining over the effects of the Closing. As soon as practicable following the Closing, Sellers shall deliver, or cause to be delivered, to Buyer duly executed effects agreements for the Assumed CBAs, as well as any other agreements reached in connection with those negotiations, subject to Schedule 9.3.

9.4 Pension Plan. With respect to the Employee Retirement Plan of Safeway Inc. and Its Domestic Subsidiaries Restatement, effective December 1, 1946 (As Restated Effective December 31, 2020) (the "Safeway Pension Plan"), promptly following the date hereof, the Parties and Buyer shall engage in good faith discussions as to whether to effect a spinoff of certain assets and liabilities from the Safeway Pension Plan to a new tax-qualified pension plan established by Acorn Seller covering collectively bargained Transferred Employees who are actively accruing benefits under the Safeway Plan and effective as of a date reasonably proximate and prior to the Closing Date as the Parties may agree. Such pension plan, if established, would be assumed by Buyer effective upon the Closing Date (the "Assumed Pension Plan"), and the Parties shall work together, in good faith, to agree on appropriate amendments or modifications to this Agreement to memorialize such assumption and, where applicable, exclusion of the Assumed Pension Plan (including, for the avoidance of doubt, the definitions of Assumed Liabilities, Excluded Liabilities, Transferred Assets, and Excluded Assets, as applicable). The Assumed Pension Plan and the related transfer of assets and liabilities would be in accordance with the applicable requirements of the Internal Revenue Code and ERISA, as well as applicable collective bargaining agreements. In the event that the Parties do not agree on the terms of the spinoff of assets and liabilities to the Assumed Pension Plan, the Sellers shall, in consultation with Buyer, take such other actions as are

necessary so that the terms of any applicable collective bargaining agreement with respect to the Safeway Pension Plan (as in effect on the Closing Date) are not violated.

9.5 Pension Credit for Early Retirement. Kettle Seller and Acorn Seller shall take all actions necessary to cause the Harris Teeter Supermarkets, Inc. Employees' Pension Plan (the "HT Pension Plan") to credit any Transferred Employee who participates in the HT Pension Plan, who as of the Closing Date are within four (4) years of becoming eligible for early retirement benefits, with service for the period of time such Transferred Employee is employed by Buyer or any of its Affiliates on and after the Closing Date for purposes of determining eligibility for, and amount of, any early retirement subsidies in accordance with the terms of HT Pension Plan as in effect on the Closing Date.

ARTICLE X
CONDITIONS TO CLOSING

10.1 Conditions to the Obligation of the Parties. The respective obligations of the Parties hereunder to consummate the Transactions are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived, to the extent legally permissible, in writing, in whole or in part, by the Parties in their sole discretion):

(a) Competition Approvals. Either, (i) if applicable, any applicable waiting period under the HSR Act, or any extensions thereof entered into by agreement, relating to the Transactions shall have expired or been terminated; (ii) either (A) an FTC Order shall have been entered that by its terms permits the consummation of the Transactions or (B) the FTC shall have accepted for public comment the proposed Consent Decree relating to the Primary Acquisition and such proposed Consent Decree shall identify the Buyer as being the purchaser of the Transferred Assets; or (iii) an Order by a Governmental Entity of competent jurisdiction shall have been issued allowing for the sale of the Transferred Assets to Buyer.

(b) No Order. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) which is then in effect and has the effect of making the Transactions illegal or otherwise enjoining or prohibiting the consummation of the Transactions.

(c) Closing of the Primary Acquisition. The Primary Acquisition Closing shall have occurred.

10.2 Conditions to the Obligations of Buyer. The obligations of Buyer hereunder to consummate the Transactions are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in writing, in whole or in part, by Buyer in its sole discretion):

(a) Representations and Warranties. (i) Each of the representations and warranties of the Sellers in Article IV, other than the Fundamental Representations, shall be true and correct (without giving effect to materiality, Material Adverse Effect, or any similar qualification contained therein) as of the Closing Date as if made at such date (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct in all material respects as of such earlier

date), unless the failure of any such representations and warranties to be true and correct would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (ii) each of the Fundamental Representations shall be true and correct (without giving effect to materiality, Material Adverse Effect or any similar qualification contained therein) in all but *de minimis* respects as of the Closing Date as if made at such date (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct in all but *de minimis* respects as of such earlier date).

(b) Covenants. The covenants and agreements contained in this Agreement to be performed or complied with by the Sellers on or before the Closing shall have been performed or complied with in all material respects.

(c) No Material Adverse Effect. Since the A&R Date, there shall not have occurred any circumstance, development, effect, event, occurrence, fact, condition or change that has had, is reasonably likely to or would reasonably be expected to have, a Material Adverse Effect.

(d) Sellers Closing Deliveries. The Sellers shall have delivered to Buyer each of the items listed in Section 3.2.

(e) Financing. Buyer shall have obtained the Financing at or prior to the Closing.

10.3 Conditions to the Obligations of the Sellers. The obligations of the Sellers hereunder to consummate the Transactions are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in writing, in whole or in part, by the Sellers in their sole discretion):

(a) Representations and Warranties. (i) Each of the representations and warranties of Buyer in Article V, other than the Fundamental Representations, shall be true and correct (without giving effect to materiality, Buyer Material Adverse Effect, or any similar qualification contained therein) as of the Closing Date as if made at such date (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct in all material respects as of such earlier date), unless the failure of any such representations and warranties to be true and correct would not, either individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect; and (ii) each of the Fundamental Representations shall be true and correct (without giving effect to materiality, Buyer Material Adverse Effect or any similar qualification contained therein) in all but *de minimis* respects as of the Closing Date as if made at such date (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct but *de minimis* as of such earlier date).

(b) Covenants. The covenants and agreements contained in this Agreement to be complied with by Buyer on or before the Closing shall have been complied with in all material respects.

(c) Buyer Closing Deliveries. Buyer shall have delivered to the Sellers each of the items listed in Section 3.4.

10.4 Frustration of Closing Conditions. No Seller, nor Buyer, may rely on the failure of any condition set forth in this Article X to be satisfied if such failure was caused by such Party's breach of this Agreement.

