

EXECUTION VERSION

**EQUITY PURCHASE AGREEMENT**

## TABLE OF CONTENTS

|                                                                  | Page |
|------------------------------------------------------------------|------|
| 1 —DEFINITIONS.....                                              | 1    |
| 2 —BASIC TRANSACTION .....                                       | 1    |
| 2.1 PURCHASE AND SALE OF UNITS.....                              | 1    |
| 2.2 PURCHASE PRICE.....                                          | 1    |
| 2.3 SELLER ESTIMATE OF BASE PURCHASE PRICE PRIOR TO CLOSING..... | 1    |
| 2.4 CLOSING DELIVERIES .....                                     | 2    |
| 2.5 POST-CLOSING ADJUSTMENTS.....                                | 2    |
| 2.6 TAX WITHHOLDING.....                                         | 4    |
| 2.7 THE CLOSING.....                                             | 4    |
| 3 —REPRESENTATIONS AND WARRANTIES OF SELLER.....                 | 4    |
| 3.1 AUTHORITY; ORGANIZATION OF SELLER .....                      | 4    |
| 3.2 NONCONTRAVENTION .....                                       | 4    |
| 3.3 BROKERS' FEES .....                                          | 5    |
| 3.4 ORGANIZATION AND GOOD STANDING.....                          | 5    |
| 3.5 CAPITALIZATION; TITLE TO UNITS.....                          | 5    |
| 3.6 SUBSIDIARIES.....                                            | 6    |
| 3.7 TITLE TO ASSETS.....                                         | 6    |
| 3.8 TAX MATTERS.....                                             | 6    |
| 3.9 EMPLOYEE BENEFITS.....                                       | 7    |
| 3.10 ENVIRONMENTAL, HEALTH, AND SAFETY MATTERS.....              | 10   |
| 3.11 FINANCIAL STATEMENTS .....                                  | 10   |
| 3.12 INDEBTEDNESS .....                                          | 11   |
| 3.13 UNDISCLOSED LIABILITIES .....                               | 11   |
| 3.14 EVENTS SUBSEQUENT TO MOST RECENT FISCAL YEAR END.....       | 11   |
| 3.15 NOTES AND ACCOUNTS RECEIVABLE.....                          | 13   |
| 3.16 INVENTORY .....                                             | 13   |
| 3.17 LEGAL COMPLIANCE.....                                       | 13   |
| 3.18 LITIGATION .....                                            | 14   |
| 3.19 PERMITS.....                                                | 14   |
| 3.20 INTELLECTUAL PROPERTY .....                                 | 15   |
| 3.21 TRADEMARKS .....                                            | 16   |
| 3.22 TANGIBLE ASSETS .....                                       | 17   |
| 3.23 REAL ESTATE.....                                            | 17   |
| 3.24 CONTRACTS .....                                             | 18   |
| 3.25 INSURANCE .....                                             | 19   |
| 3.26 EMPLOYEES .....                                             | 19   |
| 3.27 IMMIGRATION MATTERS .....                                   | 20   |
| 3.28 WARRANTIES.....                                             | 20   |
| 3.29 CERTAIN BUSINESS RELATIONSHIPS .....                        | 21   |
| 3.30 CERTAIN PAYMENTS.....                                       | 21   |
| 3.31 CUSTOMERS, SUPPLIERS AND CO-PACKERS.....                    | 21   |
| 3.32 BANK ACCOUNTS .....                                         | 22   |
| 3.33 OTHER TRADEMARK REPRESENTATIONS .....                       | 22   |
| 3.34 NO OTHER REPRESENTATIONS; SCHEDULES.....                    | 22   |



|       |                                                      |    |
|-------|------------------------------------------------------|----|
| 10.8  | CERTAIN TAXES.....                                   | 39 |
| 10.9  | CHARACTERIZATION; ALLOCATION OF PURCHASE PRICE ..... | 39 |
| 10.10 | TAX TREATMENT OF INDEMNITY PAYMENTS .....            | 40 |
| 11    | —MISCELLANEOUS .....                                 | 40 |
| 11.1  | NO THIRD-PARTY BENEFICIARIES .....                   | 40 |
| 11.2  | ENTIRE AGREEMENT .....                               | 40 |
| 11.3  | SUCCESSION AND ASSIGNMENT .....                      | 40 |
| 11.4  | COUNTERPARTS.....                                    | 40 |
| 11.5  | HEADINGS .....                                       | 40 |
| 11.6  | NOTICES .....                                        | 40 |
| 11.7  | AMENDMENTS AND WAIVERS.....                          | 41 |
| 11.8  | LENDER PROVISIONS.....                               | 41 |
| 11.9  | SEVERABILITY .....                                   | 42 |
| 11.10 | EXPENSES .....                                       | 42 |
| 11.11 | INCORPORATION OF EXHIBITS AND SCHEDULES .....        | 42 |
| 11.12 | TIME OF THE ESSENCE.....                             | 42 |
| 11.13 | SPECIFIC PERFORMANCE .....                           | 42 |
| 11.14 | GOVERNING LAW .....                                  | 42 |
| 11.15 | SUBMISSION TO JURISDICTION .....                     | 42 |
| 11.16 | CONCERNING COUNSEL .....                             | 43 |
| 11.17 | NO RECOURSE AGAINST NONPARTY AFFILIATES.....         | 43 |
| 11.18 | CONSTRUCTION .....                                   | 44 |
| 11.19 | CONSENTS .....                                       | 44 |
| 11.20 | WAIVER OF JURY TRIAL .....                           | 44 |
| 11.21 | OWNER GUARANTEE.....                                 | 44 |
|       | APPENDIX 1—DEFINITIONS.....                          | 47 |

## **EQUITY PURCHASE AGREEMENT**

**THIS EQUITY PURCHASE AGREEMENT** (this "Agreement") is entered into to be effective as of the \_\_\_\_\_ day of July, 2014, among **US JUICE PARTNERS, LLC**, a Delaware limited liability company ("Seller") and **CLEMENT PAPPAS AND COMPANY, INC.**, a corporation incorporated under the laws of the State of New Jersey ("Buyer"). Buyer and Seller are referred to individually herein as a "Party" and collectively, as the "Parties."

### **RECITALS:**

**WHEREAS**, this Agreement contemplates a transaction in which Buyer will purchase Seller's equity interests (the "Units") in **APPLE & EVE, LLC**, a Delaware limited liability company (the "Company"), in return for the consideration described below;

**WHEREAS**, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase and acquire from Seller, such Units, upon the terms and subject to the conditions hereinafter set forth;

**WHEREAS**, the Parties hereto desire to set forth certain agreements made as an inducement to the execution and delivery of this Agreement;

**NOW THEREFORE**, in consideration of these premises and the agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties, intending to be legally bound, agree as follows:

**1—DEFINITIONS.** Unless context otherwise requires, capitalized terms shall have the meanings ascribed to them in **APPENDIX 1** to this Agreement.

### **2—BASIC TRANSACTION.**

**2.1 PURCHASE AND SALE OF UNITS.** On and subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer, convey, and deliver to Buyer, all of the Units at the Closing for the consideration specified below in this § 2.

**2.2 PURCHASE PRICE.** As used herein, the "Base Purchase Price" is an amount equal to (1) One Hundred Fifty Million and No/100 U.S. Dollars (\$150,000,000.00) (the "Total Enterprise Value"), minus (2) Closing Company Indebtedness, plus (3) Cash and Cash Equivalents at Closing, plus (4) the amount, if any, of the Working Capital Excess, minus (5) the amount, if any, of the Working Capital Shortfall, and minus (6) the Closing Transaction Expenses, minus (7) the portion of the premium for the R&W Policy determined as set forth in § 2.2 to the Disclosure Letter (the "Seller's Portion of the R&W Premium"), minus (8) the aggregate amount of the contingent payments listed on Exhibit 2.2 as due to any employees as a result of the transactions contemplated by this Agreement (the "Contingent Employee Payments"), minus (9) the Insurance Escrow Amount, and minus (10) [REDACTED]

**2.3 SELLER ESTIMATE OF BASE PURCHASE PRICE PRIOR TO CLOSING.** At least three (3) Business Days prior to the Closing Date, Seller shall deliver to Buyer Seller's good faith calculation of the Base Purchase Price, including its good faith estimate and reasonably detailed calculation of Adjusted Company Working Capital Value and each of the other components of Base Purchase Price (including estimates for Closing Company Indebtedness, Cash and Cash Equivalents at Closing, Closing Transaction Expenses and Seller's Portion of the R&W Premium), together with a written instrument signed by Paul Rouse, in his capacity as Chief Financial Officer of the Seller, to the effect that such estimated calculation of the Base Purchase Price was compiled, to the best of his knowledge and with regard to the

## 2.4 CLOSING DELIVERIES.

(a) delivery by wire transfer of immediately available funds to Seller an amount equal to the "Primary Payment," which is equal to (1) the Total Enterprise Value, minus (2) the Closing Company Indebtedness as reflected in the payoff letters referred to in § 6.1(f) (the "Payoff Letter Company Indebtedness"), plus (3) estimated Cash and Cash Equivalents at Closing, plus (4) the amount, if any, of the Estimated Working Capital Excess, minus (5) the amount, if any, of the Estimated Working Capital Shortfall, and minus (6) the Estimated Closing Transaction Expenses, minus (7) Seller's Portion of the R&W Premium, minus (8) the Contingent Employee Payments, minus (9) the Insurance Escrow Amount, and minus (10) [REDACTED]

(c) Buyer shall pay all unpaid Transaction Expenses listed on **EXHIBIT 2.4.1(c)** to the Disclosure Letter at the Closing, except where by arrangement with the payee payment is to be made by the Company after the Closing;

(e) Buyer shall pay [REDACTED], by wire transfer of immediately available funds; and

2.4.2 SELLER'S CLOSING DELIVERIES. At the Closing, Seller will deliver to Buyer the various certificates, instruments, and documents referred to in § 6.1 and will deliver to Buyer an assignment of Seller's Units in the form of **EXHIBIT 2.4.2** hereto.

## 2.5 POST-CLOSING ADJUSTMENTS.

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the Closing Company Indebtedness, Closing Transaction Expenses, and Base Purchase Price. The Preliminary Statement shall be binding upon the Parties to this Agreement, and such Preliminary Statement shall be the "Final Statement," unless Seller gives a notice to Buyer under and in accordance with § 2.5.2.

2.5.2 DISAGREEMENT PROCEDURES. The Preliminary Statement shall not be binding upon any of the parties to this Agreement if Seller gives written notice of its disagreement ("Notice of Disagreement") to Buyer within thirty (30) days after Seller's receipt of the Preliminary Statement, specifying in reasonable detail the nature and amount of such disagreement. The Parties will use reasonable, good faith efforts to resolve such disagreement during such thirty (30) day period. The Parties will set forth in writing any resolution of such disagreement within thirty (30) days after Buyer's receipt of the Notice of Disagreement, and, absent Fraud, such agreement shall be binding upon the Parties, and the Preliminary Statement, with such changes, if any, as are so mutually agreed, shall become the "Final Statement."

2.5.3 UNRESOLVED DISAGREEMENTS. If a Notice of Disagreement is given and Buyer and Seller are unable to resolve such disagreement within such thirty (30) day period, the disputed items shall be referred for final determination to BDO or if such firm has a conflict or is otherwise unable to serve in such capacity, an independent registered public accounting firm mutually acceptable to the parties (the "Independent Firm"). The Independent Firm shall be instructed to render a determination within thirty (30) days after referral of the matter to the Independent firm. Each of the Parties represents to the others that such Party has no current or contemplated business relationship with BDO. In accordance with § 2.5.3(a), the resolution of such disagreement and the Independent Firm's calculations of the matter in disagreement shall be final and binding upon the Parties absent Fraud and shall, together with those aspects of the Preliminary Statement as to which no objection was made, be the "Final Statement."

(a) The Parties will cooperate with the Independent Firm during the term of its engagement. In resolving any matters in dispute, the Independent Firm may not assign a value to any item in dispute (i) greater than the greatest value for such item assigned by Seller, on the one hand, or the Preliminary Statement, on the other hand, or (ii) less than the smallest value for such item assigned by Seller, on the one hand, or the Preliminary Statement, on the other hand. The Independent Firm's determination will be based solely on presentations by Seller and Buyer, which are in accordance with the guidelines and procedures set forth in this Agreement and not on the basis of an independent review. The Final Statement and the determination of any matter in dispute pursuant to the foregoing provisions shall become final and binding on the Parties, absent Fraud, on the date the Independent Firm delivers its final resolution in writing to the Parties. Fees and expenses of the Independent Firm shall be paid one half by Seller and one-half by Buyer.

(b) Buyer shall grant Seller and its representatives access during normal business hours to the relevant Books and Records of the Acquired Companies and its relevant personnel to allow each of them to make evaluations under this § 2.5. Seller shall conduct its review in such a manner as to reasonably minimize disruption to the Acquired Companies.

2.5.4 UNDERPAYMENT. If the Base Purchase Price as reflected in the Final Statement is equal to or in excess of the Primary Payment (any such excess being referred to herein as the "Unpaid Balance"), then, within five (5) Business Days after the final determination of the Final Statement Buyer shall pay to an amount equal to the Unpaid Balance to Seller.

2.5.5 OVERPAYMENT. If the Base Purchase Price as reflected in the Final Statement is less than the Primary Payment (such difference being referred to herein as the "Overpayment"), then, within

five (5) Business Days after the final determination of the Final Statement, Seller shall pay to an amount equal to the Overpayment to Buyer.

**2.6 TAX WITHHOLDING.** Buyer shall be entitled to deduct and withhold from any payment otherwise payable pursuant to this Agreement to Seller the amounts required to be deducted and withheld under the Code or other similar provision of any other applicable Tax Law. Any amounts so withheld shall be paid over to the relevant Governmental Authority. To the extent that amounts are so deducted and withheld, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to Seller.

**2.7 THE CLOSING.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of the Company, on the later of (a) July 28, 2014; or (b) the third Business Day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective Parties will take at the Closing itself) or such other date as the Parties may mutually determine (the "Closing Date"). The Closing shall not be a physical Closing, but shall occur by delivery of facsimile signatures (including copies of signatures in PDF or similar electronic format delivered via email) by all Persons on the Closing Date of each of the documents required to be delivered by such Party pursuant to the terms hereof, with the obligation to deliver original signatures on such documents by overnight delivery by the Parties or their respective legal representatives on the Business Day next following the Closing Date. All acts, deliveries and confirmations comprising the Closing, regardless of chronological sequence, shall be deemed to occur contemporaneously and simultaneously at 5:00 p.m., New York, New York time on the Closing Date.

**3—REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller represents and warrants to Buyer that the statements contained in this § 3 are correct and complete as of the date of this Agreement and as of the Closing except that the representations and warranties that are made as of a specific date shall be correct and complete only as of such date:

**3.1 AUTHORITY; ORGANIZATION OF SELLER.** Seller has the limited liability company power and authority to execute and deliver this Agreement and each other agreement to be executed by Seller in connection herewith and to perform its obligations hereunder and thereunder, all of which have been duly authorized by all requisite limited liability company action. Seller is a limited liability company duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its organization. This Agreement has been duly authorized, executed and delivered by Seller and, assuming that this Agreement has been duly and validly authorized, executed and delivered by Buyer, constitutes the valid and legally binding obligation of Seller, enforceable in accordance with its terms and conditions, except as such enforceability may be limited by (i) bankruptcy Laws and other similar Laws affecting creditors' rights generally, and (ii) general principles of equity, regardless of whether asserted in a proceeding in equity or at law.

### 3.2 NONCONTRAVENTION.

**3.2.1 NONCONTRAVENTION.** Except as set forth in § 3.2.1 of the Disclosure Letter, neither the execution and the delivery of this Agreement, nor any other agreement to be executed by Seller in connection herewith, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of and the performance by Seller of its obligations hereunder or thereunder, will (i) violate any Law or Order to which any of Seller or the Acquired Companies are subject or any provision of their respective Organizational Documents, (ii) conflict with, result in a breach of (with or without the lapse of time, the giving of notice, or both), constitute a default under, result in the acceleration of, create in either party the right to accelerate, terminate, modify, or cancel, or require any notice, consent or approval of

any third party under any Permit shown or required to be shown on § 3.19 of the Disclosure Letter or any Company Material Contract, or (iii) result in the acceleration of, or permit any Person to terminate, modify, cancel, accelerate or declare due and payable prior to its stated maturity, any obligation of any Acquired Company.

**3.2.2 GOVERNMENTAL NOTICES AND CONSENTS.** Except as set forth in § 3.2.2 of the Disclosure Letter and except for the expiration or termination of the applicable waiting period under the HSR Act, no notice to, filing with, and no Permit, authorization, consent or approval of any Governmental Authority is necessary for the execution and delivery of this Agreement by Seller or the consummation of the transactions contemplated by this Agreement.

**3.3 BROKERS' FEES.** Neither Seller nor any of the Acquired Companies has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement, except for a liability or obligation of Seller to be satisfied under § 2.4.1(c).

**3.4 ORGANIZATION AND GOOD STANDING.**

**3.4.1 DUE ORGANIZATION.** Each Acquired Company is a limited liability company duly organized, validly existing, and in good standing under the Laws of its jurisdiction of organization, with full limited liability company power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under its contracts.

**3.4.2 REGISTRATIONS; ORGANIZATIONAL DOCUMENTS.** § 3.4.2 of the Disclosure Letter contains a complete and accurate list for each Acquired Company of its name, its jurisdiction of organization, and other jurisdictions in which it is authorized to do business. Each Acquired Company is duly qualified to do business as a foreign limited liability company and is in good standing under the Laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification. Seller has made available to Buyer copies of the Organizational Documents of each Acquired Company, as currently in effect and the Acquired Companies have no minute books, unit ledgers or registers, company seals or other records relating to the organization, ownership and maintenance of the Acquired Companies, except to the extent included within the Organizational Documents of such Acquired Companies.

**3.5 CAPITALIZATION; TITLE TO UNITS.** The Units constitute 100% of the issued and outstanding equity interests in the Company, and all of the Units are owned and held of record by Seller, free and clear of any restrictions on transfer (other than any restrictions under the Securities Act and state securities Laws or as set forth in § 3.5 of the Disclosure Letter), Taxes, Liens, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. All of the Units have been duly authorized, are validly issued, fully paid, and nonassessable. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Company to issue, sell, or otherwise cause to become outstanding any of its equity interests or which could require Seller to sell, transfer, or otherwise dispose of any equity interests of the Company (other than this Agreement). There are no outstanding or authorized equity appreciation, phantom stock, profit participation, or similar rights with respect to the Company. Except as set forth in Company's Organizational Documents, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting of the equity interests of the Company.

**3.6 SUBSIDIARIES.** Except as listed on § 3.6 of the Disclosure Letter, the Company has no Subsidiaries. With respect to each such Subsidiary so listed, all of the outstanding equity interests of such Subsidiary are held by the Company, free and clear of any restrictions on transfer (other than any restrictions under the Securities Act and state securities Laws or as set forth in § 3.6 of the Disclosure Letter), Taxes, Liens, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. All of the such equity interests have been duly authorized, are validly issued, fully paid, and nonassessable. With respect to each such Subsidiary, (a) there are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require such Subsidiary to issue, sell, or otherwise cause to become outstanding any of its equity interests or which could require the Company to sell, transfer, or otherwise dispose of any equity interests in such Subsidiary held by of the Company (other than this Agreement); (b) there are no outstanding or authorized equity appreciation, phantom stock, profit participation, or similar rights with respect to such Subsidiary; and, (c) except as set forth in such Subsidiary's Organizational Documents, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting of the equity interests of such Subsidiary.

**3.7 TITLE TO ASSETS.** Section 3.7 of the Disclosure Letter provides a complete list of all fixed assets owned by the Acquired Companies as well as the location where such fixed assets are held, in each case as of May 31, 2014. Section 3.7 of the Disclosure Letter lists all stock keeping unit numbers, UPC codes (including manufacturer's code, brand code and stock keeping unit number code) and listings used in the operation of the Business as of May 31, 2014. Except for properties and assets disposed of in the Ordinary Course of Business since the date of the Most Recent Balance Sheet, the Acquired Companies have good and marketable title (free and clear of all Liens) to, or a valid leasehold interest in, the properties and assets shown on the Most Recent Balance Sheet or acquired after the date thereof.

**3.8 TAX MATTERS.**

**3.8.1 DEFINITIONS.** As used herein, the term (a) "Tax" means (i) any federal, state, local, or foreign income, profits, gross receipts, license, fee, payroll, employment, excise, severance, stamp, business and/or occupation, premium, windfall profits, capital gains, environmental (including taxes under Code § 59A), customs duties, capital stock, franchise, capital, net worth, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, security, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not and (ii) any liability for the payment of any amounts described in clause (i) by operation of law or as a result of any tax sharing, tax indemnity or tax allocation agreement; (b) "Income Tax" means any federal, capital gains, foreign, franchise and similar Taxes (including the Texas "margin tax"), and state or local Taxes based on or measured by net income, however determined (including any interest and penalties or additions to tax (civil or criminal) related thereto or to the nonpayment thereof); and (c) "Tax Return" means any return, declaration, report, for, certificate, claim for refund, information return or report, or other statement or information relating to any Tax, including any schedule or attachment thereto, and including any amendment thereof, and including, where permitted or required, combined, affiliated, unitary or other similar returns for any group of entities that includes the Company.

**3.8.2 TAX, STATUS; TAX RETURNS.** For purposes of Income Taxes, except with respect to Texas, each Acquired Company is, and has always been, a disregarded entity and the results of its operations are, and have always been, included in the Income Tax Returns of the Seller and/or the Seller's equity owners. Each Acquired Company (or the Seller on behalf of any Acquired Company) has duly and timely filed all Tax Returns required to be filed thereby, and such Tax Returns were true, correct and complete in all respects. Each Acquired Company (or the Seller on behalf of each Acquired Company) has paid at the time required by law all Taxes owed thereby. The unpaid Taxes of the Acquired

Companies (a) did not, as of the Most Recent Fiscal Month End exceed the reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the unaudited balance sheet of the Company included in the Most Recent Financial Statements and (b) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with past custom and practice of the Acquired Companies in filing their Tax Returns. Since the date of the Most Recent Financial Statements, no Acquired Company has incurred any liability for Taxes arising from extraordinary gains or losses outside of the Ordinary Course of Business consistent with past custom and practice.

**3.8.3 TAXES GENERALLY.** Except as disclosed in § 3.8 of the Disclosure Letter:

(a) No Acquired Company has requested or been granted (and the Seller on behalf of any Acquired Company has not requested or been granted) an extension of the time for filing any Tax Return which has not yet been filed.

(b) No Acquired Company has (and the Seller on behalf of any Acquired Company has not) waived any statute of limitations in respect of Taxes.

(c) No deficiency or proposed adjustment which has not been settled or otherwise resolved for any amount of Tax has been asserted, or assessed in writing, by any Governmental Authority against any Acquired Company or against the Seller in respect of any Acquired Company, and no such deficiency or assessment is proposed.

(d) There is no action, suit, claim, Proceeding or audit now in progress, pending or threatened against or with respect to Taxes or any Tax Return of any Acquired Company.

(e) There are no Liens for Taxes (other than for current Taxes not yet due and payable) on any of the assets of any Acquired Company.

(f) Each Acquired Company has withheld all required amounts in respect of Taxes in accordance with applicable Law and has timely paid over such amounts to the appropriate Governmental Authority.

(g) No Governmental Authority with which any Acquired Company does not file Tax Returns has asserted that such Acquired Company is or may be required to pay Taxes to or file Tax Returns with that Governmental Authority, nor is there a factual or legal basis for such an assertion. No Acquired Company has a permanent establishment in any country other than the United States.

(h) No Acquired Company is a party to or bound by any Tax allocation or Tax sharing agreement or similar agreement, including any terminated agreement as to which any Acquired Company could have any continuing liabilities on or after the Closing Date.

(i) No Acquired Company is liable for Taxes of any other person (except for any Acquired Company) under Treasury Regulation § 1.1502-6 (or similar provision of state, local or foreign law), as transferee or successor, by contract or otherwise.

**3.9 EMPLOYEE BENEFITS.**

**3.9.1 DEFINITIONS.** The following terms have the meanings ascribed to them below:

(a) "Employee Benefit Plan" means any (a) nonqualified deferred compensation arrangement, (b) qualified defined contribution retirement plan which is an Employee Pension Benefit Plan, (c) qualified defined benefit retirement plan which is an Employee Pension Benefit Plan (including any Multiemployer Plan), (d) Employee Welfare Benefit Plan or material fringe benefit or other retirement, bonus, or severance plan or program, including any medical plan which provides benefits to any of the Acquired Companies' retirees or former employees, or (e) obligation, arrangement or customary practice to provide benefits, other than salary, as compensation for services rendered, to present and former directors, employees, or agents other than obligations, arrangements and practices that are described in (a) through (d), including employee stock option or purchase plans or arrangements.

(b) "Employee Pension Benefit Plan" has the meaning set forth in ERISA § 3(2).

(c) "Employee Welfare Benefit Plan" has the meaning set forth in ERISA § 3(1).

(d) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(e) "ERISA Affiliate" means each entity which is treated as a single employer with any Acquired Company for purposes of Code § 414.

(f) "Fiduciary" has the meaning set forth in ERISA § 3(21).

(g) "Multiemployer Plan" has the meaning set forth in ERISA § 3(37)(A).

3.9.2 DETAILS OF PLANS. § 3.9.2 of the Disclosure Letter lists each Employee Benefit Plan that any Acquired Company maintains or to any Acquired Company contributes or has any obligation to contribute. Except as would not reasonably be expected to result in a Company Material Adverse Effect:

(a) Each such Employee Benefit Plan (and each related trust, insurance contract, or fund) complies in form and in operation in all material respects with the applicable requirements of ERISA, the Code, and other applicable Laws and the terms of the Employee Benefit Plan.

(b) Each such Employee Benefit Plan which is an Employee Pension Benefit Plan meets the requirements of a "qualified plan" under Code § 401(a).

(c) To the Knowledge of Seller or the Company, no "Prohibited Transaction," as such term is described in Section 4975 of the Code, has occurred with respect to any of the Employee Benefit Plans that would subject any Acquired Company, any officer of an Acquired Company or any of such plans or any trust to any material tax or penalty on prohibited transactions imposed by Section 4975 of the Code.

(d) To the Knowledge of Seller or the Company, each Employee Benefit Plan or other arrangement subject to Section 409A of the Code has complied in form and operation with the requirements of Section 409A of the Code as in effect from time-to-time.

(e) Except as set forth in § 3.9.2 of the Disclosure Letter, neither the execution or delivery of this Agreement, nor the consummation of the transactions contemplated by this Agreement will, either alone or in conjunction with any other event (whether contingent or otherwise) (i) result in any payment or benefit becoming due or payable, or required to be provided pursuant to an Employee Benefit Plan in which any Acquired Company participates, (A) to any employee, director or independent contractor of any Acquired Company, or (B) to any other Person for which the payment or provision of

such payment of benefit is or may be the responsibility of any Acquired Company, (ii) result in the forgiveness of any indebtedness of any employee, director or independent contractor of any Acquired Company to any Acquired Company, (iii) increase the amount or value of any benefit or compensation otherwise payable or required to be provided to any such employee director, independent contractor or other Person, (iv) result in the acceleration of the time of payment, vesting, distribution or funding of any such benefit or compensation or (v) result in any amount to fail to be deductible by reason of Section 280G of the Code or any similar applicable Law. There is no Employee Benefit Plan or other arrangement to which any Acquired Company is a party or by which it is bound to compensate any employee, director or independent contractor for excise taxes paid pursuant to Section 4999 of the Code, taxes incurred pursuant to Section 409A of the Code, or any similar applicable Law.

3.9.3 NATURE OF PLANS. With respect to each Employee Benefit Plan that any Acquired Company maintains:

(a) no such Employee Benefit Plan is an Employee Benefit Plan subject to Title IV of ERISA nor a Multiemployer Plan and no Acquired Company has liability (including withdrawal liability as defined in ERISA § 4201) under any Multiemployer Plan;

(b) no Fiduciary has any liability for breach of fiduciary duty under ERISA in connection with the administration or investment of the assets of any such Employee Benefit Plan;

(c) no Proceeding with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending or, to the Knowledge of Seller or the Company, threatened;

(d) no such Employee Benefit Plan is an Employee Welfare Benefit Plan providing medical, health, or life insurance or other welfare-type benefits for current or future retired or terminated employees, their spouses, or their dependents (other than in accordance with Code § 4980B); and

(e) Seller has made available to Buyer true and correct copies of the following documents with respect to each such Employee Benefit Plan, where applicable:

(i) all current plan documents governing such plan and the most recent summary plan description furnished to employees,

(ii) the three most recent annual reports filed with the IRS (Form 5500-series) including all schedules and attachments thereto,

(iii) each current related trust agreement or other funding arrangement,

(iv) the most recent determination of the IRS with respect to the qualified status of such Employee Benefit Plan, and any currently-pending application for such a letter,

(v) the most recent actuarial report or valuation, and

(vi) written descriptions of unwritten Employee Benefit Plan.

(f) No such Employee Benefit Plans have incurred any "accumulated funding deficiency" (as defined in Section 412 of the Code or Part 3 of Title I of ERISA), or similar such deficiency as defined in any provision of federal, state, local, or foreign Law, whether or not waived.

**3.10 ENVIRONMENTAL, HEALTH, AND SAFETY MATTERS.** Except as disclosed in §3.10 of the Disclosure Letter:

(a) Each Acquired Company is, and for the past five (5) years has been, in material compliance with all federal, state, or local Laws, regulations, ordinances or Orders concerning public health and safety, worker health and safety, and pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation (collectively, "Environmental, Health, and Safety Requirements").

(b) The operation of the Acquired Companies has not resulted in any release, spill, emission, discharge, management or handling of hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, or polychlorinated biphenyls in violation of Environmental, Health and Safety Requirements or in a manner that would result in the Acquired Companies being liable for remediation or corrective action, and to the Knowledge of Acquired Companies, there is and has been no such release or potential liability associated with the leased property on which the Acquired Companies operate.

(c) The Acquired Companies have not expressly or by operation of law, assumed or undertaken any liabilities, including without limitation, any obligation for corrective or remedial action, of any other Person, relating to Environmental, Health and Safety Requirements.

(d) To the actual knowledge of Seller or the Company, the vendors, suppliers and Co-Packers listed or required to be listed in § 3.31.2 of the Disclosure Letter are operating in material compliance with Environmental Health and Safety Requirements.

(e) There is no pending or, to the Knowledge of Seller or the Company, threatened civil or criminal litigation, written notice of violation, inquiry, or judicial or administrative proceeding (other than administrative rulemaking proceedings) by or against any Acquired Company and relating in any way to any Environmental, Health, and Safety Requirements and there have been no such litigation, violation, inquiry or proceeding in the past five (5) years or that remains unresolved.

(f) Seller has delivered or made available to Buyer true, correct and complete copies of all environmental investigations, studies, audits, tests, reviews or other analyses conducted by or on behalf of any of the Acquired Companies, or related to any leased real property of the Acquired Companies, that are in the possession of any Acquired Company.

**3.11 FINANCIAL STATEMENTS.** Attached to the Disclosure Letter as **EXHIBIT 3.11** are the following financial statements (collectively the "Financial Statements"): (i) audited balance sheets and statements of operations as of and for the last three (3) fiscal years ended as of August 31 and statements of members' equity and statements of cash flows (including the related notes) (with the last fiscal year end being the "Most Recent Fiscal Year End") for the Company; and (ii) internally prepared unaudited consolidated balance sheets and statements of operations and consolidated statements of cash flows (the "Most Recent Financial Statements") as of and for the nine months ended May 31, 2014 (the "Most Recent Fiscal Month End") for the Acquired Companies. The Financial Statements were derived from and are consistent with the Books and Records of the Company and present fairly, in all material respects and in conformity in all material respects with GAAP, the financial condition of the Company as of such dates and the results of operations and cash flows of the Company for such periods; provided, however,

**3.12 INDEBTEDNESS.** The Indebtedness as of a date within two (2) days of the date hereof for the Acquired Companies is described generally in § 3.12 of the Disclosure Letter, with the holder of each item of such Indebtedness set forth thereon, together with an estimate as of the date of this Agreement of the amount of outstanding Indebtedness so held.

**3.14 EVENTS SUBSEQUENT TO MOST RECENT FISCAL YEAR END.** Except as shown on § 3.14 of the Disclosure Letter, since the Most Recent Fiscal Year End, none of the following has occurred:

(h) no Acquired Company has made any grant of credit to any customer or supplier outside the Ordinary Course of Business;



(u) except in the Ordinary Course of Business, none of the Acquired Companies has entered into, modified or amended any consulting agreements;

(v) no Acquired Company has changed an annual accounting period or adopted or changed any accounting method;

(w) no Acquired Company has made, changed, or revoked any material election in respect of Taxes, made any material agreement or settlement with respect to Taxes, filed any amended Tax Return, surrendered any right to claim a refund of Taxes, or consented to any extension or waiver of the limitation period applicable to any Tax claim or assessment (and Seller has not on behalf of any Acquired Company done any of the foregoing); and

(x) no Acquired Company has committed to do any of the foregoing.

**3.15 NOTES AND ACCOUNTS RECEIVABLE.** Except as set forth in § 3.15 of the Disclosure Letter, all notes and accounts receivable of the Acquired Companies reflected on the balance sheet of the Acquired Companies dated as of the Most Recent Fiscal Month End resulted from bona fide sales in the Ordinary Course of the Business and are subject to no valid defenses, set-offs or counterclaims.

**3.16 INVENTORY.** The inventory of the Acquired Companies is reflected properly on their books and records in accordance with GAAP and the Accounting Practices and consists of supplies, raw materials, and work-in-process, and finished goods, all of which is merchantable and fit for the purpose for which it was procured or manufactured, and none of which is obsolete, damaged, or defective, subject only to the reserve for inventory write-down set forth on the balance sheet of the Acquired Companies dated as of the Most Recent Fiscal Month End. All of the finished goods inventory of the Acquired Companies is safe for human consumption. Except as described on § 3.16 of the Disclosure Letter, no Person other than an Acquired Company is in possession of any of the Acquired Companies' inventories.

**3.17 LEGAL COMPLIANCE.**

3.17.1 **GENERAL.** Except as set forth in § 3.17.1 of the Disclosure Letter, each Acquired Company is in compliance in all material respects with all applicable Laws, and no Proceeding or notice has been filed or commenced, or to the Knowledge of Seller or the Company, threatened against any Acquired Company alleging any failure so to comply.

3.17.2 **PRODUCT COMPLIANCE.** Each product manufactured, tested, packaged, labeled, advertised, distributed, shipped, stored, held and/or marketed by or on behalf of any Acquired Company is of merchantable quality, free of any defect, safe for human consumption and suitable for use in, or in connection with manufacturing, testing, packaging, labeling, advertising, distribution or shipment, storage or marketing of food.

3.17.3 **FDA MATTERS.** Each product subject to jurisdiction under the Federal Food, Drug and Cosmetic Act ("FDCA"), Food Safety and Modernization Act ("FSMA"), or other federal, state or local governmental Law relating to food manufacturing, testing, packaging, labeling, advertising, distribution, shipment, storage or marketing (each of the foregoing Laws, including the FDCA and the FSMA, a "Food Law") that is manufactured, tested, packaged, labeled, advertised, distributed, shipped, stored, held and/or marketed by or on behalf any Acquired Company is being manufactured, tested, packaged, labeled, advertised, distributed, shipped, stored, held and/or marketed in compliance in all material respects with all applicable requirements under any Food Law, as amended, and the applicable regulations and requirements adopted by the U.S. Food and Drug Administration thereunder and the applicable

regulations and requirements adopted by other federal agencies with jurisdiction over the Acquired Companies' products, including the U.S. Department of Agriculture or other Governmental Authority.

**3.17.4 PROP 65 MATTERS.** Each Acquired Company possesses all permits, licenses, approvals, clearances, consents, registrations or authorizations required under or in connection with the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), including any and all orders, consent orders or binding agreements issued by or entered into with a Governmental Authority, necessary to operate the business of the Acquired Companies immediately following the Closing in the same manner as such business was operating prior to the Closing. Each Acquired Company is in compliance in all material respects with Proposition 65 in connection with the operation of such Acquired Company's business. No product sold by any Acquired Company contains any chemicals that require such products to include any warning under Proposition 65 or any similar applicable law.

**3.17.5 RECALLS.** To the Knowledge of Seller or the Company, since May 31, 2009, no product sold by any Acquired Company has been the subject of a Recall or has been published on any list of Recalls by a Governmental Authority and, to the Knowledge of Seller or the Company, no product sold by any Acquired Company is subject to a Recall that is pending.

**3.17.6 DATA SECURITY.** Each Acquired Company maintains and is in compliance with policies and procedures regarding data security, back-up, disaster recovery and privacy that are consistent with industry standards. The use and dissemination of any and all data and information concerning individuals by any Acquired Company is in compliance with all applicable privacy policies, terms of use, and applicable Law. The transactions contemplated by this Agreement will not violate any privacy, policy, terms of use, or applicable Law relating to the use, dissemination, or transfer of any such data or information.

**3.18 LITIGATION.** Except as disclosed in § 3.18 of the Disclosure Letter, there is no pending or, to the Knowledge of Seller or the Company, threatened, adverse claim, dispute, governmental investigation, suit, action, arbitration, legal, administrative, opposition claim or complaint by or before and Governmental Authority or other proceeding of any nature, domestic or foreign, criminal or civil, at law or in equity ("Proceeding"), in each case by or against any Acquired Company and, to the Knowledge of Seller or the Company, there is no set of facts that reasonably could be expected to result in any such Proceeding. No Proceeding is pending or, to the Knowledge of Seller or the Company, threatened that challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated in this Agreement. None of the Acquired Companies is subject to any Order. No Acquired Company is in default with respect to any Order by which it is bound or to which such Acquired Company's property is subject, and there exists no Order enjoining or requiring any Acquired Company to take any action of any kind with respect to such Acquired Company's business.

**3.19 PERMITS.** Except as disclosed in § 3.19 of the Disclosure Letter, each Acquired Company, and, to the actual knowledge of Seller or the Company, each Co-Packer, currently maintains all material licenses, permits, certificates, certificates of occupancy, orders, authorizations and approvals required by applicable Laws, including, without limitation, Environmental, Health and Safety Requirements, and have made all required material registrations and filings with, any Governmental Authority that are required for the conduct of their business (collectively, "Permits"). All material Permits that are required to be maintained by any Acquired Company for the conduct of their business are listed in § 3.19 of the Disclosure Letter and are in full force and effect and there are no material violations of any such Permit. No Proceeding is pending or, to the Knowledge of Seller or the Company, threatened to revoke or limit any Permit so listed.

**3.20 INTELLECTUAL PROPERTY.** (a) § 3.20(a) of the Disclosure Letter sets forth a complete and correct list of all material Intellectual Property rights (i) owned by any of the Acquired Companies or used in the conduct of its business or (ii) licensed to any of the Acquired Companies (other than licenses for Internally Used Shrink-wrap Software), including for each such item, the owner of such right, the jurisdiction, and in the case of licensed Intellectual Property, the name of the licensor and the contract under which such Intellectual Property is licensed. An Acquired Company owns, free and clear of any Lien and Permitted Lien, license, or other restriction, including without limitation any restriction under any agreement settling a Proceeding or any similar Agreement, or has a valid and enforceable right to use all Intellectual Property rights, as against the grantor of the license of any Intellectual Property licensed to and not owned by an Acquired Company, necessary to conduct the businesses of the Acquired Companies as currently conducted. As of the date hereof, no Acquired Company (x) holds of record any registration or application for any Intellectual Property, or (y) has applied to any Governmental Authority for registration of any Intellectual Property it may own.

(a) To the Knowledge of Seller or the Company, there is no unauthorized use, disclosure, infringement or misappropriation by any Person of any of the Intellectual Property owned by the Acquired Companies or used in the conduct of its business. None of the Acquired Companies have sent to any Person any written notice of any such unauthorized use, disclosure, infringement or misappropriation by such Person of any of the Intellectual Property owned by the Acquired Companies, nor have any of the Acquired Companies threatened or instituted Proceedings against any Person relating to the foregoing, for the two (2) years prior to the date hereof (or earlier if presently not resolved), other than claims that have since been finally resolved. To the Knowledge of Seller or the Company and except as set forth in § 3.20(b) of the Disclosure Letter, the Acquired Companies' use of any Intellectual Property in connection with the conduct of their business does not infringe, misappropriate or violate any intellectual property rights or other proprietary rights of any Person. There are no pending or to the Knowledge of Seller or the Company, threatened Proceedings against any Acquired Company (i) contesting the validity, enforceability or ownership of any Intellectual Property owned by an Acquired Company or (ii) alleging that any Intellectual Property owned by an Acquired Company or the operation of an Acquired Company's business infringes, misappropriates or otherwise violates the Intellectual Property rights of any other Person nor, to the Knowledge of Seller or the Company, is there any reasonable basis for any such claim, and for the two (2) years prior to the date hereof (or earlier if presently not resolved), no Acquired Company has received any written notice of any such allegation or claim, other than claims that have since been finally resolved.

(b) Except as disclosed in § 3.20(c) of the Disclosure Letter, in connection with the use of Intellectual Property by the Acquired Companies, except for software maintenance charges due and payable in the Ordinary Course of Business, the Acquired Companies do not owe to any other Person any ongoing fee, royalty or other payment as a result of the use of such Intellectual Property. To the extent any such fees, royalties or other payments are disclosed in § 3.20(c) of the Disclosure Letter, or have previously been payable to third parties for the use of such Intellectual Property, all such payments have been timely paid when due. Except as disclosed in § 3.20(c) of the Disclosure Letter, no Acquired Company has entered into any license or other contract pursuant to which such Acquired Company has granted to any other Person the right to use any Intellectual Property owned by such Acquired Company. To the extent that any such license or other contract is disclosed in § 3.20(c) of the Disclosure Letter, all payments that such other Persons were obligated to pay the Acquired Companies under such license or contract have been timely paid when due. Each Acquired Company is in compliance in all material respects with each license for Internally Used Shrink-wrap Software to which such Acquired Company is a party.

(c) To the Knowledge of the Seller and the Company, none of the confidential information or trade secrets (as defined in the Uniform Trade Secrets Act) of any Acquired Company has

been published or disclosed to any Person, except pursuant to licenses or other agreements requiring such other Person to keep such information or trade secrets confidential. Seller and each Acquired Company have taken commercially reasonable steps to protect, preserve and maintain the secrecy and confidentiality of each Acquired Company's confidential information and other trade secrets and to preserve and maintain each Acquired Company's interests and rights in its Intellectual Property. Except as disclosed in § 3.20(d) of the Disclosure Letter, all current and former employees, consultants and independent contractors of each Acquired Company having access to confidential information or trade secrets of such Acquired Company, its customers or business partners, or involved in the creation of Intellectual Property, have executed and delivered to the applicable Acquired Company an agreement regarding the protection of such confidential information and the assignment of such Intellectual Property to the applicable Acquired Company.

### **3.21 TRADEMARKS.**

(a) As used in this § 3.21, the term "Trademark" shall mean all (i) trademarks, (ii) service marks, (iii) trade dress, (iv) logos, (v) trade names, (vi) corporate names, including fictitious business names, (vii) brand names, (viii) slogans, (ix) domain names and (x) other source indicators, including all goodwill associated therewith, whether registered or unregistered, all registrations and applications for registration of any of the foregoing and all renewals of any registration in connection therewith in any jurisdiction throughout the world.

(b) § 3.21 of the Disclosure Letter contains a complete and correct list of all Trademarks for which registration has been applied for by any Acquired Company in the conduct of its business and of related registrations and applications for registration held by any Acquired Company, including for each such Trademark, the owner of record thereof, the registration or serial number, as applicable, and the jurisdiction. An Acquired Company has registered or applied for registration of all material Trademarks. With respect to any Trademarks that are material to the business of any Acquired Company as currently conducted, registration has been applied for and either been issued or not rejected. All required filings and fees related to each Trademark identified in § 3.21 of the Disclosure Letter which is material have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all such Trademarks are otherwise in good standing, to the extent deemed by the Company material for the relevant jurisdiction.

(c) An Acquired Company possesses all right, title, and interest in and to each Trademark free and clear of any Lien and Permitted Lien, chain of title defect, license, or other restriction, including without limitation any restriction under an agreement settling a Proceeding or any similar agreement (except as otherwise shown on § 3.21 of the Disclosure Letter). Except as set forth in Section 3.21 of the Company Disclosure Letter, there are no Orders limiting or restricting use by an Acquired Company of any Trademark owned by an Acquired Company.

(d) § 3.21 of the Disclosure Letter contains a complete and correct list of all licenses, agreements, or other permissions of any kind pursuant to which (i) an Acquired Company has granted to any Person any right in or to such Acquired Company's Trademark and (ii) any Person has granted to an Acquired Party any rights in or to such Person's Trademarks. All licenses or other material rights or permissions required for the use of the Trademarks of any other Person necessary for the conduct of the business of the Acquired Companies have been obtained by the Acquired Companies. All license fees, royalties and any other amounts, if any, due and payable under the agreements described in clauses (i) (except as set forth in §3.2.1 of the Disclosure Letter) and (ii) have been paid on a timely basis or are currently up to date. Assuming the consents applicable to the agreements listed in §3.2.1 of the Disclosure Letter which pertain to or include a Trademark license are obtained, the consummation of the transactions contemplated hereby will not, pursuant to the terms of any written agreement to which an



### 3.24 CONTRACTS.

3.24.1 TYPES OF CONTRACTS. § 3.24.1 of the Disclosure Letter lists the following written contracts and other agreements (and reasonably detailed descriptions of all non-written contracts and agreements) to which any Acquired Company is a party or otherwise bound (each a "Company Material Contract"):

(a) any agreement for the lease of personal property to or from any Person providing for lease payments in excess of \$50,000 per annum;

(b) any agreement that expressly obligates such Acquired Company to pay an amount of \$50,000 or more and has not been fully performed as of the date hereof;

(c) any agreement to which such Acquired Company is a party or is bound and pursuant to which such Acquired Company is treated as a "partner" for federal income tax purposes;

(d) any agreement that has not been fully performed as of the date hereof and that has resulted in the provision of services for amounts in excess of \$25,000 for the period between January 1, 2014 and the Most Recent Fiscal Month End;

(e) any agreement that expressly restricts the ability of such Acquired Company to compete or otherwise to freely engage in such Acquired Company's business in any manner or place, including without limitation any product or territory exclusion;

(f) any collective bargaining agreement;

(g) any agreement with an independent contractor or for the employment of any individual on a full-time, part-time, consulting, or other basis to the extent that such agreement either (i) provides for annual compensation in excess of \$50,000, (ii) provides for severance benefits, or (iii) is not terminable by such Acquired Company at-will; including all severance or other agreements with continuing obligations to any former director, officer, employee or contractor;

(h) any agreement under which such Acquired Company has advanced or loaned any amount to any of such Acquired Company's members, managers, and employees;

(i) the agreements set forth in Sections 3.20(a)(ii), 3.20(c) and 3.21(d) of the Disclosure Letter;

(j) any agreement by such Acquired Company to purchase any capital stock or other debt or equity securities of any Person;

(k) all mortgages, indentures, notes, bonds or other agreements relating to Indebtedness incurred or provided by any Acquired Company, and any agreement or guarantee under which it has guaranteed the performance of the obligations of another Person;

(l) any power of attorney that is currently effective and outstanding;

(m) any written warranty or guaranty with respect to contractual performance extended by any Acquired Company other than in the Ordinary Course of Business;

(n) any standby letters of credit, bank guarantees and surety bonds issued by any bank, financial institutions or surety company with respect to obligations of any Acquired Company;

(o) any sales, marketing, distributorship, agency representative and value-added reseller agreements involving amounts in excess of \$50,000 per annum;

(p) all contracts with the customers, vendors and Co-Packers listed on § 3.31.1, 3.31.2 and 3.31.3 of the Disclosure Letter;

(q) all vendor commitment forms or sales programs for the customers listed on § 3.31.1; and

(r) any commitment to enter into any of the foregoing agreements described in clauses (a) through (q).

**3.24.2 STATUS OF CONTRACTS.** Seller has made available to Buyer a correct and complete copy of each written Company Material Contract. With respect to each Company Material Contract:

(a) except as such enforceability may be limited by (i) bankruptcy Laws and other similar Laws affecting creditors' rights generally, and (ii) general principles of equity, regardless of whether asserted in a proceeding in equity or at law, the agreement is legal, valid, binding, enforceable, and in full force and effect;

(b) no Acquired Company is and, to the Knowledge of Seller or the Company, no other party to such a Company Material Contract is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default, or permit termination, modification, or acceleration, under such agreement; and

(c) no party has repudiated in writing any provision of the agreement.

**3.25 INSURANCE.** § 3.25 of the Disclosure Letter sets forth as of the date of this Agreement a list of all policies or binders of fire, liability, workers' compensation, vehicular or other insurance held by or on behalf of any Acquired Company or under which an Acquired Company is covered and all pending applications by any Acquired Company for policies of insurance, specifying the insurer, the policy number (or covering note number with respect to binders), and describing each currently pending claim thereunder of more than \$50,000. Seller has made available to Buyer a correct and complete copy of each such policy and binder of insurance and pending application for insurance. Such policies and binders are in full force and effect and, except as set forth on § 3.25 of the Disclosure Letter, will continue to be legal, valid, binding, and in full force and effect following the consummation of the transactions contemplated hereby. No Acquired Company is in breach or default, and to the Knowledge of Seller or the Company, no event has occurred which, with notice or the lapse of time, or both, would constitute such a breach or default, or permit termination, modification, or acceleration, under such policy or binder, and proper notice has been given to the insurer of all claims of which any Acquired Company has Knowledge that are insured under such policy. No Acquired Company has received a notice of cancellation or non-renewal of any such policy or binder.

### **3.26 EMPLOYEES.**

**3.26.1 LIST.** § 3.26.1 of the Disclosure Letter sets forth the following as of May 31, 2014: a complete and accurate list of each employee working wholly or mainly for the benefit of an Acquired Company (the "Employees"), his or her employer, dates of hire, position and title (if any), and current

3.26.2 EMPLOYEE COMPENSATION. § 3.26.2 of the Disclosure Letter lists all employees of any Acquired Company who are currently scheduled to receive annual compensation, including non-discretionary bonuses, in excess of \$100,000 per year with respect to the calendar year 2014. Except as disclosed in § 3.26.2 of the Disclosure Letter, to the Knowledge of Seller or the Company, none of such employees currently scheduled to receive annual compensation in excess of \$100,000 for calendar year 2014 has canceled, terminated or notified the employer in writing of any intention to cancel, terminate or materially alter such employee's relationship with such employer, effective prior to, as of, or within one year after, the Closing. To the Knowledge of Seller or the Company, no such employee currently scheduled to receive annual compensation in excess of \$100,000 for calendar year 2014 is a party to, or is otherwise bound by, any contract or agreement for the benefit of a Person other than an Acquired Company, including any confidentiality, non-competition, or proprietary rights contract, between such employee and any other Person that in any way adversely affects or will adversely affect the performance of such employee's duties as an employee of any Acquired Company immediately after the Closing. All wages and benefits due to the Employees have been paid in the Ordinary Course of Business and there are no other monies due from the Company to any Employees (whether arising out of any formal or informal arrangement).

3.26.4 OTHER EMPLOYMENT MATTERS. Each Acquired Company is in compliance in all material respects with all applicable Laws respecting employment and employment practices and terms and conditions of employment, including all Laws relating to minimum wage and overtime (including classification of employees) wage payment, equal pay, workers' safety and health, sexual harassment, discrimination and workers' compensation and is not engaged in any unfair labor practice. No unfair labor practice complaint against any Acquired Company is pending before the National Labor Relations Board. There is no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of Seller or the Company, threatened against or involving any Acquired Company, other than disputes that would not reasonably be expected to result in a Company Material Adverse Effect. No Acquired Company is a party to a collective bargaining agreement and no collective bargaining agreement is currently being negotiated by any Acquired Company. No claim in respect of the employment of any employee or any alleged misclassified independent contractor of any Acquired Company listed in § 3.26.2 of the Disclosure Letter has been asserted and is currently pending or, to the Knowledge of Seller or the Company, in the last three (3) years, threatened in writing, against any Acquired Company other than claims that would not reasonably be expected to result in a Company Material Adverse Effect.

### **3.28 WARRANTIES.**

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standard product warranties and product return, indemnity and credit policies, correct and complete copies of all of which have been made available to Buyer.

(b) No Acquired Company has liability to any customer in connection with any product manufactured, sold, or delivered by such Acquired Company to provide the customer with any other products of such Acquired Company on pre-negotiated terms, including for products at prices below such Acquired Company's published price for such products. Except as set forth in § 3.28(b) of the Disclosure Letter, no Acquired Company has liability to any customer in connection with any product manufactured, sold, or delivered by any Acquired Company, including, without limitation, any unpaid slotting fees.

**3.29 CERTAIN BUSINESS RELATIONSHIPS.** Except as set forth in § 3.29 of the Disclosure Letter, neither Seller nor its Affiliates have been involved in any business arrangement or relationship with any Acquired Company within the past 12 months (except acting as a member, manager, employee or officer), and neither Seller nor its Affiliates owns any asset, tangible or intangible, which is used in the business of any Acquired Company.

**3.30 CERTAIN PAYMENTS.** None of the Acquired Companies, Seller, nor any director, officer, agent, or employee of any Acquired Company, or any other Person associated with or acting for or on behalf of any Acquired Company, has in violation of applicable Law, directly or indirectly, (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, or (iii) to obtain special concessions or for special concessions already obtained, for or in respect of such Acquired Company, (b) taken any action that violates the Foreign Corrupt Practices Act; or (c) established or maintained any fund or asset that has not been recorded in the Books and Records of the Acquired Companies.

**3.31 CUSTOMERS, SUPPLIERS AND CO-PACKERS.**

**3.31.1 CUSTOMER LIST.** § 3.31.1 of the Disclosure Letter contains a list of the twenty (20) largest customers of the Acquired Companies for the year ended August 31, 2013 (determined on the basis of the total dollar amount of payments to the Acquired Companies) (the "Material Customers") showing the total dollar amount of such payments with respect to each Material Customer during such year. To the Knowledge of Seller or the Company, the Acquired Companies have good commercial working relationships with the Material Customers. Since August 31, 2013, (a) no Material Customer has advised any Acquired Company that it has canceled or otherwise terminated its relationship with such Acquired Company, (b) no Material Customer has advised any Acquired Company that it will reduce its purchases from any Acquired Company by more than \$50,000 in any future period, and (c) to the Knowledge of Seller or the Company, no Material Customer has threatened to take any such action. Except as disclosed on § 3.31.1 of the Disclosure Letter, since March 30, 2011, there has not been a customer audit for any Material Customer and the Acquired Companies do not have any liabilities related to any such customer audits.

**3.31.2 VENDORS.** § 3.31.2 of the Disclosure Letter contains a list of the twenty (20) largest suppliers or vendors, excluding co-packers, to the Acquired Companies for the year ended August 31, 2013 (determined on the basis of the total dollar amount of payments by the Acquired Companies) showing the total dollar amount of such payments to each such vendor or supplier during such year. To the Knowledge of Seller or the Company, the Acquired Companies have good commercial working relationships with such suppliers and vendors. Since August 31, 2013, (a) no such supplier or vendor has advised any Acquired Company that it has canceled or otherwise terminated its relationship with such

Acquired Company, (b) no such supplier or vendor has advised any Acquired Company that it will reduce its supply to any Acquired Company; and (c) to the Knowledge of Seller or the Company, no such supplier or vendor has threatened to take any such action.

**3.31.3 CO-PACKERS.** § 3.31.3 of the Disclosure Letter contains a list of all co-packers to the Acquired Companies for the year ended August 31, 2013 (the "Co-Packers") showing the total dollar amount of payments made to each Co-Packer during such year. To the Knowledge of Seller or the Company, the Acquired Companies have good commercial working relationships with the Co-Packers. Since August 31, 2013, (a) no Co-Packer has advised any Acquired Company that it has canceled or otherwise terminated its relationship with such Acquired Company, (b) no Co-Packer has advised any Acquired Company that it will reduce its supply to any Acquired Company; (c) to the actual knowledge of Seller or the Company, no Co-Packer has declared bankruptcy or insolvency or been unable to pay its debts and obligations when due, and (d) to the actual knowledge of Seller or the Company, no Co-Packer has threatened to take any such action. To the Knowledge of Seller or the Company and except as set forth in § 3.31.3 of the Disclosure Letter, there are no amounts payable to any Co-Packer, or reasonably expected to become payable, due to a failure to achieve minimum volumes.

**3.32 BANK ACCOUNTS.** § 3.32 of the Disclosure Letter sets forth a correct and complete list of each account maintained by the Acquired Companies at any bank or other financial institution, including the following information for each such account: (a) the name and location of the institution at which such account is maintained, (b) the name in which such account is maintained and the account number of such account, (c) a brief description of such account, and (d) the names of all individuals authorized to draw on or make withdrawals from such account.

**3.33 OTHER TRADEMARK REPRESENTATIONS.** Trademarks for which registration has not been applied are also set forth in § 3.33 of the Disclosure Letter, but Seller does not represent that such is a complete list. To the Knowledge of the Seller or the Company and except as set forth in § 3.33 of the Disclosure Letter, there is not any reasonable basis for any claim that a Trademark of an Acquired Company or the operation of an Acquired Company's business, infringes, dilutes, misappropriates or otherwise violates the Trademark rights of any other Person.

**3.34 NO OTHER REPRESENTATIONS; SCHEDULES.** Except for the representations and warranties contained in this § 3 (as modified by the Disclosure Letter), Seller makes no other express or implied representation or warranty with respect to the Units, any Acquired Company or any of their respective Affiliates or the transactions contemplated by this Agreement, and Seller disclaims any other representations or warranties, whether made by any Acquired Company or Seller or any of their respective Affiliates, officers, members, managers, employees, agents or representatives.

**4—REPRESENTATIONS AND WARRANTIES OF BUYER.** Buyer represents and warrants to Seller that the statements contained in this § 4 are correct and complete as of the date of this Agreement and as of the Closing.

**4.1 AUTHORIZATION OF TRANSACTION.** Buyer is a corporation duly incorporated, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation. Buyer has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of Buyer, enforceable in accordance with its terms and conditions, except as such enforceability may be limited by (i) bankruptcy Laws and other similar Laws affecting creditors' rights generally, and (ii) general principles of equity, regardless of whether asserted in a proceeding in equity or at law.

**4.2 NONCONTRAVENTION.** Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will violate any constitution, statute, regulation, rule, injunction, judgment, Order, decree, ruling, charge, or other restriction of any Governmental Authority to which Buyer is subject or any provision of the Organizational Documents of Buyer.

**4.3 INVESTMENT.** Buyer is not acquiring the Units with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act.

**4.4 BROKERS' FEES.** Except as set forth in § 4.4 of the Disclosure Letter, Buyer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated.

**4.5 NOTICE AND CONSENT.** No notice to, filing with, and no permit, authorization, consent or approval of, any Governmental Authority, or any other Person is necessary for the execution and delivery of this Agreement by Buyer or the consummation of the transactions contemplated by this Agreement, except for the expiration or termination of the applicable waiting period under the HSR Act.

**4.6 NON-RELIANCE.** In connection with its decision to purchase the Units, Buyer acknowledges and agrees that (i) Buyer is a sophisticated party with such knowledge and experience in business matters that it appreciates the merits and risks involved in purchasing the Units and consummating the transactions contemplated hereby, (ii) Seller is making no representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in § 3 and Buyer is not relying and has not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in § 3, and (iii) Buyer is entering into the transactions contemplated hereby without reliance upon the accuracy or completeness of any express or implied representations or warranties of any nature, whether in writing, orally or otherwise, or any omission, made by or on behalf of or imputed to Seller or any of its Affiliates, except as expressly set forth in this Agreement. Buyer recognizes that significant uncertainties are inherent in any forward-looking projections, forecasts, budgets, financial data or any other forward-looking information (written or oral) with respect to any of the Units prepared by or furnished to it by or on behalf of Seller or any of its Affiliates, agents or representatives (all such information "Forward-Looking Data") and that no Person has made any representations, expressed or implied, relating to the Forward-Looking Data, and Buyer takes full responsibility for making its own evaluation as to the adequacy and accuracy of such Forward-Looking Data.

**4.7 FINANCIAL ABILITY.** Assuming the conditions set forth in Section 6.1 of this Agreement are satisfied, Buyer on the Closing Date will have sufficient funds available to it to pay to Seller the purchase price for the Units and otherwise to satisfy all of its obligations under this Agreement.

**4.8 SOLVENCY.** Immediately upon the effectiveness of the Closing, Buyer and the Acquired Companies shall be able to pay their respective debts as they become due and shall own property which has a fair saleable value greater than the amounts required to pay their respective debts (including a reasonable estimate of the amount of all contingent liabilities). Immediately upon the effectiveness of the Closing, Buyer and the Acquired Companies shall have adequate capital to carry on their respective businesses. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of the Parties hereto.

**4.9 ACKNOWLEDGEMENTS BY BUYER.** THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT BY THE SELLER CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE SELLER TO BUYER IN

**4.10 R&W POLICY.** As of the date hereof, Buyer has procured a Representations and Warranties Insurance Policy (the "R&W Policy") providing for indemnification and reimbursement for damages arising from the breach of any representation or warranty of Seller (including, for the avoidance of doubt, the Fundamental Representations) upon terms and conditions acceptable to Buyer. The premium paid by Buyer for the R&W Policy is set forth on § 4.10 of the Disclosure Letter. A true, accurate, correct and complete copy of the R&W Policy has been provided by Buyer to Seller and is attached hereto as **EXHIBIT 4.10**. With respect to the R&W Policy: (a) except as such enforceability may be limited by (i) bankruptcy Laws and other similar Laws affecting creditors' rights generally, and (ii) general principles of equity, regardless of whether asserted in a proceeding in equity or at law, the R&W Policy is legal, valid, binding, enforceable, and in full force and effect; (b) the Buyer is not and, to the Knowledge of Buyer, no other party to the R&W Policy is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default, or permit termination, modification, or acceleration, under such R&W Policy; and (c) no party to the R&W Policy has repudiated in writing any provision of such R&W Policy

**5—PRE CLOSING COVENANTS.** The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing or earlier termination of this Agreement.

**5.2 ACCESS.** Seller will, and will cause the Acquired Companies to, permit representatives of Buyer to have access to all premises, properties, personnel, Books and Records, Tax records, contracts, and documents of or pertaining to the Acquired Companies; provided, however, that such access shall not unreasonably interfere with the business of the Acquired Companies and Seller shall be permitted to limit such access as may be reasonably necessary to ensure the confidentiality of the transactions contemplated hereby. Without the prior written consent of Seller (not to be unreasonably withheld or delayed), neither Buyer nor its representatives shall be permitted to (i) access locations of the Acquired Companies, their customers, or their vendors or (ii) have discussions regarding the transactions contemplated hereby with the Acquired Companies' customers, vendors, co-packers or employees, provided that none of the foregoing is intended to restrict Buyer's activities undertaken in the ordinary course of its current business operations.

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**5.4 NOTICES AND CONSENTS.** Seller will, or Seller shall cause the Acquired Companies to, give any notices to third parties, and will use its commercially reasonable best efforts to obtain all third-party consents or approvals in connection with the matters referred to in §§ 3.2.1 and 3.2.2. Buyer will use its commercially reasonable best efforts to obtain the third-party consents in connection with the matters referred to in § 4.5.

(a) Subject to the terms and conditions herein provided, each of the Parties hereto shall use its commercially reasonable best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws to consummate and make effective the transaction contemplated by this Agreement. Without limiting the generality of the foregoing, the Buyer shall use its commercially reasonable best efforts to cooperate with Seller, at its request, to obtain all consents under any Company Material Contracts that are required as a result of the transaction; provided, however, that such effort shall not require the Buyer to incur any actual out-of-pocket costs payable to any third-party. Each of the Seller, on one hand, and Buyer, on the other hand, will use its respective commercially reasonable best efforts to obtain consents of all Governmental Authorities and third parties necessary to the consummation of the transactions contemplated by this Agreement. Each Party shall bear its own costs incurred in connection with obtaining such consents; provided, however, that the Seller shall reimburse Buyer for one-half of the HSR Act filing fee in accordance with §2.4.1(c). Effective as of June 25, 2014, each of the Buyer and Seller has filed the Notification and Report Forms with the United States Federal Trade Commission ("FTC") and the Antitrust Division of the United States Department of Justice ("DOJ") required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") and each Party shall supply as promptly as practicable to the appropriate Governmental Authorities any additional information and documentary material that may be requested pursuant to the HSR Act. If requested by Seller, Buyer hereby agrees that it shall request early termination of the waiting period under the HSR Act. Without limitation of the foregoing, Seller, on one hand, and Buyer, on the other hand, and their respective Affiliates shall not extend any waiting period or comparable period under the HSR Act or enter into any agreement with any Governmental Authority not to consummate the transactions contemplated hereby, except with the prior written consent of the parties hereto. Buyer shall (and shall cause its Affiliates to) offer to take (and if such offer is accepted, commit to take) all steps which they are capable of taking to avoid or eliminate impediments under any antitrust, competition, or trade regulation law that may be asserted by the FTC, the Antitrust Division or any other Governmental Authority or Person with respect to the transactions contemplated by this Agreement so as to enable the Closing to occur as expeditiously as possible. Notwithstanding anything else contained in this Agreement, neither Party shall be required to divest any assets that such Party or its Affiliates own prior to the date of this Agreement or any assets or business of any Acquired Company. Each Party shall promptly notify the other Party of the existence of any written communication to that Party from the FTC or the DOJ.

(b) In the event any claim, action, suit, investigation or other proceeding by any Governmental Authorities or other Person is commenced which questions the validity or legality of the transaction contemplated by this Agreement, or seeks damages in connection therewith, the Parties agree to cooperate and use commercially reasonable best efforts to defend against such claim, action, suit, investigation or other proceeding and, if an injunction or other order is issued in any such action, suit or other proceeding, to use commercially reasonable best efforts to have such injunction or other order lifted, and to cooperate reasonably regarding any other impediment to the consummation of the transaction contemplated hereby.

**5.5 OPERATION OF BUSINESS.** Prior to the Closing, each Acquired Company shall (a) carry on such Acquired Company's business in the Ordinary Course of Business; (b) use commercially reasonable best efforts to maintain such Acquired Company's assets in good operating condition and repair in accordance with past practices (normal wear and tear excepted); (c) maintain insurance policies and



amend, modify, change or terminate any pension, profit-sharing, bonus, incentive, deferred compensation, group insurance, severance, retirement or other benefit plan, contract, agreement or arrangement with respect to its managers, officers, and employees (or take any such action with respect to any other Employee Benefit Plan), or any employment agreement with or for the benefit of any employee, or terminate or amend any of such plans or any of such agreements in existence, including the Employee Benefit Plans, on the date of this Agreement, except as required by Law;

(xiii) change an annual accounting period or adopt or change any accounting method;

(xiv) make, change or revoke any material election in respect of Taxes, make any material agreement or settlement with respect to Taxes, file any amended Tax Return, surrender any right to claim a refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment (and Seller will not on behalf of any Acquired Company do any of the foregoing).

**5.6 ASSISTANCE WITH FINANCING.** Prior to the Closing, the Seller shall, and shall cause the Company and its Subsidiaries to, use commercially reasonable efforts to provide and cause its and their officers and employees to provide, on a timely basis, such cooperation as is reasonably requested by Buyer and that is customary in connection with the arrangement of the Buyer's debt financing (the "Financing") incurred to fund a portion of the purchase price hereunder (provided, that such requested cooperation does not (a) unreasonably interfere with the ongoing operations of the Company and its Subsidiaries, (b) cause any representation, warranty or covenant in this Agreement to be inaccurate or breached or (c) cause any closing condition set forth in § 6 to fail to be satisfied), including using its commercially reasonable efforts to (i) provide financial and other pertinent information regarding the Company and its Subsidiaries and their respective properties and assets as may be reasonably requested by Buyer in order to consummate the Financing or to satisfy the conditions precedent to the Financing, (ii) provide other customary certificates, information or documents that are reasonably requested by Financing Sources in order to complete the Financing, (iii) participate in a reasonable number of informational meetings and meetings in connection with the Financing (including customary one-on-one meetings between senior management of the Company, on the one hand, and actual and prospective Financing Sources and prospective lenders and purchasers of the Financing, on the other hand), (iv) provide reasonable assistance to Buyer and its actual and prospective Financing Sources in the preparation of credit or loan agreements, instruments and other agreements (including review of schedules for completeness) and information memoranda and other marketing and rating agency materials for the Financing and confirm the completeness and accuracy of all such materials, together with reasonable and customary representation and authorization letters duly executed on behalf of the Company in connection therewith and in connection with other information to be provided to actual and potential Financing Sources, it being understood and agreed that information and documents provided to Buyer by Seller, the Company and its Subsidiaries may be delivered to actual and prospective Financing Sources and their representatives (subject to customary arrangements for confidentiality), (v) provide documentation and information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the PATRIOT Act, (vi) cooperate with the Financing Sources' due diligence investigation and evaluation of the Company's assets for the purpose of establishing collateral arrangements and to otherwise reasonably facilitate the granting of a security interest in collateral (and the perfection thereof), guarantees, other definitive financing documents and other customary closing certificates and documents as may be reasonably requested by Buyer; provided, that no obligations or grants of security contained in any such agreement or document shall be effective prior to the Closing, and (vii) use commercially reasonable efforts to arrange for customary documents and instruments for the repayment and termination of Closing Company Indebtedness and release of related Liens; provided, that (x) no such certificate, document or instrument shall be effective until the



and as of the Closing Date, except (i) that the representations and warranties that are made as of a specific date shall be true and correct only as of such date; and (ii) for breaches of representations and warranties the effect of which, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect; and

(c) Seller and Buyer shall have procured all of the third-party consents specified in § 5.4 above; and

(d) Seller shall have caused to have delivered to Buyer evidence of the termination of that certain Advisory Agreement, dated October 5, 2007, by and among ClearLight Partners Management, LLC, Apple & Eve, Inc., the Seller and the Company; and

(e) Seller shall have caused to have delivered to Buyer an opinion of counsel in the form of **EXHIBIT 6.1(e)**; and

(f) Buyer shall have received payoff letters from all of the lenders thereof for all of the Closing Company Indebtedness of the Acquired Companies, with such payoff letters to be current as of the Closing and which payoff letters shall commit to file Lien releases, as applicable, confirming that the loans, mortgages and security interests from or granted to all such lenders shall have been satisfied or released upon receipt of the payment contemplated by § 2.4.1(b); and

(g) Seller shall have delivered to Buyer a certificate to the effect that each of the conditions specified above in § 6.1(a)-6.1(b) is satisfied in all respects; and

(h) Seller shall have delivered to Buyer each of the following:

(i) a certified copy of the resolutions duly adopted by the Board of Managers and majority member of Seller authorizing the execution, delivery and performance of this Agreement and the consummation of all transactions contemplated hereby;

(ii) a true and correct copy of each the Acquired Company's Certificate of Organization certified by the Secretary of the State of its organization dated no more than fifteen (15) Business Days prior to Closing;

(iii) a true and correct copy of each Acquired Company's operating agreement, limited liability company agreement or similar Organizational Document, together with all amendments in effect as of Closing;

(iv) certificate(s) of good standing or existence, as applicable, for the Acquired Companies by the Secretary of State (or comparable officer) in each jurisdiction listed in § 3.4.2 of the Disclosure Letter dated no more than fifteen (15) Business Days prior to Closing; and

(v) Buyer shall have received from Seller a certificate conforming to the requirements of Treasury Regulations § 1.1445-2(b);

(i) Since the date of this Agreement, there shall not have been any Material Adverse Effect; and

(j) Seller shall have executed and delivered to Buyer the Escrow Agreement substantially in the form of **EXHIBIT 6.1(j)**.

**6.2 CONDITIONS TO OBLIGATION OF SELLER.** The obligation of Seller to consummate the transactions contemplated by this Agreement shall be subject to satisfaction of the following conditions prior to or at Closing, any and all of which may be waived, in whole or in part, by Seller to the extent permitted by applicable Law:

(a) Buyer shall have performed and complied with all of its covenants hereunder in all respects through the Closing Date; and

(b) The Fundamental Representations of Buyer shall be true and correct as of the date of this Agreement and as of the Closing Date as if made on the Closing Date. The representations and warranties of Buyer set forth in § 4, other than the Fundamental Representations, without giving effect to any materiality or "Material Adverse Effect" qualifications therein, shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date, except (i) that the representations and warranties that are made as of a specific date shall be true and correct only as of such date; and (ii) for breaches of representations and warranties the effect of which, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect; and

(c) Seller and Buyer shall have procured all of the third-party consents specified in § 5.4 above;

(d) Buyer shall have delivered to Seller a certificate to the effect that each of the conditions specified above in § 6.2(a)-6.2(b) is satisfied in all respects; and

(e) Buyer shall have executed and delivered to Seller the Escrow Agreement substantially in the form of EXHIBIT 6.1(j).

**7—TERMINATION.**

**7.1 TERMINATION OF AGREEMENT.** Certain of the Parties may terminate this Agreement at any time prior to the Closing as provided below:

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

(b) by Buyer upon written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in § 6.1 and such breach, inaccuracy or failure has not been cured by Seller within thirty (30) days after Seller's receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in § 6.1 shall not have been fulfilled by the Closing Deadline, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it at or prior to the Closing.

(c) by Seller upon written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or

agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in § 6.2 and such breach, inaccuracy or failure has not been cured by Buyer within thirty (30) days after Buyer's receipt of written notice of such breach from Seller; or

(ii) any of the conditions set forth in § 6.2 shall not have been fulfilled by the Closing Deadline, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by him at or prior to the Closing.

(d) by Buyer or Seller if any Governmental Authority shall have issued an Order permanently restraining or enjoining the transactions contemplated by this Agreement, and such Order shall have become final and non-appealable.

**7.2 EFFECT OF TERMINATION.** In the event of termination of this Agreement in accordance with § 7.1, all rights and obligations of the Parties hereunder shall terminate and no Party shall have any liability or obligation to the other Party (except for the obligations of the Parties pursuant to the Confidentiality Agreement, § 5.7 (and any related definitional provisions set forth in Appendix 1) and the procedural aspects of § 11 which shall survive the termination of this Agreement. For the avoidance of doubt, neither Party shall have any ongoing obligations under § 5.7 following any termination of this Agreement. In addition, such termination shall not preclude either Party from suing the other Party for any breaches of this Agreement prior to the termination.

**7.3 CLOSING DEADLINE.** As used herein, the term "Closing Deadline" means the date that is thirty (30) days following the date of this Agreement; provided, however, that Seller and Buyer may by written agreement elect to extend the Closing Deadline.

**8—POST-CLOSING COVENANTS.** The covenants contained in this § 8 shall govern the period following the Closing.

**8.1 GENERAL.** In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party may reasonably request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under § 9 below). Subject to the terms of § 10.2, Seller acknowledges and agrees that from and after the Closing Buyer will be entitled to possession of all documents, books, records (including Tax records), agreements, and financial data of any sort relating to the Acquired Companies.

**8.2 INSURANCE MATTERS; D&O INDEMNITIES.**

**8.2.1 SURVIVAL.** To the fullest extent not prohibited by applicable Law, from and after the Closing Date, all rights to indemnification now existing in favor of the employees, members, managers or officers of the Acquired Companies with respect to their activities as such prior to or on the Closing Date, as provided in the Acquired Companies' Organizational Documents or indemnification agreements in effect on the date of such activities or otherwise in effect on the date hereof, shall survive the Closing and shall continue in full force and effect for a period of not less than six (6) years from the Closing Date, provided that, in the event any claim or claims are asserted or made within such six (6) year period, all such rights to indemnification in respect of any claim or claims shall continue until final disposition of such claim or claims.

**8.2.2 MAINTAIN INSURANCE.** For a period of six (6) years after the Closing Date, each Acquired Company shall maintain, at such Acquired Company's expense, directors' and officers' liability

insurance policies which provide coverage in scope and amount substantially equivalent to those maintained by the Acquired Companies prior to the Closing Date for the benefit of those Persons who are currently covered by such policies on terms no less favorable than the terms of such current insurance coverage, for the purpose of insuring the obligations of such Acquired Company with respect to periods prior to the Closing Date as described in § 8.2.1; provided, however, that in no event shall any Acquired Company be required to expend in any one year an amount in excess of one hundred fifty percent (150%) of the annual premiums currently paid by that Acquired Company for such insurance.

**8.2.3 EXCULPATORY PROVISIONS.** For the period of six (6) years after the Closing Date, Buyer shall not, and shall not permit any Acquired Company to, amend any of such Acquired Company's Organizational Documents or contracts to reduce or eliminate the benefits of any exculpatory provisions applicable to any past or current officer, member, employee or manager of such Acquired Company.

**8.2.4 THIRD-PARTY BENEFICIARIES.** The provisions of § 8.2 are intended to be for the benefit of, and shall be enforceable by, the employees, members, managers or officers of the Acquired Companies and their respective heirs, executors or administrators and other representatives.

**8.3 CONFIDENTIALITY.** From and after the Closing and subject to the limitations contained herein, (i) Seller will treat and hold as such all of the Confidential Information in the possession or control of Seller; and (ii) each of the Parties shall hold as confidential the terms of this Agreement and, without limiting the generality of the foregoing, Buyer acknowledges that the existence and nature of the rights and obligations under §§ 9.2.1 (the second sentence only) and 9.4.7 [REDACTED] shall be treated as confidential and shall not be disclosed [REDACTED]. For purposes of any public filing of this Agreement as required under applicable securities Laws, Buyer shall cause the [REDACTED] the related defined terms to be redacted from such public filing in order to comply with the confidentiality provisions in this §8.3. The foregoing restrictions shall not apply to the disclosure of information by either Party: (a) upon the requirement of a Governmental Authority, as otherwise required by Law, or in connection with a Proceeding; (b) to its Affiliates who are bound by an obligation of confidentiality to the disclosing Party; and (c) as necessary for the purposes of completing Tax Returns related to the Acquired Companies; provided, however, that in each instance §§ 8.3(a) through 8.3(c) the Party proposing to make such disclosure shall exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be afforded the information so disclosed. In addition to the foregoing, if a Party is required under § 8.3(a) to disclose any information subject to this § 8.3 after the Closing, such Party shall notify the other Party promptly in writing of the request or requirement so that such other Party may seek an appropriate protective Order and the first Party shall reasonably cooperate with obtaining such a protective Order.

## **9—REMEDIES FOR BREACHES OF THIS AGREEMENT.**

**9.1 SURVIVAL.** The Parties, intending to contractually shorten the applicable statute of limitations, agree that (except for the Fundamental Representations) the representations and warranties stated in or made pursuant to this Agreement shall expire on the Closing Date. The Fundamental Representations shall survive the Closing indefinitely, other than the Fundamental Representations set forth in § 3.3 (Broker's Fees) and § 3.2.1 (Trademarks), which shall only survive the Closing for a period of twenty-four (24) months and claims arising out of Fraud shall only survive the Closing until the date that is sixty (60) days after the expiration of the applicable statute of limitations.

## **9.2 INDEMNIFICATION.**

**9.2.1 OF BUYER.** Subject to the terms, conditions and limitations of this § 9, Seller (an "Indemnifying Party") shall indemnify, defend and hold harmless Buyer and its officers, directors,



### 9.3 LIMITATIONS.

**9.3.1 DETERMINATION OF LOSSES.** All Losses hereunder shall be determined net of any

9.3.2 **EXCLUSIVITY.** The remedies available under this § 9 shall be the exclusive remedies

Proceeding with respect to any rights and remedies waived by such Party under this § 9.3.2. Nothing contained in this § 9 will operate to limit the common law liability of Seller to Buyer for fraud in the event Seller is determined by a court of competent jurisdiction to have committed a fraud against Buyer regarding the representations and warranties expressly set forth in § 3 ("Fraud").

9.3.3 EXCLUSION OF SPECIAL DAMAGES. Notwithstanding any other provision in this Agreement to the contrary, no Indemnifying Party shall be required to indemnify, hold harmless or otherwise compensate any Indemnified Party for damage to reputation, mental or emotional distress, special, exemplary or punitive damages, except to the extent such damages result from a Third-Party Action.

9.3.4 DUTY TO MITIGATE. An Indemnified Party shall take all commercially reasonable steps to mitigate all indemnifiable Losses upon and after becoming aware of any event or circumstance that could reasonably be expected to give rise to any such Losses. Without limiting the generality of the foregoing, an Indemnified Party shall pursue all possible Third-Party Awards. With respect to the R&W Policy, Buyer shall not be entitled to recover Losses above the then current Retention to the extent that a claim involves a breach of a Fundamental Representation, unless and until Buyer has pursued all rights and remedies available to it under the R&W Policy for such Losses (including, if requested by Seller, prosecution of an arbitration through a non-appealable arbitral award). If Seller requests that Buyer prosecute such an arbitration, Seller shall promptly reimburse Buyer for attorneys' fees and other direct costs of such arbitration as they are incurred by Buyer and Seller shall be entitled, at its own cost and expense, to participate in such prosecution and Buyer will not settle any such arbitration without the Seller's prior written consent, not to be unreasonably withheld, conditioned or delayed.

9.3.5 ELIGIBLE CLAIM THRESHOLD. No Party shall be required to indemnify another Party for any individual claim where the Losses relating to such claim (or series of claims arising out of the same or substantially similar facts and circumstances) are (after deducting from such Losses, as hereinabove provided, any Third-Party Awards) less than \$7,500.00. Any claim (or series of claims arising out of the same or substantially similar facts and circumstances) above such amount shall be deemed to be an "Eligible Claim" for which indemnification may be sought under this § 9, subject to the other terms, limitations and conditions contained herein.

9.3.6 CAP. Notwithstanding anything to the contrary contained herein, Seller shall not have any responsibility under § 9.2.1 with respect to the Fundamental Representations in an aggregate amount in excess of 100% of the Total Enterprise Value.

9.3.7 CLAIM REQUIRED TO BE MADE PRIOR TO END OF SURVIVAL PERIOD. For a Person to be indemnified under the provisions of this Agreement for a breach of a Fundamental Representation or covenant (other than in the case of Fraud), such Person must deliver the Certificate, referred to in § 9.4.1 below, prior to the expiration of the Survival Period, it being understood that so long as such Certificate is delivered on or prior to such date, such Fundamental Representations or covenants to which a claim of breach relates, shall continue to survive until such matter is resolved. Failure to so deliver any required Certificate with respect to any breach of a representation or warranty prior to the expiration of the Survival Period shall result in such Person's loss of the right to indemnification hereunder.

## 9.4 INDEMNIFICATION PROCEDURES.

9.4.1 CERTIFICATE. As soon as reasonably practicable after an Indemnified Party has incurred or reasonably believes it will incur a Loss or Losses by an Indemnified Party, including, without limitation, any claim by a third-party described in § 9.4.3, which might give rise to indemnification



Books and Records and employees of the Acquired Companies if relevant to the defense of such Third-Party Action.

(c) If the Indemnifying Party does not assume the defense of a Third-Party Action, the Indemnified Party shall be entitled to conduct its own defense and to be represented by attorneys of its own choosing, and the cost and expense thereof shall be an indemnifiable Loss hereunder, subject to the terms (including any applicable limitations on indemnification) hereof.

(d) Neither Buyer nor Seller may concede, settle or compromise any Third-Party Action without the consent of the other, which consents shall not be unreasonably withheld, conditioned, or delayed.

9.4.4 AGREED CLAIMS. Claims for Losses specified in any Certificate to which no Indemnifying Party shall object in writing within thirty (30) days of receipt of such Certificate, claims for Losses covered by a memorandum of agreement of the nature described in § 9.4.2, and claims for Losses the validity and amount of which have been the subject of judicial determination or settlement as contemplated by § 9.4.2 are hereinafter collectively referred to as "Agreed Claims." Within ten (10) days of the determination of the amount of any Agreed Claims for which Buyer is entitled to indemnification hereunder, Seller shall pay an amount equal to the Agreed Claim (subject to the limitations contained herein) by wire transfer in immediately available funds to Buyer. Within ten (10) days of the determination of the amount of any Agreed Claims for which Seller is entitled to indemnification hereunder, Buyer shall pay an amount equal to the Agreed Claim (subject to the limitations contained herein) by wire transfer in immediately available funds to Seller.

9.4.5 SUBROGATION OF INDEMNIFYING PARTY. If the Indemnified Party receives payment or other indemnification from an Indemnifying Party hereunder, the Indemnifying Party shall be subrogated to the extent of such payment or indemnification to all rights in respect of the subject matter of such claim to which the Indemnified Party may be entitled (including all rights under Third-Party Awards), to institute appropriate action for the recovery thereof, and the Indemnified Party agrees reasonably to assist and cooperate with the Indemnifying Party at no expense to the Indemnified Party in enforcing such rights; provided that the subrogation rights shall not apply to the R&W Policy.

9.4.6 NO DOUBLE RECOVERY. Notwithstanding any contrary provision hereof, Buyer shall be entitled only to one recovery of Buyer Losses indemnified hereunder. Without limiting the foregoing, there shall be no indemnification obligations pursuant to this §§ 9 or 10 for Buyer Losses to the extent such Buyer Losses are or have been reflected in or taken account of in the determination of the Final Statement. No Indemnifying Party shall have any obligation to indemnify an Indemnified Party for any Losses that represent the cost of repairs, replacements or improvements that enhance the value of the repaired, replaced or improved asset above its value on the Closing Date, or that represent the cost of repair or replacement exceeding the lowest reasonable cost of such repair or replacement.

9.4.7





## **9.5 R&W POLICY MATTERS**

(a) With respect to the Retention (as that term is defined in the R&W Policy) and subject to the limitations in this § 9.5(a), as between Buyer and Seller, in the event Buyer asserts one or more claims under the R&W Policy as a result of any breach of Seller's representations and warranties (exclusive of the Seller's Fundamental Representations) or under § 10 of this Agreement ("Standard Policy Claims"), Buyer shall be first obligated to pay, suffer or incur the Retention with respect to any such Standard Policy Claims and Seller shall be obligated to reimburse that portion of the Retention that is so paid, suffered or incurred by Buyer that is in excess of \$1,500,000 up to a maximum amount of \$2,500,000. Any such portion of the Retention to be so reimbursed by Seller pursuant to any Standard Policy Claims shall be reimbursed solely from the Insurance Escrow Amount in accordance with the terms of the Escrow Agreement. Seller shall have no obligation to pay any amounts with respect to Standard Policy Claims in excess of its portion of the Retention specified above.

(b) In the event Buyer asserts one or more claims under the R&W Policy as a result of any breach of Seller's Fundamental Representations ("Fundamental Policy Claims"), Buyer shall be first obligated to pay, suffer or incur the then current Retention with respect to any such Fundamental Policy Claims and Seller shall be obligated to reimburse that portion of the Retention that is so paid, suffered or incurred by Buyer with respect to the Fundamental Policy Claims up to a maximum amount of \$2,500,000 or the then current Retention, if lower.

**10—TAX MATTERS.** The following provisions shall govern Seller's obligation to indemnify Buyer for Taxes and shall also govern the allocation of responsibility as between Buyer and Seller for certain Tax matters following the Closing Date:

**10.1 TAX INDEMNIFICATION.** Subject to the terms and limitations in § 9 (including, for avoidance of doubt, the limitations in §§ 9.3.2 and 9.4.6), Seller agrees, to the extent of the Buyer's rights under the § 9.5(a) and to the extent of the proceeds available from the R&W Policy only, to indemnify Buyer and its Affiliates and hold them harmless from and against (i) all Taxes (or the non-payment thereof) for all taxable periods or portions thereof ending on or before the Closing Date, (ii) any and all Taxes of any member of an affiliated, consolidated, combined or unitary group of which any Acquired Company (or any predecessor thereof) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulations section 1.1502-6 or any analogous or similar state, local or foreign Law, and (iii) any and all Taxes of any Person (other than any Acquired Company) imposed on any Acquired Company as a transferee or successor, by contract or pursuant to any Law, which Taxes are imposed on any Acquired Company as a result of an event or transaction occurring on or prior to the Closing Date. Such obligations shall be without regard to whether there was any breach of any representation or warranty under § 3 with respect to such Tax or any disclosures that may have been made with respect to § 3 or otherwise.

**10.2 PREPARATION OF TAX RETURNS.** Buyer shall prepare and file, or cause to be prepared and filed, all Tax Returns that are filed or required to be filed after the Closing Date by or with respect to

any Acquired Company, including Tax Returns of any Acquired Company for any Tax period that begins before and ends after the Closing Date. Buyer shall provide any Tax Return that includes any Tax period (or portion thereof) prior to the Closing Date to the Seller for review prior to filing and shall consider in good faith any changes reasonably and timely requested by the Seller. Within fifteen (15) days after the date on which Buyer or any Acquired Company pays or causes to be paid any Taxes of any Acquired Company with respect to any such Tax Return, Seller shall pay to the Buyer the amount of such Taxes that relates to the Tax period (or portion thereof) ending on or prior to the Closing Date. Except as otherwise required by Law, Buyer shall not permit any Acquired Company to amend any Tax Return covering any period (or portion thereof) ending on or prior to the Closing Date without the prior written consent of Seller. Seller shall include any income, gain, loss, deduction or other tax item with respect to any Acquired Company for any period (or portion thereof) ending on or prior to the Closing Date, including any income, gain, loss, deduction or other tax item resulting from the sale of Units hereunder on its Tax Returns to the extent permitted by Law.

**10.3 ALLOCATION OF TAX LIABILITY FOR STRADDLE PERIODS.** For purposes of this Agreement, in the case of any Taxes that are imposed on a periodic basis and are payable for a Tax period that includes (but does not end on) the Closing Date, the portion of such Tax related to the portion of such Tax period ending on and including the Closing Date shall (i) in the case of any Tax based upon or related to income and any gross receipts, sales or use Tax, be deemed equal to the amount which would be payable if the relevant Tax period ended on and included the Closing Date and (ii) in the case of any Taxes other than gross receipts, sales or use Taxes and Taxes based upon or related to income, be deemed equal to the amount of such Tax for the entire Tax period multiplied by a fraction the numerator of which is the number of days in the Tax period ending on and including the Closing Date and the denominator of which is the number of days in the entire Tax period; provided, however, that appropriate adjustments shall be made to reflect specific events that can be identified and specifically allocated as occurring on or before the Closing Date, on the one hand, or as occurring after the Closing Date, on the other. Notwithstanding the foregoing, the Parties agree that all Company Transaction Expenses shall be deemed to have been incurred prior to the Closing Date, irrespective as to the date upon which they are paid.

#### 10.4 SPECIAL PROCEDURES FOR TAXES.

Notwithstanding anything to the contrary contained in this Agreement, Buyer shall have the sole right to control and make all decisions regarding interests in any Tax audit or proceeding relating to Taxes, including the selection of counsel and the selection of forum for such contest, provided, however, that in the event such audit or proceeding relates to Taxes for which Seller is responsible and has agreed to indemnify Buyer, (i) Buyer, Seller and Acquired Companies shall cooperate in the conduct of any such audit or proceeding relating to such Taxes, (ii) Seller shall have the right (but not the obligation) to control such audit or proceeding at Seller's expense, and in such event, Buyer shall have the right (but not the obligation) to participate in such audit or proceeding and Buyer's expense, and (iii) Seller shall not enter into any agreement or settlement with the relevant taxing authority pertaining to such Taxes that could affect any Acquired Company in a post-closing Tax period (or portion thereof) without the prior written consent of Buyer, which consent shall not be unreasonably withheld. In the event of any conflict between this § 10.4 and any other Section hereof, the provisions of this § 10.4 shall prevail.

**10.5 COOPERATION ON TAX MATTERS.** Buyer and Seller shall cooperate fully (and shall cause each Acquired Company to cooperate fully), as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns pursuant to this § 10.5 and in litigation or any other Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such Tax Return, audit, litigation or other Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Seller and

**10.6 BEST EFFORTS.** Buyer and Seller further agree, upon request, to use their best efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

**10.8 CERTAIN TAXES.** All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with the transfer of the Units under this Agreement, shall be shared equally by the parties, and Seller will, at its own expense, file all necessary Tax Returns and other documentation.

39

Seller and Buyer shall cooperate (and each shall cause the Acquired Companies to cooperate) in the preparation and timely filing of Form 8594 and any comparable state of local forms or reports and, to the extent permissible by or required by Law, any corrections, amendments or supplements (or additional forms or reports) thereto (including any supplements, amendments, forms or reports arising as a result of any adjustments to the purchase price).

#### **10.10 TAX TREATMENT OF INDEMNITY PAYMENTS.**

The Parties agree to treat any indemnification payment pursuant to this Agreement as an adjustment to the Base Purchase Price, as adjusted pursuant to § 2.5.

#### **11—MISCELLANEOUS.**

**11.1 NO THIRD-PARTY BENEFICIARIES.** Except as specifically set forth in § 8.2.4, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns; provided that the Financing Sources shall be intended third parties beneficiaries of § 11.7, § 11.8, § 11.11, § 11.17 and § 11.20 and shall be entitled to enforce such provisions directly (and no amendment or modification to such provisions in respect to the Financing Sources may be made without the prior consent of the Financing Sources).

**11.2 ENTIRE AGREEMENT.** This Agreement (including the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter hereof. That certain Letter of Intent, dated April 29, 2014, shall be of no further force or effect upon the execution of this Agreement. That certain Mutual Confidentiality and Non-Disclosure Agreement, dated April 5, 2014, shall survive the execution hereof (the "Confidentiality Agreement").

**11.3 SUCCESSION AND ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors, heirs, and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party; provided, however, that Buyer may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates and/or any lender providing financing to Buyer or its Affiliates and (ii) designate one or more of its Affiliates and/or any lender providing financing to Buyer or its Affiliates to perform its obligations hereunder (in any or all of which cases Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder). In furtherance of the foregoing, Seller will, at Buyer's request, execute such other documents as may be necessary to transfer all or a portion of the Units to Buyer's Affiliate and/or any lender providing financing to Buyer or its Affiliates at Closing.

**11.4 COUNTERPARTS.** This Agreement may be executed in more than one counterpart, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

**11.5 HEADINGS.** The section headings and the table of contents contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**11.6 NOTICES.** All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two Business Days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to Buyer: Clement Pappas and Company,  
Inc.  
1 Collins Drive  
Suite 200  
Carneys Point, NJ 08069  
Attn:

If to Seller: US Juice Partners, LLC  
100 Bayview Circle, Suite 5000  
Newport Beach, CA 92660  
Attn: Josh Mack

Copy to Squire Patton Boggs (US) LLP  
(which shall 4900 Key Tower  
not constitute 127 Public Square  
notice): Cleveland, Ohio 44114  
Attention: Cipriano S. Beredo  
Fax: 216-479-8780

Copy to Armstrong Teasdale LLP  
(which shall 7700 Forsyth Avenue, Suite 1800  
not constitute St. Louis, Missouri 63105  
notice): Attention: Mark L. Stoneman  
Fax: 314-612-2353

Either Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Either Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

**11.7 AMENDMENTS AND WAIVERS.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Parties. No waiver by either Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. Notwithstanding the foregoing, no amendment or waiver of any provision hereunder that adversely affects the Financing Sources under the Financing Commitment shall be effective without the consent of such affected Financing Sources.

## **11.8 LENDER PROVISIONS.**

**11.8.1 LIMITATIONS ON LIABILITY; WAIVER OF CLAIMS.** Notwithstanding anything to the contrary contained herein, each of Seller and the Company (in each case, on behalf of itself and any of its Affiliates, directors, officers, employees, agents and representatives) hereby waives any rights or claims against any Financing Source in connection with this Agreement, the Financing, the Financing Commitments, the Financing Documents or in respect of any other document or theory of law or equity (whether in tort, contract or otherwise) or in respect of any oral or written representations made or alleged to be made in connection herewith or therewith and each of Seller and the Company (in each case on behalf of itself and any of its Affiliates, directors, officers, employees, agents and representatives) (a) agrees not to commence any action or proceeding against any Financing Source (i) in connection with this Agreement, the Financing, the Financing Commitments, the Financing Documents or (ii) in respect of any other document or theory of law or equity and (b) agrees to cause any such action or proceeding asserted by Seller or the Company (on behalf of itself and any of its Affiliates, directors, officers, employees, agents and representatives) against any Financing Source in connection with this Agreement, the Financing, the Financing Commitments, the Financing Documents or in respect of any other document or theory of law or equity to be dismissed or otherwise terminated. In furtherance and not in limitation of the foregoing waiver, it is acknowledged and agreed that no Financing Source shall have any liability for any claims or damages to Seller or the Company (in each case, on behalf of itself and any of its Affiliates,

directors, officers, employees, agents and representatives) and in no event shall Seller or the Company (on behalf of itself and any of its Affiliates, directors, officers, employees, agents and representatives) seek or obtain any other damages of any kind against any Financing Source (including consequential, special, indirect or punitive damages), in each case, in connection with this Agreement, the Financing, the Financing Commitments, the Financing Documents or the transactions contemplated hereby or thereby.

**11.8.2 NEW YORK AS EXCLUSIVE JURISDICTION.** Notwithstanding the foregoing, each of the Parties hereto hereby agrees that it will not bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against the Financing Sources in any way relating to this Agreement, the Financing, the Financing Commitments or the Financing Documents, or any of the transactions contemplated hereby or thereby, including, without limitation, any dispute arising out of or relating in any way to the Financing or the performance thereof, in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the federal courts, the United States District Court for the Southern District of New York (and the appellate courts thereof), and that the provisions of § 11.20 relating to the waiver of jury trial shall apply to any such action, cause of action, claim, cross-claim or third-party claim.

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

**11.10 EXPENSES.** Except as contemplated with respect to the Transaction Expenses, each of the Parties will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby. In the event of any dispute under this Agreement, the prevailing Party shall be entitled to recover its attorneys' fees and court costs from the other Party.

**11.11 INCORPORATION OF EXHIBITS AND SCHEDULES.** The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

**11.12 TIME OF THE ESSENCE.** Time is of the essence of this Agreement. If any date herein set forth for the performance of any obligations by either Party for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next Business Day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the State of New York or in the City of Montreal, Canada for observance thereof.

**11.13 SPECIFIC PERFORMANCE.** Each of the Parties acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly each of the Parties agrees that the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter (subject to the provisions set forth in § 11.15), in addition to any other remedy to which they may be entitled, at law or in equity.

**11.14 GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the domestic Laws of the State of New York without giving effect to any choice or conflict of Law

provision or rule that would cause the application of the Laws of any jurisdiction other than the State of New York.

**11.15 SUBMISSION TO JURISDICTION.** Each of the Parties submits to the jurisdiction of any state or federal court sitting in or having jurisdiction over the Borough of Manhattan, State of New York, in any Proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the Proceeding may be heard and determined in any such court. Each Party also agrees not to bring any Proceeding arising out of or relating to this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any Proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. Either Party may make service on the other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in § 11.16 below. Nothing in this § 11.15, however, shall affect the right of either Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or in equity.

**11.16 CONCERNING COUNSEL.** Buyer acknowledges that Armstrong Teasdale LLP has acted as counsel for the Acquired Companies and Seller for several years and that, in the event of any post-Closing disputes between the Parties hereto (under Section 9 or otherwise), Seller reasonably anticipates that Armstrong Teasdale LLP will represent it in such matters. Accordingly, to the extent required by reason of applicable decisional Law, or otherwise, Buyer expressly waives and will not assert and agrees to cause the Acquired Companies to waive and to not assert any conflict of interest arising out of or relating to the representation after the closing of Seller in any post-transaction matter in which the interests of Buyer and/or Acquired Companies, on the one hand, and Seller, on the other hand, are adverse, whether or not such matter is one in which Armstrong Teasdale LLP may have previously advised the Acquired Companies. If and to the extent that, at any time subsequent to the Closing, Buyer shall have the right to assert or waive an attorney-client privilege with respect to any communication between the Acquired Companies and any person representing it that occurred at any time prior to the Closing, Buyer shall not waive such privilege without the prior written consent of Seller.

**11.17 NO RECOURSE AGAINST NONPARTY AFFILIATES.** Except as described in Section 11.21, all claims, obligations, liabilities, or causes of action (whether in contract or in tort, in Law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to the Units, this Agreement, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and are those solely of) the entities that are expressly identified as "Parties" in the preamble to this Agreement. Except as described in Section 11.21, no Person who is not a Party, including without limitation any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, or representative of, and any financial advisor or lender to, any Party, or any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, or representative of, and any financial advisor or lender to, any of the foregoing ("Nonparty Affiliates"), shall have any liability (whether in contract or in tort, in Law or in equity, or granted by statute) for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to the Units, this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach; and, to the maximum extent permitted by Law, each Party hereby waives and releases all such liabilities, claims, causes of action, and obligations against any such Nonparty Affiliates. Without limiting the foregoing, and except as described in Section 11.21, to the maximum extent permitted by Law, (a) each Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at Law or in equity, or granted by statute, to avoid or disregard the entity form of a

Party or otherwise impose liability of a Party on any Nonparty Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Party disclaims any reliance upon any Nonparty Affiliates with respect to the purchase of the Units, the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement.

**11.18 CONSTRUCTION.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation. Any matter disclosed in the Disclosure Letter shall be deemed to have been disclosed for all relevant purposes in interpreting the representations and warranties of the Parties contained in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Disclosure Letter is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including, without limitation, whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course of Business, and no Party shall use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Disclosure Letter, in any dispute or controversy involving the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the Disclosure Letter, is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or is within or outside of the Ordinary Course of Business for purposes of this Agreement. In addition, matters reflected in the Disclosure Letter are not necessarily limited to matters required by this Agreement to be reflected in the Disclosure Letter. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. The information contained in this Agreement, and in the Disclosure Letter, is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever (including, without limitation, any violation of Law or breach of contract). Unless otherwise noted, all references to "\$" or "Dollars" contained herein shall be deemed references to United States Dollars.

**11.19 CONSENTS.** Buyer acknowledges that certain consents to the transactions contemplated by this Agreement may be required from parties to contracts, leases, licenses or other agreements to which an Acquired Company is a party and the Parties hereto may consummate the transactions contemplated by this Agreement even though such consents to have not been provided or obtained. Buyer agrees and acknowledges that, except as set forth in this Agreement, Seller shall not have any liability whatsoever to Buyer (and Buyer shall not be entitled to assert any claims) arising out of or relating to the failure to obtain any consent from any Person that may have been or may be required in connection with the transactions contemplated by this Agreement or because of the default, acceleration or termination of any such contract, lease, license or other agreement as a result thereof.

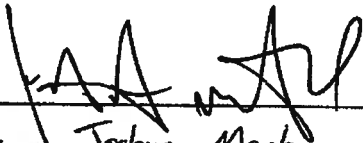
**11.20 WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO.

**11.21 OWNER GUARANTEE.** With respect to any Certificate delivered pursuant to § 11.6 prior to the second anniversary of the Closing Date, each of the owners of the Seller listed on the signature page hereto as an Owner Guarantor (collectively, the "Owner Guarantors") hereby agrees to take all action necessary to cause Seller to perform all of its respective agreements, covenants and obligations under this Agreement in accordance with the terms and limitations contained herein. Subject to Buyer's compliance with § 9.4 hereof, the Owner Guarantors unconditionally guarantee to Buyer the full and complete performance by Seller of its obligations, including without limitation its indemnification obligations, under this Agreement and shall be jointly and severally liable for any obligation of Seller pursuant to the terms, and subject to the limitations, set forth in this Agreement. This is a guarantee of payment and performance and not collectability. Subject to Buyer's compliance with § 9.4 hereof (for claims made pursuant to this Agreement), the Owner Guarantors hereby waive diligence, presentment, demand of performance, filing of any claim, any right to require any proceeding first against Seller protest, notice and all demands whatsoever in connection with the performance of its obligations set forth in this § 11.21. The obligations set forth in this § 11.21 shall expire on the second anniversary of the Closing Date, except with respect to Certificates that have been properly delivered under this Agreement prior to such expiration. Notwithstanding anything to the contrary contained herein, no Owner Guarantor shall have any liabilities or obligations under this § 11.21 in excess of (x) the Base Purchase Price, as adjusted pursuant to Section 2.5, [REDACTED] multiplied by (y) such Owner Guarantor's ownership percentage of the Seller as of the date of this Agreement. For purposes of the foregoing, "ownership percentage" shall be calculated as to any Owner Guarantor as a percentage equal to (x) the sum of all distributions such Owner Guarantor would receive if the Seller was liquidated immediately after the Closing Date, divided by (y) the sum of all distributions all equity owners would receive if the Seller was liquidated immediately after the Closing Date.

**[The Remainder of this page has intentionally been left blank. Signature page follows.]**

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as of the date and year first written above.

**SELLER:**  
US Juice Partners, LLC

By:   
Printed Name: Joshua Mack  
Title: Secretary

**BUYER:**  
Clement Pappas and Company, Inc.

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

The undersigned, constituting the "Owner Guarantors" have executed this Agreement solely for the purposes contemplated by § 11.21:

**OWNER GUARANTORS:**

Craneberry LLC

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

Clearlight Partners II, LLC

By:   
Printed Name: Michael Kaye  
Title: Managing Partner

Printed Name: Cary Crane

Printed Name: Gordon Crane

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as of the date and year first written above.

**SELLER:**  
US Juice Partners, LLC

**BUYER:**  
Clement Pappas and Company, Inc.

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

The undersigned, constituting the "Owner Guarantors" have executed this Agreement solely for the purposes contemplated by § 11.21:

**OWNER GUARANTORS:**

Craneberry LLC

Clearlight Partners II, LLC

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

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

Printed Name: Gordon Crane

Printed Name: \_\_\_\_\_

Title: Manager

Title: \_\_\_\_\_

 \_\_\_\_\_

Printed Name: Cary Crane

 \_\_\_\_\_

Printed Name: Gordon Crane

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as of the date and year first written above.

**SELLER:**  
US Juice Partners, LLC

**BUYER:**  
Clement Pappas and Company, Inc.

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

By: Pierre Paul Lassonde

Printed Name: \_\_\_\_\_

Printed Name: Pierre Paul Lassonde

Title: \_\_\_\_\_

Title: Director

The undersigned, constituting the "Owner Guarantors" have executed this Agreement solely for the purposes contemplated by § 11.21:

**OWNER GUARANTORS:**

Craneberry LLC

Clearlight Partners II, LLC

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: Cary Crane

\_\_\_\_\_  
Printed Name: Gordon Crane

## **APPENDIX 1—DEFINITIONS**

- (1) [REDACTED]
- (2) "*Accounting Practices*" means the Acquired Companies past accounting methods, policies, practices and procedures, with consistent classification and estimation methodology, as were used in preparing the audited balance sheet for the Most Recent Fiscal Year End included in the Financial Statements and in **EXHIBIT 2.5** to the Disclosure Letter, not taking into account or reflecting (i) any changes in circumstances or events occurring after the close of business on the Closing Date or (ii) any purchase accounting or other adjustment arising out of the consummation of the transactions contemplated by this Agreement. The Accounting Practices are all in accordance with GAAP.
- (3) "*Acquired Company*" means any of the Company or its Subsidiaries.
- (4) "*Acquisition Proposal*" has the meaning set forth in § 5.6.
- (5) "*Adjusted Company Working Capital Value*" shall mean the Company Working Capital Value as of the effective time of the Closing on the Closing Date (pursuant to § 2.7), with such Company Working Capital Value to be determined in accordance with the Accounting Practices.
- (6) "*Affiliate*" means: (a) with respect to a particular individual: (i) each other member of such individual's Family; (ii) any Person that is directly or indirectly Controlled by any one or more members of such individual's Family; and (iii) any Person with respect to which such individual or one or more members of such individual's Family serves as a director, officer, partner, executor or trustee (or in a similar capacity); and (b) with respect to a specified Person other than an individual: (i) any Person that directly or indirectly Controls, is directly or indirectly Controlled by or is directly or indirectly under common Control with such specified Person; (ii) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity); and (iii) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).
- (7) "*Agreed Claims*" has the meaning set forth in § 9.4.4.
- (8) "*Allocation Statement*" has the meaning set forth in § 10.9.
- (9) "*Base Purchase Price*" shall have the meaning specified in § 2.2.
- (10) "*Books and Records*" of a Person shall mean all books and records, financial records, stock transfer books, minute books, copies of outstanding stock certificates, ledgers, employee records, customer lists, files, correspondence and other written records of every kind owned by that Person. A Person's general ledger and all subsidiary ledgers, trial balances, and financial statements shall be included within such "Books and Records," along with any work papers of such Person's auditor to which such Person has access.
- (11) "*Business Day*" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York or Montreal, Quebec, Canada are authorized or required by applicable Law to close.
- (12) "*Buyer*" has the meaning set forth in the preface above.

