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11 Attorneys for Receiver
12 KRISTA FREITAG

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 v.

19 GINA CHAMPION-CAIN and ANI
20 DEVELOPMENT, LLC,

21 Defendants,

22 AMERICAN NATIONAL
INVESTMENTS, INC.,

23 Relief Defendant.
24
25
26
27
28

Case No. 3:19-cv-01628-LAB-AHG

**JOINT MOTION FOR APPROVAL
OF SALE OF PERSONAL
PROPERTY AND LIQUOR LICENSE
ASSOCIATED WITH THE PATIO
ON GOLDFINCH RESTAURANT**

Courtroom: 3B
Judge: Hon. Allison H. Goddard

JOINT MOTION

The Securities and Exchange Commission, Gina Champion-Cain ("Champion-Cain"), and Krista Freitag (the "Receiver"), the Court-appointed permanent receiver for Defendant ANI Development, LLC, Relief Defendant American National Investments, Inc., and their subsidiaries and affiliates, (collectively, the "Parties"), by and through their respective counsel, hereby respectfully submit this Joint Motion for Approval of Sale of Personal Property and Liquor License Associated with The Patio on Goldfinch restaurant (the "Joint Motion").

WHEREAS, American National Investments, Inc., one of the entities included in the receivership pursuant to the Order; Granting the Parties' Joint Motion and Stipulated Request by All Parties for a Preliminary Injunction Order and Order (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a Permanent Receiver (Dkt. No. 6, the "Appointment Order"), leased commercial space from Mission Hills Retail, LLC ("Buyer") for the purpose of operating a restaurant known as The Patio on Goldfinch;

WHEREAS, the lease was subsequently amended and assigned from American National Investments, Inc. to another receivership entity, ANI Commercial CA III, LP;

WHEREAS, after the Receiver's appointment, The Patio on Goldfinch restaurant was closed and operations ceased;

WHEREAS, the Receiver has conducted an inspection of the personal property located at the leased premises, which consists of restaurant furniture, fixtures, and equipment ("Personal Property"), and has obtained an estimate of the gross proceeds from an auction of the Personal Property from Abamex Auction Company, a licensed and bonded auction company, whose personnel also hold ISA (International Society of Appraisers) and GPPA (Graduate, Personal Property

1 Appraiser) designations. Abamex specializes in the appraisal and sale of business
2 assets, including restaurant furniture, fixtures, and equipment. Abamex's appraised
3 estimate of the gross auction proceeds from the sale of the Personal Property is
4 \$68,895, which would net approximately \$60,000 after auctioneer expenses;

5 **WHEREAS**, the Receiver has consulted with a licensed broker that
6 specializes in the purchase and sale of liquor licenses in California and an attorney
7 with significant experience handling liquor license matters, including transactions,
8 and has obtained an estimate of the value of the liquor license associated with The
9 Patio on Goldfinch restaurant ("Liquor License"), which estimate is approximately
10 \$100,000-\$150,000 if the Liquor License remains tied to the leased premises, or
11 approximately \$65,000-\$80,000 if the Liquor License is sold to a buyer that has to
12 have the approved location associated with the license changed;

13 **WHEREAS**, Buyer expressed interest in purchasing the Personal Property
14 and the Liquor License from the receivership estate and the Receiver and Buyer
15 entered into negotiations;

16 **WHEREAS**, subject to Court approval, the Receiver and Buyer have agreed
17 on terms of a proposed sale of the Personal Property and Liquor License to Buyer
18 for a total price of \$152,000, which terms are memorialized in the Purchase and Sale
19 Agreement and Joint Escrow Instructions and Third Amendment to Lease attached
20 hereto as Exhibit A;

21 **WHEREAS**, as part of the Purchase and Sale Agreement and Joint Escrow
22 Instructions and First Amendment to Lease, the lease between ANI Commercial
23 CA III, LP and Buyer will be terminated and Buyer will release any and all claims
24 for unpaid rent owed by ANI Commercial CA III, LP or the receivership estate,
25 which amount, through December 31, 2019, is approximately \$77,000;

26 **WHEREAS**, in addition to the benefit of removing a potential claim (of
27 approximately \$77,000) against the receivership estate, the Receiver submits that the
28 proposed purchase price for the Personal Property and Liquor License is fair and

1 reasonable, and exceeds the value the Receiver would likely be able to obtain from
 2 selling the Personal Property through auction and selling the liquor license on the
 3 open market, especially considering that the value of the Liquor License is
 4 considerably less if it is sold to a buyer that has to have the approved location
 5 associated with the license changed;¹

6 **WHEREAS**, the Receiver and Buyer have agreed to use Heritage Escrow as
 7 the escrow company for the transaction and have agreed to split evenly the escrow
 8 fee charged by Heritage Escrow, which fee is anticipated to be \$3,000 (or \$1,500
 9 each);

10 **WHEREAS**, for the proposed sale, which involves personal property only,
 11 the Receiver submits that publication of notice of the sale, holding a public auction,
 12 or requiring other procedural steps included in 28 U.S.C. §§ 2001-2004 would have
 13 no benefit to the receivership estate under these circumstances and therefore
 14 requests that they be waived in the Court's broad discretion (*See* 28 U.S.C. § 2004
 15 ("Any *personalty* sold under any order or decree of any court of the United States
 16 shall be sold in accordance with section 2001 of this title, *unless the court orders*
 17 *otherwise.*") (emphasis added)).

18 **THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND**
 19 **REQUESTED**, by and between the Parties, that:

20 1. The sale of the Personal Property and Liquor License to Buyer (or its
 21 designee) pursuant to the Purchase and Sale Agreement and Joint Escrow
 22 Instructions and First Amendment to Lease attached hereto as Exhibit A for the
 23 purchase price of \$152,000 is approved.

24
 25
 26
 27
 28 ¹ The estimated recoverable value of the Personal Property and Liquor License, if pulled
 from the Premises, would be approximately \$140,000 (\$60,000 for the Personal
 Property plus \$80,000 for the Liquor License).

1 2. The Receiver is authorized to take all steps necessary to complete the
2 sale, including executing such documents as may be necessary to close the sale
3 transaction.

4 The undersigned have read and hereby agree to comply with and be bound by
5 all of the terms and provisions of the foregoing Joint Motion. This Joint Motion
6 may be signed by the parties in multiple counterparts, all of which shall be taken
7 together as a single document, and facsimile and electronic signatures shall be
8 effective as originals.

9 **SO STIPULATED.**

10 Dated: December 19, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

11
12 By: s/Edward G. Fates

13 DAVID R. ZARO
14 EDWARD G. FATES
15 NORMAN M. ASPIS
 Attorneys for Receiver
 KRISTA FREITAG

16 Dated: December 19, 2019

U.S. SECURITIES AND EXCHANGE
COMMISSION

17
18 By: s/Kathryn C. Wanner

19 KATHRYN C. WANNER
20 ALEC JOHNSON
21 GARY Y. LEUNG
 Attorneys for Plaintiff
 U.S. SECURITIES AND
 EXCHANGE COMMISSION

22 Dated: December 19, 2019

SCHEPER KIM & HARRIS LLP

23
24 By: s/Angela Machala

25 DAVID SCHEPER
26 ANGELA MACHALA
27 Attorneys for Defendant
28 GINA CHAMPION-CAIN

SIGNATURE CERTIFICATION

In accordance with Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, the filer hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: December 19, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
MICHAEL R. FARRELL

By: s/Edward G. Fates

EDWARD G. FATES
Attorneys for Receiver
KRISTA FREITAG

EXHIBIT INDEX

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EXHIBIT A

EXHIBIT A

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "**Agreement**") is entered into as of December 12, 2019 (the "**Effective Date**") by and between MISSION HILLS RETAIL, LLC, a California limited liability company ("**Buyer**") and ANI COMMERCIAL CA III, LP, a California limited partnership ("**Seller**"), by and through Krista L. Freitag, solely in her capacity as Receiver ("**Receiver**") in the case entitled *Securities and Exchange Commission v. Gina Champion-Cain, ANI Development, LLC, and American National Investments, Inc.*, United States District Court for the Southern District of California (the "**Court**"), Case No. 3:19-CV-01628-LAB-AHG (the "**Receivership Action**").