ARTICLE XI
TERMINATION

11.1 Termination.

(a) Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the Transactions abandoned at any time prior to the Closing:

(i) by mutual written consent of each of the Sellers, on the one hand, and Buyer, on the other hand;

(ii) by (A) Kettle Seller on behalf of Sellers or (B) Buyer, in each case, if the Closing shall not have been consummated on or before November 15, 2024 (the "Termination Date"); *provided*, that if the Outside Date (as defined in and extended pursuant to the Merger Agreement from time to time) is extended (or the right to terminate the Merger Agreement is waived by Acorn Seller) pursuant to and in accordance with the Merger Agreement to a date later than (or such waiver expires on a date after) November 15, 2024, then in such circumstances, the Termination Date shall be extended to the same date as such Outside Date (as defined in and extended pursuant to the Merger Agreement from time to time) (or the date on which such waiver expires) upon Buyer's written consent (such consent not to be unreasonably withheld, conditioned, or delayed); *provided*, *further*, that the right to terminate this Agreement pursuant to this Section 11.1 shall not be available to the party seeking to terminate if any action of such party to perform any of its obligations under this Agreement required to be performed at or prior to the Closing has been the cause of, or resulted in, the failure of the Closing to occur on or before the Termination Date and such action or failure to perform constitutes a breach of this Agreement;

(iii) by Buyer, if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Sellers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Section 10.2 not to be satisfied, and such breach is incapable of being cured within thirty (30) days following Buyer's delivery of written notice to each Seller of such breach or failure to perform; *provided*, that Buyer may terminate this Agreement pursuant to this Section 11.1(a)(iii) only if, at the time of termination, Buyer is not in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement;

(iv) by Kettle Seller on behalf of the Sellers, if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Buyer set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Section 10.3 not to be satisfied, and such breach is incapable of being cured within thirty (30) days following such Seller's delivery of written notice to Buyer of such breach or failure to perform;

provided, that such Seller may terminate this Agreement pursuant to this Section 11.1(a)(iv) only if, at the time of termination, such Seller is not in material breach of any of their representations, warranties, covenants or agreements contained in this Agreement;

(v) by (A) Kettle Seller on behalf of the Sellers or (B) Buyer, in each case, if any Governmental Entity shall have issued a Order enjoining or otherwise prohibiting the Transactions and such Order shall have become final, binding, and non-appealable; or

(vi) by either Kettle Seller, Acorn Seller or Buyer, in each case, if the Merger Agreement is validly terminated.

(b) In the event of termination by a Party pursuant to this Section 11.1, written notice thereof shall forthwith be given to the other Parties and the Transactions shall be terminated, without further action by any Party.

11.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 11.1, any obligation to complete the Closing or the other Transactions shall terminate and this Agreement forthwith shall become void and there shall be no Liability on the part of any Party except that Section 6.11(c), this Section 11.2, Section 11.3, Article I, Article XIII (the "Surviving Provisions") (and any other Section or Article of this Agreement referenced in the Surviving Provisions which are required to survive in order to give appropriate effect to the Surviving Provisions (which shall survive solely to the extent required to do so)) and the Confidentiality Agreement shall survive any termination of this Agreement in accordance with their respective terms and conditions; *provided, however*, that subject in all respects to this Section 11.2, Section 11.3, Section 13.13 and Section 13.14, nothing herein shall relieve (a) any Party from Liability for its willful and material breach of this Agreement or Fraud occurring prior to such termination, (b) any Party from its obligations arising under the Confidentiality Agreement (subject to the terms and conditions therein), or (c) Kettle Seller from its obligations under Section 11.3.

11.3 Termination Fee.

(a) If this Agreement is terminated pursuant to Section 11.1(a)(ii), 11.1(a)(iii), 11.1(a)(v) or 11.1(a)(vi), then Kettle Seller shall, within five (5) Business Days of such termination, pay to Buyer an amount equal to one hundred and twenty-five million dollars ($125,000,000) (the "Seller Termination Fee"), by wire transfer of immediately available funds to such account or accounts as may be specified in a written notice by Buyer to Kettle Seller and Acorn Seller; *provided* that, for the avoidance of doubt, no amounts previously reimbursed by Kettle Seller and paid to Buyer prior to the date of such termination, shall be credited toward payment of the Seller Termination Fee; *provided*, *further*, that Buyer shall not be entitled to any Seller Termination Fee, if at the time this Agreement is terminated, (x) Buyer is in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement, or (y) (A) the Financing Commitment Deadline has elapsed, (B) the Buyer shall not have obtained the Financing Commitments, by the Financing Commitment Deadline, and (C) the Sellers are not in material breach of any of their covenants or agreements contained in Section 6.11(b), Section 6.11(c) or Section 6.11(d). The Parties agree that any payment of the Seller Termination Fee, if, as, and when required, shall be deemed to be liquidated damages in a reasonable amount

that will compensate Buyer and its respective Related Parties for the efforts and resources expended and the opportunities foregone while negotiating this Agreement and the other Transaction Documents and for preparing for the Transactions, which amount would otherwise be impossible to calculate with precision and shall not be a penalty. Under no circumstances shall Kettle Seller be required to pay the Seller Termination Fee more than once.

(b) Each of the Parties acknowledges and agrees that the provisions of this Section 11.3 are an integral part of the Transactions and that, without these agreements, no Party would enter into this Agreement; accordingly, if Kettle Seller fails to promptly pay the Seller Termination Fee, then interest shall accrue on such amount from the date such payment was required to be paid pursuant to the terms of this Agreement until the date of payment at an annual rate equal to the prime rate set forth in *The Wall Street Journal* in effect on the date such payment was required to be made (such amount, the "Applicable Interest"), and if, in order to obtain payment of the Seller Termination Fee and any Applicable Interest, Buyer commences an Action that results in judgment for Buyer for such amount, Kettle Seller shall pay Buyer its reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such Action (up to a maximum aggregate amount of $2,500,000) (such amount, subject to such cap, the "Buyer Enforcement Expenses").

(c) Subject to Section 11.2 and the right to seek specific performance or obtain injunctive relief under Section 13.13, in the event that either (i) this Agreement is validly terminated under circumstances where the Seller Termination Fee is payable pursuant to this Section 11.3, the payment of the Seller Termination Fee (and any Applicable Interest and any Buyer Enforcement Expenses, if any) or (ii) this Agreement is validly terminated under any other circumstances, and if proven in a Chosen Court, Buyer obtains monetary damages for willful and material breach or Fraud prior to the valid termination of this Agreement, then, the payment of either the Seller Termination Fee or monetary damages for willful and material breach or Fraud, as applicable, shall, in each case, be the sole and exclusive remedy of Buyer for all losses and Damages suffered as a result of the failure of the Transactions to be consummated or for a breach or failure to perform hereunder or otherwise, and upon payment of such amount, neither Seller nor any of their respective Related Parties shall have any further liability or obligation relating to or arising out of this Agreement or the Transactions; *provided*, *however*, that in no event shall Buyer be permitted to obtain both a grant of specific performance and payment of the Seller Termination Fee.

