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DISTRICT OF NEW MEXICO

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In re:

U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA

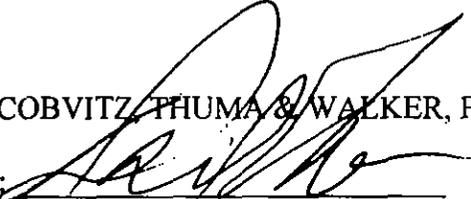
Chapter 11

Debtor.

NOTICE OF SUBMISSION OF FORM ASSET PURCHASE AGREEMENT

Attached hereto is a form of Asset Purchase Agreement, submitted by the debtor in possession pursuant to the debtor's Motion for Order Approving Sale of Some or All of Debtor's Operating Assets and Granting Other Relief, filed June 1, 2001 and docketed as document no. 542.

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ASSET PURCHASE AGREEMENT

among

FURR'S SUPERMARKETS, INC.
as Seller

and

[PURCHASER SUB]
as Purchaser

and

[PARENT]

Dated June [__], 2001

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ASSET PURCHASE AGREEMENT, dated as of June __, 2001 (this "Agreement"), by and among FURR'S SUPERMARKETS, INC., a Delaware corporation ("Seller"), [] ("Parent"), a [] corporation, and []

("Purchaser"), a [] corporation and wholly-owned subsidiary of Parent.

WHEREAS, on February 8, 2001, Seller filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of New Mexico (the "Bankruptcy Court"), Case No. 01-010779-SA (the "Chapter 11 Case"), and Seller remains in possession and control of its assets and business as a debtor in possession;

WHEREAS, on June 1, 2001, Seller filed a motion with the Bankruptcy Court (the "Sale Motion"), in which among other things it moved for an order approving the sale of part or all of its operating assets to a purchaser to be determined at an Auction (as defined in the Sale Motion) to be held on June 25, 2001;

WHEREAS, Seller served notice of the Sale Motion on all parties entitled thereto, in accordance with the Bankruptcy Code and the Bankruptcy Rules (as defined herein);

WHEREAS, Exhibit 4 to the Sale Motion described certain Bidding Procedures (as defined in the Sale Motion), to be used in connection with the consideration of any competing proposal to purchase Seller's assets;

WHEREAS, Seller has determined that it is in Seller's best interest to sell to Purchaser and Purchaser desires to purchase the Purchased Assets (as defined herein), and Purchaser desires to assume certain liabilities of Seller, all on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, subject to the entry of the Sale Order (as defined herein) and on the terms and conditions set forth herein, Purchaser shall purchase the Purchased Assets.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Action" means any claim, charge, action, suit, arbitration, mediation, inquiry, proceeding or investigation by any private Person or Governmental Authority before any Governmental Authority.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person.

"Agreement" means this Agreement, including the Schedules and the Exhibits, as amended from time to time in accordance with its terms.

"Alternative Offer" means any written proposal or written offer to Seller from any Person other than Purchaser or its Affiliates for a Business Combination with or to obtain Control of Seller.

"Associate" means, with respect to any Person, any corporation or other business organization of which such Person is an officer or partner or is the beneficial owner, directly or indirectly, of ten percent (10%) or more of any class of equity securities, any trust or estate in which such Person has a substantial beneficial interest or as to which such Person serves as a trustee or in a similar capacity.

"Assumed Liabilities" has the meaning set forth in Section 3.1(a).

"Assumption Agreement" means the Assignment and Assumption Agreement, between Seller and Purchaser, in substantially the form attached to this Agreement as Exhibit C.

"Auction" has the meaning set forth in the Sale Motion.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, the Bankruptcy Court's local rules, and any order entered by the Bankruptcy Court at any time.

"Bidding Procedures" has the meaning set forth in the Sale Motion.

"Bill of Sale" means a Bill of Sale in substantially the form attached to this Agreement as Exhibit B.

"Business Combination" means with respect to any Person any:

- (i) merger, consolidation or combination to which such Person is a party;
- (ii) any sale, dividend, split or other disposition of any capital stock or other equity interests of such Person, or any acquisition of capital stock or equity interests or securities of such Person, representing in any such case at least fifty percent (50%) of such class of capital stock or equity interests;
- (iii) any sale, dividend or other disposition of all or fifty percent (50%) of the assets of such Person; or
- (iv) the entering into of any agreement or understanding, or the granting of any rights or options, with respect to any of the foregoing.

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

"Bylaws" means the bylaws of Seller, as amended through the date hereof.

"CAM Charges" means common area maintenance expenses and charges relating to the Leases for the leased Store Properties.

"Cash Consideration" has the meaning set forth in Section 4.1.

"**Certificate of Incorporation**" means the Certificate of Incorporation of Seller, as amended through the date hereof.

"**Chapter 11 Case**" has the meaning set forth in the Recitals.

"**Chapter 11 Expenses**" means the costs incurred and expenses paid or payable by Seller in connection with the administration of the Chapter 11 Case, including, (a) professionals' fees and expenses allowed under Section 330 of the Bankruptcy Code, (b) fees and expenses payable to the United States Trustee under Section 1930 of title 28, United States Code, and (c) expenses of members of the Creditors' Committee.

"**Closing**" has the meaning set forth in Section 10.1.

"**Closing Date**" has the meaning set forth in Section 10.1.

"**Code**" means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated thereunder.

"**Confidentiality Agreement**" means the Confidentiality Agreement, dated as of [], by and between Parent and Seller.

"**Consent**" means a consent, approval, authorization, waiver or notification from any Governmental Authority or other Person.

"**Control**" (including the terms "**controlled by**" and "**under common control with**") means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of capital stock, as trustee (other than a Chapter 11 trustee) or executor, by contract, credit arrangement or otherwise.

"**Creditors' Committee**" means the official committee of unsecured creditors, as appointed by the United States Trustee in the Chapter 11 Case.

"**Encumbrance**" means any claim, charge, encumbrance, security interest, lien, pledge or mortgage against or with respect to tangible or intangible property or rights, whether imposed by agreement, understanding, law, equity, or otherwise.

"**Equipment Lease**" has the meaning set forth in Section 2.1(b).

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

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Liabilities" has the meaning set forth in Section 3.1(b).

"Final Order" means an order entered by the Bankruptcy Court (i) that has not been reversed, modified, or withdrawn and that remains in full force and effect, (ii) as to which the time to appeal or seek rehearing has expired and no appeal or request for rehearing is pending, and (iii) that is not the subject of a stay.

"Governmental Authority" means any United States federal, state or local or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

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

"Initial Purchase Price" has the meaning set forth in Section 4.1.

"Intellectual Property" has the meaning set forth in Section 2.1(g).

"Intellectual Property Rights" has the meaning set forth in Section 5.1(i).

"Inventory" has the meaning set forth in Section 2.1(f).

"Inventory Purchase Price" has the meaning set forth in Section 4.1.

"IRS" means the Internal Revenue Service.

