

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>DAVID L. NEALE (SBN 141225) TODD M. ARNOLD (SBN 221868) LEVENE, NEALE, BENDER, YOO & BRILL L.L.P. 10250 Constellation Boulevard, Suite 1700 Los Angeles, California 90067 Telephone: (310) 229-1234; Facsimile: (310) 229-1244 Email: dln@lnbyb.com, tma@lnbyb.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Chapter 11 Debtor</p>	<p>FOR COURT USE ONLY</p>
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

<p>In re: VINAMEX SUPERMARKET, LLC,</p> <p style="text-align: right;">Debtor(s).</p>	<p>CASE NO.: 8:15-bk-13189-MW CHAPTER: 11</p> <p style="text-align: center;">NOTICE OF SALE OF ESTATE PROPERTY</p>
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<p>Sale Date: 2/29/16 Bid Deadline; 3/7/16 Auction and Sale Hearing</p>	<p>Time: See Attached for Other Dead</p>
<p>Location: Courtroom 6C, 411 West Fourth Street, Santa Ana, CA 92701</p>	

Type of Sale: Public Private **Last date to file objections:** 2/22/16

Description of property to be sold:
Substantially all of the Debtor's assets related to the operation of a supermarket. See Attached APA for Specific Information.

Terms and conditions of sale:
See Attached

Proposed sale price: \$ 2,000,000.00

Overbid procedure (if any):

See Attached

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

DATE: March 7, 2016

TIME: 2:00 p.m.

PLACE: Courtroom 6C

411 West Fourth Street

Santa Ana, CA 92701

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Gregg Yorkison

C.Y.G.

12081 Brookhurst St.

Garden Grove, CA 92840-2814

gregg@clareyorkgroup.com

310.463.3378

Date: 02/15/2016

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On *(date)* _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 15, 2016**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On **February 15, 2016**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **February 15, 2016**, I caused to be served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

Served via attorney service or Overnight Mail

The Hon. Mark S. Wallace
United States Bankruptcy Court
411 West Fourth Street, Suite 6135 / Courtroom 6C
Santa Ana, CA 92701-4593

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

February 15, 2016
Date

Todd Arnold
Type Name

/s/ Todd Arnold
Signature

8:15-bk-13189-MW Notice will be electronically mailed to:

1 Todd M Arnold on behalf of Attorney Levene Neale Bender Yoo & Brill LLP
2 tma@lnbyb.com

3 Todd M Arnold on behalf of Debtor Vinamex Supermarket, LLC
4 tma@lnbyb.com

5 Glenn Besnyl on behalf of Interested Party Courtesy NEF
6 gab1law@msn.com

7 J Scott Bovitz on behalf of Creditor U.S. TelePacific Corp.
8 bovitz@bovitz-spitzer.com

9 Ronald Clifford on behalf of Attorney Ronald Clifford
10 rclifford@blakeleyllp.com, ecf@blakeleyllp.com;seb@blakeleyllp.com;info@ecf.inforuptcy.com

11 Ronald Clifford on behalf of Attorney Scott E Blakeley
12 rclifford@blakeleyllp.com, ecf@blakeleyllp.com;seb@blakeleyllp.com;info@ecf.inforuptcy.com

13 Ronald Clifford on behalf of Creditor Committee Committee Of Unsecured Creditors
14 rclifford@blakeleyllp.com, ecf@blakeleyllp.com;seb@blakeleyllp.com;info@ecf.inforuptcy.com

15 Fredric Glass on behalf of Creditor Fair Harbor Capital, LLC
16 fglass@fairharborcapital.com

17 Michael J Hauser on behalf of U.S. Trustee United States Trustee (SA)
18 michael.hauser@usdoj.gov

19 Yale K Kim on behalf of Interested Party Courtesy NEF
20 ykim@allenmatkins.com, lpanderson@allenmatkins.com

21 Maxim B Litvak on behalf of Interested Party Vinamex Investors, LLC
22 mlitvak@pszjlaw.com

23 David L. Neale on behalf of Debtor Vinamex Supermarket, LLC
24 dln@lnbyb.com

25 David L Prince on behalf of Creditor Pacific American Fish Co., Inc.
26 dlp@redchamber.com

27 Miles L Prince on behalf of Creditor Pacific American Fish Co., Inc.
28 miles@redchamber.com, miles@redchamber.com

Jeremy V Richards on behalf of Interested Party Vinamex Investors, LLC
jrichards@pszjlaw.com, bdassa@pszjlaw.com;imorris@pszjlaw.com

Dheeraj K Singhal on behalf of Creditor Rosa H Duong
dksinghal@dcdmlawgroup.com

Dheeraj K Singhal on behalf of Interested Party Courtesy NEF
dksinghal@dcdmlawgroup.com

Ryan A Stubbe on behalf of Creditor Rosa H Duong
nef.rstubbe@gmail.com, rstubbe@dcdmlawgroup.com

United States Trustee (SA)
ustpreion16.sa.ecf@usdoj.gov

Andrew F Whatnall on behalf of Creditor DACA VI LLC
awhatnall@daca4.com

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1 DAVID L. NEALE (SBN 141225)
2 TODD M. ARNOLD (SBN 221868)
3 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
4 10250 Constellation Boulevard, Suite 1700
5 Los Angeles, California 90067
6 Telephone: (310) 229-1234; Facsimile: (310) 229-1244
7 Email: dln@lnbyb.com, tma@lnbyb.com

8 Attorneys for Chapter 11 Debtor and Debtor in Possession

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11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SANTA ANA DIVISION**
14

15 In re

16 VINAMEX SUPERMARKET, LLC,

17 Debtor in Possession.

Case No. 8:15-bk-13189-MW

Chapter 11

**NOTICE OF MOTION AND MOTION FOR AN
ORDER (1) AUTHORIZING THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR'S
ASSETS FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND INTERESTS;
(2) AUTHORIZING THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES; AND
(3) GRANTING RELATED RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS IN
SUPPORT THEREOF**

Hearing:

DATE: March 7, 2016

TIME: 2:00 p.m.

PLACE: Courtroom 6C

411 West Fourth Street
Santa Ana, CA 92701

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24 **PLEASE TAKE NOTICE** that a hearing will be held at the above-referenced date, time,
25 and location to consider this motion (the "Sale Motion") by Vinamex Supermarket, LLC, the
26 debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the
27 "Debtor"), for an order:
28

1 (1) granting the Sale Motion in its entirety,
2 (2) authorizing the sale of substantially all of the debtor's assets (the "Purchased
3 Assets") free and clear of all liens, claims, encumbrances, and interests to Vinamex Investors,
4 LLC, a California limited liability company ("Vinamex Investors") for a purchase price (the
5 "Purchase Price") of \$2 million comprised of (a) Vinamex Investors' assumption of the Debtor's
6 obligations under that certain Super Priority Administrative Expense Debtor-In-Possession Loan
7 Agreement, as amended (the "DIP Loan"), together with all interest, fees, and costs associated
8 therewith, totaling \$1,248,000, (b) minus the sum of \$148,000 for cash deposits posted by the
9 Debtor with third parties, which deposits are included within the Purchased Assets, and (c) plus
10 \$900,000 cash, pursuant to the terms of the Asset Purchase Agreement (the "APA") attached
11 hereto as **Exhibit "1"** or to an entity or individual (a "Successful Over Bidder") that submits a
12 bid meeting the requirements for submitting competing bids pursuant to the bidding procedures
13 (the "Bid Procedures") approved by an order the Court (the "Bid Procedures Order"), whose bid
14 is selected by the Debtor as the highest and best offer for the Purchased Assets at the auction (the
15 "Auction") for the purchased assets to be held immediately prior to the hearing on this Sale
16 Motion;

17 (3) finding and holding that the Debtor complied with the requirements and
18 conditions set forth in the Bid Procedures Order;

19 (4) finding and holding that Purchase Price represents the fair market value for the
20 Purchased Assets;

21 (5) finding and holding that Vinamex Investors or a Successful Over Bidder, as
22 appropriate, is not a continuation of the Debtor or otherwise liable for any Liabilities¹ of the
23 Debtor based on successor liability or similar theories,

24 (6) finding and holding that the Purchased Assets are being purchased by Vinamex
25 Investors or a Successful Over Bidder, as appropriate, in good faith and the Purchase Price was
26

27 ¹ Capitalized terms not otherwise defined herein have the same meanings as in the APA.
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1 not controlled by an agreement among potential bidders and otherwise complies with the
2 requirements of Section 363(m) of 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”)-²

3 (7) approving the APA (and all other Transaction Documents) between the Debtor
4 and Vinamex Investors or the asset purchase agreement between the Debtor and any Successful
5 Over Bidder (and all other related transaction documents) in their entirety,

6 (8) finding and holding that the Purchased Assets are sold and conveyed to Vinamex
7 Investors or a Successful Over Bidder, as appropriate, free and clear of any and all Liens and,
8 other than any Assumed Liabilities, all Liabilities of the Debtor, encumbrances, restrictions, and
9 limitations pursuant to Section 363(b) and (f),

10 (9) approving the cure amounts (the “Cure Amounts”) set forth in **Exhibit “2”** hereto
11 for the Contracts that have been designated an Assumed Contracts by Vinamex Investors and
12 deeming the failure of a counter-party to a particular Assumed Contract to object to the proposed
13 Cure Amount and assumption and assignment to be a waiver of such objection;

14 (10) finding and holding that the Assumed Contracts are assumed and assigned to
15 Vinamex Investors or a Successful Over Bidder, as appropriate, pursuant to Section 365 or such
16 other appropriate sections of the Bankruptcy Code and approving such assumption and
17 assignment,

18 (11) finding and holding that Vinamex Investors or a Successful Over Bidder, as
19 appropriate, shall not be liable or obligated for any Liability (other than any Assumed Liability),
20 Liens, interests, damages, costs, expenses, claims or demands arising from or relating to the pre-
21 Closing ownership or operation of the Purchased Assets,

22 (12) waiving the 14-day stay periods set forth in Federal Rules of Bankruptcy
23 Procedure (“FRBP”) 6004(h) and 6006(d),

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² Unless otherwise stated, all Section references herein are to the Bankruptcy Code.

1 (13) authorizing the Debtor, Vinamex Investors or a Successful Over Bidder, as
2 appropriate, and all other parties in interest to take any and all necessary actions required to
3 consummate the sale of the Purchased Assets as contemplated by the APA, and

4 (14) granting related relief as appropriate under the circumstances.

5 **PLEASE TAKE FURTHER NOTICE** that this Sale Motion is based on this Notice of
6 Motion and Sale Motion, the annexed memorandum of points and authorities and declarations
7 in support of the Sale Motion, all other papers filed in support of the Sale Motion, the entire
8 record in the Debtor's bankruptcy case, and the arguments and comments of counsel made at
9 the hearing on the Sale Motion.

10 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule
11 ("LBR") 9013-1(f), any opposition to the Sale Motion must (1) be in writing and include all
12 reasons and evidence in support of the opposition, (2) be filed at least fourteen (14) days prior to
13 the hearing on the Sale Motion, and (3) be served on the United States Trustee, and counsel for
14 the Debtor, counsel for the Official Committee of Unsecured Creditors (the "Committee").

15 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(h), the Court
16 may deem the failure of any party to file a timely opposition to the Sale Motion to constitute
17 consent to the granting of the Sale Motion and the relief requested herein.

18 Dated: February 15, 2016

VINAMEX SUPERMARKET, LLC

19 By: /s/ David L. Neale
20 DAVID L. NEALE
21 TODD M. ARNOLD
22 LEVENE, NEALE, BENDER, YOO
& BRILL L.L.P.
23 Attorneys for Debtor and
24 Debtor in Possession
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MEMORANDUM OF POINTS AND AUTHORITIES³

I.

STATEMENT OF FACTS

A. QINGFU XU AND AFFILIATED ENTITIES

The proposed buyer of the Purchased Assets, Vinamex Investors, which is also the lender on the DIP Loan, is arguably an “insider,” as defined under Section 101(31). Therefore, in the interest of full disclosure, the Debtor provides the following information regarding Qingfu Xu (“Xu”) and a number of his affiliated entities that are referenced in this Sale Motion. Those entities are as follows:

- Goldstone Management, LLC (“Goldstone”) – Xu is the sole member and manager of Goldstone. Goldstone is currently a single purpose entity. Goldstone’s sole asset is its Class A Membership Units in the Debtor, which Goldstone obtained on Xu’s behalf as consideration for Xu’s efforts through A&J Capital Investment Inc. (“A&J Capital”) in obtaining EB-5 Program investors for the Debtor.

- A&J Capital – Xu is the sole shareholder and the President and Chief Executive Officer of A&J Capital. A&J Capital is a commercial real estate and private equity management firm headquartered in Los Angeles. A&J Capital is involved in the EB-5 Program. A&J Capital often serves as a fiduciary for EB-5 Program investors and assists in negotiating and structuring investments for EB-5 Program investors in the United States, as it did for the Debtor.

A separate Management Agreement entered March 26, 2014 established Pan-Asia Consulting Ltd. (“Pan-Asia”) as the Class B Manager of the Debtor. The Management Agreement bestows upon the Class B Manager the authority to act on behalf of the Class B Members. In April 2014, A&J Capital was appointed the Class B Manager’s Authorized Agent, and was delegated the power to exercise and assume

³ Vinamex Investors APA provides that the hearing on the Sale Motion has to be held by no later than March 11, 2016. Stalking Horse APA, § 5.2(b)(vi).

1 certain of the rights and powers of the Class B Manager.

2 • Vinamex Investors – Xu is the sole member and manager of Vinamex
3 Investors. Vinamex Investors was created in February 19, 2015 for reasons unrelated to
4 the Debtor. Vinamex Investors was previously named AJ Glendale APT, LLC but
5 changed its name to Vinamex Investors on or about June 22, 2015. Vinamex Investors
6 currently has no business purpose other than funding the post-petition DIP Financing and
7 potentially acquiring substantially all of the Debtor’s assets pursuant to the APA.

8 Aside from Xu’s relationship through the Debtor, Xu has no prior relationship with Rosa
9 Duong (“Duong”) or Peter Nguyen (“Nguyen”), two of the other purported Class A Members of
10 the Debtor. Xu previously met Richard Chhor (“Chhor”), the other purported Class A Member
11 of the Debtor, in 2012 when Chhor approached Xu about a possible restaurant venture, but such
12 discussions did not lead to any transaction. Xu has no other current or prior personal or
13 professional relationships with Duong, Nguyen, or Chhor.

14 Duong, Nguyen, and Chhor never had, and currently do not have, any ownership or other
15 interest in, and have at all times been wholly unaffiliated with, Vinamex Investors, A&J, and
16 Goldstone.⁴

17 Prior to this bankruptcy case, Xu and his affiliated entities had no prior relationship with
18 Gregg Yorkison (“Yorkison”), who was retained as the Debtor’s Chief Restructuring Officer just
19 one day before the filing of the Debtor’s Bankruptcy Case.

20 **B. BACKGROUND AND CASE FILING**

21 On April 8, 2013, the Debtor was formed to own, operate, and manage a supermarket
22 (the “Supermarket”) in Garden Grove, California that would specialize in the sale of Asian and
23 Mexican products and allow the Debtor to generate additional income from the sublease of stalls
24 to third parties for the operation of small food vendor and consumer goods shops. Another
25

26 ⁴ The information above in this §I.A is based on the supplemental declaration of Xu (the “Xu Declaration”) filed
27 on July 8, 2015 [Dkt. 51] A true and correct copy of the Xu Declaration, without exhibits, is attached hereto as
28 **Exhibit “7.”**

1 objective of the Debtor was to serve as an investment and job-creation vehicle for foreign
2 nationals seeking lawful permanent residency through the EB-5 Program.

3 As more fully set forth in the Debtor's Second Amended Disclosure Statement
4 Describing Debtor's Second Amended Plan Dated February 9, 2016 (the "SADS") [Dkt. 311],
5 the Debtor suffered from mismanagement and was severely undercapitalized when it opened the
6 Supermarket in February 2015. Ultimately, the Debtor was unable to pay its debts as they came
7 due. Based on the foregoing, and for other reasons set forth in the SADS, the Debtor decided to
8 file for bankruptcy protection in an effort to reorganize for the benefit of all creditors.

9 On June 24, 2015 (the "Petition Date"), the Debtor commenced its bankruptcy case by
10 filing a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor is managing
11 its financial affairs as a debtor in possession pursuant to Sections 1107 and 1108. On July 27,
12 2015, the Office of the United States Trustee formed the Committee.

13 The Debtor has no known secured creditors. On June 23, 2015, the day before the
14 Petition Date, the Debtor, through its counsel, requested a search from the California Secretary
15 of State identifying any liens against the Debtor. Attached hereto as **Exhibit "3"** is the Search
16 Certificate provided by the California Secretary of State certifying that, as of June 18, 2015,
17 there were no "no active financing statements, tax liens, attachment liens, or judgment liens on
18 file [with the Secretary of State] reflecting the above Debtor." The Debtor is not aware of any
19 liens having been placed against the Debtor after June 18, 2015 and any liens placed in the
20 Debtor after the Petition Date would be void *ab initio* as violations of the automatic stay of
21 Section 362 (or, at a minimum, avoidable under Section 549). *In re Schwartz*, 954 F.2d 569 (9th
22 Cir. 1993).

23
24 **C. POST-BANKRUPTCY EVENTS, OPERATIONS, AND EFFORTS TO**
REORGANIZE AROUND AN OPERATING BUSINESS

25 **1. THE CLOSURE OF THE SUPERMARKET**

26 As noted, Yorkison was retained as the Debtor's Chief Restructuring Officer on June 23,
27 2015, one day before the Petition Date of June 24, 2015. On June 25, 2015, Yorkison's
28

1 associate, Shanon Slack went to the Debtor's Supermarket and, due to chaos and confusion
2 threatening business operations and creating the potential for theft, at the direction of Yorkison,
3 closed the store, re-keyed exterior doors, and hired on-site security. As further discussed below,
4 the Supermarket was reopened on September 3, 2015 after the Debtor obtained Court authority
5 to obtain funding under the post-petition DIP Loan from Vinamex Investors required to stock the
6 Supermarket and fund operations.

7 **2. THE DIP LOAN**

8 **a. The Initial DIP Loan**

9 In consideration of the Debtor's inability to pay claims as they come due solely from the
10 Debtor's revenue and the need for additional working capital required to reopen the
11 Supermarket, immediately after the Petition Date, the Debtor filed a motion (the "Original DIP
12 Financing Motion") seeking Court approval to obtain up to \$1 million in debtor-in-possession
13 financing (*i.e.*, the DIP Loan) to be provided by Vinamex Investors pursuant to the terms of the
14 Senior Secured Super-Priority Debtor-In-Possession Loan Agreement (as amended,
15 supplemented, restated, or otherwise modified from time to time, the "Original DIP Loan
16 Agreement") between the Debtor and Vinamex Investors. [Dkt. 8] Pacific American Fish filed
17 an opposition to the DIP Financing Motion.

18 On June 29, 2015, the Court held a preliminary hearing on the Original DIP Financing
19 Motion. On July 2, 2015, the Court entered an interim order, (1) approving the DIP Loan in an
20 amount up to \$250,000 on a limited basis with the amount loaned to be entitled to administrative
21 priority *pari pasu* with other administrative claims (but no security interest or lien), (2) requiring
22 a declaration providing additional information regarding Xu, Vinamex Investors, all relationships
23 among and between Xu, Vinamex Investors, the Debtor, Goldstone, Duong, Chhor, Nguyen, and
24 the failure of Duong, Chhor, and Nguyen to make their required capital contributions to the
25 Debtor, and (3) setting a final hearing for July 20, 2015 (the "Interim Financing Order"). [Dkt.
26 40]

1 On July 8, 2015, the Debtor filed a supplemental declaration of Xu (the “Xu
2 Declaration”) with the information required by the Interim Financing Order, as well as other
3 relevant information. [Dkt. 51] A true and correct copy of the Xu Declaration, without exhibits,
4 is attached hereto as **Exhibit “7.”** Notwithstanding this additional information, Pacific
5 American Fish again objected to the approval of the DIP Loan on a final basis, raising concerns
6 about the relationship between Vinamex Investors and the Debtor, among other things. [Dkt. 58]

7 On July 17, 2015, the Court *sua sponte* entered an order (1) raising questions and
8 concerns regarding the connections and relationships by and among Xu, Vinamex Investors, the
9 Debtor, Goldstone, and A&J Capital, Duong, Chhor, Nguyen, (2) raising questions and concerns
10 regarding when and how A&J Capital became aware that Duong, Chhor, and Nguyen failed to
11 make their required capital contributions to the Debtor, (3) suggesting that the formation and
12 input of a committee of unsecured creditors would be helpful in considering and determining
13 final approval of the Original Motion, (4) continuing the final hearing on the Original DIP
14 Financing Motion to November 16, 2015, and (5) noting that the Court understood that the
15 continuance of the hearing could result in continued nonoperation of the Supermarket and
16 warning that if nonoperation results in substantial or continuing loss to or diminution of the
17 estate and the absence of a reasonable likelihood of rehabilitation, that there could be grounds
18 for converting or dismissing the Bankruptcy Case (the “First Sua Sponte Financing Order”).
19 [Dkt. 63] For this reason, the Debtor knew it was crucial (1) for the Plan confirmation process to
20 move forward as expeditiously as possible, otherwise the Debtor, the Estate, and, most
21 importantly, creditors and Class B Members, whose visas hang in the balance, might not obtain
22 the benefits of the Plan outlined in this Disclosure Statement and (2) that the Debtor renew its
23 request to obtain the full \$1 million DIP Loan so that the Debtor could reopen its Supermarket.

24 Pursuant to the First Interim Financing Order, Vinamex Investors provided \$250,000 of
25 the proposed \$1 million DIP Loan to the Debtor (the “Initial DIP Financing”).
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1 **b. The First and Second Increases in the DIP Loan**

2 The Committee was formed shortly after the First *Sua Sponte* Financing Order. After its
3 formation, the Debtor and the Committee had numerous discussions regarding terms for the DIP
4 Loan and a plan of reorganization that would be acceptable to the Committee. After substantial
5 discussions and negotiations, the Debtor and the Committee, by unanimous consent, came to
6 agreement regarding such terms. As a result, the Committee supported the immediate entry of a
7 final order approving the DIP Loan on the terms set forth in the Postpetition Financing Pursuant
8 to Superpriority Debtor-in-Possession Loan Agreement (the "Amended DIP Loan Agreement"),
9 which amended the Original DIP Loan Agreement based on agreements between the Debtor and
10 the Committee.

11 Based on the foregoing, and due to the need for additional funding of the DIP Loan in
12 order to re-open the Supermarket, on August 21, 2015, the Debtor filed its motion to set a
13 hearing for final approval of the DIP Loan and for entry of a final order approving the full DIP
14 Loan under the Amended DIP Loan Agreement (the "Amended DIP Financing Motion"). [Dkt.
15 103] Also on August 21, 2015, the Debtor filed an application seeking a hearing on shortened
16 time on the Amended DIP Financing Motion (the "Application for OST"). [Dkt. 104]

17 The Debtor sought an expedited hearing on the Amended DIP Financing Motion,
18 because, without additional DIP Loan financing above the \$250,000 provided for by the First
19 Interim Financing Order, the Debtor had insufficient funds to reopen the Supermarket. It was the
20 Debtor's belief that reopening the Supermarket before the Labor Day holiday weekend would
21 maximize the chances for the Debtor to start generating income. The Debtor also wanted to
22 reopen the Supermarket as soon as possible in order to preserve and maximize the value of the
23 Debtor's Estate for the benefit of all parties in interest, to avoid dismissal because of any
24 continuing loss or diminution of the Estate, and to enable the Debtor to proceed with the Plan
25 described herein and to demonstrate the feasibility thereof.

26 On August 23, 2015, the Committee filed a joinder in support of the Amended DIP
27 Financing Motion. [Dkt. 105]

28

1 On August 25, 2015, the Court entered its order granting the Application for OST, but not
2 setting a hearing on the Amended DIP Financing Motion until September 9, 2015 – *i.e.*, after the
3 Labor Day holiday weekend during which the Debtor wanted to be open in order to benefit from
4 increased sales volume.

5 On August 26, 2015, the Court *sua sponte* entered an order (1) increasing the financing
6 limit under the First Sua Sponte Financing Order from \$250,000 to \$750,000, (2) continuing the
7 final hearing on the Amended DIP Financing Motion from September 9, 2015 to October 7,
8 2015, (3) continuing the hearing on the Debtor’s Original Disclosure Statement (as defined
9 below) from September 9, 2015 to October 28, 2015, and (4) requiring the Debtor to file a
10 declaration setting forth financial data concerning the results of operations from the date of
11 reopening the Supermarket through September 30, 2015 by October 15, 2015 (the “Second Sua
12 Sponte Financing Order”). [Dkt. 111].