ARTICLE XII
INDEMNIFICATION AND SURVIVAL

12.1 Survival.

(a) Subject to the other terms and conditions of this Article XII, the Parties acknowledge and agree that with respect to any claim that any Party may have against any other Party that is permitted pursuant to this Article XII, the survival periods set forth and agreed to in this Section 12.1 shall govern when any such Claim may be brought and shall replace and supersede any statute of limitations that may otherwise be applicable. Accordingly:

(i) the Fundamental Representations shall survive until the six (6) year

anniversary of the Closing Date;

(ii) the representations and warranties contained in Section 4.14 (*Taxes*), Section 4.15 (*Employees and Labor Matters*), Section 4.16 (*Seller Benefit Plans*), in each case, solely to the extent relating to Taxes, shall survive until the expiration of the applicable statute of limitations, giving effect to any extensions thereof, *plus* sixty (60) days;

(iii) the representations and warranties contained in Section 4.18 (*Environmental Matters)* shall survive until the three (3) year anniversary of the Closing Date;

(iv) all other representations and warranties set forth in Article IV and Article V shall survive for eighteen (18) months following the Closing;

(v) (A) covenants and agreements that require performance in full prior to the Closing shall survive the Closing Date for sixty (60) days and (B) covenants and agreements that by their terms are required to be performed, in whole or in part, after the Closing, shall survive until the date on which such covenants and agreements have been fully performed or otherwise satisfied in accordance herewith; and

(vi) the provisions set forth in Article XIII shall survive indefinitely.

(b) Notwithstanding the foregoing of this Section 12.1, nothing shall prevent, restrict, or otherwise limit any Party from asserting a claim for Fraud. The termination of the representations, warranties, covenants and agreements provided herein shall not affect the rights of a Party in respect of any Claim made by such Party in a writing and received by the Sellers (in the case of a Claim made by Buyer) or Buyer (in a case of a Claim made by the Sellers) prior to the expiration of the applicable survival period.

12.2 Indemnification by Sellers.

(a) Subject to this Article XII, from and after the Closing, Kettle Seller shall, indemnify, defend, and hold harmless Buyer, its Affiliates, and each of their respective officers, directors, employees, agents, and other Representatives, successors and permitted assigns of the foregoing (collectively, the "Buyer Indemnitees") from and against any Damages incurred or sustained by, or imposing upon, any such Buyer Indemnitee that arise out of or result from:

(i) the failure of any representation and warranty set forth in Article IV (other than the Fundamental Representations) or any certificate to be delivered pursuant to this Agreement, to be true and accurate when made (or, in the case of any representation and warranty that expressly speaks as of a different date, such date);

(ii) the failure of any Fundamental Representations of the Sellers to be true and accurate when made;

(iii) any breach by any Seller of any covenant or agreement of the Sellers contained in this Agreement (other than this Section 12.2) from and after the Closing (subject in all respects to Section 12.1); and

(iv) the Excluded Liabilities or the Excluded Assets;

provided, *however*, that Buyer shall take, and shall cause the other Buyer Indemnitees to take, all reasonable best steps to mitigate any such Damages upon becoming aware of any event that would reasonably be expected to, or does, give rise thereto; *provided*, *further*, that it shall be presumed that any discovery of any release of Hazardous Materials at any Transferred Asset after the third (3rd) anniversary of the Closing shall be an Assumed Liability unless Buyer provides reasonable evidence that the release occurred prior to Closing. Kettle Seller's indemnification obligations under Section 12.2(a)(i) or Section 12.2(a)(ii) with respect to a given representation and warranty shall terminate as of the termination date of such representation or warranty as set forth in Section 12.1.

12.3 Indemnification by Buyer.

(a) Subject to this Article XII, from and after the Closing, Buyer shall indemnify, defend, and hold harmless each of the Sellers, their respective Affiliates, and the respective officers, directors, employees, agents, and other Representatives, successors and permitted assigns of the foregoing of the foregoing (each a "Seller Indemnitee") from and against any Damages incurred or sustained by, or imposing upon, any such Seller Indemnitee that arise out of or result from:

(i) the failure of any representation and warranty set forth in Article V or any certificate to be delivered pursuant to this Agreement, to be true and accurate when made (or, in the case of any representation and warranty that expressly speaks as of a different date, such date);

(ii) the failure of any Fundamental Representations of the Buyer to be true and accurate when made;

(iii) any breach by Buyer of any covenant or agreement of Buyer contained in this Agreement (other than this Section 12.3);

(iv) the Transferred Assets or Assumed Liabilities;

(v) the Schedule 9.2 Participating MEPP Buyer Indemnified Matters; and

(vi) any violations of applicable Law, or any other actions or omissions taken by Buyer or any of its Representatives pursuant to or under (A) the limited power of attorney under a Seller's Alcohol and Tobacco Licenses, (B) the limited power of attorney under a Seller's Pharmacy Licenses, or (C) the limited power of attorney under a Seller's Gambling Licenses;

provided, *however*, that Sellers shall take, and shall cause the other Seller Indemnitees to take, all reasonable best steps to mitigate any such Damages upon becoming aware of any event that would reasonably be expected to, or does, give rise thereto. Buyer's indemnification obligations under Section 12.3(a)(i) and Section 12.3(a)(ii) with respect to a given representation and warranty shall terminate as of the termination date of such representation or warranty as set forth in Section 12.1.

12.4 Limitations on Indemnification; Losses Net of Insurance.

(a) Sellers shall not have any liability in respect of any Damages of the type described in Section 12.2(a)(i) for any representations and warranties:

(i) for any Damages that arise from any individual item, occurrence, circumstance, act or omission (or series of related items, occurrences, circumstances, acts or omissions) unless and until the aggregate amount of Damages resulting therefrom exceeds $100,000 (the "Per Claim Amount");

(ii) unless and until the aggregate amount of such Damages exceeding the Per Claim Amount and actually suffered by the Buyer Indemnitees in connection therewith exceeds $13,500,000 (the "Indemnity Deductible"), in which event Sellers shall only be liable for the amount of Damages that exceed the Indemnity Deductible (it being acknowledged and agreed that such Indemnity Deductible is a true deductible).

(b) In no event shall Kettle Seller ever be required to indemnify the Buyer Indemnitees (i) pursuant to Section 12.2(a)(i) for an aggregate amount of Damages in excess of $180,000,000 (the "R&W Cap Amount"), or (ii) pursuant to any other subsection of Section 12.2(a) (other than Section 12.2(a)(iv)) for an aggregate amount of Damages in excess of the Purchase Price, as finally determined pursuant to Section 2.3 (the "Overall Indemnity Cap"), and in each case of the clauses (i) and (ii) of this Section 12.4(b), Buyer (on its own behalf and on behalf of the other Buyer Indemnitees) waives, releases, and forever discharges Kettle Seller from any and all Liabilities under Section 12.2(a)(i) in excess of the R&W Cap Amount and under any other subsection of Section 12.2(a) (other than Section 12.2(a)(iv)) in excess of the Overall Indemnity Cap. For the avoidance of doubt, (A) the indemnity obligations under Section 12.2(a)(iv) shall be uncapped, and (B) all indemnification obligations of the Sellers following the Closing shall be borne by Kettle Seller.

(c) For purposes of calculating the amount of any Damages indemnifiable hereunder, any reference to "material," "materiality," "Material Adverse Effect" or similar qualifier contained within such representations and warranties will be disregarded.