"Knowledge" or "knowledge of a party" means the knowledge of any executive officer of such party or of such Persons responsible for the matters covered by the representations and warranties and covenants contained herein.

"**Law**" means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law.

"**Lease**" means a lease, sublease, license and use or occupancy agreement or other arrangement conveying the right to use Leased Real Property.

"**Leased Real Property**" means the real property leased or subleased by Seller pursuant to Leases for Store Properties, including, to the extent also leased by Seller, all buildings and other structures, facilities or improvements currently or hereafter located thereon, all fixtures of Seller attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing; provided, that Leased Real Property does not include the head office of Seller or other real property which is not a Store Property.

"**Liquor Licenses**" means the licenses required to sell liquor products as they are and have been sold in the Store Properties.

"**Manager Benefit Plans**" has the meaning set forth in Section 2.2(h).

"**Material Adverse Change**" means, with respect to Seller, the closing of any Store Property between the date of this Agreement and Closing.

"**Material Adverse Effect**" means, with respect to Seller, any change or effect that is materially adverse to:

(i) the business, operations, results of operation or financial condition of Seller, taken as a whole;

(ii) the Purchased Assets; or

(iii) the validity or enforceability of this Agreement or the ability of Seller to perform its obligations hereunder in a timely fashion other than, (A) general changes in the U.S. economy, (B) general changes in the industries in which Seller does business, (C) changes arising from the filing, commencement and continuation of the Chapter 11 Case or (D) changes arising from the announcement of the transactions contemplated hereby.

"**Outside Date**" has the meaning set forth in Section 11.1(e).

"Owned Real Property" means the real property owned by Seller listed on Schedule 5(e)(i), including all buildings and other structures, facilities or improvements currently or hereafter located thereon and all fixtures of Seller attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing.

"Parent" has the meaning set forth in the Recitals.

"Permits" means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any Governmental Authority.

"Permitted Encumbrances" means:

(i) mechanics', carriers', workers', repairers', materialmen's, warehousemen's, landlord's and other similar Encumbrances arising or incurred in the ordinary course of business;

(ii) Encumbrances arising or resulting from any action taken by Parent or Purchaser;

(iii) Encumbrances for current Taxes, assessments and other governmental charges not yet due and payable or that may subsequently be paid without penalty or that are being contested in good faith by appropriate proceedings;

(iv) any other covenants, conditions, restrictions, reservations, rights, claims, rights-of-ways, easements and other encumbrances or matters affecting title, which do not individually or in the aggregate materially adversely affect the value or current use of any of the Real Property;

(v) zoning, building, land use, and other similar restrictions imposed by law, statute, rule, regulation, ordinance, order or process promulgated by any Governmental Authority; and

(vi) matters of public record, other than secured creditors' liens.

"Person" means an individual, corporation, partnership, association, limited liability company, trust, joint venture, unincorporated organization, other entity or group (as defined in Section 13(d)(3) of the Securities Exchange Act).

"Pharmacy Licenses" means the licenses required to operate the pharmacies as they are and have been operated in the Store Properties.

"Proposed Sale" has the meaning set forth in the Sale Motion.

"Purchased Assets" has the meaning set forth in Section 2.1.

"Purchased Contract" has the meaning set forth in Section 2.1(d).

"Purchase Price" means the Initial Purchase Price and the Inventory Purchase Price.

"Purchase Price Escrow Agent" means [].

"Purchase Price Escrow Agreement" means an agreement, substantially in the form of Exhibit A, among Seller, Purchaser and the Purchase Price Escrow Agent.

"Purchase Price Escrow Amount" has the meaning set forth in Section 4.2(a).

"Purchase Price Escrow Payment" has the meaning set forth in Section 4.2(a).

"Purchaser" has the meaning set forth in the Recitals.

"Real Property" means the Leased Real Property and the Owned Real Property.

"Rejected Property" has the meaning set forth in Section 2.1.

"Sale Motion" has the meaning set forth in the Recitals.

"Sale Order" has the meaning set forth in Section 8.1(a).

"Seller" has the meaning set forth in the Recitals.

"Store Cash" has the meaning set forth in Section 2.1(j).

"Store Properties" means the supermarkets owned and operated by Seller.

"**Tangible Personal Property**" has the meaning set forth in Section 2.1(b).

"**Taxes**" means all taxes, levies or other like assessments, charges or fees (including estimated taxes, charges and fees), including income, corporation, gross receipts, transfer, excise, property, sales, use, value-added, license, payroll, pay as you earn, withholding, social security and franchise or other governmental taxes or charges, imposed by the United States or any state, county, local or foreign government or subdivision or agency thereof, and such term shall include any interest, penalties or additions to tax attributable to such taxes.

"**Tax Return**" means any report, return, statement or other written information required to be supplied to a taxing authority in connection with Taxes.

"**Transfer Taxes**" means any and all sales, transfer, conveyance, deed, recording and/or documentary stamp taxes, fees and similar costs and charges relating to, or with respect to, the conveyance and transfer of the Purchased Assets.

"**Warehouses**" means the warehouses and storage locations of the Seller listed in Exhibit E hereto.

Section 1.2 Terms Generally. As used in this Agreement (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other genders as the context requires, (b) the terms "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits and Schedules to this Agreement unless otherwise specified, and (c) the word "including" and words of similar import, when used in this Agreement, shall mean "including, without limitation," unless otherwise specified.

ARTICLE II

SALE AND PURCHASE OF PURCHASED ASSETS

Section 2.1 Sale and Purchase of the Purchased Assets. On the Closing Date, Seller shall unconditionally transfer, sell, assign, and deliver to Purchaser, and Purchaser shall purchase from Seller, on an "as is" and "where is" basis and on the terms and subject

to the conditions set forth in this Agreement and the Sale Order, all of Seller's right, title and interest in, to and under any and all Store Properties and the assets located therein or set forth below (collectively, the "**Purchased Assets**"), free and clear of all Encumbrances, other than the Assumed Liabilities and the Permitted Encumbrances, if any. The Purchased Assets shall consist of the following (and only the following):

(a) Fee simple title to the Owned Real Property and all of Seller's rights and interests under the Leases.

(b) All furniture, fixtures, equipment, machinery, materials, and spare and replacement items therefor (the "**Tangible Personal Property**") located at any Store Property, whether owned by the Seller or leased by the Seller under a lease agreement or arrangement with third parties (an "**Equipment Lease**"). Notwithstanding the foregoing, if at Closing Seller is unable to convey to Purchaser any Tangible Personal Property that is currently the subject of an Equipment Lease free and clear of the lessor's interest, Seller shall either (i) assume and assign the Equipment Lease to Purchaser, or (ii) reject the Equipment Lease. In either case, the Purchase Price will be adjusted appropriately.

(c) All employment, sales and business records located at the Store Properties and telephone numbers currently used by each Store Property.

(d) All contracts, agreements and purchase orders entered into by Seller (other than contracts included in the Excluded Assets), including the contracts listed in Schedule 2.1(d) (the "**Purchased Contracts**").

