

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
COMPLEX BUSINESS LITIGATION DIVISION**

GROCERKEY, INC.
GIGPOINT LLC
POINT PICKUP ENTERPRISES, INC.
POINT PICKUP MANAGEMENT, LLC
POINT PICKUP NOW, INC.
POINT PICKUP TECHNOLOGIES, INC.

CASE NO: 2024-003495-CA-01
(Consolidated)

Assignors,
To:

PETER HURWITZ,
Assignee.

**ASSIGNEE'S MOTION (I) TO APPROVE THE SALE OF CERTAIN ASSETS FREE
AND CLEAR OF CLAIMS, LIENS AND ENCUMBRANCES,
AND (II) FOR OTHER RELATED RELIEF**

TO CREDITORS AND OTHER INTERESTED PARTIES:

PLEASE TAKE NOTICE that, pursuant to Section 727.111(4), Florida Statutes, the Assignee may sell assets of the estate, as described herein, and the Court may consider these actions without further notice unless a party in interest files an objection before the hearing set to consider this motion. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court at 601 NW 1st Court, 16th Floor, Miami, FL , and serve a copy on the Assignee's attorneys, Eyal Berger, Esq. and D. Brett Marks, Esq., Akerman LLP, 201 East Las Olas Boulevard, Suite 1800, Fort Lauderdale, FL 33301, eyal.berger@akerman.com and brett.marks@akerman.com and any other appropriate person. If you do not file an objection within the time permitted, the Assignee and the Court will presume that you do not oppose the granting of the relief requested in the paper.

Peter Hurwitz, (the "Assignee"), solely as the Assignee for the benefit of creditors of GrocerKey, Inc. ("Assignor"), a Delaware corporation, and not individually, by and through his undersigned counsel, and pursuant to Florida Statutes §§ 727.102, 727.108(1), 727.109(1), (7),

and (15), and 727.111(4), files this *Motion (I) to Approve the Sale of Certain Assets Free and Clear of Claims, Liens and Encumbrances, and (II) for Other Related Relief* (the “**Motion**”), and in support thereof, states as follows:

BACKGROUND

1. On February 23, 2024, a *Petition Commencing Assignment for the Benefit of Creditors* was filed by the Assignee, thereby commencing the following assignments for the benefit of creditors cases (the “**Assignment**”) pursuant to Chapter 727 of the Florida Statutes, in this Court: *In re GrocerKey, Inc.*, Case No. 2024-003495-CA-01 (the “**Assignment Case**”).

2. Prior to filing the Assignment, the Assignor has been engaged in the business providing mobile custom-built fulfillment to assist regional grocery stores with successfully picking, packing, and delivering eCommerce orders (the “**Business**”). Assignor is indebted to creditors, is unable to pay its debts, and is desirous of providing for payment of its debts as far as it is possible.

3. Assignee has determined, in his business judgment, that the best way to maximize the value of the assets of Assignor and to maximize the return for creditors is to sell substantially all of the assets of Assignor, including outstanding accounts receivables, intellectual property and certain causes of action, subject to any higher and better offers

4. All of the assets of Assignor constitute the assignment estate (collectively, the “**Assignment Estate**”), to be administered by the Assignee. Pursuant to Fla. Stat. Chapter 727, the Assignee is required to liquidate the assets of the Assignment Estate.

5. BBH Opportunities PPUP Holdings, LLC and NRF3 Driven to Deliver, LLC (together, the “**Secured Lenders**”), was the prepetition, secured lender to the above styled Assignors. Secured Lenders have an administrative expense claim against the Assignor's estate

and are seeking a perfected secured lien in their favor and against Assignor for loans to be advanced to Assignor by Secured Lenders in an approximate principal amount of \$2,202,000.00 encumbering all of the assets subject to the proposed sale (the “**Secured Lien**”).¹

THE PROPOSED SALE OF ASSETS²

6. Since the Assignment Date, the Assignee has been attempting to liquidate certain of the assets owned by the Assignment Estate for the benefit of the Assignment Estate. The Assignee seeks to conduct a fair and transparent auction process pursuant to which the winning bidder (the “**Purchaser**”) will enter into an agreement, or agreements, substantially in the form of the in the form of an Asset Purchase Agreement (the “**APA**”) ³ for the purchase, sale, assumption and assignment of certain of the assets owned by the Assignment Estate. Specifically, the APA contemplates purchase, sale, assumption and assignment of all of certain of the assets of Assignor used in, or otherwise relating to the operation of Business, “as is” and “where is”, free and clear of all liens, which assets include (collectively, the “**Acquired Assets**”):

- a) all of the Assignor’s deposits, security deposits, prepayments, and prepaid expenses as of the Closing Date that relate to any Assigned Contract or any other Acquired Asset;
- b) the Acquired Receivables;
- c) all customer accounts;
- d) Assigned Contracts set forth on **Disclosure Schedule 2.3**, excluding cure amounts related to the Assigned Contracts, which shall be satisfied by Seller on behalf of Assignor from the proceeds of the Purchase Price;
- e) all equipment, computers (including all copies of software installed on any such computers, servers, or other electronic equipment, and any documentation and media constituting, describing, or relating to such copies, including manuals,

¹ A hearing to approve the Secured Lien is currently scheduled for March 26, 2024 at 9:00 a.m. EST.

² To the extent the summary provided in this Motion diverts from the APA, the APA shall govern.

³ A true and correct copy of the proposed Asset Purchase Agreement is attached hereto as **Exhibit "A."**

technical specifications and the like), furniture, supplies, fixtures, and other tangible personal property of Assignor;

- f) all Inventory, which as used herein shall mean, any and all of Assignor's (i) owned, finished or partially finished, products manufactured or to be distributed by or on Assignor's behalf, and (ii) any and all other owned inventory, and any finished goods returned by any of Assignor's customers, whether returned before or after the Closing Date, in each case ((i) or (ii)), wherever located, including all finished goods, works in process, raw materials, and all other materials and supplies to be used or consumed by or on behalf of Assignor in the production of finished goods or the operation of the Business;
- g) all investment property, instruments, chattel paper, and real estate;
- h) all Intellectual Property Rights together with all income, royalties, damages, and payments due or payable to Assignor at the Closing or thereafter relating to the Intellectual Property Rights, the right to register, prosecute, maintain, and defend the rights of Assignor in the Intellectual Property Rights, the right to sue and recover damages for past or future infringements or misappropriations thereof, and the right to fully and entirely stand in the place of Assignor in all matters related thereto;
- i) all permits, to the extent transferable, necessary for Purchaser to perform its obligations under the Assigned Contracts after the Closing;
- j) all Books and Records, except those Books and Records set forth on Disclosure Schedule 2.2;
- k) the Assignor's email addresses, website (including the URL, electronic images, text, and source codes therein), facsimile numbers, telephone numbers, and cellphones;
- l) all rights and claims with respect to the Acquired Assets and Assumed Liabilities, including all enforcement rights, for Acquired Causes of Action, and refunds including with respect to taxes for all periods ended after the Closing Date;
- m) all promotional materials, catalogues, research materials, mailing lists and customer lists, all names and addresses of customers, and sales reports by title and by customer to the extent available relating to the Business;
- n) the amount of, and all rights to any, insurance proceeds received by Assignor after the Effective Date in respect of the loss, destruction, or condemnation of any Acquired Assets occurring prior to, on, or after the Closing or any Assumed Liabilities;
- o) all rights to net operating losses, tax refunds, credits, or similar benefits for all periods ended on or prior to the Closing Date;

- p) all outstanding orders for Assignor's products as of the Closing Date, which shall be transferred to Purchaser at Closing for processing and fulfillment;
- q) all goodwill relating to the items set forth in this Disclosure Schedule 2.1.