(d) In any case where an Indemnified Party recovers from a Third Party any insurance proceeds or any other amount in respect of any Damages for which an Indemnifying Party has actually paid or reimbursed such Indemnified Party pursuant to this Article XII, such Indemnified Party shall promptly pay over to the Indemnifying Party such insurance proceeds or the amount so recovered (after deducting therefrom the amount of expenses incurred by it in procuring such recovery), but not in excess of the sum of (i) any amount previously paid by the Indemnifying Party to or on behalf of the Indemnified Party in respect of such claim and (ii) any amount expended by the Indemnifying Party in pursuing or defending any claim arising out of such matter. Each Indemnified Party shall use reasonable best efforts to seek, in good faith, full recovery of any insurance proceeds under all insurance policies covering any Damages to the same extent as it would if such Damages were not subject to indemnification hereunder.

(e) Sellers shall not have any liability in respect of any Damages that arise out of or result from any breach by any Seller of (i) any representation and warranty set forth in

Section 4.14(a) or (b) for any Tax that is not an Excluded Liability or (ii) any representation and warranty that is also an Assumed Liability (excluding clause (a) of such definition).

(f) Any payments in respect of any claim pursuant to Section 12.2 shall be treated as adjustments to the final Purchase Price for Tax purposes.

(g) No Party shall be entitled to any payment, adjustment or indemnification more than once with respect to the same matter.

(h) In the event an Indemnified Party shall recover Damages in respect of a claim of indemnification pursuant to this Article XII, no other Indemnified Party shall be entitled to recover the same Damages in respect of the same claim for indemnification.

(i) Notwithstanding anything to the contrary contained in this Agreement, if an Indemnified Party fails to take any reasonable steps identified by the Indemnifying Party to mitigate any Damages, the Indemnified Party shall not be entitled to be indemnified, defended, held harmless or reimbursed for any portion of such Damages that reasonably could have been avoided had the Indemnified Party so complied.

12.5 Sole and Exclusive Remedy. Each Party acknowledges and agrees that, except as expressly stated in this Article XII, its sole and exclusive monetary remedy following the Closing with respect to any breach of any representation, warranty, covenant, or obligation set forth in this Agreement or otherwise with respect to the Transactions shall be pursuant to the provisions set forth in this Article XII. In furtherance of the foregoing, except as expressly stated in this Article XII, from and after the Closing, each Party hereby waives to the fullest extent permitted under Law, any and all rights, claims, and causes of action for any monetary remedy due to the inaccuracy in or breach of any representation, warranty, covenant, agreement, or obligation set forth herein it may have against the other Party arising under or based upon any Law (including the ability to sue for Damages), except pursuant to the indemnification provisions set forth in this Article XII. For clarity, nothing in this Section 12.5 shall prevent an Indemnified Party from enforcing its indemnification rights hereunder, or limit either Party's right to seek and obtain an injunction, specific performance, and or/other equitable remedies as provided in this Agreement in accordance with Section 13.13. For the avoidance of doubt, and notwithstanding anything to the contrary herein, nothing in this Article XII shall be construed in any fashion whatsoever to limit any Indemnified Party's rights to assert, pursue, and recover any Claim arising out of, or related to, or in connection with Fraud.

12.6 Procedure for Claims; Third Party Claims; Direct Claims.

(a) If a Claim for indemnification pursuant to Section 12.2 or Section 12.3 is to be made by a Party entitled to indemnification hereunder (the "Indemnified Party"), such Indemnified Party shall give written notice (a "Claim Notice") to the other Party (the "Indemnifying Party") reasonably promptly after (i) the Indemnified Party becomes aware of any fact, condition, or event that may give rise to Damages for which indemnification may be sought under Section 12.2 or Section 12.3 (an "Indemnification Claim"), or (ii) receipt by the Indemnified Party of notice of a Claim involving the assertion of a Claim by a Third Party that may give rise to an Indemnification Claim. Such Claim Notice shall contain such material facts and information

as are then reasonably available and that such Indemnified Party is permitted to disclose under applicable Law, including the estimated amount of Damages (to the extent known) and the basis for indemnification hereunder, to the extent known. The failure of any Indemnified Party to give timely notice hereunder shall not affect its rights to indemnification hereunder, except to the extent that the Indemnifying Party is materially prejudiced by such failure.

(b) Following delivery by an Indemnified Party of a Claim Notice arising from a Claim of a Third Party (a "Third Party Claim"):

(i) The Indemnifying Party shall have the right (and, if it elects to exercise such right, to do so by written notice to the Indemnified Party within thirty (30) days (or such lesser number of days set forth in the notice as may be required by court proceeding in the event of a litigated matter) after receipt of the Claim Notice) to defend, assume, and control the defense against any such Third Party Claim, in its name or in the name of the Indemnified Party, as applicable, at the expense of the Indemnifying Party, and with counsel selected by the Indemnifying Party, unless the Indemnifying Party shall have not take any action to defend such Third Party Claim within such thirty (30) day period. The Indemnified Party shall cooperate with the Indemnifying Party in such defense and shall make available to the Indemnifying Party any witnesses, documents, materials, records, and other information in its or its Affiliates' possession or control that may be necessary to the defense, compromise, or settlement of such Third Party Claim (*provided*, *however*, that the Indemnified Party shall not be required to furnish any such documents, materials, records, and other information which would (in the reasonable judgment of the Indemnified Party upon advice of counsel) be reasonably likely to (A) constitute a waiver of the attorney-client or other privilege held by the Indemnified Party or any of its Affiliates, (B) violate any applicable Laws, or (C) breach any Contract of the Indemnified Party or any of its Affiliates with any Third Party; *provided*, *further*, that the Indemnified Party shall use its reasonable best efforts to obtain any required consents and take such other reasonable action (such as the entry into a joint defense agreement or other arrangement to avoid loss of attorney-client privilege) to permit such disclosure). The Indemnified Party also agrees to reasonably cooperate with the Indemnifying Party and its counsel in the making of any related counterclaim against the Person asserting the Third Party Claim or any cross complaint against any Person and executing powers of attorney to the extent necessary; *provided*, *however*, that the Indemnifying Party shall promptly reimburse the Indemnified Party for any Damages incurred by the Indemnified Party in connection with providing such cooperation (subject in all respects to the terms and conditions of this Article XII). The Indemnifying Party shall keep the Indemnified Party reasonably informed of all material developments and events relating to such Third Party Claim. If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnified Party shall not pay, or permit to be paid, any part of such Third Party Claim unless the Indemnifying Party withdraws from the defense of such Third Party Claim or unless a final judgement for which no appeal may be taken by or on behalf of the Indemnifying Party is entered against the Indemnified Party for such Third Party Claim.

(ii) If the Indemnifying Party assumes, conducts, and controls, the defense, compromise, or settlement of such Third Party Claim, the Indemnified Party may, at its sole option and expense, (i) participate in any defense and investigation of such Third Party Claim or settlement negotiations with respect to such Third Party Claim and (ii) employ separate counsel

which is reasonably acceptable to the Indemnifying Party (it being acknowledged and agreed that the Pre-Approved Counsel is acceptable to such Indemnifying Party).