(e) All Permits owned or held by Seller which relate to the Store Properties and Tangible Personal Property, as listed in Schedule 2.1(e).

(f) All items of inventory supplies, goods-in-transit, packaging materials and other consumables of Seller (collectively, the "**Inventory**"), including Inventory (i) in transit from suppliers, (ii) held by suppliers and (iii) located in the Warehouses.

(g) All trade names, trademarks and service marks of the Seller, including the trade name Furr's and the related logo, trademarks and service marks (the "**Intellectual Property**").

(h) All Pharmacy Licenses, which shall be transferred and assigned to Purchaser (i) on an interim basis by an executed power of attorney pursuant to Section 10.2(k) and Section 10.3(e) and (ii) fully and finally pursuant to Section 8.5.

(i) All Liquor Licenses, which shall be transferred and assigned to Purchaser (i) on an interim basis by an executed lease pursuant to Section 10.2(l) and Section 10.3(f) and (ii) fully and finally pursuant to Section 8.5.

(j) All operating cash at each of the Store Properties, in the amounts held by each Store Property on the Business Day preceding the Closing Date (the "**Store Cash**"); provided, that the Purchaser shall pay Seller for the Store Cash by increasing the amount of the Cash Consideration by the aggregate amount of the Store Cash.

Section 2.2 Excluded Assets. Any provision of this Agreement to the contrary notwithstanding, any asset (of any nature, whether tangible or intangible, fixed, real, personal wherever situated, owned, held or used by Seller) or property which is not a Purchased Asset shall not be sold or assigned by Seller to Purchaser pursuant to this Agreement (collectively, the "**Excluded Assets**"), including, without limitation:

(a) The minute books, stock books, corporate seals and other corporate records of Seller relating to its organization and existence; provided, however, that after execution of this Agreement, Seller shall, on request by Purchaser, provide copies of such books, records and other materials not previously provided to Purchaser.

(b) The Purchase Price.

(c) All Tax Returns of Seller; provided, however, that after execution of this Agreement, Seller shall, on request by Purchaser, provide copies of such Tax Returns not previously provided to Purchaser.

(d) Cash equivalents, coupons and other non-cash currency, money orders, undeposited, uncollected and returned checks, accounts receivable, bank accounts, certificates of deposit, treasury bills, treasury notes and marketable securities, except for the Store Cash.

- (e) Any assets, properties or contracts listed on Schedule 2.2(e).
- (f) All rights, claims, credits, causes of action, condemnation proceedings, rights of set-off or other rights against third parties and the proceeds thereof, including any rights concerning any litigation in which Seller is a claimant, including those listed in Schedule 2.2(f) and all causes of actions under Chapter 5 of the Bankruptcy Code.
- (g) Insurance policies of the Seller.
- (h) All rights and claims relating to plans maintained for the benefit of managers and other certain employees of the Seller (the "**Manager Benefit Plans**") that are listed in Schedule 2.2(h).
- (i) Any and all prepaid rentals, other prepaid payments, security deposits, electric, gas, sewer and water deposits, deposited with the landlord under each Lease or with the relevant utility company.

ARTICLE III

LIABILITIES ASSUMED

Section 3.1 Assumption of Liabilities.

(a) Assumed Liabilities. In connection with its acquisition of the Purchased Assets, and upon the terms and subject to the conditions set forth herein, Purchaser shall assume and become responsible for all liabilities and obligations whatsoever of Seller that arise out of or relate to the ownership of the Purchased Assets or the operation of Seller's business, whether known or unknown, disclosed or undisclosed, matured or unmatured, accrued, absolute, contingent or otherwise, including the following liabilities and obligations (collectively, the "**Assumed Liabilities**"):

- (i) all obligations to be performed on or after the Closing Date under the Leases, the Purchased Contracts, and any other agreement, lease, license, permit, application, or commitment (including any Equipment Lease) to be assigned to Purchaser under this Agreement;

(ii) all obligations with respect to returns, credits, discounts and allowances relating to products sold or orders accepted prior to the Closing Date and incurred by Seller in the ordinary course of business;

(iii) all obligations of Seller with respect to security and maintenance contracts and agreements relating to the Purchased Assets;

(iv) all liabilities and obligations, commencing on the Closing Date, pursuant to Section 7.1;

(v) executory obligations arising or continuing after the Closing Date under the Purchased Contracts;

(vi) real property taxes as defined in Section 164(d) of the Code accruing from and after the Closing Date; and

(vii) all of the following expenses for the balance of the month in which Closing occurs:

(A) rent under each Lease for each of the leased Store Properties;

(B) CAM Charges for each of the leased Store Properties.

(C) to the extent applicable, all brokerage and leasing commissions or other compensation due or accrued to any broker, agent or other person in connection with any Store Property for brokerage or other services rendered to Seller in connection with the management and/or leasing of the Store Properties; and

(D) any and all other fees, charges, payments or sums due in connection with any leased Store Properties.

(b) Excluded Liabilities. Other than the Assumed Liabilities, Purchaser shall not assume and shall not be liable for any liabilities of Seller, regardless of the type or nature of such liabilities (collectively, the "**Excluded Liabilities**"), including:

(i) Chapter 11 Expenses;

- (ii) all Taxes other than real property taxes as defined in Section 164(d) of the Code for any period (or portion thereof) ending on or prior to the Closing Date;
- (iii) liabilities or obligations in respect of any indebtedness for borrowed money or other interest-bearing obligations;
- (iv) trade payables or general unsecured claims not expressly assumed under this Agreement;
- (v) all amounts that must be paid under Section 365(b)(1)(A)-(B) of the Bankruptcy Code to permit Seller to assume and assign to Purchaser each Lease, Purchased Contract, and other agreement (including any Equipment Lease) to be assigned to Purchaser under this Agreement, which amounts Seller shall pay or provide for in accordance with Section 8.10; and
- (vi) the contracts listed on Schedule 2.2(e).

ARTICLE IV

PURCHASE PRICE

Section 4.1 Purchase Price for Purchased Assets. The consideration for the Purchased Assets shall consist of (i) [] dollars in cash [\$] (the "**Cash Consideration**"), (ii) assumption of the Assumed Liabilities, (iii) the aggregate amount of the Store Cash (collectively (i), (ii) and (iii), the "**Initial Purchase Price**"), and (iv) the amount equal to the aggregate value of the Inventory as of the Closing Date determined in accordance with the valuation process set out in Exhibit F attached hereto (the "**Inventory Purchase Price**").

Section 4.2 Payment of Purchase Price. Purchaser shall pay Seller the Purchase Price as follows:

(a) (i) upon execution and delivery of this Agreement, a payment of [] U.S. dollars [\$] (the "**Purchase Price Escrow Amount**") shall be deposited by wire transfer or by other immediately available funds, in escrow with the Purchase Price Escrow Amount to be held by the Purchase Price Escrow Agent in accordance with the terms of the Purchase Price Escrow Agreement and applied, together

with all interest earned thereon from the date of deposit with the Purchase Price Escrow Agent (the "**Purchase Price Escrow Agent**") as follows.