ARTICLE 1 PURCHASE AND SALE

1.1 Agreement of Purchase and Sale. Pursuant to that certain Order; Granting The Parties' Joint Motion and Stipulated Request by All Parties for a Preliminary Junction Order and Order (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a Permanent Receiver (the "**Order**") entered on September 3, 2019 by the Court with respect to the Receivership Action, Receiver was appointed permanent receiver for the Seller and certain other entities, as "Defendants," and their subsidiaries and affiliates as "Relief Defendants" (collectively, the "**Receivership Entities**"). Seller, as one of the Receivership Entities, agrees to sell the Purchased Assets (as defined below) to Buyer, and Buyer agrees to purchase the Purchased Assets from Seller, subject to the terms and conditions set forth in this Agreement.

1.2 The Business. Seller conducted the business of owning and operating a restaurant, commonly known as "The Patio on Goldfinch" (the "**Business**") located at 4020 Goldfinch Street, San Diego, California 92103 (the "**Premises**").

1.3 The Lease. Seller, as "Tenant," currently leases the Premises from Buyer, as "Landlord," pursuant to the terms and conditions of that certain Commercial Lease Agreement dated as of November 1, 2013 (the "**Original Lease**"), as amended by (i) that certain First Amendment to and Assignment of Commercial Lease dated June 6, 2014 (the "**First Amendment**"), and (ii) that certain Second Amendment to Commercial Lease dated June 30, 2014 (the "**Second Amendment**"). Seller is the successor-in-interest in the Original Lease to American National Investments, Inc., a California corporation, pursuant to an assignment contained in the First Amendment. The Original Lease, as amended by the First Amendment and the Second Amendment, is referred to herein as the "**Lease**." Concurrently with this Agreement, the parties are entering in an amendment to the Lease to, among other things, provide for the early termination of the Lease (the "**Lease Amendment**"), which Lease Amendment shall be in the form attached hereto as Exhibit "B".

1.4 For purposes of this Agreement, the "**Purchased Assets**" shall mean and include in its present "AS-IS", "WHERE IS" condition,¹ all of Seller's right, title and interest in and to the following:

(i) all of the improvements to the Premises thus far accomplished in their current state and condition and including any furniture, fixtures and equipment thus far purchased or otherwise owned by the Seller for use by the Business and located at the Premises (collectively the "**Improvements**"); and

(ii) that certain liquor license No. 47-596916 (the "**Liquor License**") issued to Seller by the California Department of Alcoholic Beverage Control (the "**ABC**") with a current expiration date of September 30, 2020, for the sale of alcoholic beverages at the premises of the Business.

1.5 **Opening of Escrow.** Buyer and Seller have opened an escrow with The Heritage Escrow Company, Attention: Debbie Howe (the "**Escrow Holder**") under Escrow No. _____ ("**Escrow**"). Escrow Holder shall execute the Escrow Holder Signature Page attached hereto and return one fully executed original of this Agreement and the Escrow Holder Signature Page to each of Seller and Buyer. The purchase and sale of the Purchased Assets shall be consummated through the Escrow in accordance with the instructions contained in this Agreement.

1.6 **Closing Date.** The closing of the purchase and sale of the Purchased Assets (the "**Closing**" or "**Close of Escrow**") shall occur on or before five (5) business days following the date upon which both the Court Approval Date (as defined below) and the Liquor License Approval Date (as defined below) have occurred (the "**Closing Date**"). On the Closing Date, TIME SHALL BE DEEMED OF THE ESSENCE with respect to Buyer's obligation to close. For purposes hereof, the "**Court Approval Date**" shall be the date the Court enters an order approving this Agreement with respect to the purchase and sale of all of the Purchased Assets (the "**Court Order Approving the Sale**"). For purposes hereof, the "**Liquor License Approval Date**" shall be the date that the ABC approves the transfer of the Liquor License from Seller to Buyer.

ARTICLE 2 PURCHASE PRICE

2.1 **Purchase Price.** The purchase price for the Purchased Assets shall be One Hundred Fifty-Two Thousand and No/100 Dollars (\$152,000.00) (the "**Purchase Price**") of which the amount of Eighty-Five Thousand and No/100 Dollars (\$85,000.00) shall be allocated to the Liquor License ("**Liquor License Allocation**"), with the remaining Sixty-Seven Thousand and No/100 Dollars (\$67,000.00) being allocated as consideration for (i) the value of the Improvements, (ii) the parties' agreement to enter into the Lease Amendment, and (iii) Buyer's agreement to waive any right to unpaid rent owed to Buyer as the "Landlord" under the Lease from Seller as the "Tenant" under the Lease.

¹ The liens documented by UCC Financing Statements 15-7470056095 and 15-7471577498 have been terminated and such termination will be documented by filing UCC-3 Terminations prior to Closing.

2.2 Payment of the Purchase Price. Buyer shall pay the Purchase Price to Seller as follows:

(a) No later than three (3) days after the Effective Date, Buyer shall deposit with Escrow Holder, in cash, certified or bank cashier's check made payable to Escrow Holder, or by a confirmed Federal Reserve wire transfer of funds (hereinafter referred to as "**Immediately Available Funds**"), the sum of Fifteen Thousand Two Hundred and No/100 Dollars (\$15,200.00) (with all interest earned thereon, the "**Earnest Money Deposit**") into Escrow. The Earnest Money Deposit shall be nonrefundable to Buyer except in the event: (i) of Seller's default under this Agreement, as set forth in Section 9.2, below or (ii) the Court fails to approve the sale of the Purchased Assets to Buyer. Escrow Holder shall invest the Earnest Money Deposit in an interest-bearing account pursuant to the provisions of Section 2.3(a) below.

(b) In the event the Closing under this Agreement occurs, then the Earnest Money Deposit shall be credited against the Purchase Price at Closing. In the event the Closing under this Agreement shall fail to occur, then the Earnest Money Deposit shall be nonrefundable except as expressly set forth in Section 2.2(a) above.

(c) At least one (1) business day prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder, in Immediately Available Funds, the balance of the Purchase Price and all other amounts payable by Buyer pursuant to this Agreement into Escrow.

2.3 Escrow Provisions Regarding Earnest Money Deposit.

(a) Escrow Holder shall hold the Earnest Money Deposit and make delivery of the Earnest Money Deposit to the party entitled thereto under the terms of this Agreement. Escrow Holder shall invest the Earnest Money Deposit in an interest-bearing account maintained at a federally insured bank or savings and loan association as approved by Seller and Buyer, and all interest and income thereon shall become part of the Earnest Money Deposit and shall be remitted to the party entitled to the Earnest Money Deposit pursuant to this Agreement.

(b) Escrow Holder shall hold the Earnest Money Deposit until the earlier occurrence of (i) the Closing Date, at which time the Earnest Money Deposit shall be applied against the Purchase Price, (ii) Buyer's failure to close the transaction contemplated hereby or breach of its obligations hereunder, in which event Seller may terminate this Agreement and Escrow Holder shall disburse the Earnest Money Deposit to Seller, plus accrued interest thereon, upon Escrow Holder's receipt of written notice from Seller confirming such failure to close or breach by Buyer, or (iii) the Seller's default as set forth in Section 9.2, or (iv) the Court otherwise fails to approve the sale of the Purchased Assets to Buyer. The tax identification numbers of the parties shall be furnished to Escrow Holder upon request.

(c) The parties acknowledge that Escrow Holder is acting solely as a stakeholder at their request and for their convenience, and that Escrow Holder shall not be deemed to be the agent of either of the parties for any act or omission on its part unless taken or suffered in bad faith in willful disregard of this Agreement or involving gross negligence. Seller and Buyer jointly and severally release Escrow Holder from any and all liability for costs, claims and expenses, including reasonable attorney's fees, incurred in connection with the performance of

Escrow Holder's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Holder in bad faith, in willful disregard of this Agreement or involving gross negligence on the part of the Escrow Holder.

(d) The parties shall deliver to Escrow Holder an executed copy of this Agreement, which shall constitute the sole instructions to Escrow Holder. Escrow Holder shall execute the signature page for Escrow Holder attached hereto with respect to the provisions of this Section 2.3; provided, however, that (i) Escrow Holder's signature hereon shall not be a prerequisite to the binding nature of this Agreement on Buyer and Seller, and the same shall become fully effective upon execution by Buyer and Seller, and (ii) the signature of Escrow Holder will not be necessary to amend any provision of this Agreement other than this Section 2.3.

(e) Escrow Holder, as the person responsible for closing the transaction within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**"), shall file all necessary information, reports, returns, and statements regarding the transaction required by the Code including, but not limited to, the tax reports required pursuant to Section 6045 of the Code. Further, Escrow Holder agrees to indemnify and hold Buyer, Seller, and their respective attorneys and brokers, if applicable, harmless from and against any losses resulting from Escrow Holder's failure to file the reports Escrow Holder is required to file pursuant to this section.

(f) The provisions of this section shall survive the termination of this Agreement, and if not so terminated, the Closing and delivery of the grant deed to Buyer.

ARTICLE 3 LIQUOR LICENSE TRANSFER OBLIGATIONS

3.1 Liquor License. Not more than five (5) days after the date of this Court Approval Date, Buyer shall prepare, file and thereafter diligently process an application with the appropriate office of the ABC for transfer of the Liquor License from Seller to Buyer in accordance with the terms and conditions of that certain agreement of even date herewith by and between Seller and Buyer regarding the sale of the Liquor License (the "**Liquor License Agreement**"). Buyer and Seller shall fully cooperate with one another to facilitate the transfer of the Liquor License. Any and all fees and costs incurred by Buyer in connection with the transfer of the Liquor License and any expeditor or consultant hired by Buyer to facilitate the transfer of the Liquor License shall be the sole expense of Buyer. Buyer shall pay for any and all fees and costs incurred by Buyer, including the cost of any expeditor or other consultant, in connection with the transfer of the Liquor License.

ARTICLE 4 CLOSING

4.1 Escrow. The Closing of the purchase and sale of the Purchased Assets shall be consummated through Escrow in accordance with the provisions of this ARTICLE 4.

4.2 Escrow Instructions for Closing. This Agreement shall constitute joint instructions to Escrow Holder. The parties agree to execute and deliver to the Escrow Holder reasonable and customary additional escrow instructions in the usual form of Escrow Holder for

the purpose of consummating the purchase and sale contemplated by this Agreement; provided, however, that standard extension provisions in such escrow instructions shall not apply; and provided, further, that in the event of any conflict between this Agreement and any escrow instructions, the provisions of this Agreement shall control. Escrow Holder shall perform all customary functions of an escrow holder to consummate this transaction, including among other duties the calculation of the Closing Costs (as defined below) required by this Agreement, as well as serving as depository for all funds, instruments, and documents needed for the Close of Escrow. Upon the Closing, Escrow Holder is hereby instructed to remit all sales proceeds from the sale of the Purchased Assets to an interest-bearing account maintained at a federally insured bank or savings and loan association established by Seller, which sales proceeds shall be held and distributed in the manner set forth in the Court Order Approving the Sale. For the sake of clarity, Escrow Holder's remittance of all sales proceeds from the sale of the Purchased Assets pursuant to the manner set forth in the foregoing sentence shall mean that such sales proceeds shall be remitted to Receiver.

4.3 Closing Conditions.

(a) Buyer's obligation to Close is subject to satisfaction of the following conditions, which are for the benefit of Buyer and may be waived by Buyer in its sole discretion:

(i) Buyer shall have completed its due diligence investigation of the Purchased Assets and approved of the Purchased Assets, or be deemed to have approved of the Purchased Assets, on or prior to the date of this Agreement; and

(ii) Seller shall not, as of the Closing Date, be in material default in the performance of its obligations under this Agreement.

(b) Seller's obligation to Close is subject to satisfaction of the following conditions, which are for the benefit of Seller and may be waived by Seller in its sole discretion:

(i) All representations and warranties made by Buyer in this Agreement shall be true when made and shall be true as of the Closing Date, without any material adverse change, except for any material adverse change of which Buyer has notified Seller and which Seller has accepted;

(ii) All of the documents and funds required to be delivered by Buyer to Seller or Escrow Holder (as the case may be) at the Closing pursuant to the terms and conditions hereof shall have been delivered;

(iii) Seller shall have received all consents, documentation and approvals necessary to consummate and facilitate the transactions contemplated hereby, including, without limitation, approval of the sale of the Purchased Assets to Buyer from the Court and as may be required by law; and

(iv) Buyer shall not, as of the Closing Date, be in default in the performance of its obligations under this Agreement.

(c) In addition to the foregoing, Buyer's and Seller's respective obligations to Close are subject to the approval of the transaction contemplated herein by the Court, which approval shall be a condition for the benefit of both Buyer and Seller and may not be unilaterally waived by either party. Seller agrees that when seeking the Court Order Approving the Sale, Seller will request from the Court that the Court Order Approving the Sale include provisions stating that the Purchased Assets are "free and clear of any and all liens and encumbrances." Notwithstanding the foregoing, in the event that this Agreement is not approved by the Court, nothing herein or in the Lease Amendment shall preclude Buyer from asserting or submitting a rent claim in the Receivership Action.

(d) If the purchase and sale fails to Close by the Closing Date due to a failure of a condition, the party for whose benefit the condition is set forth may terminate this Agreement at any time thereafter until the Closing occurs, so long as the failure of condition is not caused by such party's breach of its obligations under this Agreement. If Buyer so terminates in connection with the condition set forth in Section 4.3(a)(ii), above (only), then Buyer shall be entitled as its sole and exclusive remedy to the return of the Earnest Money Deposit. If Seller so terminates, Seller shall be entitled to retain the Earnest Money Deposit. Notwithstanding Sections 4.3(c) and (d), the Lease Amendment shall be effective upon mutual execution and delivery.

4.4 Buyer's Deliveries. No later than one (1) business day prior to the Closing Date, Buyer shall deliver to Escrow Holder:

(a) The difference between the Purchase Price and the Earnest Money Deposit, and all costs and fees required to be paid by Buyer pursuant to Section 4.6 below, all in Immediately Available Funds;

(b) A countersigned counterpart of the Bill of Sale in the form attached as Exhibit "A" (the "**Bill of Sale**");

(c) A countersigned counterpart of the Lease Amendment in the form attached as Exhibit "B";

(d) Resolutions, certificates of good standing, and such other organizational documents, in form acceptable to any third-party, authorizing the execution, delivery and performance by Buyer of this Agreement and designating one or more members to execute documents on Buyer's behalf in connection with this transaction; and

(e) Such other documents and instruments as may be reasonably requested by Seller or by the Escrow Holder in order to consummate this transaction.

4.5 Seller's Deliveries. No later than one (1) business day prior to the Closing Date, Seller shall deliver to Escrow Holder:

(a) A countersigned counterpart of the Bill of Sale;

(b) A countersigned counterpart of the Lease Amendment;

(c) Such other documents and instruments as may be required herein or reasonably requested by the Escrow Holder in order to consummate this transaction.

4.6 Closing Costs. Seller shall pay: any and all documentary transfer taxes; and (b) one-half (1/2) of all Closing Costs. Buyer shall pay: (i) one-half (1/2) of Closing Costs. Any other costs or expenses of the Escrow shall be borne by the parties in accordance with customary practice in San Diego County, California. For purposes of this Agreement, "**Closing Costs**" shall mean escrow fees, city documentary transfer taxes, document preparation charges and acknowledgment and recording costs, but shall not include any attorneys' fees or other such costs and expenses incurred separately by Buyer or Seller.