13 On October 7, 2015, the Court held a final hearing on the Amended DIP Financing
14 Motion. On October 15, 2015, the Court entered its Final Order Authorizing Debtor To Obtain
15 Postpetition Financing Pursuant To Section 364(C)(1) Of The Bankruptcy Code [Dkt. 188],
16 granting the Amended DIP Financing Motion, which increased approved DIP Loan availability
17 to \$1 million. [Dkt. 188]

18 **c. The Third Increase in the DIP Loan**

19 On January 8, 2016, the Debtor filed a motion seeking approval of an amendment to the
20 Amended DIP Loan Agreement loan agreement (the “DIP Loan Amendment”) providing, among
21 other things, for an additional \$100,000 in DIP Loan financing required to allow the Debtor to
22 manage its affairs and expenses for long enough for a contemplated sale process to be
23 concluded, which ultimately culminated in this Sale Motion and the proposed sale of the
24 Purchased Assets or a Successful Over Bidder, to be concluded (the “Motion to Amend DIP
25 Financing”), as well as an application for a hearing on shortened time thereon, which was
26 approved. [Dkt. 271]

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1 On January 13, 2016, the Court held a hearing on the Motion to Amend DIP Financing.
2 At the hearing, the Court advanced the dates regarding the further amended Modified FADS (as
3 defined below) and Modified FAP (as defined below) by directing the Debtor to file the
4 foregoing documents by no later than February 9, 2016 and setting a hearing on the further
5 amended Modified FADS on March 9, 2016. On January 15, 2016, the Court entered its Order
6 Approving First Amendment To Super-Priority Administrative Expense Debtor-In-Possession
7 Loan (the "DIP Amendment Order"), whereby the Court, among other things, granted the
8 Motion to Amend DIP Financing and approved the DIP Loan Amendment subject to certain
9 revisions to the DIP Loan Amendment. [Dkt. 286]

10 **3. THE REOPENING OF THE SUPERMARKET**

11 On September 3, 2015, using additional DIP Loan funds advanced by Vinamex Investors
12 pursuant to the Second *Sua Sponte* Financing Order, the Debtor was able to reopen the
13 Supermarket.

14 **4. PRIOR DISCLOSURE STATEMENTS AND PLANS TO REORGANIZE**
15 **AROUND THE CONTINUED OPERATION OF THE SUPERMARKET**

16 On August 4, 2015, well before the original deadline for doing so under Section 1121(c),
17 the Debtor filed its original plan (the "Original Plan") and disclosure statement (the "Original
18 Disclosure Statement") describing the Original Plan. [Dkts. 80 and 81]

19 Pursuant to negotiations with the Committee regarding amended DIP Financing and plan
20 terms, and as directed by the Court, on September 11, 2015, the Debtor filed its amended
21 Original Disclosure Statement (the "FADS") and amended Original Plan (the "FAP"). [Dkts.
22 126 and 127]

23 Unfortunately, due to time constraints, the Debtor was unable to get the Committee's
24 proposed revisions to the FADS and FAP before they were filed. Accordingly, on October 7,
25 2015, the Debtor filed its amended Modified FADS and modified FAP (the "Modified FAP"),
26 which incorporated revisions provided by the Committee and agreed to by the Debtor after the
27 FADS and FAP were filed, as well as some additional revisions made by the Debtor to provide
28

1 information based on developments regarding claims against the Debtor and litigation claims
2 held by the Debtor. [Dkts. 150 and 151]

3 The Original Plan, FAP, and Modified FAP were all premised on exit financing and a
4 new value contribution to be provided by Vinamex Investors and the continued operation of the
5 Debtor's Supermarket.

6 On October 19, 2015, the Court entered an order denying the motion to approve the
7 Modified FADS, without prejudice, and requiring the Debtor to (1) revise the tax section of the
8 Modified FAP, (2) revise sections regarding the allegations against Duong and others and
9 allowing Duong to provide a response to the allegations, (3) provide additional information and
10 reports to the Court regarding financial performance and projections, since, as the time of the
11 hearing on the Modified FADS, the Debtor had only been operating for a little over one month,
12 and (4) prepare and file a further amended Modified FADS and Modified FAP by March 25,
13 2016, with a hearing on the further amended Modified FAP to be held on April 20, 2016 (the
14 "10/19/15 Modified FADS Order"). [Dkt. 201]. The foregoing dates were advanced by the DIP
15 Amendment Order to February 9, 2016 and March 9, 2016, respectively.

16 As required by the DIP Amendment order, on February 9, 2016, the Debtor filed its
17 SADS [Dkt. 311] and related Second Amended Plan Dated February 9, 2016, as Modified (the
18 "SAP") [Dkt. 310]. Unlike the Original Plan, FAP, and Modified FAP, the SAP is not premised
19 on continued operation of the Debtor's Supermarket. Instead, for reasons discussed below, the
20 SAP is premised on a pre-plan effective date liquidation of substantially all of the Debtors'
21 assets, which the Debtor is seeking to effectuate pursuant to the instant Sale Motion and
22 proposed sale of the Purchased Assets to Vinamex Investors or a Successful Over Bidder, and
23 the distribution of the proceeds thereof and any net litigation recoveries.

24 **D. ABANDONMENT OF A REORGANIZING PLAN IN FAVOR OF A SALE OF**
25 **SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS AND THE PENDING**
26 **LIQUATING PLAN UNDER THE SAP**

27 Unfortunately, the delay associated with the plan process was detrimental to the Debtor
28 and efforts to proceed with a reorganizing plan. At the commencement of the case, the Debtor

1 anticipated emerging from bankruptcy within a six month period and budgeted accordingly.
2 More specifically, the \$1 million DIP Loan anticipated that the Debtor would have its disclosure
3 statement approved in October 2015 and its plan confirmed in December 2015, with the plan
4 going effective in January 2016. The proceeds from the DIP Loan were utilized as follows:

- 5 • Draw #1: \$250,000 for various expenses, most of which was rent, during the two-
6 plus months the Supermarket remained closed awaiting approval of the proposed
7 DIP Financing.
- 8 • Draw #2: \$210,000 for re-stocking of the Supermarket. This figure was higher
9 than needed due to the two-plus months the Supermarket remained closed
10 awaiting approval of the proposed DIP Financing.
- 11 • Draw #3: \$190,000 for re-stocking of the Supermarket. This figure was higher
12 than needed due to the two-plus months the Supermarket remained closed
13 awaiting approval of the proposed DIP Financing.
- 14 • Draw #4: \$47,000 for ongoing operations.
- 15 • Draw #5: \$45,000 for ongoing operations.
- 16 • Draw #6: \$40,000 for ongoing operations.
- 17 • Draw #7: \$215,000 for legal fees and ongoing operations (\$40,000).
- 18 • Draw #8: \$3,000 for ongoing operations.
- 19 • Draw #9: \$100,000 for ongoing operations.

20 The delayed timetable for approval of a disclosure statement and confirmation of a plan
21 resulted in negative perception in the marketplace and, in turn, decreased sales and an inability
22 to obtain vendor credit for inventory. The delay in obtaining plan confirmation has also resulted
23 in higher than expected administrative expenses. Additionally, the Debtor has incurred
24 unexpected expenses for, among other things, the repair of construction defects, which the
25 Debtor had to make in order to obtain a permanent certificate of occupancy and to ensure that it
26 could sub-lease operable food court and consumer goods stalls to sub-tenants.

1 All of the foregoing and, in particular, expenses specific to operating as a debtor in
2 possession in an ongoing bankruptcy case, hindered the Debtor's ability to operate on cash flow
3 positive basis. Were it not for the bankruptcy related expenses, the Debtor would be generating
4 industry leading profit margins and operating on a cash flow positive basis.

5 Due to shortfalls in operating income resulting from the need to pay expenses that would
6 not have been incurred if the Debtor was not in bankruptcy, the Debtor had to utilize DIP Loan
7 proceeds in order to pay all ordinary operating expenses as they became due. The resulting
8 diminishment in DIP Loan availability required to fund continued operations, which was
9 forecasted to be exhausted before any plan could be confirmed on the timetable fixed by the
10 Court, forced the Debtor to pursue alternatives to a reorganizing plan.

11 In consideration of the foregoing, the Debtor determined that the best course of action
12 was to pursue a sale of substantially all of the Debtors' assets, which the Debtor is seeking to
13 accomplish by way of this Sale Motion. The Debtor sought and obtained approval of the
14 additional \$100,000 in DIP Loan financing pursuant to the DIP Loan Amendment to fund
15 operations through the close of the proposed sale of the Purchased Assets. Even with the
16 additional financing, the Debtor intends to close the Supermarket at the close of business on
17 February 21, 2016 or possibly a week later, because the DIP Loan financing is insufficient to
18 fund bankruptcy related expenses and ongoing ordinary business expenses required to maintain
19 operations after such date.

20 In addition to seeking additional DIP Loan financing to advance sale efforts, on January
21 22, 2016, having determined that the Debtor would pursue an asset sale, which resulted in the
22 Debtor requiring the services of an investment banker to market and facilitate a sale of the
23 substantially all of the Debtor's assets, the Debtor filed its motion to expand the terms of the
24 engagement contract between the Debtor and Yorkison pursuant to which he became the
25 Debtor's Chief Restructuring Officer, which was approved by the Court [Dkt. 88], to include
26 authorization for the Debtor to retain Yorkison as an investment banker in connection with the
27 sale of the Debtor's assets, with compensation at the rate of \$34,000 per month (prorated for any
28

1 partial month) from January 1, 2016 through the close of a sale and only to be paid on the
2 successful closing of a sale. [Dkt. 296] That motion is pending with the court. February 8,
3 2016 was the deadline for objections and none were filed. The order granting the motion has
4 been lodged with the Court, but has not yet been entered. A true and correct copy of Yorkison's
5 professional resume is attached hereto as **Exhibit "4."**

6 **E. MARKETING EFFORTS, NEGOTIATION OF THE APA, AND BIDDING**
7 **PROCEDURES**

8 Beginning in late December 2015, after determining that the Debtor would have to
9 pursue an expedited liquidation of substantially all of the Debtor's assets, Yorkison and others
10 working at his direction started marketing the Debtor's assets for sale and soliciting bids for the
11 assets. In connection with marketing the Debtor's assets for sale, by February 2, 2016, Yorkison
12 and his team contacted approximately 136 potential bidders (the "Potential Bidders") for the
13 assets, and additional Potential Bidders have been contacted since that date. A total of 153
14 Potential Bidders have now been contacted. Attached hereto as **Exhibit "5"** is a list of the
15 Potential Bidders contacted by Yorkison and/or those working with him to market the Purchased
16 Assets. In addition, on or about February 1, 2016, the Debtor, through Yorkison, set up an
17 electronic data room with key documents to facilitate due diligence by Potential Bidders. By
18 January 7, 2016, the Debtor, through Yorkison, had already obtained four (4) competing bids to
19 acquire all, or substantially all, of the assets associated with the operation of its business.

20 Upon determining that Vinamex Investors bid represented the highest and best bid at the
21 time, the Debtor and Vinamex Investors negotiated the terms of the APA providing for the sale
22 of substantially all of the Debtor's assets (identified and defined as the Purchased Assets in the
23 APA) to Vinamex Investors. The APA is the result of arms-length negotiations between the
24 Debtor and Vinamex Investors, both of which were represented by independent counsel in
25 conjunction with negotiating the terms of the proposed asset sale and drafting the APA based on
26 such terms. The APA was entered into as of January 25, 2016.

1 In accordance with the APA, on January 25, 2016, the Debtor filed its motion (the “Bid
2 Procedures Motion”) to approve the Bidding Procedures specified in the APA for the sale of
3 substantially all of the Debtor’s assets. [Dkt. 298] On February 4, 2016, the Court entered its
4 Bid Procedures Order (a) granting the Bid Procedures Motion, (b) approving the Bid Procedures,
5 with certain modifications, and (c) setting a hearing on March 7, 2016 to consider this Sale
6 Motion to approve the Asset Sale to Vinamex Investors Bidder or a Successful Over Bidder
7 pursuant to the Bid Procedures. [Dkt. 303]

8 Information regarding the Bid Procedures and the requirements and deadlines for
9 submitting Qualified Over Bids was placed in to the data room to afford each potential
10 competing bidder access to such information. Efforts to identify other prospective bidders
11 continue and will continue through the deadline for submitting qualified bids pursuant the Bid
12 Procedures approved by the Court, which is five (5) business days before the March 7, 2016
13 hearing on this Sale Motion (*i.e.*, February 29, 2016). For example, during the week of February
14 15, 2016, Yorkison will advertise the asset sale in three (3) Vietnamese newspapers and attempt
15 to do an interview on local Vietnamese television regarding the asset sale. Attached hereto as
16 **Exhibit “6”** is a chart summarizing the Debtor’s efforts through the date hereof to market
17 substantially all of the Debtor’s assets for sale.

18 **F. SUMMARY OF PRINCIPAL TERMS OF THE APA**

19 A summary of the principal terms of the APA are as follows:⁵

20 1. Purchased Assets. The Debtors will sell substantially all of their assets,
21 as described, enumerated, and defined as the Purchased Assets in the APA. (*See* APA at
22 § 1.1 definition of Purchased Assets and § 3.1.)

23 2. Excluded Assets. The Debtors will **not** sell and will retain certain assets,
24 as described, enumerated, and defined as the Excluded Assets in the APA, which include
25

26 ⁵ The following is a summary only and nothing contained herein changes the terms of the APA. In the event of a
27 conflict between this summary and the APA, the APA shall control. **Interested parties should read the entire**
28 **APA.**

1 (a) any equity interests of the Debtor in any subsidiaries or affiliates, (b) any employee
2 benefit plans or obligations of the Debtor, all cash on hand as of the Closing, (d) except
3 to the extent included in Assumed Contract Rights and, subject to the provisions of
4 Section 3.3 of the APA, all Litigation Claims (defined in § 1.1 of the APA as any and all
5 claims, rights and causes of action against any third party, including all Avoidance
6 Action Claims, and the proceeds thereof, solely to the extent such claims, rights and
7 causes of action constitute property of the Debtor's bankruptcy estate pursuant to
8 Section 541 of the Bankruptcy Code in existence on the Closing Date), except Litigation
9 Claims of the Debtor against Food to Go and 3 Mein, (e) all Excluded Contracts, (f) all
10 personnel records and other records that the Debtor is required by law to retain in its
11 possession and any retained copies of any record or document included in the Purchased
12 Assets, and (g) all insurance proceeds, claims and/or causes of action solely with respect
13 to or arising in connection with (i) any Excluded Contract or any item of tangible or
14 intangible property not acquired by Vinamex Investors at the Closing. (See APA at §
15 1.1 definition of Excluded Assets and § 3.1.)

16 3. Assumed Liabilities. At the Vinamex Investors shall assume and agree to
17 perform and discharge, or take subject to, the following Liabilities of the Debtor to the
18 extent not previously performed or discharged, and no others: (i) all Liabilities of Seller
19 with respect to the Purchased Assets which accrue and are to be performed from and
20 after the Closing, including, without limitation, all Liabilities under the Assumed
21 Contracts which relate to lime periods or goods or services provided to or by Vinamex
22 Investors after the Closing; and (ii) Liabilities and obligations relating to and arising
23 from Vinamex Investor's exploitation of the Purchased Assets after the Closing.
24 Vinamex Investors shall not assume or be bound by or be obligated or responsible for
25 any of the Non-Assumed Liabilities. (See APA at § 3.2)

26 4. Litigation Claims. As discussed above, Litigation Claims shall be
27 Excluded Assets, provided, however, that if, within sixty (60) days following the
28

1 Closing Date, neither the Seller nor any party acting on behalf of the Debtor's
2 bankruptcy estate, including, without limitation, the Committee, has taken any action to
3 commence or otherwise pursue collection of the Litigation Claims, the Litigation
4 Claims, or any Litigation Claim(s) specifically designated by Vinamex Investors, other
5 than Litigation Claims of the Debtor against Food to Go and 3 Mein, shall, at Vinamex
6 Investors' option, automatically be transferred to Vinamex Investors for no additional
7 consideration. Within five (5) days following the expiration of the sixty (60) day period
8 referenced above, Vinamex Investors shall provide the Debtor with written notice
9 specifically identifying any Litigation Claim(s) that Vinamex Investors intends to
10 assume and pursue. If Litigation Claims are not transferred to Purchaser, any and all
11 recoveries on account of Litigation Claims shall belong to the Debtor. (See APA at §
12 3.3)

13 5. Assumed Contracts and Cure Amounts. Vinamex Investors has until five
14 (5) days prior to the date first set for the hearing on this Sale Motion to determine and
15 identify which Contracts it seeks to have the Debtor assume and assign to Vinamex
16 Investors (*i.e.*, the Assumed Contracts) pursuant to Section 365. All Contracts that are
17 not expressly identified as Assumed Contracts to be assumed and assigned to Vinamex
18 Investors shall not be assumed by, nor shall they be the responsibility of, Vinamex
19 Investors. (See APA at §§ 6.2, 6.2)

20 To the extent Vinamex Investors has identified an Assumed Contract under the
21 APA, Vinamex Investors shall be responsible for payment of any Cure amount due and
22 owing under such Assumed Contracts, not to exceed the sum of \$5,000.00 in the
23 aggregate. The Debtor is required to obtain any necessary consents to assume and assign
24 such specified Assumed Contracts to Vinamex Investors pursuant to Section 365.
25 Vinamex Investors shall provide adequate assurance of future performance for purposes
26 of Section 365 of the Bankruptcy Code. Vinamex Investors' failure to provide adequate
27 assurance of future performance as to any material Assumed Contract shall excuse the
28

1 Debtor's compliance with Article 6 of the APA governing the assumption and
2 assignment of the Assumed Contracts. (*See* APA at §§ 6.2, 6.2)

3 Vinamex Investors already identified the Contracts listed in Exhibit "2" hereto as
4 the Assumed Contracts.

5 6. Purchase Price. The Purchase Price for the Purchased Assets shall be an
6 amount equal to \$2 million comprised of (a) Vinamex Investors' assumption of the
7 Debtor's obligations under that the DIP Loan, together with all interest, fees, and costs
8 associated therewith, totaling \$1,248,000, (b) minus the sum of \$148,000 for cash
9 deposits posted by the Debtor with third parties, which deposits are included within the
10 Purchased Assets, and (c) plus \$900,000 cash. (*See* APA at § 4.1)

11 7. Deposit. Vinamex Investors deposited \$50,000 (the "Deposit") with the
12 Debtor. Except as provided in Section 4.4 of the APA, discussed below, the Deposit
13 shall become nonrefundable upon entry by the Bankruptcy Court of the Bid Procedures
14 Order (which has now occurred). At the Closing, subject to Article 5 of the APA, the
15 Deposit, together with all interest accrued thereon, shall be credited and applied toward
16 payment of the Purchase Price, and the Escrow Holder shall deliver the Deposit to the
17 Debtor. (*See* APA at § 4.2)

18 The Deposit, together with all interest accrued thereon, shall either be applied to
19 the payment of the Purchase Price as discussed above or returned to Vinamex Investors
20 upon the occurrence of any of the following: (i) the Bid Procedures Order is not entered
21 on or before February 16, 2016 and Vinamex Investors elects not to proceed with the
22 purchase of the Purchased Assets; (ii) the Closing Date does not occur on or before
23 March 31, 2016 and Purchaser elects not to proceed with the purchase of the Purchased
24 Assets, (iii) the Debtor enters into a letter of intent or purchase and sale agreement with
25 respect to any of the Purchased Assets with another party except as expressly permitted
26 under the APA and the Bid Procedures Order, (iv) Vinamex Investors is prevented from
27 closing through no fault of its own, or (v) the sale of the Purchased Assets is approved
28

1 by the Bankruptcy Court but the transaction terminates by virtue of any wrongful action
2 or inaction of the Debtor. If, notwithstanding that all conditions precedent have been
3 met and an order approving the sale to Vinamex Investors Purchaser has been entered,
4 Purchaser is unwilling or unable to consummate the sale and perform the obligations
5 required upon closing, all of the Deposit, together with all interest accrued thereon, shall
6 be non-refundable and shall immediately be released and paid to the Debtor. (*See* APA
7 at § 4.2)

8 8. Closing. Closing shall take place via-email, or by such other means or
9 place agreed to by the parties, on or before March 30, 2016, unless Vinamex Investors
10 and the Debtor agree in writing to another date.⁶ (*See* APA at § 8.1)

11 9. Representations and Warranties and Conditions. The APA is subject to
12 standard representations, warranties, and covenants by the Debtor and Vinamex
13 Investors and conditions to the performance of each. (*See* APA, Articles 9, 10, 12)
14 Notwithstanding the foregoing, Vinamex Investors acknowledges and agrees that there
15 are no representations and warranties by the Debtor other than as expressly set forth in
16 Article 9 of the APA and that the sale of the Purchased Assets is “as is,” “where is,” and
17 “with all faults.” (*See* APA at § 11.1)

18 After considering the terms of, and benefits derived from, the APA, considering the
19 Debtor’s precarious financial position, considering the need to have a party serve as a stalking
20 horse bidder pursuant to a binding APA to help achieve a benchmark price for the Purchased
21 Assets, determining that, at the time, the purchase price offered by Vinamex Investors was by far
22 the highest amount offered for the Purchased Assets, the Debtor concluded, in an exercise of its
23 reasonable and sound business judgment, that the proposed sale under the APA is in the best
24 interests of the Debtor, its estates, its creditors, and other parties in interest. The APA and
25 related extension of an additional \$100,000 in funding under the DIP Loan (1) provide the
26

27 ⁶ The current maturity date of the DIP Loan is March 31, 2016.

1 Debtor with the funds it needed to pursue and close a sale of the Purchased Assets and to
2 maintain operations as long as possible in the interim, (2) provide a baseline bid for the
3 Purchased Assets, and (3) in light of the fact the APA is subject to overbid pursuant to the Court-
4 approved Bid Procedures, should result in the Debtor obtaining the highest and best price for the
5 Purchased Assets, which will benefit all parties in interest.

6 Upon the close of the proposed sale of the Purchased Assets, (1) the superpriority
7 administrative claim held by Vinamex Investors for the DIP Loan will be eliminated, through
8 either Vinamex Investors' assumption of the obligation or a Successful Over Bidder's
9 assumption or payoff of the obligation, (2) the Debtor will acquire approximately \$798,000 in
10 net proceeds from the Purchase Price (the \$900,000 cash from the Purchase Price, less a
11 conservatively estimated \$102,000 in contingency fees payable to Yorkison pursuant to his
12 expanded retention agreement to cover investment banking services in connection with the asset
13 sale) if the sale is to Vinamex Investors or more if the sale is to a Successful Over Bidder, and
14 (3) the Debtor's remaining assets will be principally comprised of the Net Sale Proceeds, any
15 other cash on hand, and Litigation Claims.

16
17 **G. THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND RELATED
CURE AMOUNTS.**

18 Pursuant to the Sale Motion, the Debtor is seeking, *inter alia*, an order (1) approving the
19 Cure Amounts set forth in **Exhibit "2"** hereto for the Assumed Contracts designated by
20 Vinamex Investors and deeming the failure of a counter-party to a particular Assumed Contract
21 to object to the proposed Cure Amount and assumption and assignment to be a waiver of such
22 objection and (2) finding and holding that the Assumed Contracts are assumed by the Debtor
23 and assigned to Vinamex Investors or a Successful Over Bidder, as appropriate, pursuant to
24 Section 365 or such other appropriate sections of the Bankruptcy Code and approving such
25 assumption and assignment.

1 II.

2 DISCUSSION

3 A. THE DEBTOR SHOULD BE AUTHORIZED TO SELL THE PURCHASED
4 ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND
5 ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363 AND THE TERMS OF THE
6 APA

7 1. THE DEBTOR SHOULD BE AUTHORIZED TO SELL THE ASSETS.

8 Pursuant to Sections 363(b)(1) and 1107(a), “[The debtor in possession], after notice and
9 a hearing, may . . . sell . . . other than in the ordinary course of business, property of the estate.”
10 11 U.S.C. §§ 363(b)(1) and 1107(a). As a general matter, a court determining a Section 363(b)
11 motion to sell property of the estate should determine, based on the evidence presented, that
12 there is a “sound business reason” to grant such motion. *In re Lionel Corp.*, 722 F.2d 1063,
13 1071 (2d Cir. 1983). *In re Martin (Myers v. Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) citing *In*
14 *re Schipper (Fulton State Bank v. Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Abbotts*
15 *Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting test of *Lionel*
16 *Corp.* and requiring good faith); *In re Delaware and Hudson Ry. Co.*, 124 B.R. 169 (D. Del.
17 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the
18 *Abbotts Dairies* decision).

19 In the Ninth Circuit, “cause” exists for authorizing a sale of estate assets if it is in the
20 best interest of the estate, and a business justification exists for authorizing the sale. *In re*
21 *Huntington, Ltd.*, 654 F.2d 578 (9th Cir. 1981); *Walter v. Sunwest Bank (In re Walter)*, 83 B.R.
22 14, 19-20 (9th Cir. BAP 1988). In addition, the court must further find it is in the best interest
23 of the estate. To make this determination, the court should consider whether:

- 24 (1) the sale is fair and reasonable, i.e., the price to be paid is
25 adequate;
26 (2) the property has been given adequate marketing;
27 (3) the sale is in good faith, i.e., there is an absence of any
28 lucrative deals with insiders, and
(4) adequate notice has been provided to creditors.

1 *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841-42 (Bankr. C.D. Cal. 1991); *In re The*
2 *Landing*, 156 B.R. 246, 249 (Bankr. E.D. Mo. 1993); *In re Mama's Original Foods, Inc.*, 234
3 B.R. 500, 502-505 (C.D. Cal. 1999). As described in detail below, the Debtors' proposed sale of
4 the Assets to the Buyer, subject to overbid, is appropriate and should be approved by the Court.