(ii) The Purchase Price Escrow Amount shall be held by the Purchase Price Escrow Agent until the amount of the Inventory Purchase Price has been determined.

(iii) Once the Inventory Purchase Price has been determined and is due and payable in accordance with Section 4.2(c), then the Purchase Price Escrow Agent shall release the Purchase Price Escrow Amount to Seller by wire transfer (pursuant to wire transfer instructions provided by Seller).

(b) at the Closing, an amount equal to (i) the Cash Consideration plus (ii) the Store Cash amount shall be paid and delivered by wire transfer (pursuant to wire transfer instructions, which Seller shall provide to Purchaser), or by other immediately available funds; and

(c) (i) if the Inventory Purchase Price is greater than the Purchase Price Escrow Amount then Purchaser shall pay Seller the Inventory Purchase Price minus the Purchase Price Escrow Amount, by wire transfer or by other immediately available funds on or before [____], 2001.

(ii) If the Inventory Purchase Price is less than the Purchase Price Escrow Amount then Seller shall pay the difference between the Purchase Price Escrow Amount and the Inventory Purchase Price to Purchaser by wire transfer or by other immediately available funds on or before [____], 2001.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND RELATED UNDERTAKINGS

Section 5.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser and Parent as follows:

(a) Good Standing. Except as a result of the commencement of the Chapter 11 Case, Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and has all requisite corporate power and authority to own, lease and operate the Purchased Assets and to carry on the operation of its business at the Store Properties as now being conducted by it and, subject to Bankruptcy Court entry of the Sale Order, to sell and convey the Purchased Assets to Purchaser. Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it with respect to its business or the nature of the business conducted by it makes such licensing or qualification necessary, except in such jurisdictions where the failure to be so duly qualified or licensed or in good standing would not have a Material Adverse Effect.

(b) Authority. Subject to Bankruptcy Court entry of the Sale Order, Seller has the requisite corporate power and authority to execute and deliver this Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale and the performance of its obligations hereunder and thereunder have been duly and validly authorized by all necessary corporate action of Seller and no other corporate proceedings on the part of Seller are necessary to authorize the execution, delivery and performance of this Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale. This Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale have been duly executed and delivered by Seller and, upon Bankruptcy Court entry of the Sale Order, will constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms.

(c) Consents, Approvals and Authorizations. Except as set forth on Schedule 5.1(c), no Consent of any Governmental Authority is required in connection with the execution and delivery of this Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale by Seller or the performance by Seller of its obligations hereunder and thereunder, except (i) compliance with any applicable requirements of the HSR Act, (ii) filings required by the Bankruptcy Code and the Bankruptcy Rules and (iii) such other Consents of any Governmental Authority the failure of which to be obtained or made would not be reasonably expected to have a Material Adverse Effect.

(d) Personal Property. At the Closing, Seller will own or hold under a valid lease all Tangible Personal Property, free and clear of any Encumbrance, except for Permitted Encumbrances and Assumed Liabilities, and except where the failure to hold such property would not be reasonably expected to have a Material Adverse Effect.

(c) Real Property.

(i) Owned Real Property. Schedule 5.1(e)(i) contains a complete and correct list of all Owned Real Property.

(A) Seller will have, upon the Closing Date, good, valid and insurable fee simple title to the Owned Real Property subject only to Permitted Encumbrances.

(B) Except as listed on Schedule 5(e)(i), there are no outstanding options or rights of first refusal to purchase the Owned Real Property, or any material portion thereof or interest therein.

(C) There are no pending or, to the knowledge of Seller, threatened condemnation proceedings, lawsuits, or administrative actions relating to the Owned Real Property or other matters which adversely affect the current use or occupancy thereof.

(D) To the knowledge of Seller, all facilities located at the Owned Real Property have received all approvals of governmental authorities (including material licenses and permits) required in connection with the ownership or operation thereof, and have been operated and maintained in accordance with applicable laws, and regulations in all material respects.

(E) Except as set forth on Schedule 5.1(c)(i), there are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any third party the right of use or occupancy of any portion of the Owned Real Property or interest therein.

(F) Except as set forth on Schedule 5.1(c)(i), there are no third parties in possession of any parcel of Owned Real Property.

(ii) Leased Real Property. Schedule 5.1(e)(ii) contains a complete and correct list of all Leased Real Property and all Leases.

(A) True, correct and complete copies of all Leases relating to the Leased Real Property have heretofore been delivered by Seller to Purchaser.

(B) Except as limited by the Bankruptcy Code, all Leases are valid, binding and in full force and effect and are enforceable by Seller and grant the lessee under the applicable Lease the exclusive right to use and occupy the premises leased thereby.

(C) Seller has good and valid title to the leasehold estate or other interest created under each Lease and is not in default under any Lease, except (1) for defaults relating to the insolvency or the financial condition of Seller or the commencement of the Chapter 11 Case, (2) where such default would not materially and adversely impair the ability of Purchaser to conduct the business as presently conducted on the Leased Real Property, and (3) for such defaults as will be cured in connection with Seller's assumption and assignment of the Leases.

(D) To the knowledge of Seller, no party to any Lease has repudiated any material provision thereof.

(E) Except as set forth on Schedule 5.1(e)(ii), there are no material disputes, oral agreements, or forbearance programs in effect as to any Lease.

(F) All facilities operated by Seller which are located at the Leased Real Property have received all material approvals of Governmental Authorities (including material licenses and Permits) required in connection with the operation thereof, and have been operated and maintained in accordance with applicable laws, rules, and regulations in all material respects.

(f) Labor Matters. Except as set forth on Schedule 5.1(f), (i) Seller is not a party to or bound by any collective bargaining agreement or other labor union contract applicable to persons employed by Seller, (ii) there are no unfair labor practice charges or complaints, or any current union representation questions, involving employees of Seller pending against Seller before the National Labor Relations Board, and (iii) to the knowledge of Seller there is no labor strike, lockout, organized slowdown or organized work stoppage in effect or, threatened against Seller other than, in cases of clauses (ii) and (iii), those matters which would not have a Material Adverse Effect.

(g) Certain Fees. Seller has not employed any financial advisor or finder and has not incurred any liability for any financial advisory or finders' fees in connection with this Agreement or the transactions contemplated hereby, except Peter J. Solomon Company, whose fees and expenses will be paid by Seller in accordance with Seller's agreement with such firm.

Section 5.2 Representations and Warranties of Parent and Purchaser. Parent and Purchaser hereby jointly and severally represent and warrant to Seller the following:

(a) Good Standing. Each of Parent and Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and has all requisite corporate power and authority to own, lease and operate the properties owned, leased and operated by each of them and to carry on the operations of their respective business as now being conducted by them. Purchaser and Parent heretofore made available to Seller a complete and correct copy of the certificates of incorporation and bylaws of Purchaser and Parent, as currently in effect.