4.7 Termination of this Agreement. In the event this Agreement is terminated in accordance with this Agreement, (i) any documents deposited with Escrow Holder shall be returned to the party depositing the same; (ii) Buyer shall return to Seller all documents delivered by Seller to Buyer pursuant to this Agreement, provided, however that the Lease Amendment and its effectiveness shall survive any termination of this Agreement for any reason; and (iii) unless otherwise specifically provided elsewhere, the Buyer shall pay all Escrow, title, and other costs, if any, incurred in connection with cancellation of the Escrow. If this Agreement is not so terminated, Buyer shall go forward with the acquisition of the Purchased Assets as provided in this Agreement and the Deposit shall be non-refundable, except in the event of Seller's default prior to the Close of Escrow.

4.8 Escrow Cancellation Charges. In the event the Escrow shall fail to close by reason of a party's default, the defaulting party shall be liable for all Escrow cancellation charges. In the event the Escrow shall fail to close due to the failure of a Closing condition set forth in Section 4.3 that is not caused by a default of one of the parties, each party shall pay one-half (1/2) of any Escrow cancellation charges.

4.9 Waiver of "Bulk Sale" Provisions. Buyer and Seller hereby acknowledge and agree that the sale of the Purchased Assets shall not be made as a "bulk sale" under Sections 6101 et seq. of the California Commercial Code, that there shall be no separate escrow or sub-escrow for the sale of any portion of the Purchased Assets, and that no "bulk sale" notice pursuant to Section 6105 of the California Commercial Code shall be given by Escrow Holder or the parties in connection with the transfer of any portion of the Purchased Assets. Seller represents and warrants to Buyer that Seller's principal business is not the sale of inventory from stock or that of a restaurant owner.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER

5.1 Representations and Warranties of Buyer. Buyer represents and warrants as follows:

(a) **Authority.** The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized and approved by all requisite action of Buyer, and no other authorizations or approvals, whether of governmental

bodies or otherwise, will be necessary in order to enable Buyer to enter into or to comply with the terms of this Agreement.

(b) **Binding Effect of Documents.** This Agreement and the other documents to be executed by Buyer hereunder, upon execution and delivery thereof by Buyer, will have been duly entered into by Buyer, and will constitute legal, valid and binding obligations of Buyer. Neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Buyer is a party or by which it is bound.

(c) **Representation Regarding Brokers.** No broker has any direct or indirect legal, beneficial, economic or voting interest in Buyer (or in any assignee of Buyer), nor has Buyer or any affiliate of Buyer granted (as of the Effective Date or the Closing Date) any broker or any of its affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

(d) **No Pending or Threatened Litigation.** No pending or threatened litigation exists which if determined adversely would restrain the consummation of the transactions contemplated by this Agreement or would declare illegal, invalid or non-binding any of Buyer's obligations or covenants to Seller.

(e) **Survival of Buyer's Representations and Warranties.** All warranties and representations of Buyer set forth in this Agreement shall survive for a period of twelve (12) months following the Closing Date and any claim with respect to a breach of any representation or warranty made or given by Buyer shall be initiated in accordance with the applicable provisions of this Agreement within twelve (12) months of the Closing Date or such claim shall be forever barred.

ARTICLE 6 "AS IS" SALE

6.1 Independent Investigation. Buyer shall have independently investigated, analyzed and appraised the value, profitability and condition of the Purchased Assets, including, without limitation, the geological and soil condition of the Purchased Assets, the fitness or suitability of the Purchased Assets for Buyer's intended use of the Purchased Assets and all environmental matters relating to the Purchased Assets (including, but not limited to, the presence or absence of hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws), without relying on any representations of any kind (whether oral or written, express or implied) made by Seller to Buyer. Buyer is purchasing the Purchased Assets in its "AS IS, WHERE IS" condition as of the Effective Date solely in reliance upon Buyer's own investigations and evaluation thereof and without any representation or warranty by Seller as to the condition of the Purchased Assets.

6.2 AS-IS Purchase; No Side Agreements Or Representations. Buyer acknowledges and agrees that Buyer has independently and personally inspected the Purchased Assets, and the improvements, entitlements, plans and specifications related to the Purchased Assets, Buyer has elected to go forward with the purchase of the Purchased Assets on the basis of

such personal examinations and inspections as Buyer has deemed appropriate to make. Buyer agrees that **AS A MATERIAL INDUCEMENT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY SELLER, BUYER IS PURCHASING THE PURCHASED ASSETS IN AN "AS IS" AND "WHERE IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR, WITH ALL FAULTS.** No person acting on behalf of Seller is authorized to make, and by execution hereof Buyer acknowledges and agrees that, except as specifically provided in this agreement, Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of and to, concerning or with respect to:

- (i) the value of the Purchased Assets;
- (ii) the income to be derived from the Purchased Assets;
- (iii) the suitability of the Purchased Assets for any and all activities and uses which Buyer may conduct thereon, including without limitation any development of any or all of the Purchased Assets;
- (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Purchased Assets;
- (v) the manner, quality, state of repair, or lack of repair, of the Purchased Assets;
- (vi) the nature quality or condition of the Purchased Assets;
- (vii) the compliance of or by the Purchased Assets or the operation of the Purchased Assets with any laws, rules, ordinances, or regulations of any applicable governmental authority or body;
- (viii) the manner, condition, or quality of the construction or materials, if any, incorporated into the Purchased Assets;
- (ix) compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including but not limited to, the Endangered Species Act, Title III of the Americans With Disabilities Act of 1990, and any other law, rule or regulation governing access by disabled persons;
- (x) the presence or absence of hazardous or toxic substances at, on, under, or adjacent to the Purchased Assets;
- (xi) the content, completeness or accuracy of the due diligence materials, including any informational package, document list or other materials prepared by Seller;
- (xii) the conformity of the improvements to any plans or specifications for the Purchased Assets, including any plans and specifications that may have been or may be provided to Buyer;

(xiii) the conformity of the Purchased Assets to past, current or future applicable zoning or building requirements;

(xiv) the existence of land use zoning or building entitlements affecting the Purchased Assets;

(xv) deficiency of any access to Improvements; and

(xvi) with respect to any other matter concerning the Purchased Assets, except as may be otherwise expressly stated herein, including any and all such matters referenced discussed or disclosed in any documents delivered by Seller to Buyer, in any public records of any governmental agency, entity or utility company, or in any other documents available to Buyer.

Buyer acknowledges and agrees that the opportunity to inspect the Purchased Assets and review information and documentation respecting the Purchased Assets (including that disclosed in the Acknowledgment) as provided in this Agreement is sufficient to allow the Buyer to make an adequate investigation of the Purchased Assets and that Buyer is relying solely on its own investigation of the Purchased Assets and review of such information and documentation, and not, on any information provided or to, be provided by Seller. Buyer further acknowledges and agrees that any information made available to Buyer or provided or to be provided by or on behalf of Seller with respect to the Purchased Assets was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and make no representations as to the accuracy or completeness of such information except as may otherwise be provided herein. Buyer agrees to fully and irrevocably release all such sources of information and preparers of information and documentation to the extent such sources or preparers are Seller, or its employees, members, officers directors, representatives, agents, servants, attorneys, affiliates, parent companies, subsidiaries, successors or assigns, from any and all claims that it may now have or hereafter acquire against such sources and preparers of information for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Purchased Assets or the operation thereof furnished by any of the foregoing entities and individuals or any other individual or entity. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Purchased Assets as provided for herein is made on an "AS-IS" condition and basis, with all faults, and that Seller has no obligations to make repairs, replacements or improvements.

6.3 NO LIABILITY TO RECEIVER. WITHOUT LIMITATION OF THE FOREGOING, AS AN ESSENTIAL INDUCEMENT TO RECEIVER TO ENTER INTO THIS AGREEMENT, AND AS PART OF THE DETERMINATION OF THE CONSIDERATION GIVEN HEREUNDER, BUYER ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

(a) BUYER ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THIS AGREEMENT SOLELY IN CONNECTION WITH HIS OR HER DUTIES AS RECEIVER PURSUANT TO THE ORDERS. IN NO EVENT SHALL RECEIVER BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY RECEIVER, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCE

WHATSOEVER, EXCEPT IF THE RESULT OF RECEIVER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. RECEIVER SHALL NOT BE PERSONALLY LIABLE IN CONNECTION WITH ANY DUTIES PERFORMED BY RECEIVER PURSUANT TO THE ORDERS.

(B) NO PROVISION OF THIS AGREEMENT SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PURCHASED ASSETS UPON RECEIVER NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE COMMITTED ON THE PREMISES BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PURCHASED ASSETS OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PURCHASED ASSETS RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.

6.4 Survival. The provisions of this ARTICLE 6 shall survive the Close of Escrow indefinitely or until the maximum extent allowed under applicable laws.

ARTICLE 7 RELEASE AND INDEMNITY

7.1 Release. To the maximum extent permitted by law, Buyer, on behalf of itself and its past, present and future agents, representatives, partners, shareholders, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs and executors and assigns (collectively, "**Buyer's Parties**"), hereby releases and forever discharges Seller, and each of their respective past, present and future agents (including Receiver, representatives, partners, attorneys', shareholders, principals, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs, executors and assigns (collectively, "**Indemnitees**"), from and against all claims, rights, remedies, recourse or other basis for recovery, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs) ("**Claims**"), whether direct or indirect, known or unknown, foreseen, whether before or after the Closing Date, including without limitation any loss, damage, injury, illness, death or other claim attributable to: (a) the use of the Purchased Assets or any part thereof; (b) a defect in the design or construction of any improvements on or about the Purchased Assets or the physical condition of the Purchased Assets; (c) any hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws including, without limitation, all claims in tort or contract and any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, et seq.) or any similar federal, state or local statute, rule or ordinance relating to liability of property owners for environmental matters; (d) any act, omission or representation of Buyer or any of Buyer's Parties; (e) any accident or casualty on the Premises caused by or attributable to the acts or omissions of any Indemnitees, Buyer or Buyer's Parties on or about the Premises; (f) a violation or alleged violation by any Indemnitee, Buyer, or Buyer's Parties of any law now or hereinafter enacted, including, without limitation, any requirements of any governmental authority; (g) the design, construction, engineering or other, work with respect to the Premises provided or performed by or caused by or attributable to any Indemnitee, Buyer or Buyer's Parties, whether before or after the Closing Date; (h) any other cause whatsoever in

connection with Buyer's use of the Purchased Assets or Buyer's performance under the Agreement or any of the instruments executed and delivered at Closing in connection herewith; (i) any breach by Buyer in the performance of its obligations under this Agreement or the other instruments executed and delivered at Closing in connection herewith; or (j) the application of the principles of strict liability in connection with the Purchased Assets (collectively, the "**Released Claims**"). Notwithstanding the foregoing, the Buyer shall not be required to or be deemed to have waived any Claims against any particular Indemnitee from an event which arises from a pre-existing relationship or claim between the Buyer and such Indemnitee.

With respect to this release and discharge, Buyer, on behalf of itself and all of Buyer's Parties, hereby acknowledges that the Released Claims may include Claims of which Buyer is presently unaware, or which Buyer does not presently suspect to exist, or which may not yet have accrued or become manifest, and which, if known by Buyer on the Effective Date or the Closing Date would materially affect Buyer's release and discharge of Seller and the other Indemnitees, and Buyer, on behalf of itself and all of Buyer's Parties, hereby waives application of the California Civil Code Section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Buyer understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that, even if Buyer or any of Buyer's Parties suffer future damages arising out of or resulting from any Released Claims, neither Buyer nor any of Buyer's Parties will be able to make any claim for those damages against Seller or any other Indemnitee. Furthermore, Buyer acknowledges that it intends these consequences for any such Claims which may exist as of the date of this release but which Buyer does not know exist, and which, if known, would materially affect Buyer's decision to execute this Agreement, regardless of whether Buyer's lack of knowledge is the result of ignorance, oversight, error, negligence or any other cause.



Buyer's initials

7.2 Survival. The provisions of this ARTICLE 7 shall survive the Close of Escrow indefinitely or until the maximum extent allowed under applicable laws.

ARTICLE 8 DISPUTE RESOLUTION

8.1 Court Trial. Each party to this Agreement hereby expressly waives any right to trial by jury with respect to any claim, demand, action or cause of action (a) arising under this Agreement, including, without limitation, any present or future modification thereof, or (b) in any way connected with or related or incidental to the dealings of the parties hereto or any of them


with respect to this Agreement (as now or hereafter modified) or any other instrument, document or agreement executed or delivered in connection herewith, or the transactions related hereto or thereto, in each case whether such claim, demand, action or cause of action is now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of any right they might otherwise have to trial by jury. The parties shall be entitled to recover only their actual damages, and no party shall be entitled to recover any consequential damages, punitive damages, or any other damages that are not actual damages.

8.2 Venue. Any action shall be commenced and maintained in the Court. The parties irrevocably consent to jurisdiction and venue in such Court and agree not to seek transfer or removal of any action commenced in accordance with the terms of this article.

ARTICLE 9 DEFAULT BY BUYER

9.1 DEFAULT BY BUYER. UPON DEFAULT BY BUYER, SELLER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO BUYER AND THE ESCROW HOLDER. IN SUCH EVENT, ESCROW HOLDER SHALL RELEASE THE EARNEST MONEY DEPOSIT TO SELLER, AND SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES AND, EXCEPT FOR BUYER'S INDEMNITY AND OTHER SPECIFIC OBLIGATIONS REFERRED TO HEREIN WHICH MAY BE ENFORCED BY SELLER, NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER. IN THE EVENT THE CLOSING DOES NOT OCCUR BECAUSE OF BUYER'S DEFAULT, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PURCHASED ASSETS PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH DEFAULT; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT: (A) LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES; (B) WAIVE OR AFFECT BUYER'S INDEMNITY OBLIGATIONS AND SELLER'S RIGHTS TO SUCH INDEMNITY; OR (C) WAIVE OR AFFECT BUYER'S OBLIGATIONS TO RETURN OR PROVIDE TO SELLER DOCUMENTS, REPORTS OR OTHER INFORMATION PROVIDED TO OR PREPARED BY OR FOR BUYER PURSUANT TO APPLICABLE PROVISIONS OF THIS AGREEMENT. THEREFORE, BUYER AND SELLER DO HEREBY AGREE THAT AS OF THE EFFECTIVE DATE, A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PURCHASED ASSETS IS AN AMOUNT EQUAL TO THE EARNEST MONEY DEPOSIT (WHICH INCLUDES ANY ACCRUED INTEREST THEREON). SAID AMOUNT SHALL BE THE

FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389.


Buyer's initials


Seller's initials

9.2 Default by Seller. If the sale of the Purchased Assets is not consummated because of a material default by Seller under this Agreement, Buyer's sole remedy shall be to terminate this Agreement and recover the Earnest Money Deposit and interest accrued thereon.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 Intentionally Omitted.

10.2 Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed facsimile transmission with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than three (3) business days thereafter. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

To Seller/Receiver:

Krista L. Freitag
E3 Advisors
355 South Grand Avenue, Suite 2450
Los Angeles, California 90071

E-mail: kfreitag@ethreadvisors.com

Facsimile: (213) 943-1374

With a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
One America Plaza, 600 West Broadway, 27th Floor
San Diego, CA 92101-0903
Email: tfates@allenmatkins.com
Facsimile: (619) 233-1158
Attention: Ted G. Fates, Esq.

To Buyer:

Jeffrey H. Silberman, President
Carleton Management, Inc.
11440 West Bernardo Court, Suite 390
San Diego, CA 92127
(858) 613-1000
Jeffs@carletonmgmt.com

With a copy to:

Michael D. Breslauer, Esq.
Solomon Ward Seidenwurm & Smith, LLP
401 B Street, Suite 1200
San Diego, California 92101
(619) 238-4804
mbreslauer@swsslaw.com

10.3 Confidentiality. Unless otherwise agreed to in writing by Seller and Buyer, each party shall keep confidential all documents, contracts, prices, plans specifications, strategies, marketing programs, financial statements, reports or other information provided to, or generated by the other party relating to the Purchased Assets and shall not disclose any such information to any person other than: (a) employees, agents and attorneys of Seller or Buyer; (b) those who are actively and directly participating in the evaluation of the Purchased Assets, or the appraisal, investigation or financing of the purchase or construction of the Premises; and (c) governmental, administrative, regulatory or judicial authorities in the investigation of the compliance of the Purchased Assets with applicable legal requirements. Buyer agrees to provide this confidentiality provision to any consultant, contractor or employee to whom confidential information may be disclosed and shall require any such consultant, contractor or employee to be bound by this confidentiality provision. Buyer expressly covenants and agrees that it shall not disclose any code compliance, environmental or other regulatory matters to governmental or other authorities without the express prior written approval by Seller unless required by law, in which case Buyer

shall immediately notify Seller thereof. Upon any termination of this Agreement for any reason, Buyer shall promptly return to Seller copies of all documents or other information pertaining to the Purchased Assets provided to Buyer by Seller. Buyer also acknowledges that a copy of this Agreement shall be filed with the Court in connection with the Receiver's motion for Court approval of the sale. The provisions of this section shall survive the Closing or earlier termination of this Agreement.

10.4 Assignment. Buyer shall not assign this Agreement without obtaining Seller's prior written consent, which consent may be withheld by Seller in its sole and absolute discretion for any reason whatsoever.

10.5 Bankruptcy. Buyer agrees that in the event that: (a) all or substantially all of Buyer's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of thirty (30) days; (b) Buyer makes an assignment for the benefit of creditors; (c) Buyer is adjudicated a bankruptcy; (d) Buyer institutes any proceeding under any law relating to bankruptcy wherein Buyer seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization; (e) an involuntary proceeding is filed against Buyer under any bankruptcy laws and Buyer consents thereto or acquiesces therein by pleading or default or such involuntary proceeding is not dismissed within ninety (90) days; or (f) substantially all of Buyer's assets are attached or seized by judicial order where such seizure is not discharged within thirty (30) days then: (i) Buyer shall be deemed to be in default hereunder, (ii) this Agreement, including without limitation the rights granted herein, shall not become an asset in any of such proceedings; (iii) in addition to all other available remedies it shall be lawful for Seller to declare this Agreement terminated; and (iv) Buyer shall have no further claim on the Purchased Assets hereunder or otherwise, and no right to return of its Deposit or any other payments or expenses incurred pursuant to this Agreement.

10.6 Not an Offer; Last Date for Submission. Seller's delivery of unsigned copies of this Agreement is solely for the purpose of review by the party to whom delivered, and neither the delivery nor any prior communications between the parties, whether oral or written, shall in any way be construed as an offer by Seller, nor in any way imply that Seller is under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by Buyer constitutes an offer which shall not be deemed accepted by Seller unless and until Seller has signed this Agreement and delivered a duplicate original to Buyer.

10.7 Modification. This Agreement may not be modified or amended except by a written agreement executed by Seller and Buyer, and only to the extent set forth therein.

10.8 Attorneys' Fees. In the event any legal or equitable action is commenced in connection with this Agreement or the Purchased Assets, whether in contract or in tort, the prevailing party (as determined by the court) shall be entitled to recover from the losing party all reasonable costs and expenses incurred, including but not limited to reasonable attorneys' fees, in addition to all other relief and remedies to which the prevailing party may be entitled.

10.9 Successors and Assigns. Subject to the limitations on Buyer's right to assign, this Agreement shall be binding on, and shall inure to the benefit of, the successors and assigns of the parties.

10.10 Duplicate Counterparts. This Agreement may be executed in duplicate counterparts, all of which together shall constitute a single instrument, and each of which shall be deemed an original of this Agreement for all purposes, notwithstanding that less than all signatures appear on any one counterpart.

10.11 Section Headings. The various section headings in this Agreement are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

10.12 Survival of Covenants, etc. Except as otherwise expressly provided herein, all agreements, conditions, acknowledgments, representations, and other obligations set forth in this Agreement shall merge with the grant deed and shall not survive the Close of Escrow.

10.13 Days/Holidays. All references to days herein shall refer to calendar days unless otherwise noted. When performance of an obligation or satisfaction of a condition set forth in this Agreement is required on or by a date that is a Saturday, Sunday or legal holiday, such performance or satisfaction shall instead be required on or by the next business day following that Saturday, Sunday or holiday, notwithstanding any other provisions of this Agreement.

10.14 No Recorded Memorandum. Prior to Close of Escrow, neither this Agreement nor any memorandum hereof or reference hereto shall be filed in any place of public record. Failure of Buyer to comply with this Section shall be a material default by Buyer under this Agreement and, at the election of Seller, shall automatically and immediately terminate all of Buyer's rights under this Agreement, and thereafter Buyer shall not have any right, title, or interest in or to the Purchased Assets whatsoever.

10.15 Exhibits. All Exhibits attached to, and to which reference is made in, this Agreement are incorporated into, and shall be deemed a part of, this Agreement.

10.16 Entire Agreement. This Agreement is the entire agreement of Seller and Buyer with respect to the Purchased Assets, containing all of the terms and conditions to which Seller and Buyer have agreed. This Agreement supersedes and replaces entirely all previous oral and written understandings, offers, counter offers, acceptances, if any, of Seller and Buyer respecting the Purchased Assets.

10.17 Time. Time is of the essence in this Agreement and each and every provision of this Agreement.

10.18 Governing Law and Forum. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. The exclusive forum for resolving disputes arising from or related to this Agreement or closing of the sale shall be the Court in the Case.

10.19 Severability. If any term, provision, covenant or condition of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

10.20 Intentionally Omitted.

10.21 Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

10.22 Intentionally Omitted.

10.23 Signer's Warranty. Each individual executing and delivering this Agreement on behalf of a party hereby warrants and represents to the other party that he or she has been duly authorized and empowered to do so.

10.24 Multiple Buyers. As used in this Agreement, the term "Buyer" means all entities acquiring any interest in the Purchased Assets at the Closing, including, without limitation, any assignee(s) of the original Buyer pursuant to this Agreement. In the event that "Buyer" has any obligations or makes any covenants, representations or warranties under this Agreement, the same shall be made jointly and severally by all entities being a Buyer hereunder. In the event that Seller receives notice from any entity being a Buyer hereunder, the same shall be deemed to constitute notice from all entities being a Buyer hereunder. In the event that any entity being a Buyer hereunder takes any action, breaches any obligation or otherwise acts pursuant to the terms of this Agreement, the same shall be deemed to be the action of the other entity(ies) being a Buyer hereunder and the action of "Buyer" under this Agreement. In the event that Seller is required to give notice or take action with respect to Buyer under this Agreement, notice to any entity being a Buyer hereunder or action with respect to any entity being a Buyer hereunder shall be a notice or action to all entities being a Buyer hereunder. In the event that any entity being a Buyer hereunder desires to bring an action or arbitration against Seller, such action must be joined by all entities being a Buyer hereunder in order to be effective. In the event that there is any agreement by Seller to pay any amount pursuant to this Agreement to Buyer under any circumstance, that amount shall be deemed maximum aggregate amount to be paid to all parties being a Buyer hereunder and not an amount that can be paid to each party being a Buyer hereunder. In the event that Seller is required to return the Deposit or other amount to Buyer, Seller shall return the same to any entity being a Buyer hereunder and, upon such return, shall have no further liability to any other entity being a Buyer hereunder for such amount. The foregoing provisions also shall apply to any documents to be executed pursuant to the provisions of this Agreement.

[Signatures Follow]

IN WITNESS WHEREOF, this Purchase and Sale Agreement and Joint Escrow Instructions is executed and delivered by the parties as of the Effective Date.

SELLER:

ANI COMMERCIAL CA III, LP, a California limited partnership

By: 

Name: Krista L. Freitag

Title: Receiver

BUYER:

MISSION HILLS RETAIL, LLC, a California limited liability company

By: CARLETON MANAGEMENT, INC., as agent for Buyer

By: 

Name: JEFFREY H. SILVERMAN

Title: PRESIDENT

ESCROW HOLDER SIGNATURE PAGE

The undersigned Escrow Holder hereby agrees to: (i) accept the foregoing Agreement; (ii) be Escrow Holder under said Agreement; and (iii) be bound by said Agreement in the performance of its duties as Escrow Holder, and hereby establishes Dec. 12, 2019 as the date of opening of escrow and designates 107-039410(BSD) as the escrow number assigned to this escrow.

Dated: 12-19-19

Debbie Howe Escrow Officer

By Debbie Howe
Authorized Representative

EXHIBIT A

FORM OF BILL OF SALE

BILL OF SALE

FOR VALUE RECEIVED, ANI COMMERCIAL CA III, LP, a California limited partnership ("**Seller**"), by and through Krista L. Freitag, Receiver, appointed by the United States District Court for the Southern District of California, hereby sells, conveys and assigns to MISSION HILLS RETAIL, LLC, a California limited liability company ("**Buyer**"), all of Seller's right, title and interest in and to the following:

That certain personal property described on Schedule 1 attached hereto and incorporated herein by this reference (collectively, the "**Tangible Assets**").

Seller makes no warranties of any kind or nature whatsoever, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose, with respect to any of the Tangible Assets transferred hereby, any and all such warranties being hereby expressly disclaimed. Buyer hereby assumes all liabilities and obligations in connection with or arising under the matters assigned under this agreement to the extent arising after the date of execution set forth below.

TO HAVE AND TO HOLD unto the grantee and its successors and assigns forever.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Seller and Buyer have executed this Bill of Sale as of the
____ day of _____, 20__.

Seller:

ANI COMMERCIAL CA III, LP, a California limited
partnership

By: _____

Name: Krista L. Freitag

Title: Receiver

Buyer:

MISSION HILLS RETAIL, LLC, a California limited
liability company

By: CARLETON MANAGEMENT, INC., as agent for
Buyer

By: _____

Name: _____

Title: _____

SCHEDULE 1

FF&E

SCHEDULE 1
TO EXHIBIT A

-1-

Inspected: 10/30/2019

QTY Description

2	6 Person granite top metal tables
31	Granite & metal tables 2 person
7	Granite & metal tables 4 person
26	Javan whicker chairs
16	Wooden Barstools
1	Vintage wood book shelf
2	Wood & metal hostess stand
2	Patio heater
2	Custom booth seating
2	Living Plant wall
4	Samll Bar tables
5	Metal & wood barstools
5	Custom wood booths
10	Toast POS
9	Custom metal track pendant light
4	Wood high chairs
1	Vintage wood buffet
1	Assorted glasses
1	Assorted silverware
1	Wood bench
1	Rolling ladder system with custom metal shelves 21'
1	Bun commercial coffee grinder
1	Faema E61 Legend esspresso Machine
1	Perlick 4 drawer referigerator under counter
2	Perlick double door referigertator under counter
1	Perlick triple door referigerator under counter
1	Samsung 70" tv
1	12 tap beer head
1	4tap beer head
1	18' metal & wood shelves
1	Small metro shelves
1	12" Stainless Steel drying rack
3	24" Stainless steel drying rack
3	Stainless steel hand sink
3	Stainless steel ice well

Inspected: 10/30/2019

QTY Description

2	Stainless steel jocky box
1	Perlick 2 drawer referigerator
1	Temperature & huiltity controlled cheese room
38	Wood decorative print dinning chairs
3	Small side hutch
1	Vintage buffet
1	Assorted plates
1	Assorted kitchen pots pans
7	Heat lamps
1	Reciept holder
1	Stainless steel 3 compartment sink
2	Stainless steel hand sink
1	Stainless steel dishwash table with sprayer
7	Stainless Steel shelves
1	6' Captive Air dish wash hood
1	Air door
2	Speed rack
1	Metro rack
1	True Stainless steel single door freezer
1	36" Stainless steel table
1	True Stainless steel 2 door undercounter referigerator
1	Berkel 827A Plus meat slicer
1	Globe 40Q mixer
1	10'Stainless steel table with sink 2 comp
2	Robot coupe 3q
2	Vitamix blenders
1	Small safe
1	Acer computer
1	Altronix camera power supply
1	Vmax960H camera dvr
1	Dbx 266xS compressor gate
1	AV network switch
1	Pakedge device software S24 network switch
1	Creston switcher ampliphier processor swamp 24x8
1	Creston expansion switcher ampliplier swamp 4
1	Creston 3 series advanced control processor Pro3

Inspected: 10/30/2019

QTY Description

1 Crston Proffessional uninterrupted power supply Len-ups1250
 1 APC smart UPS RT 2200
 1 Manitowac Ice machine
 14 Green metro racks
 1 6'x6' Freezer & 6'x 10' walkin referigerator
 6 Ingredient bins
 lot Assorted stainless steel inserts
 lot Assorted plastic inserts
 lot Assorted stock pots
 1 Perlick stainless steel undercounter single door referigerator
 1 True stainless steel referigerator 2 door under counter
 1 Continental 60" stainless steel sandwich table
 1 Small stainless steel table
 2 6' Stainless steel referigerated prep table
 1 3 Well stainless steel steam table
 1 Builtin Stainless steel sink
 2 12' Stainless Steel hoods with fire system
 1 2 Burner wok
 1 Continential Stainless steel 2 door referigerator
 1 South bend double convection oven
 2 36" Salamanders
 1 Viking 60" 12 burner range double oven
 1 Viking chargrill
 1 Viking 36" griddle
 1 Viking Double deep fryer
 1 Bakers pride double table top pizza oven
 1 Continential under counter single door satinless steel freezer
 13 JBL speakers
 1 Large JBL speaker
 1 Glychol chiller
 1 12'x 6' Beer walkin collar
 4 Extra bar stools
 3 Extra chairs
 2 Stainless steel carts

1 Type 47 Liquor License

EXHIBIT B

FORM OF LEASE AMENDMENT

[TO BE ATTACHED]

THIRD AMENDMENT TO COMMERCIAL LEASE

This THIRD AMENDMENT TO COMMERCIAL LEASE (this "**Third Amendment**") dated as of December 12, 2019, is entered into by and between MISSION HILLS RETAIL, LLC, a California limited liability company ("**Landlord**"), and ANI COMMERCIAL CA III, LP, a California limited partnership ("**Tenant**"), by and through Krista L. Freitag, solely in her capacity as "**Receiver**" in the case entitled *Securities and Exchange Commission v. Gina Champion-Cain, ANI Development, LLC, and American National Investments, Inc.*, United States District Court for the Southern District of California (the "**Court**"), Case No. 3:19-CV-01628-LAB-AHG (the "**Action**").

R E C I T A L S

- A. Landlord and American National Investments, Inc., a California corporation ("**Original Tenant**") entered into that certain Commercial Lease Agreement dated as of November 1, 2013 (the "**Original Lease**"), as amended by (i) that certain First Amendment to and Assignment of Commercial Lease dated June 6, 2014, by and among Landlord, Original Tenant as "Assignor", and Tenant, as "Assignee" (the "**First Amendment**"), and (ii) that certain Second Amendment to Commercial Lease dated June 30, 2014, by and between Landlord and Tenant (the "**Second Amendment**"). Tenant is the successor-in-interest in the Lease to the Original Tenant pursuant to an assignment contained in the First Amendment. The Original Lease, as amended by the First Amendment and the Second Amendment, is referred to herein as the "**Lease**."
- B. Pursuant to the Lease, Tenant currently leases from Landlord approximately 3,952 square feet of retail space located at 4020 Goldfinch Street in San Diego, California 92103 (the "**Premises**"), as more particularly identified in the Lease.
- C. Tenant is one of several related entities placed in receivership by the Court pursuant to the Action, and is therefore under the Receiver's exclusive management and control.
- D. Concurrently with this Third Amendment, Landlord and Receiver are entering into that certain Purchase and Sale Agreement and Joint Escrow Instructions of even date herewith (the "**Purchase Agreement**") to provide for Landlord's acquisition from Tenant of (i) certain personal property located in the Premises (the "**Personal Property**") and (ii) an alcoholic beverage license associated with Tenant's restaurant operations in the Premises (the "**Liquor License**") (collectively, the "**Property**").
- E. Landlord and Tenant desire to enter into this Third Amendment to terminate the Term of the Lease as of the earlier to occur of (i) the closing date for the Purchase Agreement, or (ii) the date upon which the Court rejects the Purchase Agreement and thereby disapproves of Landlord as the purchaser of the Property (such earlier occurring date is referred to herein as the "**Early Termination Date**").
- F. Landlord and Tenant desire to enter into this Third Amendment to terminate the Term of the Lease as of the Early Termination Date, and to otherwise amend the Lease as provided herein.
- G. Initially capitalized defined terms which are used in this Third Amendment without definition shall have the meanings given to them in the Lease.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and agreements contained in this Third Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Early Termination Date. The Lease is hereby terminated effective as of the Early Termination Date with the same force and effect as if said date was the date originally fixed in the Lease for expiration of the term thereof, subject, however, to the provisions of this Third Amendment.

2. Landlord's Access to the Premises. From and after the date of this Third Amendment, Landlord shall be permitted to enter the Premises, upon prior reasonable notice to Tenant, to show the Premises to prospective tenants. Landlord shall protect, defend, indemnify and hold Tenant harmless from any liability, cost, expense or claim arising from such entry into the Premises by Landlord or any third party.

3. Removal of Personal Property. If the Court approves the Purchase Agreement and Landlord is thereby approved as the purchaser of the Personal Property (as detailed in the Purchase Agreement), the Personal Property shall remain in the Premises and become the property of Landlord pursuant to the terms and conditions of the Purchase Agreement. However, if the Purchase Agreement is not approved by the Court and Landlord is therefore not permitted to purchase the Personal Property, or if the sale of the Personal Property to Landlord does not occur for any other reason, Receiver shall be permitted to remove the Personal Property from the Premises within forty-five (45) days after the date upon which the Court disapproves the Purchase Agreement or the Purchase Agreement is terminated (the "**Removal Period**"). Landlord shall cooperate with Receiver in connection with such removal and allow Receiver all reasonable access necessary to remove the Personal Property from the Premises within such Removal Period. If any of the Personal Property has not been removed from the Premises by the end of the Removal Period, Tenant shall be deemed to have waived its rights to the Personal Property, and Landlord may thereafter remove and dispose of the Personal Property in any manner permitted under the Lease or pursuant to applicable law. Landlord hereby consents to such entry into the Premises by Receiver and waives any claims against Receiver and Tenant which relate to or arise out of such entry. Landlord hereby acknowledges that the terms and conditions of this Section 3 and the Removal Period shall not apply to the Liquor License, which shall be subject to Receiver's control notwithstanding the approval or disapproval of the Purchase Agreement pursuant to certain additional terms and conditions or a separate liquor license purchase agreement and the requirements of applicable law, as further described in the Purchase Agreement.

4. Release of Liability.

(a) Mutual General Release of Liability. Except as expressly set forth herein, effective on the full performance by Landlord and Tenant of the terms set forth herein, Landlord on the one hand, and Tenant on the other hand, and each of them, and, to the extent applicable, their respective executors, officers, directors, shareholders, partners, agents, employees, attorneys, consultants, experts, parents, subsidiaries and other affiliate companies, predecessors, successors and representatives, and their officers, directors and shareholders, for themselves and for anyone who purports to claim through them or on their behalf, hereby release and forever discharge one another and, to the extent applicable, their respective executors, officers, directors, partners, agents, employees, attorneys, consultants, experts, parents, subsidiaries and other affiliate companies, predecessors, successors and representatives (the "**Released Parties**") of and from any and all claims, rights, demands, liabilities, actions, causes of action, damages, losses, costs and expenses, of whatever kind and nature, known or unknown, fixed or contingent, whether past, present or future, whether based on contract, tort, statute or other legal or equitable theory of recovery,

which one party has, had, or may come to have or claim to have against the other arising out of or relating to the Lease.

(b) Waiver of Civil Code Section 1542. With respect to the claims made the subject of release and discharge under this Agreement, Landlord on the one hand, and Tenant on the other hand, hereby acknowledge the provisions of California Civil Code section 1542 which states:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY"


Landlord's Initials


Tenant's Initials

Landlord and Tenant hereby waive any and all rights which may be conferred upon them by virtue of Civil Code section 1542 or any similar provision or body of law. In this regard, the parties acknowledge that facts in addition to or different from those which are now known or believed to exist may hereafter be discovered with respect to the subject matter of the released claims and that this release will remain fully enforceable notwithstanding such discovery. Landlord and Tenant hereto shall bear their own attorney's fees and costs.

5. Brokers. Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Third Amendment. Tenant agrees to indemnify, defend and hold Landlord, its members, principals, beneficiaries, partners, officers, directors, employees, mortgagee(s) and agents, and the respective principals and members of any such agents harmless from and against any and all claims of any broker claiming to have represented Tenant in connection with this Third Amendment. Landlord hereby represents to Tenant that Landlord has dealt with no broker in connection with this Third Amendment. Landlord agrees to indemnify, defend and hold Tenant, its members, principals, beneficiaries, partners, officers, directors, employees, mortgagee(s) and agents, and the respective principals and members of any such agents harmless from and against any and all claims of any broker claiming to have represented Landlord in connection with this Third Amendment.

6. Miscellaneous.

(a) This Third Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

(b) Neither Landlord nor Tenant shall be bound by this Third Amendment until this Third Amendment is fully executed and delivered by both parties.

(c) Each signatory of this Third Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

(d) Each party hereto acknowledges that: (i) each party hereto is of equal bargaining strength; (ii) each such party has actively participated in the drafting, preparation and negotiation of this Third Amendment and the transactions contemplated herein; and (iii) any rule of construction to the effect

that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Third Amendment or any portion hereof.

(e) Landlord and Tenant agree that except as otherwise specifically modified in this Third Amendment, the Lease has not been modified, supplemented, amended, or otherwise changed in any way and the Lease remains in full force and effect between the parties hereto as modified by this Third Amendment. To the extent of any inconsistency between the terms and conditions of the Lease and the terms and conditions of this Third Amendment, the terms and conditions of this Third Amendment shall apply and govern the parties. Under no circumstances shall Tenant be entitled to any rent abatement, improvement allowance, leasehold improvements, or other work to the Premises, or any similar economic incentives that may have been provided to Tenant in connection with entering into the Lease.

(f) The parties agree that electronic signatures, including those delivered by PDF or signed through the electronic signature system known as "DocuSign", shall have the same effect as originals. All parties to this Third Amendment waive any and all rights to object to the enforceability of this Third Amendment based on the form or delivery of signature.

(g) This Third Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same Third Amendment.

(h) In the event that the Court does not approve the Purchase Agreement, nothing contained herein or in the Purchase Agreement shall preclude the Landlord from asserting or submitting a rent claim in the Action.

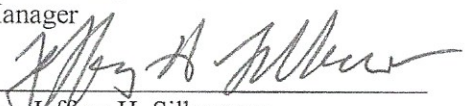
**[NO FURTHER TEXT ON THIS PAGE;
SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be duly executed as of the day and year first above written.

LANDLORD:


MISSION HILLS RETAIL, LLC,
a California limited liability company

By: Carleton Management, Inc.,
Its Manager

By: 
Name: Jeffrey H. Silberman
Title: President

TENANT:

ANI COMMERCIAL CA III, LP,
a California limited partnership

By: 
Name: Krista L. Freitag
Title: Court-Appointed Receiver

ACKNOWLEDGMENT OF GUARANTOR

The undersigned, Guarantor under that certain Guaranty of Lease dated as of November 1, 2013 (the "**Guaranty**"), hereby consents to the foregoing Third Amendment and acknowledges that the Guaranty remains in full force and effect with regard to the Lease, as amended by the Third Amendment.

GUARANTOR:

By: 

Name: Krista L. Freitag, *acting in capacity as*

Title: Court-Appointed Receiver for Guarantor