(iii) If the Indemnifying Party does not assume such defense within thirty (30) days of receipt of such Claim Notice that such Indemnifying Party elects to assume, conduct, and control the defense of such Third Party Claim, such Indemnified Party shall have the right to contest, defend, compromise, or settle such Third Party Claim but shall not thereby waive any right to indemnity therefor pursuant to this Agreement. The Indemnifying Party, at any time thereafter may, at its election, assume, conduct, and control such defense, it being acknowledged and agreed that thereafter, the other terms and conditions of this Section 12.6(b) shall apply *mutatis mutandis,* as if the Indemnifying Party had timely accepted and assumed such defense. If the Indemnified Party assumes the defense of any such Third Party Claim and proposes to settle such Third Party Claim prior to a final judgement thereon or forgo any appeal with respect thereto, then the Indemnified Party shall give the Indemnifying Party prompt written notice thereof and the Indemnifying Party shall have the right to participate in the settlement or assume or reassume the defense of the Third Party Claim.

(iv) The Indemnified Party shall not admit any liability with respect to, or settle, compromise, or discharge any Third Party Claim without the Indemnifying Party's prior written consent. The Indemnifying Party shall have no indemnification obligations with respect to any Third Party Claim, which shall be settled by the Indemnified Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned, or delayed. The Indemnifying Party shall have the right to settle any Third Party Claim for which it obtains (A) a full release of the Indemnified Party in respect of such Third Party Claim, (B) which is solely for the payment of money, or (C) to which settlement the Indemnified Party consents to in writing (which consent shall not be unreasonably withheld or conditioned). The Indemnifying Party shall not without first obtaining the prior written consent of the Indemnified Party, in the defense of a Third Party Claim, consent to the entry of any judgment (I) which does not include as an unconditional term thereof the giving to the Indemnified Party by the Third Party a release from all Liability with respect to such suit, claim, action or proceeding, and (II) if there is a finding or admission of (x) any violation of Law by the Indemnified Party (or any Affiliate thereof) or (y) any Liability on the part of the Indemnified Party (or any Affiliate thereof) not indemnified hereunder.

(v) Upon execution of a written settlement agreement or the final, binding, and non-appealable judgment with respect of any Claim, pursuant to which the Indemnifying Party would be required to make any payment pursuant to Section 12.2 or Section 12.3, as applicable, such Indemnifying Party shall pay, or cause to be paid, within ten (10) Business Days of the date of such final, binding, and non-appealable resolution, the applicable amount with respect to such Claim in full, paying the portion owed pursuant to Section 12.2 or Section 12.3, as applicable, if any, to such Indemnified Party.

(c) In the event that an Indemnified Party delivers a Claim Notice for an Indemnification Claim against an Indemnifying Party hereunder (other than as a result of a Third Party Claim), then in such circumstances, thereafter the Indemnified Party shall provide the Indemnifying Party with reasonable access to its records for the purpose of allowing the Indemnifying Party a reasonable opportunity to verify any such claim for Damages. The

Indemnified Party and the Indemnifying Party shall negotiate in good faith for a twenty (20) day period regarding the resolution of any disputed claims for Damages. If no resolution is reached with regard to such disputed Indemnification Claim between the Indemnifying Party and the Indemnified Party within such twenty (20) day period, the Indemnified Party shall be entitled to seek appropriate remedies in accordance with the terms hereof. Promptly following the final determination of the amount of any Damages claimed by the Indemnified Party, the Indemnifying Party shall pay such Damages to the Indemnified Party by wire transfer or check made payable to the order of the Indemnified Party. In the event that a party claiming to be an Indemnified Party institutes an Action in order to recover Damages hereunder and the applicable court refuses to award any Damages to such party, such party shall reimburse the defending party for the costs of such Action (including reasonable and documented out-of-pocket attorney's fees, court costs, and other actual reasonable and document out-of-pocket expenses owed to a Third Party as were reasonably necessary to defend such an Indemnification Claim).

ARTICLE XIII
MISCELLANEOUS

13.1 Expenses. Subject to Section 11.3, whether or not the Transactions are consummated and, except as otherwise specified herein or in any other Transaction Document, each Party shall bear its own costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, with respect to this Agreement and the Transactions; *provided*, that within five (5) Business Days of this Agreement, Kettle Seller shall pay to Buyer all reasonable and documented out-of-pocket expenses of Buyer incurred in connection with, or relating to, the Transactions, including (a) the negotiation, documentation, and execution of the Original Asset Purchase Agreement or this Agreement (including any due diligence investigation, transition analysis and planning, the preparation review and negotiation of definitive documentation and financing commitments) and (b) any litigation or other Actions or the regulatory process related to the Transaction, up to an aggregate amount of $25,000,000 (the "Buyer Transaction Expenses"); *provided*, *further*, that, Buyer shall provide to Kettle Seller, within three (3) Business Days of this Agreement, a written statement setting forth Buyer's calculation of the amount of the Buyer Transaction Expenses, including reasonable supporting documentation used by Buyer in calculating the amounts set forth therein (including copies of all invoices relating to the Buyer Transaction Expenses). The Parties will treat Kettle Seller's payment of Buyer Transaction Expenses to Buyer pursuant to this Section 13.1 as an adjustment to the Purchase Price for tax purposes, to the maximum extent permitted by Law; *provided*, that if this Agreement is terminated pursuant to Section 11.1, such payment will be treated as a termination fee paid by Kettle Seller to Buyer for tax purposes, to the maximum extent permitted by Law.

13.2 Notices. Unless otherwise specified herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered personally, sent by a nationally recognized overnight courier service, or transmitted by email (receipt verified), and shall be deemed to be effective upon receipt. Any such notices shall be addressed to the receiving Party at such Party's address, or email address set forth below, or at such other address or email address as may from time to time be furnished by similar notice by any Party to the other Parties:

If to the Kettle Seller (and, for the avoidance of doubt, following the Primary Acquisition Closing, the Acorn Seller):

The Kroger Co.
1014 Vine St., Cincinnati, OH 45202
Attention: Christine S. Wheatley, Group Vice President, Secretary and General Counsel
Email: christine.wheatley@kroger.com

With a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: Michael J. Aiello; Sachin Kohli
Email: michael.aiello@weil.com; sachin.kohli@weil.com

If, prior to the Primary Acquisition Closing, to the Acorn Seller:

Albertsons Companies, Inc.
250 E Parkcenter Blvd.
Attention: Tom Moriarty, Executive Vice President, General Counsel and Chief Policy Officer
Email: Tom.Moriarty@albertsons.com

With a copy (which shall not constitute notice) to:

Jenner & Block LLP
1155 Avenue of the Americas
New York, NY 10036-2711
Attention: Kevin T. Collins; Alexander J. May; Edward L. Prokop
Email: kcollins@jenner.com; amay@jenner.com; eprokop@jenner.com

And, if such notice is delivered prior to the Primary Acquisition Closing, with a copy (which shall not constitute notice) to Kettle Seller.