(b) Authority. Each of Parent and Purchaser has the requisite corporate power and corporate authority to execute and deliver this Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale and to perform its respective obligations hereunder and thereunder. The execution and delivery of this Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale and the performance by Parent and Purchaser of their obligations hereunder and thereunder have been duly and validly authorized by the respective boards of directors of Parent and Purchaser and no other corporate or stockholder proceeding on the part of Parent or Purchaser is necessary to authorize the execution, delivery and performance of this Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale. This Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale have been duly executed and delivered by Parent and Purchaser and constitute, assuming due authorization, execution and delivery

of this Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale by Seller, valid and binding obligations of Parent and Purchaser, enforceable against Parent and Purchaser in accordance with their terms, except that such enforcement may be subject to or limited by (i) bankruptcy, insolvency or other similar laws, now or hereafter in effect, affecting creditors' right generally, and (ii) the effect of general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(c) Consents, Approvals and Authorizations. No Consent of any Governmental Authority is required in connection with the execution and delivery of this Agreement, the Purchase Price Escrow Agreement, the Assumption Agreement and the Bill of Sale by Parent and Purchaser or the performance by Parent and Purchaser of their respective obligations hereunder and thereunder, except (i) compliance with any applicable requirements of the HSR Act, (ii) filings required pursuant to the Bankruptcy Code and the Bankruptcy Rules, and (iii) such other Consents the failure of which to be obtained or made would not be reasonably expected to have an effect that is materially adverse to Parent's or Purchaser's business, operations or financial condition, or that would prevent or delay the consummation of the transactions contemplated hereby.

(d) Certain Fees. Purchaser has not employed any financial advisor or finder and has not incurred any liability for any financial advisory or finders' fees in connection with this Agreement or the transactions contemplated hereby.

(e) Financing. Purchaser has on the date of execution of this Agreement and will have at the Closing sufficient available funds (through existing credit arrangements, commitment letters or otherwise) to pay the Purchase Price, and all fees and expenses required to be paid in connection with the transactions contemplated hereby. Purchaser has provided to Seller a true and correct copy of any such arrangement.

ARTICLE VI

CERTAIN LIMITATIONS ON REPRESENTATIONS AND WARRANTIES

Section 6.1 Certain Limitations. Each of the parties is sophisticated and experienced in complex business transactions and has been advised by knowledgeable counsel and, to the extent it deemed necessary, other advisors in connection with this Agreement. Accordingly, each of the parties hereby acknowledges that there are no

representations or warranties by or on behalf of any party hereto or any of its respective affiliates or representatives other than those expressly set forth in this Agreement.

Section 6.2 Disclosure Schedules. The representations and warranties made in this Agreement by Seller will be deemed for all purposes to be qualified by the applicable disclosures made in the Schedules, whether or not in the case of any particular representation or warranty such representation or warranty refers to the Schedule in which the disclosure is made or to any other Schedule. The inclusion of an item on a Schedule does not constitute an admission that such item is material to Seller's business. From time to time prior to the Closing, Seller shall, by written notice to Purchaser, amend the Schedules hereto relating to the representations and warranties in this Agreement to reflect any matters hereafter arising or which hereafter come to their attention which, if existing, occurring or known to Seller at the date of this Agreement, would in Seller's judgment have been required to be set forth or described in the Schedules to this Agreement.

Section 6.3 Survival of Representations and Warranties.

(a) The representations and warranties of Seller and Purchaser contained in this Agreement and in any certificate or writing delivered pursuant hereto shall not survive the Closing.

(b) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER UNDER ARTICLE V OF THIS AGREEMENT, ALL THE PURCHASED ASSETS TO BE CONVEYED, ASSIGNED, TRANSFERRED AND DELIVERED PURSUANT TO THIS AGREEMENT SHALL BE CONVEYED, ASSIGNED AND TRANSFERRED ON AN "AS IS" AND "WHERE IS" BASIS WITH ALL FAULTS, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, AND WITHOUT ANY RECOURSE AGAINST THE SELLER.

ARTICLE VII

EMPLOYEE MATTERS

Section 7.1 Workers' Compensation & Other Claims. Seller shall be responsible for all workers' compensation, sexual harassment, discrimination and other claims relating to the employees of Seller at the Store Properties arising out of events occurring prior to the Closing Date. Purchaser shall be responsible for all workers' compensation,

sexual harassment, discrimination and other claims relating to the employees of Seller at the Store Properties arising out of events occurring on or after the Closing Date.

ARTICLE VIII

ADDITIONAL COVENANTS

Section 8.1 Approval of this Agreement.

(a) Seller shall use its reasonable best efforts to cause the entry of an order approving this Agreement (the "**Sale Order**") by the Bankruptcy Court as promptly as possible. The Sale Order shall be in form and substance reasonably satisfactory to both Seller and Purchaser and shall, among other things:

(i) approve this Agreement;

(ii) authorize Seller to consummate the transactions contemplated in this Agreement;

(iii) provide that Purchaser shall acquire the Purchased Assets under this Agreement free and clear of all Encumbrances, other than Assumed Liabilities and Permitted Encumbrances;

(iv) provide that Purchaser is not and shall not become, by virtue of the consummation of the transactions contemplated in this Agreement, liable for the Excluded Liabilities;

(v) include a finding that, at the Closing, Purchaser shall acquire the Purchased Assets under this Agreement in "good faith," as that term is used in Section 363(m) of the Bankruptcy Code, and is entitled to the benefits of that section; and

(vi) order that no automatic stay under Rule 62(a) of the Federal Rules of Civil Procedure applies to the Sale Order, and that the parties to this Agreement may cause the Closing to occur as soon as practicable after the entry of the Sale Order.

(b) Purchaser shall use its reasonable best efforts to assist Seller in obtaining the entry of the Sale Order, including providing evidence to show adequate assurance of future performance, as required under Section 365(b)(1)(C) of the Bankruptcy Code.

Section 8.2 Access to Information; Confidentiality.

(a) Upon reasonable advance notice, Seller shall, and shall cause each of its respective officers, directors, employees and other agents to afford the officers, directors, employees and other agents of Purchaser reasonable access during normal business hours to the officers, directors, employees, agents, properties, offices, plants and other facilities of Seller and to all books and records, and shall furnish Purchaser with all financial, operating and other data and information (other than any Alternative Offer received prior to the date hereof) with respect to the Purchased Assets as Purchaser, through its officers, employees or agents may reasonably request. Without limiting the foregoing, Purchaser shall have the right to have reasonable access to the Store Properties in order to conduct, at Purchaser's discretion, Phase I environmental site assessments of any of the Store Properties, which assessments may include the visual inspection of site conditions; review of pertinent records, if available, regarding environmental conditions at the Store Properties; and discussions with relevant employees of Seller regarding environmental conditions. In exercising its rights hereunder, Purchaser shall not interfere with the conduct of the business of Seller prior to Closing. Purchaser shall promptly notify Seller if it becomes aware of any fact or circumstance that would suggest that any representation or warranty made by Seller hereunder is untrue or inaccurate in any material respect.

(b) The Confidentiality Agreement shall remain in full force and effect.