5
6 **a. SOUND BUSINESS REASON/JUSTIFICATION.**

7 In *In re Walter*, the Ninth Circuit Bankruptcy Appellate Panel adopted a flexible case-by-
8 case test to determine whether the business purpose for a proposed sale justifies disposition of
9 property of the estate under Section 363(b). *In re Walter*, 83 B.R. at 19. The facts pertaining to
10 the Debtor's proposed sale of the Purchased Assets amply substantiate the Debtor's business
11 decision that proceeding with such sale is in the best interest of its estate and merits the approval
12 of this Court.

13 As discussed above, on the Petition Date, the Debtor did not have sufficient cash to
14 operate the Supermarket and based on the lack of funds and for other reasons, the Debtor closed
15 the Supermarket. Through a number of motions and orders of the Court, the Debtor was
16 eventually able to obtain sufficient financing under the DIP Loan to reopen the market. With the
17 prospect of doing so, the Debtor proceeded to propose a reorganization plan premised on the
18 continued operation of the Supermarket.

19 Unfortunately, delays in obtaining approval of a disclosure statement and confirmation of
20 a plan resulted in numerous negative consequences, which are discussed above. Most notably,
21 simply being in bankruptcy and delays in exiting bankruptcy led to negative perceptions of the
22 Debtor and its long-term viability, which, in turn, led to decreased sales. Further, the Debtor
23 originally planned to exit bankruptcy through a confirmed plan that would become effective in
24 January 2016. Due to the delay, and because the bankruptcy case has been more litigious than
25 expected, the Debtor incurred more administrative expenses than expected. The Debtor had to
26 draw from the DIP Loan, which ultimately depleted the original \$1 million and required the
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1 Debtor to obtain an additional \$100,000 in DIP Loan financing to simply proceed with an
2 expedited sale process.

3 Faced with diminishing DIP Loan funds and an inability to continue operating, no
4 prospects, and really no ability to obtain additional DIP financing, and it being apparent that the
5 Debtor would not be able to exit from Bankruptcy in the near future, the Debtor concluded that
6 an expedited sale of its assets provided the best means of reducing ongoing administrative costs
7 and realizing the greatest benefit possible from the Debtor's assets. Under the proposed sale to
8 Vinamex Investors, the Debtor will eliminate the superpriority administrative claim held by
9 Vinamex Investors for the DIP Loan and net approximately \$798,000 in unencumbered cash
10 proceeds. The foregoing results will only improve if there is an overbid for the Purchased Assets
11 at the auction.

12 The only likely alternatives to the proposed sale of the Debtor's assets are either
13 dismissal or conversion of the Debtor's Chapter 11 case, because the Debtor has no means to
14 fully fund continued operations pending the pursuit of a reorganizing plan or to make the
15 payments that would have to be made upon the effective date of a reorganizing plan in order to
16 confirm the plan and emerge from bankruptcy. The Debtor believes dismissal or conversion
17 would both result in less value being obtained for the Purchased Assets, particularly as the
18 Supermarket lies dormant after again being closed and because an inability to pay rent for the
19 Debtor's leased location where the Supermarket is located would probably result in a termination
20 of the lease. Both of the foregoing would eviscerate the Debtor's going concern value and
21 severely diminish the value obtained for the Debtor's assets.

22 In consideration of the foregoing, the Debtor submits that there is a sound business
23 reason for selling the Purchased Assets pursuant to the APA (or to an alternative Qualified Over
24 Bidder under a substantially similar APA).

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1 **b. FAIR AND REASONABLE PRICE**

2 In order for a sale to be approved under Section 363(b), the purchase price must be fair
3 and reasonable. *See generally, In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985).
4 The trustee (or debtor in possession) is given substantial discretion in this regard. *Id.* In
5 addition, courts have broad discretion with respect to matters under section 363(b). *See Big*
6 *Shanty Land Corp. v. Comer Properties, Inc.*, 61 B.R. 272, 278 (Bankr. N.D. Ga. 1985). In any
7 sale of estate assets, the ultimate purpose is to obtain the highest price for the property sold.
8 *Wilde Horse Enterprises, Inc.*, 136 B.R. at 841 (*citing In re Chung King, Inc.*, 753 F.2d 547 (7th
9 Cir. 1985)), *In re Alpha Industries, Inc.*, 84 B.R. 703, 705 (Bankr. Mont. 1988).

10 In this case, there is substantial evidence that the Debtor will obtain a fair and reasonable
11 price for the Purchased Assets under the circumstances. Prior to filing this Sale Motion, the
12 Debtor had obtained four (4) offers for all or substantially all of the Debtor's assets and the \$2
13 million Purchase Price offered by Vinamex Investors was by far the highest.

14 In addition, the current offer by Vinamex Investors for the Purchased Assets is subject to
15 overbid after considerable marketing to obtain a higher price. Since late December 2015, when
16 it became apparent that the Debtor would have to switch strategies from a reorganizing plan to a
17 liquidating plan with a related asset sale, Yorkison, who was employed as the Debtor's
18 investment banker in connection with the marketing and sale of the Purchased Assets and who
19 has considerable experience in selling assets in bankruptcy, undertook substantial efforts to
20 market the Debtor's assets for sale. Yorkison contacted approximately 136 Potential Bidders for
21 the Debtor's assets and provided Potential Bidders with access to a data room containing key
22 documents and information to facilitate due diligence. All of the Potential Bidders were
23 provided with notice of the Bid Procedures and the requirements and deadlines for submitting
24 Qualified Over Bids, and marketing efforts will continue through the deadline for submitting
25 Qualified Over Bids.

26 Under the foregoing conditions, the Debtor believes that the Debtor will obtain the
27 highest and best price for the Purchased Assets under the circumstances.

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c. ADEQUATE MARKETING.

The Debtor's marketing efforts through Yorkison as its investment banker are discussed above. Considering that the Debtor had four (4) offers for all or substantially all of the Debtor's assets before entering into the APA and filing the instant Sale Motion, and based on the marketing efforts discussed above, the Debtors submits that the marketing of the Purchased Assets adequate.

d. ACCURATE AND REASONABLE NOTICE.

As required by FRBP 2002(a)(2), (c)(1), (d), (i) and (k), 6004, and 6006(a), the Debtor provided a separate notice to the Committee, the Office of the United States Trustee, all creditors, all purported equity holders, and all parties requesting special notice of (1) the Sale Motion, including the time and place of the auction of the Purchased Assets and the hearing on the Sale Motion, and the time fixed for filing objections to the Sale Motion, and (2) the Contracts as Assumed Contracts that the Debtor will seek to assume and assign to Vinamex Investors or a Successful Over Bidder, the proposed Cure Amount for the potentially Assumed Contracts, and the deadline for objecting to the Sale Motion to the extent it seeks to effectuate an assumption and assignment of the Assumed Contracts.

Additionally, as soon as this Sale Motion is filed, Yorkison will place a copy of this Sale Motion and the related short-form notice of the Sale Motion in the data room and inform the Potential Bidders that these documents related to the auction and sale of the Purchased Assets are available for review.

Yorkison will also advertise the asset sale in three (3) Vietnamese newspapers and attempt to conduct a television interview regarding the asset sale on a local Vietnamese television channel.

Based on the foregoing, the Debtor submits that it provided accurate and reasonable notice of the proposed transactions of under the APA and the relief requested in the Sale Motion to all parties in interest.

1 e. **GOOD FAITH.**

2 When a bankruptcy court authorizes a sale of assets pursuant to Section 363(b)(1), it is
3 required to make a finding with respect to the “good faith” of the purchaser. *Abbotts*, 788 F.2d
4 at 149. Such a procedure ensures that Section 363(b)(1) will not be employed to circumvent the
5 creditor protections of Chapter 11, and, as such, it mirrors the requirement of Section 1129 that
6 the Court independently scrutinize the proposed sale and makes a finding that it has been
7 proposed in good faith. *Id.* at 150.

8 “Good faith” encompasses fair value, and further speaks to the integrity of the
9 transaction. *Wilde Horse*, 136 B.R. at 842. With respect to the debtor’s conduct in conjunction
10 with the sale, the good faith requirement “focuses principally on the element of special treatment
11 of the debtor’s insiders in the sale transaction.” *See In re Industrial Valley Refrigeration and Air*
12 *Conditioning Supplies, Inc.*, 77 B.R. 15, 17 (Bankr. E.D. Pa. 1987). With respect to the buyer’s
13 conduct, this Court should consider whether there is any evidence of “fraud, collusion between
14 the purchaser and other bidders or the [debtor], or an attempt to take grossly unfair advantage of
15 other bidders.” *Abbotts Dairies*, 788 F.2d at 147, *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195,
16 1198 (7th Cir. 1978); *see Wilde Horse*, 136 B.R. at 842; *In re Alpha Industries, Inc.*, 84 B.R.
17 703, 706 (Bankr. D. Mont. 1988). In short, “[I]ack of good faith is generally determined by
18 fraudulent conduct during the sale proceedings.” *In re Apex Oil Co.*, 92 B.R. 847, 869 (Bankr.
19 E.D.Mo. 1988) (*citing In re Exennium, Inc.*, 715 F.2d 1401, 1404-05 (9th Cir. 1983)).

20 In addition, as stated in *Wild Horse Enterprises*:

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22 It is not bad faith *per se* for an insider to purchase property
23 from an estate, even where the insider has a fiduciary duty to
24 the estate. [*In re Apex Oil Co.*, 92 B.R. 847, 869-70 (Bankr.
25 E.D. Mo. 1988)], *citing In re Andy Frain Services, Inc.*, 798
26 F.2d 1113, 1125 (7th Cir. 1986); *In re Naron & Wagner,*
27 *Chartered*, 88 B.R. 85, 88 (Bankr. Md. 1988); and *In re Ancor*
28 *Exploration Co.*, 30 B.R. 802, 808 (Bankr. N.D. Okla.1983).
The question of good faith, even under these circumstances
however, turns on whether debtor breached its fiduciary duty of
full disclosure.

1 *Wilde Horse Enterprises*, 136 B.R. at 842. The important thing with insider sales is that the
2 debtor fully discloses to the court and creditors the relationship between the buyer and seller, as
3 well as the circumstances under which the negotiations have taken place, any marketing efforts,
4 and the factual basis upon which the debtor determined that the price was reasonable. *Id*

5 Vinamex Investors is arguably an “insider” of the Debtor, as defined by Section 101(31),
6 because, based on the Xu Declaration attached hereto as Exhibit “7,” it appears that, Vinamex
7 Investors is owned by Xu and (1) Xu is a co-Class A Manager of the Debtor, (2) Xu owns
8 Goldstone which owns Class A Membership Units in the Debtor, and (3) Xu owns A&J Capital,
9 which was delegated with authority to act as the Cass B Manager of the Debtor.
10 Notwithstanding, the Debtor submits that the proposed sale of the Purchased Assets has been,
11 and will be, conducted in good faith.

12 **First**, the foregoing connections between Vinamex Investors and the Debtor were
13 disclosed herein and, in fact, were previously disclosed on July 8, 2015 when the Debtor filed the
14 supplemental declaration of Xu with the information required by the Interim Financing Order, as
15 well as other relevant information. See Exhibit “7” hereto. There has been no attempt to hide
16 the connections between Vinamex Investors and the Debtor.

17 **Second**, Xu and his affiliated entities did not control the Debtor’s decision to sell the
18 Purchased Assets, to enter into the APA, or the terms of the APA. Yorkison, as the Debtor’s
19 Chief Restructuring Officer independently decided to sell the Purchased Assets due to the
20 financial turmoil faced by the Debtor. Yorkison, as the Debtor’s Chief Restructuring Officer and
21 Investment Banker, decided to enter into the APA with Vinamex Investors because, at the time,
22 it had made the highest bid for the Purchased Assets. As discussed, the terms of the APA are the
23 result of arms-length negotiations between the Debtor and Vinamex Investors, both of which are
24 represented by independent counsel. Given the magnitude of the bid from Vinamex Investors,
25 one could hardly argue that Vinamex Investors is being afforded any sort of “sweetheart” deal by
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1 the Debtor; to the contrary, Vinamex Investors is paying well in excess of what the assets are
2 probably worth in a liquidation scenario.

3 **Third**, Vinamex Investors' bid for the Purchased Assets has been exposed to the market
4 and is subject to overbid. Based upon the competing offers received by the Debtor prior to
5 execution of the APA, Yorkison was able to conclude that the Vinamex Investors' bid was for an
6 amount that was more than twice the amount of the next closest bid.

7 In consideration of the foregoing, the Debtor submits that Vinamex Investors, or any
8 Successful Over Bidder, is entitled to a good faith finding pursuant to Section 363(m), which is a
9 requirement under the terms of the APA.

10 Section 363(m) provides that "[t]he reversal or modification on appeal of an authorization
11 under [section 363(b) or (c)] of a sale or lease of property does not affect the validity of a sale or
12 lease under such authorization to an entity that purchased or leased such property in good faith."
13 11 U.S.C. § 363(m). In making a good faith determination, the Ninth Circuit Court of Appeals
14 has indicated that this requirement speaks to the integrity of the purchaser's conduct in the
15 course of the sale proceedings. *See Cmty. Thrift & Loan v. Suchy (In re Suchy)*, 786 F.2d 900,
16 902 (9th Cir. 1986) (internal quotation marks and citations omitted). In making a good faith
17 determination, courts generally consider whether there is any evidence of fraud, collusion, or
18 interested dealing and whether the purchaser attempted "to take grossly unfair advantage of other
19 bidders." Id.

20 As set forth above, the Debtor believes Vinamex Investors (or any Successful Over
21 Bidder) is a good faith purchaser entitled to the protections afforded by Section 363(m). There is
22 no evidence of any fraud, collusion or interested dealing, and Vinamex Investors has agreed to
23 pay a purchase price that greatly exceeds the purchase price offered by any competing bidder to
24 date.

1 **2. THE DEBTORS SHOULD BE AUTHORIZED TO SELL THE**
2 **PURCHASED ASSETS FREE AND CLEAR OF LIENS, CLAIMS,**
3 **INTERESTS, AND ENCUMBRANCES.**

4 Section 363(f) provides, in relevant part, as follows:

5 The [debtor in possession] may sell property under subsection (b) . . . of this
6 section free and clear of any interest in such property of an entity other than the
7 estate, only if—

- 8 (1) applicable non-bankruptcy law permits the sale of such
9 property free and clear of such interest;
10 (2) such entity consents;
11 (3) such interest is a lien and the price at which such property
12 is to be sold is greater than the aggregate value of all liens
13 on such property;
14 (4) such interest is in bona fide dispute; or
15 (5) such entity could be compelled, in a legal or equitable
16 proceeding, to accept a money satisfaction of such interest.

17 11 U.S.C. §363(f).

18 Here, as discussed, there are no known liens against, or interests in, the Purchased Assets.
19 With that said, the Debtor is providing notice of the Sale Motion to all known creditors.
20 Therefore, if no creditor asserts a lien or other interest in the Purchased Assets, the Debtor
21 submits that the order granting the Sale Motion and approving the sale of the Purchased Assets
22 should confirm that no party asserted a lien against, or interest in, the Purchased assets and, to
23 the extent there are any such liens or interests, the sale of the Purchased Assets is free and clear
24 of any liens or interests. Such a finding is a requirement of the APA.

25 **B. THE DEBTOR SHOULD BE AUTHORIZED TO ASSUME AND ASSIGN THE**
26 **ASSUMED CONTRACTS**

27 Barring exceptions not herein relevant, Section 365(a) authorizes a debtor in possession,
28 “subject to the court’s approval, ... [to] assume or reject any executory contract or unexpired
lease of the debtor.” If there has been a default on any executory contract or unexpired lease, a
debtor cannot assume such contract or lease, unless the debtor (1) cures, or provides adequate
assurance that the debtor will promptly cure, such default; (2) compensates, or provides adequate
assurance that the debtor will promptly compensate a party for any actual pecuniary loss to such

1 party resulting from such default; and (3) provides adequate assurance of future performance
2 under such contract or lease. 11 U.S.C. § 365(b)(2).

3 A debtor in possession may assume or reject executory contracts for the benefit of the
4 estate. *In re Klein Sleep Products, Inc.*, 78 F.3d 18, 25 (2d. Cir. 1996); *In re Central Fla. Metal*
5 *Fabrication, Inc.*, 190 B.R. 119, 124 (Bankr. N.D. Fla. 1995); *In re Gucci*, 193 B.R. 411, 415
6 (S.D.N.Y. 1996). In reviewing a debtor in possession's decision to assume or reject an executory
7 contract, a bankruptcy court should apply the "business judgment test" to determine whether it
8 would be beneficial to the estate to assume it. *In re Continental Country Club, Inc.*, 114 B.R.
9 763, 767 (Bankr. M.D. Fla. 1990); *see also In re Gucci, supra*, 193 B.R. at 415. The business
10 judgment standard requires that the court follow the business judgment of the debtor unless that
11 judgment is the product of bad faith, whim, or caprice. *In re Prime Motors Inns*, 124 B.R. 378,
12 381 (Bankr. S.D. Fla. 1991), *citing Lubrizol Enterprises v. Richmond Metal Finishers*, 756 F.2d
13 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057, 106 S.Ct. 1285, 89 L.Ed.2d 592 (1986).

14 In this case, all of the foregoing requirements have been met. As discussed above, the
15 Debtor is seeking to assume all of the Assumed Contracts enumerated in Exhibit "2" hereof and
16 to assign such Assumed Contracts to Vinamex Investors or a Qualified Over Bidder. The
17 assumption and assignment of the Assumed Contracts, some of which are integral to the
18 continued operation of the Debtor's Supermarket (*e.g.*, the real property lease of the building
19 where the Supermarket is located), is a requirement of the APA. Furthermore, the assumption
20 and assignment of the Assumed Contracts will eliminate damages that would arise if the
21 Assumed Contracts were rejected and, therefore, will reduce claims against the estate and
22 preserve funds to be used to pay allowed claims. Therefore, the Debtor submits that the
23 "business judgment test" has been satisfied.

24 In addition, as a prerequisite to the assumption and assignment of any of the Assumed
25 Contracts designated by Vinamex Investors or any Qualified Over Bidder, any payment or other
26 defaults arising under the Assumed Contracts must be cured or there must be adequate assurance
27 of prompt cure for such defaults. The Cure Amounts are set forth in Exhibit "2" hereto and in
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1 the separate notice sent to the other parties to the Assumed Contracts. The Debtor believes that
2 the payment of the Cure Amounts, if any, is all that is required to cure any payment or other
3 defaults that may have arisen under the Assumed Contracts.

4 To the extent any party to an Assumed Contract asserts that the Debtor or Vinamex
5 Investors or any Qualified Over Bidder need to provide evidence of adequate assurance of future
6 performance by the Vinamex Investors or any Qualified Over Bidder, such information will be
7 provided to the Court and other parties in interest by way of supplemental declarations.

8 Based on the foregoing, the Debtor submits that the requirements of Section 365(a), (b),
9 (f) for the assumption and assignment of the Assumed Contracts have been, or will be, satisfied.

10 **C. THE COURT SHOULD WAIVE THE FOURTEEN-DAY WAITING PERIODS**
11 **SET FORTH IN BANKRUPTCY RULES 6004(h) AND 6006(d).**

12 FRBP 6004(h) provides, among other things, that an order authorizing the sale of
13 property other than cash collateral is stayed until the expiration of fourteen (14) days after entry
14 of the order, unless the court orders otherwise. Bankruptcy Rule 6006(d) has a similar
15 provision with respect to an order approving of a debtor's assumption and assignment of
16 unexpired leases and executory contracts.

17 In this case, it is extremely important that the Debtor close the sale of the Purchased
18 Assets before March 30, 2016, because that is the deadline set by the APA (§ 8.1) and March
19 31, 2016 is the maturity date of the DIP Loan. In consideration of the foregoing, and in order to
20 have sufficient time for any unforeseen issues that arise regarding a close of the sale of the
21 Purchased Assets, the Debtor requests that the Court waive the fourteen (14) day waiting
22 periods of FRBP 6004(h) and 6006(d).

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DECLARATION OF GREGG YORKISON

I, Gregg Yorkison, hereby declare as follows:

1. I am over 18 years of age. I am the Chief Restructuring Officer of Vinamex Supermarket, LLC, a California limited liability company, debtor and debtor in possession herein (the “Debtor”). Accordingly, I am familiar with the business operations and financial books and records of the Debtor. Except where otherwise stated, I have personal knowledge of the facts set forth below and, if called to testify, I would and could competently testify thereto.

2. I have access to the Debtor’s books and records. I am familiar with the history, organization, operations and financial condition of the Debtor. The records and documents referred to in this Declaration constitute writings taken, made, or maintained in the regular or ordinary course of the Debtor’s business at or near the time of act, condition or event to which they relate by persons employed by the Debtor who had a business duty to the Debtor to accurately and completely take, make, and maintain such records and documents.

3. As set forth in my professional biography attached as hereto as Exhibit “4,” I have substantial experience acting as an investment banker in connection with Section 363 sales in Chapter 11 bankruptcy cases and in connection with sales taking place in the context of assignments for the benefit of creditors. I have been the investment banker on multiple sales both in and out-of-court. The most recent Section 363 sale for which I served as the investment banker was conducted in Tamrac (Case No.: 1:14-bk-10076-MT) in June 2014. Since then, I have completed multiple out-of-court transactions via assignments for the benefit of creditors.

4. Prior to this bankruptcy case, Xu and his affiliated entities had no prior relationship with me.

5. I am informed and believe that, on April 8, 2013, the Debtor was formed to own, operate, and manage a supermarket (the “Supermarket”) in Garden Grove, California that would specialize in the sale of Asian and Mexican products and allow the Debtor to generate additional income from the sublease of stalls to third parties for the operation of small food vendor and

1 consumer goods shops. I am informed and believe that another objective of the Debtor was to
2 serve as an investment and job-creation vehicle for foreign nationals seeking lawful permanent
3 residency through the EB-5 Program.

4 6. As more fully set forth in the Debtor's Second Amended Disclosure Statement
5 Describing Debtor's Second Amended Plan Dated February 9, 2016 (the "SADS") [Dkt. 311], the
6 Debtor suffered from mismanagement and was severely undercapitalized when it opened the
7 Supermarket in February 2015. Ultimately, the Debtor was unable to pay its debts as they came
8 due. Based on the foregoing, and for other reasons set forth in the SADS, the Debtor decided to
9 file for bankruptcy protection in an effort to reorganize for the benefit of all creditors.

10 7. On June 24, 2015 (the "Petition Date"), the Debtor commenced its bankruptcy case
11 by filing a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor is managing
12 its financial affairs as a debtor in possession pursuant to Sections 1107 and 1108. On July 27,
13 2015, the Office of the United States Trustee formed the Committee.

14 8. The Debtor has no known secured creditors. On June 23, 2015, the day before the
15 Petition Date, the Debtor, through its counsel, requested a search from the California Secretary of
16 State identifying any liens against the Debtor. Attached hereto as **Exhibit "3"** is the Search
17 Certificate provided by the California Secretary of State certifying that, as of June 18, 2015, there
18 were no "no active financing statements, tax liens, attachment liens, or judgment liens on file [with
19 the Secretary of State] reflecting the above Debtor." I am not aware of any liens having been
20 placed against the Debtor after June 18, 2015.

21 9. I was retained as the Debtor's Chief Restructuring Officer on June 23, 2015, one
22 day before the Petition Date of June 24, 2015. On June 25, 2015, my associate, Shanon Slack went
23 to the Debtor's Supermarket and, due to chaos and confusion threatening business operations and
24 creating the potential for theft, at my direction, closed the store, re-keyed exterior doors, and hired
25 on-site security. As further discussed below, the Supermarket was reopened on September 3, 2015
26 after the Debtor obtained Court authority to obtain funding under the post-petition DIP Loan from
27 Vinamex Investors required to stock the Supermarket and fund operations.

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1 10. In consideration of the Debtor’s inability to pay claims as they come due solely
2 from the Debtor’s revenue and the need for additional working capital required to reopen the
3 Supermarket, immediately after the Petition Date, the Debtor filed a motion (the “Original DIP
4 Financing Motion”) seeking Court approval to obtain up to \$1 million in debtor-in-possession
5 financing (*i.e.*, the DIP Loan) to be provided by Vinamex Investors pursuant to the terms of the
6 Senior Secured Super-Priority Debtor-In-Possession Loan Agreement (as amended, supplemented,
7 restated, or otherwise modified from time to time, the “Original DIP Loan Agreement”) between
8 the Debtor and Vinamex Investors. [Dkt. 8] Pacific American Fish filed an opposition to the DIP
9 Financing Motion.

10 11. On June 29, 2015, the Court held a preliminary hearing on the Original DIP
11 Financing Motion. On July 2, 2015, the Court entered an interim order, (1) approving the DIP
12 Loan in an amount up to \$250,000 on a limited basis with the amount loaned to be entitled to
13 administrative priority *pari pasu* with other administrative claims (but no security interest or lien),
14 (2) requiring a declaration providing additional information regarding Xu, Vinamex Investors, all
15 relationships among and between Xu, Vinamex Investors, the Debtor, Goldstone, Duong, Chhor,
16 Nguyen, and the failure of Duong, Chhor, and Nguyen to make their required capital contributions
17 to the Debtor, and (3) setting a final hearing for July 20, 2015 (the “Interim Financing Order”).
18 [Dkt. 40]

19 12. On July 8, 2015, the Debtor filed a supplemental declaration of Xu with the
20 information required by the Interim Financing Order, as well as other relevant information. [Dkt.
21 51] A true and correct copy of the Xu Declaration, without exhibits, is attached hereto as **Exhibit**
22 **“7.”** Notwithstanding this additional information, Pacific American Fish again objected to the
23 approval of the DIP Loan on a final basis, raising concerns about the relationship between
24 Vinamex Investors and the Debtor, among other things. [Dkt. 58]

25 13. On July 17, 2015, the Court *sua sponte* entered an order (1) raising questions and
26 concerns regarding the connections and relationships by and among Xu, Vinamex Investors, the
27 Debtor, Goldstone, and A&J Capital, Duong, Chhor, Nguyen, (2) raising questions and concerns
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1 regarding when and how A&J Capital became aware that Duong, Chhor, and Nguyen failed to
2 make their required capital contributions to the Debtor, (3) suggesting that the formation and input
3 of a committee of unsecured creditors would be helpful in considering and determining final
4 approval of the Original Motion, (4) continuing the final hearing on the Original DIP Financing
5 Motion to November 16, 2015, and (5) noting that the Court understood that the continuance of the
6 hearing could result in continued nonoperation of the Supermarket and warning that if
7 nonoperation results in substantial or continuing loss to or diminution of the estate and the absence
8 of a reasonable likelihood of rehabilitation, that there could be grounds for converting or
9 dismissing the Bankruptcy Case (the "First Sua Sponte Financing Order"). [Dkt. 63] For this
10 reason, the Debtor knew it was crucial (1) for the Plan confirmation process to move forward as
11 expeditiously as possible, otherwise the Debtor, the Estate, and, most importantly, creditors and
12 Class B Members, whose visas hang in the balance, might not obtain the benefits of the Plan
13 outlined in this Disclosure Statement and (2) that the Debtor renew its request to obtain the full \$1
14 million DIP Loan so that the Debtor could reopen its Supermarket.

15 14. Pursuant to the First Interim Financing Order, Vinamex Investors provided
16 \$250,000 of the proposed \$1 million DIP Loan to the Debtor (the "Initial DIP Financing").

17 15. The Committee was formed shortly after the First *Sua Sponte* Financing Order.
18 After its formation, the Debtor and the Committee had numerous discussions regarding terms for
19 the DIP Loan and a plan of reorganization that would be acceptable to the Committee. After
20 substantial discussions and negotiations, the Debtor and the Committee, by unanimous consent,
21 came to agreement regarding such terms. As a result, the Committee supported the immediate
22 entry of a final order approving the DIP Loan on the terms set forth in the Postpetition Financing
23 Pursuant to Superpriority Debtor-in-Possession Loan Agreement (the "Amended DIP Loan
24 Agreement"), which amended the Original DIP Loan Agreement based on agreements between the
25 Debtor and the Committee.

26 16. Based on the foregoing, and due to the need for additional funding of the DIP Loan
27 in order to re-open the Supermarket, on August 21, 2015, the Debtor filed its motion to set a
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1 hearing for final approval of the DIP Loan and for entry of a final order approving the full DIP
2 Loan under the Amended DIP Loan Agreement (the "Amended DIP Financing Motion"). [Dkt.
3 103] Also on August 21, 2015, the Debtor filed an application seeking a hearing on shortened time
4 on the Amended DIP Financing Motion (the "Application for OST"). [Dkt. 104]

5 17. The Debtor sought an expedited hearing on the Amended DIP Financing Motion,
6 because, without additional DIP Loan financing above the \$250,000 provided for by the First
7 Interim Financing Order, the Debtor had insufficient funds to reopen the Supermarket. It was my
8 belief that reopening the Supermarket before the Labor Day holiday weekend would maximize the
9 chances for the Debtor to start generating income. I also wanted to reopen the Supermarket as
10 soon as possible in order to preserve and maximize the value of the Debtor's Estate for the benefit
11 of all parties in interest, to avoid dismissal because of any continuing loss or diminution of the
12 Estate, and to enable the Debtor to proceed with the Plan described herein and to demonstrate the
13 feasibility thereof.

14 18. On August 23, 2015, the Committee filed a joinder in support of the Amended DIP
15 Financing Motion. [Dkt. 105]

16 19. On August 25, 2015, the Court entered its order granting the Application for OST,
17 but not setting a hearing on the Amended DIP Financing Motion until September 9, 2015 – *i.e.*,
18 after the Labor Day holiday weekend during which the I wanted the Debtor to be open in order to
19 benefit from increased sales volume.

20 20. On August 26, 2015, the Court *sua sponte* entered an order (1) increasing the
21 financing limit under the First Sua Sponte Financing Order from \$250,000 to \$750,000, (2)
22 continuing the final hearing on the Amended DIP Financing Motion from September 9, 2015 to
23 October 7, 2015, (3) continuing the hearing on the Debtor's Original Disclosure Statement (as
24 defined below) from September 9, 2015 to October 28, 2015, and (4) requiring the Debtor to file a
25 declaration setting forth financial data concerning the results of operations from the date of
26 reopening the Supermarket through September 30, 2015 by October 15, 2015 (the "Second Sua
27 Sponte Financing Order"). [Dkt. 111].

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1 21. On October 7, 2015, the Court held a final hearing on the Amended DIP Financing
2 Motion. On October 15, 2015, the Court entered its Final Order Authorizing Debtor To Obtain
3 Postpetition Financing Pursuant To Section 364(C)(1) Of The Bankruptcy Code [Dkt. 188],
4 granting the Amended DIP Financing Motion, which increased approved DIP Loan availability to
5 \$1 million. [Dkt. 188]

6 22. On January 8, 2016, the Debtor filed a motion seeking approval of an amendment
7 to the Amended DIP Loan Agreement loan agreement (the "DIP Loan Amendment") providing,
8 among other things, for an additional \$100,000 in DIP Loan financing required to allow the Debtor
9 to manage its affairs and expenses for long enough for a contemplated sale process to be
10 concluded, which ultimately culminated in this Sale Motion and the proposed sale of the Purchased
11 Assets or a Successful Over Bidder, to be concluded (the "Motion to Amend DIP Financing"), as
12 well as an application for a hearing on shortened time thereon, which was approved. [Dkt. 271]

13 23. On January 13, 2016, the Court held a hearing on the Motion to Amend DIP
14 Financing. At the hearing, the Court advanced the dates regarding the further amended Modified
15 FADS (as defined below) and Modified FAP (as defined below) by directing the Debtor to file the
16 foregoing documents by no later than February 9, 2016 and setting a hearing on the further
17 amended Modified FADS on March 9, 2016. On January 15, 2016, the Court entered its Order
18 Approving First Amendment To Super-Priority Administrative Expense Debtor-In-Possession
19 Loan (the "DIP Amendment Order"), whereby the Court, among other things, granted the Motion
20 to Amend DIP Financing and approved the DIP Loan Amendment subject to certain revisions to
21 the DIP Loan Amendment. [Dkt. 286]

22 24. On September 3, 2015, using additional DIP Loan funds advanced by Vinamex
23 Investors pursuant to the Second *Sua Sponte* Financing Order, the Debtor was able to reopen the
24 Supermarket.

25 25. On August 4, 2015, well before the original deadline for doing so under Section
26 1121(c), the Debtor filed its original plan (the "Original Plan") and disclosure statement (the
27 "Original Disclosure Statement") describing the Original Plan. [Dkts. 80 and 81]

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1 26. Pursuant to negotiations with the Committee regarding amended DIP Financing and
2 plan terms, and as directed by the Court, on September 11, 2015, the Debtor filed its amended
3 Original Disclosure Statement (the "FADS") and amended Original Plan (the "FAP"). [Dkts. 126
4 and 127]

5 27. Unfortunately, due to time constraints, the Debtor was unable to get the
6 Committee's proposed revisions to the FADS and FAP before they were filed. Accordingly, on
7 October 7, 2015, the Debtor filed its amended Modified FADS and modified FAP (the "Modified
8 FAP"), which incorporated revisions provided by the Committee and agreed to by the Debtor after
9 the FADS and FAP were filed, as well as some additional revisions made by the Debtor to provide
10 information based on developments regarding claims against the Debtor and litigation claims held
11 by the Debtor. [Dkts. 150 and 151]

12 28. The Original Plan, FAP, and Modified FAP were all premised on exit financing and
13 a new value contribution to be provided by Vinamex Investors and the continued operation of the
14 Debtor's Supermarket.

15 29. On October 19, 2015, the Court entered an order denying the motion to approve the
16 Modified FADS, without prejudice, and requiring the Debtor to (1) revise the tax section of the
17 Modified FAP, (2) revise sections regarding the allegations against Duong and others and allowing
18 Duong to provide a response to the allegations, (3) provide additional information and reports to
19 the Court regarding financial performance and projections, since, as the time of the hearing on the
20 Modified FADS, the Debtor had only been operating for a little over one month, and (4) prepare
21 and file a further amended Modified FADS and Modified FAP by March 25, 2016, with a hearing
22 on the further amended Modified FAP to be held on April 20, 2016 (the "10/19/15 Modified FADS
23 Order"). [Dkt. 201]. The foregoing dates were advanced by the DIP Amendment Order to
24 February 9, 2016 and March 9, 2016, respectively.

25 30. As required by the DIP Amendment order, on February 9, 2016, the Debtor filed its
26 SADS [Dkt. 311] and related Second Amended Plan Dated February 9, 2016, as Modified (the
27 "SAP") [Dkt. 310]. Unlike the Original Plan, FAP, and Modified FAP, the SAP is not premised on
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1 continued operation of the Debtor's Supermarket. Instead, for reasons discussed below, the SAP is
2 premised on a pre-plan effective date liquidation of substantially all of the Debtors' assets, which
3 the Debtor is seeking to effectuate pursuant to the instant Sale Motion and proposed sale of the
4 Purchased Assets to Vinamex Investors or a Successful Over Bidder, and the distribution of the
5 proceeds thereof and any net litigation recoveries.

6 31. Unfortunately, the delay associated with the plan process was detrimental to the
7 Debtor and efforts to proceed with a reorganizing plan. At the commencement of the case, the
8 Debtor anticipated emerging from bankruptcy within a six month period and budgeted accordingly.
9 More specifically, the \$1 million DIP Loan anticipated that the Debtor would have its disclosure
10 statement approved in October 2015 and its plan confirmed in December 2015, with the plan going
11 effective in January 2016. The proceeds from the DIP Loan were utilized as follows:

- 12 • Draw #1: \$250,000 for various expenses, most of which was rent, during the two-
13 plus months the Supermarket remained closed awaiting approval of the proposed
14 DIP Financing.
- 15 • Draw #2: \$210,000 for re-stocking of the Supermarket. This figure was higher
16 than needed due to the two-plus months the Supermarket remained closed
17 awaiting approval of the proposed DIP Financing.
- 18 • Draw #3: \$190,000 for re-stocking of the Supermarket. This figure was higher
19 than needed due to the two-plus months the Supermarket remained closed
20 awaiting approval of the proposed DIP Financing.
- 21 • Draw #4: \$47,000 for ongoing operations.
- 22 • Draw #5: \$45,000 for ongoing operations.
- 23 • Draw #6: \$40,000 for ongoing operations.
- 24 • Draw #7: \$215,000 for legal fees and ongoing operations (\$40,000).
- 25 • Draw #8: \$3,000 for ongoing operations.
- 26 • Draw #9: \$100,000 for ongoing operations.

27 32. The delayed timetable for approval of a disclosure statement and confirmation
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1 of a plan resulted in negative perception in the marketplace and, in turn, decreased sales and an
2 inability to obtain vendor credit for inventory. The delay in obtaining plan confirmation has also
3 resulted in higher than expected administrative expenses. Additionally, the Debtor has incurred
4 unexpected expenses for, among other things, the repair of construction defects, which the
5 Debtor had to make in order to obtain a permanent certificate of occupancy and to ensure that it
6 could sub-lease operable food court and consumer goods stalls to sub-tenants.

7 33. All of the foregoing and, in particular, expenses specific to operating as a debtor
8 in possession in an ongoing bankruptcy case, hindered the Debtor's ability to operate on cash
9 flow positive basis. Were it not for the bankruptcy related expenses, I believe the Debtor would
10 be generating industry leading profit margins and operating on a cash flow positive basis.

11 34. Due to shortfalls in operating income resulting from the need to pay expenses
12 that would not have been incurred if the Debtor was not in bankruptcy, the Debtor had to utilize
13 DIP Loan proceeds in order to pay all ordinary operating expenses as they became due. The
14 resulting diminishment in DIP Loan availability required to fund continued operations, which
15 was forecasted to be exhausted before any plan could be confirmed on the timetable fixed by the
16 Court, forced the Debtor to pursue alternatives to a reorganizing plan.

17 35. In consideration of the foregoing, I determined that the best course of action
18 was to pursue a sale of substantially all of the Debtors' assets, which the Debtor is seeking to
19 accomplish by way of this Sale Motion. The Debtor sought and obtained approval of the
20 additional \$100,000 in DIP Loan financing pursuant to the DIP Loan Amendment to fund
21 operations through the close of the proposed sale of the Purchased Assets. The current maturity
22 date of the DIP Loan is March 31, 2016. Even with the additional financing, I intend to close
23 the Supermarket at the close of business on February 21, 2016 or possibly a week later, because
24 the DIP Loan financing is insufficient to fund bankruptcy related expenses and ongoing ordinary
25 business expenses required to maintain operations after such date.

26 36. In addition to seeking additional DIP Loan financing to advance sale efforts, on
27 January 22, 2016, having determined that the Debtor would pursue an asset sale, which resulted
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1 in the Debtor requiring the services of an investment banker to market and facilitate a sale of the
2 substantially all of the Debtor's assets, the Debtor filed its motion to expand the terms of the
3 engagement contract between the Debtor and I pursuant to which I became the Debtor's Chief
4 Restructuring Officer, which was approved by the Court [Dkt. 88], to include authorization for
5 the Debtor to retain me as an investment banker in connection with the sale of the Debtor's
6 assets, with compensation at the rate of \$34,000 per month (prorated for any partial month) from
7 January 1, 2016 through the close of a sale and only to be paid on the successful closing of a
8 sale. [Dkt. 296] That motion is pending with the court. February 8, 2016 was the deadline for
9 objections and none were filed. The order granting the motion has been lodged with the Court,
10 but has not yet been entered. A true and correct copy of my professional resume is attached
11 hereto as **Exhibit "4."**

12 37. Beginning in late December 2015, after determining that the Debtor would have
13 to pursue an expedited liquidation of substantially all of the Debtor's assets, I and others
14 working at my direction started marketing the Debtor's assets for sale and soliciting bids for the
15 assets. In connection with marketing the Debtor's assets for sale, by February 2, 2016, my team
16 and I contacted approximately 136 potential bidders (the "Potential Bidders") for the assets, and
17 additional Potential Bidders have been contacted since that date. A total of 153 Potential
18 Bidders have now been contacted. Attached hereto as **Exhibit "5"** is a list of the Potential
19 Bidders contacted by me and/or those working with me to market the Purchased Assets. In
20 addition, on or about February 1, 2016, I set up an electronic data room with key documents to
21 facilitate due diligence by Potential Bidders. By January 7, 2016, I had already obtained four (4)
22 competing bids to acquire all, or substantially all, of the Debtor's assets associated with the
23 operation of its business.

24 38. Upon determining that Vinamex Investors bid represented the highest and best
25 bid at the time, the Debtor and Vinamex Investors negotiated the terms of the APA providing for
26 the sale of substantially all of the Debtor's assets (identified and defined as the Purchased Assets
27 in the APA) to Vinamex Investors. The APA is the result of arms-length negotiations between
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1 the Debtor and Vinamex Investors, both of which were represented by independent counsel in
2 conjunction with negotiating the terms of the proposed asset sale and drafting the APA based on
3 such terms. The APA was entered into as of January 25, 2016.

4 39. In accordance with the APA, on January 25, 2016, the Debtor filed its motion
5 (the "Bid Procedures Motion") to approve the Bidding Procedures specified in the APA for the
6 sale of substantially all of the Debtor's assets. [Dkt. 298] On February 4, 2016, the Court
7 entered its Bid Procedures Order (a) granting the Bid Procedures Motion, (b) approving the Bid
8 Procedures, with certain modifications, and (c) setting a hearing on March 7, 2016 to consider
9 this Sale Motion to approve the Asset Sale to Vinamex Investors Bidder or a Successful Over
10 Bidder pursuant to the Bid Procedures. [Dkt. 303]

11 40. Information regarding the Bid Procedures and the requirements and deadlines
12 for submitting Qualified Over Bids was placed in to the data room to afford each potential
13 competing bidder access to such information. Efforts to identify other prospective bidders
14 continue and will continue through the deadline for submitting qualified bids pursuant the Bid
15 Procedures approved by the Court, which is five (5) business days before the March 7, 2016
16 hearing on this Sale Motion (*i.e.*, February 29, 2016). For example, during the week of February
17 15, 2016, I will advertise the asset sale in three (3) Vietnamese newspapers and attempt to do an
18 interview on local Vietnamese television regarding the asset sale. Attached hereto as **Exhibit**
19 **"6"** is a chart summarizing the efforts of my team and I through the date hereof to market
20 substantially all of the Debtor's assets for sale.

21 41. A true and correct copy of the APA is attached hereto as **Exhibit "1."**

22 42. Vinamex Investors already identified the Contracts listed in **Exhibit "2"** hereto
23 as the Assumed Contracts. **Exhibit "2"** incudes the cure amounts I believe are required to be
24 paid to effectuate an assumption of the Assumed Contracts and an assignment thereof to
25 Vinamex Investors or a Successful Over Bidder.

26 43. After considering the terms of, and benefits derived from, the APA, considering
27 the Debtor's precarious financial position, considering the need to have a party serve as a
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1 stalking horse bidder pursuant to a binding APA to help achieve a benchmark price for the
2 Purchased Assets, determining that, at the time, the purchase price offered by Vinamex Investors
3 was by far the highest amount offered for the Purchased Assets, I concluded, in an exercise of
4 my reasonable and sound business judgment, that the proposed sale under the APA is in the best
5 interests of the Debtor, its estates, its creditors, and other parties in interest. The APA and
6 related extension of an additional \$100,000 in funding under the DIP Loan (1) provide the
7 Debtor with the funds it needed to pursue and close a sale of the Purchased Assets and to
8 maintain operations as long as possible in the interim, (2) provide a baseline bid for the
9 Purchased Assets, and (3) in light of the fact the APA is subject to overbid pursuant to the Court-
10 approved Bid Procedures, in my opinion, should result in the Debtor obtaining the highest and
11 best price for the Purchased Assets.

12 44. Upon the close of the proposed sale of the Purchased Assets, (1) the
13 superpriority administrative claim held by Vinamex Investors for the DIP Loan will be
14 eliminated, through either Vinamex Investors' assumption of the obligation or a Successful Over
15 Bidder's assumption or payoff of the obligation, (2) the Debtor will acquire approximately
16 \$798,000 in net proceeds from the Purchase Price (the \$900,000 cash from the Purchase Price,
17 less a conservatively estimated \$102,000 in contingency fees payable to me pursuant to my
18 expanded retention agreement to cover investment banking services in connection with the asset
19 sale) if the sale is to Vinamex Investors or more if the sale is to a Successful Over Bidder, and
20 (3) the Debtor's remaining assets will be principally comprised of the Net Sale Proceeds, any
21 other cash on hand, and Litigation Claims.

22 45. I believe that the only likely alternatives to the proposed sale of the Debtor's
23 assets are either dismissal or conversion of the Debtor's Chapter 11 case, because the Debtor has
24 no means to fully fund continued operations pending the pursuit of a reorganizing plan or to
25 make the payments that would have to be made upon the effective date of a reorganizing plan in
26 order to confirm the plan and emerge from bankruptcy. I believe that dismissal or conversion
27 would both result in less value being obtained for the Purchased Assets, particularly as the
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1 Supermarket lies dormant after again being closed and because an inability to pay rent for the
2 Debtor's leased location where the Supermarket is located would probably result in a
3 termination of the lease. In my opinion, both of the foregoing would eviscerate the Debtor's
4 going concern value and severely diminish the value obtained for the Debtor's assets.

5 46. As soon as this Sale Motion is filed, I will place a copy of this Sale Motion and
6 the related short-form notice of the Sale Motion in the data room and inform the Potential
7 Bidders that these documents related to the auction and sale of the Purchased Assets are
8 available for review.

9 47. I am informed and believe, based on the Xu Declaration, that Vinamex
10 Investors may be considered an "insider" of the Debtor, as defined in the Bankruptcy Code.
11 There has been no attempt to hide the connections between Vinamex Investors and the Debtor.

12 48. Xu and his affiliated entities did not control my decision, on behalf of the
13 Debtor's, to sell the Purchased Assets, to enter into the APA, or the terms of the APA. I, as the
14 Debtor's Chief Restructuring Officer independently decided to sell the Purchased Assets due to
15 the financial turmoil faced by the Debtor. I, as the Debtor's Chief Restructuring Officer and
16 Investment Banker, decided to enter into the APA with Vinamex Investors because, at the time,
17 it had made the highest bid for the Purchased Assets. As discussed, the terms of the APA are the
18 result of arms-length negotiations between the Debtor and Vinamex Investors, both of which are
19 represented by independent counsel.

20 49. Based upon the competing offers received by the Debtor prior to execution of
21 the APA, I concluded that the Vinamex Investors' bid was for an amount that was more than
22 twice the amount of the next closest bid.

23 50. The assumption and assignment of the Assumed Contracts, some of which are
24 integral to the continued operation of the Debtor's Supermarket (*e.g.*, the real property lease of
25 the building where the Supermarket is located), is a requirement of the APA. Furthermore, the
26 assumption and assignment of the Assumed Contracts will eliminate damages that would arise if
27 the Assumed Contracts were rejected and, therefore, will reduce claims against the estate and
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1 preserve funds to be used to pay allowed claims. Based on the foregoing, I, in an exercise of by
2 business judgment, concluded that the assumption and assignment of the Assumed Contracts is
3 in the best interests of the Debtor, its estate, and its creditors.

4 51. I believe that the payment of the Cure Amounts, if any, is all that is required to
5 cure any payment or other defaults that may have arisen under the Assumed Contracts.

6 52. In this case, it is extremely important that the Debtor close the sale of the
7 Purchased Assets before March 30, 2016, because that is the deadline set by the APA (§ 8.1) and
8 March 31, 2016 is the maturity date of the DIP Loan.

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct to the best of my knowledge.

11 Executed on this 15th day of February 2016, at GARDEN GROVE, California.

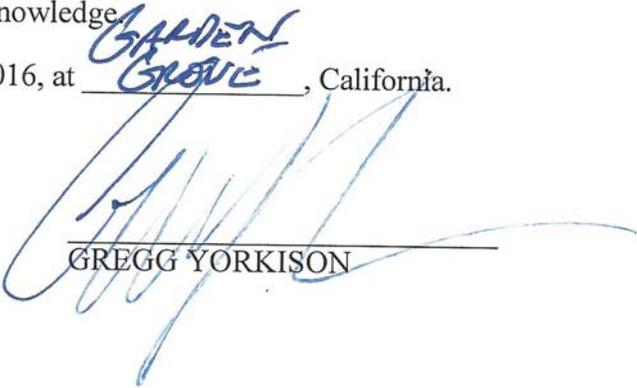
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EXHIBIT "1"

ASSET PURCHASE AGREEMENT

between

VINAMEX SUPERMARKET, LLC
DEBTOR AND DEBTOR IN POSSESSION

and

VINAMEX INVESTORS, LLC, a California limited liability company

DATED AS OF January 25, 2016

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of January 25, 2016 by and between Vinamex Supermarket, LLC, a California limited liability company, as debtor and debtor in possession ("Seller"), in Case No. 8:15-bk-13189-MW (the "Bankruptcy Case") in the United States Bankruptcy Court for the Central District of California, Santa Ana Division, Honorable Mark Wallace, United States Bankruptcy Judge presiding (the "Bankruptcy Court"), and Vinamex Investors, LLC, a California limited liability company, or its permitted designee ("Purchaser").

RECITALS

WHEREAS, on June 24, 2015, Seller commenced the Bankruptcy Case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (as defined in Article 1 hereof) with the Bankruptcy Court; and

WHEREAS, Seller is continuing to manage its affairs as a debtor and debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, Seller wishes to sell, transfer, convey, assign and deliver to Purchaser, in accordance with Sections 363 and 365 and the other applicable provisions of the Bankruptcy Code, all of the Purchased Assets (as hereinafter defined), together with the Assumed Liabilities (as hereinafter defined), of Seller upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, Purchaser wishes to purchase and take delivery of the Purchased Assets and assume the Assumed Liabilities upon such terms and subject to the conditions of this Agreement;

WHEREAS, the Purchased Assets will be sold pursuant to a Sale Order (as hereinafter defined) of the Bankruptcy Court approving such sale under Section 363 of the Bankruptcy Code and such Sale Order will include the assumption and assignment of certain Executory Contracts, unexpired leases and liabilities thereunder under Section 365 of the Bankruptcy Code and the terms and conditions of this Agreement; and

WHEREAS, all of the obligations of Seller under this Agreement are conditioned upon the approval of the Bankruptcy Court in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement and any schedules hereto or other Transaction Documents, the following terms shall have the following meanings:

“Affiliate” means any Person, which, directly or indirectly, is in control of, is controlled by, or is under common control with, another Person. For purposes of this definition, a Person shall be deemed to be “controlled by” another Person if such latter Person possesses, directly or indirectly, power either to direct or cause the direction of the management and policies of such controlled Person whether by contract or otherwise.

“Assumed Contract Rights” means those rights, powers, privileges, defenses (including setoff and/or recoupment rights), and remedies that may exist with respect to any Assumed Contract, other than Avoidance Claims.

“Assumed Contracts” has the meaning ascribed to that term in Section 6.1.

“Assumed Liabilities” means those Liabilities assumed by Purchaser pursuant to Section 3.2.

“Avoidance Claims” means any and all claims of Seller arising under Chapter 5 of the Bankruptcy Code or applicable state fraudulent transfer law, and the proceeds thereof.

“Bankruptcy Code” means 11 U.S.C. Section 101, et. seq., and any amendments thereof operative at the time of the Bankruptcy Case.

“Closing” has the meaning ascribed in Section 8.1.

“Contract” or “Contracts” means any written or oral contract, agreement, lease, license, instrument, or other document or commitment, arrangement, undertaking, practice or authorization that is binding on any Person or its property under any applicable Law.

“Deposit” has the meaning ascribed in Section 4.2.

“Deposit Account” means the interest bearing client-trust account established by the Escrow Holder for the purpose of holding the Deposit, subject to the terms and conditions of this Agreement.

“Documentation” means properties, titles, contracts, books, records, files and documents, whether stored in physical or electronic format.

“Due Diligence Materials” means all documents and information relating to the Purchased Assets that would be necessary for a prospective purchaser to review in the course of performing due diligence in advance of an acquisition of the Purchased Assets.

“Excluded Assets” means, collectively, the following assets of Seller:

- (a) Any equity interests of Seller in any subsidiaries or affiliates;
- (b) Any employee benefit plans or obligations of Seller;
- (c) All cash on hand as of the Closing;
- (d) Except to the extent included in Assumed Contract Rights and, subject to the provisions of Section 3.3, all Litigation Claims, except Litigation Claims of Seller against Food to Go and 3 Mein;
- (e) All Excluded Contracts;
- (f) All personnel records and other records that Seller is required by law to retain in its possession and any retained copies of any record or document included in the Purchased Assets; and
- (g) All insurance proceeds, claims and/or causes of action solely with respect to or arising in connection with (i) any Excluded Contract, or (ii) any item of tangible or intangible property not acquired by Purchaser at the Closing.

“Excluded Contracts” means any Contracts that are not Assumed Contracts.

“Executory Contract” means any Contract that constitutes an executory Contract subject to the provisions of Section 365 of the Bankruptcy Code.

“Final Order” means an order or judgment, entered by a court of competent jurisdiction, that remains in full force and effect and has not been reversed, or amended or modified in a manner that is materially inconsistent with the terms and conditions set forth in this Agreement, and as to which (i) no stay is in effect, (ii) the time to seek rehearing, file a notice of appeal or seek other review has expired, and (iii) no appeal or request for rehearing or other review is pending.

“Good Funds” means immediately available, good funds of the United States of America.

“Governmental Authority” means any federal, state, provincial, municipal and foreign governmental entity, authority, or agency, or any other political subdivision, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

“Hearing Deadline” means the date for the hearing on the Sale Motion which, unless extended by order of the Bankruptcy Court or mutual agreement of the Parties, shall be no later than March 11, 2016.

“Intellectual Property” means, *inter alia*, (a) all copyrights and trademarks, rights in, under or related to copyrights or trademarks, interests in copyrights and trademarks and renewals and extension of copyrights and trademarks, domestic and foreign, heretofore or hereafter in, or obtained by, the Debtor in or in connection with any of the Purchased Assets and the rights (but not any obligation) to make any publication thereof for copyright, trademark and other purposes, to register claims under copyright and trademark, to renew and extend such registrations; (b) all

inventions, processes, formulae, licenses, patent applications, patents, patent rights, trademark applications, service marks and corporate, company and trade name, trade secrets, logo and other business identifiers (for use in and in connection with the Purchased Assets, customer lists, and the exploitation of any other rights acquired hereunder); (c) any and all renewals and extensions of any property listed in (a) and (b), above, domestic and foreign; (d) the rights (but not the obligation) to register, renew and extend trademarks and service marks for use in and in connection with the Purchased Assets and the exploitation of any other rights acquired hereunder; and (e) the rights (but not any obligation) to sue in the name of the Debtor for past, present or future infringement of any of the foregoing.

“Law” means any federal, state, provincial, local or foreign statute, law, ordinance, regulation, rule, code, order, case law decision or other requirement or rule of law.

“Liability” or “Liabilities” means any liability, indebtedness, obligation, expense, claim, loss, cost, damage, obligation, responsibility, guaranty or endorsement of or by any Person, absolute or contingent, accrued or unaccrued, known or unknown, due or to become due, liquidated or unliquidated, secured or unsecured, pre-petition or administrative.

“Lien” or “Liens” means any security interests, mortgages, interests, liens, pledges, charges, encumbrances and other rights or claims of third parties.

“Liquidating Agent” means C.Y.G. Financial Advisory Services.

“Litigation Claims” means any and all claims, rights and causes of action against any third party, including all Avoidance Claims, and the proceeds thereof, solely to the extent such claims, rights and causes of action constitute property of Seller’s bankruptcy estate pursuant to Section 541 of the Bankruptcy Code in existence as of the Closing Date. For the avoidance of doubt, Litigation Claims do not include any claims, rights or causes of action belonging to any third party, including, without limitation, any holder of an equity interest in Seller.

“Non-Assumed Liabilities” means any and all Liabilities of Seller that are not Assumed Liabilities.

“Ordinary Course of Business” means the current course of business conducted by Seller consistent with past custom and practice (including with respect to quantity and frequency).

“Party” means any signatory to this Agreement.

“Person” means any corporation, partnership, limited liability company, joint venture, business association, entity or individual.

“Procedures Motion” means a motion filed with the Bankruptcy Court seeking entry of an order approving the bid procedures for a sale to Purchaser or an alternative bidder.

“Purchase Price” has the meaning ascribed to that term in Article 4.

“Purchased Assets” means all of the assets of Seller (other than the Excluded Assets) that constitute property of Seller’s bankruptcy estates pursuant to Section 541 of the Bankruptcy

Code. For purposes of clarity, but in no way limiting the definition of Purchased Assets, Purchased Assets comprise all of the tangible and intangible assets owned or used by Seller, or contemplated to be used, in the operation of Seller's business or otherwise located at Seller's premises and elsewhere (in the past, currently, or contemplated in the future), specifically including, again without limitation, all business licenses; inventory; accounts receivable; work in process; open purchase orders; Intellectual Property; computer hardware; software; telephone numbers; websites; e-mails; cash deposits of any kind provided by Seller in the ordinary course of its business as such deposits relate to the Purchased Assets; the books and records of Seller relating to the Purchased Assets, including personnel records (except personnel records and other records that Seller is required by law to retain in its possession, provided that copies of such records shall be included as Purchased Assets); all security deposits and rights to receive any refunds and/or credits; Litigation Claims of Seller against Food to Go and 3 Mein; and all losses, loss carry forwards and rights to receive refunds or credits from any Governmental Authority with respect to any taxes of the Seller incurred prior to the Closing.

"Qualified Bidder" has the meaning ascribed to that term in Section 5.2.

"Sale Motion" means the motion for entry of a Sale Order seeking, *inter alia*, authority for Seller to sell and assign, among other things, the Purchased Assets to Purchaser.

"Sale Order" means an order entered by the Bankruptcy Court granting the Sale Motion in a form reasonably acceptable to Purchaser and Seller, which order shall authorize Seller to sell and assign the Purchased Assets to Purchaser in accordance with the terms and conditions of this Agreement.

"Sale Procedures Order" means an order entered by the Bankruptcy Court granting the Procedures Motion in a form reasonably acceptable to Purchaser and Seller and approving the bid procedures set forth therein.

"Tax" or "Taxes" means any taxes, charges, duties, assessments, fees, levies, imposts, or similar governmental assessments, together with any interest, penalties, and additions to tax, imposed by any taxing authority, wherever located (i.e., whether federal, state, local, municipal, or foreign), including all net income, gross income, gross receipts, net receipts, sales, use, goods and services, transfer, franchise, privilege, profits, social security, disability, withholding, payroll, telecommunications, utility user, unemployment, employment, employer health, excise, capital, capital gains, severance, property, windfall profits, value added, ad valorem, or occupation tax, or any other similar governmental charge or imposition, and any other taxes, customs duties, stamp duties, fees, assessments, or similar charges in the nature of a tax together with any interest, fines, and penalties imposed by any Governmental Authority, whether disputed or not.

"Transaction Documents" means this Agreement, and all other agreements, documents and instruments executed in connection herewith or required to be executed or delivered by the Parties or any one or more of them in accordance with the provisions of this Agreement, which Transaction Documents shall be prepared by Purchaser.

Section 1.2. Other Defined Terms. For purposes of this Agreement and any schedules hereto or other Transaction Documents, other capitalized terms used in this Agreement have the meanings ascribed to them elsewhere in this Agreement.

Section 1.3. Other Meanings. Unless the context of this Agreement clearly requires otherwise, (a) "or" has the inclusive meaning frequently identified with the phrase "and/or," (b) "including" has the inclusive meaning frequently identified with the phrase "including, but not limited to," (c) references to "hereof," "hereunder" or "herein" or words of similar import relate to this Agreement, and (d) any reference to the singular shall include the plural.

ARTICLE 2

PURCHASE AND SALE

Section 2.1. Except as otherwise provided and subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, convey, assign, transfer and deliver to Purchaser, and Purchaser agrees to purchase from Seller at the Closing (as defined in Article 8 hereof), all of Seller's respective right, title and interest in and to the Purchased Assets, free and clear of all Liens.

ARTICLE 3

DESCRIPTION OF PURCHASED ASSETS

Section 3.1. Purchased Assets. On and subject to the terms and conditions of this Agreement, Purchaser agrees to purchase from Seller, and Seller agrees to sell to Purchaser, all of the Purchased Assets for the Purchase Price. At the Closing, the Purchased Assets shall be sold, transferred and conveyed to Purchaser, free and clear of all Liens, and Purchaser will purchase, acquire and accept for the Purchase Price, the Purchased Assets, free and clear of all Liens.

Section 3.2. Assumed Liabilities.

(a) At the Closing, Purchaser shall assume and agree to perform and discharge, or take subject to, the following Liabilities of Seller to the extent not previously performed or discharged, and no others: (i) all Liabilities of Seller with respect to the Purchased Assets which accrue and are to be performed from and after the Closing, including, without limitation, all Liabilities under the Assumed Contracts which relate to time periods or goods or services provided to or by Purchaser after the Closing; and (ii) Liabilities and obligations relating to and arising from Purchaser's exploitation of the Purchased Assets after the Closing.

(b) Purchaser shall not assume or be bound by or be obligated or responsible for any of the Non-Assumed Liabilities.

Section 3.3 Litigation Claims. Litigation Claims shall be Excluded Assets; provided, however, that if, within sixty (60) days following the Closing Date, neither the Seller, nor any party acting on behalf of Seller's bankruptcy estate, including, without limitation, the Official Committee of Unsecured Creditors, has taken any action to commence or otherwise pursue collection of the Litigation Claims, the Litigation Claims, or any Litigation Claim(s) specifically designated by Purchaser, other than Litigation Claims of Seller against Food to Go and 3 Mein,

shall, at Purchaser's option, automatically be transferred to Purchaser for no additional consideration. Within five (5) days following the expiration of the sixty (60) day period referenced above, Purchaser shall provide Seller with written notice specifically identifying any Litigation Claim(s) that Purchaser intends to assume and pursue. If Litigation Claims are not transferred to Purchaser, any and all recoveries on account of Litigation Claims shall belong to the Seller.

ARTICLE 4 **PURCHASE PRICE**

Section 4.1. Purchase Price. The purchase price for the Purchased Assets shall be an amount equal to Two Million and 00/100 Dollars (\$2,000,000) (the "Purchase Price") paid to the Seller at the Closing, comprised of the following: (a) assumption of the Liabilities and obligations of the Seller relating to and arising from the Super-Priority Administrative Expense Debtor-In-Possession Loan Agreement, as Amended (the "DIP Loan"), together with all interest, fees and costs associated therewith, totaling One Million Two Hundred and Forty Eight Thousand and 00/100 Dollars (\$1,248,000); (b) minus the sum of \$148,000 for cash deposits posted by Seller with third parties, which deposits are included within the Purchased Assets; and (c) plus Nine Hundred Thousand and 00/100 Dollars (\$900,000) in Good Funds.

Section 4.2. Deposit; Payment of Purchase Price.

(a) Prior to the execution of this Agreement, Purchaser has deposited into the Deposit Account, Good Funds in the amount of Fifty Thousand and 00/100 Dollars (\$50,000) (the "Deposit"), which shall be held in a segregated interest-bearing account. Except as otherwise provided herein, the Deposit shall be applied to the obligations of Purchaser hereunder.

(b) Except as provided in Section 4.4, below, the Deposit shall become non-refundable upon entry by the Bankruptcy Court of the Sale Procedures Order.

(c) At the Closing, subject to Article 5 hereof, the Deposit, together with all interest accrued thereon, shall be credited and applied toward payment of the Purchase Price, and the Escrow Holder shall deliver the Deposit to Seller.

(d) The cash portion of the Purchase Price shall be payable at Closing by wire transfer of Good Funds to one or more bank accounts specified by Seller in wire transfer instructions to be delivered to Purchaser at least two (2) business days prior to the Closing Date.

Section 4.3. Allocation of Purchase Price. The Purchase Price shall be allocated between and among the Purchased Assets, if at all, in a manner agreed to by Seller and Purchaser prior to the Closing.

Section 4.4. Application or Return of Deposit. The Deposit, together with all interest accrued thereon, shall either be applied to the payment of the Purchase Price hereunder or returned to Purchaser upon the occurrence of any of the following: (i) the Sale Procedures Order is not entered by the Bankruptcy Court on or before February 16, 2016 and Purchaser elects not to proceed with the purchase of the Purchased Assets; (ii) the Closing Date does not occur on or

before March 31, 2016 and Purchaser elects not to proceed with the purchase of the Purchased Assets, (iii) Seller enters into a letter of intent or purchase and sale agreement with respect to any of the Purchased Assets with another party except as expressly permitted under this Agreement and the Sale Procedures Order, (iv) Purchaser is prevented from closing through no fault of its own, or (v) the sale of the Purchased Assets is approved by the Bankruptcy Court but the transaction terminates by virtue of any wrongful action or inaction of Seller. If, notwithstanding that all conditions precedent in Articles 13 and 14 have been met and an order approving the sale to Purchaser has been entered, Purchaser is unwilling or unable to consummate the sale and perform the obligations required upon closing, all of the Deposit, together with all interest accrued thereon, shall be non-refundable and shall immediately be released and paid by the Escrow Holder to Seller.

ARTICLE 5 PROCEDURES AND APPROVALS

Section 5.1. Due Diligence Materials. Seller shall make the Due Diligence Materials available to Purchaser and may prepare summaries, compilations and other reports on the contents of the Due Diligence Materials for distribution to Purchaser.

Section 5.2. Bankruptcy Court Proceedings.

(a) Seller shall promptly move before the Bankruptcy Court for entry of the Sale Procedures Order approving the bid procedures described herein. Following entry of the Sale Procedures Order, Seller shall promptly file the Sale Motion and use its commercially reasonable best efforts to schedule a hearing on the Sale Motion on or before March 11, 2016. Seller will provide timely and sufficient notice of the hearing on the Sale Motion in compliance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of the Central District of California or as otherwise ordered by the Bankruptcy Court.

(b) The Sale Procedures Order shall contain, *inter alia*, the following material provisions:

- (i) Any sale of the Purchased Assets to a Qualified Bidder (an "Alternative Bid") must be on the same or better material terms and conditions as set forth in this Agreement and the Transaction Documents, or as the Bankruptcy Court may determine are in the best interests of creditors and Seller's bankruptcy estates, and any Alternative Bid must satisfy the DIP Loan in full in Good Funds upon the Closing, except as provided in subsection (ii), below;
- (ii) Only Qualified Bidders may tender an Alternative Bid. For purposes of this provision a "Qualified Bidder" shall be any party that, within five (5) business days prior to the hearing on the Sale Motion, delivers to the Escrow Holder (w) a Good Funds deposit in the amount of Fifty Thousand and 00/100 Dollars (\$50,000); (x) written evidence from a third party reasonably satisfactory to Seller of its financial ability to perform the obligations under this

Agreement before, on and after the Closing Date (including having sufficient funds in the United States to satisfy the Purchase Price in Good Funds); (y) a form of a proposed purchase and sale agreement for the Alternative Bid (solely in the event that the Alternative Bid is based upon terms and conditions that are materially different from the terms and conditions of this Agreement); and (z) a written statement signed by the Qualified Bidder agreeing that such Qualified Bidder, if successful at the hearing on the Sale Motion, shall be bound by the terms of this Agreement (or this Agreement, as modified by the Alternative Bid). Purchaser shall be deemed to be a Qualified Bidder. No Alternative Bids that are contingent as to financing or that purport to assume the DIP Loan shall be considered, unless, in the sole and absolute discretion of Purchaser, such Qualified Bidder is an acceptable creditworthy party who Purchaser allows in writing to assume the obligations under the DIP Loan under mutually agreeable terms;

- (iii) In the event a Qualified Bidder is the successful bidder at the hearing on the Sale Motion, Purchaser shall be entitled to receive a breakup fee in the amount of Fifty Thousand and 00/100 Dollars (\$50,000) (the "Breakup Fee"), paid directly to Purchaser at the Closing from the proceeds of the sale to the successful Alternate Bidder. The second highest and best Alternative Bid, or any Alternative Bid that is designated by the Bankruptcy Court as a "backup" bid at the hearing on the Sale Motion, shall remain binding upon the offeror as an Alternative Bid, and in the event the successful bidder fails to close as required under this Agreement, such Alternative Bid shall be deemed accepted by Seller and approved by the Bankruptcy Court. In the event Seller intends to proceed with a Closing with respect to any bid designated by the Bankruptcy Court as a "backup" bid at the hearing on the Sale Motion, Seller shall provide to the party whose bid was designated as a "backup" bid not less than ten (10) days' prior written notice of the date set for the Closing with respect to such "backup" bid;
- (iv) Alternative Bids shall be in not less than Twenty Five Thousand and 00/100 Dollars (\$25,000) increments, provided, however, that any initial Alternative Bid shall be in the amount of at least Seventy Five Thousand and 00/100 Dollars (\$75,000) more than the Purchase Price;
- (v) Purchaser shall be entitled to a credit for the full amount of the Breakup Fee in any Alternative Bid it may elect to tender at the hearing on the Sale Motion;

- (vi) The hearing on the Sale Motion shall be held by no later than the Hearing Deadline;
 - (vii) Provide that, with respect to any Assumed Contract any disputes with respect to any alleged default or the amount of a cure payment or other obligation under such Assumed Contract shall be determined at the hearing on the Sale Motion.
- (c) The Sale Order shall contain, *inter alia*, the following material provisions and/or findings:
- (i) Seller complied with the requirements and conditions set forth in the Sale Procedures Order;
 - (ii) The Purchase Price represents the fair market value for the Purchased Assets;
 - (iii) Purchaser is not a continuation of Seller or otherwise liable for any Liabilities of Seller based upon successor liability or similar theories;
 - (iv) The Purchased Assets are being purchased by Purchaser in good faith and the Purchase Price was not controlled by an agreement among potential bidders and otherwise complies with the requirements of Section 363(m) of the Bankruptcy Code;
 - (v) This Agreement (and all other Transaction Documents) is approved in its entirety;
 - (vi) The Purchased Assets are conveyed to Purchaser free and clear of any and all Liens and, other than any Assumed Liabilities, all Liabilities of Seller, encumbrances, restrictions and limitations pursuant to Section 363(b) and (f), or by any order entered by the Bankruptcy Court in the Case;
 - (vii) The Assumed Contracts are assumed and assigned to Purchaser pursuant to the requirements of Section 365 of the Bankruptcy Code or such other appropriate sections of the Bankruptcy Code; and
 - (viii) Purchaser shall not be liable or obligated for any Liability (other than any Assumed Liability), Liens, interests, damages, costs, expenses, claims or demands arising from or relating to the pre-Closing ownership or operation of the Purchased Assets.

Section 5.3. Certain Bankruptcy Undertakings by Seller.

(a) Each of Purchaser and Seller will use its commercially reasonable efforts to take all actions and do all things necessary or appropriate to comply with and satisfy the terms and conditions of this Agreement and consummate the transactions contemplated by this Agreement. With the cooperation of Seller, Purchaser will bear the burden of providing the evidence to establish that Purchaser is a good faith purchaser under Section 363(m) of the Bankruptcy Code, and cooperate with Seller to comply with the terms and conditions of and consummate the transactions contemplated by this Agreement, and Purchaser will not interfere, directly or indirectly, with such efforts by Seller.

(b) From and after the date hereof, except as ordered by the Bankruptcy Court, the Parties agree to use their commercially reasonable efforts to neither take any action, nor fail to take any action, which action or failure to act would reasonably be expected to (i) prevent or impede the consummation of the transactions contemplated by this Agreement in accordance with the terms and conditions of this Agreement and the proposed Sale Order; or (ii) with respect to the Sale Procedures Order or the Sale Order, result in (A) the reversal, avoidance, revocation, vacating or modification (in any manner that would reasonably be expected to materially and adversely affect Purchaser's or Seller's rights hereunder), or (B) the entry of a stay pending appeal.

(c) If the Sale Procedures Order, the Sale Order or any other order of the Bankruptcy Court relating to this Agreement shall be appealed (or a petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto), and, as a result thereof, Purchaser elects not to proceed with a Closing and Purchaser provides written notice to the Seller within two (2) business days following the filing of such appeal, petition for certiorari or motion for rehearing or reargument if (i) Purchaser elects not to proceed with a Closing under the circumstances, and (ii) Purchaser desires for Seller to contest any such appeal, petition for certiorari or motion for rehearing or reargument, Seller shall, contingent upon the cooperation and financial support of Purchaser, which cooperation and financial support shall include, without limitation, payment of all reasonable attorneys' fees and expenses incurred by the Seller in opposing any such appeal, petition for certiorari, motion for rehearing or reargument or any motion for a stay or in providing any bond or similar assurance with respect thereto, take all steps as may be reasonable and appropriate to defend against such appeal, petition or motion, and shall endeavor to obtain an expedited resolution thereof.

ARTICLE 6
ASSUMPTION OF CONTRACTS

Section 6.1. Assumed Contracts. Purchaser shall have until five (5) days prior to the date first set for the hearing on the Sale Motion to determine and identify which contracts it seeks to assume. All Contracts that are not expressly identified as Contracts to be assumed and assigned to Purchaser pursuant to Section 365 of the Bankruptcy Code ("Assumed Contracts") shall not be assumed by, nor shall they be the responsibility of, Purchaser.

Section 6.2. Requirements to Assume and Assign Assumed Contracts. To the extent Purchaser has identified an Assumed Contract under this Agreement, Purchaser shall be

responsible for payment of any cure amounts due and owing under such Assumed Contracts, not to exceed the sum of Five Thousand and 00/100 Dollars (\$5,000) in the aggregate. Seller is required to obtain any necessary consents to assume and assign such specified Assumed Contracts to Purchaser pursuant to Section 365 of the Bankruptcy Code. Purchaser shall provide adequate assurance of future performance for purposes of Section 365 of the Bankruptcy Code. Purchaser's failure to provide adequate assurance of future performance as to any material Assumed Contract shall excuse Seller's compliance with this Article 6.

ARTICLE 7
INSTRUMENTS OF TRANSFER AND ASSUMPTION

Section 7.1. Transaction Documents. Upon satisfaction or waiver of all conditions to the Parties' obligation to close, set forth in Articles 13 and 14, and Seller's receipt of the payment of the Purchase Price at the Closing, title to and possession of the Purchased Assets shall immediately pass to Purchaser, and, within three (3) business days following the conclusion of the hearing on the Sale Motion, Seller shall deliver to Purchaser (a) a bill of sale with respect to each of the Purchased Assets; and (b) all such other good and sufficient instruments of sale, transfer and conveyance consistent with the terms and provisions of this Agreement, including assignments of Assumed Contracts, as shall be reasonably necessary to vest in Purchaser, all of Seller's right and title to, and interest in, the applicable Purchased Assets.

ARTICLE 8
CLOSING

Section 8.1. Closing Date. Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place via e-mail, or by such other means or place as agreed upon by the parties, on or before March 30, 2016 unless Purchaser and Seller agree in writing to a later date.

ARTICLE 9
SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants (and, as necessary, acknowledges) to Purchaser that the statements contained in this Article 9 are true, correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement in this Section). Any and all representations and warranties made by Seller herein, or otherwise in connection with the transactions contemplated herein, will lapse and terminate and be of no further force or effect following the Closing.

Section 9.1. Organization, Qualification and Corporate Power. Seller is duly organized and validly existing under the Laws of Seller's state of incorporation or organization, and Seller has all necessary power and authority to own and operate its properties and to carry on its business as it is now being conducted, and, subject to obtaining Bankruptcy Court approval as contemplated herein, to carry out the transactions contemplated by this Agreement. Seller has the power and authority to

execute and deliver and, subject to entry of the Sale Order, perform its obligations under this Agreement, and to undertake the transactions contemplated hereby.

Section 9.2. Authorization, Execution and Delivery of Agreement and Transaction Documents. Subject to obtaining the Sale Order and pursuant thereto, the execution, delivery and performance of this Agreement and the other Transaction Documents by Seller in accordance with their terms, and the sale or assignment of the Purchased Assets to Purchaser in accordance therewith, have been duly and validly authorized and approved by all necessary action of on the part of Seller. Subject to obtaining the Sale Order and pursuant thereto, Seller will have full power, right and authority to sell and convey to Purchaser the Purchased Assets. This Agreement is, and as of the Closing Date, the other Transaction Documents will be, the legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms.

Section 9.3. Title to and Condition of Assets. To the best of Seller's knowledge, all of the Purchased Assets constitute property of Seller's bankruptcy estate as provided in Section 541 of the Bankruptcy Code, and, subject to the entry of the Sale Order, Seller has the valid and enforceable right to transfer, sell and assign to Purchaser the Purchased Assets, free and clear of all Liens.

Section 9.4. Receivables. The accounts and other receivables reflected on Seller's financial statements and other documents represent true amounts owing from the customers and other parties to Seller in the amounts reflected therein based on product and/or services provided from Seller to Purchaser.

Section 9.5. No Violation of Laws or Agreements. Assuming that the Bankruptcy Court enters the Sale Order, the execution and delivery by Seller of this Agreement and other documents contemplated hereby to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated herein will not violate in any material respect, any statute or Law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Seller is subject or any contract, instrument or other agreement to which Seller is a party.

Section 9.6. Brokers. With the exception of Gregg Yorkison, Seller has not engaged any agent, broker or other Person acting pursuant to the express or implied authority of Seller which is or may be entitled to a commission or broker or finder's fee in connection with the transactions contemplated by this Agreement. Seller shall have the sole and exclusive liability for payment of any fees or costs of Gregg Yorkison.

Section 9.7. No Undisclosed Liabilities. To the best of Seller's knowledge, there are currently no existing or threatened Liens, litigation, claims, circumstances or conditions that have not been disclosed in writing to Purchaser and that would impose any Liability upon Purchaser notwithstanding the entry of the Sale

Order or would otherwise limit the use and exploitation of the Purchased Assets in a material way.

Section 9.8. Governmental Approvals. Other than entry of the Sale Order, there are no governmental approvals required as a precondition to Seller's consummation of the transactions contemplated by this Agreement.

ARTICLE 10

PURCHASER'S REPRESENTATIONS AND WARRANTIES

Purchaser represents and warrants (and, as necessary, acknowledges) to Seller that the statements contained in this Article 10 are true, correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article 10). Any and all representations and warranties made by Purchaser herein, or otherwise in connection with the transactions contemplated herein, will lapse and terminate and be of no further force or effect following the Closing.

Section 10.1. Organization; Qualification and Corporate Power. Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of California. Purchaser has all necessary power and authority to (a) own and operate its properties, (b) carry on its business as it is now being conducted, (c) undertake and carry out the transactions contemplated by this Agreement; (d) perform its obligations under this Agreement, the other Transaction Documents, the Sale Order (and any other Final Order of the Bankruptcy Court relating to the transactions contemplated by this Agreement), and (e) own and operate the Purchased Assets.

Section 10.2. Governmental Approvals. Other than entry of the Sale Order, there are no governmental approvals required as a precondition to Purchaser's consummation of the transactions contemplated by this Agreement.

Section 10.3. Authorization, Execution and Delivery of Agreement and Transaction Documents. All corporate or other legal consents and approvals necessary to authorize its execution and delivery of this Agreement and the Transaction Documents and its performance hereunder have been obtained by Purchaser. The execution, delivery and performance of this Agreement and the other Transaction Documents in accordance with their terms by it has been duly and validly authorized and approved by all necessary limited liability company action of Purchaser. It has full power, right and authority to acquire the Purchased Assets to be acquired by it. This Agreement is, and each of the other Transaction Documents when so executed and delivered will be, its valid and binding obligation, enforceable against it in accordance with its terms. The representatives of Purchaser that execute this Agreement on its behalf are duly-authorized and empowered to bind Purchaser to the terms and conditions of this Agreement.

Section 10.4. Brokers. Purchaser has not engaged any agent, broker or other Person acting pursuant to the express or implied authority of Purchaser which is or may be entitled to a commission or broker or finder's fee in connection with the transactions contemplated by this Agreement or otherwise with respect to the sale of the Purchased Assets.

Section 10.5. Funding. At Closing, Purchaser shall have available to it all of the required cash or financing to pay the Purchase Price and to perform all of its obligations required to be performed by it at the Closing pursuant to this Agreement, the other Transaction Documents, or applicable orders of the Bankruptcy Court. Purchaser's ability to consummate the transactions contemplated by this Agreement is not subject to any financing contingency.

ARTICLE 11 DISCLAIMER OF WARRANTIES

Section 11.1. Disclaimer of Warranties. Purchaser hereby acknowledges and agrees that, except for the representations and warranties of Seller expressly set forth in this Agreement, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets (including income to be derived or expenses to be incurred in connection with the Purchased Assets, the physical condition of any personal property comprising a part of the Purchased Assets or which is the subject of any Assumed Contract, the value of the Purchased Assets (or any portion thereof), the transferability of the Purchased Assets, the terms, amount, validity, collectability or enforceability of any accounts receivable or any Assumed Liabilities or Assumed Contracts, the title of the Purchased Assets (or any portion thereof), the merchantability or fitness of the personal property comprising a portion of the Purchased Assets or any other portion of the Purchased Assets for any particular purpose, or any other matter or thing relating to the Purchased Assets (or any portion thereof)). Without in any way limiting the foregoing, except as otherwise expressly set forth in Article 9 above, Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose of the Purchased Assets or any portion of the Purchased Assets. Purchaser further acknowledges that (a) Purchaser has conducted such independent inspections and investigations as Purchaser deemed necessary or appropriate of the physical condition of all of the Purchased Assets and any and all other matters relating to or affecting the Purchased Assets or the Assumed Liabilities, and that (b) in proceeding with the consummation of the transactions contemplated by this Agreement, including its acquisition of the Purchased Assets and assumption of any Assumed Liabilities and any and all other obligations contemplated hereby, Purchaser is doing so based solely upon such independent inspections and investigations (except for the representations and warranties expressly set forth in Article 9, above). Accordingly, and in light of the fact that any and all representations and warranties made by Seller will lapse and terminate and be of no further force or effect following the Closing, Purchaser accepts the Purchased Assets at the Closing **"AS IS," "WHERE IS," and "WITH ALL FAULTS."**

ARTICLE 12
SELLER'S AND PURCHASER'S COVENANTS

Section 12.1. Conduct of Business. Unless otherwise ordered by the Bankruptcy Court, Seller will, without the express written consent of Purchaser, refrain from doing or failing to do anything that would: (i) dispose of, or transfer, any Purchased Asset, (ii) transfer any tangible Purchased Asset to any location other than its location as of the date of this Agreement, (iii) terminate, amend or modify the terms of any of the Assumed Contracts, or (iv) grant any interest (whether ownership, security, participation or otherwise) in or to any of the Purchased Assets or permit or authorize any third party to grant any interest (whether ownership, security, participation or otherwise) in or to any of the Purchased Assets; provided, however, that nothing herein shall prevent or otherwise limit Seller from continuing to operate in the Ordinary Course of Business.

Section 12.2. Mutual Covenants. The Parties hereto mutually covenant (and subject to the other terms of this Agreement):

(a) after the Closing Date, each of the Parties hereto will give, or cause to be given, to the other and/or the other's representatives, during normal business hours: (i) reasonable access, to the extent permitted by applicable law, to its personnel, properties, titles, contracts, books, records, files, electronic files, and documents associated with the Purchased Assets (collectively, the "Documentation"); provided, however, that (x) Seller shall only be entitled to such reasonable access from Purchaser as is otherwise necessary or appropriate in connection with Seller's ongoing administration pertaining to any Litigation Claims pursued by Seller or any designated representative of Seller's bankruptcy estate, the preparation of any Tax Return or any other document relating to Taxes applicable to Seller (subject to Section 12.6(c) below), and/or closing of its Bankruptcy Case; and (y) Purchaser shall not be required to maintain any computer servers or other data storage systems used by Seller at the time of the Closing for a period exceeding forty five (45) days, and may store any physical books and records at a place of its choosing. In the event Purchaser chooses to no longer maintain any computer servers or other data storage systems used by Seller at the time of the Closing, Purchaser shall provide access to Seller, at Seller's sole and exclusive expense, to allow Seller to generate reports necessary for the ongoing administration pertaining to any Litigation Claims pursued by Seller or any designated representative of Seller's bankruptcy estate, the preparation of any Tax Return or any other document relating to Taxes applicable to Seller (subject to Section 12.6(c) below), and/or closing of its Bankruptcy Case; and (ii) at the requesting Party's expense, copies of such Documentation, as necessary to allow the requesting party to obtain information in connection with any claims, demands, other audits, suits, actions or proceedings by or against such requesting party as the owner and operator of the Purchased Assets or otherwise in furtherance of the purposes described in clause (i) above, including, without limitation, in connection with Seller's bankruptcy proceedings. In connection with access to the records of a Party's accountants, the requesting Party shall execute and deliver such "hold harmless" agreements as the other Party's accountants may reasonably request; and

(b) from the date of this Agreement to the Closing Date, the Parties shall cooperate with each other in determining whether filings are required to be made or consents required to be obtained in any jurisdiction in connection with the consummation of the

transactions contemplated by this Agreement and, at Purchaser's expense, in making or causing to be made any such filings promptly and in seeking to obtain timely any such consents (each Party shall furnish to the other and to the other's counsel all such information as may be reasonably required in order to effectuate the foregoing action), which consents shall not, in any event, include any consent the need for which is obviated by the Sale Order or otherwise by the provisions of the Bankruptcy Code; and

(c) from the date of this Agreement to the Closing Date, to advise the other Party promptly if such Party determines that any condition precedent to its obligations hereunder will not be satisfied in a timely manner.

Section 12.3. Filings and Authorizations. The Parties hereto shall, as promptly as practicable, cause to be made all such filings and submissions as may be required to consummate the terms of this Agreement. Seller and Purchaser shall keep each other apprised of the status of any communications with, and inquiries or requests for additional information from, any Governmental Authority, and shall comply promptly with any such inquiry or request. Seller shall not make any filings or submissions without the prior approval of Purchaser, which approval shall not be unreasonably withheld.

Section 12.4. Access and Information. Upon submission of this Agreement as part of a qualified overbid and through the Closing Date, Seller will give, or cause to be given, to Purchaser or its representatives designated in writing: (i) reasonable access, to the extent permitted by applicable law, during normal business hours to their personnel, properties, titles, contracts, books, records, files and documents that pertain to the Purchased Assets; (ii) copies of such Documentation as necessary to allow Purchaser to obtain information in connection with any claims, demands, audits, suits, actions or proceedings by or against Purchaser as the owner and operator of the Purchased Assets or otherwise in furtherance of the purposes described in clause (i) above; and (iii) any and all such information Purchaser reasonably may request pertaining to the Purchased Assets, as promptly as practicable. This shall specifically include, without limitation, the right to enter the premises to inspect and audit Seller's inventory, the cost for which will be borne by Purchaser.

Section 12.5. Public Announcement. Subject to the provisions of the Bankruptcy Code and Seller's right to make such filings and disclosures as it in good faith deems necessary or appropriate in connection with the Bankruptcy Case, no Party hereto, nor their respective affiliates, agents and representatives, shall make or issue, or cause to be made or issued, any public announcement or written statement concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other Party hereto (which will not be unreasonably withheld or delayed), unless counsel to such Party advises that such announcement or statement is required by law (in which case the Parties hereto shall make reasonable efforts to consult with each other prior to such required announcement). The restrictions imposed hereunder shall not apply to communications between Purchaser and Seller. Notwithstanding anything herein to the contrary, following the filing of the Sale Motion, Purchaser may, but is not obligated to, make a public announcement of its intent to proceed under this Agreement.

Section 12.6. Taxes

(a) Except for the Liabilities under Assumed Contracts, Seller shall be responsible for all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, territorial, local or foreign taxing authority, including income, gross receipts, excise, property, sales, transfer, franchise, payroll, withholding, social security and other taxes, and shall include any interest, penalties or additions attributable thereto ("Taxes") in connection with, relating to or arising out of the ownership of the Purchased Assets, or the Assumed Liabilities attributable to taxable periods, or portions thereof, ending on or before the Closing, which Taxes shall be a Non-Assumed Liability. Purchaser shall be responsible for all sales Taxes that are Liabilities owed to any Governmental Authority by virtue of the sale of the Purchased Assets hereunder, and any other Taxes under Purchaser's respective Assumed Contracts, and all applicable Taxes in connection with, relating to or arising out of the Purchased Assets attributable to taxable periods, or portions thereof, from and after the Closing. All state and local sales and use Taxes relating to Seller's Ordinary Course of Business, to the extent attributable to periods prior to the Closing, shall be paid or otherwise discharged by Seller.

(b) All transfer and documentary Taxes and recording fees and Taxes applicable to the transactions contemplated hereby (collectively, the "Transfer Taxes") shall be borne and paid by Seller.

(c) From and after the Closing, Purchaser shall be responsible for the preparation of any return, report, information return or other document relating to tax years 2015 and 2016 (including any related or supporting information) ("Tax Return"), any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to Taxes owed by Seller, (ii) retain for a period of not less than seven (7) years, and provide Seller with, any records or other information which may be relevant to such return, audit, examination or proceeding, limited solely to prior years' Tax Returns and any workpapers and supporting documentation related thereto, and (iii) provide Seller with any final determination of any such audit or examination proceeding or determination that affects any amount required to be shown on any Tax Return of Seller for any period (which shall be maintained confidentially). Seller shall provide Purchaser access to all necessary information to complete any Tax Return.

Section 12.7. Consents. Each Party hereto will use its good faith efforts and will cooperate with the other party hereto to obtain all consents required from third persons, whose consent or approval is required pursuant to any Assumed Contract, or otherwise, in order to consummate the transaction contemplated hereby; provided, however, that Seller shall not be required to obtain any consent the need for which is obviated by the entry of the Sale Order or otherwise by any provision of the Bankruptcy Code.

Section 12.8. Good Faith Efforts. Without limiting the specific obligations of any Party hereto under any covenant or agreement hereunder, each Party hereto shall use its good faith efforts to take all action and do all things necessary to consummate the transactions contemplated in this Agreement.

Section 12.9. Further Assurances. From time to time after the Closing and without further consideration, Purchaser or Seller, at the request of the other, will execute and deliver

such other instruments of conveyance and transfer or other instruments or documents, and take or arrange for such other actions, as may reasonably be required to effect any of the transactions contemplated by this Agreement, or to provide any Party hereto with the benefits intended to be conferred and conveyed by this Agreement. To the extent required to effectuate the foregoing, Purchaser shall be appointed attorney in fact for Seller. Notwithstanding anything to the contrary in this Section 12.9 or any other provision of this Agreement, neither Purchaser nor Seller shall be required to execute any document or take any action that would (i) materially increase the liability or obligation of the Party of whom such document or action is requested beyond that such Party would have pursuant to the other provisions of this Agreement, (ii) require or cause the Party of whom such action or document is requested to initiate, join in or otherwise become a Party to any litigation, action or other proceeding, or (iii) cause such Party to incur any material cost or expense that is not already imposed upon it by another provision of this Agreement.

Section 12.10. No Survival of Representations and Warranties. None of the representations and warranties contained in this Agreement or made in any other documents or instruments delivered pursuant to this Agreement shall survive the Closing hereunder.

Section 12.11. Non-Assignment by Seller. Seller may not assign any of its rights under this Agreement prior to the Closing without the prior written consent of Purchaser, which may be withheld in its sole discretion.

Section 12.12. Litigation. Each of the Parties, and their respective successors, assigns, designees, transferees and affiliates agree to cooperate with and reasonably assist each other, as appropriate, with respect to Litigation Claims after the Closing; provided, however, such assistance shall not require either Party, or any of its respective successors, assigns, designees, transferees or affiliates to (a) initiate, join in or otherwise become a party to any litigation, action or other proceeding; or (b) assume responsibility for any costs, including legal fees, relating to such litigation.

ARTICLE 13

CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATION TO CLOSE

The obligations of Purchaser under this Agreement with respect to the purchase and sale of the Purchased Assets shall be subject to the fulfillment on or prior to the Closing of the conditions of Sections 13.1 through 13.10, any of which may be waived in writing by Purchaser. Seller shall use its best efforts to satisfy these conditions so that the Closing can occur on the first (1st) business day following the date on which all conditions to Closing set forth in Article 13 hereof.

Section 13.1. Accuracy of Representations and Warranties; Performance of this Agreement. To the best of Seller's knowledge, each of the representations and warranties made by Seller shall be true and correct in all material respects on and as of the date hereof and at and as of the Closing Date (unless such representation or warranty is given as of a particular date in which case such representation or warranty will be considered only as of such particular date). Seller shall have complied with and performed in all material respects all of the agreements and covenants required by

this Agreement, each other Transaction Document, the Sale Procedures Order or the Sale Order (or any other Final Order of the Bankruptcy Court relating to the transactions contemplated by this Agreement) to be performed or complied with by it prior to the Closing and shall be able to perform in all material respects all of the agreements and covenants required by this Agreement, each other Transaction Document, the Sale Procedures Order or the Sale Order (or any other Final Order of the Bankruptcy Court relating to the transactions contemplated by this Agreement) to be performed or complied with at Closing.

Section 13.2. Bankruptcy Matters. The Sale Order in form and substance reasonably acceptable to Purchaser shall have been entered and the hearing on the Sale Motion shall have been held by the Hearing Deadline. The Sale Order must be in effect, and must be a Final Order.

Section 13.3. Consents. Purchaser shall have received duly authorized, executed and delivered consents to the transactions contemplated hereby and waivers of rights to terminate or modify any material rights or obligations of Seller from any Person from whom such consent or waiver is required under or in connection with any Assumed Contracts or instruments who, as a result of the transactions contemplated hereby, would have such rights to terminate or modify such Assumed Contracts or instruments, either by the terms thereof or as a matter of law; provided that, the consents required under this Section 13.3 shall not, in any event, include any consent the need for which is obviated by the Sale Order or otherwise by the provisions of the Bankruptcy Code.

Section 13.4. No Material Adverse Change or Destruction of Property. Between the date hereof and the Closing and except as otherwise provided in this Agreement, (i) there shall have been no Material Adverse Change with respect to the Purchased Assets which would affect the Purchased Assets following the Closing, or which would otherwise continue to impact, following the Closing, the benefits and obligations of the transaction with respect to Purchaser contemplated under this Agreement, and (ii) there shall have been no adverse federal, state or local legislative change, or injunction affecting in any material respect any of the Purchased Assets, which would affect the Purchased Assets following the Closing, or which would otherwise impact, following the Closing, the benefits and obligations of the transaction with respect to Purchaser contemplated under this Agreement.

Section 13.5. Outside Closing Date. The Closing shall have occurred as provided in Article 8, above.

Section 13.6. Assumed Contracts. Seller shall have been authorized to assume and assign all material Assumed Contracts to Purchaser and shall have delivered an assignment to Purchaser effectuating such assignment at the Closing.

Section 13.7. Good Faith Purchaser. Purchaser shall have been found by the Bankruptcy Court at the hearing on the Sale Motion to be a good faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code.

Section 13.8. Due Diligence Materials. Seller shall have delivered or made available to Purchaser all of the Due Diligence Materials, and shall have provided to Purchaser copies of any additional information to be included with the Due Diligence Materials reasonably requested by Purchaser at any time prior to the hearing on the Sale Motion.

Section 13.9. Delivery of Purchased Assets. Seller shall have delivered all Purchased Assets.

Section 13.10. Delivery of Transaction Documents. Seller shall have delivered to Purchaser all of the Transaction Documents (other than this Agreement) which shall have been fully and duly executed by Seller to the extent required.

ARTICLE 14

CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

The obligations of Seller under this Agreement with respect to the purchase and sale of the Purchased Assets shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by Seller. Purchaser shall use its best efforts to satisfy these conditions so that the Closing can occur on the first (1st) business day following the date on which all conditions to Closing set forth in Article 14 hereof have been satisfied or waived.

Section 14.1. Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by Purchaser shall be true and correct in all material respects on and as of the date hereof and at and as of the Closing Date (unless such representation or warranty is given as of a particular date in which case such representation or warranty will be considered only as of such particular date). Purchaser shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement, each other Transaction Document, the Procedures Order or the Sale Order (or any other Final Order of the Bankruptcy Court with respect to the transactions contemplated by this Agreement) to be performed or complied with by them prior to the Closing, and shall be able to perform in all material respects all of the agreements and covenants required by this Agreement, each other Transaction Document, the Procedures Order or the Sale Order (or any other Final Order of the Bankruptcy Court with respect to the transactions contemplated by this Agreement) to be performed or complied with at Closing.

Section 14.2. Authorizing Resolutions. Purchaser shall have delivered to Seller copies of the authorizing resolutions of its members authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and all instruments and documents to be delivered in connection herewith and the transactions contemplated hereby or thereby, duly certified by an authorized signatory of Purchaser.

Section 14.3. Good Faith Purchaser. Purchaser shall have been found by the Bankruptcy Court at the hearing on the Sale Motion to be a good faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code.

Section 14.4. Assumed Contracts. With respect to all material Assumed Contracts to be assumed and assigned to Purchaser in accordance with the terms of this Agreement, Purchaser shall have performed and discharged any and all of its applicable Liabilities and satisfied all other requirements imposed by the provisions of Section 365 of the Bankruptcy Code to allow Seller to assume and assign such Assumed Contracts, if such Contracts are assumable and assignable under applicable Law, to Purchaser at the Closing.

Section 14.5 Bankruptcy Matters. The Sale Order must be in effect.

Section 14.6 Delivery of Transaction Documents. Purchaser shall have prepared and delivered to Seller all of the Transaction Documents (other than this Agreement), which shall have been fully and duly executed by Purchaser to the extent required.

ARTICLE 15
[RESERVED]

ARTICLE 16
TERMINATION

Section 16.1. Breaches and Defaults; Opportunity to Cure. Prior to the exercise by a Party of any termination rights afforded under Section 16.2 of this Agreement, if Seller or Purchaser (the "Non-Breaching Party") believes that either Seller or Purchaser, as applicable (the "Breaching Party") is in breach hereunder, the Non-Breaching Party shall provide the Breaching Party with written notice (a "Default Notice") specifying in reasonable detail the nature of such breach, whereupon if such breach is curable the Breaching Party shall have five (5) calendar days from the receipt of such Default Notice to cure such breach to the reasonable satisfaction of the Non-Breaching Party; provided, however, that the cure period for a breach shall in no event extend, or cause the Closing Date to extend, beyond March 30, 2016. The parties hereby agree that disputes concerning the validity or adequacy of any Default Notice shall be resolved by the Bankruptcy Court, and each party hereto specifically consents to the jurisdiction of the Bankruptcy Court to resolve any such disputes. If the breach is not cured within the cure period described above and if there has been no challenge to the sufficiency of any Default Notice, or, to the extent of any such challenge, the Default Notice has been upheld by the Bankruptcy Court as proper under the circumstances, then the Non-Breaching Party shall be entitled to terminate this Agreement.

(c) Termination. This Agreement may be terminated and the transactions contemplated herein may be abandoned, by written notice given to the other party hereto in accordance with Section 16.1, at any time prior to the Closing; at any time, by mutual written consent of Seller and Purchaser;

(d) by Seller or Purchaser if the Sale Order is for any reason (other than a material breach or material default hereunder by the party seeking to terminate) not entered on or before March 15, 2016;

(e) subject to the right to cure set forth in Section 16.1 at any time prior to the Closing Date by Purchaser if it is entitled to a refund of the Deposit under Section 4.4 or if Seller (i) alters, amends or breaches any of the material covenants of this Agreement, (ii) is in breach of any material covenant, representation, undertaking or warranty, or if it appears that a condition set forth in Article 13 is impossible (other than through the failure of Purchaser to comply with its obligations under this Agreement) to satisfy and Purchaser has not waived such condition in writing on or before the Closing Date;

(f) subject to the right to cure set forth in Section 16.1, at any time prior to the Closing Date by Seller if Purchaser is in breach of any material covenant, representation or warranty, or if a condition set forth in Article 14 is impossible (other than through the failure of Seller to comply with its obligations under this Agreement) to satisfy and Seller has not waived such condition in writing on or before the Closing Date;

(g) by Purchaser if, notwithstanding the entry of a Final Order approving the sale, Seller refuses to close for any reason whatsoever, other than a breach or default by Purchaser of Purchaser's obligations at Closing;

(h) by Seller or Purchaser if the Closing shall not have occurred on or before March 30, 2016, unless the failure to have the Closing shall be due to the failure of the Party seeking to terminate this Agreement to perform in any material respect its obligations under this Agreement required to be performed by it at or prior to the Closing; or

(i) by Purchaser if Seller enters into an agreement for the sale of any of the Purchased Assets with any party other than Purchaser.

ARTICLE 17 MISCELLANEOUS

Section 17.1. Additional Instruments of Transfer. From time to time after the Closing, Seller shall, if requested by Purchaser, make, execute and deliver such additional assignments, bills of sale, deeds and other instruments and documents, as may be reasonably necessary or proper to carry out the specific provisions of this Agreement, including, without limitation, transfer to Purchaser of all of Seller's right, title and interest in and to the applicable Purchased Assets.

Section 17.2. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by electronic mail, telecopier, recognized overnight delivery service or registered or certified mail, return receipt requested, postage prepaid, to the following addresses:

If to Purchaser:

Vinamex Investors, LLC
c/o A & J Capital Investment, Inc.
Attention: Frank Xu
1609 W. Valley Blvd.
Suite 328
Alhambra, CA 91803
Facsimile: (626) 289-8848
Email: frank@ajcap.com

with a required copy to:

Jeremy V. Richards, Esq.
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard
13th Floor
Los Angeles, CA 90067-4003
Facsimile: (310) 201-0760
Email: jrichards@pszjlaw.com

If to Seller:

Gregg Yorkison
c/o Michael I. Gottfried, Esq.
Landau Gottfried & Berger LLP
1801 Century Park East, Suite 700
Los Angeles, CA 90067
Facsimile: (310) 557-0056
Email: mgottfried@lbgfirm.com

with a required copy to:

David L. Neale, Esq.
Levene, Neale, Bender, Yoo & Brill L.L.P.
10250 Constellation Boulevard, Suite 1700
Los Angeles, CA 90067
Facsimile: (310) 229-1244
Email: dln@lnbyb.com

Notices delivered personally or by electronic mail shall be effective upon receipt. Notices transmitted by telecopy shall be effective when received, provided that the burden of proving receipt when notice is transmitted by telecopy shall be the responsibility of the Party providing such notice. Notices delivered by overnight mail shall be effective when received. Notices delivered by registered or certified mail shall be effective on the date set forth on the receipt of registered or certified mail, or 72 hours after mailing, whichever is earlier.

Section 17.3. Expenses. Except as expressly provided herein, each Party shall bear its own expenses and costs, including the fees of any attorney retained by it, incurred in connection with the preparation of this Agreement and the consummation of the transactions contemplated hereby. In the event either Party shall bring any action or proceeding in connection with the performance, breach or interpretation of this Agreement or any Transaction Document, the prevailing Party in such action or proceeding shall be entitled to recover from the losing Party all reasonable costs and expenses of such action, including, without limitation, reasonable attorneys' fees.

Section 17.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without application of principles of conflicts of law). In connection with any controversy arising out of or related to this Agreement, Seller and Purchaser hereby irrevocably consent to the exclusive jurisdiction of the Bankruptcy Court, or if, and only if, the Bankruptcy Case has been closed, any federal court located in the Central District of California (Los Angeles Division) or any courts of the State of California located in Los Angeles County. Seller and Purchaser each irrevocably consents to service of process out of the aforementioned courts and waives any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or in connection with this Agreement brought in the aforementioned courts.

Section 17.5. Assignment. This Agreement binds and benefits the Parties and their respective successors and assignees. Purchaser shall have the right to freely assign any of its rights under this Agreement to any other entity (i) the majority of which is owned or controlled by Purchaser, or (ii) that is an Affiliate of Purchaser. No Party may delegate any performance of its obligations under this Agreement, except that Purchaser may at any time delegate the performance of its obligations to any Affiliate of Purchaser so long as Purchaser remains fully responsible for the performance of the delegated obligation.

Section 17.6. Successors and Assigns. All agreements made and entered into in connection with this transaction shall be binding upon and inure to the benefit of the Parties hereto, their successors and permitted assigns.

Section 17.7. Amendments; Waivers. No alteration, modification or change of this Agreement shall be valid except by an agreement in writing executed by the Parties hereto. Except as otherwise expressly set forth herein, no failure or delay by any Party hereto in exercising any right, power or privilege hereunder (and no course of dealing between or among any of the parties) shall operate as a waiver of any such right, power or privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any such right, power or privilege shall preclude the further or full exercise thereof.

Section 17.8. Entire Agreement. This Agreement, together with the other Transaction Documents, merges all previous negotiations and agreements between the Parties hereto, either verbal or written, and constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement.

Section 17.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.

Section 17.10. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not materially (a) alter the terms of this Agreement, (b) diminish the benefits of this Agreement or (c) increase the burdens of this Agreement, for any person.

Section 17.11. Section Headings. The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section 17.12. Interpretation. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, the parties hereto agree that any rule of law, including, but not limited to, California Civil Code Section 1654, or any other statutes, legal decisions, or common law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that has drafted this Agreement, is of no application and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intentions of the parties hereto.

Section 17.13. Reasonable Access to Records and Certain Personnel. Until the entry of a final decree closing the Bankruptcy Case, Purchaser shall provide to Seller's counsel and other professionals or any successor to Seller (collectively, "Permitted Access Parties") (a) reasonable access to the financial and other books and records relating to the Purchased Assets through and including the Closing Date, which access shall include the right of such Permitted Access Parties to copy, at such Permitted Access Parties' expense, such documents and records as they may request, and Purchaser's copying and delivering to the relevant Permitted Access Parties such documents or records as they may request, but only to the extent such Permitted Access Parties furnish Purchaser with reasonably detailed written descriptions of the materials to be so copied and the applicable Permitted Access Party reimburses Purchaser for the reasonable costs and expenses thereof, and (b) at no cost to the Permitted Access Parties, reasonable access during regular business hours to assist Seller and the other Permitted Access Parties in their post-Closing activities; provided, however, that any access provided under this paragraph shall (i) not require Purchaser to produce information relating to transactions involving the Purchased Assets first entered into following the Closing Date, (ii) not materially interfere with Purchaser's business operations, (iii) not require access to Purchaser documents which are covered by a duty of confidentiality or impact protection of such documents under attorney-client privilege, (iv) not require Purchaser's violation of any applicable Law, (v) be limited to matters pertaining to litigation involving Seller, the preparation of any Tax Return or any other document relating to Taxes applicable to Seller, and/or the closing of Seller's Bankruptcy Case, and (vi) be subject to

the execution of such agreements as may be necessary to preserve any confidential, privileged, proprietary or secret information.

Section 17.14. Third Parties. Nothing herein, expressed or implied, is intended to or shall confer on any Person other than the Parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 17.15. Liquidating Agent Matters. Liquidating Agent shall hold all of the funds in the Deposit Account pursuant to the terms of this Agreement. Liquidating Agent shall only disburse the contents of the Deposit Account at the times and pursuant to the terms and conditions set forth in this Agreement; provided, however, that if there are any disputes and/or conflicting instructions from and/or among the Seller, Purchaser and/or any other relevant party in interest regarding the disbursement of the funds in the Deposit Account, the Liquidating Agent shall either (a) not release any funds in the Deposit Account until such dispute is resolved by the entry of an order of the Bankruptcy Court or otherwise by agreement of the Parties, or (b) deposit any funds in the Deposit Account into the registry of the Bankruptcy Court and commence an interpleader action so that the Bankruptcy Court may determine the Parties' respective rights, if any, with respect to such funds. Liquidating Agent shall not be deemed to have assumed any fiduciary duty to the Parties hereto, shall have no liability to any Party for actions taken in substantial compliance with the terms of this Agreement and/or controlling court order, and shall not charge any of the Parties a fee for serving as Liquidating Agent hereunder.

[signature page follows]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

VINAMEX SUPERMARKET, LLC
"Seller"

By: _____
Its: _____

VINAMEX INVESTORS, LLC
"Purchaser"

By: 
Its: Manager

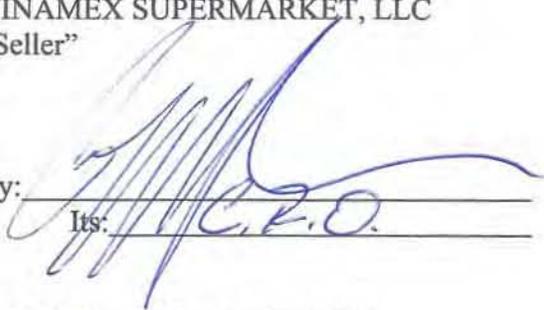
**SOLELY WITH RESPECT TO SECTION 17.15
OF THE FOREGOING AGREEMENT**

C.Y.G. FINANCIAL ADVISORY SERVICES

By: _____
GREGG YORKISON

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

VINAMEX SUPERMARKET, LLC
"Seller"

By: 
Its: C.O.

VINAMEX INVESTORS, LLC
"Purchaser"

By: _____
Its: _____

**SOLELY WITH RESPECT TO SECTION 17.15
OF THE FOREGOING AGREEMENT**

C.Y.G. FINANCIAL ADVISORY SERVICES

By: 
GREGG YORKISON

EXHIBIT "2"

[ASSUMED CONTRACTS AND CURE LIST]

<u>Other Party</u>	<u>Description</u>	<u>Cure Amount</u>
12151 Brookhurst, LLC Attn: Hyung Park, Managing Member 12103 Brookhurst St., Ste. A Garden Grove, CA 92840 <u>Counsel</u> * ECF Yale K. Kim Allen Matkins Leck Gamble Mallory & Natsis LLP 515 S. Figueroa Street, 9th Floor Los Angeles, CA 90071-3309	Lease of Real Property Located at 12081 Brookhurst Street, Garden Grove, California, 92840 to Debtor	\$0.00
Nissan-Infinity LT Attention Officer or Director PO Box 660366 Dallas, TX 75266-6700	Lease of NV 200 "S" to Debtor	\$800.00
AT&T Bankruptcy James Grudus, Counsel One AT&T Way, Room 3A218 Bedminster, NJ 07921-2693	Telephone / Internet AT&T LONG DISTANCE 861032767 AT&T U-VERSE 133452603 AT&T DEDICATED LINE 714-636-3072 AT&T 714-638-7979-402-6	\$77.72 \$184.00 \$136.86 \$561.16 <hr/> \$959.74
SIMPLEWARE INCORPORATED Attn Will Ong, Agent for Service or Other Officer or Director 165 Waverly Dr. Pasadena, CA 91105	IT	\$1,000.00
Sphinx Alarm & Communication, LLC Duc Truong, Agent for Service 1501 N. Mar Les Dr. Santa Ana, CA 92706	Alarm	\$330.00

<u>Other Party</u>	<u>Description</u>	<u>Cure Amount</u>
1 U.S. TelePacific Corp. 2 Office of General Counsel 3 515 S. Flower Street, 47th Floor 4 Los Angeles, CA 90071 4 <u>Counsel</u> 5 J. Scott Bovitz* ECF 6 Bovitz & Spitzer 7 1100 Wilshire Boulevard, Suite 2403 8 Los Angeles, California 90017-1961	Telephone	\$1,230.08
TOTAL		\$4,319.82

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EXHIBIT "3"



**SECRETARY OF STATE
STATE OF CALIFORNIA**

Search Certificate

SEARCH REQUESTED ON:

06/23/2015

Organization Debtor: **VINAMEX SUPERMARKET, LLC**

Address: **NOT SPECIFIED**

Date Range From: **NOT SPECIFIED**

Search: **ALL**

The undersigned Filing Officer hereby certifies that there are no active financing statements, tax liens, attachment liens, or judgement liens on file in my office reflecting the above Debtor as of **06/18/2015 at 1700 hours**.

The search results herein reflect only the specific information requested. The results of this Debtor search will not reflect variances of this name. If the Debtor is known under other personal names, trade names, business entities, or addresses, separate searches of these names will have to be requested and conducted. The Secretary of State, his officers and agents disclaim any and all liability for claims resulting from other filings on which the name of the Debtor can be found in any other form than which was requested.

A handwritten signature in black ink, appearing to read "Alex Padilla".

Alex Padilla
Secretary of State

EXHIBIT "4"



Gregg Yorkison Bio

Gregg Yorkison has over 22 years of experience in corporate finance transactions and operational management that combine to offer clients a diverse set of perspectives, solutions, and expertise. C.Y.G. was formed as a boutique advisory firm to focus on small and middle market companies that have been priced-out of high quality services by national firms. C.Y.G. has managed numerous transactions including the retail, publishing, textiles, private aviation, healthcare, and manufacturing sectors. These engagements include matters both in and out of court. Specific services include valuation, M&A (sell-side and buy-side), §363 sales, Assignment for Benefit of Creditors (“ABC”) transactions, recapitalizations, capital raising mandates and licensing. Additionally, his experiences in turnarounds, operations and general management provide clients with comprehensive insights and expertise for critical situations.

Mr. Yorkison has successfully completed several distressed transactions in court and out-of-court, including:

- ABC Werner Publishing (publishing)
- ABC Filmtools, Inc. (retail)
- §363 sale of Tamrac (manufacturing)
- ABC Bowtie, Inc. (publishing)
- §363 sale of 944 Media (publishing)
- §363 sale of Morena Tile (interiors, stone & tile wholesaler / retailer)
- ABC StreetSurfing, Inc. (consumer products)
- ABC Global Distribution Services (publishing)

Mr. Yorkison in some of the above and other matters has served as Chief Restructuring Officer (“CRO”). As CRO Mr. Yorkison has been responsible for day-to-day operations with an emphasis on driving change through the organization for improved cash flow and maximization of the value of the company.

A listing of industries in which Mr. Yorkison has CRO experience

- Manufacturing: Specialty Metals, Building Products, Floor Covering, Textiles, Apparel
- Publishing: Magazines and Media
- Distribution: Specialty Chemicals, Medical Supplies, Logistics
- Education: Post-Secondary Education
- Private Aviation: Charter Businesses, FBO’s, Aircraft(s)
- Media and Marketing: Event Businesses, Mobile & Experiential Marketing, Publishing

Gregg Yorkison

C.Y.G.

gregg@clareyorkgroup.com

310.463.3378

Sustainability – Green Businesses

Prior to C.Y.G. Gregg held a corporate development position in the healthcare industry. In addition, he was involved with the General Management of:

- Program Development & Execution
- Organic Growth Strategies
- Cost Management – Vendor Sourcing
- Staff Management
- P&L Responsibility and Management

During the past decade, Mr. Yorkison has also guided several corporations through difficult turnarounds. Mr. Yorkison's experiences in corporate finance transactions and general management provides the foundation for successful outcomes in complex situations requiring insight, innovation and expertise.

Mr. Yorkison graduated with a B.S. in International Finance from the University of Southern California.

Gregg Yorkison
C.Y.G.
gregg@clareyorkgroup.com
310.463.3378

EXHIBIT "5"

Vinamex SuperMarket, LLC

Garden Grove Super Market

Teaser Listings

#	Company	Type
1	Hawaii Supermarket	Strategic
2	Nujiyah Market	Strategic
3	Mitsuwa	Strategic
4	Marukai	Strategic
5	Hannam Traders	Strategic
6	99 Ranch Market	Strategic
7	Zion Market	Strategic
8	Hanahreum Group (H Mart)	Strategic
9	Bristol Farms	Strategic
10	Trader Joe's	Strategic
11	Whole Foods	Strategic
12	Henry's Farmer's Market	Strategic
13	Sprouts Farmers Market, LLC	Strategic
14	Sprouts Farmers Market, LLC	Strategic
15	Sprouts Farmers Market, LLC	Strategic
16	Gelson's Market, Inc.	Strategic
17	Arden Group, Inc.	Strategic
18	Northgate Gonzalez Markets, Inc	Strategic
19	Pacific Ranch Market	Strategic
20	Pro's Ranch Markets, Inc.	Strategic
21	PAQ, Inc. dba "Food 4 Less"	Strategic
22	Berberian Enterprises, Inc dba Jons Marketplace	Strategic
23	Mitsuwa Corporation dba Mitsuwa Marketplace	Strategic
24	Número Uno Market, Inc.	Strategic
25	Fresh & Easy Neighborhood Market, Inc	Strategic
26	Fresh & Easy Neighborhood Market, Inc	Strategic
27	Fresh & Easy Neighborhood Market, Inc	Strategic
28	The Fresh Market, Inc (NASDAQ:TFM)	Strategic
29	The Fresh Market, Inc (NASDAQ:TFM)	Strategic
30	The Fresh Market, Inc (NASDAQ:TFM)	Strategic
31	Clark's Nutrition, Inc.	Strategic
32	Dallo & Co, Inc.	Strategic
33	Dean & DeLuca, Inc.	Strategic
34	Jensen's Finest Foods	Strategic
35	Happy Asian Market	Strategic
36	T&K food market	Strategic
37	Asian Food Grocer	Strategic
38	Dalat	Strategic
39	Sun Valley, LLC	Strategic
40	Waterhill	Strategic
41	Willis Insurance	Referral Intro - M&A Insurance
42	Frost Brown Todd	Referral Intro - Attorney
43	Sheppard Mullin	Referral Intro - Attorney
44	Arent Fox	Referral Intro - Attorney
45	Fox Rothschild	Referral Intro - Attorney
46	Fox Rothschild	Referral Intro - Attorney
47	Baker & Hostetler	Referral Intro - Attorney
48	Sullivan Hill	Referral Intro - Attorney
49	Manderson, Schafer & McKinlay, LLP	Referral Intro - Attorney
50	McConnell, Dunning & Barwick	Referral Intro - Attorney
51	Winthrop Couchot	Referral Intro - Attorney
52	H3GM	Referral Intro - Attorney
53	Ethos Law	Referral
54	Private Fund	Financial

Vinamex SuperMarket, LLC

Garden Grove Super Market

Teaser Listings

#	Company	Type
55	Altamont Capital Partners	Financial
56	Diversis	Financial
57	NMC	Financial
58	SP Capital Group	Financial
59	American Capital, Special Situations Fund	Financial
60	Blackstreet Capital Management	Financial
61	Comvest Capital	Financial
62	Grey Mountain Capital	Financial
63	Guard Hill Holdings	Financial
64	Harren Equity Partners	Financial
65	Highland Capital Management	Financial
66	Insight Equity	Financial
67	KPS Capital Partners	Financial
68	Breakaway Capital	Financial
69	Peak Rock Capital	Financial
70	Renova Capital	Financial
71	Resilience Capital Partners	Financial
72	Superior Capital Partners	Financial
73	Turnspire Capital Partners	Financial
74	Versa Capital Management	Financial
75	Victory Park Capital	Financial
76	White Oak Global Advisors	Financial
77	Wingate	Financial
78	Wynnchurch Capital	Financial
79	Liquidity Capital Group	Financial
80	Century Park Capital	Financial
81	Intracorp Capital	Financial
82	HIG Bayside	Financial
83	Behrman Capital	Financial
84	Great American Group	Financial
85	Vert Capital	Financial
86	Reich Brothers	Financial
87	Overstock.com	Liquidator
88	Paul Hastings	Referral - Lawyer
89	Goldmark Advisers	Financial
90	Renovo Capital	Financial
91	Anchor Management	Financial
92	Transom Capital	Financial
93	Clearview Capital Holdings	Financial
94	Bunker Hill Capital	Financial
95	Irongate Partners	Financial
96	Balmoral Advisors	Financial
97	Balmoral Advisors	Financial
98	Marlin Equity	Financial
99	Alpine Pacific	Financial
100	Oak Tree	Financial
101	New Capital Partners	Financial
102	Fuelbreak Capital	Financial
103	West Capital Partners	Financial
104	FDG Associates	Financial
105	Vector Capital	Financial
106	Renovo Capital	Financial
107	H.I.G Capital LLC	Financial
108	LB Advisors	Financial

Vinamex SuperMarket, LLC

Garden Grove Super Market

Teaser Listings

#	Company	Type
109	Renovo Capital	Financial
110	Renovo Capital	Financial
111	Renovo Capital	Financial
112	Prospect Partners, LLC	Financial
113	Prospect Partners, LLC	Financial
114	Prospect Partners, LLC	Financial
115	Prospect Partners, LLC	Financial
116	Prospect Partners, LLC	Financial
117	Retail & Restaurant Growth Capital, LP	Financial
118	Retail & Restaurant Growth Capital, LP	Financial
119	SilkRoad Equity, LLC	Financial
120	SilkRoad Equity, LLC	Financial
121	Pinto Partners	Financial
122	Pinto Partners	Financial
123	The Sienna Group, LLC	Financial
124	The Sienna Group, LLC	Financial
125	The Sienna Group, LLC	Financial
126	San Francisco Equity Partners	Financial
127	San Francisco Equity Partners	Financial
128	San Francisco Equity Partners	Financial
129	The Yucaipaca Companies, LLC	Financial
130	The Yucaipaca Companies, LLC	Financial
131	Adventure Funds, LLC	Financial
132	Carlisle Enterprises, LLC	Financial
133	Carlisle Enterprises, LLC	Financial
134	Consumer Capital Partners	Financial
135	Winthrop Couchot	Financial
136	Ares Management	Financial
137	HT Seafood	Strategic
138	Saigon City Supermarket	Strategic
139	Westlake Food	Strategic
140	Vinh Sanh Trading Corp	Strategic
141	Stone Creek Capital	Strategic
142	HGGC	Financial
143	Sorenson Capital	Financial
144	Northgate private equity partners	Financial
145	Capital Dynamics	Financial
146	Momentum	Financial
147	Admiral Capital	Financial
148	Debevoise & pLIMPTON	Financial
149	Chapwood Investments	Financial
150	Blackstone	Financial
151	MSD Capital	Financial
152	MSD Capital	Financial
153	MSD Capital	Financial

EXHIBIT "6"

DATE	EMAILS SENT	RESPONSES	DATA ROOM UPDATE	SENT DATA ROOM INVI	MISC. NOTES
3-Feb	112 emails sent out yesterday. 10 calls made. "Touched" 122 of potential 136 prospects on the tracker list	10 responses from email servers indicating invalid emails. Using other means to connect	No data room updates today	No invites sent out as of today	Had difficulty with language barrier calling some prospects. Setting up a phone call with remaining companies and translator inquiring possible overbids on tracker.
4-Feb	Sent out 9 emails today. Updated the bad emails we had listed for some prospects on the tracker.	Received 3 more responses today regarding bad emails.	No data room updates today	No invites sent out as of today	Brian Kinsman received a proposal of the store sale today via email. Upon passing he forwarded us a referral to Bruce Lipian of Stone Creek Capital. He referred us because they recently purchased 8 Hispanic grocery stores and could possibly be looking to purchase another location.
5-Feb	No emails required to be sent out today	Received response from Warren Woo. Pass from breakaway. "Not their kind of deal"	no data room updates today	no invites sent out as of today	Received response from Warren Woo we reached out to yesterday.
6-Feb	No emails required to be sent out today	Received response from stone creek capital	No data room updates today	No invites sent out as of today	Gregg spoke with Stone Creek Capital. Even through GGSM is outside their geographic focus, They will come for a meeting n Feb 15
7-Feb	No emails required to be sent out today. Phone call took place between Gregg and Peter from Good Fortune Markets. Due to language barrier we where not able to get the correct last name of this gentleman via phone.	Received response from Good Fortune Markets today	Sent out an Invite to Good Fortune Markets today	Sent Data room invite to a gentleman named Peter from Good Fortune Markets.	In addition to Peter Gregg also spoke with his business partner John and there representation in this case Frank Huang. They have received an invite to the data room and intend on reviewing the documents and coming to the store on Tuesday to discuss further. They are aware that the Stalking Horse bid is \$2.0 million.
8-Feb	Gregg received picture images of some of the Good Fortune Markets properties. He then Forward via email to all necessary parties	Received picture images from John of Good Fortune	Data Room updated with January financials	No invites sent out as of today	Tomorrow Gregg has meeting with the Good Fortune Markets , to discuss a potential overbid of the supermarket.
9-Feb	No emails required to be sent out today	No email responses today	No data room updates today	No invites sent out as of today	Gregg spoke with Frank and Bonnie Huang (Owners of Good Fortune Market). Conversation went well. There seemed to be genuine interest. They've also requested a bankruptcy attorney referral from Gregg.
10-Feb	No emails required to be sent out today	received 3 more responses today passing on the deal.	No data room updates today	No invites sent out as of today	Gregg referred counsel to a potential over bidder (Good Fortune Markets)

DATE	EMAILS SENT	RESPONSES	DATA ROOM UPDATE	SENT DATA ROOM INVI	MISC. NOTES
11-Feb	No emails required to be sent out today	No email responses today	No data room updates today	No invites sent out as of today	Discussed status of store on conference call today with all involved parties. Summary of conversation points has been sent out to all involved in the call via email.
12-Feb	No emails required to be sent out today	No email responses today	No data room updates today	No invites sent out as of today	A vendor contacted Gregg about over-bidding. He represents 50 Vietnamese business people who are interested. Meeting Gregg on Monday.
13-Feb	No emails required to be sent out today	No email responses today	No data room updates today	No invites sent out as of today	Aside from the Monday morning meeting set up between Gregg and the vendors there are no additional updates for today
14-Feb	No emails required to be sent out today	No email responses today	No data room updates today	No invites sent out as of today	meeting tomorrow between Gregg and vendors. Bruce Lipian, StoneCreek Capital Partners, contacted Gregg via phone. Discussed the opportunity. Some interest, but it does not fit their geographical plan. Meeting this week between Gregg & Bruce
15-Feb					

EXHIBIT "7"

1 DAVID L. NEALE (SBN 141225)
2 TODD M. ARNOLD (SBN 221868)
3 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
4 10250 Constellation Boulevard, Suite 1700
5 Los Angeles, California 90067
6 Telephone: (310) 229-1234; Facsimile: (310) 229-1244
7 Email: dln@lnbyb.com, tma@lnbyb.com

8 Proposed Attorneys for Chapter 11 Debtor and Debtor in Possession

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10
11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SANTA ANA DIVISION**

14 In re

15 VINAMEX SUPERMARKET, LLC,

16 Debtor in Possession.

Case No. 8:15-bk-13189-MW

Chapter 11

17 **SUPPLEMENTAL DECLARATION OF**
18 **QINGFU XU IN SUPPORT OF DEBTOR'S**
19 **EMERGENCY MOTION FOR ENTRY OF**
20 **INTERIM AND FINAL ORDERS:**

- 21 (I) **AUTHORIZING DEBTOR TO OBTAIN**
22 **POSTPETITION FINANCING**
23 **PURSUANT TO SECTION 364 OF THE**
24 **BANKRUPTCY CODE,**
25 (II) **AUTHORIZING THE USE OF CASH**
26 **COLLATERAL PURSUANT TO**
27 **SECTION 363 OF THE BANKRUPTCY**
28 **CODE,**
(III) **GRANTING LIENS AND**
SUPERPRIORITY CLAIMS,
(IV) **SCHEDULING A FINAL HEARING ON**
THE DEBTOR'S MOTION TO INCUR
SUCH FINANCING ON A
PERMANENT BASIS, AND
(V) **GRANTING RELATED RELIEF**

Final Hearing:

DATE: July 20, 2015

TIME: 2:00 p.m.