If to Buyer:

C&S Wholesale Grocers, LLC
7 Corporate Drive, Keene, New Hampshire 03431
Attn: General Counsel – Legal Department
Email: bgranger@cswg.com

With a copy (which shall not constitute notice) to:

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Attention: George J. Sampas; Audra D. Cohen
Email: sampasg@sullcrom.com; cohena@sullcrom.com

13.3 Entire Agreement; Conflicts. This Agreement (including all Schedules, Exhibits and attachments hereto) and the other Transaction Documents contain the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersede all contemporaneous or prior agreements, negotiations, commitments, and writings among the Parties with respect to the subject matter hereof and thereof. In the event of any inconsistency between this Agreement and any Exhibits, Schedules, or attachments hereto or any certificate delivered in connection herewith, the terms of this Agreement shall govern. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by all Parties. For the avoidance of doubt, the Confidentiality Agreement (and any joinders thereto), the Clean Team Agreement, the joint defense agreement by and among the Parties, and the access agreements by and among the Parties shall continue in full force and effect from and after the A&R Date in accordance with their respective terms.

13.4 Amendments and Waivers. This Agreement may not be amended, supplemented or otherwise modified except by an instrument or instruments in writing signed by each Party. Buyer may, only by an instrument in writing, waive compliance by either of both of the Sellers with respect to any term or provision of this Agreement to be performed or complied with by such Seller. Sellers may, only by a joint instrument in writing, waive compliance by Buyer with respect to any term or provision of this Agreement to be performed or complied with by Buyer. The waiver by any Party of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

13.5 Severability. If any provision of this Agreement or any other document delivered under this Agreement is prohibited or unenforceable in any jurisdiction, it shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable nor the remaining provisions hereof, nor render unenforceable such provision in any other jurisdiction, unless the effect of rendering such provision ineffective would be to substantially deviate from the expectations and intent of the Parties in entering into this Agreement. In the event any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the Parties shall use reasonable best efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes hereof.

13.6 No Waiver; Cumulative Remedies. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no failure or delay on the part of the Sellers, on the one hand, and Buyer, on the other hand, in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the Party giving such waiver. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable Law except as expressly set forth herein.

13.7 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement, and all claims or causes of action (whether in contract, tort, or statute) based upon, arising out of, in connection with, or related to this Agreement, the

other Transaction Documents, or the Transactions, or the negotiation, execution, or the performance of this Agreement or the other Transaction Documents or the Transactions (including any claim or cause of action based upon, arising out of, in connection with, or related to any representation of warranty made in or in connection with this Agreement, the other Transaction Documents, or the Transactions as an inducement to enter into this Agreement, the other Transaction Documents, or the Transactions), shall be governed by, and construed in accordance with, the internal Laws of the State of Delaware, without giving effect to principles or rules of conflicts of law to the extent (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws or rules of any jurisdiction other than the State of Delaware and without regard to any borrowing statute that would result in the application of the statutes of limitations or repose of any other jurisdiction. In furtherance of the foregoing, the Laws of the State of Delaware will control even if under such jurisdiction's choice of law or conflict of law analysis, the substantive or procedural law of some other jurisdiction would ordinarily or necessarily apply.

(b) Any Action based upon, arising under, out of, related to, or in connection with this Agreement, the other Transaction Documents, the negotiation, execution, or the performance of this Agreement or the other Transaction Documents, or the Transactions shall be brought in the Delaware Chancery Court (or, if the Delaware Chancery Court shall be unavailable, any other court of the State of Delaware located in New Castle County, Delaware, or, in the case of claims to which the federal courts have exclusive subject matter jurisdiction, any federal court of the United States of America sitting in the State of Delaware) (collectively, the "Chosen Courts"), and each of the Parties irrevocably (i) submits to the exclusive jurisdiction of each such court in any such Action, waives any objection it may now or hereafter have to personal jurisdiction, venue, or to convenience of forum, (ii) agrees that all claims in respect of the Action shall be heard and determined only in any such Chosen Court, (iii) agrees not to bring any Action arising out of, relating to or in connection with, this Agreement, the other Transaction Documents, the negotiation, execution, or the performance of this Agreement or the other Transaction Documents, or the Transactions in any other court and consents to service being made through the notice procedures set forth in Section 13.2. Nothing herein contained shall be deemed to affect the right of any Party to serve process in any manner permitted by Law or to commence any Action, or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments or other Orders obtained in any Action brought pursuant to this Section 13.7. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection that they may now or hereafter have to the laying of venue in the Chosen Courts or any defense of inconvenient forum for the maintenance of such claims. The Parties agree that a final judgment with respect to any such claims shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

(c) EACH PARTY HERETO ACKNOWLEDGES THAT ANY ACTION, DIRECTLY OR INDIRECTLY, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, OR THE TRANSACTIONS OR THE NEGOTIATION, EXECUTION, OR THE PERFORMANCE OF THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS, OR THE TRANSACTIONS OR ANY CLAIM RELATED TO ANY OF THE FOREGOING IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE

FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH ACTION OR SUCH RELATED CLAIM. EACH PARTY HERETO HEREBY CERTIFIES AND ACKNOWLEDGES THAT: (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH ACTION OR SUCH RELATED CLAIM, SEEK TO ENFORCE THE FOREGOING WAIVER; (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (III) IT MAKES THIS WAIVER VOLUNTARILY; AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.7.

13.8 Counterparts. This Agreement and any amendment or supplement hereto may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. This Agreement shall become binding when any number of counterparts, individually or taken together, shall bear the signatures of all Parties. This Agreement may be executed and delivered by any other electronic means, including ".pdf" or ".tiff" files, and any electronic signature shall constitute an original for all purposes.

13.9 Assignments. None of the Parties shall be permitted to assign this Agreement or any of its rights or obligations under this Agreement, directly, indirectly, by operation of law, or otherwise, without the other Parties' express, prior written consent; *provided*, *however*, that each Party may assign this Agreement or any of its rights or obligations hereunder, in whole or in part, to an Affiliate without the other Parties' consent; *provided*, *further*, that such Affiliate thereafter remains an Affiliate of such assignor (and if such Affiliate ceases to remain an Affiliate, such assignment shall automatically be rescinded); *provided*, *further*, that any assignment shall not relieve the assigning Party of any of its obligations under this Agreement without the express written consent of the other Parties. Any such purported assignment in violation of this Agreement shall be voidable upon the election of the other Party. In addition, and notwithstanding anything to the contrary in this Agreement or the other Transaction Documents, if and to the extent requested by Buyer, Sellers will prepare and deliver deeds, assignments and other transfer documentation identifying one or more entities designated by Buyer, each of which will be (a) an Affiliate of Buyer or (b) an entity involved in Buyer's financing of the Transactions (which may include a sale and lease back transaction), to take title to assets being transferred as provided in this Agreement and, in any such case, references herein to "Buyer" will be understood to include any such designee as necessary or appropriate to facilitate delivery of the subject assets to any such designee.

13.10 Reservation of Rights; No Implied Licenses. All rights in or to Intellectual Property not expressly assigned, licensed, covenanted or otherwise conveyed to Buyer under this Agreement, Assignment and Bill of Sale Agreement, IP Assignment Agreements, Trademark License Agreements or Transition Services Agreement are reserved by the Sellers and their respective Affiliates. Nothing contained in this Agreement shall be construed as conferring any rights, by implication, estoppel or otherwise, under any Intellectual Property, other than the rights expressly granted under this Agreement.

13.11 No Third Party Beneficiaries. Except as otherwise expressly provided in Sections 12.2, 12.3, 13.14, 13.15 and 13.16 (in which case, the persons therein are express third party beneficiaries thereof) this Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, shall give or be construed to give to any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

13.12 Further Assurances. Subject to the terms and conditions of this Agreement, from and after Closing, each of the Parties, at its own expense, shall execute and deliver such instruments of transfer, provide such materials and information and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement.

13.13 Specific Performance.

The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that money damages or legal remedies would not be an adequate remedy for any such damages. Therefore, it is accordingly agreed that prior to the valid termination of this Agreement in accordance with Section 11.1, each Party shall be entitled to an injunction or injunctions to prevent or restrain any breach or threatened breach of this Agreement by any other party and to enforce specifically the terms and provisions of this Agreement, to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of any other party, in any court of competent jurisdiction, and appropriate injunctive relief shall be granted in connection therewith. Such remedies shall be in addition to and not in substitution for any other remedy to which such party is entitled in Law or in equity. Each Party hereby waives (a) any defenses in any action for specific performance, and agrees not to oppose the granting of an injunction, specific performance or other equitable relief as provided herein, on the basis that (i) the other Party has an adequate remedy in Law or (ii) an award of specific performance is not an appropriate remedy for any reason in Law or in equity and (b) any requirement under any Law to post a bond or other security as a prerequisite to obtaining equitable relief.

13.14 Non-Recourse. Each Party hereto agrees, on behalf of itself and its Related Parties, that all Actions (whether in contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership, or limited liability company veil, or any other theory or doctrine, including alter ego or otherwise) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to: (a) this Agreement or any other Transaction Documents, or any of the Transactions; (b) the negotiation, execution, or performance of this Agreement or any of the other Transaction Documents (including any representation or warranty made in connection with, or as an inducement to, this Agreement or any other Transaction Document); (c) any breach or violation of this Agreement or any other Transaction Document; and (d) any failure of any of the Transactions to be consummated; in each case of the foregoing (a) through (d), may be made or asserted only against (and are those solely of) the Persons that are, in the case of this Agreement, expressly identified as parties to this Agreement, and in the case of the other Transaction Documents, Persons expressly identified as parties to such Transaction Documents and in accordance with, and subject to the terms and conditions of, this Agreement or such Transaction Documents, as applicable. Notwithstanding anything in this Agreement or any of the other

Transaction Documents to the contrary, each Party agrees, on behalf of itself and its Related Parties, that no recourse under this Agreement or any of the other Transaction Documents or arising out of, related to, or in connection with any of the Transactions will be sought or had against any other Person, including any Related Party, and no other Person, including any Related Party will have any liability or obligation, for any claims, causes of action, or liabilities arising under, out of, in connection with, or related in any manner to the items of the immediately preceding clauses (a) through (d), it being expressly agreed and acknowledged that no personal liability, obligation, or losses whatsoever will attach to, be imposed on, or otherwise be incurred by any direct or indirect, past, present or future director, officer, employee, incorporator, member, partner (limited or general), stockholder, equity holder, controlling person, manager, lender, financing source, Affiliate, agent, attorney, or other Representative of any named party to this Agreement or the other Transaction Documents or any of their respective Affiliates (collectively, with such Person's assignees, successors and assigns, the "Related Parties"), as such arising under, out of, in connection with, or related in any manner to the items in the immediately preceding clauses (a) through (d), except for any claims either Seller, or Buyer, as applicable, may assert (i) against any Person that is a party to, and solely pursuant to the terms and conditions of, the Confidentiality Agreement, and (ii) against either Seller, or Buyer, as applicable, and solely in accordance with, and pursuant to the terms and conditions of, this Agreement (including, for the avoidance of doubt, in the case of Fraud).

13.15 Mutual Release.

(a) Effective upon the execution and delivery of this Agreement, each Seller, for itself and its Affiliates and their respective direct and indirect, successors, assigns, officers, directors, managers, members, trustees, and partners, or any of their respective heirs or executors (each a "Seller Releasor") hereby fully and irrevocably waives, releases, discharges, and relinquishes all waivable Claims, demands, obligations, Liabilities, setoffs, counterclaims, Actions, and causes of action of whatever kind or nature, whether known or unknown, whether arising under any Contract or understanding or otherwise at law or in equity, arising contemporaneously with or prior to the date of this Agreement, which any of such Seller Releasor has, might have, or might assert now or in the future in respect of any acts or omissions taken by the Buyer, or any of its respective successors, assigns, Representatives, or any of their respective heirs or executors (in each case in their capacity as such) (each, a "Buyer Releasee"), arising out of or relating to, in whole or in part, directly or indirectly, the negotiation of this Agreement or negotiation or performance of the Original Asset Purchase Agreement, including any alleged breach thereof, or arising out of or relating to, in whole or in part, directly or indirectly, the Transactions or the Primary Acquisition, in each case, through the date of this Agreement, and each such Seller Releasor shall not seek to recover any amounts in connection therewith or thereunder from any Buyer Releasee; *provided*, *however*, that the waiver, release, discharge, and agreement not to seek recovery, in each case, contained in this Section 13.15(d), shall not apply to (i) Claims unrelated to the Transactions or the Primary Acquisition, (ii) Fraud by Buyer or fraud by any other Buyer Releasee or (iii) Claims solely between Kettle Seller and Acorn Seller, or their respective Affiliates. Each Seller acknowledges that the Laws of many states provide substantially the following: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS, HER, OR ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, HER, OR IT WOULD HAVE MATERIALLY AFFECTED HIS, HER, OR ITS

SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." Each Seller acknowledges that such provisions are designed to protect a party from waiving claims which it does not know exist or may exist. Nonetheless, each Seller agrees that, effective as of the date hereof, such Seller shall be deemed to waive any such provision.