(c) No investigation pursuant to this Section 8.2 shall affect any representations or warranties of the parties herein or the conditions to the obligations of the parties hereto.

Section 8.3 Competing Proposals. *[Depending on the circumstances under which Seller enters into this Agreement, there may be provisions relating to the consideration of competing proposals to purchase Seller's assets. Those provisions will correspond to the Bidding Procedures in the Sale Motion, as they may be amended.]*

Section 8.4 Notification of Certain Matters. Seller shall give prompt notice to Purchaser, and Purchaser shall give prompt notice to Seller, of:

(i) the occurrence or nonoccurrence of any event the occurrence or nonoccurrence of which would be likely to cause any representation or warranty contained in this Agreement to be materially untrue or inaccurate (without giving effect to any limitation as to "materiality" set forth therein);

(ii) any failure of Seller or Purchaser, as the case may be, to comply materially with or satisfy materially any covenant, condition or agreement to be complied with or satisfied by it hereunder; and

(iii) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would have a Material Adverse Effect;

provided, however, that the delivery of any notice pursuant to this Section 8.4 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

Section 8.5 Further Action.

(a) Upon the terms and subject to the conditions hereof, each of the parties hereto shall use its reasonable best efforts to take or cause to be taken all appropriate action and to do or cause to be done all things necessary, proper or advisable under applicable Laws to consummate the transactions contemplated by this Agreement as promptly as practicable, including using its reasonable best efforts:

(i) to obtain all Permits and Consents of Governmental Authorities and parties to contracts with Seller as are necessary for the consummation of the transactions contemplated by this Agreement;

(ii) to fully assign and transfer licenses necessary to conduct businesses and operations as they are and have been conducted at the Store Properties, including the Pharmacy Licenses and the Liquor Licenses; and

(iii) to fulfill the conditions to the Closing.

(b) Each party hereto agrees to cooperate in obtaining any other Consents and approvals that may be required in connection with the transactions contem-

plated by this Agreement; provided, however, that no party hereto shall be required to compensate any third party to obtain any such consent or approval.

Section 8.6 Inspection.

(a) From and after the Closing Date, Purchaser and Seller will each permit the agents, representatives, attorneys and accountants of the other party hereto, at all reasonable times during regular business hours, to inspect and copy, at the expense of such other party, the books, files, records, and accounts of such other party then in its possession relating to periods prior to Closing, for any reasonable purpose including, (i) analysis or verification of amounts payable in respect of Taxes for which Seller is not liable under Section 2.2 hereof, (ii) reconciliation of claims or other liabilities; and (iii) administration of the Chapter 11 Case; provided, however, that any such inspection or copying shall be done so as not to interfere with its business and shall be subject to the terms and conditions of a confidentiality agreement to which such other party and its agents, representatives, attorneys and accountants shall be subject.

(b) From and after the Closing Date, until the earlier of (i) the second anniversary of the Closing Date, and (ii) the date on which Seller advises Purchaser that it no longer requires such assistance, Purchaser shall grant to Seller access to Purchaser's books and records relating to the Purchased Assets and to such Purchaser's personnel as necessary to assist Seller in the Chapter 11 Case, including assisting with the process of investigating and attempting to resolve claims filed in the Chapter 11 Case, and consulting and testifying as necessary.

Section 8.7 Conduct of the Business. Seller agrees that, during the period from the date hereof until the earlier of the Closing or the termination of this Agreement, except as (i) otherwise expressly contemplated hereby, (ii) set forth on Schedule 8.7 (ii) or (iii) consented to by Purchaser in writing, Seller shall use its reasonable efforts to (x) cause its business operations to be conducted in the ordinary course consistent with past practice, and (y) preserve intact its business organization in all material respects and relationships with suppliers, employees and customers.

Section 8.8 Public Announcements. Neither Seller, Purchaser nor any of their respective Affiliates, shall issue or cause the publication of any press release or other public announcement with respect to the transaction contemplated hereby, this Agreement or the other transactions contemplated hereby, without the prior approval of the other party, except for (i) any reference to or discussion of this Agreement that any party reasonably believes should be included with papers filed in the Bankruptcy Court and (ii)

such disclosure as required by Law or by any listing agreement with a national securities exchange; provided, that if such disclosure is required by Law, then Seller, Purchaser or any of their respective Affiliates, shall use their reasonable efforts to consult with the other party prior to making such disclosure.

Section 8.9 Filings and Authorizations; Including HSR Act Filing.

(a) Purchaser and Seller shall promptly file all necessary registrations and filings, including, but not limited to, filings under the HSR Act and submissions of additional information requested by any Governmental Authority. Both Purchaser and Seller further agree that they will, and will cause their respective Affiliates to, comply with any applicable post-Closing notification requirements of any antitrust, trade competition, investment or control reporting or similar law or regulation of any Government Authority with competent jurisdiction. Both Purchaser and Seller agree to cooperate with and promptly to consult with, to provide any reasonably available information with respect to, and to provide, subject to appropriate confidentiality provisions, copies of all presentations and filings to any Governmental Authority to the other party or its counsel.

(b) In addition to the covenants set forth in (a) above, Purchaser shall use its best efforts to ensure that the consents, approvals, waivers or other authorizations from Governmental Authorities, including antitrust clearance under the HSR Act, are obtained as promptly as practicable and that any conditions established by any such Governmental Authorities are wholly satisfied. In fulfillment of this covenant, Purchaser agrees, among other steps or actions and without limiting the scope of Purchaser's obligations, to:

(i) offer and agree to an order providing for the divestiture by Purchaser and its Affiliates of such properties, assets, operations or businesses of Purchaser and such properties, assets, or operations of the Seller as are necessary to permit Purchaser fully to complete the transactions contemplated by this Agreement;

(ii) offer and agree to hold separate such properties, assets, operations or business, pending the satisfaction or termination of any such conditions, restrictions or agreements affecting the Purchaser's full rights of ownership of Seller (or any portion thereof) as may be necessary to permit Purchaser fully to complete the transactions contemplated by this Agreement;

(iii) satisfy any additional conditions imposed by Governmental Authorities with respect to the acquisition of Seller; and

(iv) oppose fully and vigorously any litigation relating to this Agreement or the transactions contemplated hereby, including to appeal promptly any adverse decision or order by any Governmental Authority or, if reasonably requested by Seller, to commence or threaten to commence and to pursue vigorously litigation reasonably believed by Seller to be helpful in obtaining authorization from Governmental Authorities or in terminating any outstanding proceedings; it being understood that the costs and expenses of all such legal action shall be borne by Purchaser.

Section 8.10 Cure of Defaults. On or before the Closing Date, Seller will pay or provide for all amounts that must be paid under Sections 365(b)(1)(A)-(B) of the Bankruptcy Code, in the manner directed or approved by the Bankruptcy Court in the Sale Order, to permit Seller to assume and assign to Purchaser each Lease, Purchased Contract, and other agreement to be assigned to Purchaser under this Agreement.