PLACE: Courtroom 6C

411 West Fourth Street
Santa Ana, CA 92701

1 **DECLARATION OF QINGFU XU**

2 I, Qingfu Xu, hereby declare as follows:

3 1. I am over 18 years of age. Except where otherwise stated, I have personal
4 knowledge of the facts set forth herein, and, if called as a witness, could and would testify
5 competently with respect thereto.

6 2. On June 25, 2015, Vinamex Supermarket, LLC, dba Garden Grove Supermarket,
7 the debtor and debtor in possession herein (the "Debtor"), filed its *Emergency Motion For Entry*
8 *Of Interim And Final Orders: (I) Authorizing Debtor To Obtain Postpetition Financing Pursuant*
9 *To Section 364 Of The Bankruptcy Code, (II) Authorizing The Use Of Cash Collateral Pursuant*
10 *To Section 363 Of The Bankruptcy Code, (III) Granting Liens And Superpriority Claims, (IV)*
11 *Scheduling A Final Hearing On The Debtor's Motion To Incur Such Financing On A Permanent*
12 *Basis, And (V) Granting Related Relief* [Docket No. 8] (the "Motion").

13 3. A preliminary hearing on the Motion was held on June 29, 2015, at 9:00 a.m. I
14 was present at the hearing.

15 4. On July 2, 2015, the Court entered its *Interim Order Authorizing Debtor To*
16 *Obtain Postpetition Financing Pursuant To Section 364(b) Of The Bankruptcy Code And*
17 *Scheduling A Final Hearing On The Debtor's Motion To Incur Such Financing On A Permanent*
18 *Basis* [Docket No. 40] (the "Interim Order").

19 5. The Interim Order provides, in relevant part, as follows:

20 Pursuant to section 105(a) of the Bankruptcy Code, Lender
21 [Vinamax Investors, LLC] shall fully and completely disclose (1) all
22 terms, whether or not in writing, of Lender's operating agreement
23 and any other agreement, whether or not written, between Lender
24 and each of Lender's members, (2) the names and addresses of each
25 of its members, (3) all relationships that the Lender, Qingfu Xu or
26 any of Lender's equity members has currently or had in the past
27 with the Debtor, Goldstone Management LLC, Richard Chhor, Rosa
28 Duong and Peter Nguyen, and (4) all knowledge or informed belief
that Lender, Qingfu Xu or any of Lender's equity members has
concerning the failure of Richard Chhor, Rosa Duong and Peter
Nguyen to make their required capital contributions to the Debtor.

See Interim Order at ¶ 2.

1 14. I am the sole shareholder and the President and Chief Executive Officer of A&J.
2 As addressed below, A&J is the authorized representative of the Class B Manager of the Debtor.

3 15. A&J is a commercial real estate and private equity management firm
4 headquartered in Los Angeles. A&J is involved in the EB-5 Immigrant Investor (“EB-5”)
5 industry, which fosters foreign investment and job creation in the United States. The ultimate
6 goal of many EB-5 investors is to obtain lawful permanent residency in the United States in
7 conjunction with making their EB-5 investments. A&J often serves as a fiduciary for EB-5
8 investors and assists in negotiating and structuring investments for EB-5 investors in the United
9 States, as it did so here for the Debtor.

10 **C. GOLDSTONE MANAGEMENT LLC**

11 16. My only other relationship to the Debtor is through another affiliate of mine,
12 Goldstone Management LLC (“Goldstone”), which is a Delaware limited liability company
13 formed in December 2012.

14 17. I am the sole member and manager of Goldstone.

15 18. Goldstone is currently a single purpose entity. Goldstone’s sole asset is its 10%
16 Class A Membership Interest in the Debtor, which Goldstone obtained on my behalf as
17 consideration for my efforts through A&J in structuring a \$5 million capital investment in the
18 Debtor. As addressed below, unlike the other Class A Members, Goldstone was not required to
19 make a capital contribution to the Debtor.

20 **II.**

21 **RELATIONSHIPS BETWEEN LENDER AND DEBTOR’S MEMBERS**

22 19. Aside from my relationship through the Debtor, I have no prior relationship with
23 Rosa Duong or Peter Nguyen. I previously met Richard Chhor in 2012 when he approached me
24 about a possible restaurant venture, but such discussions did not lead to any transaction. I have no
25 other current or prior personal or professional relationships with Rosa Duong, Mr. Chhor, or Mr.
26 Nguyen.

1 24. Upon information and belief, in or around June 2013, Richard Chhor, Rosa Duong,
2 and Peter Nguyen entered into a partnership agreement (the “Partnership Agreement”) regarding
3 the ownership and management of the Debtor.

4 25. As noted above, I was approached after execution of the Partnership Agreement
5 and subsequently negotiated the terms of my involvement in the project, through Goldstone and
6 A&J. On January 10, 2014, a *First Amended and Restated Operating Agreement for Vinamex*
7 *Supermarket, LLC* (the “Amended Operating Agreement”), which amended and restated the
8 Partnership Agreement, was executed. A true and correct copy of the Amended Operating
9 Agreement is attached hereto as **Exhibit “D.”**

10 26. The Amended Operating Agreement, among other things, (a) provides for four (4)
11 Class A Members¹ consisting of Rosa Duong, Richard Chhor, Peter Nguyen, and Goldstone,
12 which were to own 50%, 27.5%, 12.5%, and 10% of the Class A Percentage Interests of the
13 Debtor, respectively, (b) provides that Class A Members, other than Goldstone, were to make
14 capital contributions totaling \$1.5 million in the aggregate to pay for the development and build-
15 out of the Supermarket and to fund working capital used for acquiring inventory and paying other
16 expenses related to the operation of the Supermarket, with Rosa Duong to contribute \$1.2 million,
17 Mr. Chhor to contribute \$200,000, and Mr. Nguyen to contribute \$100,000 (each a “Class A
18 Capital Contribution” and collectively the “Class A Capital Contributions”) in exchange for Class
19 A Units, (c) provides that the Class A Members were to make the foregoing Capital Contributions
20 before the admission of up to seven (7) Class B Members, (d) provides that a person could
21 become a Class B Member by paying a \$45,000 Administration Fee and providing a capital
22 contribution of \$500,000 for investment into the Debtor (each a “Class B Capital Contribution”
23 and collectively the “Class B Capital Contributions”) and allowing the Class B Capital
24 Contributions to be released to the Debtor upon the filing of the putative Class B Member’s Form
25 I-526 Immigrant Petition by Alien Entrepreneur, and (e) provides that, with limited exceptions,

27 ¹ Any capitalized terms not otherwise defined herein, have the meanings ascribed to them in the Amended
28 Operating Agreement.

1 the Debtor's operations would be managed by a Class A Manager designated in the Amended
2 Operating Agreement and a Class B Manager to be designated at a later date, with powers and
3 duties of the Class A Manager and Class B Manager to be as set forth in the Amended Operating
4 Agreement. Class B Members are entitled to a preferred return, and a liquidation preference, on
5 their full capital contribution ahead of the Class A Members under the Amended Operating
6 Agreement.

7 27. Goldstone obtained its Class A Percentage Interests in exchange for facilitating
8 and obtaining the Class B Members' \$3.5 million Class B Capital Contribution.

9 28. The original Class A Manager of the Debtor, as designated by the Amended
10 Operating Agreement, was Vinamex Management LLC ("Vinamex Management"), which I am
11 informed and believe is owned by Rosa Duong, Richard Chhor, Peter Nguyen, and possibly Pier
12 Duong, Rosa's brother. Ms. Duong generally managed the Debtor's day-to-day business affairs.
13 In February 2015, pursuant to a resolution of the Debtor, Vinamex Management was terminated
14 as the Class A Manager and the Debtor appointed me and Rosa Duong, collectively and
15 individually, to serve as Interim Class A Manager.

16 29. A separate Management Agreement entered March 26, 2014 established Pan-Asia
17 Consulting Ltd. ("Pan-Asia") as the Class B Manager. A true and correct copy of the
18 Management Agreement is attached hereto as **Exhibit "E."** The Management Agreement
19 bestows upon the Class B Manager the authority to act on behalf of the Class B Members.

20 30. In April 2014, A&J was appointed the Class B Manager's Authorized Agent, and
21 was delegated the power to exercise and assume certain of the rights and powers of the Class B
22 Manager. A true and correct copy of the Agency Agreement is attached hereto as **Exhibit "F."**

23 **B. ACTUAL AND PURPORTED CAPITAL CONTRIBUTIONS IN THE DEBTOR**

24 31. In order to become Class B Members, between May and November 2014, Li
25 Handa, Liu Juan, Liang Kaihou, Shi Minghui, Xin Yan, Wan Yujuan, Sun Wenjie, all of whom
26 are Chinese nationals participating in the EB-5 program and seeking to obtain lawful permanent
27 resident status in the United States, each made their \$500,000 Class B Capital Contribution for a
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1 total of \$3.5 million in Class B Capital Contributions, plus related fees. Such funds were
2 deposited into an East West Bank “Cash Control Account” serving to hold the Class B Capital
3 Contributions, which was in the name of the Debtor, but over which A&J, as Authorized Agent of
4 the Class B Manager, and the Class A Manager exercised joint control. A joint direction was
5 required from A&J and the Class A Manager to release the Class B Capital Contributions to the
6 Debtor.

7 32. The Class B Members made their Class B Capital Contributions as follows:

8

Name	Total Funds	Cash Control Account Received Date
LIANG, Kaihou	\$538,572.00	5/5/2014
SUN, Wenjie	\$545,085.00	5/21/2014
WAN, Yujuan	\$545,025.00	6/11/2014
XIN, Yan	\$545,032.00	6/16/2014
LIN, Handa	\$545,050.00	8/1/2014
SHI, Minghui	\$545,100.00	11/10/2014
LIU, Juan	\$545,100.00	11/13/2014

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17 A true and correct copy of the bank statements documenting the foregoing deposits of Class B
18 Contributions by the Class B Members into the “Cash Control Account” is collectively attached
19 hereto as **Exhibit “G.”**

20 33. It was my understanding that the Class B Capital Contributions were not to be
21 released to the Debtor until the Class A Members made their \$1.5 million in Class A Capital
22 Contributions.

23 34. In May 2014, Chhor, Duong, and Nguyen sent a letter to the Debtor asserting that
24 they had collectively made Class A Capital Contributions of \$1,242,208.47. A true and correct
25 copy of the May 2014 letter is attached hereto as **Exhibit “H.”** I later learned that no such Class
26 A Capital Contributions had been made.

1 35. In reliance on the Class A Members' representations, from June 30, 2014 through
2 February 2015, A&J, as the Authorized Agent of the Class B Manager, agreed to release the \$3.5
3 million Class B Capital Contributions from the East West Bank "Cash Control Account" to the
4 East West Bank "Revenue and Build Out Account" (Account #*****2314), for purposes of
5 funding the building out and improvement of the Supermarket and to fund working capital. The
6 release of the Class B Capital Contributions from the East West Bank "Cash Control Account" to
7 the East West Bank "Revenue and Build Out Account" were as follows:

Name	Total Funds	Release Amount to Revenue and Build Out Account	Release Date to Revenue and Build Out Account
LIANG, Kaihou	\$538,572.00	\$ 500,000.00	6/30/2014
SUN, Wenjie	\$545,085.00	\$ 500,000.00	7/31/2014
WAN, Yujuan	\$545,025.00	\$ 500,000.00	9/25/2014
XIN, Yan	\$545,032.00	\$ 500,000.00	9/25/2014
LIN, Handa	\$545,050.00	\$ 500,000.00	11/25/2014
SHI, Minghui	\$545,100.00	\$ 500,000.00	11/25/2014
LIU, Juan	\$545,100.00	\$ 100,000.00	1/26/2015
		\$ 400,000.00	2/3/2015

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17 A true and correct copy of the bank statements documenting the foregoing transfers is collectively
18 attached hereto as **Exhibit "I."**

19 36. A&J and Goldstone did not learn until shortly after the grand opening of the
20 Supermarket in February 2015 that Rosa Duong, Richard Chhor, and Peter Nguyen had failed to
21 make their required Class A Capital Contribution. Further, I believe that Vinamex Management,
22 as the Class A Manager, acting by and through Rosa Duong, Richard Chhor, Peter Nguyen,
23 and/or possibly Pier Duong, provided inaccurate or misleading information regarding the
24 purported Class A Capital Contributions made by the Class A Members (Rosa Duong, Richard
25 Chhor, and Peter Nguyen) in order to induce A&J, as the Authorized Agent of the Class B
26 Manager, to release the Class B Capital Contributions.

1 **C. UNDERCAPITALIZATION OF THE DEBTOR**

2 37. On February 12, 2015, the Debtor opened the Supermarket.

3 38. Due to the failure of Rosa Duong, Richard Chhor, and Peter Nguyen to make their
4 required Class A Capital Contributions totaling the full \$1.5 million, which represents 30% of
5 what was to be the initial capitalization of the Debtor, the Debtor was undercapitalized. As a
6 result, the Debtor was not able to comprehensively market and promote the Supermarket,
7 maintain or meet its working capital needs, or maintain adequate inventory. The foregoing
8 resulted in a drastic decline in revenues in the months following the Supermarket's opening and
9 an inability to pay the claims of vendors and others as they came due. In consideration of the
10 Debtor's mounting financial difficulties and in order to explore restructuring options, the Debtor
11 decided to seek bankruptcy protection and to close the Supermarket.

12 **IV.**

13 **CONCLUSION**

14 39. Based on the foregoing, I believe that I have two roles in this case, both of which I
15 view as aligned. First, my company, A&J, as the Authorized Agent of the Class B Manager, has a
16 duty to protect the interests of the Class B Members and is fully committed to do so. Second, as
17 the principal of Vinamex Investors and Goldstone, my goal is for the Debtor to propose a chapter
18 11 plan that will: (a) repay legitimate third party creditor claims in full, (b) restructure the Debtor
19 for the benefit of the Class B Members and Goldstone, and (c) allow the Debtor to re-open the
20 Supermarket, while at the same time protecting Lender's new money advances to the Debtor
21 through administrative claim status. Under all circumstances, I believe that any and all rights and
22 claims that the Debtor may have against the Class A Members, Rosa Duong, Richard Chhor, and
23 Peter Nguyen, should be preserved for the benefit of this estate.

24 40. To be clear, subject to entry of a final order approving the Motion and the
25 bargained for protections to be afforded to Vinamex Investors, I am prepared to cause Lender to
26 lend up to \$1 million to the Debtor in order to allow the Debtor to immediately re-stock inventory,
27 re-hire store employees, and re-start operations at the Supermarket. Absent entry of such final
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1 order, Lender is only willing to fund the Debtor on a limited unsecured basis that will be sufficient
2 to secure and maintain the Debtor's assets pending confirmation of the plan.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 8th day of July 2015, at Alhambra, California.


QINGFU XU

PROOF OF SERVICE OF DOCUMENT

1 I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business
2 address is: 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

3 A true and correct copy of the foregoing document entitled **NOTICE OF MOTION AND MOTION FOR**
4 **AN ORDER (1) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS**
5 **FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (2)**
6 **AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS**
7 **AND UNEXPIRED LEASES; AND (3) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS**
8 **AND AUTHORITIES; DECLARATIONS IN SUPPORT THEREOF** will be served or was served (a) on
9 the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated
10 below:

11 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to
12 controlling General Orders and LBR, the foregoing document will be served by the court via NEF and
13 hyperlink to the document. On **February 15, 2016**, I checked the CM/ECF docket for this bankruptcy
14 case or adversary proceeding and determined that the following persons are on the Electronic Mail
15 Notice List to receive NEF transmission at the email addresses stated below:

16 *Service information continued on attached page*

17 **2. SERVED BY UNITED STATES MAIL:** On **February 15, 2016**, I served the following persons and/or
18 entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true
19 and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and
20 addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be
21 completed no later than 24 hours after the document is filed.

22 *Service information continued on attached page*

23 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR**
24 **EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR,
25 on **February 15, 2016**, I caused to be served the following persons and/or entities by personal delivery,
26 overnight mail service, or (for those who consented in writing to such service method), by facsimile
27 transmission and/or email as follows. Listing the judge here constitutes a declaration that personal
28 delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is
filed.

Service information continued on attached page

Served via attorney service or Overnight Mail

The Hon. Mark S. Wallace
United States Bankruptcy Court
411 West Fourth Street, Suite 6135 / Courtroom 6C
Santa Ana, CA 92701-4593

I declare under penalty of perjury under the laws of the United States of America that the foregoing is
true and correct.

February 15, 2016
Date

Todd Arnold
Type Name

/s/ Todd Arnold
Signature

8:15-bk-13189-MW Notice will be electronically mailed to:

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Todd M Arnold on behalf of Attorney Levene Neale Bender Yoo & Brill LLP
tma@lnbyb.com

Todd M Arnold on behalf of Debtor Vinamex Supermarket, LLC
tma@lnbyb.com

Glenn Besnyl on behalf of Interested Party Courtesy NEF
gab1law@msn.com

J Scott Bovitz on behalf of Creditor U.S. TelePacific Corp.
bovitz@bovitz-spitzer.com

Ronald Clifford on behalf of Attorney Ronald Clifford
rclifford@blakeleyllp.com, ecf@blakeleyllp.com;seb@blakeleyllp.com;info@ecf.inforuptcy.com

Ronald Clifford on behalf of Attorney Scott E Blakeley
rclifford@blakeleyllp.com, ecf@blakeleyllp.com;seb@blakeleyllp.com;info@ecf.inforuptcy.com

Ronald Clifford on behalf of Creditor Committee Committee Of Unsecured Creditors
rclifford@blakeleyllp.com, ecf@blakeleyllp.com;seb@blakeleyllp.com;info@ecf.inforuptcy.com

Fredric Glass on behalf of Creditor Fair Harbor Capital, LLC
fglass@fairharborcapital.com

Michael J Hauser on behalf of U.S. Trustee United States Trustee (SA)
michael.hauser@usdoj.gov

Yale K Kim on behalf of Interested Party Courtesy NEF
ykim@allenmatkins.com, lpanderson@allenmatkins.com

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mlitvak@pszjlaw.com

David L. Neale on behalf of Debtor Vinamex Supermarket, LLC
dln@lnbyb.com

David L Prince on behalf of Creditor Pacific American Fish Co., Inc.
dlp@redchamber.com

Miles L Prince on behalf of Creditor Pacific American Fish Co., Inc.
miles@redchamber.com, miles@redchamber.com

Jeremy V Richards on behalf of Interested Party Vinamex Investors, LLC
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Dheeraj K Singhal on behalf of Creditor Rosa H Duong
dksinghal@dcdmlawgroup.com

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Ryan A Stubbe on behalf of Creditor Rosa H Duong
nef.rstubbe@gmail.com, rstubbe@dcdmlawgroup.com

United States Trustee (SA)
ustpregion16.sa.ecf@usdoj.gov

Andrew F Whatnall on behalf of Creditor DACA VI LLC
awhatnall@daca4.com

SERVED BY OVERNIGHT MAIL

20 Largest Unsecured Creditors, Committee Counsel, and Committee Members, and RSN

Vinamex File No. 7564 RSN Service by U.S. Mail or NEF if marked with an *	Michael J Hauser NEF* Office of the U.S. Trustee 411 W Fourth St #9041 Santa Ana, CA 92701	<u>Debtor</u> Vinamex Supermarket, LLC 12081 Brookhurst St. Garden Grove, CA 92840-2814
<u>Debtor's Chief Restructuring Officer</u> Gregg Yorkison Chief Restructuring Officer C/O Michael Gottfried 1801 Century Park East, Suite 700 Los Angeles, CA 90067	<u>Landlord</u> 12151 Brookhurst LLC c/o Pride Property Services-H. Park 12103 Brookhurst Street, Suite A Garden Grove, CA 92840	<u>Lender Counsel NEF*</u> Jeremy Richards/Maxim Litvak Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003
Russell I. Glazer TroyGould 1801 Century Park East, Suite 1600 Los Angeles, CA 90067	Alcoholic Beverage Control 605 W Santa Ana Blvd Bldg 28, Suite 369 Santa Ana, CA 92701	<u>Creditors Committee Counsel NEF*</u> Ronald A. Clifford/Scott E. Blakeley BLAKELEY LLP 18500 Von Karman Ave., Suite 530 Irvine, CA 92612
<u>Lease Secured Creditor</u> Nissan Motor Acceptance Corporation P.O. Box 660360 Dallas, TX 75266-0360		Alcoholic Beverage Control 605 W Santa Ana Blvd Bldg 28, Suite 369 Santa Ana, CA 92701
	<u>Committee Member</u> H & N Group, Inc. Attn: Dai Vu 5580 S. Alameda St. Vernon, CA 90058	<u>Committee Member</u> Pacific American Fish Co., Inc. Attn: Chak Yu 5525 So. Santa Fe Avenue Vernon, CA 90058
<u>Committee Member</u> Lucksen Trading, Inc. Attn: Susan Lu or Tien Lu 119 W. Live Oak Ave., Suite C Arcadia, CA 91007	Employment Development Dept. Bankruptcy Group MIC 92E P.O. Box 826880 Sacramento, CA 94280-0001	Internal Revenue Service PO Box 7346 Philadelphia, PA 19101-7346
Los Angeles County Tax Collector P.O. Box 54110 Los Angeles, CA 90054-0110	State Board of Equalization Account Information Group, MIC: 29 P.O. Box 942879 Sacramento, CA 94279-0029	Franchise Tax Board Bankruptcy Section, MS: A-345 P. O. Box 2952 Sacramento, CA 95812-2952

Ms. Thac
Crab House Trading Inc
616 Stanford Ave
Los Angeles, CA 90021

DALAT FARM INC
42 SORBONNE ST.
WESTMINSTER, CA 92683

Brian
GOURMET PURVEYORS
7930 ALABAMA AVE,
CANOGA PARK, CA 91304

Chao DENG
FLAT/RM 1005
10/F PROSPEROUS BLDG.
48-52 DES VOEUX ROAD
CENTRAL, HK **RETURNED W
NOT IN/BUSINESS CLOSED
NOTE**

Mr. Thomas
HANS MEATS
8504 FIRESTONE BLVD #203
DOWNEY, CA 90241

Mr. Think
Hudson Butcher Supply
19905 S. Susana Rd.
Rancho Dominguez, CA 90221

Atn: Gustavo
Quality Produce For Less
1922 E. Olympic Blvd.
Los Angeles, CA 90021

Anthony Tang
NT Construction
1191 N Kollwood Cir.
Anaheim, CA 92801

Mr. Goliati
QSI
1400 EAST OLYMPIC BLVD, #204
LOS ANGELES, CA 90021

Liangying YU
Sino-US Investment
FLAT/RM 1005
10/F PROSPEROUS BLDG.
48-52 DES VOEUX ROAD
CENTRAL, HK **RETURNED W
NOT IN/BUSINESS CLOSED
NOTE**

Attn: Mr. Patric
Pescaderia Tampico Seafood Inc
617 S. Stanford Ave
Los Angeles, CA 90021

Attn: Mr. Geronimo
SOUTHERN WINE & SPIRITS
17101 Valley View Avenue,
Cerritos, CA 90703

Attn: Mr. Think
Tom's Electric
4846 Cedar Ave.
El Monte, CA 91732

Attn: Mr. Hoa
Rockman Company USA Inc.
12011 Smith Ave
Santa Fe Springs, CA 90670

Thuan D N. Le
110 N. Lauren Way Anaheim
Anaheim, CA 92801

Jeff
Young's Market Company, LLC
500 S. Central Ave
Los Angeles, CA 90013

T Fresh Company
150 N. Willow Ave.,
City of Industry, CA 91746

Other Parties to Assumed Contracts

12151 Brookhurst, LLC
Attn: Hyung Park,
Managing Member
12103 Brookhurst St., Ste. A
Garden Grove, CA 92840

Counsel * ECF
Yale K. Kim
Allen Matkins Leck Gamble
Mallory & Natsis LLP
515 S. Figueroa Street, 9th Floor
Los Angeles, CA 90071-3309

Nissan-Infinity LT
Attention Officer or Director
PO Box 660366
Dallas, TX 75266-6700

AT&T Bankruptcy
James Grudus, Counsel
One AT&T Way, Room 3A218
Bedminster, NJ 07921-2693

SIMPLEWARE INCORPORATED
Attn Will Ong, Agent for Service or
Other Officer or Director
165 Waverly Dr.
Pasadena, CA 91105

Sphinx Alarm & Communication,
LLC
Duc Truong, Agent for Service
1501 N. Mar Les Dr.
Santa Ana, CA 92706

U.S. TelePacific Corp.
Office of General Counsel
515 S. Flower Street, 47th Floor
Los Angeles, CA 90071

J. Scott Bovitz* ECF
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