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(14) "*Cash*" shall mean money, currency or a balance in a deposit account at a financial institution, as determined in accordance with GAAP; provided, however, that such term shall not include Restricted Cash, and; provided, further, that, in accordance with GAAP, Cash will be adjusted to reflect any outstanding payments and deposits as of the Closing Date. For the avoidance of doubt, Cash may become a negative number when outstanding payments exceed bank balances in which case that negative Cash amount would reduce the Base Purchase Price or Primary Payment, as applicable.

(15) "*Cash Equivalent*" shall mean any indebtedness of the United States Government or agency thereof or of any United States bank insured by the Federal Deposit Insurance Corporation that has a maturity of one year or less, as determined in accordance with GAAP.

(16) "*Certificate*" shall have the meaning specified in § 9.4.1.

(17) "*Closing*" has the meaning set forth in § 2.7.

(18) "*Closing Company Indebtedness*" shall mean any Company Indebtedness outstanding as of immediately prior to the Closing.

(19) "*Closing Date*" has the meaning set forth in § 2.7.

(20) "*Closing Deadline*" has the meaning set forth in § 7.3.

(21) "*Closing Transaction Expenses*" shall mean Transaction Expenses payable by the Acquired Companies after the Closing Date.

(22) "*COBRA*" means the requirements of Part 6 of Subtitle B of Title I of ERISA and Code § 4980B.

(23) "*Code*" means the Internal Revenue Code of 1986, as amended.

(24) "*Company*" has the meaning set forth in the Recitals.

(25) "*Company Indebtedness*" shall mean the funded Indebtedness of the Acquired Companies.

(26) "*Company Material Adverse Effect*" means a Material Adverse Effect on the Acquired Companies, taken as a whole.

(27) "*Company Material Contract*" shall have the meaning set forth in § 3.24.1

(28) "*Company Working Capital Value*" shall mean, as of the close of business on the Closing Date, the aggregate accounts receivable and other current assets (including any prepaid assets, including prepaid Taxes) of the Acquired Companies (excluding prepaid Transaction Expenses, Cash, Cash Equivalents, and deferred Tax assets any intercompany accounts and transactions between any Acquired Company, on the one hand, and any other Acquired Company, on the other hand) on a consolidated basis and as determined in accordance with GAAP and the Accounting Practices, less the accounts payable and other current liabilities of the Acquired Companies (including the liabilities of the Acquired Companies for Taxes) on a consolidated basis and as determined in accordance with GAAP and the Accounting

Practices, but excluding accrued (but unpaid) Transaction Expenses, deferred Tax liabilities, and Company Indebtedness, each computed on a basis consistent with the preparation of EXHIBIT 2.5 to the Disclosure Letter.

(29) "*Confidential Information*" means any information concerning the businesses and affairs of the Acquired Companies that is not already generally available to the public.

(30) "*Confidentiality Agreement*" has the meaning set forth in § 11.2.

(31) "*Contingent Employee Payments*" shall have the meaning set forth in § 2.2(8).

(32) "*Control*" (including "controlling," "controlled by," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(33) "*Co-Packer*" has the meaning set forth in § 3.31.3.

(34) "*Disclosure Letter*" means the letter of the Company to Buyer dated and delivered the date of this Agreement, which letter includes all Exhibits and Schedules to this Agreement to be delivered to Buyer.

(35) "*DOJ*" has the meaning set forth in § 5.4(a).

(36) "*Eligible Claim*" has the meaning set forth in § 9.3.5.

(37) "*Employee Benefit Plan*" has the meaning set forth in § 3.9.1(a).

(38) "*Employee Pension Benefit Plan*" has the meaning set forth in § 3.9.1(b).

(39) "*Employees*" has the meaning set forth in § 3.26.1.

(40) "*Employee Welfare Benefit Plan*" has the meaning set forth in § 3.9.1(c).

(41) "*Environmental, Health, and Safety Requirements*" has the meaning set forth in § 3.10.

(42) "*ERISA*" has the meaning set forth in § 3.9.1(d).

(43) "*ERISA Affiliate*" has the meaning set forth in § 3.9.1(e).

(44) "*Escrow Agent*" shall mean UMB Bank, N.A.

(45) "*Escrow Agreement*" shall mean the Escrow Agreement in the form annexed hereto as Exhibit 6.1(k).

(46) "*Estimated Adjusted Company Working Capital Value*" shall mean Seller's good faith estimate of the Adjusted Company Working Capital Value delivered to Buyer pursuant to § 2.3.

(47) "*Estimated Closing Transaction Expenses*" shall mean Seller's good faith estimate of the Closing Transaction Expenses, if any, delivered to Buyer pursuant to § 2.3.

(48) "*Estimated Working Capital Excess*" means, in those instances in which Estimated Adjusted Company Working Capital Value is in excess of the Working Capital Target, the amount of such excess.

- (49) "*Estimated Working Capital Shortfall*" means, in those instances in which Estimated Adjusted Company Working Capital Value falls short of the Working Capital Target (including if the Estimated Adjusted Company Working Capital Value is a negative number), the amount of such shortfall.
- (50) "*Family*" of an individual includes (i) the individual, (ii) the individual's spouse and children, and (iii) any other natural person who is related to the individual and who resides with such individual.
- (51) "*FDCA*" has the meaning set forth in § 3.17.2.
- (52) "*Fiduciary*" has the meaning set forth in § 3.9.1(f).
- (53) "*Final Statement*" has the meaning set forth in § 2.5.
- (54) "*Financial Statements*" has the meaning set forth in § 3.11.
- (55) "*Financing*" has the meaning set forth in § 5.6.
- (56) "*Financing Commitments*" means any commitment by a Financing Source to provide the Financing or other financings in connection with the transactions contemplated hereby.
- (57) "*Financing Documents*" means any commitment letters, engagement letters, credit agreements, loan agreements, indentures and each other agreement, document or instrument relating to or arising in connection with the Financing.
- (58) "*Financing Source*" shall mean, exclusive of the Buyer or its Affiliates, each Person (including, without limitation, each agent and arranger) that has committed to provide or otherwise entered into agreements in connection with the Financing or other financings in connection with the transactions contemplated hereby, including (without limitation) any commitment letters, engagement letters, credit agreements, loan agreements or indentures relating thereto, together with each affiliate thereof and each officer, director, employee, partner, controlling person, advisor, attorney, agent and representative of each such Person or affiliate and their respective successors and assigns.
- (59) "*Food Law*" has the meaning set forth in § 3.17.3.
- (60) "*Forward-Looking Data*" has the meaning set forth in § 4.8.
- (61) "*FSMA*" has the meaning set forth in § 3.17.2.
- (62) "*FTC*" has the meaning set forth in § 5.4(a).
- (63) "*Fraud*" has the meaning set forth in § 9.3.2.
- (64) "*Fundamental Policy Claims*" shall have the meaning set forth in § 9.5(b).
- (65) "*Fundamental Representations*" shall mean each of the representations in §§ 3.1 (Authority; Organization of Seller), 3.3 (Brokers' Fees), 3.4 (Organization and Good Standing), 3.5 (Capitalization; Table of Units), 3.21 (Trademarks), 4.1 (Authorization of Transaction) and 4.4 (Brokers' Fees), 4.6 (Non-Reliance), 4.8 (Solvency), 4.9 (Acknowledgments by Buyer), 4.10 (R&W Policy), and 4.11 (Financial).
- (66) "*GAAP*" means United States generally accepted accounting principles, consistently applied, as in effect on the date of this Agreement.

(67) "*Governmental Authority*" means any national, federal, state, provincial, county or municipal or local governmental body, foreign or domestic, or the government of any political subdivision of any of the foregoing, or any entity, authority, agency, ministry or other similar body exercising executive, legislative, judicial, regulatory or administrative authority or functions of or pertaining to government, including any authority or other quasi-governmental entity established to perform any of such functions.

(68) "*HSR Act*" has the meaning set forth in § 5.4(a).

(69) "*Income Tax*" has the meaning set forth in § 3.8.1.

(70) "*Indebtedness*" means as of any date, without duplication, the outstanding principal amount of, accrued and unpaid interest on and other payment obligations (including any prepayment premiums or termination penalties payable as a result of the consummation of the transactions contemplated herein) arising under any obligations of any Acquired Company for (i) indebtedness for borrowed money, (ii) indebtedness evidenced by any note, bond, debenture or other debt security, (iii) reimbursement obligations, contingent or otherwise, in connection with any letters of credit issued on behalf of any Acquired Company, (iv) obligations representing the deferred purchase price of property or services rendered, including, without limitation, earn-outs and other similar forms of contingent purchase prices (but excluding accounts payable arising in the ordinary course of business payable on terms customary in the trade), (v) obligations secured by liens or payable out of the revenues, property or assets now or hereafter owned or acquired by any Acquired Company, (vi) obligations under any interest rate protection agreements, foreign currency exchange agreements or other interest rate or exchange rate hedging arrangements; (vii) interest rate swap agreements entered into by any Acquired Company, and (viii) guarantees of any of the foregoing.

(71) "*Indemnified Party*" has the meaning as determined pursuant to § 9.2.

(72) "*Indemnifying Party*" has the meaning as determined pursuant to § 9.2.

(73) "*Independent Firm*" has the meaning set forth in § 2.5.3.

(74) "*Insurance Escrow Amount*" shall mean \$1,000,000.

(75) "*Intellectual Property*" means all of the following in any jurisdiction throughout the world (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, renewals and reexaminations thereof, (ii) all designs, whether protectable or not, design patent applications, together with all reissuances, continuations, continuations-in-part, revisions, extensions, renewals and reexaminations thereof, (iii) all copyrightable works (whether or not registered), all copyrights, and all applications, registrations and all renewals in connection therewith, (iv) all trade secrets, know-how, technical information, process technology, industrial designs, recipes and formulations, and (v) all computer software (including source code, object code, firmware, development tools, test suites, files, records and data, processes, scripts, routines used to process data, web sites (including related computer code and content) data, databases and related documentation, media on which any of the foregoing is recorded, improvements, modifications, enhancements, versions and releases relating thereto, but excluding Internally Used Shrink-wrap Software. For the avoidance of doubt, and notwithstanding anything in this definition to the contrary, Intellectual Property shall not include Trademarks.

(76) "*Internally Used Shrink-wrap Software*" means software licensed to any Acquired Company under generally available retail shrink-wrap, click-wrap or similar types of licenses and used in any

Acquired Company's business, but not incorporated into software, products or services licensed or sold, or anticipated to be licensed or sold, by the Acquired Companies to customers or otherwise resold or distributed by the Acquired Companies.

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(82) "*Knowledge*" an individual will be deemed to have "*Knowledge*" of a particular fact or other matter if such individual is or was actually aware of such fact or other matter, after due and reasonable inquiry. An entity will be deemed to have "*Knowledge*" of a particular fact or other matter if an individual serving as an officer or manager of such entity is or was actually aware of such fact or other matter, after due and reasonable inquiry.

(83) "*Law*" means (i) all applicable laws, statutes, regulations, rules, ordinances, judgments, rulings, orders, writs, injunctions, decrees, or (ii) any orders, settlements or awards of any Governmental Authority.

(84) "*Lien*" means any mortgage, pledge, lien, encumbrance, charge, or other security interest, other than Permitted Liens.

(85) "*LTM PF EBITDA*" means Pro-Forma Adjusted Earnings before Interest, Taxes, Depreciation and Amortization for the twelve months preceding the Closing Date for both Buyer and the Company.

(86) "*Losses*" means all damages, losses, liabilities, obligations, claims, awards, judgments, assessments, fines, sanctions, penalties, charges, costs, expenses, payments, all interest thereon (including court costs and reasonable attorneys' and consultant's fees and expenses), but excluding those damages described in § 9.3.3.

(87) "*Material Adverse Effect*" means, any change, event, violation, inaccuracy, circumstance, condition or effect that individually or in the aggregate with all other changes, events, violations,

inaccuracies, circumstances, conditions or effects, would or reasonably would be expected to have a material adverse effect upon the business, assets, liabilities, financial condition, or financial results of operations of the Acquired Companies, taken as a whole, other than as a result of (i) changes generally adversely affecting the United States economy or financial markets, (ii) changes affecting generally the industries or markets in which any Acquired Company operates; (iii) performance by the Parties of any of their obligations under and in accordance with the terms of this Agreement; (iv) the announcement or disclosure or pendency of the transactions contemplated by this Agreement; (v) acts of war, sabotage or terrorism, military actions or the escalation thereof; and/or (vi) any changes in applicable Laws, GAAP or other accounting requirements; provided, however, that any change, event, violation, inaccuracy, circumstance, condition or effect referred to in clauses (i), (ii), (v) and (vi) may be taken into account in determining whether there has been a Material Adverse Effect to the extent such change, event, violation, inaccuracy, circumstance, condition or effect has a disproportionate adverse effect on the Acquired Companies, taken as a whole, as compared to other participants in the industries in which the Acquired Companies operate (in which event the incremental disproportionate impact or impacts may be taken into account in determining whether a Material Adverse Effect has occurred or reasonably would be expected to occur).

- (88) "*Material Customer*" has the meaning set forth in § 3.31.1.
- (89) "*Most Recent Balance Sheet*" means the balance sheet for the Company dated as of the Most Recent Fiscal Year End.
- (90) "*Most Recent Financial Statements*" has the meaning set forth in § 3.11.
- (91) "*Most Recent Fiscal Month End*" has the meaning set forth in § 3.11.
- (92) "*Most Recent Fiscal Year End*" has the meaning set forth in § 3.11.
- (93) "*Multiemployer Plan*" has the meaning set forth in § 3.9.1(g).
- (94) "*Nonparty Affiliates*" has the meaning set forth in § 11.17.
- (95) "*Notice of Disagreement*" has the meaning set forth in § 2.5.2.
- (96) "*Order*" means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any Governmental Authority.
- (97) "*Ordinary Course of Business*" means the ordinary course of business of the Acquired Companies consistent with past custom and practice (including with respect to quantity and frequency), and in compliance with Laws.
- (98) "*Organizational Documents*" means the charter and bylaws of a corporation, the articles or certificate of organization and operating agreement or limited liability company agreement for a limited liability company, and the documents of procedural equivalence for any other entity.
- (99) "*Overpayment*" has the meaning set forth in § 2.5.5.
- (100) "*Owner Guarantors*" has the meaning set forth in § 11.21.
- (101) "*Party*" and "*Parties*" have the meaning set forth in the preface above.





(133) "*Transaction Expenses*" means the out-of-pocket legal, accounting, financial advisory and other third-party advisory or consulting fees, expenses paid or payable by the Acquired Companies as a result of the transactions contemplated by this Agreement.

(134) "*Units*" has the meaning set forth in the Recitals.

(135) "*Unpaid Balance*" has the meaning set forth in § 2.5.4.

(136) "*Working Capital Excess*" means, in those instances in which Adjusted Company Working Capital Value is in excess of the Working Capital Target, the amount of such excess.

(137) "*Working Capital Shortfall*" means, in those instances in which Adjusted Company Working Capital Value falls short of the Working Capital Target (including if the Adjusted Company Working Capital Value is a negative number), the amount of such shortfall.

(138) "*Working Capital Target*" means \$22,080,286, which amount is calculated by excluding any Income Tax liabilities of the Acquired Companies.