7. The proposed APA expressly excludes from sale the following assets of the Assignment Estate:

- a) all cash and cash equivalents which are (i) equal to or less than, but not in excess of, the Cash Purchase Price, or (ii) not included in Disclosure Schedule 2.1, above;
- b) the corporate charter, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books and other documents relating to the organization and existence of Assignor as a limited liability company;
- c) any Books and Records that do not relate to the Acquired Assets or the Assumed Liabilities or that Seller is, in its good faith determination, required by law to retain, provided that Purchaser shall have the right, to make copies of any such Books and Records to the extent they related to Acquired Assets or Assumed Liabilities;
- d) all of the Assignor's bank accounts and lock-boxes;
- e) all rights of Seller and Assignor under this Agreement or any of the Transaction Documents;
- f) all insurance policies, except to the extent constituting an Assigned Contract;
- g) Excluded Contracts;
- h) all insurance claims, insurance premium refunds, and proceeds to the extent related to any Excluded Asset;
- i) Excluded Causes of Action as identified by Assignee prior to the Sale Hearing;
- j) Claims against any third party under Fla. Stat. 726.101, et seq.;
- k) Claims against any former officer, director, or professional of Assignors;
- l) all membership interests and all other equity interests of or relating to the Assignor.

8. The Assignee will post the form APA to a virtual data room for prospective bidders to markup, and has set a bid deadline of April 8, 2024 at 5:00 P.M. (Eastern Standard Time) for the submission of bids and revised APAs. The Purchaser's APA shall contain a proposed purchase

price for the Acquired Assets as follows: (i) a cash payment to the Assignee if made by a party other than the Secured Lender; or (ii) a credit bid of the Secured Claim if made by Secured Lender; and (iii) the Purchaser's assumption of all liabilities related to the Assumed Contracts and any open purchase orders (collectively, (i) – (iii), the “**Purchase Price**”), free and clear of liens, claims and encumbrances, with any such liens, claims and encumbrances to attach to the proceeds of the sale.

9. In the event that multiple APAs are submitted, the Assignee will hold a virtual auction sale process on April 11, 2024 at 10:00 A.M. (Eastern Standard Time) via Zoom (the “**Auction**”). A Sale Hearing to approve the highest or best bid will occur on April 15, 2024. Subsequent to the Sale Hearing, the closing of the APA would occur within seven to ten days.

10. The Assignee believes that the proposed sale process and Auction of the Acquired Assets to the Purchaser is in the best interest of the Assignment Estate, because it allows for a liquidation of substantially all of the tangible and intangible assets of the Assignment Estate on an expedited and efficient basis, thereby reducing the costs of administering the Assignment Estate.

11. The Assignee and the Assignment Estate lack the resources to perform the Assignor's obligations under the Assumed Contracts to be acquired by the Purchaser. Accordingly, the assumption and assignment of the Assumed Contracts (as defined in the APA) by and to the Purchaser will relieve the Assignment Estate of the performance obligations and liabilities associated with the Assumed Contracts.

12. The Assignee believes that given his marketing efforts to date, the sale process and Auction allows for a fair and open sale process that will maximize the value received for the Purchased Assets.

REQUESTED RELIEF

13. Pursuant to Fla. Stat. § 727.108(1), the Assignee “shall [c]ollect and reduce to money the assets of the estate” including by public or private sale.

14. Pursuant to Fla. Stat. § 727.109(7), the Court has the power to “hear and determine a motion brought by the assignee for approval of a proposed sale of assets of the estate other than in the ordinary course of business ...” Further, the Court is authorized to “[e]xercise any other powers that are necessary to enforce or carry out the provisions of this chapter.” Fla. Stat. § 727.109(15).

15. Fla. Stat. § 727.114 establishes the priority of claims, giving first priority to “creditors with liens on assets of the estate, which liens are duly perfected pursuant to applicable law, [who] *shall receive the proceeds from the disposition of their collateral, less the reasonable, necessary expenses* of preserving or disposing of such collateral to the extent of any benefit to such creditors.”

16. Reading these three sections together (Fla. Stat. §§ 727.108, 727.109 and 727.114), the only logical result is that the Assignee may sell collateral, and the Court may approve a sale of collateral *free and clear of liens*, with such liens to attach to the proceeds of the sale⁴ and to be paid in the order of priority established by the statute. *See In re Italkkitchen International Inc., et al.*, Case No. 12-13342-CA-40, In the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, June 14, 2012 (J. Jose M. Rodriguez) (authorizing sale of assets free and clear of claims, liens and encumbrances pursuant to the powers granted the court pursuant to Fla. Stat § 727.109(15)); *In re Ultimate Gamer, LLC*, Case No. 22-007748-CA-01, In the Circuit

⁴ Such liens shall attach to the proceeds of the Sale, less the reasonable, necessary expenses of preserving or disposing of such collateral. *See* Fla. Stat. § 727.114(1)(a).

Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, July, 8, 2022 (J. Alan Fine) (same); *In re MyPhoto, LLC*, Case No. 50-202-CA-000573, In the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, February 20, 2020 (J. Janis B. Keyser) (same); *In re Lacerta Therapeutics, Inc.*, Case No. 2023-CA-004801, February 15, 2024, In the Circuit Court of the Eighth Judicial Circuit in and for Alachua County, Florida (J. George M. Wright)(same).

17. Other than the Secured Lien, which is part of the Purchase Price, the Assignee is not aware of any properly perfected liens on the Assignment Estate's assets. However, in an abundance of caution, the Assignee requests that the Court approve the sale of the Acquired Assets to Purchaser, free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances to attach to the proceeds of the Sale. To date, no other creditor other than Secured Lender has asserted a security interest in the Assignment Estate's assets, or filed any secured proof of claim.

WHEREFORE, the Assignee respectfully requests the Court enter an Order, in the form substantially in the form attached hereto as **Exhibit "B"**: (i) granting this Motion; and (ii) granting such other and further relief as the Court deems just and proper.

Respectfully submitted this 22nd day of March 2024.

AKERMAN LLP

/s/ Eyal Berger

Eyal Berger, Esq.

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Counsel for Assignee, Peter Hurwitz

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on March 22, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of Court through the Florida statewide E-Portal system and served to all parties registered to receive such service in this case.

/s/ Eyal M. Berger
Eyal M. Berger, Esq.

Exhibit A

ASSET PURCHASE AGREEMENT

This asset purchase agreement (this “**Agreement**”) is entered into on April [•], 2024 (the “**Effective Date**”), between [•], a [•] [•] (“**Purchaser**”) and **Peter Hurwitz, in his capacity as the Assignee for the Benefit of Creditors of GrocerKey, Inc.** (the “**Assignee**” or the “**Seller**”), whose address is 1601 Belvedere Rd., Ste 305S, West Palm Beach, Florida 33406 and who is in possession of the assets of **GrocerKey, Inc.**, a Delaware corporation with a principal place of business at 78 SW 7th Street, Miami, Florida 33130 (“**GrocerKey**”) by way of the assignment for the benefit of creditors currently pending in the Circuit Court of the 11th Judicial Circuit of the State of Florida in and for Miami-Dade County, Florida (the “**State Court**”) under case number 2024-003495-CA-01 for GrocerKey (the “**Assignment Case**”). Purchaser and Seller are sometimes referred to herein each as a “**Party**” and collectively as the “**Parties**”.

RECITALS

I. Prior to the commencement of the Assignment Case, GrocerKey was engaged in the business of providing fulfillment and last-mile delivery services for retailers and other enterprises across the United States (the “**Business**”).

II. The Seller is the Assignee that owns 100% of GrocerKey and all of its assets (including the Acquired Assets and the Excluded Assets) and currently operates GrocerKey.

III. In accordance with the Florida Statute, and subject to and upon the terms and conditions set forth in this Agreement, Seller desires to sell, assign, and deliver to Purchaser, and Purchaser desires to purchase, accept, and take delivery from Seller, all of the Acquired Assets, free and clear from all Liens, with such Liens, to attach to the proceeds from the sale contemplated by this Agreement.

IV. The transactions contemplated by this Agreement and the Transaction Documents are subject to the approval of the State Court, and the Acquired Assets will be sold, subject to higher or better offers at a public sale, and pursuant to a Final Order, in form and substance satisfactory to the Parties, approving such sale under the Florida Statute.

V. All capitalized terms not otherwise defined in the body of this Agreement shall carry the meaning ascribed to them in Section 1.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual representations, warranties, covenants, and promises contained herein, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS AND USAGE OF CERTAIN TERMS. For purposes of this Agreement, all terms not otherwise defined in this Agreement shall carry the following meanings:

“**Acquired Causes of Action**” shall mean only those Causes of Action which are being acquired by Purchaser, which are listed on Disclosure Schedule 2.1.

“Acquired Receivables” shall mean (a) all trade and other accounts receivable, including notes and loans receivable, as well as, any rights to receive credit card proceeds and rights to payment of any kind or nature, that are or may become payable to GrocerKey for services rendered or products delivered and the full benefit of all security for such accounts or rights to payment, and (b) any claim, remedy or other right related to any of the foregoing, including any monies, checks or instruments received by or on behalf of GrocerKey before or after the Closing in respect thereof, (c) Cash On Hand and subject to the provisions of 2.4.1.2, and (d) all records supporting the provision of products or services to which the receivable relates, which (a) though (d) are being acquired by Purchaser.

“Assigned Contracts” shall mean solely those GrocerKey Contracts, which are listed on Disclosure Schedule 2.3(a), which are being assigned to, and assumed by Purchaser.

“Books and Records” shall mean all books and records pertaining to the Acquired Assets, the Business or the Assumed Liabilities, of any and every kind, including customer lists, correspondence, data, files, reports and operating records of every kind, held or maintained by or on behalf of GrocerKey.

“Business Day” shall mean any day other than (i) Saturday or Sunday or (ii) any other day on which banks in Miami, Florida are permitted or required to be closed.

“Cash On Hand” means all, all sums of money, all currency, all good checks, money orders, certificates of deposit or other negotiable instruments, and all other cash equivalents held by Seller, for or in the name of GrocerKey, or which would be properly categorized as an asset of GrocerKey, including, but not limited to, all amounts deposited in the bank account for the Assignment Case maintained by the Assignee, less any made and outstanding payments written on such bank account.

“Causes of Action” shall mean all claims, causes of action, rights of recovery, repayment obligations, rights of setoff, and rights of recoupment that GrocerKey (or Seller as representative of GrocerKey) has or may have against any Person.

“Disclosure Schedules” shall mean those schedules attached to this Agreement.

“Excluded Contracts” shall mean any GrocerKey Contract that is not an Assigned Contract.

“Final Order” shall mean that certain order of the State Court entered pursuant the Florida Statute, which provides for, and authorizes, among other things, (a) the sale of the Acquired Assets and the Business to Purchaser, and (b) the assignment by Seller, and assumption by Purchaser of the Assumed Liabilities, which order is enforceable immediately upon entry and is not stayed in any manner, which the time to appeal or seek review or rehearing has expired, and as to which no appeal or petition for review or motion for re-argument has been taken or been made and is pending for argument.

“Florida Statute” shall mean the Title XLI of the Florida Statutes, Chapter 727.101 *et seq.*

“GrocerKey Contracts” shall mean any agreement, contract, plan, undertaking, instrument, note, bond, mortgage, indenture, deed of trust, loan, credit agreement, franchise concession, permit, license, lease, purchase order, sales order or other similar commitment, obligation, arrangement or understanding, whether written or oral, between GrocerKey (or Seller on behalf of GrocerKey) and any other Person.

“Intellectual Property Rights” shall mean all worldwide intellectual property rights belonging to GrocerKey, including, without limitation, GrocerKey’s trade name “GrocerKey”, all derivations thereof otherwise used by GrocerKey, and all logos and other corresponding intellectual property relating thereto; all U.S. and foreign patents, patent applications, patent rights, trademarks (registered and/or at common law), trademark applications, trade names, service marks, service mark applications, URLs, copyrights, copyright registrations and applications for registration, moral rights, franchises, licenses, inventories, know-how, trade secrets, customer lists, proprietary information, proprietary processes and formulae, databases and data collections, all source and object code, algorithms, architecture, structure, layouts, inventions, development tools, all goodwill and other general intangibles, and all products and proceeds thereof, and all documentation and media constituting, describing or relating to the above, including, manuals, memoranda, and records, including, without limitation, GrocerKey’s domain “grocerkey.com”. The term “Intellectual Property Rights” shall also include, but not be limited to, those registered trademarks and patents set forth on Disclosure Schedule 1.

“Knowledge” shall mean, as to a particular matter, the actual knowledge of the Assignee after due inquiry of the GrocerKey’s management.

“Liability” with respect to any Person, shall mean any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of such Person.

“Lien” means any lien (statutory or otherwise), claim, Liability, encumbrance, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, right of recovery, option, charge, hypothecation, security interest, interest, right of way, encroachment, mortgage, deed of trust, imperfection of title, prior assignments, tax (including federal, state, local, municipal, foreign, international, multinational or other tax), order of any governmental authority, right of first refusal or similar interests, or other encumbrance or charge of any kind or nature whatsoever, including voting trusts or agreements, proxies and marital or community property interests.

“Person” shall mean any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, any government or any agency or political subdivision thereof.

“Secured Lender” means, collectively, BBH Opportunities PPUP Holdings, LLC and NRF3 Driven to Deliver, LLC.

“**Secured Lien**” shall mean the perfected secured lien made in favor of and held by Secured Lender against GrocerKey for loans made to GrocerKey by Secured Lender in an approximate principal amount of \$2,202,000.00, plus accruing interest, fees and other costs.

2. PURCHASE AND SALE

2.1. Assets to be Sold. Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller shall sell, convey, transfer, and assign to Purchaser, and Purchaser shall purchase and accept from Seller, all right, title, and interest of the Seller and/or GrocerKey, in and to all of the property and assets of GrocerKey used in, or otherwise relating to the operation of the Business, whether real or personal, tangible or intangible, of every kind and description, and wherever located, “as is” and “where is”, free and clear of all Liens existing as of the Closing, regardless of whether any of such assets existed before, on, or after the commencement of the Assignment Case, including, without limitation, those assets identified on Disclosure Schedule 2.1 (the “**Acquired Assets**”). The term “Acquired Assets” shall (i) include the Business, and (ii) unless otherwise provided for herein, shall not include any Excluded Asset or unassumed Liability.

2.2. Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the assets of GrocerKey set forth on Disclosure Schedule 2.2 are not part of the sale and purchase contemplated hereunder, are expressly excluded from the Acquired Assets, and shall remain the property of GrocerKey (or the Assignee, as the case may be) after the Closing (collectively, the “**Excluded Assets**”).

2.3. Assumed Liabilities; Purchaser Not Successor to GrocerKey or Assignee. Upon and subject to the terms and conditions of this Agreement, Purchaser shall assume and become responsible for, from and after the Closing, only those obligations of GrocerKey listed in Disclosure Schedule 2.3(b), which include the Assigned Contracts, which accrue and are required to be performed from and after the Closing Date (except for any obligations and liabilities to the extent based on the actions of GrocerKey or any of its employees or officers), specifically excluding cure amounts for the period prior to the Closing Date related to the Assigned Contracts, which shall be the sole responsibility of GrocerKey or Seller on behalf of GrocerKey (the “**Assumed Liabilities**”). The assumption of the Assumed Liabilities by Purchaser shall not enlarge any rights of third parties under the Assigned Contracts or arrangements with Purchaser, GrocerKey or Seller, and nothing herein shall prevent any party from contesting in good faith with any third party any Assumed Liability.

2.4. Purchase Price. The purchase price to be received by Seller for the Acquired Assets and the Assumed Liabilities shall be an amount equal to a credit bid of the amount of the Secured Lien plus cash of \$[•] (the “**Cash Purchase Price**”, and together with the Secured Lien, the “**Purchase Price**”). At and after the Closing Date, and subject to the terms of Section 2.8, Purchaser shall retain all rights to receive any distributable amounts in excess of the Cash Purchase Price from the Assignment Case on account of its Secured Lien. The Cash Purchase Price shall be delivered and allocated as follows:

2.4.1.1. *Deposit.* Within two (2) business days from full execution hereof, a good faith deposit of \$[•] (the “**Deposit**”) shall be delivered to counsel for Seller designated in

Section 10 to be held in escrow pending the Closing, at which time, such funds shall be immediately released to the Party entitled to receive same pursuant to Section 2.4.1.2, below; and

2.4.1.2. *Remaining Balance.* On 10:00 A.M. on the day before the Closing Date (the “**Cash Confirmation Date**”), the Parties shall mutually confirm and agree on the total amount of Cash On Hand. To the extent that Cash On Hand exceeds the Cash Purchase Price (inclusive of the Deposit), the Cash Purchase Price shall be released to Seller from Cash On Hand at Closing and the remaining Cash On Hand shall be released to Purchaser at Closing. To the extent that the Cash Purchase Price (inclusive of the Deposit) exceeds the total Cash On Hand, the Cash On Hand shall be released to Seller at Closing, and Purchaser shall pay to Seller the difference between the Cash Purchase Price (inclusive of the Deposit) and Cash On Hand.

All payments of the Cash Purchase Price or other transfers of Cash On Hand under this Section 2.4 shall be made by wire transfer of immediately available funds to an account that each Party, at least 48 hours prior to the Closing, has submitted to the other Party in writing.

The Parties agree to discuss how to treat any deposits or withdrawals (including the writing of checks) to or from the bank account the Assignee maintains for the Assignment Case after the Cash Confirmation Date which may affect the calculation of Cash On Hand.

2.5. Closing. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of Seller’s counsel, commencing at a time mutually agreed upon by the Parties, on the date that is not later than five (5) Business Days following: (a) the entry of the Final Order; and (b) satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated herein (other than conditions with respect to actions the respective Parties will take at the Closing itself) or such other date as the Parties may mutually determine (the “**Closing Date**”).

2.6. State Court Approval. This Agreement is subject to the Assignee obtaining the Final Order approving, among other things, the sale of the Acquired Assets free and clear of all Liens, claims, and encumbrances on or before [•], 2024 in the Assignment Case.

2.7. Further Assurances.

2.7.1. *From the Effective Date.* At any time and from time to time after the Effective Date: (a) the Seller shall execute and deliver or cause to be executed and delivered to the Purchaser such other instruments and take such other action, all as the Purchaser may reasonably request, in order to carry out the intent and purpose of this Agreement; and (b) the Purchaser shall execute and deliver or cause to be executed and delivered to the Seller such other instruments and take such other action, all as the Seller may reasonably request, in order to carry out the intent and purpose of this Agreement.

2.7.2. *From the Closing Date.* At any time and from time to time after the Closing, at the request of Purchaser and without further consideration: (i) Seller shall (a) use commercially reasonable best efforts to effectuate an orderly transition of the Business and the Acquired Assets to Purchaser and to minimize any disruption in the Business resulting from the transactions contemplated herein; (b) execute and deliver such other instruments of sale, transfer, conveyance, and assignment; and (c) take such actions as Purchaser may request to more effectively transfer,

convey, and assign to Purchaser, and to confirm Purchaser's rights to, title in, and ownership of, the Acquired Assets, and to place Purchaser in actual possession and operating control thereof; and (ii) Purchaser shall provide Seller with access to Books and Records, and suppliers, as same may be reasonably requested.

2.8. No Successor Liability. Except as expressly set forth herein, and except for performance of any Assumed Liability, Purchaser shall not be the successor to the GrocerKey or Seller in any respect, and Seller hereby acknowledges and agrees (on behalf of himself and GrocerKey) that, subject to the terms and provisions of this Agreement, Purchaser shall not assume or become liable or obligated to pay, perform, or discharge any Liability whatsoever of GrocerKey or Seller, whether or not relating to any of the Acquired Assets, whether fixed or unfixed, known or unknown, asserted or unasserted, liquidated or unliquidated, secured or unsecured, absolute or contingent, accrued or unaccrued, matured or unmatured other than the Assumed Liabilities.

The Seller will not be responsible for any liability that arises from the Purchaser's operation of the Business, the Acquired Assets or derivative of an Assumed Liability that arises after the Closing Date.

3. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller hereby represents and warrants to Purchaser as follows:

3.1. Authorization of Transaction. Seller has the full power and authority (a) to execute and deliver this Agreement and the Transaction Documents to which it is or will be a party, and (b) subject to the Florida Statute and the approval of the State Court as the case may be, to perform his obligations hereunder and under the Transaction Documents.

3.2. Brokers' Fees. No broker, finder, or other Person acting under Seller's authority is entitled to any broker's commission or other fee in connection with the transactions contemplated by this Agreement and the Transaction Documents for which Seller or GrocerKey's estate shall be responsible.

3.3. Independent Investigation; Acknowledgement of No Other Representations and Warranties. PURCHASER HAS CONDUCTED ITS OWN INDEPENDENT INVESTIGATION, REVIEW AND ANALYSIS OF THE ACQUIRED ASSETS AND THE ASSUMED LIABILITIES, AND ACKNOWLEDGES THAT IT HAS BEEN PROVIDED ADEQUATE ACCESS TO THE PERSONNEL, PROPERTIES, ASSETS, PREMISES, BOOKS AND RECORDS, AND OTHER DOCUMENTS AND DATA OF SELLER FOR SUCH PURPOSE. PURCHASER ACKNOWLEDGES AND AGREES THAT (I) IN MAKING ITS DECISION TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS AND TO CONSUMMATE THE TRANSACTIONS, PURCHASER HAS RELIED SOLELY UPON ITS OWN INVESTIGATION AND THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN ARTICLE V HEREOF (INCLUDING RELATED PORTIONS OF THE DISCLOSURE SCHEDULE) AND (II) NEITHER SELLER NOR ANY OTHER PERSON HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO SELLER OR ASSIGNOR, THE ACQUIRED ASSETS, THE ASSUMED LIABILITIES OR THIS AGREEMENT, EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE V HEREOF (INCLUDING THE RELATED PORTIONS OF THE DISCLOSURE SCHEDULE)

AND PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED THEREIN, THE ACQUIRED ASSETS AND THE ASSUMED LIABILITIES ARE BEING SOLD, CONVEYED, ASSIGNED AND TRANSFERRED ON A “WHERE IS” AND, AS TO CONDITION, “AS IS WITH ALL FAULTS” BASIS AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE ACQUIRED ASSETS OR THE ASSUMED LIABILITIES OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. PURCHASER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE ACQUIRED ASSETS AND THE ASSUMED LIABILITIES ARE BEING SOLD “AS-IS, WHERE-IS, WITH ALL FAULTS”. IN ADDITION, PURCHASER ACKNOWLEDGES AND ASSUMES THE RISK THAT ADVERSE MATTERS INCLUDING, BUT NOT LIMITED TO, LATENT PATENT DEFECTS, ADVERSE PHYSICAL OR OTHER ADVERSE MATTERS, MAY NOT HAVE BEEN REVEALED BY PURCHASER’S REVIEW AND INSPECTIONS AND INVESTIGATIONS.

4. REPRESENTATIONS AND WARRANTIES OF PURCHASER. Purchaser hereby represents and warrants to Seller as follows:

4.1. Organization and Good Standing. Purchaser is a [•] duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization and has the requisite power and authority to carry on its business as now being conducted and to effect the transactions contemplated hereunder.

4.2. Power and Authorization. Purchaser has the requisite power and authority to execute and deliver this Agreement and the Transaction Documents to which it is or will be a party and to perform its obligations hereunder and thereunder. The execution and delivery by Purchaser of this Agreement and the Transaction Documents to which it is or will be a party, and the consummation by Purchaser of the transactions contemplated hereby and thereby, have been (or will be at the time of execution thereof) duly and validly approved and authorized by all necessary action on the part of Purchaser, and no other action on the part of the Buyer is necessary to authorize the execution and delivery of this Agreement, the Transaction Documents or the consummation of the transactions contemplated hereby or thereby. This Agreement has been duly and validly executed and delivered by Purchaser, and constitutes a valid and binding obligation of Purchaser, assuming the due authorization, execution and delivery by Seller, enforceable against Purchaser in accordance with its terms, subject (a) to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies and (b) to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Each of the Transaction Documents, upon their execution and delivery by Purchaser and assuming the due authorization, execution and delivery by Seller, will constitute a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject (a) to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies and (b) to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

4.3. Brokers' Fees. No broker, finder, or other Person acting under Purchaser's authority is entitled to any broker's commission or other fee in connection with the transactions contemplated by this Agreement, and the Transaction Documents, for which Seller or the Debtor's bankruptcy estate shall be responsible.

4.4. Non-contravention. Neither the execution and delivery by Purchaser of this Agreement or any of the Transaction Documents nor the consummation by Purchaser of the transactions contemplated hereby or thereby will (a) conflict with or violate any provision of the organizational documents of Purchaser, (b) require on the part of Purchaser any material notice to or filing with, or material permit, authorization, consent or approval of, any governmental authority or other third party, or (c) violate any material order, writ, injunction, judgment, decree or law applicable to Purchaser or any of its properties or assets.

4.5. Litigation. There is no action pending or, to the actual knowledge of Purchaser, any claim that has been asserted or threatened in writing against or affecting Purchaser that, individually or in the aggregate, challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated hereunder or that has had or would reasonably be expected to be materially adverse to Purchaser.

4.6. AS IS SALE. PURCHASER UNDERSTANDS THAT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SELLER IS NOT AND WILL NOT BE MAKING ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND THAT THE ACQUIRED ASSETS, THE ASSUMED LIABILITIES AND THE BUSINESS BEING TRANSFERRED TO BUYER ARE TO BE CONVEYED HEREUNDER "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR THEN EXISTING CONDITION. IN ENTERING INTO THIS AGREEMENT, BUYER IS RELYING UPON BUYER'S OWN DUE DILIGENCE INVESTIGATION AND EXAMINATION OF THE ACQUIRED ASSETS AND THE ASSUMED LIABILITIES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER IS NOT MAKING ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR QUALITY, WITH RESPECT TO ANY OF THE TANGIBLE ASSETS BEING TRANSFERRED, OR AS TO THE CONDITION OR WORKMANSHIP THEREOF OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT.

5. COVENANTS.

5.1. Conduct of Business. Subject to any orders, rulings or determinations of the State Court, during the period from the Effective Date through and including the Closing Date (the "**Contract Period**"), Seller shall use his best efforts to continue to operate the Business in the ordinary course, and in substantially the same manner as has been conducted since the commencement of the Assignment Case.

5.2. Contracts. During the Contract Period, Seller shall not amend, modify, reject, or terminate any Assigned Contract without the express written consent of Purchaser.

5.3. Notice. Seller shall promptly notify Purchaser of any litigation, arbitration, or administrative proceeding pending, or to Seller's Knowledge, threatened against GrocerKey,

which challenges the transactions contemplated by this Agreement, and of any failure of Seller's ability to comply with or satisfy any covenant, conditions, or agreements contained in this Agreement.

5.4. Assignment Case Covenants.

5.4.1. Upon the full execution of this Agreement, Seller shall promptly file with the State Court a sale motion seeking the entry of, among other relief, the Final Order.

5.4.2. If this Agreement and the transactions contemplated hereby, on the terms and conditions hereof, are determined to be the "highest or otherwise best offer," Seller agrees to use commercially reasonable best efforts to cause the State Court to enter the Final Order, which shall include provisions authorizing and approving the transactions contemplated hereby, including: (i) the sale of the Acquired Assets to Purchaser free and clear of all Liens pursuant to the terms of this Agreement; (ii) providing that Purchaser shall not be subject to any successor liability and shall have no liability or suffer any damages for among other things, any Liens existing prior to the Closing Date which may be asserted against GrocerKey, the Acquired Assets, the Business, or GrocerKey estate in the Assignment Case, or any claims against Purchaser as successor to the Acquired Assets; (iii) approving Purchaser's assumption and assignment of the Assumed Liabilities on the basis that cure amounts related to the Assigned Contracts shall be satisfied by the Seller on behalf of GrocerKey's estate from the proceeds of the Purchase Price. Seller shall promptly provide Purchaser with copies of any objections to the Final Order.

6. CONDITIONS TO CLOSING OF EACH PARTY. The respective obligations of each Party to consummate the transactions contemplated by this Agreement and the Transaction Documents to be consummated at the Closing are subject to the satisfaction of the condition that the sale of the Acquired Assets by Seller to Purchaser and the assumption and assignment of the Assumed Liabilities as contemplated by this Agreement and the Transaction Documents, shall have been approved by the State Court pursuant to the Final Order in form and substance satisfactory to each Party, which as of the Closing Date shall be in full force and effect and shall not have been violated, vacated, withdrawn, overruled, resolved or stayed, modified, vacated, reversed, amended, or revoked.

7. CONDITIONS TO CLOSING OF SELLER. The obligation of Seller to consummate the transactions contemplated by this Agreement and the Transaction Documents to be consummated at the Closing is subject to the satisfaction or waiver (but only a waiver in a writing signed on behalf of Seller), to the extent permitted by law, of the following additional conditions:

7.1. Representations and Warranties. Each of the representations and warranties of Purchaser set forth in Section 4 of this Agreement shall be true and correct in all material respects (or in all respects, to the extent any such representation and warranty is already qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except that to the extent such representations and warranties address matters only as of a particular date, such representations and warranties shall, to such extent, be true and correct on and as of such particular date as if made on and as of such particular date.

7.2. Deliverables. Purchaser shall execute and deliver to Seller any and all Transaction Documents to which it is a party.

7.3. Purchase Price. Purchaser shall satisfy the Cash Purchase Price.

7.4. Final Order. The State Court shall have entered the Final Order.

8. CONDITIONS TO CLOSING OF PURCHASER. The obligation of Purchaser to consummate the transactions contemplated by this Agreement and the Transaction Documents to be consummated at the Closing is subject to the satisfaction or waiver (but such waiver only in a writing signed on behalf of Purchaser), to the extent permitted by law, by Purchaser of the following additional conditions:

8.1. Deliverables. Seller shall have delivered to Purchaser the following, each to be in form and substance satisfactory to Purchaser and its counsel in their sole discretion (collectively, the “**Transaction Documents**”):

8.1.1. A customary bill of sale for all of the Acquired Assets which are tangible personal property, duly executed by Seller;

8.1.2. A customary assignment executed by Seller of all of the Acquired Assets which are intangible personal property;

8.1.3. Customary assignments, as prepared by Purchaser and executed by Seller, of all Assumed Liabilities and Intellectual Property Rights and customary separate assignments of all registered trademarks, service marks, patents, and copyrights, and all applications therefore;

8.1.4. Such other deeds, bills of sale, assignments, certificates of title, documents, and other instruments of transfer and conveyance as may reasonably be requested by Purchaser.

8.2. Final Order. The State Court shall have entered the Final Order in a form and substance reasonably acceptable to Purchaser authorizing the Parties to perform and consummate the transactions contemplated hereby and thereby.

8.3. Representations and Warranties. Each of the representations and warranties of Seller set forth in Section 3 of this Agreement shall be true and correct in all material respects (or in all respects, to the extent any such representation and warranty is already qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except that to the extent such representations and warranties address matters only as of a particular date, such representations and warranties shall, to such extent, be true and correct on and as of such particular date as if made on and as of such particular date.

8.4. Covenants. Seller shall have performed and complied in all material respects with all of its agreements and covenants required to be performed or complied with under this Agreement on or prior to the Closing Date.

8.5. Assignment Case. During the Contract Period, there shall not have been any dismissal of the Assignment Case or conversion of the Assignment Case to a case under Title 11 of the United States Code.

9. POST-CLOSING COVENANTS.

9.1. Non-Disclosure. From and after the Closing, Seller shall not disclose or make use of (except to pursue its rights under this Agreement, or in the administration of GrocerKey's estate) any knowledge, information or documents of a confidential nature or not generally known to the public which are included in the Acquired Assets or Assumed Liabilities (including any such information which constitutes financial information, technical information or data relating to products, services and names of customers) (all such knowledge, information or documents, "**Confidential Information**"), except to the extent that such Confidential Information is or shall have become public knowledge other than through improper disclosure by Seller.

9.2. Compelled Disclosure. Notwithstanding anything set forth to the contrary in this Section 9, Seller may disclose a portion of the Confidential Information if the information is required by applicable law to be disclosed in response to a valid order of a court of competent jurisdiction or Government Authority; provided, that Seller must provide Purchaser prompt written notice and obtain or allow for a reasonable effort by Purchaser to seek an appropriate protective order or other appropriate remedy or, in Purchaser's sole discretion, waive compliance with the applicable terms of Section 9.1 (and if Purchaser seeks such an order, Seller will provide such cooperation as Purchaser shall reasonably requested). In the event that no such protective order or other remedy is obtained or Purchaser does not waive compliance with the applicable terms of Section 9.1 and Seller is nonetheless legally compelled to disclose such Confidential Information, Seller will furnish only that portion of the Confidential Information which Seller is advised by counsel is legally required and will give Purchaser written notice of the Confidential Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

9.3. Collection of Acquired Receivables. Seller, on behalf of GrocerKey, hereby irrevocably constitutes and appoints, effective as of and after the Closing Date, the Purchaser (and any assigns of Purchaser) as true and lawful attorney of GrocerKey with full power of substitution to collect for the account of Purchaser any Acquired Asset, including to endorse and cash any checks or instruments payable or endorsed to GrocerKey, or to Seller on behalf of GrocerKey, or their respective order that are received by Purchaser and that relate to the Acquired Receivables.

10. **NOTICES**. All notices required or permitted to be given by any Party shall be in writing and shall be deemed to have been properly given if sent by registered or certified mail, or by recognized overnight courier service (the "**Courier Service**"), postage prepaid, to the Parties at the addresses set forth below or to such other address as any Party may from time to time give notice pursuant to this Section 10. All notices shall be deemed received when delivered but in no event later than five (5) Business Days after they are deposited with either the United States Postal Service or the Courier Service, whichever shall first occur. Notice shall be given at the following addresses:

To Purchaser:

[•]
[•]
[•]
Attn: [•]

With copy to (which shall not constitute notice):

[•]
[•]
[•]
Attn: [•]

To Seller:

Peter Hurwitz
c/o Dundon Advisors LLC
1601 Belvedere Road
Suite 305S
West Palm Beach, Florida 33406

with a copy to(which shall not constitute notice):

Akerman, LLP
201 E. Las Olas Blvd., 18th Floor
Ft. Lauderdale, Florida 33301
Attn: Eyal Berger, Esq.
Email: eyal.berger@akerman.com

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party or Parties notice in the manner herein set forth.

11. MISCELLANEOUS.

11.1. Expenses. Except as otherwise set forth in this Agreement and, as applicable, the Transaction Documents, each Party shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

11.2. Entire Agreement. This Agreement including the Transaction Documents constitute the entire agreement among the Parties with the respect to the subject matter hereof. This Agreement supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, with respect to the subject matter hereof.

11.3. Amendments and Waivers. The Parties may mutually amend any provision of this Agreement at any time prior to the Closing. No amendment of any provision of this Agreement

shall be valid unless the same shall be in writing and signed by each of the Parties. No waiver by any Party of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No waiver by any Party with respect to any default, misrepresentation, or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

11.4. Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. To the fullest extent permitted by applicable law, each Party hereto agrees: (i) that any claim, action, or proceeding by such Party seeking any relief whatsoever arising out of, or in connection with this Agreement or any Transaction Document or the transactions contemplated hereby and thereby shall be brought only in the (a) federal courts in the Southern District of Florida and (b) state courts of the State of Florida, for either (a) or (b) located in Miami-Dade County (collectively, the “Florida Courts”), and shall not be brought, in each case, in any other State or Federal court in the United States of America or any court in any other country, (ii) to submit to the exclusive jurisdiction of the Florida Courts for purposes of all claims, actions, or proceedings arising out of, or in connection with this Agreement or any Transaction Document or the transactions contemplated by this Agreement, (iii) to waive and not to assert any objection that it may now or hereafter have to the laying of the venue of any such claim, action or proceeding brought in such a court or any claim that any such claim, action or proceeding brought in such a court has been brought in an inconvenient forum, (iv) that mailing of process or other papers in connection with any such claim, action or proceeding in the manner provided in Section 10 hereto shall be valid and sufficient service thereof, and (v) agrees that a final judgment in any such claim, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

11.5. Survival of Representations. Except as otherwise provided in this Agreement, the representations, warranties and covenants of the respective Parties contained in this Agreement will survive (and not be affected in any respect by) the Closing Date for the applicable statute of limitations as well as any investigation conducted by any Party and any information which any party may receive.

11.6. Assignment; Binding Upon Successors and Assigns. Neither Party may assign any of its rights or obligations hereunder without the prior written consent of the other Party; provided, however, that Purchaser may assign its rights to acquire the Acquired Assets in whole or in part to an Affiliate, provided such assignment shall not relieve Purchaser of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

11.7. No Third-Party Beneficiaries. No provisions of this Agreement are intended, nor will be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, affiliate, member, shareholder, partner, employee of any Party or any other Person unless specifically provided otherwise herein, and, except as so provided, all provisions herein will be solely between the Parties.

11.8. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

11.9. Construction.

11.9.1. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

11.9.2. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

11.9.3. Any reference to “include,” “includes,” or “including” shall be interpreted to be followed by the phrase “without limitation” or “but not limited to”,

11.9.4. Any reference to \$ shall be to U.S. dollars.

11.9.5. Any reference to any section shall be deemed to refer to a section of this Agreement, unless the context clearly indicates otherwise.

11.10. Severability. If any provision of this Agreement, or the application thereof, is for any reason held to any extent to be invalid or unenforceable, the remainder of this Agreement and application of such provision will be interpreted so as reasonably to affect the intent of the Parties. The Parties further agree to replace such unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business, and other purposes of the void or unenforceable provision.

11.11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11.12. Incorporation. The preamble, recitals and Disclosure Schedules to this Agreement are incorporated herein by reference and made a material part hereof as if set forth herein at length.

[Remainder of the page intentionally left blank; one signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

SELLER:

Peter Hurwitz
Assignee of GrocerKey, Inc.

Peter Hurwitz, solely in his capacity
as Assignee of GrocerKey, Inc.

PURCHASER:

[•]

By: _____

[•]

[•]

[Disclosure Schedules to Follow]

Disclosure Schedules

Disclosure Schedule 1

(Intellectual Property Rights)

The following is a non-exclusive list of Intellectual Property Rights being transferred hereunder:

US Trademarks:

- | <u>Mark</u> | <u>Registration No.</u> |
|--|--------------------------------|
| 1. [To be negotiated with successful bidder] | |

Foreign Trademarks

- | <u>Mark</u> | <u>Registration Jurisdiction</u> | <u>Reg No.</u> |
|--|---|-----------------------|
| 2. [To be negotiated with successful bidder] | | |

US Patents

- | <u>Patent Device</u> | <u>Patent No.</u> |
|--|--------------------------|
| 3. [To be negotiated with successful bidder] | |

Disclosure Schedule 2.1

(Acquired Assets)

1. all of GrocerKey's deposits, security deposits, prepayments, and prepaid expenses as of the Closing Date that relate to any Assigned Contract or any other Acquired Asset;
2. the Acquired Receivables;
3. all customer accounts;
4. Assigned Contracts set forth on **Disclosure Schedule 2.3**, excluding cure amounts related to the Assigned Contracts, which shall be satisfied by Seller on behalf of GrocerKey from the proceeds of the Purchase Price;
5. all equipment, computers (including all copies of software installed on any such computers, servers, or other electronic equipment, and any documentation and media constituting, describing, or relating to such copies, including manuals, technical specifications and the like), furniture, supplies, fixtures, and other tangible personal property of GrocerKey;
6. all Inventory, which as used herein shall mean, any and all of GrocerKey's (i) owned, finished or partially finished, products manufactured or to be distributed by or on GrocerKey's behalf, and (ii) any and all other owned inventory, and any finished goods returned by any of GrocerKey's customers, whether returned before or after the Closing Date, in each case ((i) or (ii)), wherever located, including all finished goods, works in process, raw materials, and all other materials and supplies to be used or consumed by or on behalf of Debtor in the production of finished goods or the operation of the Business;
7. all investment property, instruments, chattel paper, and real estate;
8. all Intellectual Property Rights together with all income, royalties, damages, and payments due or payable to GrocerKey at the Closing or thereafter relating to the Intellectual Property Rights, the right to register, prosecute, maintain, and defend the rights of GrocerKey in the Intellectual Property Rights, the right to sue and recover damages for past or future infringements or misappropriations thereof, and the right to fully and entirely stand in the place of GrocerKey in all matters related thereto;
9. all permits, to the extent transferable, necessary for Purchaser to perform its obligations under the Assigned Contracts after the Closing;
10. all Books and Records, except those Books and Records set forth on **Disclosure Schedule 2.2**;
11. the Debtor's email addresses, website (including the URL, electronic images, text, and source codes therein), facsimile numbers, telephone numbers, and cellphones;

12. all rights and claims with respect to the Acquired Assets and Assumed Liabilities, including all enforcement rights, for Acquired Causes of Action, and refunds including with respect to taxes for all periods ended after the Closing Date;
13. all promotional materials, catalogues, research materials, mailing lists and customer lists, all names and addresses of customers, and sales reports by title and by customer to the extent available relating to the Business;
14. the amount of, and all rights to any, insurance proceeds received by GrocerKey after the Effective Date in respect of the loss, destruction, or condemnation of any Acquired Assets occurring prior to, on, or after the Closing or any Assumed Liabilities;
15. all rights to net operating losses, tax refunds, credits, or similar benefits for all periods ended on or prior to the Closing Date;
16. all outstanding orders for GrocerKey's products as of the Closing Date, which shall be transferred to Purchaser at Closing for processing and fulfillment;
17. the following Acquired Causes of Action:
 - a. [To be negotiated with successful bidder];
18. all goodwill relating to the items set forth in this Disclosure Schedule 2.1.

Disclosure Schedule 2.2 **(Excluded Assets)**

1. all cash and cash equivalents which are (i) equal to or less than, but not in excess of, the Cash Purchase Price, or (ii) not included in Disclosure Schedule 2.1, above;
2. the corporate charter, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books and other documents relating to the organization and existence of GrocerKey as a limited liability company;
3. any Books and Records that do not relate to the Acquired Assets or the Assumed Liabilities or that Seller is, in its good faith determination, required by law to retain, provided that Purchaser shall have the right, to make copies of any such Books and Records to the extent they related to Acquired Assets or Assumed Liabilities;
4. all of the GrocerKey's bank accounts and lockboxes;
5. all rights of Seller and GrocerKey under this Agreement or any of the Transaction Documents;
6. all insurance policies, except to the extent constituting an Assigned Contract;
7. Excluded Contracts;
8. all insurance claims, insurance premium refunds, and proceeds to the extent related to any Excluded Asset;
9. Excluded Causes of Action, include, but are not limited to all claims that have not been expressly identified in Schedule 2.1 of the Agreement
10. Claims against any third party under Fla. Stat. 726.101, et seq.
11. all membership interests and all other equity interests of or relating to the GrocerKey.

Disclosure Schedule 2.3(a)
(Assigned Contracts)

[To be negotiated with successful bidder]

Disclosure Schedule 2.3(b)
(Assumed Liabilities)

- Solely, those liabilities associated with the Assigned Contracts

Exhibit B

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
COMPLEX BUSINESS LITIGATION DIVISION**

GROCERKEY, INC.
GIGPOINT LLC
POINT PICKUP ENTERPRISES, INC.
POINT PICKUP MANAGEMENT, LLC
POINT PICKUP NOW, INC.
POINT PICKUP TECHNOLOGIES, INC.
Assignors.

To:

PETER HURWITZ,
Assignee.

CASE NO: 2024-003495-CA-01
(Consolidated)

**ORDER APPROVING SALE OF CERTAIN ASSETS FREE AND CLEAR OF CLAIMS, LIENS
AND ENCUMBRANCES AND OTHER RELATED RELIEF**

THIS CAUSE came before the Court for a hearing on April 15, 2024 at 9:00 a.m. (the “**Hearing**”) upon the Assignee’s Motion (I) to Approve the Sale of Certain Assets Free and Clear of claims, liens and encumbrances, and (II) for Other Related Relief (the “**Sale Motion**”)¹ filed by Peter Hurwitz (the “Assignee”), sole as the Assignee for the benefit of creditors GrocerKey, Inc. (“**Assignor**”), a Delaware corporation, and not individually, by and through his undersigned counsel, and pursuant to Florida Statutes §§ 727.102, 727.108(1), 727.109(1), (7), and (15), and 727.111(4).

The Court, having reviewed the Sale Motion and the record in the case, having found that the Acquired Assets were sufficiently marketed for sale by the Assignee, having found that sufficient notice of the Sale Motion scheduling this hearing has been provided to all creditors of the Assignor and parties

¹ All terms not defined herein shall have the meaning ascribed in the Sale Motion.

in interest as required pursuant to Fla. Stat. §727.111, having noted that no opposition has been filed by any interested party as of the objection deadline of April 15, 2024, and based on the Court's finding that the Purchase Price represents the best and highest offer for the Acquired Assets, and that good cause exists for granting the relief sought in the Sale Motion, and with the Court otherwise being duly advised in the premises, and good cause exists to grant the relief sought in the Sale Motion as set forth below.

Accordingly, it is **ORDERED**:

1. The Motion is GRANTED. The APA, exhibits and schedules thereto and all ancillary documents, and all terms and conditions thereof, are authorized and approved in all respects.
2. The Assignee is authorized, empowered, and directed to take any and all actions necessary or appropriate to: (a) consummate the sale of the Acquired Assets in accordance with the terms and conditions of the APA (the "**Transaction**"), (b) close the Transaction, and (c) execute and deliver, perform under, consummate, implement, and fully close the APA, together with additional instruments and documents that the Purchaser or Assignee may deem reasonably necessary or desirable to implement the APA and the Transaction, all without further order of this Court.
3. This Order shall be binding in all respects upon the Assignee, Assignors, Assignment estate and all of its creditors and stakeholders, holders of any claim (known or unknown) against the Assignors and the Assignment Estate, holders of liens against, in or on all or any portion of the Acquired Assets, the Purchaser, and all successors and assigns of the foregoing, including, without limitation, any trustee, if any, subsequently appointed in any chapter 7 or 11 bankruptcy case that may be filed by the Assignors.

4. The Acquired Assets constitute assets of the Assignment Estate, and the Assignee is authorized to sell and transfer the Acquired Assets to the Purchaser, free and clear of all claims, liens and encumbrances, and as more fully set forth in the APA, which the Court finds to be in the best interests of the Assignment Estate. This Order is and shall be sufficient evidence of the transfer of title to the Acquired Assets and no further documentation of title is necessary; however, the Assignee is authorized to execute further documents to transfer title to the Acquired Assets as reasonably requested by the Purchaser pursuant to the APA.
5. Adequate notice was provided of the Motion, hearing, and the Transaction, and no further notice is necessary or required.
6. The Transaction does not cause there to be, and there is not: (a) a consolidation, merger, or de facto merger of the Purchaser, on the one hand, with or into the Assignors, Assignee, or Assignment Estate, on the other hand, or vice versa; (b) a substantial continuity between the Purchaser, on the one hand, and the Assignors, Assignee, or Assignment Estate, on the other hand; (c) a common identity between the Purchaser, on the one hand, and the Assignors, Assignee, or Assignment Estate, on the other hand; or (d) a mere continuation of the Assignors, Assignee, or Assignment Estate, on the one hand, with the Purchaser, on the other hand.
7. Except as otherwise expressly provided herein or in the APA, none of the Purchaser or its respective affiliates or assigns, shall have any liability or responsibility for any liability or other obligation of the Assignors arising under or related to the Acquired Assets prior to the closing of the Transaction (the “**Closing**”). Without limiting the generality of the foregoing, and except as otherwise specifically provided herein, to the maximum extent allowed by law, none of the Purchaser or its affiliates and/or assigns, shall be liable for any claims against the Assignors or any of its predecessors

or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character including, but not limited to, any such liability that may be imposed by statute (e.g., under so-called “bulk sale” laws) or any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the date of entry of this Order, now existing or hereafter arising, whether fixed or contingent, with respect to the Assignors or any obligations of the Assignors arising prior to the Closing, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing, provided, however, that nothing herein shall excuse the Purchaser from its obligations under this Order and the APA or obligations arising from the Acquired Assets after the Closing.

8. If any person or entity that has filed financing statements, mortgages, mechanic’s liens, lis pendens, or other documents or agreements evidencing liens, claims, interests or encumbrances in the Acquired Assets shall not have delivered to the Assignee prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens which the person or entity has with respect to the Acquired Assets, then, following the Closing Date, (a) the Assignee is authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens in the Acquired Assets of any kind or nature whatsoever.
9. To the greatest extent available under applicable law and except as otherwise provided herein, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Assignee with respect to the Acquired

Assets, and all such licenses, permits, registrations and governmental authorizations and approvals related to the Acquired Assets (to the extent that such licenses, permits, registrations and government authorizations and approvals constitute Acquired Assets) are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date.

10. Except as otherwise provided herein or otherwise provided in the APA, all of the Assignee's right, title, and interest in and to the Acquired Assets to be acquired by the Purchaser as-is, where-is under the APA shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Purchaser free and clear of all liens, claims, or encumbrances. Upon the occurrence of the Closing and except as otherwise provided herein, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets acquired by the Purchaser under the APA and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Acquired Assets to the Purchaser.

11. This Order: (a) is and shall be effective as a determination that, on the Closing Date, all liens, claims, or encumbrances existing against the Purchased Assets before the Closing Date, have been unconditionally released, discharged and terminated (with such liens, claims, or encumbrances to attach to the proceeds of the Sale), and that the conveyance of the Purchased Assets has been effected; and (b) is and shall be binding upon and govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, registrars of deed, registrars of patent, trademark or other intellectual property, local, state and federal regulatory boards, administrative agencies, governmental departments (other than as set forth in paragraph 16 below), secretaries of federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their offices, or contract, to accept, file,

register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Acquired Assets.

12. Each and every federal, state, and local governmental agency or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the Transaction.
13. The terms and provisions of this Order, shall be binding in all respects upon the Assignee, Assignors, its estate, and its creditors, the Purchaser and any affiliates or assignees, and their successors or affected third parties, and all parties asserting any liens, claims, or encumbrances in the Assignors' estates or the Acquired Assets to be sold to the Purchaser pursuant to this Order. The APA and the Transaction contemplated thereby and hereby, shall be enforceable by specific performance against and shall be binding upon and not subject to rejection or avoidance by the Assignee or Assignors.
14. All persons or entities, presently or on or after the Closing Date with access to or in possession or control of some or all of the Acquired Assets are directed to provide access to and surrender possession of the Acquired Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.
15. This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Assignee and the Purchaser are free to close under the APA at any time, subject to the terms of the APA.
16. This Order and the rights and obligations set forth herein shall survive any dismissal of the Assignment Case, and this Court shall retain jurisdiction as set forth below.
17. The Transaction, the APA and any related agreements, documents or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and

in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Assignors' estate.

18. The failure specifically to include any particular provisions of the APA or the Transaction in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Transaction be authorized and approved in its entirety. However, to the extent that this Order and the APA conflict, this Order shall control.

19. Time is of the essence in closing the APA and the Transaction contemplated thereby.

20. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, in a writing signed by such parties, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Assignment Estate. The Assignee is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the APA. Nothing contained in any order entered in this

21. case or in any subsequent or related proceeding in any court subsequent to entry of this Order, shall conflict with or derogate from the provisions of the APA or the terms of this Order. To the extent of any such conflict or derogation, the terms of this Order shall govern.

22. The Closing of the APA shall take place no later than ten (10) days after the Court's entry of this Order.

23. The Court retains exclusive jurisdiction to:

- a. interpret, implement, and enforce the APA, all related documents, any amendments thereto, and this Order,
- b. adjudicate any disputes arising from or relating to the APA or any other matters pertaining to the Transaction,
- c. decide any disputes concerning this Order, the APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the APA and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Acquired Assets and any Assumed Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Acquired Assets free and clear of all liens, claims, or encumbrances,
- d. protect the Purchaser and Acquired Assets against any liens, claims, or encumbrances as provided herein including, without limitation, to enjoin the commencement or continuation of any action seeking to impose successor liability or bulk sale liability,
- e. enter Orders in aid or furtherance of the transactions contemplated by the APA or to ensure the peaceful use and enjoyment of the Assumed Contracts or the Acquired Assets by the Purchaser,
- f. compel delivery of all Acquired Assets to the Purchaser
- g. adjudicate any and all disputes concerning alleged pre-Closing interests in and to the Acquired Assets including without limitation the extent, validity, enforceability, priority, and nature of any and all such alleged Interests;

- h. adjudicate any and all disputes relating to the Assignee's right, title, or interest in the Acquired Assets and the proceeds thereof,
- i. re-open the Assignment Case to determine any of the foregoing; provided, however, in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Transaction or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter; and
- j. hear, determine and adjudicate any claims asserted against the Assignee, Assignors, their estates or the Purchaser seeking administrative expenses status.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this _____.

Electronically Served:

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