ARTICLE IX

CONDITIONS TO THE CLOSING

Section 9.1 Conditions to Obligations of Purchaser. The obligations of Purchaser to effect the Closing shall be subject to the prior and/or simultaneous fulfillment or written waiver by Purchaser of each of the following conditions:

(a) Entry of Sale Order. The Sale Order shall have been entered within ninety (90) days after the date hereof, shall have become a Final Order, shall be in full force and effect on the Closing Date, and shall be in form and substance reasonably acceptable to Purchaser. Notwithstanding the foregoing, Purchaser may waive the requirement that the Sale Order be a Final Order and may cause the Closing to occur at any time after the Sale Order's entry, so long as on the Closing Date (i) all other conditions to Closing are satisfied or waived, and (ii) the Sale Order is in full force and effect and is not the subject of a stay.

(b) Representations and Warranties; Covenants.

(i) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except that to the extent such representations and warranties expressly speak as of an earlier date, such representations and warranties shall be true in all respects as of such specified date), and Purchaser shall have received a certificate signed on behalf of Seller by the chief executive officer and the chief financial officer of Seller to such effect.

(ii) Seller shall have performed in all material respects all of the obligations, covenants and agreements required to be performed by it under this Agreement at or prior to the Closing Date and Purchaser shall have received a certificate signed on behalf of Seller by the chief executive officer and the chief financial officer of Seller to such effect.

(c) HSR Act. The applicable waiting period (and any extension thereof) under the HSR Act shall have expired or been terminated. Seller and Purchaser shall have received all consents or approvals and made all applications, requests, notices and filings with any Person or Governmental Authority required to be obtained or made in connection with the consummation of the transactions contemplated by this Agreement.

(d) No Order. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other Governmental Order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions or which would otherwise materially adversely affect or interfere with the operation of the business following Closing; provided, however, that the parties hereto shall use all reasonable best efforts to have any such order or injunction vacated.

(e) No Material Adverse Change. Since the date of this Agreement, no events or changes have occurred that constitute or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Change.

(f) Closing Deliveries. Seller shall have delivered or caused to be delivered to Purchaser each of the items listed in Section 10.2 hereof.

(g) This Agreement shall not have been terminated pursuant to Article XI.

(h) Seller shall have entered into the Assumption Agreement and the Bill of Sale, and the Assumption Agreement and the Bill of Sale shall be in full force and effect.

Section 9.2 Conditions to Obligations of Seller. The obligations of Seller to effect the Closing shall be subject to the prior and/or simultaneous fulfillment or written waiver by Seller of each of the following conditions:

(a) Entry of the Sale Order. The Sale Order shall have been entered, shall have become a Final Order, and shall be in full force and effect on the Closing Date. The Sale Order shall be in form and substance reasonably acceptable to Seller and shall provide, among other things, that as of the Closing, Seller shall have no further obligations under the Leases, Purchased Contracts, or any other agreement assumed and assigned to Purchaser under this Agreement. Purchaser may waive the requirement that the Sale Order be a Final Order, as provided in Section 9.1(a) above.

(b) Representations and Warranties; Covenants.

(i) The representation and warranties of Parent and Purchaser set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except that to the extent such representations and warranties expressly speak as of an earlier date, such representations and warranties shall be true in all respects as of such specified date).

(ii) Parent and Purchaser shall each have performed in all material respects all of the obligations, covenants and agreements required to be performed by Parent and Purchaser under this Agreement at or prior to the Closing Date and Seller shall have received a certificate signed on behalf of Purchaser by the chief executive officer and the chief financial officer of Purchaser to such effect.

(c) HSR Act. The applicable waiting period (and any extension thereof) under the HSR Act shall have expired or been terminated. Seller and Purchaser shall have received all consents or approvals and made all applications, requests, notices and filings with any Person or Governmental Authority required to be obtained or made in connection with the consummation of the transactions contemplated by this Agreement.

(d) No Order. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation or other Governmental Order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this agreement illegal or otherwise restraining or prohibiting consummation of such transactions; provided, however, that the parties hereto shall use all reasonable best efforts to have any such order or injunction vacated.

(e) This Agreement shall not have been terminated pursuant to Article XI.

(f) Purchaser shall have entered into the Assumption Agreement and Bill of Sale, and the Assumption Agreement and Bill of Sale shall be in full force and effect.

ARTICLE X

CLOSING

Section 10.1 Closing. The closing (the "**Closing**") of the transactions contemplated in this Agreement shall take place as soon as practicable after the satisfaction or waiver of each of the conditions set forth in Article IX (the "**Closing Date**") at the offices of Seller in Albuquerque, New Mexico, or at such other time and place as the parties may agree.

Section 10.2 Deliveries at Closing by Seller. At the Closing, Seller shall properly execute (if necessary) and deliver (or cause to be delivered) to Purchaser:

- (a) A Bill of Sale.
- (b) The Assumption Agreement.
- (c) A special warranty deed (or the equivalent thereof) for each Owned Real Property parcel, in recordable form, duly executed and acknowledged by Seller, and sufficient to convey to Purchaser, fee simple ownership of the Owned Real Property free and clear of all Encumbrances except for Permitted Encumbrances.
- (d) An assignment of lease for each Lease, in recordable form, duly executed and acknowledged by Seller, and sufficient to convey to Purchaser, Seller's right, title and interest in and to each Lease, free and clear of all Encumbrances except for Permitted Encumbrances.
- (e) All forms and returns required in connection with the payment of Transfer Taxes and of recording the deeds.
- (f) FIRPTA affidavit affirming that Seller is not a "foreign person."
- (g) An assignment for each Purchased Contract, Equipment Lease and other agreement to be assigned to Purchaser hereunder, in the form and substance agreed by the parties and the applicable lessors.
- (h) A file-stamped copy of the Sale Order and a copy of the docket sheet for the Chapter 11 Case showing its entry.
- (i) The certificates of Seller referred to in Section 9.1(b) hereof.
- (j) A cross-receipt acknowledging receipt of the Initial Purchase Price.
- (k) An executed power of attorney regarding the Pharmacy Licenses in the form attached hereto as Exhibit G.
- (l) An executed lease regarding the Liquor Licenses in the form attached hereto as Exhibit H.

(m) Such other documents and instruments as are contemplated in this Agreement or as Purchaser or Purchaser's counsel may reasonably request in order to evidence or consummate the transactions contemplated by this Agreement or to effectuate the purpose or intent of this Agreement.

Section 10.3 Deliveries at Closing by Purchaser. At the Closing, Parent shall, or shall cause Purchaser to, execute (if necessary) and deliver (or caused to be delivered) to Seller:

(a) The Cash Consideration and the Store Cash amount, as provided in Section 4.2.

(b) The executed Assumption Agreement.

(c) The executed Bill of Sale.

(d) The certificate of Purchaser referred to in Section 9.2(b)(ii) hereof.

(e) A cross-receipt acknowledging receipt of the Purchased Assets.

(f) An executed power of attorney regarding the Pharmacy Licenses in the form attached hereto as Exhibit G.