(b) Effective upon the execution and delivery of this Agreement, Buyer, for itself and its Affiliates and their respective direct and indirect, successors, assigns, officers, directors, managers, members, trustees, and partners, or any of their respective heirs or executors (each a "Buyer Releasor") hereby fully and irrevocably waives, releases, discharges, and relinquishes all waivable Claims, demands, obligations, Liabilities, setoffs, counterclaims, Actions, and causes of action of whatever kind or nature, whether known or unknown, whether arising under any Contract or understanding or otherwise at law or in equity, arising contemporaneously with or prior to the date of this Agreement, which any of such Buyer Releasor has, might have, or might assert now or in the future in respect of any acts or omissions taken by each Seller, or any of such Seller's respective successors, assigns, Representatives, or any of their respective heirs or executors (in each case in their capacity as such) (each, a "Seller Releasee"), arising out of or relating to, in whole or in part, directly or indirectly, the negotiation of this Agreement or negotiation or performance of the Original Asset Purchase Agreement, including any alleged breach thereof, or arising out of or relating to, in whole or in part, directly or indirectly, the Transactions or the Primary Acquisition, in each case, through the date of this Agreement, and each such Buyer Releasor shall not seek to recover any amounts in connection therewith or thereunder from any Seller Releasee; *provided*, *however*, that the waiver, release, discharge, and agreement not to seek recovery, in each case, contained in this Section 13.15(b), shall not apply to (i) Claims unrelated to the Transactions or the Primary Acquisition, (ii) Fraud by Seller or fraud by any other Seller Releasee or (iii) Claims solely between Kettle Seller and Acorn Seller, or their respective Affiliates. Buyer acknowledges that the Laws of many states provide substantially the following: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS, HER, OR ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, HER, OR IT WOULD HAVE MATERIALLY AFFECTED HIS, HER, OR ITS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." Buyer acknowledges that such provisions are designed to protect a party from waiving claims which it does not know exist or may exist. Nonetheless, Buyer agrees that, effective as of the date hereof, Buyer shall be deemed to waive any such provision.

(c) Effective upon the Closing, each Seller Releasor hereby fully and irrevocably waives, releases, discharges, and relinquishes all waivable Claims, demands, obligations, Liabilities, setoffs, counterclaims, Actions, and causes of action of whatever kind or nature, whether known or unknown, whether arising under any Contract or understanding or otherwise at law or in equity, arising contemporaneously with or prior to Closing, which any of such Seller Releasor has, might have, or might assert now or in the future with respect to the Excluded Assets and Excluded Liabilities, against any Buyer Releasee, and each such Seller Releasor shall not seek to recover any amounts in connection therewith or thereunder from any Buyer Releasee; *provided*, *however*, that the waiver, release, discharge, and agreement not to seek recovery, in each case, contained in this Section 13.15(c), shall not apply to: (i) any Claims arising under the express terms of this Agreement, including Article XII and Section 2.4, the other Transaction Documents, or any other agreements or documents pursuant to this Agreement, in

each case, against the other parties hereto and thereto and subject in all respects to the terms and conditions hereof and thereof; (ii) Claims unrelated to the Transactions or the Primary Acquisition, or (iii) Fraud by Buyer or fraud by any other Buyer Releasee.

(d) Effective upon the Closing, each Buyer Releasor hereby fully and irrevocably waives, releases, discharges, and relinquishes all waivable Claims, demands, obligations, Liabilities, setoffs, counterclaims, Actions, and causes of action of whatever kind or nature, whether known or unknown, whether arising under any Contract or understanding or otherwise at law or in equity, arising contemporaneously with or prior to Closing, which any of such Buyer Releasor has, might have, or might assert now or in the future with respect to the Transferred Assets and Assumed Liabilities, against each Seller Releasee, and each such Buyer Releasor shall not seek to recover any amounts in connection therewith or thereunder from any Seller Releasee; *provided*, *however*, that the waiver, release, discharge, and agreement not to seek recovery, in each case, contained in this Section 13.15(d), shall not apply to: (i) any Claims arising under the express terms of this Agreement, the other Transaction Documents, or any other agreements or documents pursuant to this Agreement, in each case, against the other parties hereto and thereto and subject in all respects to the terms and conditions hereof and thereof; (ii) Claims unrelated to the Transactions or the Primary Acquisition, or (iii) Fraud by any Seller or fraud by any other Seller Releasee.

13.16 Financing Provisions. Notwithstanding anything in this Agreement to the contrary (including any other provisions of this Article XIII), each Seller, on behalf of itself and its respective Affiliates, and each other party hereto, on behalf of itself and each of its respective Affiliates, hereby: (a) agree that any Action, whether in law or in equity, whether in contract or in tort or otherwise, involving the Financing Party, arising out of or relating to, this Agreement or any of the agreements entered into in connection with the Financing or any of the Transactions or thereby or the performance of any services thereunder, shall be subject to the exclusive jurisdiction of any federal court or state court in the Borough of Manhattan, New York, New York, and any appellate court thereof and each party hereto irrevocably submits itself and its property with respect to any such Action to the exclusive jurisdiction of such court, and agrees not to bring or support any such Action against any Financing Party in any forum other than such courts, (b) agrees that any such Action shall be governed by the laws of the State of New York (without giving effect to any conflicts of law principles that would result in the application of the laws of another state), except as otherwise provided in any agreement relating to the Financing, (c) knowingly, intentionally and voluntarily waives to the fullest extent permitted by applicable Law trial by jury in any such Action brought against the Financing Parties in any way arising out of or relating to, this Agreement or the Financing, (d) agrees that none of the Financing Parties shall have any liability to the applicable Seller or any of its respective Affiliates or Representatives relating to or arising out of this Agreement or any agreements relating to the Financing, (e) agrees that only Buyer (including its permitted successors and assigns) shall be permitted to bring any Claim (including any claim for specific performance) against a Financing Party for failing to satisfy any obligation to fund the Financing and that neither of the Sellers nor any of their respective Affiliates shall be entitled to seek the remedy of specific performance with respect to Buyer's rights under any agreement relating to the Financing against the Financing Parties party thereto, (f) agrees that in no event will any Financing Party be liable to any Seller for consequential, special, exemplary, punitive or indirect damages (including any loss of profits, business, or anticipated savings), or damages of a tortious nature in connection with the Financing, and (g) agrees that the Financing

Parties are express third party beneficiaries of, and may enforce, any of the provisions of this Section 13.6 and that this Section 13.6 may not be amended, modified or waived without the written consent of the Financing Parties. Notwithstanding the foregoing, nothing in this Section 13.6 shall in any way limit or modify the rights and obligations of Buyer under this Agreement or any Financing Party's obligations to Buyer under any agreement relating to the Financing.

[Remainder of page intentionally blank; signature pages follow.]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Parties as of the A&R Date.

Kettle Seller

By: _____
Name:
Title:

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Parties as of the A&R Date.

Acorn Seller

By: _____
Name:
Title:

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Parties as of the A&R Date.

Buyer

By: _____
Name:
Title:

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2025, copies of the *Public Version of Exhibit 1 to Plaintiff's Complaint* were caused to be served upon all counsel of record via File & Serve*Xpress*.

/s/ Louis F. Masi
Louis F. Masi (#7233)