(g) An executed lease regarding the Liquor Licenses in the form attached hereto as Exhibit H.

(h) Such other documents and instruments as are contemplated in this Agreement or as Seller or Seller's counsel may reasonably request in order to evidence or consummate the transactions contemplated by this Agreement or to effectuate the purpose or intent of this Agreement.

ARTICLE XI

TERMINATION, AMENDMENT AND WAIVER

Section 11.1 Termination. Notwithstanding anything herein to the contrary, this Agreement may be (and, in the case of Section 11.1(d) will be) terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

- (a) by mutual written consent of Purchaser and Seller;
- (b) by Purchaser if the board of directors of Seller determines, in good faith, after consultation with outside counsel, and evidenced by a duly adopted board resolution, that, in order to comply with its fiduciary duties under applicable Law, it is required to and does enter into, execute and deliver a definitive agreement with respect to an Alternative Offer;
- (c) by Purchaser or Seller if the Bankruptcy Court, another court of competent jurisdiction, or another Governmental Authority shall have issued an order, decree, ruling or taken any other action restraining, enjoining or otherwise prohibiting the purchase of the Purchased Assets on the terms and conditions contained herein and such order, decree, ruling or other action shall become a Final Order or otherwise have become final;
- (d) automatically, without any further action by either party, if the Sale Order shall not have been entered by the Bankruptcy Court on or prior to [July 31], 2001;
- (e) by either Seller or Purchaser if the Closing shall not have occurred on or before [August 31], 2001 (the "**Outside Date**"); provided, however, that the right to terminate this Agreement under this Section 11.1(e) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing or the failure of the Sale Order to have been entered or to have become a Final Order on or before the Outside Date;
- (f) by Seller if Seller accepts an Alternative Offer;
- (g) by Purchaser upon the entry of a Bankruptcy Court order converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code;
- (h) by Seller (provided that it is not in material breach of any representation, warranty or covenant or other agreement contained herein) if there is a material breach by Purchaser of any representation or warranty of Purchaser under this Agreement, which breach is not cured within seven (7) days following written notice to Purchaser; or

(i) by Purchaser (provided that it is not in material breach of any representation, warranty or covenant or other agreement contained herein) if there is a material breach by Seller of any representation or warranty of Seller under this Agreement, which breach is not cured within seven (7) days following written notice to Seller.

Section 11.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 11.1, this Agreement shall forthwith become void and have no effect and there shall be no liability on the part of any party hereto or its Affiliates, directors, officers, shareholders, or agents, except under Sections 8.3, 8.9 and 11.3.

Section 11.3 Termination Payment; Expenses.

(a) In the event that this Agreement is terminated as a result of a material breach of this Agreement by Purchaser or Parent, or the Closing fails to occur by the Outside Date as a result of a breach by Purchaser or Parent, and provided that there is no material breach by Seller of any of its representations and warranties under this Agreement, then the Purchase Price Escrow Agent shall release the Purchase Price

transaction fails to close for any other reason, the Purchase Price Escrow Agent shall release the Purchase Price Escrow Amount to the Purchaser.

(b) In no event shall Seller be liable for any punitive or consequential

(a) agrees that any action or proceeding arising out of or relating to this Agreement shall be heard and determined in Bankruptcy Court;

(b) irrevocably submits to the jurisdiction of such court in any such action or proceeding;

(c) consents that any such action or proceeding may be brought in such court and waives any objection that such party may now or hereafter have to the venue or jurisdiction or that such action or proceeding was brought in an inconvenient court; and

(d) agrees that service of process in any such action or proceeding may be effected as provided in Bankruptcy Rule 7004.

Section 12.3 Notices. Any and all notices, requests, demands and other communications permitted under or required pursuant to this Agreement shall be in writing and shall be deemed given if personally delivered, faxed, mailed, postage prepaid, certified or registered mail, return receipt requested, to the parties at the addresses set forth below, or at such other addresses as they may indicate by written notice given as provided in this Section 12.3:

If to Purchaser:

With required copies to:

[]

[]

If to Seller:

With required copies to:

Furr's Supermarkets, Inc.
4411 The 25 Way N.E. Suite 100
Albuquerque, New Mexico 87109
Attention: Mr. Steven L. Mortensen
Tel: 505-761-0802
Fax: 505-944-2692

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Howard Ellin, Esq.
Tel: 212-735-3000
Fax: 212-735-2000

Section 12.4 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

Section 12.5 Successors and Assigns; Binding Effect. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, including, by operation of law, by any party hereto without the prior written consent of the other parties hereto. Subject to the preceding sentence, this Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 12.6 Entire Agreement. This Agreement and the Confidentiality Agreement, including any exhibits or schedules hereto, constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements or understandings, both written and oral, between the parties or any of them with respect to the subject matter hereof. The only representations and warranties made by the parties hereto with respect to the subject matter hereof are the representations and warranties contained in or made pursuant to this Agreement.

Section 12.7 Tax Matters. Purchaser shall pay all Transfer Taxes, if any, imposed on the transfer of the Purchased Assets to the extent not exempt from payment under Section 1146(c) of the Bankruptcy Code.

Section 12.8 Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received counterparts hereof signed by all of the other parties hereto.

Section 12.9 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provision of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated herein is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

Section 12.10 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to create any third party beneficiaries.

Section 12.11 Amendments, Modification and Waiver.

(a) Except as may otherwise be provided herein, any provision of this Agreement may be amended, modified or waived by the parties hereto through a written instrument executed by each of the parties.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 12.12 Further Assurances. From time to time after the Closing Date, at Purchaser's request and without further consideration, but at Purchaser's expense, Seller shall execute and deliver or cause to be executed and delivered such further instruments of conveyance, assignment and transfer and shall take such other action as Purchaser may reasonably request in order more effectively to convey, transfer, reduce to possession or record title to any of the Purchased Assets purchased pursuant to this Agreement. On Purchaser's request, Seller shall cooperate and use its best efforts to have its officers, directors, employees and agents cooperate with Purchaser on or after the Closing Date by furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings, arrangements or disputes involving Purchaser and which are based on contracts, leases, arrangements or acts of Seller which were in effect or occurred on or prior to the Closing Date. Purchaser shall reimburse Seller, as is appropriate, for the reasonable out-of-pocket expenses, which it incurs in connection with such cooperation.

Section 12.13 Guaranty. Subject to the terms of this Agreement, Parent hereby irrevocably and unconditionally guarantees the performance by the Purchaser of its obligations under this Agreement at all times. Parent hereby agrees that this guarantee is unconditional, and no release or extinguishment of Purchaser's obligations or liabilities (other than in accordance with the terms of this Agreement), whether by decree in bankruptcy or otherwise, shall affect the continuing validity or enforceability of this guarantee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly authorized officers as of the day and year first written above.

FURR'S SUPERMARKETS, INC.

By: _____
Name:
Title:

[PURCHASER]

By: _____
Name:
Title:

[PARENT]

By: _____
Name:
Title: