

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 10-Q**

**Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended March 26, 2022

OR

**Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from            to

Commission File Number 001-35588

**Franchise Group, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State of incorporation)

**27-3561876**

(IRS employer identification no.)

**109 Innovation Court, Suite J**

**Delaware, Ohio 43015**

(Address of principal executive offices)

**(740) 363-2222**

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common stock, par value \$.01 per share	FRG	NASDAQ Global Market
7.50% Series A Cumulative Preferred Stock, par value \$0.01 per share and liquidation preference of \$25.00 per share	FRGAP	NASDAQ Global Market

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer

Non-accelerated filer  Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares outstanding of the registrant's common stock, par value \$0.01 value per share, as of April 30, 2022 was 40,354,436 shares.

FRANCHISE GROUP, INC. AND SUBSIDIARIES  
Form 10-Q for the Quarterly Period Ended March 26, 2022

Table of Contents

Page Number

PART I - FINANCIAL INFORMATION

<u>Item 1.</u>	<u>Financial Statements (Unaudited)</u>	<u>1</u>
	<u>Condensed Consolidated Statements of Operations</u>	<u>2</u>
	<u>Condensed Consolidated Statements of Comprehensive Income (Loss)</u>	<u>3</u>
	<u>Condensed Consolidated Balance Sheets</u>	<u>4</u>
	<u>Condensed Consolidated Statements of Stockholders' Equity</u>	<u>5</u>
	<u>Condensed Consolidated Statements of Cash Flows</u>	<u>6</u>
	<u>Notes to Unaudited Condensed Consolidated Financial Statements</u>	<u>7</u>
<u>Item 2.</u>	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>24</u>
<u>Item 3.</u>	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	<u>33</u>
<u>Item 4.</u>	<u>Controls and Procedures</u>	<u>33</u>

PART II - OTHER INFORMATION

<u>Item 1.</u>	<u>Legal Proceedings</u>	<u>34</u>
<u>Item 1A.</u>	<u>Risk Factors</u>	<u>34</u>
<u>Item 2.</u>	<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>34</u>
<u>Item 3.</u>	<u>Defaults Upon Senior Securities</u>	<u>34</u>
<u>Item 4.</u>	<u>Mine Safety Disclosures</u>	<u>34</u>
<u>Item 5.</u>	<u>Other Information</u>	<u>34</u>
<u>Item 6.</u>	<u>Exhibits</u>	<u>35</u>
<u>Signatures</u>		<u>38</u>

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**PART I. FINANCIAL INFORMATION**

**ITEM 1  
FINANCIAL STATEMENTS (UNAUDITED)**

**FRANCHISE GROUP, INC. AND SUBSIDIARIES**  
Condensed Consolidated Statements of Operations (Unaudited)

(In thousands, except share count and per share data)	Three Months Ended	
	March 26, 2022	March 27, 2021
<b>Revenues:</b>		
Product	\$ 979,164	\$ 583,816
Service and other	148,282	28,576
Rental	8,024	8,953
Total revenues	1,135,470	621,345
<b>Operating expenses:</b>		
<b>Cost of revenue:</b>		
Product	616,585	339,414
Service and other	8,663	405
Rental	2,861	3,005
Total cost of revenue	628,109	342,824
Selling, general, and administrative expenses	376,995	225,545
Total operating expenses	1,005,104	568,369
Income from operations	130,366	52,976
<b>Other expense:</b>		
Bargain purchase gain	(67)	—
Other	(21,977)	(36,726)
Interest expense, net	(92,327)	(47,435)
Income (loss) from continuing operations before income taxes	15,995	(31,185)
Income tax expense (benefit)	3,678	(2,851)
Income (loss) from continuing operations	12,317	(28,334)
Income (loss) from discontinued operations, net of tax	—	42,147
Net income (loss) attributable to Franchise Group, Inc.	\$ 12,317	\$ 13,813
<b>Income (loss) per share from continuing operations:</b>		
Basic	\$ 0.25	\$ (0.76)
Diluted	0.25	(0.76)
<b>Net income (loss) per share:</b>		
Basic	\$ 0.25	\$ 0.29
Diluted	0.25	0.29
<b>Weighted-average shares outstanding:</b>		
Basic	40,307,412	40,110,084
Diluted	41,107,793	40,110,084

See accompanying notes to condensed consolidated financial statements.

**FRANCHISE GROUP, INC. AND SUBSIDIARIES**  
Condensed Consolidated Statements of Comprehensive Income (Loss) (Unaudited)

(In thousands)	Three Months Ended	
	March 26, 2022	March 27, 2021
Net income (loss)	\$ 12,317	\$ 13,813
Other comprehensive income (loss)		
Unrealized (gain) loss on interest rate swap agreement, net of taxes of \$— and \$13, respectively	—	48
Foreign currency translation adjustment	—	223
Forward contracts related to foreign currency exchange rates	—	16
Other comprehensive income (loss)	—	287
Comprehensive income (loss)	\$ 12,317	\$ 14,100

See accompanying notes to condensed consolidated financial statements.

**FRANCHISE GROUP, INC. AND SUBSIDIARIES**  
Condensed Consolidated Balance Sheets (Unaudited)

(In thousands, except share count and per share data)	March 26, 2022	December 25, 2021
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 149,597	\$ 292,714
Current receivables, net	110,368	118,698
Current securitized receivables, net	386,886	369,567
Inventories, net	779,279	673,170
Current assets held for sale	203,679	—
Other current assets	28,403	24,063
Total current assets	<u>1,658,212</u>	<u>1,478,212</u>
Property, plant, and equipment, net	237,056	449,886
Non-current receivables, net	11,156	11,755
Non-current securitized receivables, net	48,355	47,252
Goodwill	806,697	806,536
Intangible assets, net	125,222	127,951
Tradenames	222,687	222,687
Operating lease right-of-use assets	713,820	714,741
Investment in equity securities	11,626	35,249
Other non-current assets	18,578	18,902
Total assets	<u>\$ 3,853,409</u>	<u>\$ 3,913,171</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Current installments of long-term obligations	\$ 487,957	\$ 486,170
Current operating lease liabilities	173,295	173,101
Accounts payable and accrued expenses	458,776	410,552
Other current liabilities	51,572	50,833
Total current liabilities	<u>1,171,600</u>	<u>1,120,656</u>
Long-term obligations, excluding current installments	1,286,972	1,383,725
Non-current operating lease liabilities	552,412	557,071
Other non-current liabilities	90,739	88,888
Total liabilities	<u>3,101,723</u>	<u>3,150,340</u>
Stockholders' equity:		
Common stock, \$0.01 par value per share, 180,000,000 shares authorized, 40,353,865 and 40,296,688 shares issued and outstanding at March 26, 2022 and December 25, 2021, respectively	404	403
Preferred stock, \$0.01 par value per share, 20,000,000 shares authorized and 4,541,125 shares issued and outstanding at March 26, 2022 and December 25, 2021	45	45
Additional paid-in capital	480,628	475,396
Retained earnings	270,609	286,987
Total equity	<u>751,686</u>	<u>762,831</u>
Total liabilities and equity	<u>\$ 3,853,409</u>	<u>\$ 3,913,171</u>

See accompanying notes to condensed consolidated financial statements.

**FRANCHISE GROUP, INC. AND SUBSIDIARIES**  
Condensed Consolidated Statements of Stockholders' Equity (Unaudited)

(In thousands)	Three Months Ended March 26, 2022							
	Common stock shares	Common stock	Preferred stock shares	Preferred stock	Additional paid-in-capital	Accumulated other comprehensive loss	Retained earnings	Total Franchise Group equity
Balance at December 25, 2021	40,297	\$ 403	4,541	\$ 45	\$ 475,396	\$ —	\$ 286,987	\$ 762,831
Net income	—	—	—	—	—	—	12,317	12,317
Exercise of stock options	15	—	—	—	180	—	—	180
Stock-based compensation expense, net	41	1	—	—	5,028	—	—	5,029
Issuance of common stock	1	—	—	—	24	—	—	24
Common dividend declared (\$0.625 per share)	—	—	—	—	—	—	(26,567)	(26,567)
Preferred dividend declared (\$0.469 per share)	—	—	—	—	—	—	(2,128)	(2,128)
Balance at March 26, 2022	40,354	\$ 404	4,541	\$ 45	\$ 480,628	\$ —	\$ 270,609	\$ 751,686

**FRANCHISE GROUP, INC. AND SUBSIDIARIES**  
Condensed Consolidated Statements of Stockholders' Equity (Unaudited)

(In thousands)	Three Months Ended March 27, 2021							
	Common stock shares	Common stock	Preferred stock shares	Preferred stock	Additional paid-in-capital	Accumulated other comprehensive loss	Retained earnings	Total Franchise Group equity
Balance at December 26, 2020	40,092	\$ 401	1,250	\$ 13	\$ 382,383	\$ (1,399)	\$ 3,769	\$ 385,167
Net income	—	—	—	—	—	—	13,813	13,813
Total other comprehensive income	—	—	—	—	—	287	—	287
Exercise of stock options	3	—	—	—	25	—	—	25
Stock-based compensation expense, net	62	1	—	—	2,189	—	—	2,190
Issuance of Series A Preferred Stock	—	—	3,291	32	79,509	—	—	79,541
Common dividend declared (\$0.375 per share)	—	—	—	—	—	—	(15,434)	(15,434)
Preferred dividend declared (\$0.469 per share)	—	—	—	—	—	—	(2,129)	(2,129)
Balance at March 27, 2021	40,157	\$ 402	4,541	\$ 45	\$ 464,106	\$ (1,112)	\$ 19	\$ 463,460

See accompanying notes to condensed consolidated financial statements.

**FRANCHISE GROUP, INC. AND SUBSIDIARIES**  
Condensed Consolidated Statements of Cash Flows (Unaudited)

(In thousands)	Three Months Ended	
	March 26, 2022	March 27, 2021
<b>Operating Activities</b>		
Net income	\$ 12,317	\$ 13,813
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Provision for doubtful accounts	15,103	710
Depreciation, amortization, and impairment charges	22,033	14,176
Amortization of deferred financing costs and prepayment penalties	71,679	67,699
Stock-based compensation expense	5,447	2,550
Change in fair value of investment	23,723	—
(Gain) on bargain purchases and sales of Company-owned stores	(2,206)	(623)
Other non-cash items	(2,227)	(62)
Changes in operating assets and liabilities	(83,716)	(22,512)
Net cash provided by operating activities	62,153	75,751
<b>Investing Activities</b>		
Purchases of property, plant, and equipment	(9,752)	(11,667)
Proceeds from sale of property, plant, and equipment	2,554	277
Acquisition of business, net of cash and restricted cash acquired	(3,930)	(463,753)
Issuance of operating loans to franchisees	—	(17,058)
Payments received on operating loans to franchisees	—	21,644
Net cash (used in) investing activities	(11,128)	(470,557)
<b>Financing Activities</b>		
Dividends paid	(27,315)	(15,620)
Issuance of long-term debt and other obligations	124,358	1,306,724
Repayment of long-term debt and other obligations	(290,202)	(854,665)
Issuance of common stock	24	—
Issuance of preferred stock	—	79,541
Principal payments of finance lease obligations	(768)	—
Payment for debt issue costs and prepayment penalty on extinguishment	—	(87,490)
Other stock compensation transactions	(239)	(336)
Net cash provided by (used in) financing activities	(194,142)	428,154
Effect of exchange rate changes on cash, net	—	56
Net increase (decrease) in cash equivalents and restricted cash	(143,117)	33,404
Cash, cash equivalents and restricted cash at beginning of period	292,714	151,502
Cash, cash equivalents and restricted cash at end of period	\$ 149,597	\$ 184,906
<b>Supplemental Cash Flow Disclosure</b>		
Cash paid for taxes, net of refunds	\$ 274	\$ 65
Cash paid for interest	21,424	39,730
Accrued capital expenditures	3,177	3,019
Tax receivable agreement included in other long-term liabilities	—	16,775

See accompanying notes to condensed consolidated financial statements.

The following table provides a reconciliation of cash, cash equivalents, and restricted cash reported within the Condensed Consolidated Balance Sheets that sum to the total of the same such amounts shown in the condensed consolidated statements of cash flows.

(In thousands)	March 26, 2022	March 27, 2021
Cash and cash equivalents	\$ 149,597	\$ 164,858
Restricted cash included in other non-current assets	—	368
Cash and cash equivalents for discontinued operations	—	19,680
Total cash, cash equivalents and restricted cash shown in the condensed consolidated statements of cash flows	\$ 149,597	\$ 184,906

Amounts included in other non-current assets represent those required to be set aside by a contractual agreement with an insurer for the payment of specific workers' compensation claims.

## FRANCHISE GROUP, INC. AND SUBSIDIARIES

### Notes to Unaudited Condensed Consolidated Financial Statements

March 26, 2022 and March 27, 2021

#### (1) Basis of Presentation

Unless otherwise stated, references to the "Company," "we," "us," and "our" in this Quarterly Report on Form 10-Q (the "Quarterly Report") refer to Franchise Group, Inc. and its direct and indirect subsidiaries on a consolidated basis. The unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and pursuant to the requirements of Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete consolidated financial statements. The unaudited condensed consolidated financial statements should be read in conjunction with the Company's Form 10-K for the year ended December 25, 2021 that was filed with the Securities and Exchange Commission ("SEC") on February 23, 2022 (the "Form 10-K").

In the opinion of management, all adjustments (including those of a normal recurring nature) necessary for a fair presentation of such condensed consolidated financial statements in accordance with GAAP have been recorded. The December 25, 2021 balance sheet information was derived from the audited financial statements as of that date.

#### Accounting Pronouncements

In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU No. 2016-13, "*Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*", which changes how companies will measure credit losses for most financial assets and certain other instruments that aren't measured at fair value through net income. The standard replaces the "incurred loss" approach with an "expected loss" model for instruments measured at amortized cost (which generally will result in the earlier recognition of allowances for losses) and requires companies to record allowances for available-for-sale debt securities, rather than reduce the carrying amount. In addition, companies will have to disclose significantly more information, including information used to track credit quality by year of origination, for most financing receivables. The ASU should be applied as a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the standard is effective. The ASU is effective for the Company for the fiscal year beginning January 1, 2023. The Company is currently evaluating the impact of the adoption of this standard on its consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04, "*Intangibles - Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*." This standard eliminates Step 2 from the goodwill impairment test. Instead, an entity should compare the fair value of a reporting unit with its carrying amount and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value, not to exceed the total amount of goodwill allocated to the reporting unit. The ASU is effective for the Company for the fiscal year beginning January 1, 2023. The Company is currently evaluating the impact of the adoption of this standard to its consolidated financial statements.

#### (2) Acquisitions

The Company continually looks to diversify and grow its portfolio of brands through acquisitions. On March 10, 2021, the Company completed its acquisition (the "Pet Supplies Plus Acquisition") of Pet Supplies Plus, on September 27, 2021, the Company completed its acquisition (the "Sylvan Acquisition") of Sylvan Learning ("Sylvan"), and on November 22, 2021, the Company completed its acquisition (the "Badcock Acquisition" and, collectively with the Sylvan Acquisition and the Pet Supplies Plus Acquisition, the "Acquisitions") of W.S. Badcock Corporation ("Badcock").

##### Badcock Acquisition

On November 22, 2021, the Company completed the Badcock Acquisition. The preliminary fair value of the consideration transferred at the acquisition date was \$548.7 million. For the three months ended March 26, 2022, \$0.6 million of acquisition fees had been incurred that are recorded in selling, general and administrative expenses.

The table below summarizes the unaudited preliminary estimates of the fair values of the identifiable assets acquired and liabilities assumed in the Badcock Acquisition on November 22, 2021. The preliminary estimates of the fair value of identifiable assets acquired and liabilities assumed are subject to revisions, which may result in an adjustment to the preliminary values presented below. In the three months ended March 26, 2022, the preliminary estimates of the fair value of identifiable

assets acquired and liabilities assumed were adjusted, which resulted in an increase in the bargain purchase gain of \$0.1 million. The increase was primarily due to an increase in operating lease right-of-use assets of \$3.9 million related to market lease terms partially offset by a \$1.1 million increase in other long-term liabilities for deferred taxes and a net working capital true-up of \$2.9 million. The Company expects to complete the purchase price allocation as soon as reasonably possible but not to exceed one year from the date of completion of the Badcock Acquisition.

(In thousands)	Preliminary November 22, 2021
Cash and cash equivalents	\$ 23,413
Inventories, net	130,045
Accounts receivable	411,268
Other current assets	5,023
Property, plant, and equipment	233,938
Operating lease right-of-use assets	55,626
Other non-current assets	2,506
Total assets	861,819
Current operating lease liabilities	12,070
Accounts payable and accrued expenses	71,436
Other current liabilities	18,942
Current installments of long-term obligations	5,261
Long-term obligations, excluding current installments	7,247
Non-current operating lease liabilities	39,599
Other long-term liabilities	26,504
Total liabilities	181,059
Bargain purchase gain	(132,110)
Consideration transferred	\$ 548,650

Operating lease right-of-use assets of \$55.6 million and operating and lease liabilities of \$51.7 million, consist of leases for retail store locations, warehouses and office equipment.

Property, plant, and equipment consists of fixtures and equipment of \$93.0 million, buildings and building improvements of \$93.1 million, land and land improvements of \$33.4 million, leasehold improvements of \$23.7 million, and construction in progress of \$1.4 million.

During the three months ended March 26, 2022, the preliminary estimates of the fair value of identifiable assets acquired and liabilities assumed were adjusted, which resulted in a \$0.1 million increase to the bargain purchase gain for a cumulative bargain purchase gain of \$132.1 million. The adjustment is classified as "Bargain purchase gain" on the Consolidated Statements of Operations for the three months ended March 26, 2022. The Company believes the seller in the Badcock Acquisition was willing to accept a bargain purchase price in return for the Company's ability to act more quickly, partially due to the Company's access to capital to complete the transaction, and with greater certainty than any other prospective acquirer. Additionally, the Company believes the seller in the Badcock Acquisition was motivated to complete the transaction as part of an overall repositioning of its business. Upon completion of this reassessment, the Company concluded that recording a bargain purchase gain with respect to the Badcock Acquisition was appropriate and required under GAAP. The tax impact related to the bargain purchase gain was non-taxable and impacted the Company's effective tax rate for the period.

#### Sylvan Acquisition

On September 27, 2021, the Company completed the Sylvan Acquisition. The preliminary fair value of the consideration transferred at the acquisition date was \$82.9 million.

The table below summarizes the preliminary estimates of the fair values of the identifiable assets acquired and liabilities assumed in the Sylvan Acquisition on September 27, 2021. The preliminary estimates of the fair value of identifiable assets acquired and liabilities assumed are subject to revisions, which may result in an adjustment to the preliminary values presented

below. In the three months ended March 26, 2022, the preliminary estimates of the fair value of identifiable assets acquired and liabilities assumed were adjusted, which resulted in a decrease in goodwill of \$0.1 million. The decrease was due to a net working capital true-up of \$0.1 million. The Company expects to complete the purchase price allocation as soon as reasonably possible but not to exceed one year from the date of completion of the Sylvan Acquisition.

(In thousands)	Preliminary September 27, 2021
Cash and cash equivalents	\$ 4,364
Other current assets	3,592
Property, plant, and equipment	26,324
Goodwill	19,406
Tradenames	24,987
Operating lease right-of-use assets	2,874
Other intangible assets	19,412
Other non-current assets	185
<b>Total assets</b>	<b>101,144</b>
Current operating lease liabilities	891
Accounts payable and accrued expenses	6,072
Non-current operating lease liabilities	1,984
Other long-term liabilities	9,320
<b>Total liabilities</b>	<b>18,267</b>
<b>Consideration transferred</b>	<b>\$ 82,877</b>

Other intangible assets consists of the franchise agreements of \$18.3 million and proprietary content of \$1.1 million.

Property, plant and equipment consists of fixtures and equipment of \$0.3 million, leasehold improvements of \$0.7 million, and software and electronic content of \$25.3 million.

### Pet Supplies Plus Acquisition

On March 10, 2021, the Company completed the Pet Supplies Plus Acquisition. The preliminary fair value of the consideration transferred at the acquisition date was \$451.3 million.

The table below summarizes the unaudited estimates of the fair values of the identifiable assets acquired and liabilities assumed in the Pet Supplies Plus Acquisition on March 10, 2021. In the three months ended March 26, 2022, the preliminary estimates of the fair value of identifiable assets acquired and liabilities assumed were finalized, which resulted in an increase in goodwill of \$0.1 million. The increase was due to a \$0.1 million decrease of deferred franchise fees. The Company has completed the purchase price allocation of the Pet Supplies Plus Acquisition.

<u>(In thousands)</u>	<u>Preliminary March 10, 2021</u>
Cash and cash equivalents	\$ 2,131
Other current assets	39,844
Inventories, net	118,600
Property, equipment and software, net	75,616
Goodwill	335,995
Operating lease right-of-use assets	151,243
Tradenames	104,400
Other intangible assets, net	101,400
Other non-current assets	6,393
Total assets	935,622
Current operating lease liabilities	25,405
Accounts payable and accrued expenses	82,237
Other current liabilities	1,606
Current installments of long-term obligations	3,507
Long-term obligations, excluding current installments	247,458
Non-current operating lease liabilities	114,292
Other long-term liabilities	9,761
Total liabilities	484,266
Consideration transferred	\$ 451,356

Other intangible assets consists of franchise agreements of \$67.1 million and customer relationships of \$34.3 million.

Operating lease right-of-use assets and lease liabilities consist of leases for retail store locations, warehouses and office equipment. Operating lease right-of-use assets incorporates a favorable adjustment of \$12.4 million, net for favorable and unfavorable Pet Supplies Plus real estate leases (as compared to prevailing market rates) which will be amortized over the remaining lease terms.

Property, equipment and software, net consists of fixtures and equipment of \$37.0 million, leasehold improvements of \$33.5 million, construction in progress of \$3.5 million and financing leases of \$1.7 million.

Other non-current assets includes \$0.4 million of restricted cash.

### Wag N' Wash Acquisition

On February 22, 2022, the Company's Pet Supplies Plus segment completed the acquisition of Wag N' Wash ("Wag N' Wash Acquisition"), an emerging natural pet food, self-wash, and grooming franchise, for an all cash purchase price of \$0.9 million, and five of the Wag N' Wash stores were subsequently sold to a franchisee for \$0.6 million. The Company expects to complete the purchase price allocation as soon as reasonably possible but not to exceed one year from the date of completion of

the Wag N' Wash Acquisition. The components of the purchase price allocation are not presented herein due to the immateriality of the transaction to the Company overall.

**Pro forma financial information**

The following unaudited consolidated pro forma summary has been prepared by adjusting the Company's historical data to give effect to the Acquisitions as if they had occurred on December 25, 2021.

(In thousands)	Pro forma (Unaudited)	
	Three Months Ended	
	March 26, 2022	March 27, 2021
Revenue	\$ 1,135,469	\$ 1,052,002
Net income	12,366	55,276
Basic net income per share	\$ 0.31	\$ 1.38
Diluted net income per share	\$ 0.30	\$ 1.35

These unaudited pro forma results include adjustments such as inventory step-up, amortization of acquired intangible assets, depreciation of acquired property, equipment, and software and interest expense on debt financing in connection with the Acquisitions. Material, nonrecurring pro forma adjustments directly attributable to the Acquisitions include:

- Acquired inventory step-up to its fair value of \$2.3 million is assumed to be recorded in the first quarter of 2020 and therefore removed from the three months ended March 27, 2021.
- Acquisition transaction related costs of \$4.9 million that were incurred during the three months ended March 27, 2021 are assumed to have occurred on the pro forma close date of January 1, 2020, and recognized as if incurred in the first quarter of 2020.

The unaudited consolidated pro forma financial information was prepared in accordance with GAAP and is not necessarily indicative of the results of operations that would have occurred if the Acquisitions had been completed on the date indicated, nor is it indicative of the future operating results of the Company.

The unaudited pro forma results do not reflect events that either have occurred or may occur after the Acquisitions, including, but not limited to, the anticipated realization of operating synergies in subsequent periods. They also do not give effect to certain charges that the Company expects to incur in connection with the acquisition, including, but not limited to, additional professional fees and employee integration.

**(3) Discontinued Operations and Assets Held for Sale**

**Liberty Tax Divestiture**

On July 2, 2021, the Company completed the sale of its Liberty Tax business (the "Liberty Transaction") to NextPoint Acquisition Corp. ("Next Point") and received total consideration of approximately \$255.3 million, consisting of approximately \$181.2 million in cash and approximately \$74.1 million in proportionate voting shares of NextPoint recorded as an investment in equity securities in "Investment in equity securities" on the Condensed Consolidated Balance Sheets. As a result of the Liberty Transaction, the financial position and results of operations of the Liberty Tax business are presented as discontinued operations and, as such, have been excluded from continuing operations and segment results for the three months ended March 27, 2021.

The following is a Condensed Consolidated Statement of Operations for the Liberty Tax business. The amounts are included in "Income (loss) from discontinued operations, net of tax" in the Company's Condensed Consolidated Statements of Operations.

(In thousands)	Three Months Ended	
	March 26, 2022	March 27, 2021
Revenue	\$ —	\$ 76,480
Selling, general, and administrative expenses	—	34,061
Income from operations	—	42,419
Other expense:		
Other	—	153
Interest expense, net	—	(11)
Income before income taxes	—	42,561
Income tax expense	—	414
Net income attributable to discontinued operations	\$ —	\$ 42,147

The following is the operating and investing activities for the Liberty Tax business. These amounts are included in the Company's Condensed Consolidated Statement of Cash Flows.

(In thousands)	Three Months Ended	
	March 26, 2022	March 27, 2021
Cash flows provided by operating activities from discontinued operations	\$ —	\$ 15,787
Cash flows provided by investing activities from discontinued operations	\$ —	\$ 2,058

#### Assets Held for Sale

As of March 26, 2022, the Company's Badcock segment was negotiating sale-leaseback transactions for retail locations, distribution centers, and its corporate headquarters. The net book value of the properties of \$203.7 million is classified as "Current assets held for sale" on the Condensed Consolidated Balance Sheets. The retail locations, distribution centers, and corporate headquarters are classified as assets held for sale as the Company is presently in active negotiations and the assets are expected to be sold within a year. The sale of the retail locations was completed on March 31, 2022 for net proceeds of \$94.0 million. Purchases and sale agreements for the distribution centers for net proceeds of \$150.0 million and the headquarters for net proceeds of \$18.5 million were entered into on April 15, 2022 and April 26, 2022, respectively. The sales of the distribution centers and headquarters are expected to close during the second quarter of fiscal year 2022, at which time a corresponding operating lease right of use asset and operating lease liability will be recorded to the Condensed Consolidated Balance Sheets for the transactions.

#### (4) Accounts and Notes Receivable

Current and non-current receivables as of March 26, 2022 and December 25, 2021 are presented in the Condensed Consolidated Balance Sheets as follows:

(In thousands)	March 26, 2022	December 25, 2021
Accounts receivable	\$ 82,848	\$ 86,087
Notes receivable	1,506	1,681
Interest receivable	55	54
Income tax receivable	27,149	32,448
Allowance for doubtful accounts	(1,190)	(1,572)
Current receivables, net	110,368	118,698
Notes receivable, non-current	11,580	12,183
Allowance for doubtful accounts, non-current	(424)	(428)
Non-current receivables, net	11,156	11,755
Total receivables	\$ 121,524	\$ 130,453

Notes receivable are due from the Company's franchisees and are collateralized by the underlying franchise. The debtors' ability to repay the notes is dependent upon both the performance of the franchisee's industry as a whole and the individual franchise areas.

#### *Secured Borrowing Accounting*

On December 20, 2021, Badcock entered into a Master Receivables Purchase Agreement (the "Receivables Purchase Agreement") with B. Riley Receivables, LLC (the "Purchaser") and consummated the sale to the Purchaser of the existing consumer credit receivables portfolio of Badcock as of December 15, 2021 for a purchase price of \$400.0 million in cash and the sale of additional receivables for up to 90 days after the signing of the Receivables Purchase Agreement. In connection with the Receivables Purchase Agreement, Badcock entered into a Servicing Agreement (the "Servicing Agreement") with the Purchaser pursuant to which Badcock will provide to the Purchaser certain customary servicing and account management services in respect of the receivables purchased by the Purchaser under the Receivables Purchase Agreement.

As a result of the transaction, the Company's Badcock segment sold beneficial interests in revolving lines of credit that it originated. The sales of the beneficial interests in the revolving lines of credit are accounted for as secured borrowings on our Condensed Consolidated Balance Sheets, with both assets and non-recourse liabilities, since the sales do not qualify as a sale under ASC 860 - "Transfers and Servicing," even though the underlying receivables are deemed to be legally sold. The income earned on the securitized revolving lines of credit is recorded as interest income in "Service and other revenues" and the accretion of the securitized debt is recorded in "Interest expense, net" on the Condensed Consolidated Statements of Operations.

Current securitized receivables, net includes \$463.3 million of securitized receivables and an unamortized discount of \$76.4 million. Non-current securitized receivables, net includes \$57.9 million of securitized receivables and an unamortized discount of \$9.6 million.

## (5) Goodwill and Intangible Assets

The Company performs impairment tests for goodwill as of the end of July of each fiscal year and between annual impairment tests if an event occurs or circumstances change that would more likely than not reduce the fair values of the Company's reporting units below their carrying values. There are no accumulated goodwill impairment losses recorded.

Changes in the carrying amount of goodwill for the three months ended March 26, 2022 are as follows:

	Vitamin Shoppe	Pet Supplies Plus	American Freight	Buddy's	Sylvan	Total
Balance as of December 25, 2021	\$ 1,277	\$ 335,875	\$ 370,829	\$ 79,099	\$ 19,456	\$ 806,536
Acquisitions	—	937	—	—	—	937
Disposals and purchase accounting adjustments	—	(726)	—	—	(50)	(776)
Balance as of March 26, 2022	<u>\$ 1,277</u>	<u>\$ 336,086</u>	<u>\$ 370,829</u>	<u>\$ 79,099</u>	<u>\$ 19,406</u>	<u>\$ 806,697</u>

Components of intangible assets as of March 26, 2022 and December 25, 2021 were as follows:

(In thousands)	March 26, 2022		
	Gross carrying amount	Accumulated amortization	Net carrying amount
Indefinite lived tradenames	\$ 222,687	\$ —	\$ 222,687
Intangible assets			
Franchise and dealer agreements	\$ 95,865	\$ (8,379)	\$ 87,486
Customer contracts	42,414	(6,128)	36,286
Other intangible assets	1,929	(479)	1,450
Total intangible assets	<u>\$ 140,208</u>	<u>\$ (14,986)</u>	<u>\$ 125,222</u>

(In thousands)	December 25, 2021		
	Gross carrying amount	Accumulated amortization	Net carrying amount
Indefinite lived tradenames	\$ 222,687	\$ —	\$ 222,687
Intangible assets			
Franchise and dealer agreements	\$ 95,865	\$ (6,571)	\$ 89,294
Customer contracts	42,414	(5,215)	37,199
Other intangible assets	1,836	(378)	1,458
Total intangible assets	<u>\$ 140,115</u>	<u>\$ (12,164)</u>	<u>\$ 127,951</u>

## (6) Revenue

For details regarding the principal activities from which the Company generates its revenue, see "Note 1. Description of Business and Summary of Significant Account Policies Presentation" in the Form 10-K. For more detailed information regarding reportable segments, see "Note 13. Segments" in this Quarterly Report. The following represents the disaggregated revenue by reportable segments for the three months ended March 26, 2022:

(In thousands)	March 26, 2022							Consolidated
	Vitamin Shoppe	Pet Supplies Plus	Badcock	American Freight	Buddy's	Sylvan	Three Months Ended	
Retail sales	\$ 310,430	\$ 162,549	\$ 166,642	\$ 211,513	\$ 1,070	\$ 11	\$ 852,215	
Wholesale sales	175	123,232	—	3,542	—	—	126,949	
<b>Total product revenue</b>	<b>310,605</b>	<b>285,781</b>	<b>166,642</b>	<b>215,055</b>	<b>1,070</b>	<b>11</b>	<b>979,164</b>	
Royalties and other franchise based fees	134	9,062	—	548	4,824	9,509	24,077	
Financing revenue	—	—	—	8,175	—	—	8,175	
Interest income	—	73	65,269	195	—	—	65,537	
Warranty and damage revenue	—	—	13,546	11,479	1,604	—	26,629	
Other revenues	214	6,298	10,802	5,964	63	523	23,864	
<b>Total service revenue</b>	<b>348</b>	<b>15,433</b>	<b>89,617</b>	<b>26,361</b>	<b>6,491</b>	<b>10,032</b>	<b>148,282</b>	
Rental revenue, net	—	—	—	—	8,024	—	8,024	
<b>Total rental revenue</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>8,024</b>	<b>—</b>	<b>8,024</b>	
<b>Total revenue</b>	<b>\$ 310,953</b>	<b>\$ 301,214</b>	<b>\$ 256,259</b>	<b>\$ 241,416</b>	<b>\$ 15,585</b>	<b>\$ 10,043</b>	<b>\$ 1,135,470</b>	

The following represents the disaggregated revenue by reportable segments for the three months ended March 27, 2021:

(In thousands)	March 27, 2021					Consolidated
	Vitamin Shoppe	Pet Supplies Plus †	American Freight	Buddy's	Three Months Ended	
Retail sales	\$ 294,739	\$ 31,365	\$ 239,058	\$ 1,368	\$ 566,529	
Wholesale sales	—	17,287	—	—	17,287	
<b>Total product revenue</b>	<b>294,739</b>	<b>48,652</b>	<b>239,058</b>	<b>1,368</b>	<b>583,836</b>	
Royalties and other franchise based fees	—	1,390	—	4,555	5,945	
Financing revenue	—	—	8,579	—	8,579	
Interest income	—	13	295	—	308	
Warranty and damage revenue	—	—	6,397	1,806	8,203	
Other revenues	—	1,254	4,188	98	5,840	
<b>Total service revenue</b>	<b>—</b>	<b>2,657</b>	<b>19,459</b>	<b>6,459</b>	<b>28,635</b>	
Rental revenue, net	—	—	—	8,953	8,953	
<b>Total rental revenue</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>8,953</b>	<b>8,953</b>	
<b>Total revenue</b>	<b>\$ 294,739</b>	<b>\$ 51,309</b>	<b>\$ 258,517</b>	<b>\$ 16,780</b>	<b>\$ 621,331</b>	

† Reflects the results from the March 10, 2021 acquisition date.

### Contract Balances

The following table provides information about receivables and contract liabilities (deferred revenue) from contracts with customers as of March 26, 2022 and December 25, 2021:

(In thousands)	March 26, 2022	December 25, 2021
Accounts Receivable	\$ 82,848	\$ 86,087
Notes receivable	1,505	13,864
Customer deposits	\$ 36,515	\$ 37,626
Gift cards and loyalty programs	8,417	7,604
Deferred franchise fee revenue	17,691	16,984
Other deferred revenue	10,134	8,400
Total deferred revenue	<u>\$ 72,757</u>	<u>\$ 70,614</u>

Deferred revenue for customer deposits, gift card or store credits outstanding, and loyalty reward program credits are generally recognized within one year following the revenue deferral. Deferred franchise fee revenue is recognized over the term of the agreement, which is generally between five and ten years.

### (7) Long-Term Obligations

For details regarding the Company's long-term debt obligations, refer to "Note 9. - Long-Term Obligations" in the Form 10-K.

Long-term obligations at March 26, 2022 and December 25, 2021 were as follows:

(In thousands)	March 26, 2022	December 25, 2021
Term loans, net of debt issuance costs		
First lien term loan, due March 10, 2026	\$ 791,461	\$ 790,057
Second lien term loan, due September 10, 2026	287,729	287,188
Badcock first lien term loan, due November 22, 2023	171,389	201,530
Badcock second lien term loan, due November 22, 2023	—	146,616
Total term loans, net of debt issuance costs	1,250,579	1,425,391
Revolving credit facilities	87,000	20,000
Debt securitized by accounts receivable, net of discount	422,053	407,502
Other long-term obligations	9,475	10,537
Finance lease liabilities	5,822	6,465
Total long-term obligations	1,774,929	1,869,895
Less current installments	487,957	486,170
Total long-term obligations, excluding current installments, net	<u>\$ 1,286,972</u>	<u>\$ 1,383,725</u>

The Badcock First and Second Lien Term Loans are classified as current in the Condensed Consolidated Balance Sheets as proceeds from the sale leaseback transactions of Badcock real estate will be used to repay the term loans. See "Note 3. - Discontinued Operations and Assets Held for Sale" in this Quarterly Report for details of the sale-leaseback transactions.

### Debt Related to the Securitization of Accounts Receivable

In December 2021, the Company's Badcock segment sold beneficial interests in the revolving lines of credit that it originated. The sales of the beneficial interests in the revolving lines of credit are accounted for as secured borrowings on our Condensed Consolidated Balance Sheets with both assets and non-recourse liabilities because the sales do not qualify as a sale under ASC 860 - "Transfers and Servicing," even though the underlying receivables are deemed to be legally sold. The income earned on the securitized revolving lines of credit is recorded as interest income in service and other revenues with a corresponding amount recorded in Interest expense, net on the Condensed Consolidated Statements of Operations.

Proceeds from secured borrowings issued in the securitization are accounted for as non-recourse notes payable. The Company's customers are responsible for repaying the debt from a secured borrowing, and the Company is not liable for the repayment of non-recourse loans unless representations or warranties in the loan agreements are breached. The lender assumes the credit risk and their only recourse, upon default by the customer, is against the customer.

Debt securitized by accounts receivable, net includes \$349.3 million of securitized debt and an unamortized discount of \$72.8 million. Current installments of debt securitized by accounts receivable, net includes \$256.6 million of securitized debt and an unamortized discount of \$53.5 million.

## **(8) Income Taxes**

### *Overview*

For the three months ended March 26, 2022 and March 27, 2021, the Company had an effective tax rate from continuing operations of 23.0% and 9.1%, respectively. The change in the effective tax rate compared to the prior year is due to the reversal of a valuation allowance related to net operating loss carryforwards in the prior year.

### *Tax Receivable Agreement*

On July 10, 2019, the Company entered into a tax receivable agreement with the then-existing non-controlling interest holders (the "Tax Receivable Agreement") that provides for the payment by the Company to the non-controlling interest holders of 40% of the cash savings, if any, in federal, state and local taxes that the Company realizes or is deemed to realize as a result of any increases in tax basis of the assets of Franchise Group New Holdco, LLC ("New Holdco") resulting from future redemptions or exchanges of New Holdco units.

Payments will be made when such Tax Receivable Agreement related deductions actually reduce the Company's income tax liability. No payments were made to members of New Holdco pursuant to the Tax Receivable Agreement during the quarter ended March 26, 2022. Pursuant to the Company's election under Section 754 of the Internal Revenue Code (the "Code"), the Company has obtained an increase in its share of the tax basis in the net assets of New Holdco when the New Holdco units were redeemed or exchanged by the non-controlling interest holders and other qualifying transactions. The Company has treated the redemptions and exchanges of New Holdco units by the non-controlling interest holders as direct purchases of New Holdco units for U.S. federal income tax purposes. This increase in tax basis will reduce the amounts that it would otherwise pay in the future to various tax authorities. They may also decrease gains (or increase losses) on future dispositions of certain capital assets to the extent tax basis is allocated to those capital assets.

## (9) Net Income (Loss) Per Share

Diluted net income (loss) per share is computed using the weighted-average number of common stock and, if dilutive, the potential common stock outstanding during the period. Potential common stock consists of the incremental common stock issuable upon the exercise of stock options and vesting of restricted stock units. The dilutive effect of outstanding stock options and restricted stock units is reflected in diluted earnings per share by application of the treasury stock method. Additionally, the computation of the diluted net income (loss) per share of common stock assumed the conversion of Preferred Stock, if dilutive.

The following table sets forth the calculations of basic and diluted net income (loss) per share:

(In thousands, except for share and per share amounts)	Three Months Ended	
	March 26, 2022	March 27, 2021
Net income (loss) from continuing operations attributable to Franchise Group	\$ 12,317	\$ (28,334)
Less: Preferred dividend declared	(2,128)	(2,129)
Adjusted net income (loss) from continuing operations available to Common Stockholders	10,189	(30,463)
Net income from discontinued operations attributable to Franchise Group	—	42,147
Adjusted net income (loss) available to Common Stockholders	\$ 10,189	\$ 11,684
Weighted-average common stock outstanding	40,307,412	40,110,084
Net dilutive effect of stock options and restricted stock	800,381	—
Weighted-average diluted shares outstanding	41,107,793	40,110,084
Basic net income (loss) per share:		
Continuing operations	\$ 0.25	\$ (0.76)
Discontinued operations	—	1.05
Basic net income per share	\$ 0.25	\$ 0.29
Diluted net income (loss) per share:		
Continuing operations	\$ 0.25	\$ (0.76)
Discontinued operations	—	1.05
Diluted net income per share	\$ 0.25	\$ 0.29

## (10) Stock Compensation Plans

For a discussion of our stock-based compensation plans, refer to "Note 11. - Stock Compensation Plans" of the Form 10-K.

### Restricted Stock Units

The Company has awarded service-based restricted stock units (the "RSUs") to its non-employee directors, officers and certain employees. The Company recognizes expense based on the estimated fair value of the RSUs granted over the vesting period on a straight-line basis. The fair value of RSUs is determined using the Company's closing stock price on the date of the grant. At March 26, 2022, unrecognized compensation costs related to the RSUs were \$8.8 million. These costs are expected to be recognized through fiscal year 2024.

The following table summarizes the status of the RSUs as of and changes during the three months ended March 26, 2022:

	Number of RSUs	Weighted average fair value at grant date
Balance as of December 25, 2021	269,708	\$ 27.
Granted	114,039	42.
Vested	(51,602)	41.
Canceled	—	
Balance as of March 26, 2022	<u>332,145</u>	<u>\$ 33.</u>

#### **Performance Restricted Stock Units**

The Company has awarded performance restricted stock units (the "PRSUs") to its officers and certain employees. The Company recognizes expense based on the estimated fair value of the PRSUs granted over the vesting period on a straight-line basis. The fair value of PRSUs is determined using the Company's closing stock price on the date of the grant. At March 26, 2022, unrecognized compensation costs related to the PRSUs were \$11.7 million. These costs are expected to be recognized through fiscal year 2024.

The following table summarizes the status of the PRSUs as of and changes during the three months ended March 26, 2022:

	Number of PRSUs	Weighted average fair value at grant date
Balance as of December 25, 2021	706,260	\$ 19.90
Granted	101,366	42.41
Vested	—	—
Canceled	—	—
Balance as of March 26, 2022	<u>807,626</u>	<u>\$ 22.72</u>

#### **Market-Based Performance Restricted Stock Units**

The Company has awarded market-based performance restricted stock units (the "MPRSUs") to its officers and certain employees. The Company recognizes expense based on the estimated fair value of the MPRSUs granted over the vesting period on a straight-line basis. The fair value of MPRSUs is determined using a Monte Carlo simulation valuation model to calculate grant date fair value. Compensation expense is recognized over the requisite service period using the proportionate amount of the award's fair value that has been earned through service to date. At March 26, 2022, unrecognized compensation costs related to the MPRSUs were \$15.2 million. These costs are expected to be recognized through fiscal year 2024.

The following table summarizes the status of the MPRSUs as of and changes during the three months ended March 26, 2022:

	Number of MPRSUs	Weighted average fair value at grant date
Balance as of December 25, 2021	826,926	\$ 20.13
Granted	70,000	39.67
Vested	—	—
Canceled	—	—
Balance as of March 26, 2022	<u>896,926</u>	<u>\$ 21.66</u>

## Stock Options

The Company has awarded stock options to its non-employee directors and officers. As of March 26, 2022 and March 27, 2021, there were 317,033 and 388,409 stock options outstanding, respectively. During the three months ended March 26, 2022, there were no stock options granted, 15,000 stock options exercised, and no stock options forfeited. The weighted-average exercise price of stock options outstanding was \$9.92 per share as of March 26, 2022. All outstanding stock options will expire in fiscal years 2023 and 2024.

At March 26, 2022 and March 27, 2021, there were zero and 63,334 non-vested stock options outstanding, respectively. At March 26, 2022, there was no remaining unrecognized compensation cost related to vested or non-vested stock options.

The following table summarizes information about stock options outstanding and exercisable at March 26, 2022:

Range of exercise prices	Options Outstanding and Exercisable		
	Number	Weighted average exercise price	Weighted average remaining contractual life (in years)
\$0.00 - \$10.89	204,500	\$ 8.80	1.3
\$10.90 - \$12.01	112,533	11.97	2.1
	<u>317,033</u>	<u>\$ 9.92</u>	

## Stock Compensation Expense

The Company recorded \$5.4 million and \$2.6 million during the three months ended March 26, 2022 and March 27, 2021, respectively.

The Company has stock based incentive plans at various operating companies which are recorded as liabilities. The total aggregate liability for these plans as of March 26, 2022 is \$2.6 million, recorded in "Accounts payable and accrued expenses" on the Condensed Consolidated Balance Sheets. During the three months ended March 26, 2022, total expense recognized related to these plans was \$1.2 million. Future expense to be recognized for these plans as of March 26, 2022 is \$21.5 million.

## (11) Related Party Transactions

The Company considers any of its directors, executive officers or beneficial owners of more than 5% of our common stock, or any member of the immediate family of the foregoing persons, to be related parties.

### Messrs. Kahn and Laurence

Brian Kahn and Vintage Capital Management, LLC and its affiliates ("Vintage"), in aggregate, held approximately 31% of the aggregate voting power of the Company through their ownership of common stock as of March 26, 2022. Brian Kahn and Andrew Laurence are principals of Vintage. Mr. Kahn is a member of the Board of Directors, President and Chief Executive Officer of the Company. Mr. Laurence is an Executive Vice President of the Company, served as a member of the Company's Board of Directors until the Company's annual meeting of stockholders in May 2021 and served as the Company's Chairman of the Board until March 31, 2020.

*Buddy's Franchises.* Mr. Kahn's brother-in-law owns seven Buddy's franchises. All transactions between the Company's Buddy's segment and Mr. Kahn's brother-in-law are conducted on a basis consistent with other franchisees.

### Tax Receivable Agreement

The Company previously had a non-controlling interest in New Holdco as a result of its acquisition of Buddy's on July 10, 2019. On April 1, 2020, the Company redeemed all of the non-controlling interest units. On July 10, 2019, the Company entered into the Tax Receivable Agreement with the then-existing non-controlling interest holders, which comprised the former equity holders of Buddy's (the "Buddy's Members") that provides for the payment by the Company to the non-controlling interest holders of 40% of the amount of any tax benefits that the Company actually realizes as a result of increases in the tax basis of the net assets of New Holdco resulting from any redemptions or exchanges of New Holdco units. Amounts due under

the Tax Receivable Agreement to the Buddy's Members as of March 26, 2022 were \$17.3 million which is recorded in "Other non-current liabilities" in the accompanying Condensed Consolidated Balance Sheets. No payments were made to Buddy's Members pursuant to the Tax Receivable Agreement during the three months ended March 26, 2022.

## **(12) Commitments and Contingencies**

In the ordinary course of operations, the Company may become a party to legal proceedings. Based upon information currently available, management believes that such legal proceedings, individually or in the aggregate, will not have a material adverse effect on the Company's business, financial condition, cash flows, or results of operations.

The Company is party to claims and lawsuits that are considered to be ordinary, routine litigation incidental to the business, including claims and lawsuits concerning the fees charged to customers for various products and services, relationships with franchisees, intellectual property disputes, employment matters, and contract disputes. Although the Company cannot provide assurance that it will ultimately prevail in each instance, it believes the amount, if any, it will be required to pay in the discharge of liabilities or settlements in these claims will not have a material adverse impact on its consolidated results of operations, financial position, or cash flows.

### ***Guarantees***

The Company remains secondarily liable under various real estate leases that were assigned to franchisees who acquired Pet Supplies Plus stores from the Company. In the event of the failure of an acquirer to pay lease payments, the Company could be obligated to pay the remaining lease payments which extend through 2033 and in aggregate are \$25.4 million and \$22.9 million as of March 26, 2022 and December 25, 2021, respectively. If the Company is required to make payments under these guarantees, the Company could seek to recover those amounts from the franchisees or in some cases their affiliates. The Company believes that payment under these guarantees is remote as of March 26, 2022.

## **(13) Segments**

The Company's operations are conducted in six reportable business segments: Vitamin Shoppe, Pet Supplies Plus, Badcock, American Freight, Buddy's, and Sylvan. The Company defines its segments as those operations which results its chief operating decision maker ("CODM") regularly reviews to analyze performance and allocate resources. The results of operations of Pet Supplies Plus are included in the Company's results of operations beginning on March 11, 2021, the results of operations of Sylvan are included in the Company's results of operations beginning on September 27, 2021, and the results of operations of Badcock are included in the Company's results of operations beginning on November 22, 2021.

The Vitamin Shoppe segment is an omnichannel specialty retailer and wellness lifestyle company with the mission of providing customers with the most trusted products, guidance, and services to help them become their best selves, however they define it. The Vitamin Shoppe segment offers one of the largest varieties of products among vitamin, mineral and supplement retailers. The broad product offering enables the company to provide customers with a depth of selection of products that may not be readily available at other specialty retailers or mass merchants, such as discount stores, supermarkets, drug stores and wholesale clubs. The Vitamin Shoppe continues to focus on improving the customer experience through the roll-out of initiatives including increasing customer engagement and personalization, redesigning the omnichannel experience (including in stores as well as through the internet and mobile devices), growing private brands and improving the effectiveness of pricing and promotions. Vitamin Shoppe is headquartered in Secaucus, New Jersey.

The Pet Supplies Plus segment is a leading omnichannel retail chain and franchisor of pet supplies and services. Pet Supplies Plus has a diversified revenue model comprised of Company-owned store revenue, franchise royalties and revenue generated by the wholesale distribution of products to its franchisees. Pet Supplies Plus offers a curated selection of premium brands, proprietary private labels and specialty products with retail price parity with online players. Additionally, Pet Supplies Plus offers grooming, pet wash and other services in most of its locations. The Pet Supplies Plus segment operates under the "Pet Supplies Plus" brand and is headquartered in Livonia, Michigan.

The Badcock segment is a specialty retailer of furniture, appliances, bedding, electronics, home office equipment, accessories and seasonal items in a showroom format. Additionally, Badcock offers multiple and flexible payment solutions and credit options through its consumer financing services. Badcock expects to shift its consumer financing business to third-party vendors in the future. The Badcock segment operates under the "Badcock Home Furniture & More" brand and is headquartered in Mulberry, Florida.

The American Freight segment is a retail chain offering in-store and online access to furniture, mattresses, new and out-of-box home appliances and home accessories at discount prices. American Freight buys direct from manufacturers and sells direct in warehouse-style stores. By cutting out the middleman and keeping its overhead costs low, American Freight can offer quality products at low prices. American Freight provides customers with multiple payment options providing access to high-quality products and brand name appliances that may otherwise remain aspirational to some of its customers.

American Freight also serves as a liquidation channel for major appliance vendors. American Freight operates specialty distribution centers that test every out-of-box appliance before it is offered for sale to customers. Customers typically are covered by the original manufacturer's warranty and are offered the opportunity to purchase a full suite of extended-service plans and services. The American Freight segment operates under the "American Freight" brand and is headquartered in Delaware, Ohio.

The Buddy's segment is a specialty retailer of high quality, name brand consumer electronic, residential furniture, appliances and household accessories through rent-to-own agreements. The rental transaction allows customers the opportunity to benefit from the use of high-quality products under flexible rental purchase agreements without long-term obligations. The Buddy's segment operates under the "Buddy's" brand and is headquartered in Orlando, Florida.

The Sylvan segment is an established and growing franchisor of supplemental education for Pre-K-12 students and families. Sylvan addresses the full range of student needs with a broad variety of academic curriculums delivered in an omnichannel format. The Sylvan platform provides franchisees with the ability to provide a range of services, including on premises, virtually, at a satellite location, and in the home. Sylvan is headquartered in Hunt Valley, Maryland.

Total revenues by segment were as follows:

(In thousands)	Three Months Ended	
	March 26, 2022	March 27, 2021
Total revenue:		
Vitamin Shoppe	\$ 310,953	\$ 294,739
Pet Supplies Plus	301,214	51,309
Badcock	256,259	—
American Freight	241,416	258,517
Buddy's	15,585	16,780
Sylvan	10,043	—
Consolidated total revenue	<u>\$ 1,135,470</u>	<u>\$ 621,345</u>

Operating income (loss) by segment were as follows:

(In thousands)	Three Months Ended	
	March 26, 2022	March 27, 2021
Income (loss) from operations:		
Vitamin Shoppe	\$ 35,354	\$ 33,275
Pet Supplies Plus	17,021	(4,169)
Badcock	70,230	—
American Freight	11,213	25,130
Buddy's	4,065	4,273
Sylvan	948	—
Total Segments	138,831	58,509
Corporate	(8,465)	(5,533)
Consolidated income (loss) from operations	<u>\$ 130,366</u>	<u>\$ 52,976</u>

Total assets by segment were as follows:

(In thousands)	March 26, 2022	December 25, 2021
Total assets:		
Vitamin Shoppe	\$ 623,609	\$ 596,964
Pet Supplies Plus	952,324	957,849
Badcock	923,710	1,062,310
American Freight	1,002,638	959,282
Buddy's	143,527	146,033
Sylvan	102,063	103,850
Total Segments	3,747,871	3,826,288
Corporate	105,538	86,883
Consolidated total assets	<u>\$ 3,853,409</u>	<u>\$ 3,913,171</u>

#### (14) Subsequent Events

On March 31, 2022, the Company completed the sale-leaseback of 35 retail Badcock locations for gross proceeds of approximately \$94.0 million. The Company used \$70.2 million of the proceeds to pay down the Badcock First Lien Term Loan.

On April 15, 2022, the Company entered into a Purchase and Sale Agreement for the sale of certain parcels of land on which the Badcock segment operates its distribution centers and is entitled to receive approximately \$150.0 million in cash at closing, subject to certain adjustments. The Company anticipates using most of the proceeds from the sale to repay a portion of its existing indebtedness.

On April 26, 2022, the Company entered into a Purchase and Sale Agreement for the sale of the Badcock segment's corporate headquarters and is entitled to receive approximately \$18.5 million in cash at closing, subject to certain adjustments. The Company anticipates using most of the proceeds from the sale to repay a portion of its existing indebtedness.

## ITEM 2

### MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

#### Special Note Regarding Forward-Looking Statements

This quarterly report contains forward-looking statements concerning our business, operations, and financial performance and condition as well as our plans, objectives, and expectations for our business operations and financial performance and condition. Any statements contained herein that are not of historical facts may be deemed to be forward-looking statements. You can identify these statements by words such as "aim," "anticipate," "assume," "believe," "could," "due," "estimate," "expect," "goal," "intend," "may," "objective," "plan," "predict," "potential," "positioned," "should," "target," "will," "would," and other similar expressions that are predictions of or indicate future events and future trends. These forward-looking statements are based on current expectations, estimates, forecasts, and projections about our business and the industry in which we operate and our management's beliefs and assumptions. They are not guarantees of future performance or development and involve known and unknown risks, uncertainties, and other factors that are in some cases beyond our control. Additionally, other factors may cause actual results to differ materially from historical results or from any results expressed or implied by such forward-looking statements. Factors that may cause such differences include, but are not limited to, the risks described under "Item 1A-Risk Factors," including:

- the uncertainty of the future impact of the COVID-19 pandemic and public health measures on our business and results of operations;
- the effect of steps we take in response to the COVID-19 pandemic, the severity and duration of the pandemic, new variants of COVID-19 that have emerged, and the speed and efficacy of vaccine and treatment developments, the pace of recovery when the pandemic subsides and the heightened impact it has on many of the risks described herein and in our other filings with the SEC;
- potential regulatory actions relating to the COVID-19 pandemic and the related government mitigation efforts on our business and our financial results;
- the risk that natural disasters, public health crises, political uprisings, uncertainty or unrest, or other catastrophic events could adversely affect our operations and financial results, including the impact of the COVID-19 pandemic on manufacturing operations and our supply chain, customer traffic and our operations in general;
- the possibility that any of the anticipated benefits of our acquisitions will not be realized or will not be realized within the expected time period, our businesses and our acquisitions may not be integrated successfully or such integration may be more difficult, time-consuming or costly than expected, or revenues following our acquisitions may be lower than expected;
- our inability to grow on a sustainable basis;
- changes in operating costs, including employee compensation and benefits;
- higher inflation rates;
- the seasonality of the products and services we provide in certain of our business segments;
- departures of key executives, senior management members or directors;
- our ability to attract additional talent to our teams;
- our ability to maintain an active trading market for our common stock on The Nasdaq Global Market ("Nasdaq");
- the effect of regulation of the products and services that we offer, including changes in laws and regulations and the costs and administrative burdens associated with complying with such laws and regulations;
- our ability to develop and maintain relationships with our third-party product and service providers;

- our ability to offer merchandise and services that our customers demand;
- our ability to successfully manage our inventory levels and implement initiatives to improve inventory management and other capabilities;
- competitive conditions in the retail industry and consumer services markets;
- the performance of our products within the prevailing industry;
- worldwide economic conditions and business uncertainty, the availability of consumer and commercial credit, change in consumer confidence, tastes, preferences and spending, and changes in vendor relationships;
- disruption of manufacturing, warehouse or distribution facilities or information systems;
- the continued reduction of our competitors promotional pricing on new-in-box appliances, potentially adversely impacting our sales of out-of-box appliances and associated margin;
- any potential non-compliance, fraud or other misconduct by our franchisees, dealers, or employees;
- our ability and the ability of our franchisees and dealers to comply with legal and regulatory requirements;
- failures by our franchisees, the franchisees' employees, and our dealers to comply with their contractual obligations to us and with laws and regulations, to the extent these failures affect our reputation or subject us to legal risk;
- the ability of our franchisees and dealers to open new territories and operate them successfully;
- the availability of suitable store locations at appropriate lease terms;
- the ability of our franchisees and dealers to generate sufficient revenue to repay their indebtedness to us;
- our ability to manage Company-owned stores;
- our exposure to litigation and any governmental investigations;
- our ability and our franchisees' and dealers' ability to protect customers' personal information, including from a cyber-security incident;
- the impact of identity-theft concerns on customer attitudes toward our services;
- our ability to access the credit markets and satisfy our covenants to lenders;
- our operating subsidiary's potential repurchase of certain finance receivables if certain representations and warranties about the quality and nature of such receivables are breached, which may negatively impact our results of operations, financial condition, and liquidity;
- a decline in the credit quality of our customers, a decrease in our credit sales, or other factors outside of our control, which could lead to a decrease in our product sales and profitability;
- our reliance on technology systems and electronic communications;
- the impact of any acquisitions or dispositions, including our ability to integrate acquisitions and capitalize on their anticipated synergies or our ability to sale non-core assets including the anticipated benefits; and
- other factors, including the risk factors discussed in this quarterly report.

Potential investors and other readers are urged to consider these factors carefully in evaluating the forward-looking statements and are cautioned not to place undue reliance on the forward-looking statements. These forward-looking statements speak only as of the date of this quarterly report. Unless required by law, we do not intend to publicly update or revise any

forward-looking statements to reflect new information or future events or otherwise. A potential investor or other vendor should, however, review the factors and risks we describe in the reports we will file from time to time with the U.S. Securities and Exchange Commission ("SEC") after the date of this quarterly report.

## **Overview**

We are an owner and operator of franchised and franchisable businesses that continually looks to grow our portfolio of brands while utilizing our operating and capital allocation philosophies to generate strong cash flows. We have a diversified and growing portfolio of highly recognized brands. Our asset-light business model is designed to generate consistent, recurring revenue and strong operating margins and requires limited maintenance capital expenditures. As a multi-brand operator, we continually look to diversify and grow our portfolio of brands either through acquisition or organic brand development. Our acquisition strategy typically targets businesses that are highly cash flow generative with compelling unit economics that can be scaled by adding franchise and company owned units, or that can be restructured to enhance performance and value to Franchise Group. We strive to create value for our stockholders by generating free cash flow and capital-efficient growth across economic cycles.

Our business lines include The Vitamin Shoppe ("Vitamin Shoppe"), Pet Supplies Plus, Badcock Home Furniture & More ("Badcock"), American Freight, Buddy's Home Furnishings ("Buddy's"), and Sylvan Learning ("Sylvan"). Refer to "Note 13. Segments" for additional information.

Our revenue is primarily derived from merchandise sales, lease revenue, financing revenues, royalties and other required fees from our franchisees.

In evaluating our performance, management focuses on Adjusted EBITDA as a measure of the cash flow from recurring operations from the businesses. Adjusted EBITDA represents net income (loss), before income taxes, interest expense, depreciation and amortization, and certain other items.

## **Impact of COVID-19**

As of the date of this Quarterly Report, we have not experienced a significant negative impact on our sales and profitability due to the COVID-19 pandemic. However, the COVID-19 pandemic could negatively impact our business and financial results by weakening demand for our products and services, interfering with our ability and our franchisees' ability to operate store locations, disrupting our supply chain or affecting our ability to raise capital from financial institutions. As events are rapidly changing, we are unable to accurately predict the impact that the COVID-19 pandemic will have on our results of operations due to uncertainties including, but not limited to, the curtailing of government stimulus programs, the duration of shutdowns, quarantines and travel restrictions, the severity of the disease, the duration of the outbreak and the public's response to the outbreak; however, we are actively managing our business to respond to the impact.

## Results of Operations

The table below shows results of operations for the three months ended March 26, 2022 and March 27, 2021.

(In thousands)	Three Months Ended			
	March 26, 2022	March 27, 2021	Change	
			\$	%
Total revenues	\$ 1,135,470	\$ 621,345	\$ 514,125	82.7 %
Income from operations	130,366	52,976	77,390	146.1 %
Net income	\$ 12,317	\$ (28,334)	\$ 40,651	143.5 %

*Revenues.* The table below sets forth the components and changes in our revenues for the three months ended March 26, 2022 and March 27, 2021.

(In thousands)	Three Months Ended			
	March 26, 2022	March 27, 2021	Change	
			\$	%
Product	\$ 979,164	\$ 583,816	\$ 395,348	67.7 %
Service and other	148,282	28,576	119,706	418.9 %
Rental	8,024	8,953	(929)	(10.4)%
Total revenue	\$ 1,135,470	\$ 621,345	\$ 514,125	82.7 %

For the three months ended March 26, 2022, total revenues increased \$514.1 million, or 83%, to \$1,135.5 million compared to \$621.3 million in the same period last year. This increase was primarily due to the Pet Supplies Plus Acquisition, which increased revenue by \$249.9 million, the Badcock Acquisition, which increased revenue by \$256.3 million, and the Sylvan Acquisition, which increased revenue by \$10.0 million. The increase was also due to a \$16.2 million increase in revenue at our Vitamin Shoppe segment. These increases were offset by a \$17.1 million decrease in revenue at our American Freight segment.

*Operating expenses.* The following table details the amounts and changes in our operating expenses for the three months ended March 26, 2022 and March 27, 2021.

(In thousands)	Three Months Ended			
	March 26, 2022	March 27, 2021	Change	
			\$	%
Cost of revenue:				
Product	\$ 616,585	339,414	\$ 277,171	81.7 %
Service and other	8,663	405	8,258	2,039.0 %
Rental	2,861	3,005	(144)	(4.8)%
Total cost of revenue	628,109	342,824	285,285	83.2 %
Selling, general, and administrative expenses	376,995	225,545	151,450	67.1 %
Total operating expenses	\$ 1,005,104	\$ 568,369	\$ 436,735	76.8 %

For the three months ended March 26, 2022, total operating expenses were \$1,005.1 million compared to \$568.4 million in the same period last year, representing an increase of \$436.7 million, or 76.8%. This increase was primarily due to the Pet Supplies Plus Acquisition which increased operating expenses by \$228.7 million, the Badcock Acquisition, which increased operating expenses by \$186.0 million, and the Sylvan Acquisition, which increased operating expenses by \$9.1 million. The increase was also due to \$14.1 million increase in operating expenses at our Vitamin Shoppe segment.

Non-operating income (expense) increased \$30.2 million due to the following:

*Bargain purchase gain.* Bargain purchase gain increased \$0.1 million for the three months ended March 26, 2022 compared to the same period last year due to an adjustment made to the preliminary estimates of the fair value of identifiable assets acquired and liabilities assumed in the Badcock Acquisition.

*Other.* Other expense decreased \$14.7 million for the three months ended March 26, 2022 compared to the same period last year primarily due to a prepayment penalty in the prior period of \$36.7 million from the repayment of the Franchise Group New Holdco Term Loan and ABL Term Loan, partially offset by a \$23.7 million loss related to our investment in NextPoint in the three months ended March 26, 2022.

*Interest expense, net.* Interest expense, net increased \$44.9 million for the three months ended March 26, 2022, due to \$65.3 million of interest expense related to the Badcock securitized receivables, the write-off of \$0.3 million of deferred financing costs from the \$31.0 million principal payment of the First Lien Badcock Term Loan, and the write-off of \$3.5 million of deferred financing costs from the \$150.0 million principal payment and termination of the Second Lien Badcock Term Loan.

*Income tax benefit.* Our effective tax rate from continuing operations, including discrete income tax items, was 23.0% and 9.1% for the three months ended March 26, 2022 and March 27, 2021, respectively. The change in the effective tax rate compared to the prior year is due to the reversal of a valuation allowance related to net operating loss carryforwards in the prior year.

#### Segment Information

We, through our franchisees and Company-owned stores, operate a system of rent-to-own and point of sale retail locations. Our operations are conducted in six reporting business segments: Vitamin Shoppe, Badcock, Pet Supplies Plus, American Freight, Buddy's, and Sylvan. Refer to "Note 13. Segments" for additional information. Because the Pet Supplies Plus Acquisition occurred on March 10, 2021, comparable information is not useful as the prior year period does not include a full quarter of activity. Because the Sylvan and Badcock Acquisitions occurred on September 27, 2021 and November 22, 2021, respectively; no comparable information is available. Therefore, Pet Supplies Plus, Sylvan, and Badcock information is not provided in this discussion.

The following table summarizes the operating results of our Vitamin Shoppe segment:

(In thousands)	Three Months Ended				
			Change		
	March 26, 2022	March 27, 2021	\$	%	
Total revenues	\$ 310,953	\$ 294,739	\$ 16,214	5.5 %	
Operating expenses	275,599	261,464	14,135	5.4 %	
Segment income	\$ 35,354	\$ 33,275	\$ 2,079	6.2 %	

Total revenue for the three months ended March 26, 2022 for our Vitamin Shoppe segment increased \$16.2 million or 5.5% compared to the same period in the prior year. The increase in revenue was primarily due to a 6.1% increase in comparable store sales driven primarily by an increase in customer traffic in the retail stores, new product launches and price increases due to higher vendor costs.

Operating expenses for our Vitamin Shoppe segment increased \$14.1 million or 5.4% for the three months ended March 26, 2022 as compared to the same period in the prior year. The increases in operating expenses were primarily due to the following:

- a \$12.6 million increase in cost of revenue due to a corresponding increase in revenue and a shift in the product mix; and
- a \$2.8 million increase in employee compensation and benefits related to variable payroll costs and higher healthcare costs.

The following table summarizes the operating results of the American Freight segment:

(In thousands)	Three Months Ended				
	March 26, 2022	March 27, 2021	Change		
			\$	%	
Total revenues	\$ 241,416	\$ 258,517	\$ (17,101)	(6.6)%	
Operating expenses	230,203	233,387	(3,184)	(1.4)%	
Segment income	11,213	\$ 25,130	\$ (13,917)	(55.4)%	

Total revenue for our American Freight segment decreased \$17.1 million or (6.6)% for the three months ended March 26, 2022 as compared to the same period last year. The decrease was attributable to a decrease in comparable store sales due to lower demand for furniture and appliances driven by government stimulus programs in the prior year period and the inflationary environment which resulted in reduced customer traffic.

Operating expenses for our American Freight segment decreased \$3.2 million or (1.4)% for the three months ended March 26, 2022 as compared to the same period last year due to the decrease in commission based compensation.

The following table summarizes the operating results of the Buddy's segment:

(In thousands)	Three Months Ended				
	March 26, 2022	March 27, 2021	Change		
			\$	%	
Total revenues	\$ 15,585	\$ 16,780	\$ (1,195)	(7.1)%	
Operating expenses	11,520	12,507	(987)	(7.9)%	
Segment income	4,065	4,273	(208)	(4.9)%	

Total revenue for our Buddy's segment decreased \$1.2 million or (7.1)% for the three months ended March 26, 2022, as compared to the same period last year. The decrease in revenue was primarily attributable to the refranchising of eight Company-owned stores on August 25, 2021. Revenue for comparable stores for the three months ended March 26, 2022 increased from \$7.7 million to \$9.0 million compared to the same period last year.

Operating expenses for our Buddy's segment decreased \$1.0 million or (7.9)% for the three months ended March 26, 2022, as compared to the same period last year primarily due to the refranchising of eight Company-owned stores on August 21, 2021.

The Pet Supplies Plus Acquisition occurred on March 10, 2021. Because the Pet Supplies Plus Acquisition occurred during the three months ended March 27, 2021, all material income statement increases in the current period are due to the Pet Supplies Plus Acquisition.

#### Adjusted EBITDA

To provide additional information regarding our financial results, we have disclosed Adjusted EBITDA in the table below and within this Quarterly Report. Adjusted EBITDA represents net income (loss), before income taxes, interest expense, depreciation and amortization, and certain other items specified below. We have provided a reconciliation below of Adjusted EBITDA to net income (loss), the most directly comparable GAAP financial measure.

We have included Adjusted EBITDA in this Quarterly Report because we believe the presentation of this measure is useful to investors as a supplemental measure in evaluating the aggregate performance of our operating businesses and in comparing our results from period to period because it excludes items that we do not believe are reflective of our core or ongoing operating results. This measure is used by our management to evaluate performance and make resource allocation decisions each period. Adjusted EBITDA is also the primary operating metric used in the determination of executive management's compensation. In addition, a measure similar to Adjusted EBITDA is used in our credit facilities. Adjusted EBITDA is not a recognized financial measure under GAAP and may not be comparable to similarly-titled measures used by other companies in our industry. Adjusted EBITDA should not be considered in isolation from or as an alternative to net income (loss), operating income (loss), or any other performance measures derived in accordance with GAAP.

The following table presents a reconciliation of Adjusted EBITDA for each of the periods indicated.

(In thousands)	Reconciliation of Net Income to Adjusted EBITDA	
	Three Months Ended	
	March 26, 2022	March 27, 2021
Net income (loss) from continuing operations	\$ 12,317	\$ (28,334)
Add back:		
Interest expense	92,327	47,435
Income tax expense (benefit)	3,678	(2,851)
Depreciation and amortization	22,033	11,458
Total Adjustments	118,038	56,042
EBITDA	130,355	27,708
Adjustments to EBITDA		
Executive severance and related costs	96	510
Stock based compensation	6,626	2,436
Litigation costs and settlements	230	89
Corporate compliance costs	51	779
Store closures	933	222
Securitized receivables, net	(50,871)	—
Prepayment penalty on early debt repayment	—	36,726
Right-of-use asset impairment	375	—
Integration costs	464	3,123
Divestiture costs	(337)	342
Acquisition costs	626	7,230
Loss on investment in equity securities	23,723	—
Acquisition bargain purchase gain	67	—
Total Adjustments to EBITDA	(18,017)	51,457
Adjusted EBITDA	\$ 112,338	\$ 79,165

### Liquidity and Capital Resources

We believe that we have sufficient liquidity to support our ongoing operations and maintain a sufficient liquidity position to meet our obligations and commitments. Our liquidity plans are established as part of our financial and strategic planning processes and consider the liquidity necessary to fund our operating, capital expenditure and debt service needs.

We primarily fund our operations and acquisitions through operating cash flows and, as needed, a combination of borrowings under various credit agreements, availability under our revolving credit facilities and the issuance of equity securities. Cash generation can be subject to variability based on many factors, including seasonality and the effects of changes in end markets.

As of March 26, 2022, we have current installments of long-term obligations of \$488.0 million, of which is \$310.1 million in debt related to the securitization of accounts receivable, \$175.7 million in current term loans net of debt issuance costs, and \$2.1 million from finance leases. We expect these obligations can be serviced from our cash and cash equivalents, which were \$149.6 million as of March 26, 2022, and the proceeds from our Badcock segment's sale-leaseback transactions.

During the three months ended March 26, 2022, we executed three substantial transactions that will affect our liquidity and capital resources in future periods. For more details please see "Note 7. Long-Term Obligations":

- On December 27, 2021, we repaid \$31.0 million and \$150.0 million of principal on our First Lien Badcock Term Loan and Second Lien Badcock Term Loan, respectively, using cash proceeds from the Receivables Purchase Agreement. The repayment of the First Lien Badcock Term Loan satisfied the requirements for quarterly principal payments so no additional principal payments are due until the maturity of the loan. The repayment of the First Lien Badcock Term

Loan resulted in additional interest expense of \$0.3 million for the write-off of deferred financing costs. The repayment of the Second Lien Badcock Term Loan repaid the full outstanding balance of principal, which resulted in additional interest expense of \$3.5 million for the write-off of deferred financing costs.

- On January 1, 2022 and March 25, 2022, we drew \$17.0 million and \$50.0 million, respectively, on the senior secured revolving loan facility. The obligations of the Company under the Third Amended and Restated Loan and Security Agreement are secured by substantially all of the assets of the Company pursuant to the ABL Agreement and a Third Amended and Restated Pledge Agreement.

### **Sources and uses of cash**

*Operating activities.* In the three months ended March 26, 2022, net cash from operating activities decreased \$13.6 million compared to the same period in the prior year primarily due to a \$85.8 million increase in cash used for inventory and a \$21.2 million decrease in accounts receivable. This was partially offset by a \$40.5 million increase in accounts payable and accrued expenses and a \$47.6 million increase in cash income from operations. Cash net income represents net income adjusted for non-cash or non-operating activities such as depreciation and amortization, deferred financing cost amortization and the change in fair value of investment.

*Investing activities.* In the three months ended March 26, 2022, cash used in investing activities decreased \$459.4 million compared to the same period in the prior year. This decrease was primarily due to a reduction of \$459.8 million in cash used for acquisitions. This was partially offset by a \$2.3 million increase of proceeds received from the sale of property, plant, and equipment and a net \$4.6 million decrease in issuance of operating loans and payments received from franchisees.

*Financing activities.* In the three months ended March 26, 2022, cash provided by financing activities decreased \$622.3 million compared to the same period in the prior year. This decrease was due to a \$1,182.4 million decrease in proceeds from the issuance of debt, a \$79.5 million decrease in proceeds from the issuance of preferred stock and an increase of \$11.7 million for dividends paid. The decrease of cash provided by financing activities was partially offset by a \$564.5 million decrease in repayments of long-term obligations and a \$87.5 million decrease in payments for debt issuance costs.

### **Long-term debt borrowings**

For a description of our long-term debt borrowing refer to "Note 7. Long-Term Obligations".

### **Other factors affecting our liquidity**

*Tax Receivable Agreement.* We may be required to make payments under the Tax Receivable Agreement ("TRA Payments") to the former equity holders of Buddy's (the "Buddy's Members"). Under the terms of the Tax Receivable Agreement, we agreed to pay the Buddy's Members 40% of the cash savings, if any, in federal, state and local taxes that we realize or are deemed to realize as a result of any increases in tax basis of the assets of New Holdco resulting from future redemptions or exchanges of New Holdco units held by the Buddy's Members. Any future obligations and the timing of such payments under the Tax Receivable Agreement, however, are subject to several factors, including (i) the timing of subsequent exchanges of New Holdco units by the Buddy's Members, (ii) the price of our common stock at the time of exchange, (iii) the extent to which such exchanges are taxable, (iv) the ability to generate sufficient future taxable income over the term of the Tax Receivable Agreement to realize the tax benefits and (v) any future changes in tax laws. If we do not generate sufficient taxable income in the aggregate over the term of the Tax Receivable Agreement to utilize the tax benefits, then we would not be required to make the related TRA Payments. Although the amount of the TRA Payments would reduce the total cash flow to us and New Holdco, we expect the cash tax savings we will realize from the utilization of the related tax benefits would be sufficient to fund the required payments. As of March 26, 2022, we have TRA Payments due to the Buddy's Members of \$17.3 million.

*Dividends.* The payment of dividends is at the discretion of our Board of Directors and depends, among other things, on our earnings, capital requirements, and financial condition. Our ability to pay dividends is also subject to compliance with financial covenants that are contained in our credit facility and may be restricted by any future indebtedness that we incur or issuances of our preferred stock. In addition, applicable law requires our Board of Directors to determine that we have adequate surplus prior to the declaration of dividends. We cannot provide an assurance that we will pay dividends at any specific level or at all.

### **Future cash needs and capital requirements**

*Operating and financing cash flow needs.* Following transactions completed subsequent to March 26, 2022, our primary cash needs are expected to include the payment of scheduled debt and interest payments, capital expenditures and normal operating activities. We believe that the revolving credit facilities along with cash from operating activities, will be sufficient to support our cash flow needs for at least the next twelve months.

Several factors could affect our cash flow in future periods, including the following:

- The extent to which we extend additional operating financing to our franchisees beyond the levels of prior periods;
- The extent and timing of capital expenditures;
- The extent and timing of future acquisitions;
- Our ability to integrate our acquisitions and implement business and cost savings initiatives to improve profitability; and
- The extent, if any, to which our Board of Directors elects to continue to declare dividends on our common stock.

*Compliance with debt covenants.* Our revolving credit and long-term debt agreements impose restrictive covenants on us, including requirements to meet certain ratios. As of March 26, 2022, we were in compliance with all covenants under these agreements and, based on a continuation of current operating results, we expect to be in compliance for the remainder of fiscal 2022.

### **Off Balance Sheet Arrangements**

For off balance sheet arrangements and guarantees to which the Company remains secondarily reliable, refer to "Note 12. Commitments and Contingencies".

**ITEM 3**  
**QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to various types of market risk in the normal course of our business, including the impact of interest rate changes. We may enter into interest rate swaps to manage exposure to interest rate changes. We do not enter into derivative instruments for any purpose other than cash flow hedging and we do not hold derivative instruments for trading purposes.

Our exposure to interest rate risk relates to our long-term debt obligations, as they bear interest at LIBOR, reset periodically and have an interest rate margin. Assuming our revolving credit facility was fully drawn, a ten basis point change in the interest rates would change our annual interest expense by \$180.9 million.

**ITEM 4**  
**CONTROLS AND PROCEDURES**

The Company, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of March 26, 2022. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of March 26, 2022, the Company's disclosure controls and procedures were designed and functional effectively to provide reasonable assurance that information required to be disclosed in reports that the Company files or submits under the Exchange act is (i) recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms and (ii) accumulated and communicated to the Company's management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding disclosure.

On September 27, 2021 and November 22, 2021, the Company acquired Sylvan and Badcock, respectively. The Company is in the process of implementing its internal control structure over each of the acquired business's operations and expects that process to be completed in the fourth quarter of fiscal year 2022.

There have been no changes in our internal control over financial reporting during the fiscal quarter ended March 26, 2022 that have materially affected, or our reasonably like to affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1 LEGAL PROCEEDINGS

For information regarding legal proceedings, see "Note 12. Commitments and Contingencies" in the Notes to the Consolidated Financial Statements, which information is incorporated herein by reference.

### ITEM 1A RISK FACTORS

There are no additional risk factors that should be considered in addition to the risk factors described in Part I, Item 1A, in the Form 10-K and Part II, Item 1A in our Quarterly Report on Form 10-Q for the quarter ended March 26, 2022.

### ITEM 2 UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

There were no sales of our equity securities for the period covered by this quarterly report.

### SHARE REPURCHASES

Our Board of Directors has authorized up to \$10.0 million for share repurchases. This authorization has no specific expiration date and cash proceeds from stock option exercises and other expenditures can increase or decrease the amount of the authorization. During the three months ended March 26, 2022, we did not repurchase any shares of our common stock.

### ITEM 3 DEFAULTS UPON SENIOR SECURITIES

None.

### ITEM 4 MINE SAFETY DISCLOSURES

None.

### ITEM 5 OTHER INFORMATION

None.

**ITEM 6  
EXHIBITS**

We have filed the following exhibits as part of this quarterly report:

Exhibit Number	Exhibit Description	Filed Herewith	Incorporated by Reference
2.1	<a href="#"><u>Agreement of Merger and Business Combination Agreement dated as of July 10, 2019, among Liberty Tax, Inc., Buddy's Newco, LLC, Franchise Group New Holdco, LLC, Franchise Group B Merger Sub, LLC, and Vintage RTO, L.P. (Exhibit 2.1 to Form 8-K, File No. 001-35588 filed on July 11, 2019).</u></a>		X
2.2	<a href="#"><u>Agreement and Plan of Merger, dated as of August 7, 2019, by and among Liberty Tax, Inc., Vitamin Shoppe, Inc. and Valor Acquisition, LLC (Exhibit 2.1 to Form 8-K, File No. 001-35588 filed on August 8, 2019).</u></a>		X
2.2.1	<a href="#"><u>First Amendment to Agreement and Plan of Merger, dated as of November 11, 2019, by and among Franchise Group, Inc., Vitamin Shoppe, Inc. and Valor Acquisition, LLC. (Exhibit 2.1 to Form 8-K, File No. 001-35588 filed on November 12, 2019).</u></a>		X
2.3	<a href="#"><u>Equity and Asset Purchase Agreement, dated as of August 27, 2019, by and between Sears Hometown Outlet Stores, Inc., Franchise Group Newco S, LLC and solely for purposes of Section 10.17 thereto, Liberty Tax, Inc. (incorporated by reference to Exhibit 2.1 to Form 8-K, File No. 001-35588 filed August 28, 2019).</u></a>		X
2.4	<a href="#"><u>Agreement and Plan of Merger, dated as of December 28, 2019, by and among Franchise Group Newco Intermediate AF, LLC, American Freight Group, Inc., Franchise Group Merger Sub AF, Inc., and The Jordan Company, L.P., solely in its capacity as representative (incorporated by reference to Exhibit 2.1 to Form 8-K, File No. 001-35588 filed on December 30, 2019).</u></a>		X
2.4.1	<a href="#"><u>Amendment to Agreement and Plan of Merger, dated as of February 14, 2020, by and among American Freight Group, Inc., Franchise Group Newco Intermediate AF, LLC and The Jordan Company, L.P., solely in its capacity as representative for the Fully-Diluted Stockholders (as defined in the Merger Agreement) (incorporated by reference to Exhibit 2.1, File No. 001-35588 filed on February 18, 2020).</u></a>		X
2.5	<a href="#"><u>Amended and Restated Equity Purchase Agreement, dated as of March 3, 2021, by and among Franchise Group Newco PSP, LLC, PSP Holdings, LLC, Sentinel Capital Partners VI-A, L.P., Sentinel PSP Blocker, Inc., PSP Midco, LLC, PSP Intermediate, LLC, Sentinel Capital Partners, L.L.C., solely for purposes of agreeing to the covenants set forth in Section 6.8 and Section 6.9 thereof, effective as of immediately prior to the Closing (as defined therein), a newly formed Delaware limited liability company to be named PSP Midco Holdings, LLC, and Franchise Group, Inc., solely for purposes of agreeing to the covenants set forth in Section 10.19 thereof (incorporated by reference to Exhibit 2.1 to Form 8-K, File No. 001-35588 filed March 8, 2021).</u></a>		X

<a href="#">2.6</a>	<a href="#">Membership Interest Purchase Agreement, by and between NextPoint Acquisition Corp. and Franchise Group Intermediate L, LLC, dated as of February 21, 2021 (incorporated by reference to Exhibit 2.1 to Form 8-K, File No. 001-35588 filed February 22, 2021).</a>		X
<a href="#">2.6.1</a>	<a href="#">Amendment No. 1, dated as of April 13, 2021 to Membership Interest Purchase Agreement, by and between NextPoint Acquisition Corp. and Franchise Group Intermediate L, LLC, dated as of February 21, 2021.</a>		X
<a href="#">2.6.2</a>	<a href="#">Amendment No. 2, dated as of June 30, 2021 to Membership Interest Purchase Agreement, by and between NextPoint Acquisition Corp. and Franchise Group Intermediate L, LLC, dated as of February 21, 2021.</a>		X
<a href="#">2.7</a>	<a href="#">Stock Purchase Agreement, dated as of November 22, 2021, by and among Franchise Group Newco BHF, LLC, W.S. Badcock Corporation, the shareholders set forth on Annex 1 thereto, and William K. Pou, Jr. (incorporated by reference to Exhibit 2.1 to Form 8-K, File No. 001-25588 filed November 24, 2021).*</a>		X
<a href="#">2.8</a>	<a href="#">Master Receivables Purchase Agreement, dated as of December 20, 2021, between W.S. Badcock Corporation and B. Riley Receivables, LLC (incorporated by reference to Exhibit 2.1 to Form 8-K, File No. 001-35588 filed December 21, 2021).</a>		X
<a href="#">2.9</a>	<a href="#">Purchase and Sale Agreement, dated as of March 31, 2022, between W.S. Badcock Corporation and National Retail Properties, LP.</a>	X	
<a href="#">2.10</a>	<a href="#">Purchase and Sale Agreement, dated as of April 15, 2022, between W.S. Badcock Corporation and Mesirow Realty Sale-Leaseback, Inc.</a>	X	
<a href="#">2.11</a>	<a href="#">Purchase and Sale Agreement, dated as of April 26, 2022, between W.S. Badcock Corporation and CAI Investments Sub Series 100, LLC.</a>	X	
<a href="#">3.1</a>	<a href="#">Second Amended and Restated Certificate of Incorporation of Liberty Tax, Inc. (incorporated by reference to Exhibit 3.1 to Form 8-K, File No. 001-35588 filed on December 19, 2018).</a>		X
<a href="#">3.1.1</a>	<a href="#">Certificate of Designation of the Voting Non-Economic Preferred Stock of Liberty Tax, Inc. filed with the Secretary of State of the State of Delaware July 10, 2019 (incorporated by reference to Exhibit 3.1, File No. 001-35588 filed on July 11, 2019).</a>		X
<a href="#">3.1.2</a>	<a href="#">Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Liberty Tax, Inc. (incorporated by reference to Exhibit 3.1 to Form 8-K, File No. 001-35588 filed September 19, 2019).</a>		X

3.1.3	<a href="#"><u>Certificate of Increase of the Number of Shares of Voting Non-Economic Preferred Stock of Franchise Group, Inc., filed with the Secretary of State of the State of Delaware on September 30, 2019 (incorporated by reference to Exhibit 3.1 to Form 8-K, File No. 001-35588 filed October 1, 2019).</u></a>	X
3.1.4	<a href="#"><u>Certificate of Designation designating the 7.50% Series A Cumulative Perpetual Preferred Stock of Franchise Group, Inc. (incorporated by reference to Exhibit 3.1 to Form 8-K, File No. 001-35588 filed September 18, 2020).</u></a>	X
3.1.5	<a href="#"><u>Certificate of Increase of the Number of Shares of 7.50% Series A Cumulative Perpetual Preferred Stock of Franchise Group, Inc., filed with the Secretary of State of the State of Delaware on January 15, 2021 (incorporated by reference to Exhibit 3.1 to Form 8-K, File No. 001-35588 filed January 15, 2021).</u></a>	X
3.2	<a href="#"><u>Second Amended and Restated Bylaws of Liberty Tax, Inc. (incorporated by reference to Exhibit 3.2 to Form 8-K, File No. 001-35588 filed on July 15, 2014).</u></a>	X
31.1	<a href="#"><u>Certification of Chief Executive Officer</u></a>	X
31.2	<a href="#"><u>Certification of Chief Financial Officer</u></a>	X
32.1	<a href="#"><u>Section 1350 Certification (Chief Executive Officer)</u></a>	X
32.2	<a href="#"><u>Section 1350 Certification (Chief Financial Officer)</u></a>	X
101	The following financial statements from the Company's Quarterly Report on Form 10-Q for the quarter ended March 26, 2022, formatted in Inline XBRL, filed herewith: (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Operations (unaudited), (iii) the Condensed Consolidated Statements of Comprehensive Income (Loss) (unaudited), (iv) the Condensed Consolidated Statements of Stockholders' Equity (unaudited), (v) the Condensed Consolidated Statements of Cash Flows (unaudited) and (vi) the Notes to Unaudited Condensed Consolidated Financial Statements	X
104	The cover page from the Company's Quarterly Report on Form 10-Q for the quarter ended March 26, 2022, formatted in Inline XBRL (included with Exhibit 101)	X

\*All schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company will furnish the omitted disclosure schedules to the SEC upon request by the SEC; provided, however, that the Company reserves the right to request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedule or exhibit so furnished.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**FRANCHISE GROUP, INC.  
(Registrant)**

May 5, 2022

By: /s/ Brian R. Kahn  
Brian R. Kahn  
Chief Executive Officer and Director  
(Principal Executive Officer)

May 5, 2022

By: /s/ Eric F. Seeton  
Eric F. Seeton  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**PURCHASE AND SALE AGREEMENT**

This **PURCHASE AND SALE AGREEMENT** (this "**Agreement**") made as of this 31<sup>st</sup> day of March, 2022 (the "**Effective Date**"), by and between **W.S. Badcock Corporation**, a Florida corporation having an address at 200 NW Phosphate Boulevard, Mulberry, Florida 33860 ("**Seller**"), and **NATIONAL RETAIL PROPERTIES, LP**, a Delaware limited partnership, having an address at 450 South Orange Avenue, Suite 900, Orlando, Florida 32801 ("**Purchaser**").

**RECITALS:**

**WHEREAS**, Seller is the fee owner of those certain plots, pieces or parcels of land commonly known by the addresses set forth on Schedule I attached hereto and more particularly described on Exhibit A attached hereto (individually or collectively, the "**Land**"), and on which Seller operates its business (individually or collectively, the "**Business**"); and

**WHEREAS**, Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller the Property (as hereinafter defined), subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

1. **Sale and Purchase.**

1.1 **Property.** Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, upon and subject to the terms and conditions hereinafter set forth, (a) the Land; (b) all buildings and improvements currently located on the Land (collectively, the "**Improvements**"); (c) all plans, specifications and studies pertaining to the Land, in Seller's possession or under its control; (d) all mineral, oil and gas rights, water rights, sewer rights and other utility rights allocated to Seller with respect to the Land; (e) any and all leases and rental agreements relating to the Land, including, without limitation, all rent, prepaid rent, security deposits and other payments and deposits (other than the leases set forth on Schedule 1.1(e) attached hereto (collectively, the "**Dealer Leases**") and all rent, prepaid rent, security deposits and other payments and deposits with respect to the Dealer Leases); and (f) all appurtenances, easements, licenses, privileges and other property interests belonging to Seller with respect to the Land, free and clear of any liens, encumbrances, claims or security interests, other than as appearing on any Title Report (as such term is defined in Section 5.1) and/or Survey (as such term is defined in Section 5.1), all Permitted Encumbrances (as such term is defined in Section 4.1), but expressly excluding all right, title and interest of Seller and/or any tenants or licensees ("**Subtenants**"), if any, in and to all fixtures, equipment and personal property (regardless of whether attached or appurtenant to the Land or the Improvements and regardless of whether used in connection with the operation of the Business) and/or as otherwise disclosed herein (collectively, the "**Property**").

1.2 **Terminated Properties.**

1.2.1 To the extent any provision herein expressly states that Purchaser shall have the right to terminate this Agreement with respect to any Property(ies) upon the terms set forth in such provision, then, upon Purchaser's delivery of written notice to Seller exercising such right in accordance with the terms of such provision, this Agreement shall be deemed amended as follows with respect to such Property(ies) (each, a "**Terminated Property**" and collectively, the

“**Terminated Properties**”), but shall otherwise remain in full force and effect: (i) the definition of Property shall not include such Terminated Properties, except to the extent that any provisions of this Agreement which by their express terms survive the termination of this Agreement prior to the Closing would be applicable to such Terminated Properties (or to the extent necessary to implement this Section 1.2); (ii) the Purchase Price (as such term is defined in Section 2.1) shall be reduced by the Allocated Purchase Price (as such term is defined in Section 2.4) of such Terminated Properties; and (iii) Seller shall have no obligations with respect to such Terminated Properties, nor shall any covenant, representation or warranty be deemed made with respect to such Terminated Properties, and Purchaser shall not have any rights or obligations under this Agreement with respect to such Terminated Properties other than as set forth in the provisions of this Agreement which by their express terms survive the termination of this Agreement prior to the Closing. To the extent any provision herein expressly states that Purchaser shall have the right to terminate this Agreement with respect to any Property(ies) upon the terms set forth in such provision, then, upon Purchaser’s delivery of written notice to Seller exercising such right in accordance with the terms of such provision, this Agreement shall be deemed amended as follows with respect to such Property(ies) (each, a “**Terminated Property**” and collectively, the “**Terminated Properties**”), but shall otherwise remain in full force and effect: (i) the definition of Property shall not include such Terminated Properties, except to the extent that any provisions of this Agreement which by their express terms survive the termination of this Agreement prior to the Closing would be applicable to such Terminated Properties (or to the extent necessary to implement this Section 1.2); (ii) the Purchase Price (as such term is defined in Section 2.1) shall be reduced by the Allocated Purchase Price (as such term is defined in Section 2.4) of such Terminated Properties; and (iii) Seller shall have no obligations with respect to such Terminated Properties, nor shall any covenant, representation or warranty be deemed made with respect to such Terminated Properties, and Purchaser shall not have any rights or obligations under this Agreement with respect to such Terminated Properties other than as set forth in the provisions of this Agreement which by their express terms survive the termination of this Agreement prior to the Closing.

1.2.2 Notwithstanding anything herein to the contrary, in the event that Purchaser exercises any right expressly set forth herein to terminate this Agreement with respect to five (5) or more individual Properties, Seller shall have the right (the “**Seller Termination Right**”), exercised in its sole and absolute discretion, to terminate this Agreement in its entirety. Unless otherwise expressly set forth herein, Seller may exercise the Seller Termination Right upon written notice to Purchaser delivered within five (5) Business Days of the delivery of the notice in which Purchaser elects to exercise its termination right (provided, however, to the extent Purchaser delivers such notice less than five (5) Business Days prior to the Closing Date, Seller shall be entitled to an adjournment of the Closing in order to permit Seller the full five (5) Business Days to exercise the Seller Termination Right). The parties hereby agree that in the event that Purchaser terminates no more than two (2) individual Properties pursuant to the express terms set forth in Section 6.5, Seller shall not have any ability to terminate this Agreement pursuant to this Section 1.2.2.

## 2. Purchase Price.

2.1 The purchase price to be paid by Purchaser to Seller for the Property (the “**Purchase Price**”) is NINETY-FOUR MILLION AND NO/100 DOLLARS (\$94,000,000.00), subject to adjustment as otherwise provided under this Agreement. The Purchase Price shall be paid by Purchaser as follows:

2.1.1 No later than two (2) Business Days following the Effective Date, and as a condition to the effectiveness hereof (TIME BEING OF THE ESSENCE with respect to such date), Purchaser shall deliver to First American Title Insurance Company, through their New

York office ("**Escrow Agent**") an amount equal to ONE MILLION FIVE HUNDRED Thousand AND NO/100 DOLLARS (\$1,500,000.00) (together with any interest earned thereon, the "**Initial Deposit**") by wire transfer of immediately available funds, to be held in escrow in accordance with Article 19; and

2.1.2 If Purchaser does not terminate this Agreement on or before the Due Diligence Date (as hereinafter defined) pursuant to Section 6.5, Purchaser shall, no later than two (2) Business Days following the Due Diligence Date (TIME BEING OF THE ESSENCE with respect to such date), deliver to Escrow Agent an additional amount equal to Two Million EIGHT Hundred Thousand AND NO/100 DOLLARS (\$2,800,000.00) (together with any interest earned thereon, the "**Additional Deposit**", and, together with the Initial Deposit, collectively, the "**Deposit**") by wire transfer of immediately available funds, to be held in escrow in accordance with Article 19; and

2.1.3 Purchaser shall, on or before 12:00 p.m. (Eastern Time) on the Closing Date, deliver to Escrow Agent by wire transfer of immediately available funds an amount equal to (i) the Purchase Price as apportioned, adjusted and prorated pursuant to Article 7 or as otherwise provided under this Agreement less (ii) the amount of the Deposit plus (iii) any other amounts required to be paid by Purchaser at the Closing.

2.2 On the day after the Due Diligence Date, the Deposit shall become non-refundable; provided, however, that the Deposit shall be refundable to Purchaser if Purchaser terminates this Agreement in accordance with the provisions of this Agreement which expressly provide for the return of the Deposit to Purchaser upon such termination. In any instance where the Deposit is to be returned to Purchaser, Purchaser shall be entitled to a refund of only so much of the Deposit that has been delivered to Escrow Agent pursuant to the terms of this Agreement.

2.3 At the Closing, Escrow Agent shall disburse the Purchase Price apportioned, adjusted and prorated to reflect closing costs, prorations and other adjustments made pursuant to Article 7 to Seller as Seller may direct or in accordance with a closing statement prepared and approved by Seller and Purchaser.

2.4 Seller and Purchaser have agreed upon the allocation of the Purchase Price, before any adjustments as provided in this Agreement, among the individual Properties as set forth on Schedule I attached hereto. Each allocated purchase price on Schedule I attached hereto shall be referred to as an "**Allocated Purchase Price**". Prior to 12:00 p.m. (Eastern Time) on the Due Diligence Date (TIME BEING OF THE ESSENCE as to such time and date) (the "**Reallocation Deadline**"), Purchaser shall have the one-time right to adjust the Allocated Purchase Price (a "**Purchase Price Allocation Adjustment**") upon written notice to, and the prior written approval of, Seller by no later than the Reallocation Deadline, provided that any Purchase Price Allocation Adjustment shall (i) not result in a change to the total Purchase Price, (ii) be proposed for a valid business purpose, and (iii) the so-reallocated purchase price for each applicable individual Property shall constitute the Allocated Purchase Price for such individual Property. Purchaser and Seller shall file federal, state and local tax returns in a manner consistent with each Allocated Purchase Price and shall otherwise be bound by such Allocated Purchase Price (including the preparation of all books, records and tax filings) unless otherwise required by applicable law. In the event one party does not file federal, state and local tax returns in a manner consistent with any Allocated Purchase Price, then such party shall bear the consequences of any discrepancies and the other party shall have no obligation or liability with respect thereto. In all events, each Allocated Purchase Price shall control for purposes of paying any transfer taxes in connection with the Closing and for purposes of determining the insured amount for any title insurance policy. This Section 2.4 shall survive the Closing.

3. **Leaseback.**

3.1 Purchaser and Seller shall enter into a lease agreement with respect to each individual Property substantially on the form attached hereto as Exhibit B, pursuant to which Purchaser shall, from and after the Closing Date, lease each individual Property to Seller, at the rent and pursuant to the terms and conditions contained therein (each, a "**Lease**" and collectively, the "**Leases**"). The initial rent amounts of the Leases are set forth on Exhibit C attached hereto. Prior to the Reallocation Deadline, Purchaser shall have the one-time right to adjust the initial rent amounts of the Leases (a "**Rent Allocation Adjustment**") upon written notice to, and the prior written approval of, Seller by no later than the Reallocation Deadline, provided that any Rent Allocation Adjustment shall (i) not result in a change to the total initial rent amounts of the Leases are set forth on Exhibit C attached hereto, and (ii) be proposed for a valid business purpose.

4. **State of Title of Property and Violations.**

4.1 **Permitted Encumbrances.** The Property is being sold and is to be conveyed subject only to the matters described in Sections 4.1.1 through 4.1.9 and Section 4.2 (collectively, the "**Permitted Encumbrances**") which are approved by Purchaser prior to the Due Diligence Date in accordance with the terms hereof:

4.1.1 Any and all present and future zoning restrictions, regulations, requirements, laws, ordinances, resolutions and orders applicable to the Property, and all other laws, requirements, orders, rules, or regulations, now or hereafter in effect, of any governmental or quasi-governmental authority, department or agency having jurisdiction over the Property or any part thereof.

4.1.2 The state of facts shown on the Surveys and any state of facts a current and accurate survey of the Property would show.

4.1.3 Real estate taxes and assessments for the fiscal year in which the Closing occurs.

4.1.4 Rights and easements of utility companies to lay, install, maintain or operate wires, lines, cables, pipes, holes, boxes and other fixtures, facilities or equipment in, over and upon the Property or any portion thereof.

4.1.5 Any exceptions caused by Purchaser, its agents, representatives or employees.

4.1.6 Such matters as Escrow Agent shall be willing without any additional premium to omit as exceptions to coverage.

4.1.7 Such matters that are not timely objected to in accordance with Section 5.2.1.

4.1.8 The liens or encumbrances listed on, and/or disclosed by, the Title Reports which Seller has no obligation to cure pursuant to the terms hereof.

4.1.9 Subtenant Title Objections (as such term is defined in Section 5.2.2).

Notwithstanding anything herein to the contrary, the Permitted Encumbrances set forth on each Deed (as such term is defined in Section 12.1) shall be limited to all matters of record shown on the final owner's pro formas of title insurance affecting each individual Property, including real estate taxes and assessments for the fiscal year in which the Closing occurs.

#### 4.2 Violation Objections and Termination Rights.

4.2.1 The Property is being sold and is to be conveyed subject to all notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by or any federal, state, county or municipal department having jurisdiction affecting or against the Property.

#### 5. Title Insurance and Ability of Seller to Convey.

5.1 Purchaser acknowledges receipt prior to the Effective Date of certain commitments (collectively, the "**Title Reports**") to issue owner's policies of title insurance with respect to the Property from Escrow Agent bearing the commitment numbers set forth on **Schedule I** attached hereto. On the Closing Date, Purchaser will purchase (at Seller's expense) from Escrow Agent owner's title insurance policies for each individual Property insuring Purchaser in the amount of the Allocated Purchase Price for such Property. Purchaser acknowledges receipt prior to the Effective Date of certain ALTA surveys of the Property performed by a registered surveyor and as further described on **Schedule I** attached hereto, which shall be certified to Purchaser, Seller, Escrow Agent, and any other party required by Purchaser (collectively, the "**Surveys**"); it being understood that obtaining a Survey shall not constitute a condition to, or delay, the Closing. Purchaser will direct each respective vendor to promptly deliver a copy of any updated Title Report and any updated Survey to Seller and Escrow Agent. Except as otherwise specifically provided in **Section 5.2** and **Section 5.3**, Seller shall not be obligated to incur any expense, or to bring any action or proceeding, to remove any exceptions or objections to title or to render title to the Property marketable and/or indefeasible and shall not be obligated to grant an abatement in the Purchase Price with respect to any such exception or objection. Nothing herein contained shall be construed to limit Purchaser's right to specific performance in the event of Seller's willful default hereunder. Seller shall have the right, but not the obligation, to a reasonable adjournment or adjournments of the Closing to remove any defect in or objection to title disclosed on or prior to the Closing Date in any Title Report and/or Survey, any update to any Title Report and/or Survey, or otherwise which does not constitute a Permitted Encumbrance (including, but not limited to, any Required Title Clearance Item (as such term is defined in **Section 5.2.1**)). Purchaser acknowledges and agrees that Seller makes no representation or warranty regarding the condition of title to the Land or the Improvements except as expressly set forth herein.

#### 5.2 Title Objections and Termination Rights.

5.2.1 Subject to **Section 5.4**, to the extent the same affects the Property, Seller shall eliminate any mortgage or deed of trust, regardless of amount, executed by Seller affecting each individual Property (the "**Required Title Clearance Items**"). If any individual Property becomes subject after the Effective Date but prior to the Closing Date to one or more liens or encumbrances that do not constitute Permitted Encumbrances or Required Title Clearance Items (any such lien or encumbrance, individually or collectively, a "**Title Objection Matter**"), then Purchaser shall furnish Seller with a written statement of objections, if any, to any such Title Objection Matter within two (2) Business Days of becoming aware of any individual Title Objection Matter (TIME BEING OF THE ESSENCE with respect to such date).

5.2.2 To the extent all such Title Objection Matters may be removed and/or cured solely by the payment of a sum of money not exceeding ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in the aggregate (the "**Title Cure Cap**"), Seller shall remove and/or cure the same; provided, however, nothing herein shall require Seller to bring any action or proceeding to remove any Title Objection Matter caused by an act or omission of any Subtenant ("**Subtenant Title Objections**"). To the extent such Title Objection Matters (other

than Subtenant Title Objections) may not be removed and/or cured solely by payment of a sum of money not exceeding the Title Cure Cap or the cost to remove and/or cure such Title Objection Matters exceeds the Title Cure Cap, Seller shall have the option (each of the foregoing, "**Seller's Cure Options**") to elect to (x) remove and/or cure the same at its sole cost and expense, or (y) elect not to take any action ("**No-Action Election**"), in which case Purchaser may make a Purchaser Title Election (as such term is defined in Section 5.2.3). Seller shall have the right to elect any of Seller's Cure Options as Seller becomes aware of Title Objection Matters, but shall have the right to alter or amend its election as Seller becomes aware of additional Title Objection Matters. Seller shall have the right to a reasonable adjournment or adjournments of the Closing Date in order to make such election. If Seller fails to deliver notice of a Seller Cure Option in accordance with and pursuant to the terms of this Section 5.2.2, Seller shall be deemed to have made a No-Action Election. Notwithstanding anything to the contrary set forth herein, Seller shall have no obligation to cure, remove or remedy any Subtenant Title Objection, all of which shall be deemed Permitted Encumbrances if approved by Purchaser in accordance with the terms hereof; provided, however, Seller shall use commercially reasonable efforts to cause any applicable Subtenant to remedy same, provided that, for these purposes, "commercially reasonable efforts" shall be deemed to mean providing written notice of such request for remediation (and commercially reasonable follow-up) to the applicable Subtenant and in no event shall Seller be required to threaten or commence any enforcement proceedings against any Subtenant.

5.2.3 Provided that Seller elects the No-Action Election or is deemed to have made a No-Action Election, Purchaser shall have the right to provide Seller notice of Purchaser's intent to terminate this Agreement (the "**Purchaser Title Election**") with respect to all of the Property(ies) subject to the applicable Title Objection Matter(s) (other than Subtenant Title Objections) (the Property(ies) with respect to which Purchaser desires to terminate this Agreement, the "**Title Objection Matter Terminated Property(s)**"). Purchaser shall make the Purchaser Title Election (if at all) by written notice to Seller delivered (i) on or before the fifth (5<sup>th</sup>) Business Day after delivery of Seller's notice electing the No-Action Election, or (ii) on or before the Closing Date if Seller's notice electing the No-Action Election is delivered three (3) Business Days prior to the Closing Date or on the Closing Date.

5.2.4 If Purchaser affirmatively elects not to make the Purchaser Title Election or fails to deliver notice of making the Purchaser Title Election in accordance with and pursuant to the terms of Section 5.2.3, Purchaser shall be deemed to have failed to make the Purchaser Title Election, and Purchaser shall be required, subject to the terms and conditions of this Agreement, to close on the transactions contemplated pursuant to this Agreement and accept title subject to the Title Objection Matter(s) (including all Subtenant Title Objections) without any reduction or credit to the Purchase Price. If Purchaser makes the Purchaser Title Election, such Property shall be deemed a "Terminated Property" and subject to the terms of Section 1.2.

5.3 If Seller shall so request, Purchaser will allow Seller to pay from the balance of the Purchase Price as much thereof as may be necessary to satisfy any lien or encumbrance which Seller is obligated or elects to cure hereunder.

5.4 At the Closing, subject to the provisions of this Article 5, Seller shall convey to Purchaser fee simple title to the Property free of all liens and encumbrances other than the Permitted Encumbrances.

## 6. **Diligence.**

6.1 **Deliveries by Seller.** Prior to the Effective Date, Purchaser received an offering package with respect to the Property and/or was granted access to Property-related materials, including those

certain leases, agreements, documents, reports, and other written material and instruments more particularly set forth on Exhibit E attached hereto (collectively, the “**Offering Package**”). If not already provided to Purchaser prior to the Effective Date, Seller shall deliver or make available, or cause to be delivered or made available, to Purchaser for inspection, any additional documents, information and/or reports reasonably requested by Purchaser which are in the actual possession or control of Seller (together with the Offering Package, all documents, reports, and materials delivered to Purchaser by or on behalf of Seller or otherwise actually reviewed by Purchaser, the “**Due Diligence Materials**”). The Due Diligence Materials do not (and are not required to) include any documentation or information which Seller must keep confidential, or any items which are protected by any attorney-client privilege. It is expressly agreed and understood that none of Seller nor its representatives shall be required to create any report or statement for Purchaser that is not created in the ordinary course of owning or operating the Property.

6.2 No Representations Regarding Due Diligence Materials. By making available to or furnishing Purchaser with the Due Diligence Materials, Seller does not make any warranty or representation with respect to the accuracy, completeness, conclusions or statements expressed in the Due Diligence Materials. Seller shall make available to or furnish Purchaser with any other existing written information, reports or updates of such Due Diligence Materials, to the extent in existence, within five (5) Business Days following reasonable request by Purchaser, but failure to deliver or make available same shall not in and of itself constitute a default hereunder, or otherwise constitute a failure of a condition to the Closing. Purchaser hereby waives any and all claims against Seller arising out of any inaccuracy, incompleteness, conclusions or statements expressed in the Due Diligence Materials furnished or made available by Seller or any other party. The immediately preceding sentence of this Section 6.2 shall survive the Closing or the termination of this Agreement.

### 6.3 Access to the Property.

6.3.1 Seller will allow Purchaser and its employees, agents, prospective lenders, attorneys, contractors, and representatives (collectively, “**Purchaser’s Representatives**”), prior to the Due Diligence Date at reasonable times during normal business hours upon twenty-four (24) hours’ prior notice (but subject to the rights of Subtenants under their applicable Dealer Leases) and without material interruption of Seller’s management of the Property or interference with Subtenants, residents, occupants or employees at the Property, to enter upon the Property (i) for the purpose of updating Surveys, inspections, engineering studies, Phase I environmental assessments and any other non-invasive tests, structural examinations or studies which Purchaser may reasonably deem necessary and (ii) to inspect the Property and, to the extent permitted by law, all books, records and accounts relating to the operation thereof (collectively, clauses (i) and (ii), the “**Investigations**”). Purchaser shall be solely responsible for all of the costs and expenses of any Investigations and shall conduct such Investigations in good faith and with due diligence. Notwithstanding the foregoing, Seller’s prior written consent (which consent may be granted or withheld in Seller’s sole and absolute discretion) shall be required for any Investigations which involve invasive or destructive testing of the Property (or any portion thereof and including, without limitation, any Phase II environmental assessments or boring of the Property in connection with an environmental audit or otherwise) or any alteration of the Property (or any portion thereof). In the event Seller does provide its consent to any such invasive testing or alteration, Purchaser shall promptly restore the Property to its condition immediately prior to, as applicable, such test or alteration. Purchaser shall provide Seller with evidence that applicable contractors have named Seller as an additional insured to their respective insurance policies, which insurance policies must be approved by Seller in its reasonable discretion and maintained through the Closing Date. Purchaser shall (i) fully comply with all laws, rules and regulations applicable to Property and/or the Investigations and all other activities undertaken in connection therewith, (ii) not interfere with the use, occupancy, management, maintenance or operation of the Property (or any portion thereof) by Seller or the Subtenants under the Dealer Leases (or any

of their respective agents, representatives, residents, occupants, guests, invitees, contractors, or employees), and (iii) schedule all such Investigations at Seller's convenience and shall permit Seller to have a representative present during all Investigations undertaken hereunder. Purchaser hereby agrees to indemnify, defend and hold harmless Seller and each other Released Party (as such term is defined in Section 11.2) from and against any and all loss, cost, expense, damage, claim and liability (including, without limitation, reasonable attorneys' fees and disbursements), suffered or incurred by Seller or any other Released Party and arising out of or in connection with (i) Purchaser and/or Purchaser's Representatives entry upon the Property, (ii) any Investigations and other activities conducted with respect to the Property by Purchaser or Purchaser's Representatives, and (iii) any liens or encumbrances filed or recorded against the Property as a consequence of any and all Investigations and other activities undertaken by Purchaser or Purchaser's Representatives. The provisions of this Section 6.3.1 shall not in any way be deemed to amend the provisions of Article 11. The indemnity set forth in this Section 6.3.1 shall survive the Closing and/or the termination of this Agreement until the Survival Date (as such term is defined in Section 26.1) set forth in Section 26.1.

6.3.2 Purchaser and/or Purchaser's Representatives shall not contact, communicate or otherwise interfere with the normal conduct by Seller, the Subtenants or employees of the Property of their business at the Property.

6.4 Return of Information Upon Termination. If this Agreement is terminated by any party pursuant to the terms of this Agreement, then Purchaser shall return to Seller, or at Seller's request, destroy all Due Diligence Materials delivered to Purchaser and/or Purchaser's Representatives as well as a copy of any and all reports studies, data, analysis and surveys that Purchaser and/or Purchaser's Representatives discover, commission or generate in connection with or resulting from their due diligence activities on the Property (collectively, the "Information"). All of the Information shall be deemed confidential, and Purchaser acknowledges and agrees that the Information is subject to the confidentiality provisions of Section 22.1. Purchaser shall indemnify the Released Parties from and against any and all Claims (as such term is defined in Section 11.2) resulting from, arising out of or in connection with Purchaser's and/or Purchaser's Representatives' breach of its obligations under this Section 6.4. The indemnity set forth in this Section 6.4 shall survive the termination of this Agreement until the Survival Date set forth in Section 26.1.

6.5. Purchaser's Unconditional Right to Terminate. Purchaser shall have the right to terminate this Agreement for any reason whatsoever by notifying Seller in writing of such termination on or before 12:00 p.m. (Eastern Time) on March 31, 2022 (the "Due Diligence Date") (TIME BEING OF THE ESSENCE as to such time and date). If Purchaser duly terminates this Agreement in accordance with the foregoing provisions of this Section 6.5, this Agreement shall terminate, Purchaser shall be entitled to the return of the Initial Deposit and the parties shall have no further liability to one another arising from this Agreement, except that the following provisions of this Agreement shall survive such termination and be enforceable by the parties after termination: namely, Sections 6.2, 6.3 (other than with respect to access to the Property), 6.4, this 6.5, 7.1, 19, 21.1, 22.1, and 23.1. If Purchaser does not duly terminate this Agreement in accordance with the foregoing provisions of this Section 6.5, or if Purchaser delivers written notice of its acceptance of the Property to Seller on or before 12:00 p.m. (Eastern Time) on the Due Diligence Date, Purchaser shall be obligated to consummate the transaction hereunder on the Closing Date and shall be deemed to have approved its due diligence investigation of the Property, including, without limitation, all laws, ordinances and regulations pertaining to the Property and all engineering, zoning and environmental matters pertaining to the Property. Prior to the Due Diligence Date, Purchaser shall promptly notify Seller of its discovery of any inaccuracy in any representation or warranty of Seller hereunder and Seller shall have the right from time to time, until one (1) Business Day prior to the Due Diligence Date, to update any Exhibit attached hereto or modify any representation or warranty made by Seller herein by giving Purchaser written notice of any such update and/or modification prior to the Due

Diligence Date (each, a “**Seller’s Modification Notice**”), without incurring any cost, expense, liability or obligation, and without the same constituting a breach or default under this Agreement. Purchaser agrees that, in such event, the Exhibits attached hereto and/or representations and warranties contained herein shall be deemed modified to reflect the updates and/or modifications made thereto by Seller as of the last Seller’s Modification Notice. If Purchaser has a material objection only with respect to environmental, survey, title, or zoning (a “**Deferred Property Defect**”) as to some but not all of the Properties (but no more than two (2) individual Properties) and notifies Seller in writing of the same on or before the Due Diligence Date to Seller, then Seller may, at its option, elect to deem such individual Property(ies) a “**Deferred Property(ies)**”, in which event, this Agreement shall be deemed amended, without further action on either party’s part, as follows with respect to each Deferred Property:

6.5.1 Following the initial Closing (and any subsequent Closing of less than all of the Deferred Properties), the Allocated Deposit for each Deferred Property shall be held by Escrow Agent under an escrow agreement reasonably acceptable to Seller and Purchaser and subject to the terms of this Agreement. No funds on account of the purchase price for the Deferred Properties shall be escrowed other than the Allocated Deposit. The “**Allocated Deposit**” for each individual Property shall be the amount equal to the Deposit multiplied by the fraction of (x) the Allocated Purchase Price of such individual Property over (y) the Purchase Price.

6.5.2 Seller shall use diligent efforts to cure each **Deferred Property Defect** with respect to the Deferred Properties as soon as reasonably possible. Seller and Purchaser shall set a new closing date with respect to any Deferred Property (the “**Deferred Closing Date**”), which date shall be no later than ten (10) Business Days after Seller cures the applicable Deferred Property Defect. In the event that, despite using diligent efforts, Seller fails to effect such cure on or before the date that is one hundred eighty (180) days after the initial Closing Date, Purchaser may elect to (A) terminate this Agreement with respect to the applicable Deferred Property in which case the Deferred Properties so terminated shall be deemed Terminated Properties, and the applicable Allocated Deposit shall be promptly returned to Purchaser and neither party shall have any further obligation or liability under this Agreement except as otherwise expressly provided hereunder, or (B) if agreed to by Seller in its sole and absolute discretion, proceed to close on such Deferred Property with a credit against the Purchase Price in an amount (to be reasonably agreed upon by Purchaser and Seller) equal to the reduction in the value of the portfolio resulting from the uncured Deferred Property Defect, in which event Purchaser shall accept title to such Deferred Property subject to such Deferred Property Defect.

6.5.3 Each such Deferred Property shall continue to be subject to all of the terms and conditions of this Agreement as if it were a Property, and all obligations and rights of Seller and Purchaser with respect to the Deferred Property shall continue under this Agreement, *mutatis mutandis*, except that (i) the Purchase Price for such Deferred Property shall be the Allocated Purchase Price of such Deferred Property as adjusted pursuant to the terms of this Agreement (the “**Deferred Closing Purchase Price**”), (ii) the Closing Date shall be the Deferred Closing Date, and (iii) the liquidated damages for Purchaser’s failure to close with respect to such Deferred Property pursuant to Section 18.1 shall be the Allocated Deposit for such Deferred Property. At the Closing for the Deferred Property, Purchaser shall pay to Seller the Deferred Closing Purchase Price, less the Allocated Deposit.

## 7. **Expenses.**

7.1 Each party shall pay its own costs and expenses in connection with the transactions contemplated hereby, including the fees and expenses of its attorneys, accountants, consultants and engineers. Seller shall pay (a) all fees and costs due to Escrow Agent in connection with the transactions contemplated herein, (b) transfer taxes, documentary stamp taxes, recording taxes, and other taxes, fees,

charges and expenses required to be paid in connection with the sale of the Property, (c) all due diligence expenses and charges, including, without limitation, any expenses and charges for engineering reports, appraisals, environmental reports, or property condition reports, obtained by, or on behalf of, Purchaser, in connection with the transactions contemplated herein (but expressly excluding all expenses and charges for zoning reports and all inspections performed by Purchaser (including all Investigations) and the cost of Purchaser's site visits), (d) all expenses of or related to the issuance of standard coverage for any ALTA owner's title insurance policy, including any incremental costs for extended coverage, if applicable, and any endorsements thereto mutually agreed to by Purchaser and Seller, acting reasonably, that are permitted by state law and reasonably customary in similar commercial transactions in which the individual Properties are located, (e) the cost of any Survey, (f) recording fees for recordation of the Deeds, and (g) the cost of releasing all liens, judgments and other encumbrances that are to be released of record (subject to the limitations set forth herein) and the fees associated with recording any such releases; provided, however, notwithstanding the foregoing or anything herein to the contrary, should the Closing occur, Purchaser shall reimburse Seller at the Closing for the actual costs incurred by Seller for the Surveys and environmental reports obtained in connection with the transactions contemplated herein in an amount not to exceed THREE HUNDRED TEN THOUSAND AND NO/100 DOLLARS (\$310,000.00). Purchaser shall pay (i) all expenses and charges for zoning reports, (ii) all expenses and charges for all inspections performed by Purchaser (including all Investigations) and the cost of Purchaser's site visits, (iii) any other costs associated with Purchaser's financing of the Property (including, without limitation, mortgage recording taxes, to the extent the same are required to be paid), and (iv) all expenses of or related to the issuance of standard coverage for any ALTA lender's title insurance policy, including any incremental costs for extended coverage, if applicable, and any endorsements thereto). Any other customary closing costs shall be paid by Purchaser and Seller in accordance with local custom in the State and jurisdiction in which the applicable Property to which the applicable costs relate is located. The provisions of this Section 7.1 shall survive the Closing.

#### **8. Adjustments and Closing Costs.**

8.1 In view of the subsequent lease of each individual Property by Purchaser to Seller pursuant to the Leases and Seller's obligations thereunder, there shall be no proration of insurance, taxes, special assessments, utilities or any other costs related to the Property between Seller and Purchaser at the Closing. Rent payable under the Leases shall be prorated as of the Closing Date.

#### **9. Representations and Warranties of Seller.**

9.1 Representations and Warranties. Seller represents and warrants to Purchaser that as of the Effective Date the following representations and warranties are true in all material respects and the same shall be true in all material respects as of the Closing Date (except for (a) changes in facts resulting from actions taken by Seller which are not in breach of this Agreement or occurring from events beyond the reasonable control of Seller (other than the representations and warranties of Seller set forth in Sections 9.1.1, 9.1.2, and 9.1.6, which shall be true and correct in all material respects as of the Closing Date without modification), and (b) Seller's right to update or add Exhibits to modify the representations and warranties of Seller (based solely on matters arising after the Effective Date) in order to make such representations and warranties true as of the Closing Date; provided, however, that the foregoing right to amend the Exhibits hereto shall not be deemed to permit Seller to default under any covenant made by Seller herein):

9.1.1 Seller is a corporation validly existing and in good standing under the laws of the State of Florida. Subject to any consent required under Seller's organizational documents (the "**Required Seller Consents**"), which Required Seller Consents shall be obtained on or prior to the Closing, Seller has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement

(collectively, the “**Seller’s Documents**”) and to perform all obligations arising under this Agreement and the Seller’s Documents. Subject to Seller obtaining the Required Seller Consents, this Agreement and the Seller’s Documents constitute the legal, valid and binding obligations of Seller enforceable against Seller in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors’ rights generally and except as may be limited by general equitable principles. Subject to obtaining the Required Seller Consents, Seller is authorized to enter into this Agreement and the transactions contemplated hereby.

9.1.2 Subject to Seller obtaining the Required Seller Consents, this Agreement and the Seller’s Documents do not and will not contravene any provision of the organizational documents of Seller, any judgment, order, decree, writ, injunction, or any other agreement binding on Seller, or any provision of any existing law or regulation to which Seller is a party or is bound. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not require (except to the extent, specifically set forth herein) any consent by any third party (including, without limitation, the consent of any direct or indirect owner of Seller) other than the Required Seller Consents.

9.1.3 To Seller’s actual knowledge, no litigation, or governmental or agency proceeding or investigation is pending or threatened in writing against Seller which would materially impair or adversely affect Seller’s ability to perform its obligations under this Agreement and consummate the transactions contemplated herein.

9.1.4 To Seller’s actual knowledge, Seller and each individual Property is in compliance in all material respects with all applicable laws relating to the ownership, current operation or current use of any individual Property. Seller has not directly received any written notice or other written communication from any governmental or regulatory authority or any other Person regarding any actual, alleged or potential material violation of, or failure to comply in all material respects with, any applicable law relating to any individual Property which remains uncured.

9.1.5 There is no contemplated, pending or threatened bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or any other proceeding under any federal or state bankruptcy or similar law, whether voluntary or involuntary, affecting Seller or any affiliates thereof.

9.1.6 Seller is not currently identified as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (the “**OFAC List**”) or is a Person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

9.1.7 Seller has not received written notice of condemnation or eminent domain proceedings affecting a Property and Seller has no actual knowledge that any such proceedings are contemplated.

9.2 **Survival.** The provisions of Section 9.1 shall survive the Closing for a period of six (6) months after the Closing.

9.3 **Limitations on Seller’s Representations.** Those provisions of this Article 9 and the representations and warranties set forth in such provisions, shall survive the Closing until the Survival

Date set forth in Section 26.1. Notwithstanding anything contained herein to the contrary, absent fraud or intentional misrepresentation, Seller shall have no obligation or liability to Purchaser, prior to or after the Closing (if the Closing shall occur), in any respect of the inaccuracy or breach of any representation or warranty of Seller hereunder (and such default, inaccuracy and/or breach by Seller shall be deemed waived by Purchaser), to the extent such default, inaccuracy or breach (1) is actually known by Purchaser or Purchaser's Representatives prior to 12:00 p.m. (Eastern Time) on the Due Diligence Date or included in any Due Diligence Materials actually delivered to or made available for review by Purchaser in accordance with the terms hereof or in any other materials obtained by Purchaser or Purchaser's Representatives in connection with the transactions contemplated hereby (including any third party reports commissioned by Purchaser or Purchaser's Representatives) (collectively, "**Purchaser's Diligence Materials**"), (2) becomes known to Purchaser prior to the Closing Date and Purchaser does not, within three (3) Business Days after obtaining such knowledge, and in all events, prior to the Closing Date, provide written notice thereof to Seller, (3) arises due to an act permitted or required to be taken by Seller hereunder, or (4) arises from the act or omission of Purchaser or Purchaser's Representatives or was consented to by Purchaser in writing. To the extent any Due Diligence Materials (if actually delivered to or made available for review by Purchaser in accordance with the terms hereof) or Purchaser's Diligence Materials contain information inconsistent with or different from the representations and warranties made in Section 9.1 or Purchaser or Purchaser's Representatives otherwise have knowledge of any such inconsistency or difference prior to 12:00 p.m. (Eastern Time) on the Due Diligence Date, then such representations and warranties shall be deemed modified to conform them to the provisions of the Specified Documents or to such difference or inconsistent facts so known to Purchaser or Purchaser's Representatives, as applicable. The provisions of this Section 9.3 shall survive the Closing.

9.4 Seller does not represent or warrant that any particular Dealer Lease will be in force or effect as of the Closing Date or that any Subtenant under a Dealer Lease will not be in default under its Dealer Lease. If any Dealer Lease is not in effect or a party to any Dealer Lease is in default or any Subtenant is in arrears in the payment of rent, such fact shall not, in any way, relieve Purchaser of its obligation to purchase the Property or entitle Purchaser to a reduction in the Purchase Price. The termination of any Dealer Lease shall not affect the obligations of Purchaser hereunder.

## **10. Representations and Warranties of Purchaser.**

10.1 Representations and Warranties. Purchaser represents and warrants to Seller that as of the Effective Date the following representations and warranties (and all other representations and warranties of Purchaser contained herein) are true in all material respects and shall be true in all material respects on the Closing Date:

10.1.1 Purchaser is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware. At the Closing, Purchaser or its permitted assignee will be authorized to do business in each jurisdiction in which any individual Property is located. Purchaser has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement (collectively, the "**Purchaser's Documents**") and to perform all obligations arising under this Agreement and the Purchaser's Documents. This Agreement and the Purchaser's Documents constitute the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and except as may be limited by general equitable principles. Purchaser is duly authorized to enter into this Agreement and the transactions contemplated hereby.

10.1.2 This Agreement and the Purchaser's Documents do not and will not contravene any provision of the organizational documents of Purchaser, any judgment, order, decree, writ, injunction, or any other agreement binding on Purchaser, or any provision of any existing law or regulation to which Purchaser is a party or is bound.

10.1.3 The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not require (except to the extent, specifically set forth herein) any consent by any third party (including, without limitation, the consent of any direct or indirect owner of Purchaser).

10.1.4 Purchaser has the financial wherewithal to perform its obligations hereunder.

10.1.5 To Purchaser's knowledge, no litigation, or governmental or agency proceeding or investigation is pending or threatened against Purchaser which would materially impair or adversely affect Purchaser's ability to perform its obligations under this Agreement and consummate the transactions contemplated herein.

10.1.6 Purchaser is not currently identified on the OFAC List or is a Person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States. The foregoing representation and warranty shall not apply to any holder of Purchaser's publicly traded stock.

10.2 Survival. Those provisions of Section 10.1 and the representations and warranties set forth in such provisions (and all other representations and warranties of Purchaser contained herein), shall survive the Closing until the Survival Date set forth in Section 26.1.

#### **11. Condition of Property; Release of Claims.**

11.1 CONDITION OF PROPERTY. PURCHASER IS PURCHASING THE PROPERTY "AS-IS, WHERE IS AND WITH ALL FAULTS" IN ITS PRESENT CONDITION, SUBJECT TO REASONABLE USE, WEAR, TEAR AND NATURAL DETERIORATION OF THE PROPERTY BETWEEN THE EFFECTIVE DATE AND THE CLOSING DATE AND FURTHER AGREES THAT (i) SELLER SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE PROPERTY AND (ii) EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY SELLER'S DOCUMENT DELIVERED BY SELLER AT CLOSING, NEITHER SELLER, ANY AFFILIATE NOR ANY DIRECT OR INDIRECT AGENT, MEMBER, PARTNER, EMPLOYEE OR REPRESENTATIVE OF SELLER EITHER HAS MADE OR WILL MAKE OR WILL BE ALLEGED TO HAVE MADE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, REGARDING THE PROPERTY OR ANY PART THEREOF, OR ANYTHING RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, AND (iii) PURCHASER, IN EXECUTING, DELIVERING AND PERFORMING THIS AGREEMENT, HAS NOT AND DOES NOT RELY UPON ANY STATEMENT, INFORMATION, OR REPRESENTATION TO WHOMSOEVER MADE OR GIVEN, WHETHER TO PURCHASER OR OTHERS, AND WHETHER DIRECTLY OR INDIRECTLY, VERBALLY OR IN WRITING, MADE BY ANY PERSON, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY SELLER'S DOCUMENT DELIVERED BY SELLER AT CLOSING. IN ADDITION TO THE FOREGOING, IF PURCHASER FAILS TO TERMINATE PRIOR TO 12:00 P.M. ON THE DUE DILIGENCE DATE, THEN PURCHASER SHALL BE DEEMED TO HAVE REPRESENTED THAT PURCHASER HAS EXAMINED ALL OF THOSE ITEMS SET FORTH IN THE DUE DILIGENCE MATERIALS AND IS FAMILIAR WITH THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY AND HAS CONDUCTED SUCH INVESTIGATION OF THE AFFAIRS AND

CONDITION OF THE PROPERTY AS PURCHASER HAS CONSIDERED APPROPRIATE. AS OF THE EFFECTIVE DATE, PURCHASER SHALL BE DEEMED TO HAVE REPRESENTED THAT (I) EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER SELLER, ANY AFFILIATE OF SELLER NOR ANY DIRECT OR INDIRECT AGENT, MEMBER, PARTNER, EMPLOYEE OR REPRESENTATIVE OF SELLER EITHER HAS MADE OR WILL MAKE OR WILL BE ALLEGED TO HAVE MADE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER TO PURCHASER, WHETHER EXPRESS OR IMPLIED, AND, IN PARTICULAR, THAT NO SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES HAVE BEEN MADE OR WILL BE MADE OR WILL BE ALLEGED TO HAVE BEEN MADE WITH RESPECT TO THE PHYSICAL CONDITION, ENVIRONMENTAL CONDITION OR OPERATION OF THE PROPERTY, THE ACTUAL OR PROJECTED REVENUE AND EXPENSES OF THE PROPERTY, THE ENFORCEABILITY OF ANY THIRD-PARTY AGREEMENT(S) (INCLUDING, WITHOUT LIMITATION, ANY DEALER LEASES OR GUARANTIES), THE ZONING AND OTHER LAWS, REGULATIONS AND RULES APPLICABLE TO THE PROPERTY OR THE COMPLIANCE OF THE PROPERTY THEREWITH, THE QUANTITY, QUALITY OR CONDITION OF THE ARTICLES OF PERSONAL PROPERTY AND FIXTURES INCLUDED IN THE TRANSACTIONS CONTEMPLATED HEREBY, THE USE OR OCCUPANCY OF THE PROPERTY OR ANY PART THEREOF OR ANY OTHER MATTER OR THING AFFECTING OR RELATED TO THE PROPERTY OR THE TRANSACTIONS CONTEMPLATED HEREBY, EXCEPT AS, AND SOLELY TO THE EXTENT, HEREIN SPECIFICALLY SET FORTH, (II) EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY SELLER'S DOCUMENT DELIVERED BY SELLER AT CLOSING, NEITHER SELLER, ANY AFFILIATE OF SELLER NOR ANY DIRECT OR INDIRECT AGENT, MEMBER, PARTNER, EMPLOYEE OR REPRESENTATIVE OF ANY OF THE FOREGOING HAVE MADE OR WILL MAKE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER TO PURCHASER, WHETHER EXPRESS OR IMPLIED, AND, IN PARTICULAR, THAT NO SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES HAVE BEEN MADE OR WILL BE MADE WITH RESPECT TO THE TRUTH, ACCURACY OR COMPLETENESS OF ANY MATERIALS, DATA OR OTHER INFORMATION, INCLUDING, WITHOUT LIMITATION, THE CONTENTS OF SELLER'S BOOKS AND RECORDS, CONTRACTS, ANY PROPERTY CONDITION REPORTS, ENGINEERING REPORTS, PHYSICAL CONDITION SURVEYS, INFORMATIONAL BROCHURE WITH RESPECT TO THE PROPERTY, RENT ROLLS OR INCOME AND EXPENSE STATEMENTS, WHICH SELLER OR SELLER'S REPRESENTATIVES MAY HAVE DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER AND/OR PURCHASER'S REPRESENTATIVES IN CONNECTION WITH THE PROPERTY AND PURCHASER REPRESENTS, WARRANTS AND AGREES THAT ANY SUCH MATERIALS, DATA AND OTHER INFORMATION DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER AND/OR PURCHASER'S REPRESENTATIVES ARE DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER AS A CONVENIENCE AND ACCOMMODATION ONLY AND EXPRESSLY DISCLAIMS ANY INTENT TO RELY ON ANY SUCH MATERIALS, DATA AND OTHER INFORMATION, (III) EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY SELLER'S DOCUMENT DELIVERED BY SELLER AT CLOSING, PURCHASER HAS NOT RELIED UPON ANY SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES OR UPON ANY STATEMENTS MADE IN ANY INFORMATIONAL BROCHURE WITH RESPECT TO THE PROPERTY AND HAS ENTERED INTO THIS AGREEMENT WITH THE EXPRESS INTENTION OF MAKING AND RELYING SOLELY ON ITS OWN INDEPENDENT INVESTIGATION, INSPECTION, ANALYSIS, APPRAISAL, EXAMINATION AND EVALUATION OF THE FACTS AND CIRCUMSTANCES, AND (IV) PURCHASER ACKNOWLEDGES THAT THE PROPERTY MAY NOT BE IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED, AND SELLER MAKES NO REPRESENTATIONS WITH RESPECT TO SAME AND WITHOUT LIMITING THE FOREGOING, EXCEPT AS, AND SOLELY TO THE EXTENT, HEREIN SPECIFICALLY SET

FORTH, SELLER HAS MADE NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING HAZARDOUS MATERIALS (AS SUCH TERM IS DEFINED IN SECTION 11.2) OF ANY KIND OR NATURE ON, ABOUT OR WITHIN THE PROPERTY OR THE PHYSICAL CONDITION OF THE PROPERTY AND PURCHASER AGREES TO ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, CONSTRUCTION OR MECHANICAL DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS MAY NOT HAVE BEEN (AND/OR MAY NOT BE) REVEALED BY PURCHASER'S INVESTIGATIONS, THE ENVIRONMENTAL REPORTS, AND/OR THE PROPERTY CONDITION REPORTS. NOTHING CONTAINED IN THIS SECTION 11.1 SHALL RELIEVE, DIMINISH OR OTHERWISE IMPACT SELLER'S OBLIGATIONS UNDER THE LEASES.

11.2 Release of Claims. Without limiting any provision in this Agreement, Purchaser, for itself and any of its successors and assigns and their affiliates, hereby irrevocably and absolutely waives its right to recover from, and forever releases and discharges, and covenants not to file or otherwise pursue any legal action (whether based on contract, statutory rights, common law or otherwise) against Seller, its affiliates and any direct or indirect partner, member, trustee, beneficiary, director, shareholder, controlling person, affiliate officer, employee or agent, of any of the foregoing, and any of their respective heirs, successors, and assigns (each, a "**Released Party**," and collectively, the "**Released Parties**") with respect to any and all suits, actions, proceedings, investigations, demands, claims, liabilities, obligations, fines, penalties, liens, judgments, losses, injuries, damages, settlement expenses or costs of whatever kind or nature, whether direct or indirect, known or unknown, contingent or otherwise (including any action or proceeding brought or threatened or ordered by any governmental or regulatory authority), in each case arising in connection with this Agreement, but not under the Leases, including, without limitation, attorneys' and experts' fees and expenses, and investigation and remediation costs that may arise on account of or in any way be connected with (i) the Investigations by Purchaser and Purchaser's Representatives permitted pursuant to Section 6.3, and (ii) the Property or any portion thereof, including, without limitation, Section 11.1 (collectively, "**Claims**"), including, without limitation, the physical, environmental and structural condition of the Property or any law or regulation applicable thereto, or any other matter relating to the use, presence, discharge or release of Hazardous Materials on, under, in, above or about the Property; provided, however, that Purchaser does not waive its rights, if any, to recover from, or release or discharge or covenant not to bring any action against (i) Seller or any Released Party for any act that constitutes fraud or intentional misrepresentation, (ii) Seller for any breach of the representations or warranties set forth in this Agreement, subject to the limitations and conditions provided in this Agreement, or (iii) Seller for its express obligations under this Agreement. In connection with this Section 11.2, Purchaser expressly waives the benefits of any provision or principle of federal or state law or regulation that may limit the scope or effect of the foregoing waiver and release to the extent applicable. For purposes of this Agreement, the term "**Hazardous Materials**" shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or other material that is hazardous, toxic, ignitable, corrosive, carcinogenic or otherwise presents a risk of danger to human, plant or animal life or the environment or that is defined, determined or identified as such in any federal, state or local law, rule or regulation (whether now existing or hereafter enacted or promulgated) or any judicial or administrative order or judgment, in each case relating to the protection of human health, safety and/or the environment, including, but not limited to, any materials, wastes or substances that are included within the definition of (A) "hazardous waste" in the federal Resource Conservation and Recovery Act; (B) "hazardous substances" in the federal Comprehensive Environmental Response, Compensation and Liability Act; (C) "pollutants" in the federal Clean Water Act; (D) "toxic substances" in the federal Toxic Substances Control Act; and (E) "oil or hazardous materials" in the laws or regulations of any State. The provisions of this Section 11.2 shall survive the Closing. Nothing contained in this Section 11.2 shall impact Purchaser's rights or remedies or Seller's obligations under the Leases.

12. **Documents or Instruments To be Delivered by Seller at the Closing.** At the Closing, Seller will deliver (or cause to be delivered) the following to Purchaser or Escrow Agent, with respect to each individual Property, as applicable (in addition to any items or documents otherwise required by this Agreement):

12.1 An original special warranty deed without covenants (or the state-specific counterpart thereof) substantially in the applicable form attached hereto as Exhibit D-1, Exhibit D-2, Exhibit D-3, Exhibit D-4 or Exhibit D-5, respectively ("**Deed**") executed and acknowledged by Seller and in proper form for recording conveying the Land and the Improvements, subject to the Permitted Encumbrances.

12.2 An original counterpart to the certificate that Seller is not a "foreign person" under the Foreign Investment in Real Property Tax Act in such form as reasonably acceptable to Seller, executed by Seller.

12.3 A certificate executed by Seller stating that all of the representations and warranties set forth in Section 9.1 are true and correct in all material respects as of the Closing Date, as updated as permitted pursuant to Section 9.1.

12.4 An owner's affidavit for the benefit of Escrow Agent in such form as reasonably required by Escrow Agent and reasonably acceptable to Seller.

12.5 A closing statement in a form agreed to by Seller and Purchaser, executed by Seller and Purchaser.

12.6 With respect to each individual Property, an original counterpart to each Lease.

12.7 With respect to each Lease, an original counterpart to a memorandum of lease in recordable form and substance as set forth on Exhibit F attached hereto (each, a "**Memo of Lease**").

12.8 With respect to each Lease, an original counterpart to a lease guaranty executed by Franchise Group, Inc., a Delaware corporation ("**Guarantor**"), in the form attached as Exhibit A to the form of Lease attached hereto (each, a "**Guaranty**").

12.9 With respect to each Dealer Lease, an original counterpart to each Subtenant Recognition Agreement in form and substance reasonably acceptable to Seller, Purchaser and the applicable Subtenant (each, a "**Subtenant Recognition Agreement**").

12.10 Intentionally Omitted.

12.11 A counterpart to the assignment of guaranties and warranties in form and substance as set forth on Exhibit G attached hereto (the "**Assignment of Guaranties and Warranties**").

12.12 Any additional instruments and documents reasonably requested by Escrow Agent in order to confirm corporate existence, structure, and/or authority of Seller.

12.13 Any state, county and municipal transfer declarations or notices which are legally or customarily required to be executed by the applicable Seller to effectuate the conveyance and transfer of the Property owned by such Seller as contemplated hereby.

12.14 Such other instruments and documents or payments as may be reasonably required to consummate the transaction herein contemplated.

13. **Documents or Instruments to be Delivered by Purchaser at the Closing.** At the Closing, Purchaser will deliver (in addition to any items or documents otherwise required by this Agreement) the following to Seller or Escrow Agent, with respect to each individual Property, as applicable:

13.1 The balance of the Purchase Price pursuant to and in accordance with Article 2.

13.2 A certificate executed by Purchaser stating that all of the representations and warranties set forth in Section 10.1 are true and correct in all material respects as of the Closing Date.

13.3 A closing statement in a form agreed to by Seller and Purchaser, executed by Purchaser.

13.4 With respect to each individual Property, an original counterpart to each Lease.

13.5 With respect to each Lease, an original counterpart to each Memo of Lease

13.6 With respect to each Dealer Lease, an original counterpart to each Subtenant Recognition Agreement.

13.7 Intentionally Omitted.

13.8 A counterpart to the Assignment of Guaranties and Warranties.

13.9 Any state, county and municipal transfer declarations or notices which are legally or customarily required to be executed by the applicable Purchaser to effectuate the conveyance and transfer of the Property purchased by such Purchaser as contemplated hereby.

13.10 Any additional instruments and documents reasonably requested by Escrow Agent in order to confirm corporate existence, structure, and/or authority of Purchaser.

13.11 Such other instruments and documents or payments as may be reasonably required to consummate the transaction herein contemplated.

14. **Conditions to Closing.**

14.1 **Conditions to Seller's Obligation to Sell.** Seller's obligation to consummate the transactions as contemplated by this Agreement and to deliver the documents and instruments required under Article 12 is subject to satisfaction of the following conditions (any of which may be waived by notice from Seller):

14.1.1 The delivery to Escrow Agent of the Purchase Price, adjusted as provided herein, plus the payment by Purchaser to the appropriate parties of any closing costs to be paid by Purchaser hereunder.

14.1.2 Purchaser shall have completed all of the other deliveries required of Purchaser under Article 13 (which may be delivered into escrow), and all such documents and instruments shall be in the form required hereby, or if no form is required hereby, then in form and substance reasonably satisfactory to Seller and its attorney.

14.1.3 All representations and warranties of Purchaser contained in this Agreement shall be true in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date and Purchaser shall have performed and

complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Purchaser prior to or by the Closing Date (including, but not limited to, the delivery by Purchaser of the items described in Article 13).

14.1.4 All authorizations, consents, orders or approvals, or declarations or filings with, or expirations of waiting periods imposed by, any governmental authority necessary for the consummation of the transactions contemplated hereby shall have been obtained or filed or shall have occurred.

If the foregoing conditions set forth in this Section 14.1 are not satisfied on and as of the Closing Date, Seller may (a) waive any of the foregoing conditions and proceed to the Closing on the Closing Date, (b) terminate this Agreement in its entirety, or (c) if such failure constitutes a default by Purchaser, exercise any of Seller's remedies pursuant to Section 18.1.

14.2 Conditions to Purchaser's Obligation to Purchase. Purchaser's obligation to consummate the transactions contemplated by this Agreement and to deliver the balance of the Purchase Price and the other documents and instruments required under Article 13 is subject to satisfaction of the following conditions (any of which may be waived by notice from Purchaser):

14.2.1 Subject to Seller's right to update same in accordance with Section 9.1, all representations and warranties of Seller contained in this Agreement shall be true in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date and Seller shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or by the Closing Date

14.2.2 Seller shall have completed all of the other deliveries required of Seller under Article 12 (which may be delivered into escrow), and all such documents and instruments shall be in the form required hereby, or if no form is required hereby, then in form and substance reasonably satisfactory to Purchaser and its attorney.

14.2.3 Each Phase I Report approved by Purchaser prior to the Due Diligence Date shall be dated within one hundred eighty (180) days of the Closing Date and shall continue to accurately reflect the environmental condition of the respective Properties in all material respects.

14.2.4 The financial condition of Seller and Guarantor shall not have materially deteriorated from the financial condition disclosed to Purchaser in the financial reports provided to Purchaser prior to the date of this Agreement, and in any event (a) neither Tenant nor Guarantor shall have filed or have filed against it a petition seeking relief under the bankruptcy or other similar laws of the United States or any state thereof, (b) Seller shall not have defaulted on or have missed a payment on any obligation with a face amount in excess of \$1,000,000, which default or missed payment remains uncured for more than thirty (30) days (unless being disputed in good faith), and (c) Guarantor shall not have defaulted on or have missed a payment on any obligation that would be reasonably likely to have a material adverse effect on Guarantor's financial condition (unless being disputed in good faith).

14.2.5 All authorizations, consents, orders or approvals, or declarations or filings with, or expirations of waiting periods imposed by, any governmental authority necessary for the consummation of the transactions contemplated hereby shall have been obtained or filed or shall have occurred.

If the foregoing conditions set forth in this Section 14.2 are not satisfied on and as of the Closing Date as to all of the Properties, Purchaser may (a) waive any of the foregoing conditions and proceed to the Closing on the Closing Date, (b) terminate this Agreement in its entirety, or (c) if such failure constitutes a default by Seller, exercise any of Purchaser's remedies pursuant to Section 18.2. Notwithstanding the foregoing, if the foregoing conditions set forth in this Section 14.2 are not satisfied on and as of the Closing Date as to less than all of the Properties, then Seller may, at its option, as to just those individual Properties for which the foregoing conditions have not been satisfied on and as of the Closing Date, elect to deem such individual Property(ies) a "Deferred Property(ies)", in which event, this Agreement shall be deemed amended, without further action on any party's part, in accordance with the terms of Section 6.5, and Purchaser may proceed to closing on the remaining Properties. If the Agreement is terminated by Purchaser as to all of the Properties, the Deposit shall be returned to Purchaser in accordance with Section 2.2.

14.3 Consents. Unless specifically set forth herein to the contrary, Seller shall not be responsible for obtaining the consent of any party to the assignment of any environmental report, engineering report, Dealer Lease, guaranty, warranty, or to the assignment of any other document or agreement to Purchaser and, in clarification thereof, if any such consent is required by any party to such document or agreement and such consent is not obtained by the Closing Date, Seller shall not be responsible for assigning such document or agreement to Purchaser and the failure to so assign such document or agreement shall not be considered a default hereunder or a failure to satisfy any condition hereof; provided, however, Seller agrees to use commercially reasonable efforts to obtain any such consents.

14.4 No Financing Contingency. It is expressly acknowledged by Purchaser that the Closing of the transactions contemplated by this Agreement is not subject to any financing contingency and that no financing for this transaction shall be provided by Seller. Without limiting the foregoing, Purchaser agrees that the ability or inability of Purchaser to obtain debt, equity investments or other financing in order to pay all of any part of the Purchase Price shall not be a contingency or condition to any of Purchaser's obligations under this Agreement.

14.5 The Closing. The closing of the transaction contemplated herein (the "**Closing**") shall be effectuated through an escrow with Escrow Agent pursuant to escrow instructions consistent with the terms and provisions of this Agreement and otherwise mutually satisfactory to Seller and Purchaser, on or before the date (as the same may be adjourned in accordance with this Agreement or as otherwise mutually agreed by the parties in writing, the "**Initial Closing Date**") that is ten (10) days after the Due Diligence Date, subject only to the various adjournment rights of Seller or Purchaser explicitly permitted in this Agreement. Each party shall have the right to adjourn the Closing Date for three (3) Business Days (the "**Adjourned Closing Date**", together with the Initial Closing Date, the "**Closing Date**") by sending written notice of same to the non-electing party no later than two (2) Business Days prior to the Initial Closing Date or Adjourned Closing Date, as applicable. TIME SHALL BE OF THE ESSENCE WITH RESPECT TO PURCHASER'S OBLIGATION TO CLOSE HEREUNDER ON THE CLOSING DATE. Seller and Purchaser agree that they will endeavor to cause the Closing to occur by March 31, 2022. Reference in this Agreement to a "Closing" or a "Closing Date" shall be deemed to refer to the Closing or Closing Date with respect to each individual Property or Deferred Property, as applicable as and when the same occurs or is required to occur.

14.6 No Termination. Notwithstanding anything to the contrary contained herein, Purchaser shall not be entitled to terminate this Agreement and Seller shall not be liable to Purchaser, and Purchaser shall not receive a reduction in, or a credit against, the Purchase Price, in the event any Subtenant vacates its premises, defaults under its Dealer Lease in any respect, or if any Subtenant terminates its Dealer Lease in accordance with rights granted Subtenant under the terms of its Dealer Lease, prior to the Closing Date.

## 15. Casualty; Condemnation.

15.1 Casualty. If any individual Property is “materially damaged or destroyed” (as hereinafter defined) by a fire or other casualty event (a “**Casualty**”) prior to the Closing, Seller shall promptly notify Purchaser and Purchaser may terminate this Agreement with respect to such Property only by written notice given to Seller within ten (10) Business Days after Purchaser receives notice of the occurrence of such Casualty. If Purchaser so terminates this Agreement with respect to such Property, such Property shall be deemed a “Terminated Property” and subject to the terms of Section 1.2. If Purchaser does not so terminate this Agreement with respect to such Property, or if the Property is not deemed “materially damaged or destroyed,” Purchaser will remain bound to purchase such Property for the full Allocated Purchase Price pursuant to the terms of this Agreement, without regard to the occurrence or effects of the Casualty; provided that, at the Closing, Seller will assign to Purchaser Seller’s interest in the property insurance proceeds payable to Seller (if any) under Seller’s insurance applicable to the Property(s) suffering such Casualty for the restoration of the physical damage to such Property(s), but net of any costs and expenses incurred by Seller prior to the Closing in connection with the Casualty, and Seller shall credit Purchaser at the Closing with the amount of the applicable insurance deductible pertaining to such Casualty. For purposes of this Section 15.1, a Property shall be deemed “**materially damaged or destroyed**” if the cost to repair and restore such Property exceeds an amount equal to twenty percent (20%) of the Allocated Purchase Price for the individual Property that is materially damaged or destroyed.

15.2 If any condemnation proceedings are instituted, or notice of any condemnation or intent to condemn is given, with respect to all or any portion of any individual Property (a “**Condemnation**”) prior to the Closing, and the Condemnation will result in a “material and adverse effect” (as hereinafter defined) to such Property, Seller shall promptly notify Purchaser and Purchaser may terminate this Agreement with respect to such Property only by written notice given to Seller within ten (10) Business Days after the date Purchaser receives notice of such Condemnation. If Purchaser so terminates this Agreement with respect to such Property, such Property shall be deemed a “Terminated Property” and subject to the terms of Section 1.2. If Purchaser does not so terminate this Agreement with respect to such Property, or if the Condemnation will not result in a “material and adverse effect” to such Property, Purchaser will remain bound to purchase the Property for the full Allocated Purchase Price pursuant to the terms of this Agreement, without regard to the occurrence or effect of the Condemnation; provided that, at the Closing, Seller will assign to Purchaser Seller’s interest in the award(s) payable to Seller on account of the Condemnation (if any), but net of any costs and expenses incurred by Seller prior to the Closing in connection with the Condemnation. For purposes of this Section 15.2, “**material and adverse effect**” shall mean the Condemnation will materially impair the value of the Property by more than twenty percent (20%) of the Allocated Purchase Price for the individual Property that is the subject of any such Condemnation.

## 16. Discharge of Obligations.

16.1 The delivery of the Deed by Seller in accordance with the provisions of this Agreement, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder. Except as otherwise set forth in Section 26.1, no representation or warranty of Seller shall survive Closing.

## 17. Covenants of Seller.

17.1 From and after the Due Diligence Date until the earlier of the Closing or the termination of this Agreement, Seller shall, except for those actions expressly contemplated or required to be taken by this Agreement or as consented to by Purchaser in writing, cause each individual Property to be operated in the ordinary course consistent with past practice.

17.2 From and after the Effective Date until the Closing, there shall be no material adverse change in the physical condition of the Property or the improvements on the Property existing as of the Effective Date.

17.3 Notwithstanding anything herein to the contrary, Seller may, without Purchaser's consent and without cost to Purchaser (unless otherwise set forth herein or unless otherwise approved by Purchaser) (i) take such actions, if any, with respect to the Property, reasonably necessary to comply with the terms of the Dealer Leases and any insurance requirements or to comply with laws, rules or regulations of any governmental authority, (ii) take such actions as it deems reasonably necessary to repair any insured or uninsured casualty or damage, and (iii) take such actions with respect to the Property reasonably necessary to prevent loss of life, personal injury or property damage.

## **18. Defaults; Damages.**

18.1 Purchaser Defaults. In the event that Purchaser shall default under this Agreement, Purchaser and Seller agree that the damages that Seller shall sustain as a result thereof shall be substantial and shall be extremely difficult and impractical to determine. Purchaser and Seller therefore agree that if Purchaser fails to perform any or all of the terms, covenants, conditions and agreements to be performed by Purchaser hereunder, whether at or as of the Closing, Seller's remedy shall be to receive as liquidated damages (but not as a penalty) the Deposit from Escrow Agent, and thereafter neither Purchaser nor Seller shall have any further liability or obligation to the other hereunder, except for such liabilities and obligations as are expressly stated to survive the termination of this Agreement. Purchaser and Seller agree that, considering all of the facts and circumstances existing as of the Effective Date, the amount of the Deposit is a fair and reasonable estimate of the damages that Seller would incur in the event of a default by Purchaser under this Agreement.

### **18.2 Seller Pre-Closing Defaults.**

18.2.1 In the event that on the Closing Date Seller has defaulted on its obligations hereunder in any material respect, then, subject to the provisions set forth below, Purchaser shall be entitled, as its sole remedy, to either: (i) treat this Agreement as being in full force and effect and pursue only the remedy of specific performance against Seller; or (ii) if specific performance is not possible or if Purchaser elects not to pursue specific performance, terminate this Agreement and receive (i) a return of the Deposit from Escrow Agent and (ii) a payment from Seller in an amount equal to the reasonable, third-party, out-of-pocket costs and expenses actually incurred by Purchaser in connection with the transactions contemplated hereby as a result of such default by Seller (including reasonable attorney's fees and costs), not to exceed TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) in the aggregate, and Seller shall not have any further liability or obligation to Purchaser hereunder nor shall Purchaser have any further liability or obligation to Seller hereunder, except for such obligations (but not liabilities) of the parties respectively as are specifically stated to survive the termination of this Agreement. In addition, in the event a Seller default relates to less than all of the Properties, Purchaser shall be entitled to (i) pursue only the remedy of specific performance against Seller as to those individual Properties on which Seller has not defaulted, and (ii) terminate this Agreement as to just those individual Properties on which Seller has defaulted and receive a payment from Seller in an amount equal to the reasonable, third-party, out-of-pocket costs and expenses actually incurred by Purchaser in connection with the transactions contemplated hereby as a result of such default by Seller (including reasonable attorney's fees and costs), not to exceed SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00) for each such individual terminated Property.

18.2.2 Purchaser waives any right to pursue any other remedy at law or in equity for such default of Seller, including, without limitation, any right to seek, claim or obtain damages, other than in the case of Seller's fraud, but in no case shall Purchaser seek or shall Seller be liable for indirect, punitive, special or consequential damages. Notwithstanding anything contained herein to the contrary, if prior to the Closing Date, Purchaser has or obtains knowledge that (a) Seller has defaulted on its obligations hereunder in any respect, and Purchaser nevertheless proceeds with the Closing, then the default by Seller as to which Purchaser shall have such knowledge shall be deemed waived by Purchaser and Seller shall have no liability to Purchaser or its successors and assigns in respect thereof or (b) any of Seller's representations or warranties set forth in Article 9 are untrue in any respect, and Purchaser nevertheless proceeds with the Closing, then the breach by Seller of the representations and warranties as to which Purchaser shall have such knowledge shall be deemed waived by Purchaser, such representations and warranties shall be deemed modified to conform them to the information that Purchaser shall have knowledge of and Seller shall have no liability to Purchaser or its successors or assigns in respect thereof. If Purchaser has or obtains knowledge that (i) Seller has defaulted on its obligations hereunder in any respect or (ii) any of Seller's representations or warranties set forth in Article 9 are untrue in any material respect, Purchaser shall so notify Seller in writing (x) on or before the date that is the second (2<sup>nd</sup>) Business Day after obtaining such knowledge, or (y) on or before the Closing Date if Purchaser obtains such knowledge one (1) Business Day prior to the Closing Date or on the Closing Date.

18.3 Right to Cure. In the event either party defaults in the performance of any of the covenants or obligations required to be observed or performed by such party (such defaulting party being hereinafter referred to as the "**Defaulting Party**") pursuant to the terms of this Agreement (other than a default of Purchaser's obligation to effectuate the Closing (for which there shall be no cure period)), the non-defaulting party (the "**Non-Defaulting Party**") before seeking any remedies hereunder, shall provide the Defaulting Party with written notice of such default ("**Default Notice**"). The Defaulting Party shall have three (3) Business Days (for any failure to timely pay or deposit any amount of money required to be paid or deposited under this Agreement) or ten (10) Business Days (for any other default) from receipt of such Default Notice to cure such default before the Non-Defaulting Party may exercise the remedies set forth in Sections 18.1 and 18.2 above.

18.4 Defaults Discovered Post-Closing. If Purchaser closes the transactions contemplated by this Agreement and, after the Closing Date but before the Survival Date, Purchaser discovers a breach of any of Seller's representations or warranties hereunder or under any certificates and other documents executed at, or in connection with, the Closing, Purchaser shall have the right, until the Survival Date, to sue Seller for actual direct damages incurred by Purchaser as a result of such breach or breaches, but in no case shall Purchaser seek or shall Seller be liable for indirect, punitive, special or consequential damages. However, in any such event or events, Seller shall not have any liability to Purchaser for all or any of such matters in excess of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00) in the aggregate (the "**Post-Closing Damage Cap**"). Purchaser shall not seek, pursue or enter any judgment or collect (or attempt to collect) an amount in excess of the Post-Closing Damage Cap. The provisions of this Section 18.4 shall survive the Closing.

18.5 Limitation on Default. Notwithstanding anything to the contrary, Seller's inability to satisfy a condition of this Agreement shall not be considered a default by Seller hereunder unless such inability results from the breach of Seller's express obligations hereunder; provided nothing herein shall relieve Seller from using commercially reasonable efforts to satisfy the conditions of this Agreement.

## 19. Escrow Agent.

19.1 Escrow Agent shall hold the proceeds of the Deposit in escrow in a special bank account (or as otherwise agreed in writing by Seller, Purchaser and Escrow Agent) until the Closing Date or sooner termination of this Agreement and shall pay over or apply such proceeds in accordance with the terms of this Article 19. Escrow Agent shall hold such proceeds in an interest-bearing account, and any interest earned thereon shall be paid to the same party entitled to the escrowed proceeds, and the party receiving such interest shall pay any income taxes thereon. Seller and Purchaser shall each provide a form W-9 to Escrow Agent concurrently with or prior to the Effective Date. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrow Agent to Seller.

19.2 If any party makes a written demand upon Escrow Agent for payment of the proceeds of the Deposit, then Escrow Agent shall give written notice to the other parties of such demand. If Escrow Agent does not receive a written objection from the other parties to the proposed payment within ten (10) Business Days after the giving of such notice, Escrow Agent is hereby authorized to make such payment. If Escrow Agent does receive such written objection within such ten (10)-Business Day period or if for any other reason Escrow Agent in good faith shall elect not to make such payment, Escrow Agent shall continue to hold such amount until otherwise directed by written instructions from the parties to this Agreement or a final judgment of a court of competent jurisdiction. However, Escrow Agent shall have the right at any time to deposit the escrowed proceeds and interest thereon, if any, with the clerk of the appropriate court of the county in which the Property is located. Escrow Agent shall give written notice of such deposit to Seller and Purchaser. Upon such deposit, Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder. The parties acknowledge that Seller shall have no obligation to challenge the release of the Deposit to Purchaser in the event Purchaser terminates the entire Agreement prior to the Due Diligence Date in accordance with the terms hereof.

19.3 The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that Escrow Agent shall not be deemed to be the agent of either of the parties, and that Escrow Agent shall not be liable to any of the parties for any act or omission on its part unless taken or suffered in bad faith and in willful disregard of this Agreement or involving gross negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable, out-of-pocket attorneys' fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith, and in willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent.

19.4 Escrow Agent shall not have any duties or responsibilities except those set forth in this Agreement and shall not incur any liability in acting upon any signature, notice, request, waiver, consent, receipt or other instrument or document believed in good faith by Escrow Agent to be genuine, and Escrow Agent may assume that any Person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so. Escrow Agent shall have no duty to determine (and shall not be affected by any knowledge concerning) the validity, authenticity or enforceability of any specification or certification made in any certificate or notice.

## **20. Notices.**

20.1 All notices, demands, requests or other communication required to be given or which may be given hereunder shall be in writing and shall be deemed to have been properly given, unless otherwise provided herein, if (a) deposited in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested, (b) delivered to such party, or an agent of such party, in person or by commercial courier, (c) sent by electronic copy, evidenced by confirmed receipt and concurrently followed by a "hard" copy of same delivered to the party by mail, personal delivery or overnight delivery pursuant to clauses (a), (b) or (d) hereof, or (d) sent (prepaid) by reputable nationally recognized overnight courier for next Business Day delivery. Such notice, demand, request or

communication shall be deemed to have been duly given, on the date received, or the date delivery is refused if hand delivered. The attorney for any party may give a notice on behalf of such party. Notices shall be addressed as follows:

If to Seller, to:

200 NW Phosphate Boulevard  
Mulberry, Florida 33860  
Attention: Phil Bayt  
Email: phil.bayt@badcock.com

with copies to:

c/o Franchise Group, Inc.  
109 Innovation Court, Suite J  
Delaware, Ohio 43015  
Attention: Eric Seeton, CFO  
Email: eseeton@franchisegrp.com

and:

c/o Franchise Group, Inc.  
109 Innovation Court, Suite J  
Delaware, Ohio 43015  
Attention: Tiffany McMillan-McWaters, Deputy General Counsel  
Email: tmcwaters@Franchisegrp.com

and:

Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Melissa Fischetti, Esq.  
Email: mfischetti@willkie.com

If to Purchaser, to:

National Retail Properties, LP  
450 South Orange Avenue, Suite 900  
Orlando, Florida 32801  
Attention: David G. Byrnes, Jr., Assistant General Counsel  
Email: david.byrnes@nnnreit.com

with a copy to:

The Lowndes Law Firm  
215 N. Eola Drive  
Orlando, Florida 32801  
Attention: Timothy R. Miedona, Esq.  
Email: tim.miedona@lowndes-law.com

If to Escrow Agent, to:

First American Title Insurance Company  
National Commercial Services  
5201 Blue Lagoon Drive, Suite 974  
Miami, Florida 33126  
Attention: Vanessa Abreu, Esq., VP and Division Area Manager-NCS Miami  
Email: vabreu@firstam.com

or to such other Person and/or address as shall be specified by any party in a notice given to the other party pursuant to the provisions of this Section 20.1.

21. **Brokers.**

21.1 Purchaser and Seller each warrant and represent to the other that this transaction was not brought about by any broker other than B. Riley Real Estate, LLC (the "**Broker**"). Seller will pay the Broker a brokerage commission pursuant to a separate agreement with the Broker. Purchaser and Seller each shall and hereby does agree to indemnify and hold the other party harmless from and against any and all claims, demands or causes of action or other liability (including, without limitation, reasonable attorneys' fees and disbursements) against the indemnified party arising from or pertaining to any violation, on their respective parts, of the foregoing representation and warranty. The representations, warranties and indemnity contained in this Section 21.1 shall survive the Closing and the delivery of the instruments contemplated hereunder or if the Closing does not occur, the termination of this Agreement.

22. **Confidentiality.**

22.1 The parties agree that they will not disclose the contents of this Agreement or any agreement contemplated hereby or executed by the parties prior to the Effective Date other than the Leases to any third parties without the consent of the other party, except as may be required or, based on the advice of counsel, advisable to ensure compliance with any applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency having jurisdiction over such party; provided that the disclosing party has given the other party no less than two (2) Business Days' prior written notice of such intended disclosure. Nothing contained in this Section 22.1 shall be construed as prohibiting the parties from disclosing the contents of this Agreement (A) on a confidential basis to its counsel, accountants, insurance agents, consultants, and other agents, or governmental authorities, (B) with respect to Purchaser, to parties from which it is seeking financing or equity investment including their agents and rating agencies or (C) with respect to Seller, any existing lender or mortgagee. Without in any way limiting the foregoing, Purchaser agrees that any and all materials and information provided by Seller or made available to Purchaser, including, without limitation, the Information and the Due Diligence Materials, shall be kept strictly confidential in accordance with the terms of this Section 22.1; provided, however, that Purchaser may disclose the terms of this Agreement and the Leases during any investor or earnings call conducted by Purchaser as required by applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency. The provisions of this Section 22.1 shall survive the termination of this Agreement until the Survival Date set forth in Section 26.1; provided, however, upon the Closing for each Property, any confidentiality imposed upon Purchaser regarding the due diligence of such individual Property acquired by Purchaser shall expire upon the Closing (subject to the terms of the applicable Lease).

23. **Public Disclosure; Press Releases.**

23.1 Prior to the Closing, Seller and Purchaser each agree that it will not issue any press release, advertisement or other public communication with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other party hereto, which consent shall not

be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, (i) Seller and Purchaser shall each have the right to make any filings or issue any press releases, advertisements, or other public communications required by applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency without the prior written consent of the other party hereto, (ii) Seller and Purchaser each may make an announcement to, or otherwise communicate with, its direct and indirect investors, employees and owners regarding this Agreement and/or the transactions contemplated herein, without the consent of the other party, provided such announcements or communications do not include the economic or other material terms of the transaction contemplated by this Agreement or the Leases, or any financial information regarding Seller, (iii) Purchaser may make an announcement on any earnings calls conducted by Purchaser, and (iv) Seller shall have the right to make any filings or issue any press releases, advertisements, or other public communications as made or issued in the ordinary course of Seller's business (including as required by applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency) without the prior written consent of Purchaser provided that Seller does not reveal Purchaser's identity or use the name of Purchaser or any related entity of Purchaser without the prior written consent of Purchaser. At the Closing, in addition to any filings that Seller is required to make pursuant to applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency, Seller may issue a press announcement of this transaction without the prior written consent of Purchaser provided that Seller does not reveal Purchaser's identity or use the name of Purchaser or any related entity of Purchaser without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned, or delayed).

**24. Further Assurances.**

24.1 The parties agree to do such other and further acts and things, and to execute and deliver such instruments and documents, as either may reasonably request from time to time, on or after the Closing Date, in furtherance of the purposes of this Agreement. The provisions of this Section 24.1 shall survive the Closing until the Survival Date set forth in Section 26.1.

**25. Miscellaneous.**

25.1 This Agreement, the Exhibits and the Schedules attached hereto, together with the Seller's Documents and the Purchaser's Documents, constitute the entire agreement between the parties with respect to the subject matter hereof, and all understandings and agreements heretofore or simultaneously had between the parties are merged in, superseded by and contained in this Agreement.

25.2 No waiver by any party to any breach hereunder shall be deemed a waiver of any other or subsequent breach.

25.3 This Agreement may not be altered, amended, changed, waived, discharged, terminated or modified in any respect or particular unless the same shall be in writing and signed by or on behalf of the party to be charged therewith; and any consent, waiver, approval or authorization shall be effective only if signed by the party granting such consent, waiver, approval or authorization.

25.4 Subject to the provisions of Section 25.8, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators and successors and permitted assigns.

25.5 This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof.

25.6 This Agreement shall be construed and enforced in accordance with the laws of the State of Florida without regard to principles of conflicts of laws, except as to real property matters directly

relating to an individual Property, which matters shall be governed by the laws of the State in which the applicable individual Property is located. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

25.7 This Agreement (or any memorandum hereof) may not be recorded by Purchaser and any recordation thereof shall be deemed a material default under this Agreement.

25.8 Purchaser may not directly or indirectly assign or transfer this Agreement or any of its rights hereunder without Seller's prior written consent in each instance, which consent may be granted or withheld in Seller's sole and absolute discretion. No consent given by Seller to any assignment shall be construed as a consent to any other assignment, and any unpermitted assignment made by Purchaser shall be void. Notwithstanding the foregoing, Purchaser may, without Seller's consent, (i) assign this Agreement to an entity one hundred percent (100%) owned by Purchaser provided Seller receives a written assignment and assumption of this Agreement at least fifteen (15) Business Days prior to the Closing, provided, however, that such assignment and assumption shall not relieve Purchaser of its obligations hereunder; or (ii) direct that title to the Property be transferred at the Closing to one or more entities one hundred percent (100%) owned by Purchaser provided Seller receives such direction in writing at least fifteen (15) Business Days prior to the Closing.

25.9 The captions, Section and Article titles and Exhibit and Schedule names contained in this Agreement are for convenience and reference only and shall not be used in construing this Agreement.

25.10 The Exhibits and Schedules attached hereto are hereby made part of this Agreement.

25.11 The terms "hereof," "herein," and "hereunder" and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular article or provision, unless expressly so stated. All words or terms used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. For the purposes of this Agreement, and without intending to expand the meaning of the phrase "commercially reasonable efforts", the parties hereto acknowledge that commercially reasonable efforts will not be interpreted as requiring the initiation or settlement of litigation, disproportionate payouts to any partners, or the payment of money (other than usual and customary expenses associated with negotiating and closing transaction of the nature set forth herein).

25.12 For the purposes of this Agreement, "knowledge" with respect to or matters "known" by (a) Seller shall mean matters as to which the following individual has actual, present and personal knowledge without any independent investigation or any duty or responsibility to make any inquiry, review or investigation: Robert Burnette; and (b) Purchaser shall mean matters as to which the following individuals have actual, present and personal knowledge without any independent investigation or any duty or responsibility to make any inquiry, review or investigation: Matt Williams and Will Mims. Actual knowledge shall not be deemed to exist merely by assertion by Purchaser or Seller of a claim that any of the foregoing persons should have known of such facts or circumstances, if such person did not have actual knowledge thereof. The individuals named in this Section 25.12 shall have no personal liability pursuant to this Agreement.

25.13 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Each party may rely upon a facsimile or other electronic counterpart (including ".pdf") of this Agreement or any instrument delivered in connection herewith signed by the other party with the same effect as if such party had received an original counterpart signed by such other party.

25.14 If any provision of this Agreement, or the application of such provision to any Person or circumstance, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the Person or circumstance other than those in respect of which it is invalid or unenforceable, except those provisions which are made subject to or conditioned upon such invalid or unenforceable provisions, shall not be affected thereby.

25.15 The submission of this Agreement to Purchaser does not create a binding obligation on the part of Seller. This Agreement shall not be binding on Purchaser or Seller until Purchaser has signed this Agreement and delivered the signed Agreement and the Deposit to Seller and a counterpart hereof executed by Seller has been delivered to Purchaser.

25.16 If any party obtains a judgment against any other party by reason of breach of this Agreement, reasonable attorneys' fees and disbursements as fixed by the court shall be included in such judgment.

25.17 Time is of the essence of this Agreement. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which the period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a Business Day, in which case the period shall be deemed to run until the end of the next day which is a Business Day.

25.18 Whenever two or more parties constitute Purchaser, all such parties shall be jointly and severally liable for performing Purchaser's obligations hereunder. Whenever two or more parties constitute Seller, all such parties shall be jointly and severally liable for performing Seller's obligations hereunder.

25.19 The following terms used but not otherwise defined herein shall have the following meanings:

25.19.1 "**Business Day**," shall mean any day other than a Saturday, Sunday or bank holiday in the City of New York, State of New York or the City of Orlando, State of Florida.

25.19.2 "**Person**" shall mean any individual, corporation, limited liability company, limited partnership, general partnership, association, joint stock company, joint venture, estate, trust (including any beneficiary thereof), unincorporated organization, government or any political subdivision thereof, governmental unit or authority or any other entity.

25.19.3 "**Taxes**" shall mean any federal, state, local or foreign, real property, personal property, sales, use, room, occupancy, ad valorem or similar taxes, assessments, levies, charges or fees imposed by any governmental or regulatory authority on Seller with respect to the Property, including, without limitation, any interest, penalty or fine with respect thereto, but expressly excluding any federal, state, local or foreign income, capital gain, gross receipts, capital stock, franchise, profits, estate, gift or generation skipping tax, transfer, documentary stamp, recording or similar tax, levy, charge or fee incurred with respect to the transaction described in this Agreement.

**25.20 State-Specific Required Provisions.**

25.20.1 Florida.

25.20.1.1 Radon Gas. As required by Florida statute, the following notification is provided:

“**RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.”

25.20.2 Georgia. The documents to be delivered by Seller as described in Section 12.13 above include a completed Georgia Affidavit of Residence or Affidavit of Seller’s Gain, as applicable.

26. **Survival.**

26.1 The acceptance by Purchaser of the Deeds and assignments referred to in Article 12 shall be deemed to be an acknowledgment, for all purposes, of the full performance and discharge of every representation, agreement and obligation on the part of Seller to be performed by it pursuant to the provisions of this Agreement, except for the following provisions which are to survive the Closing until the Survival Date and any other provisions of this Agreement which are specifically stated to survive the Closing. The “**Survival Date**” shall mean the date that is nine (9) months after the Closing.

26.2 Notice of any claim made by Purchaser or Seller on the basis of a breach of a provision of this Agreement which survives the Closing shall be given on or before the Survival Date. In the event that either party shall fail to give such notice prior to the Survival Date, such party shall be deemed to have waived all claims in connection with any such provision. Any litigation with respect to such claim shall be commenced within thirty (30) days after the Survival Date. Time shall be of the essence with respect to giving notice hereunder and commencing any litigation.

26.3 The provisions of this Article 26 shall survive the Closing.

27. **Tax Contents**

27.1 Taxes. Seller shall retain the right to commence, continue and settle any proceeding to contest any Taxes for any taxable period whether prior to or following the Closing Date, subject to the terms and conditions of the Leases, and shall be entitled to any refunds or abatement of Taxes for such periods awarded in any such proceedings.

27.2 Cooperation. Seller and Purchaser shall use commercially reasonable efforts to cooperate with the party contesting the Taxes (at no cost or expense to the party not contesting the Taxes other than any *de minimis* cost or expense or any cost or expense which the contesting party agrees in writing to reimburse) and to execute and deliver any documents and instruments reasonably requested by the party contesting the Taxes in furtherance of the contest of such Taxes.

27.3 Survival. The provisions of this Article 27 shall survive the Closing until the Survival Date set forth in Section 26.1.

28. **Waiver of Jury Trial.**

28.1 TO THE EXTENT PERMITTED BY APPLICABLE LAW, PURCHASER AND SELLER HERETO SHALL, AND THEY HEREBY DO, INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF PURCHASER AND SELLER HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. The provisions of this Section 28.1 shall survive the Closing.

29. **Sign and Close.** Notwithstanding anything herein to the contrary, in the event that the Closing Date is the Effective Date:

29.1 Purchaser shall not be required to deposit any Deposit, and all other representations, covenants, rights, and obligations hereunder in respect of the Deposit shall be void and of no force or effect;

29.2 the terms and conditions of Section 6.3 shall apply retroactively to any Investigations actually performed by Purchaser;

29.3 the terms and conditions of Section 6.3 shall apply retroactively to any Investigations actually performed by Purchaser;

29.4 Section 5.2 shall be void and of no force or effect and this Agreement shall be construed as though Purchaser had elected not to raise any Title Objection Matters.

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27.2 Cooperation. Seller and Purchaser shall use commercially reasonable efforts to cooperate with the party contesting the Taxes (at no cost or expense to the party not contesting the Taxes other than any *de minimis* cost or expense or any cost or expense which the contesting party agrees in writing to reimburse) and to execute and deliver any documents and instruments reasonably requested by the party contesting the Taxes in furtherance of the contest of such Taxes.

27.3 Survival. The provisions of this Article 27 shall survive the Closing until the Survival Date set forth in Section 26.1.

28. **Waiver of Jury Trial.**

28.1 TO THE EXTENT PERMITTED BY APPLICABLE LAW, PURCHASER AND SELLER HERETO SHALL, AND THEY HEREBY DO, INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF PURCHASER AND SELLER HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. The provisions of this Section 28.1 shall survive the Closing until the Survival Date set forth in Section 26.1.

29. **Sign and Close.** Notwithstanding anything herein to the contrary, in the event that the Closing Date is the Effective Date:

29.1 Purchaser shall not be required to deposit any Deposit, and all other representations, covenants, rights, and obligations hereunder in respect of the Deposit shall be void and of no force or effect;

29.2 the terms and conditions of Section 6.3 shall apply retroactively to any Investigations actually performed by Purchaser;

29.3 Section 6.5, Article 17, Article XIV and Article XV shall be void and of no force or effect; and

29.4 Section 5.2 shall be void and of no force or effect and this Agreement shall be construed as though Purchaser had elected not to raise any Title Objection Matters.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

**SELLER:**  
**W.S. BADCOCK CORPORATION,**  
a Florida corporation

By: /s/ Robert B. Burnette  
Name: Robert B. Burnette  
Title: President

**PURCHASER:**  
**NATIONAL RETAIL PROPERTIES, LP,**  
a Delaware limited partnership

By: NNN GP Corp.,  
a Delaware corporation,  
as general partner

By: Stephen A. Horn, Jr. /s/  
Name: A. Horn, Jr. Stephen  
Title: Vice President Executive

[Signature Page to Purchase and Sale Agreement]

**CONSENT OF ESCROW AGENT:**

FIRST AMERICAN TITLE INSURANCE COMPANY ("**Escrow Agent**") hereby agrees to: (i) accept and carry out the escrow instructions set forth in this Agreement, (ii) carry out the responsibilities of Escrow Agent as provided in this Agreement; and (iii) be bound by this Agreement in the performance of its duties as Escrow Agent.

DATED: March 31, 2022 **FIRST AMERICAN TITLE INSURANCE COMPANY**

By: Tahany /s/ Erin  
Name: Tahany Erin  
Title: Supervisor Operations

[Signature Page to Purchase and Sale Agreement]

**PURCHASE AND SALE AGREEMENT**

This **PURCHASE AND SALE AGREEMENT** (this "**Agreement**") made as of this 15<sup>th</sup> day of April, 2022 (the "**Effective Date**"), by and between **W.S. Badcock Corporation**, a Florida corporation having an address at 200 NW Phosphate Boulevard, Mulberry, Florida 33860 ("**Seller**"), and **MESIROW REALTY SALE-LEASEBACK, INC.**, an Illinois corporation, having an address at 353 North Clark Street, Chicago, Illinois 60654 ("**Purchaser**").

**RECITALS:**

**WHEREAS**, Seller is the fee owner of those certain plots, pieces or parcels of land commonly known by the addresses set forth on Schedule I attached hereto and more particularly described on Exhibit A attached hereto (each individually, a "**Land Parcel**" and, collectively, the "**Land**"), and on which Seller operates its business (individually or collectively, the "**Business**"); and

**WHEREAS**, Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller the Properties (as hereinafter defined), subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

1. **Sale and Purchase.**

1.1 **Property.** Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, upon and subject to the terms and conditions hereinafter set forth, (a) the Land; (b) all buildings and other improvements of every kind and nature currently located on the Land, all building systems, fixtures (but specifically excluding any machinery or equipment whether attached or not and any fixtures otherwise excluded by the terms of this Section 1.1), conduits, ducts, hot water heaters, oil burners, domestic water systems, and installations, including those used to provide fire protection, heat, exhaust, ventilation, air conditioning, electrical power, light, plumbing, gas, sewer and water thereto, and all elevators, escalators and loading dock lifts (collectively, the "**Improvements**"); (c) all plans, specifications, studies, guaranties, contract rights, licenses, permits relating to the ownership and operation of the Land and/or the Improvements (as opposed to the operation of the Business), in Seller's possession or under its control (collectively, the "**Intangible Property**"); and (d) all mineral, oil and gas rights, water rights, sewer rights and other utility rights allocated to Seller with respect to the Land and all appurtenances, easements, licenses, privileges and other property interests belonging to Seller with respect to the Land (collectively, the "**Appurtenances**"), free and clear of any liens, encumbrances, claims or security interests, other than all Permitted Encumbrances (as such term is defined in Section 4.1), but expressly excluding all right, title and interest of Seller, if any, in and to all equipment and personal property (regardless of whether attached or appurtenant to the Land or the Improvements and regardless of whether used in connection with the operation of the Business), all fixtures to the extent such fixtures are not affixed to the Land or the Improvements, and all of Seller's racking and shelving, and conveyor systems (if any), whether affixed to the Land or the Improvements or not. Each Land Parcel and all Improvements located thereon and all Appurtenances and Intangible Property relating thereto are collectively referred to herein as a "**Property**" and collectively as the "**Properties**".

1.2 **All or Nothing Purchase and Sale.** Purchaser and Seller acknowledge and agree that the individual Properties shall be sold together as a package. Except as expressly set forth herein in Section 5.2 (as to title matters), Section 9.3.2 (as to a breach of representations and warranties), Section 15.1 (as to a Casualty), and Section 15.2 (as to a Condemnation), any rights of Purchaser contained herein to terminate this Agreement shall require termination of the entire Agreement and shall not be construed as giving Purchaser the right to exclude, or terminate only as to, one (1) or more of the individual Properties. To the extent any provision herein expressly states that Purchaser shall have the right to terminate this Agreement with respect to any Property(ies) upon the terms set forth in such provision, then, upon Purchaser's delivery of written notice to Seller exercising such right in accordance with the terms of such provision, this Agreement shall be deemed amended as follows with respect to such Property(ies) (each, a "**Terminated Property**" and collectively, the "**Terminated Properties**"), but shall otherwise remain in full force and effect: (i) the definition of Property or Properties shall not include such Terminated Properties, except to the extent that any provisions of this Agreement which by their express terms survive the termination of this Agreement prior to the Closing would be applicable to such Terminated Properties (or to the extent necessary to implement this Section 1.2); (ii) the Purchase Price (as such term is defined in Section 2.1) shall be reduced by the Allocated Purchase Price (as defined on Schedule I attached hereto) of such Terminated Properties; and (iii) Seller shall have no obligations with respect to such Terminated Properties, nor shall any covenant, representation or warranty be deemed made with respect to such Terminated Properties, and Purchaser shall not have any rights or obligations under this Agreement with respect to such Terminated Properties other than as set forth in the provisions of this Agreement which by their express terms survive the termination of this Agreement prior to the Closing.

## 2. **Purchase Price.**

2.1 The purchase price to be paid by Purchaser to Seller for the Properties (the "**Purchase Price**") is One Hundred FIFTY Million AND NO/100 DOLLARS (\$150,000,000.00), subject to adjustment as otherwise provided under this Agreement. The Purchase Price shall be paid by Purchaser as follows:

2.1.1 No later than three (3) Business Days following the Effective Date, and as a condition to the effectiveness hereof (TIME BEING OF THE ESSENCE with respect to such date), Purchaser shall deliver to First American Title Insurance Company, through their New York office ("**Escrow Agent**" or the "**Title Company**") an amount equal to Two Million Four Hundred Ninety Thousand AND NO/100 DOLLARS (\$2,490,000.00) (together with any interest earned thereon, the "**Initial Deposit**") by wire transfer of immediately available funds, to be held in escrow in accordance with Article 19; and

2.1.2 If Purchaser does not terminate this Agreement on or before the Due Diligence Date (as hereinafter defined) pursuant to Section 6.5, Purchaser shall, no later than three (3) Business Days following the Due Diligence Date (TIME BEING OF THE ESSENCE with respect to such date), deliver to Escrow Agent an additional amount equal to Two Million Four Hundred Ninety Thousand AND NO/100 DOLLARS (\$2,490,000.00) (together with any interest earned thereon, the "**Additional Deposit**", and, together with the Initial Deposit, collectively, the "**Deposit**") by wire transfer of immediately available funds, to be held in escrow in accordance with Article 19; and

2.1.3 Purchaser shall, on or before 3:00 p.m. (Eastern Time) on the Closing Date, deliver to Escrow Agent by wire transfer of immediately available funds an amount equal to (i) the Purchase Price as apportioned, adjusted and prorated pursuant to Article 7 or as otherwise provided under this Agreement less (ii) the amount of the Deposit plus (iii) any other amounts required to be paid by Purchaser at the Closing.

2.2 On the day after the Due Diligence Date, the Deposit shall become non-refundable, except as otherwise expressly set forth herein. In any instance where the Deposit is to be returned to Purchaser, Purchaser shall be entitled to a refund of only so much of the Deposit that has been delivered to Escrow Agent pursuant to the terms of this Agreement.

2.3 At the Closing, Escrow Agent shall disburse the Purchase Price apportioned, adjusted and prorated to reflect closing costs, prorations and other adjustments made pursuant to Article 7 to Seller as Seller may direct, in accordance with the Closing Statement (as hereinafter defined).

2.4 SSeller and Purchaser have agreed upon the allocation of the Purchase Price, before any adjustments as provided in this Agreement, among the individual Properties as set forth on Schedule I attached hereto. Each allocated purchase price on Schedule I attached hereto shall be referred to as an “**Allocated Purchase Price**”. Purchaser and Seller shall file federal, state and local tax returns in a manner consistent with the Allocated Purchase Price and shall otherwise be bound by such Allocated Purchase Price (including the preparation of all books, records and tax filings) unless otherwise required by applicable law. In the event one party does not file federal, state and local tax returns in a manner consistent with the Allocated Purchase Price, then such party shall bear the consequences of any discrepancies and the other party shall have no obligation or liability with respect thereto. In all events, the Allocated Purchase Price shall control for purposes of paying any transfer taxes in connection with the Closing and for purposes of determining the insured amount for any title insurance policy. This Section 2.4 shall survive the Closing.

### 3. **Leaseback.**

3.1 Purchaser and Seller shall enter into a lease agreement with respect to each individual Property substantially on the form attached hereto as Exhibit B, pursuant to which Purchaser shall, from and after the Closing Date, lease each individual Property to Seller, at the rent and pursuant to the terms and conditions contained therein (each, a “**Lease**” and collectively, the “**Leases**”). The initial rent amounts of the Leases are set forth on Exhibit C attached hereto.

### 4. **State of Title of Property and Violations.**

4.1 **Permitted Encumbrances.** Each Property is being sold and is to be conveyed subject only to the following matters (collectively, the “**Permitted Encumbrances**”):

4.1.1 Any and all present and future zoning restrictions, regulations, requirements, laws, ordinances, resolutions and orders applicable to the Property, and all other laws, requirements, orders, rules, or regulations, now or hereafter in effect, of any governmental or quasi-governmental authority, department or agency having jurisdiction over the Property or any part thereof.

4.1.2 The state of facts shown on the Surveys and any updates thereto, other than matters that Seller is expressly obligated to have removed pursuant to Article 5 below.

4.1.3 Real estate taxes and assessments for the fiscal year in which the Closing occurs which are not yet due and payable

4.1.4 Rights and easements of utility companies to lay, install, maintain or operate wires, lines, cables, pipes, holes, boxes and other fixtures, facilities or equipment in, over and upon the Property or any portion thereof, to the extent disclosed in the applicable Title Report and/or Survey.

4.1.5 Any exceptions caused by Purchaser, its agents, representatives or employees.

4.1.6 The liens, encumbrances and other matters listed on, and/or disclosed by, the applicable Title Report (as hereinafter defined) other than (a) the general exceptions, (b) subject to Article 5 below, any Required Title Clearance Items (as hereinafter defined), and (c) any other matters that Seller is expressly obligated to have removed pursuant to Article 5 below.

4.1.7 Such matters as Escrow Agent shall be willing, without any additional premium, to omit as exceptions to coverage on the applicable Title Policy.

4.1.8 Such matters that are not timely objected to in accordance with Section 5.2.

4.2 Violation Objections and Termination Rights. The Properties are being sold and are to be conveyed subject to all notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by or any federal, state, county or municipal department having jurisdiction affecting or against the Properties which are disclosed to Purchaser prior to the Due Diligence Date or thereafter disclosed in accordance with this Agreement and for which Purchaser did not have the right to terminate, or did not terminate, this Agreement. Notwithstanding the foregoing, Seller, as the tenant under the applicable Lease, shall have to cure such violations and comply with all such laws, ordinances, and orders as and to the extent set forth in the Leases.

## 5. Title Insurance and Ability of Seller to Convey.

5.1 Purchaser acknowledges receipt prior to the Effective Date of (i) certain commitments (collectively, the "Title Reports") to issue owner's policies of title insurance with respect to the applicable Property from Escrow Agent bearing the commitment numbers set forth on Schedule I attached hereto, and (ii) copies of all documents, recorded or unrecorded, referenced in the Title Reports (collectively, the "Underlying Documents"). On the Closing Date, Seller shall cause (at Seller's expense in accordance with the terms of Article 7 below) the Title Company to issue to Purchaser (or its applicable designee or assignee as permitted in accordance with the terms of Section 25.8) an owner's title insurance policy for each individual Property insuring Purchaser (or its applicable designee or assignee as permitted in accordance with the terms of Section 25.8) in the amount of the Allocated Purchase Price for such Property, insuring title to such Property in Purchaser (or its applicable designee or assignee as permitted in accordance with the terms of Section 25.8), subject only to all Permitted Encumbrances and including the Required Endorsements (as hereinafter defined) to the extent available in the State where the applicable Property is located (each, a "Title Policy," and, collectively, the "Title Policies"). Purchaser acknowledges receipt prior to the Effective Date of certain ALTA surveys of the Properties performed by a registered surveyor and as further described on Schedule I attached hereto, which shall be updated as reasonably requested by Purchaser (at Seller's sole cost) and certified to Purchaser (and/or its applicable designee or assignee as permitted in accordance with the terms of Section 25.8), Purchaser's lender(s), Seller, Escrow Agent, and any other party reasonably required by Purchaser (collectively, the "Surveys") Each of Purchaser and Seller shall deliver to the other and to the Title Company any updates to the Title Reports and any updated Surveys obtained by such party promptly after receipt thereof. Except as otherwise specifically provided in Section 4.1, Section 5.2, Section 5.3 and Section 5.4, Seller shall not be obligated to incur any expense, or to bring any action or proceeding, to remove any exceptions or objections to title or to render title to any Property marketable and/or infeasible and shall not be obligated to grant an abatement in the Purchase Price with respect to any such exception or objection. Nothing herein contained shall be construed to limit Purchaser's right to specific performance or any other remedy hereunder in the event of Seller's default hereunder. Seller shall have the right, but not the obligation, to a reasonable adjournment or adjournments, but in no event more than twenty (20) days in the aggregate, of the Closing to remove any defect in or objection to title

disclosed on or prior to the Closing Date in any Title Report and/or Survey, any update to any Title Report and/or Survey, or otherwise which does not constitute a Permitted Encumbrance (including, but not limited to, any Required Title Clearance Item (as such term is defined in Section 5.2.1)). Purchaser acknowledges and agrees that, except as expressly provided in this Agreement and in any Seller's Document delivered to Purchaser at the Closing, Seller makes no representation or warranty regarding the condition of title to the Land or the Improvements. Seller acknowledges that, at the Closing, Purchaser may obtain loan policies of title insurance, at Purchaser's sole cost and expense, for its lender from Chicago Title Insurance Company ("**Chicago Title**") insuring the lien of the applicable mortgage, deed of trust or deed to secure debt, as applicable, on the Properties (collectively, the "**Loan Title Policies**") and Seller agrees to reasonably cooperate with Purchaser and Chicago Title, at no cost or expense to Seller, in the issuance of such Loan Title Policies as set forth herein. Seller agrees that delivery to Chicago Title of the documents and instruments required under Section 12 shall not be deemed to impose any cost or expense on Seller.

## 5.2 Title Objections and Termination Rights.

5.2.1 To the extent the same affects any Property, Seller shall eliminate any mortgage, deed of trust or deed to secure debt, regardless of amount, executed by Seller, any other any matter in the nature of a lien for borrowed money (and documents relating thereto) executed by Seller, any mechanics' lien, judgment lien or any other monetary lien caused by or through Seller and affecting any Property (the "**Required Title Clearance Items**").

5.2.2 No less than ten (10) days prior to the Due Diligence Date, Purchaser shall deliver to Seller a written statement of objection to any matter disclosed in any Title Report or Survey to which Purchaser does not agree to take title to the applicable Property subject to (the "**Initial Title Notice**"). Any exceptions contained in the Title Reports and not objected to in Purchaser's Initial Title Notice, other than the Required Title Clearance Items and the general exceptions, shall be deemed Permitted Encumbrances. If Purchaser fails to timely deliver the Initial Title Notice, all exceptions contained in the Title Reports, other than the Required Title Clearance Items and the general exceptions, shall be deemed Permitted Encumbrances.

5.2.3 If Purchaser or Seller obtains knowledge that any individual Property is or becomes subject to any lien, encumbrance or other exception prior to the Closing Date that is not disclosed on the applicable Title Report or that does not constitute a Permitted Encumbrance (any such lien, encumbrance or other exception, individually or collectively, together with all matters objected to in the Initial Title Notice, a "**Title Objection Matter**"), then such party shall promptly provide the other party with notice and a copy thereof. Purchaser shall furnish to Seller a written statement of objections, if any, to any such Title Objection Matter within five (5) Business Days of becoming aware of any individual Title Objection Matter (TIME BEING OF THE ESSENCE with respect to such date), provided that Purchaser's failure to notify Seller of any Required Title Clearance Item shall not relieve Seller of its obligation to remove such item. For the sake of clarity, if any Title Objection Matter constitutes a Required Title Clearance Item, Seller shall be obligated to have the same removed whether or not Purchaser provides a written objection with respect thereto.

5.2.4 To the extent all Title Objection Matters (other than the Required Title Clearance Items) may be removed and/or cured solely by the payment of a sum of money not exceeding ONE HUNDRED Fifty Thousand and NO/100 DOLLARS (\$150,000.00) in the aggregate (the "**Title Cure Cap**"), Seller shall remove and/or cure the same. To the extent such Title Objection Matters may not be removed and/or cured solely by payment of a sum of money not exceeding the Title Cure Cap or the cost to remove and/or cure such Title Objection Matters exceeds the Title Cure Cap, Seller shall have the option (each of the foregoing, a "**Seller's Cure Option**") to

elect to (x) remove and/or cure the same at its sole cost and expense, or (y) elect not to take any action (“**No-Action Election**”), in which case Purchaser may make a Purchaser Title Election (as hereinafter defined). Seller shall have the right to elect either of Seller’s Cure Options as Seller becomes aware of Title Objection Matters and shall provide Purchaser with written notice of which Seller’s Cure Option it elects with respect to each Title Objection Matter contained in Purchaser’s Initial Title Notice within five (5) Business Days after receipt of the Initial Title Notice and within five (5) Business Days after receipt or delivery of notice of any other Title Objection Matter as to such Title Objection Matter. Once a Seller’s Cure Option election has been made with respect to any matter contained in the Initial Title Objection or any subsequent Title Objection Matter, Seller shall have no right to alter or amend its election with respect to such matters as Seller becomes aware of additional Title Objection Matters. Seller’s failure to remove or cure, at or prior to Closing, any matter which Seller has elected to cure or remove pursuant to its Seller’s Cure Option shall be a default by Seller under this Agreement. Seller shall have the right to a reasonable adjournment or adjournments of the Closing Date, not to exceed twenty (20) days in the aggregate, in order to cure or remove the items it has elected to cure or remove. If Seller fails to timely deliver notice of a Seller Cure Option with respect to the Initial Title Notice or any subsequent Title Objection Matter, Seller shall be deemed to have made a No-Action Election.

5.2.5. Provided that Seller elects the No-Action Election or is deemed to have made a No-Action Election, Purchaser shall have the right to provide Seller notice of Purchaser’s intent to terminate this Agreement (the “**Purchaser Title Election**”) with respect to all of the Property(ies) subject to the applicable Title Objection Matter(s), subject to the provisions of the following sentence (the Property(ies) with respect to which Purchaser desires to terminate this Agreement, the “**Title Objection Matter Terminated Property(ies)**”). Notwithstanding any provision of this Section 5.2 to the contrary, Purchaser may only terminate this Agreement with respect to an individual Property to the extent the Title Objection Matter(s) at the applicable individual Property will cost in excess of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) to remove and/or remedy. Purchaser shall make the Purchaser Title Election (if at all) by written notice to Seller delivered on or before the fifth (5<sup>th</sup>) Business Day after delivery of Seller’s notice electing the No-Action Election or the expiration of the five (5)-Business Day period for Seller to deliver the Seller’s Cure Option election notice, as applicable, with respect to the particular Title Objection Matter.

5.2.6 If Purchaser affirmatively elects not to make the Purchaser Title Election or fails to deliver notice of making the Purchaser Title Election in accordance with and pursuant to the terms of Section 5.2.5, Purchaser shall be deemed to have failed to make the Purchaser Title Election, and Purchaser shall be required, subject to the terms and conditions of this Agreement, to close on the transactions contemplated pursuant to this Agreement and accept title subject to the Title Objection Matter(s) without any reduction or credit to the Purchase Price. If Purchaser makes the Purchaser Title Election, this Agreement shall terminate with respect to the Title Objection Matter Terminated Property(ies), in which case this Agreement shall be amended pursuant to the terms and provisions of Section 1.2, and for such purpose each Title Objection Matter Terminated Property shall be deemed a “Terminated Property.” In the event that Purchaser terminates this Agreement as to all Properties as a result of Title Objection Matters, the Deposit shall be returned to Purchaser and neither party shall have any further obligation or liability hereunder, except with respect to such terms that expressly survive termination pursuant to the terms hereof.

5.3 If Seller shall so request, Purchaser will allow Seller to pay from the balance of the Purchase Price as much thereof as may be necessary to satisfy any lien or encumbrance which Seller is obligated or elects to cure hereunder.

5.4 At the Closing, subject to the provisions of this Article 5, Seller shall convey to Purchaser fee simple title to the Properties free of all liens and encumbrances other than the Permitted Encumbrances.

5.5 The Closing Date shall be extended (including beyond the Outside Closing Date) as reasonably necessary to allow for the time periods for delivery and response to any Title Objection Matter, Seller's Cure Option election, No-Action Election and Purchaser's Title Election provided for in this Article 5.

## 6. Diligence.

6.1 Deliveries by Seller. Prior to the Effective Date, Purchaser received an offering package with respect to the Properties and/or was granted access to Property-related materials, including those certain agreements, documents, reports, and other written material and instruments more particularly set forth on Exhibit E attached hereto (collectively, the "**Offering Package**"). If not already provided to Purchaser prior to the Effective Date, Seller shall deliver or make available, or cause to be delivered or made available, to Purchaser for inspection, any additional documents, information and/or reports reasonably requested by Purchaser which are in the actual possession or control of Seller (together with the Offering Package, all documents, reports, and materials delivered to Purchaser by or on behalf of Seller or otherwise actually reviewed by Purchaser, the "**Due Diligence Materials**"), including, without limitation, the items listed on Exhibit E-1, which are hereby requested by Purchaser and shall be provided by Seller within ten (10) days following the Effective Date. The Due Diligence Materials do not (and are not required to) include any documentation or information which Seller must keep confidential under applicable law or by court order or otherwise, or any items which are protected by any attorney-client privilege. It is expressly agreed and understood that none of Seller nor its representatives shall be required to create any report or statement for Purchaser that is not created in the ordinary course of owning or operating the Properties.

6.2 No Representations Regarding Due Diligence Materials. By making available to or furnishing Purchaser with the Due Diligence Materials, except as expressly provided in Section 9.1.20, Seller does not make any warranty or representation with respect to the accuracy, completeness, conclusions or statements expressed in the Due Diligence Materials. Seller shall make available to or furnish Purchaser with any other existing written information, reports or updates of such Due Diligence Materials, to the extent in existence, within three (3) Business Days following reasonable request by Purchaser, but failure to deliver or make available same shall not in and of itself constitute a default hereunder, or otherwise constitute a failure of a condition to the Closing. Except to the extent such claim results from the breach of a representation or warranty expressly made by Seller in this Agreement or in any Seller's Documents, Purchaser hereby waives any and all claims against Seller arising out of any inaccuracy, incompleteness, conclusions or statements expressed in the Due Diligence Materials furnished or made available by Seller or any other party. The immediately preceding sentence of this Section 6.2 shall survive the Closing until the Survival Date (as such term is defined in Section 26.1) set forth in Section 26.1 or the termination of this Agreement.

### 6.3 Access to the Property.

6.3.1 Provided Purchaser has delivered evidence of Purchaser's Liability Insurance (as hereinafter defined) to Seller, and Seller has approved the certificate(s) of insurance relating thereto (which approval shall not be unreasonably withheld, conditioned or delayed), Seller will allow Purchaser and its employees, agents, prospective lenders, attorneys, contractors, and representatives (collectively, "**Purchaser's Representatives**"), prior to the Closing Date at

reasonable times during normal business hours upon two (2) Business Days' prior notice and without material interruption of Seller's management of any Property or interference with occupants or employees at any Property, to enter upon the Properties (i) for the purpose of updating Surveys, inspections, engineering studies, Phase I environmental assessments and any other non-invasive tests, structural examinations or studies which Purchaser may reasonably deem necessary and (ii) to inspect the Properties and, to the extent permitted by law, all books, records and accounts relating to the operation thereof (collectively, clauses (i) and (ii), the "**Investigations**"). Except as otherwise provided herein (i.e., as to reports Seller is required to provide to Purchaser or to pay for), Purchaser shall be solely responsible for all of the costs and expenses of any Investigations and Purchaser shall conduct such Investigations in good faith and with due diligence. Notwithstanding the foregoing, Seller's prior written consent (which consent may be granted or withheld in Seller's sole and absolute discretion) shall be required for any Investigations which involve invasive or destructive testing of any Property (or any portion thereof and including, without limitation, any Phase II environmental assessments or boring of any Property in connection with an environmental audit or otherwise) or any alteration of any Property (or any portion thereof). In the event Seller does provide its consent to any such invasive testing or alteration, Purchaser shall promptly restore each Property to its condition immediately prior to, as applicable, such test or alteration. At Seller's request, Purchaser shall provide Seller with evidence that applicable contractors performing physical tests or inspections at the property on behalf of Purchaser (as opposed to mere site visits) carry customary liability insurance. Purchaser shall (i) fully comply with all laws, rules and regulations applicable to such Property and/or the Investigations and all other activities undertaken at the Properties in connection therewith, (ii) not unreasonably interfere with the use, occupancy, management, maintenance or operation of such Property (or any portion thereof) by Seller (or any of its agents, representatives, residents, occupants, guests, invitees, contractors, or employees), and (iii) schedule all such Investigations with Seller in advance and during normal business hours and shall permit Seller to have a representative present during all Investigations undertaken hereunder. Purchaser hereby agrees to indemnify, defend and hold harmless Seller and each other Released Party (as such term is defined in Section 11.2) from and against any and all loss, cost, expense, damage, claim and liability (including, without limitation, reasonable attorneys' fees and disbursements), suffered or incurred by Seller or any other Released Party and arising out of or in connection with (i) Purchaser and/or Purchaser's Representatives entry upon any Property, (ii) any Investigations and other activities conducted at any Property by Purchaser or Purchaser's Representatives, and (iii) any liens or encumbrances filed or recorded against any Property as a consequence of any and all Investigations and other activities undertaken by Purchaser or Purchaser's Representatives. The foregoing indemnity shall not apply to the mere discovery (as opposed to the exacerbation) of conditions existing at any Property or to any loss, cost, expense, damage, claim and liability to the extent arising out of Seller's or any other Released Party's gross negligence or willful misconduct. Purchaser shall procure, prior to entry upon any Property, and maintain for at least one (1) year after the Effective Date commercial general liability insurance covering Purchaser and naming Seller as an additional insured, on an occurrence, as opposed to claims made, basis and providing for an each occurrence limit of \$1,000,000, personal & advertising injury limit of \$1,000,000 resulting in a combined general aggregate limit of not less than \$2,000,000 per occurrence and an additional \$5,000,000 in Umbrella/Excess limits, with no deductible, issued by companies authorized to transact insurance business in the State in which the applicable Property is located ("**Purchaser's Liability Insurance**"). All of Purchaser's Liability Insurance shall be primary and not contributing with any insurance maintained by Seller to the extent of Purchaser's indemnity contained in this Section 6.3.1. Seller shall be named as an additional insured under all of Purchaser's Liability Insurance and Seller shall be given written notice at least thirty (30) days (ten (10) days for nonpayment) prior to cancellation, material amendment or reduction of any such coverage. The provisions of this Section 6.3.1 shall not in any way be deemed to amend the provisions of Article

11. The indemnity set forth in this Section 6.3.1 shall survive the Closing and/or the termination of this Agreement until the Survival Date set forth in Section 26.1.

6.3.2 Purchaser and/or Purchaser's Representatives shall not contact or communicate with employees of any Property or otherwise interfere with the normal conduct by Seller or employees of any Property of their business at any Property.

6.4 Return of Information Upon Termination. Except as expressly provided in this Section 6.4, if this Agreement is terminated by any party pursuant to the terms of this Agreement, then Purchaser shall return to Seller, or confirm to Seller in writing that Purchaser has destroyed, all Due Diligence Materials delivered to Purchaser and/or Purchaser's Representatives as well as a copy of any and all reports, studies, data, analysis and surveys that Purchaser and/or Purchaser's Representatives discover or commission in connection with or resulting from their due diligence activities on the Properties (collectively, the "**Information**"); provided, however, (i) neither Purchaser nor Purchaser's Representatives shall be required to destroy or return any electronic copies of the Information created under standard electronic backup and archival procedures, and (ii) Purchaser may retain copies of the Information in accordance with Purchaser's formal written document retention policies or regulatory requirements, and any Confidential Information (as hereinafter defined) retained and not destroyed shall remain subject to the confidentiality provisions of Section 22.1. All Due Diligence Materials and Information shall be "**Confidential Information**" unless any Due Diligence Materials and/or Information (a) becomes generally available to the public, provided this occurs other than by disclosure by Purchaser or Purchaser's Representatives in violation of this Agreement, (b) was or becomes available to Purchaser or Purchaser's Representatives on a non-confidential basis, from a source other than Seller or Seller's representatives, provided that such source is not known by Purchaser or Purchaser's Representatives to be party to a non-disclosure or confidentiality agreement concerning the Information, or (c) was independently developed by Purchaser or Purchaser's Representatives without use or reference to the Information. Purchaser acknowledges and agrees that the Confidential Information is subject to the confidentiality provisions of Section 22.1. Purchaser shall indemnify the Released Parties from and against any and all Claims (as such term is defined in Section 11.2) resulting from, arising out of or in connection with Purchaser's and/or Purchaser's Representatives' breach of its obligations under this Section 6.4. The indemnity set forth in this Section 6.4 shall survive the Closing and/or the termination of this Agreement until the Survival Date set forth in Section 26.1.

6.5 Purchaser's Unconditional Right to Terminate. Purchaser shall have the right to terminate this Agreement for any reason whatsoever, or for no reason, by notifying Seller in writing, which notice may be solely by email, of such termination on or before 5:00 p.m. (Eastern Time) on the date that is thirty (30) days following the Effective Date (the "**Due Diligence Date**") (TIME BEING OF THE ESSENCE as to such time and date). If Purchaser duly terminates this Agreement in accordance with the foregoing provisions of this Section 6.5, this Agreement shall terminate, Purchaser shall be entitled to the return of the Initial Deposit (less and except One Hundred and No/100 Dollars (\$100.00), which shall be paid to Seller as independent consideration for Purchaser's right to terminate this Agreement under this Section 6.5) and the parties shall have no further liability to one another arising from this Agreement, except that the following provisions of this Agreement shall survive such termination and be enforceable by the parties after termination: namely, Sections 6.2, 6.3 (other than with respect to access to the Properties), 6.4, this 6.5, 7.1, 19, 21.1, 22.1, and 23.1 and any other obligations or liabilities that expressly survive the termination of this Agreement. If Purchaser does not duly terminate this Agreement in accordance with the foregoing provisions of this Section 6.5, or if Purchaser delivers written notice of its acceptance of the Properties to Seller on or before 5:00 p.m. (Eastern Time) on the Due Diligence Date, Purchaser shall have no further right to terminate this Agreement pursuant to this Section 6.5 and shall be deemed to have accepted the condition of the Properties.

6.6. **Changes in Representation and Warranties.** Prior to the Due Diligence Date, Purchaser shall promptly notify Seller of its discovery of any inaccuracy in any representation or warranty of Seller hereunder and Seller shall have the right from time to time, until five (5) Business Days prior to the Due Diligence Date, to modify any representation or warranty made by Seller herein by giving Purchaser written notice of any such update and/or modification prior to the day which is five (5) Business Days prior to the Due Diligence Date (each, a “**Seller’s Modification Notice**”), without incurring any cost, expense, liability or obligation, and without the same constituting a breach or default under this Agreement, unless the event giving rise to such modification is Seller Control Default (as hereinafter defined). Purchaser agrees that, in such event, the applicable representations and warranties contained herein shall be deemed modified to reflect the updates and/or modifications made thereto by Seller as of the last Seller’s Modification Notice.

## 7. **Expenses.**

7.1 Except as expressly provided below in this **Section 7.1** and in **Section 25.16**, each party shall pay its own costs and expenses in connection with the transactions contemplated hereby, including the fees and expenses of its attorneys, accountants, consultants and engineers. Seller shall pay (a) all fees and costs due to Escrow Agent in connection with the transactions contemplated herein, (b) transfer taxes, documentary stamp taxes, recording taxes, and other taxes, fees, charges and expenses required to be paid in connection with the sale of the Properties and the granting of the Deeds (as hereinafter defined) at the Closing, (c) all due diligence expenses and charges, including, without limitation, any expenses and charges for engineering reports, appraisals, environmental reports, zoning reports, and property condition reports, obtained by, or on behalf of, Purchaser, in connection with the transactions contemplated herein, (d) all expenses of or related to the issuance of standard coverage for any ALTA owner’s title insurance policy, including any incremental costs for extended coverage, if applicable, and any endorsements thereto mutually agreed to by Purchaser and Seller, acting reasonably, that are permitted by state law and reasonably customary in similar commercial transactions in which the individual Properties are located (including, without limitation, survey coverage and the following endorsements to the extent available in the State where the applicable Property is located: zoning endorsement 3.1, ALTA 9, tax parcel, subdivision, access, contiguity (if applicable), encroachment (if applicable), and utility facilities) (collectively, the “**Required Endorsements**”), (e) the cost of the Surveys and any updates thereto, (f) recording fees for recordation of the Deeds, and (g) the cost of releasing all liens, judgments and other encumbrances that are to be released of record (subject to the limitations set forth herein) and the fees associated with recording any such releases. Purchaser shall pay (i) any other costs associated with Purchaser’s financing of the Properties (including, without limitation, mortgage recording taxes, to the extent the same are required to be paid), and (ii) all expenses of or related to the issuance of standard coverage for any ALTA lender’s title insurance policy, including any incremental costs for extended coverage, if applicable, and any endorsements thereto). Any other customary closing costs shall be paid by Purchaser and Seller in accordance with local custom in the State and jurisdiction in which the applicable Property to which the applicable costs relate is located. The provisions of this **Section 7.1** shall survive the Closing until the Survival Date set forth in **Section 26.1**.

## 8. **Adjustments and Closing Costs.**

8.1 In view of the subsequent lease of each individual Property by Purchaser to Seller pursuant to the Leases and Seller’s obligations thereunder, there shall be no proration of insurance, taxes, special assessments, utilities or any other costs related to the Property between Seller and Purchaser at the Closing. On the Closing Date, Seller shall pay Base Rent (as such term is defined in the Lease) for the period from the Closing Date through first full calendar month following the Closing Date. Purchaser acknowledges and agrees that such Base Rent shall be paid to Purchaser out of Seller’s proceeds received at the Closing.

## 9. Representations and Warranties of Seller.

9.1 Representations and Warranties. Seller represents and warrants to Purchaser that as of the Effective Date the following representations and warranties are true and correct in all material respects and the same shall be true and correct in all material respects as of the Closing Date (except for the changes disclosed as provided in Section 6.6 above and except as provided in Section 9.3.2 below):

9.1.1 Seller is a corporation validly existing and in good standing under the laws of the State of Florida. Subject to any consent required under Seller's organizational documents (the "**Required Seller Consents**"), which Required Seller Consents shall be obtained on or prior to the Closing, Seller has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement (collectively, the "**Seller's Documents**") and to perform all obligations arising under this Agreement and the Seller's Documents. Subject to Seller obtaining the Required Seller Consents, this Agreement and the Seller's Documents constitute the legal, valid and binding obligations of Seller enforceable against Seller in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and except as may be limited by general equitable principles. Subject to obtaining the Required Seller Consents, Seller is authorized to enter into this Agreement and the transactions contemplated hereby.

9.1.2 Subject to Seller obtaining the Required Seller Consents, this Agreement and the Seller's Documents do not and will not contravene any provision of the organizational documents of Seller, any judgment, order, decree, writ, injunction, or any other agreement binding on Seller, or any provision of any existing law or regulation to which Seller is a party or is bound. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not require (except to the extent, specifically set forth herein) any consent by any third party (including, without limitation, the consent of any direct or indirect owner of Seller), other than the Required Seller Consents that have been or will be obtained by the Closing.

9.1.3 Guarantor is a corporation validly existing and in good standing under the laws of the State of Delaware. Subject to any consent required under Guarantor's organizational documents (the "**Required Guarantor Consents**"), which Required Guarantor Consents shall be obtained on or prior to the Closing, Guarantor has full power and authority to execute and deliver the joinder attached to this Agreement and the Guaranties (as hereinafter defined) (collectively, the "**Guarantor's Documents**") and to perform all obligations arising under the Guarantor's Documents. Subject to Guarantor obtaining the Required Guarantor Consents, the Guarantor's Documents constitute the legal, valid and binding obligations of Guarantor enforceable against Guarantor in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and except as may be limited by general equitable principles. Subject to obtaining the Required Guarantor Consents, Guarantor is authorized to enter into the Guarantor's Documents and the transactions contemplated thereby.

9.1.4 Subject to Guarantor obtaining the Required Guarantor Consents, the Guarantor's Documents do not and will not contravene any provision of the organizational documents of Guarantor, any judgment, order, decree, writ, injunction, or any other agreement binding on Guarantor, or any provision of any existing law or regulation to which Guarantor is a party or is bound. The execution and delivery of the Guarantor's Documents and the consummation of the transactions contemplated thereby do not and will not require (except to the extent, specifically set forth herein) any consent by any third party (including, without limitation, the consent of any

direct or indirect owner of Guarantor), other than the Required Guarantor Consents that have been or will be obtained by the Closing.

9.1.5 No litigation, or governmental or agency proceeding or investigation is pending or, to Seller's actual knowledge, threatened in writing against Seller which would materially impair or adversely affect Seller's ability to perform its obligations under this Agreement and consummate the transactions contemplated herein.

9.1.6 To Seller's actual knowledge, there are no claims, options, options to purchase, liens, covenants, conditions, restrictions, rights-of-way, servitudes, easements, judgments and other matters affecting title to any of the Properties, except such matters as are shown in the Title Reports. There are no leases or other tenancies or licenses to occupy any of the Properties.

9.1.7 To Seller's actual knowledge, neither Seller nor any Property is in material violation of, or material default under, any of the Underlying Documents.

9.1.8 To Seller's actual knowledge, Seller and each individual Property is in compliance in all material respects with all applicable laws, ordinances regulations, licenses, permits and authorizations relating to the ownership, current operation or current use of each individual Property ("**Applicable Laws**"). Seller has not received any written notice or other written communication from any governmental or regulatory authority or any other Person regarding any actual, alleged or potential material violation of, or failure to comply in all material respects with, any Applicable Laws which remains uncured.

9.1.9 To Seller's actual knowledge, there are no off-site facilities necessary to ensure compliance by any Property with Applicable Laws.

9.1.10 To Seller's actual knowledge, the mechanical systems in the Improvements on the Land are independent systems and do not depend on any other property or source of power or materials for operation except customary utility services.

9.1.11. To Seller's actual knowledge, all water, sewer, gas, electric, telephone, drainage and other utility equipment, facilities and services required by Applicable Law or reasonably necessary for the operation of each Property (including the Improvements) as it is presently being operated are adequate to service such Property and all currently due and payable fees and other charges therefor have been paid in full, including, but not limited to, tap-in and connection fees for public water and sanitary sewerage facilities. To Seller's actual knowledge, no fact or condition exists which would result in the termination, reduction or impairment of the furnishing of service to any Property of water, sewer, gas, electric, telephone, drainage and other such utility services.

9.1.12. Seller has not received any written notice from any insurance carrier of defects or inadequacies in any Property which if not corrected would result in termination of insurance coverage or material increase in the cost thereof.

9.1.13. To Seller's actual knowledge, except as specifically described in any environmental reports delivered to Purchaser (collectively, the "**Environmental Reports**"), there are no Hazardous Materials generated, released, stored, buried or deposited over, beneath, in or upon the Land or the Improvements thereon, in violation of Applicable Laws.

9.1.14. The transaction contemplated hereby either (i) will not constitute a sale of all or substantially all the assets of Seller, or (ii) if such transaction does constitute a sale of all or

substantially all the assets of Seller, Seller hereby indemnifies Purchaser, its assignees and designees taking title to a Property against any resulting state tax liability with respect to the period prior to the Closing or the sale contemplated by this Agreement.

9.1.15. Seller does not employ any employees at any Property with respect to whom Purchaser shall have any obligations after the Closing.

9.1.16. There is no contemplated, pending or threatened bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or any other proceeding under any federal or state bankruptcy or similar law, whether voluntary or involuntary, affecting Seller or Guarantor or; and no attachments, execution proceedings or assignments for the benefit of creditors are pending or threatened in writing against Seller or Guarantor.

9.1.17. Neither Seller nor Guarantor is currently identified as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (the “**OFAC List**”) or is a Person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

9.1.18. Seller has not received written notice of condemnation or eminent domain proceedings affecting a Property and Seller has no actual knowledge that any such proceedings are contemplated.

9.1.19. To Seller’s actual knowledge, there are no pending or threatened in writing material requests, applications or proceedings to alter or restrict the zoning or other use restrictions applicable to any Property or any portion thereof, including, without limitation, proceedings involving building code, environmental or zoning.

9.1.20. All Due Diligence Materials provided to Purchaser are complete copies of the originals or copies thereof in Seller’s possession, except as may be indicated therein. Seller has not failed to provide any documents or other information to Purchaser based on any requirements of confidentiality that would otherwise be Due Diligence Materials under this Agreement (“**Excluded Documents**”), which Excluded Documents would disclose any material adverse information regarding any Property, Seller or Guarantor.

9.2 Survival. The provisions of Section 9.1 shall survive the Closing until the Survival Date set forth in Section 26.1.

9.3 Limitations on Seller’s Representations.

9.3.1 Those provisions of this Article 9 and the representations and warranties set forth in such provisions, shall survive the Closing until the Survival Date set forth in Section 26.1. Notwithstanding anything contained herein to the contrary, absent fraud or intentional misrepresentation, Seller shall have no obligation or liability to Purchaser, prior to or after the Closing (if the Closing shall occur), in any respect of the inaccuracy or breach of any representation or warranty of Seller hereunder (and such default, inaccuracy and/or breach by Seller shall be deemed waived by Purchaser), to the extent such default, inaccuracy or breach (1) is actually known by Purchaser or Purchaser’s Representatives prior to 12:00 p.m. (Eastern Time) on the Due Diligence Date, (2) becomes known to Purchaser prior to the Closing Date and Purchaser does not provide written notice thereof to Seller in accordance with the terms of Section 9.3.2 below, or (3) arises from the act or omission of Purchaser or Purchaser’s

Representatives or was consented to by Purchaser in writing. To the extent Purchaser has actual knowledge of any such inconsistency or difference prior to 12:00 p.m. (Eastern Time) on the day prior to Due Diligence Date, then such representations and warranties shall be deemed modified to conform them to such difference or inconsistent facts so known to Purchaser. The provisions of this Section 9.3 shall survive the Closing until the Survival Date set forth in Section 26.1.

9.3.2. Without limiting the foregoing, to the extent that Seller or Purchaser becomes aware of any conflict with or inaccuracy in the representations and warranties set forth herein (a "**Representation Breach**") after the Effective Date and prior to the Closing, the party having knowledge of such Representation Breach (the "**Recipient**") shall provide to the other party (the "**Maker**") a written notice thereof within three (3) Business Days after obtaining such knowledge. The Maker will have the right, but not the obligation, to cure the Representation Breach within five (5) Business Days after the Maker's receipt of such notice (and if reasonably required, the Closing will be extended to allow for such cure). Regardless of whether such cure is attempted or effected by the Maker, the Recipient, within three (3) Business Days following the end of the Maker's five (5)-Business Day cure period (but in any event, prior to the Closing), shall only have the right to either (i) terminate this Agreement in whole or, if applicable, solely with respect to the affected Property (and, if the Maker is Seller, only if the Representation Breach has a material adverse effect on such Property, as determined by Purchaser in Purchaser's sole but reasonable judgment), subject to Purchaser's rights set forth below with respect to a Representation Breach resulting from a Seller Control Event (as hereinafter defined); or (ii) proceed with the transaction described herein. If the Recipient elects to terminate this Agreement pursuant to this Section 9.3.2, (a) the Deposit shall be returned to Purchaser unless Purchaser is the Maker and the Representation Breach is not a breach of Section 10.1.4 of which Purchaser did not have knowledge as of the Effective Date, or the termination right is exercised with respect to less than all of the Properties (and, if a Representation Breach is the result of a Seller Control Event, the Representation Breach shall be a Seller default hereunder and Purchaser shall be entitled to all rights and remedies afforded to Purchaser hereunder with respect to a Seller default), and (b) to the extent this Agreement is terminated in its entirety, neither Party will have any further rights or obligations under this Agreement except for the provisions of this Agreement which by their express terms survive the termination of this Agreement prior to the Closing. If the Recipient does not elect to so terminate this Agreement (whether or not having disclosed the Representation Breach to Seller and whether or not such Representation Breach is the result of a Seller Control Event), the Recipient shall be deemed to have proceeded in accordance with subsection (ii) above and shall be conclusively and automatically deemed to have waived any rights that the Recipient may have against the Maker as a result of such Representation Breach, and the Maker will have no liability whatsoever with respect to the Inaccuracy. Nothing herein shall be deemed to modify or alter the terms of any Lease or the obligations of the tenant thereunder with respect to any Property. As used herein, "**Seller Control Event**" shall mean (a) a knowing misrepresentation by Seller or (b) the failure of any of Seller's representations and warranties to remain true and correct as of Closing, but only if such failure is as a direct result of or directly caused by any act or omission by Seller, its employees or agents in contravention of this Agreement.

#### **10. Representations and Warranties of Purchaser.**

10.1 Representations and Warranties. Purchaser represents and warrants to Seller that as of the Effective Date the following representations and warranties (and all other representations and warranties of Purchaser contained herein) are true and correct in all material respects and shall be true and correct in all material respects on the Closing Date:

10.1.1 Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois. At the Closing, Purchaser or its permitted assigns will be authorized to do business in each jurisdiction in which any individual Property is located. Purchaser has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement (collectively, the "**Purchaser's Documents**") and to perform all obligations arising under this Agreement and the Purchaser's Documents. This Agreement and the Purchaser's Documents constitute the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and except as may be limited by general equitable principles. Purchaser is duly authorized to enter into this Agreement and the transactions contemplated hereby.

10.1.2 This Agreement and the Purchaser's Documents do not and will not contravene any provision of the organizational documents of Purchaser, any judgment, order, decree, writ, injunction, or any other agreement binding on Purchaser, or any provision of any existing law or regulation to which Purchaser is a party or is bound.

10.1.3 The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not require (except to the extent, specifically set forth herein) any consent by any third party (including, without limitation, the consent of any direct or indirect owner of Purchaser), other than those consents that have been or will be obtained by the Closing.

10.1.4 To Purchaser's knowledge, no litigation, or governmental or agency proceeding or investigation is pending or threatened against Purchaser which would materially impair or adversely affect Purchaser's ability to perform its obligations under this Agreement and consummate the transactions contemplated herein.

10.1.5 Purchaser is not currently identified on the OFAC List or is a Person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

10.2 Survival. Those provisions of Section 10.1 and the representations and warranties set forth in such provisions (and all other representations and warranties of Purchaser contained herein), shall survive the Closing until the Survival Date set forth in Section 26.1.

#### **11. Condition of Property; Release of Claims.**

11.1 CONDITION OF PROPERTY. PURCHASER IS PURCHASING THE PROPERTY "AS-IS, WHERE IS AND WITH ALL FAULTS" IN ITS PRESENT CONDITION, SUBJECT TO REASONABLE USE, WEAR, TEAR AND NATURAL DETERIORATION OF THE PROPERTY BETWEEN THE EFFECTIVE DATE AND THE CLOSING DATE AND FURTHER AGREES THAT (i) SELLER SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE PROPERTY AND (ii) EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN ANY OTHER SELLER'S DOCUMENT DELIVERED TO PURCHASER AT THE CLOSING (INCLUDING THE DEEDS AND THE LEASES), NEITHER SELLER, ANY AFFILIATE NOR ANY DIRECT OR INDIRECT AGENT, MEMBER, PARTNER, EMPLOYEE OR REPRESENTATIVE OF SELLER (EXCEPT, AS TO GUARANTOR, THOSE MADE IN THE GUARANTIES) EITHER HAS MADE OR WILL BE ALLEGED TO HAVE MADE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER, WHETHER EXPRESS OR

IMPLIED, REGARDING THE PROPERTY OR ANY PART THEREOF, OR ANYTHING RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, AND (iii) PURCHASER, IN EXECUTING, DELIVERING AND PERFORMING THIS AGREEMENT, HAS NOT AND DOES NOT RELY UPON ANY STATEMENT, INFORMATION, OR REPRESENTATION TO WHOMSOEVER MADE OR GIVEN, WHETHER TO PURCHASER OR OTHERS, AND WHETHER DIRECTLY OR INDIRECTLY, VERBALLY OR IN WRITING, MADE BY ANY PERSON, EXCEPT AS EXPRESSLY SET FORTH HEREIN, IN ANY OTHER SELLER'S DOCUMENT DELIVERED TO PURCHASER AT THE CLOSING OR IN ANY GUARANTY. IN ADDITION TO THE FOREGOING, IF PURCHASER FAILS TO TERMINATE PRIOR TO 5:00 P.M. ON THE DUE DILIGENCE DATE, THEN PURCHASER SHALL BE DEEMED TO HAVE REPRESENTED THAT PURCHASER IS FAMILIAR WITH THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY AND HAS CONDUCTED SUCH INVESTIGATION OF THE AFFAIRS AND CONDITION OF THE PROPERTY AS PURCHASER HAS CONSIDERED APPROPRIATE. AS OF THE EFFECTIVE DATE, PURCHASER SHALL BE DEEMED TO HAVE REPRESENTED THAT (I) EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN ANY OTHER SELLER'S DOCUMENT DELIVERED TO PURCHASER AT THE CLOSING (INCLUDING THE DEEDS AND THE LEASES), NEITHER SELLER, ANY AFFILIATE OF SELLER (EXCEPT, AS TO GUARANTOR, THOSE MADE IN THE GUARANTIES) NOR ANY DIRECT OR INDIRECT AGENT, MEMBER, PARTNER, EMPLOYEE OR REPRESENTATIVE OF SELLER EITHER HAS MADE OR WILL BE ALLEGED TO HAVE MADE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER TO PURCHASER, WHETHER EXPRESS OR IMPLIED, AND, IN PARTICULAR, THAT NO SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES HAVE BEEN MADE OR WILL BE ALLEGED TO HAVE BEEN MADE WITH RESPECT TO THE PHYSICAL CONDITION, ENVIRONMENTAL CONDITION OR OPERATION OF THE PROPERTY, THE ACTUAL OR PROJECTED REVENUE AND EXPENSES OF THE PROPERTY, THE ENFORCEABILITY OF ANY THIRD-PARTY AGREEMENT(S), THE ZONING AND OTHER LAWS, REGULATIONS AND RULES APPLICABLE TO THE PROPERTY OR THE COMPLIANCE OF THE PROPERTY THEREWITH, THE QUANTITY, QUALITY OR CONDITION OF THE ARTICLES OF PERSONAL PROPERTY AND FIXTURES INCLUDED IN THE TRANSACTIONS CONTEMPLATED HEREBY, THE USE OR OCCUPANCY OF THE PROPERTY OR ANY PART THEREOF OR ANY OTHER MATTER OR THING AFFECTING OR RELATED TO THE PROPERTY OR THE TRANSACTIONS CONTEMPLATED HEREBY, EXCEPT AS, AND SOLELY TO THE EXTENT, HEREIN OR THEREIN SPECIFICALLY SET FORTH, (II) EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN ANY SELLER'S DOCUMENT DELIVERED TO PURCHASER AT THE CLOSING (INCLUDING THE DEEDS AND THE LEASES), NEITHER SELLER, ANY AFFILIATE OF SELLER (EXCEPT, AS TO GUARANTOR, THOSE MADE IN THE GUARANTIES) NOR ANY DIRECT OR INDIRECT AGENT, MEMBER, PARTNER, EMPLOYEE OR REPRESENTATIVE OF ANY OF THE FOREGOING HAVE MADE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER TO PURCHASER, WHETHER EXPRESS OR IMPLIED, AND, IN PARTICULAR, THAT NO SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES HAVE BEEN MADE WITH RESPECT TO THE TRUTH, ACCURACY OR COMPLETENESS OF ANY MATERIALS, DATA OR OTHER INFORMATION, INCLUDING, WITHOUT LIMITATION, THE CONTENTS OF SELLER'S BOOKS AND RECORDS, CONTRACTS, ANY PROPERTY CONDITION REPORTS, ENGINEERING REPORTS, PHYSICAL CONDITION SURVEYS, INFORMATIONAL BROCHURE WITH RESPECT TO THE PROPERTY, RENT ROLLS OR INCOME AND EXPENSE STATEMENTS, WHICH SELLER OR SELLER'S REPRESENTATIVES MAY HAVE DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER AND/OR PURCHASER'S REPRESENTATIVES IN CONNECTION WITH THE PROPERTY AND PURCHASER ACKNOWLEDGES AND AGREES THAT ANY SUCH MATERIALS, DATA AND OTHER INFORMATION DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER AND/OR PURCHASER'S REPRESENTATIVES ARE DELIVERED, MADE AVAILABLE OR FURNISHED

TO PURCHASER AS A CONVENIENCE AND ACCOMMODATION ONLY AND EXPRESSLY DISCLAIMS ANY INTENT TO RELY ON ANY SUCH MATERIALS, DATA AND OTHER INFORMATION, (III) EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN ANY SELLER'S DOCUMENT DELIVERED TO PURCHASER AT THE CLOSING (INCLUDING THE DEEDS AND LEASES), PURCHASER HAS NOT RELIED UPON ANY SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES OR UPON ANY STATEMENTS MADE IN ANY INFORMATIONAL BROCHURE WITH RESPECT TO THE PROPERTY AND HAS ENTERED INTO THIS AGREEMENT WITH THE EXPRESS INTENTION OF MAKING AND RELYING SOLELY ON ITS OWN INDEPENDENT INVESTIGATION, INSPECTION, ANALYSIS, APPRAISAL, EXAMINATION AND EVALUATION OF THE FACTS AND CIRCUMSTANCES (INCLUDING, WITHOUT LIMITATION, ANY REPORTS PREPARED BY THIRD PARTIES AND UPON WHICH PURCHASER IS PERMITTED TO RELY), AND (IV) PURCHASER ACKNOWLEDGES THAT THE PROPERTY MAY NOT BE IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED, AND, EXCEPT AS SET FORTH HEREIN AND IN ANY SELLER'S DOCUMENT DELIVERED TO PURCHASER AT THE CLOSING (INCLUDING THE DEEDS AND THE LEASES) SELLER MAKES NO REPRESENTATIONS WITH RESPECT TO SAME AND WITHOUT LIMITING THE FOREGOING, EXCEPT AS, AND SOLELY TO THE EXTENT, HEREIN SPECIFICALLY SET FORTH, SELLER HAS MADE NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING HAZARDOUS MATERIALS (AS SUCH TERM IS DEFINED IN SECTION 11.2) OF ANY KIND OR NATURE ON, ABOUT OR WITHIN THE PROPERTY OR THE PHYSICAL CONDITION OF THE PROPERTY AND PURCHASER AGREES TO ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, CONSTRUCTION OR MECHANICAL DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS MAY NOT HAVE BEEN (AND/OR MAY NOT BE) REVEALED BY PURCHASER'S INVESTIGATIONS, THE ENVIRONMENTAL REPORTS, AND/OR THE PROPERTY CONDITION REPORTS. NOTHING IN THIS SECTION 11.1 SHALL BE DEEMED AN INDEMNITY OF SELLER BY PURCHASER, AND PURCHASER DOES NOT AGREE TO INDEMNIFY THE SELLER, AGAINST ANY OF THE FOREGOING MATTERS.

11.2 Release of Claims. Without limiting any provision in this Agreement, except for any claims arising under any Lease or any Guaranty, Purchaser, for itself and any of its successors and assigns and their affiliates, hereby irrevocably and absolutely waives its right to recover from, and forever releases and discharges, and covenants not to file or otherwise pursue any legal action (whether based on contract, statutory rights, common law or otherwise) against Seller, its affiliates and any direct or indirect partner, member, trustee, beneficiary, director, shareholder, controlling person, affiliate officer, employee or agent, of any of the foregoing, and any of their respective heirs, successors, and assigns (each, a "**Released Party**" and collectively, the "**Released Parties**") with respect to any and all suits, actions, proceedings, investigations, demands, claims, liabilities, obligations, fines, penalties, liens, judgments, losses, injuries, damages, settlement expenses or costs of whatever kind or nature, whether direct or indirect, known or unknown, contingent or otherwise (including any action or proceeding brought or threatened or ordered by any governmental or regulatory authority), in each case arising in connection with this Agreement, but not under the Leases, including, without limitation, attorneys' and experts' fees and expenses, and investigation and remediation costs that may arise on account of or in any way be connected with (i) the Investigations by Purchaser and Purchaser's Representatives permitted pursuant to Section 6.3, and (ii) the Properties or any portion thereof, including, without limitation, Section 11.1 (collectively, "**Claims**"), including, without limitation, the physical, environmental and structural condition of any Property or any law or regulation applicable thereto, or any other matter relating to the use, presence, discharge or release of Hazardous Materials on, under, in, above or about any Property; provided, however, that Purchaser does not waive its rights, if any, to recover from, or release or discharge or covenant not to bring any action against (i) Seller or any Released Party for any act that constitutes fraud or intentional misrepresentation, (ii) Seller for any breach of the representations or warranties set forth in this Agreement, subject to the limitations and conditions provided in this

Agreement, or (iii) Seller for its express obligations under this Agreement or breach thereof (beyond all applicable notice, grace and/or cure periods). In connection with this Section 11.2, Purchaser expressly waives the benefits of any provision or principle of federal or state law or regulation that may limit the scope or effect of the foregoing waiver and release to the extent applicable. For purposes of this Agreement, the term “**Hazardous Materials**” shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or other material that is hazardous, toxic, ignitable, corrosive, carcinogenic or otherwise presents a risk of danger to human, plant or animal life or the environment or that is defined, determined or identified as such in any federal, state or local law, rule or regulation (whether now existing or hereafter enacted or promulgated) or any judicial or administrative order or judgment, in each case relating to the protection of human health, safety and/or the environment, including, but not limited to, any materials, wastes or substances that are included within the definition of (A) “hazardous waste” in the federal Resource Conservation and Recovery Act; (B) “hazardous substances” in the federal Comprehensive Environmental Response, Compensation and Liability Act; (C) “pollutants” in the federal Clean Water Act; (D) “toxic substances” in the federal Toxic Substances Control Act; and (E) “oil or hazardous materials” in the laws or regulations of any State. The provisions of this Section 11.2 shall survive the Closing until the Survival Date set forth in Section 26.1. Nothing in this Section 11.2 shall be deemed an indemnity of Seller or any other Released Party by Purchaser, and Purchaser does not agree to indemnify Seller or any of the other Released Party, against any of the foregoing.

11.3. Liability Under Lease and Guaranty. Seller hereby acknowledges and agrees that no waiver, limitation, release, disclaimer or other provision contained in in this Agreement, including, without limitation, Section 11.1 or Section 11.2, shall limit, reduce or otherwise affect the representations, warranties, liabilities or other obligations of Seller, as tenant, under any Lease or of Guarantor under any Guaranty executed or delivered at the Closing.

12. Documents or Instruments To be Delivered by Seller at the Closing. At the Closing, Seller will deliver (or cause to be delivered) the following to Purchaser or Escrow Agent, with respect to each individual Property, as applicable (in addition to any items or documents otherwise required by this Agreement):

12.1 An original special or limited warranty deed for each Property (or the state-specific counterpart thereof) substantially in the applicable form attached hereto as Exhibit D-1, Exhibit D-2 or Exhibit D-3, respectively (“**Deed**”) executed and acknowledged by Seller and in proper form for recording conveying fee simple title to the applicable Land, Improvements and Appurtenances, subject only to the Permitted Encumbrances. In addition, if the Survey of a Property yields a legal description of such Property that differs from that set forth in Exhibit A attached hereto, Seller shall also deliver a duly executed, witnessed and acknowledged quitclaim deed to such Property which attaches the legal description of such Property taken from the Survey and otherwise in form and substance reasonably acceptable to Seller and Purchaser.

12.2 An original counterpart to the certificate that Seller is not a “foreign person” under the Foreign Investment in Real Property Tax Act in such form as reasonably acceptable to Seller and Purchaser, executed by Seller.

12.3 A certificate executed by Seller stating that all of the representations and warranties set forth in Section 9.1 are true and correct in all material respects as of the Closing Date, as updated as permitted pursuant to Section 9.1.

12.4 An owner’s affidavit for the benefit of Escrow Agent and Chicago Title in such form as reasonably required by Escrow Agent and Chicago Title, respectively, and reasonably acceptable to Seller.

- 12.5 A closing statement in a form agreed to by Seller and Purchaser (the “**Closing Statement**”), executed by Seller.
- 12.6 With respect to each individual Property, an original counterpart to each Lease
- 12.7 With respect to each Lease, an original counterpart to a memorandum of lease in recordable form and substance as set forth on Exhibit F attached hereto (each, a “**Memo of Lease**”).
- 12.8 With respect to each Lease, an original counterpart to a lease guaranty executed by Franchise Group, Inc., a Delaware corporation (“**Guarantor**”), in the form attached as Exhibit A to the form of Lease attached hereto (each, a “**Guaranty**” and collectively, the “**Guaranties**”).
- 12.9 With respect to each Guaranty, an original counterpart to an estoppel certificate executed by Guarantor, in form and substance reasonably acceptable to Seller and Purchaser.
- 12.10 If Purchaser is financing any Property, with respect to each such financed Property, an original counterpart to a Subordination, Non-Disturbance and Attornment Agreement, in a form reasonably acceptable to Seller and the applicable lender (each, an “**SNDA**”).
- 12.11 A counterpart to the bill of sale (with respect to any portion of the Property that is personal property and not Intangible Personal Property) and assignment of Intangible Property in form and substance as set forth on Exhibit G attached hereto (the “**Assignment of Intangible Property**”) with respect to the Properties executed by Seller.
- 12.12 With respect to each Lease, an original counterpart to an estoppel certificate executed by Seller, as the tenant under each Lease, in form and substance reasonably acceptable to Seller and Purchaser.
- 12.13 One or more opinions of in-house counsel for Seller, as tenant under the Lease, and Guarantor in form and substance reasonably acceptable to Seller and Purchaser.
- 12.14 The Title Company’s irrevocable commitment to issue the Title Policies upon payment of title premiums; provided, however, (i) if Purchaser has not executed and delivered to the Title Company, at or prior to the Closing, (x) any amounts required to be paid by Purchaser hereunder and (y) any documents, instruments and agreements required to be delivered by Purchaser (and not required to be delivered by Seller hereunder) in order for the Title Company to issue the Title Policies, then Purchaser shall be obligated to consummate the transactions hereunder without fulfillment of the condition set forth in this Section 12.14 and this condition precedent shall be deemed satisfied; provided, further, however, in the event the Title Company is unable or unwilling to issue the Title Policies in accordance with this Section 12.14 and Chicago Title, Commonwealth Land Title Insurance Company, First American Title Insurance Company, Fidelity National Title Insurance Company or any other title company reasonably acceptable to Seller and Purchaser is willing to issue the Title Policies in accordance with this Section 12.14, then Seller shall purchase the Title Policies for the benefit of Purchaser from such other title company and this condition shall be deemed satisfied.
- 12.15 Any additional instruments and documents reasonably requested by Escrow Agent or Chicago Title in order to confirm corporate existence, structure, and/or authority of Seller or, in the case of Escrow Agent or Chicago Title, in order to issue the Title Policies and the Loan Title Policies.

12.16. Any state, county and municipal transfer declarations or notices which are legally or customarily required to be executed by the applicable Seller to effectuate the conveyance and transfer of the Properties owned by such Seller as contemplated hereby.

12.17. Such other instruments and documents or payments as may be reasonably required to consummate the transaction herein contemplated.

13. **Documents or Instruments to be Delivered by Purchaser at the Closing.** At the Closing, Purchaser will deliver (in addition to any items or documents otherwise required by this Agreement) the following to Seller or Escrow Agent, with respect to each individual Property, as applicable:

13.1 The balance of the Purchase Price pursuant to and in accordance with Article 2.

13.2 A certificate executed by Purchaser stating that all of the representations and warranties set forth in Section 10.1 are true and correct in all material respects of the Closing Date.

13.3 The Closing Statement, executed by Purchaser.

13.4 With respect to each individual Property, an original counterpart to each Lease.

13.5 With respect to each Lease, an original counterpart to each Memo of Lease.

13.6 If Purchaser is financing any Property, with respect to each such financed Property, an original counterpart to each SNDA from Purchaser and Purchaser's lender.

13.7 A counterpart to the Assignment of Intangible Property.

13.8 Any state, county and municipal transfer declarations or notices which are legally or customarily required to be executed by the applicable Purchaser to effectuate the conveyance and transfer of the Properties purchased by such Purchaser as contemplated hereby.

13.9 Any additional instruments and documents reasonably requested by Escrow Agent in order to confirm corporate existence, structure, and/or authority of Purchaser.

13.10 Such other instruments and documents or payments as may be reasonably required to consummate the transaction herein contemplated.

14. **Conditions to Closing.**

14.1 Conditions to Seller's Obligation to Sell. Seller's obligation to consummate the transactions as contemplated by this Agreement and to deliver the documents and instruments required under Article 12 is subject to satisfaction of the following conditions (any of which may be waived by notice from Seller):

14.1.1 The delivery to Escrow Agent of the Purchase Price, adjusted as provided herein, plus the payment by Purchaser to the appropriate parties of any closing costs to be paid by Purchaser hereunder.

14.1.2 Purchaser shall have completed all of the other deliveries required of Purchaser under Article 13 (which may be delivered into escrow), and all such documents and instruments shall be in the form required hereby, or if no form is required hereby, then in form and substance reasonably satisfactory to Purchaser, Seller and their respective attorneys.

14.1.3 All representations and warranties of Purchaser contained in this Agreement shall be true in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date and Purchaser shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Purchaser prior to or by the Closing Date (including, but not limited to, the delivery by Purchaser of the items described in Article 13).

14.2 Conditions to Purchaser's Obligation to Purchase. Purchaser's obligation to consummate the transactions contemplated by this Agreement and to deliver the balance of the Purchase Price and the other documents and instruments required under Article 13 is subject to satisfaction of the following conditions (any of which may be waived by notice from Purchaser):

14.2.1 Subject to Seller's right to update same in accordance with Section 6.6 or Section 9.3.2 and except for any Representation Breach Purchaser has waived, or is deemed to have waived, pursuant to Section 9.3.2, all representations and warranties of Seller contained in this Agreement shall be true in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date and Seller shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or by the Closing Date.

14.2.2 Seller shall have completed all of the other deliveries required of Seller under Article 12 (which may be delivered into escrow), and all such documents and instruments shall be in the form required hereby, or if no form is required hereby, then in form and substance reasonably satisfactory to Purchaser and its attorney.

14.2.3 There shall exist no event or circumstance that would constitute an "Event of Default" under, and as defined in, any Lease or that would constitute a default under any Guaranty, nor any event or circumstance which, with the giving of notice or passage of time or both, would constitute an Event of Default under any Lease or default any Guaranty.

14.3 Failure of Condition to Closing.

14.3.1 In the event any of the conditions set forth in Section 14.1 are not satisfied at or prior to the Closing, Seller may elect, in its sole and absolute discretion, to (a) terminate this Agreement in its entirety and neither party shall have any further obligation or liability hereunder, except with respect to such terms that expressly survive termination pursuant to the terms hereof, (b) waive any or all of the conditions set forth in Section 14.1 and proceed to the Closing on the Closing Date, or (c) if such failure is due to a default by Purchaser under this Agreement, exercise any of Seller's remedies pursuant to Section 18.1.

14.3.2 In the event any of the conditions set forth in Section 14.2 are not satisfied at or prior to the Closing, Purchaser may elect, in its sole and absolute discretion, to (a) terminate this Agreement in its entirety and neither party shall have any further obligation or liability hereunder, except with respect to such terms that expressly survive termination pursuant to the terms hereof, (b) waive any or all of the foregoing conditions set forth in Section 14.2 and proceed to the Closing on the Closing Date, or (c) if such failure is due to a default by Seller under this Agreement, exercise any of Purchaser's remedies pursuant to Section 18.2. In the event of termination of this Agreement under this Section 14.3.2, the Deposit shall be returned to Purchaser in accordance with Section 2.2.

14.4 Consents. Unless specifically set forth herein to the contrary, except as with respect to any reports and studies Seller is obligated to pay for under Article 7, each of which Seller shall be obligated to provide for reliance on by Purchaser, Seller shall not be responsible for obtaining the consent of any party to the assignment of any environmental report, engineering report, guaranty, warranty, or to the assignment of any other document or agreement to Purchaser and, in clarification thereof, if any such consent is required by any party to such document or agreement and such consent is not obtained by the Closing Date, Seller shall not be responsible for assigning such document or agreement to Purchaser and the failure to so assign such document or agreement shall not be considered a default hereunder or a failure to satisfy any condition hereof; provided, however, Seller agrees to use commercially reasonable efforts to obtain any such consents. For the sake of clarity, Seller and Guarantor shall each obtain the Required Seller Consents and the Required Guarantor Consents.

14.5 No Financing Contingency. It is expressly acknowledged by Purchaser that the Closing of the transactions contemplated by this Agreement is not subject to any financing contingency and that no financing for this transaction shall be provided by Seller. Without limiting the foregoing, Purchaser agrees that the ability or inability of Purchaser to obtain debt, equity investments or other financing in order to pay all of any part of the Purchase Price shall not be a contingency or condition to any of Purchaser's obligations under this Agreement.

14.6 The Closing. The closing of the transaction contemplated herein (the "**Closing**") shall be effectuated through an escrow with Escrow Agent pursuant to escrow instructions consistent with the terms and provisions of this Agreement and otherwise mutually satisfactory to Seller and Purchaser, on or before the date (as the same may be adjourned in accordance with this Agreement or as otherwise mutually agreed by the parties in writing, the "**Initial Closing Date**") that is fifteen (15) days after the Due Diligence Date, subject only to the various adjournment rights of Seller or Purchaser explicitly permitted in this Agreement. Each party shall have the right to adjourn the Closing Date for three (3) Business Days (the "**Adjourned Closing Date**", together with the Initial Closing Date, the "**Closing Date**") by sending written notice of same to the non-electing party no later than two (2) Business Days prior to the Initial Closing Date or Adjourned Closing Date, as applicable. Notwithstanding anything contained herein to the contrary, in no event shall the Closing Date be extended beyond May 31, 2022 (as the same may be extended pursuant to the terms of this Agreement, the "**Outside Closing Date**"). TIME SHALL BE OF THE ESSENCE WITH RESPECT TO PURCHASER'S OBLIGATION TO CLOSE HEREUNDER ON THE CLOSING DATE.

## 15. Casualty; Condemnation.

15.1 Casualty. If any individual Property is "materially damaged or destroyed" (as hereinafter defined) by a fire or other casualty event (a "**Casualty**") prior to the Closing, Seller shall promptly notify Purchaser thereof and Purchaser may terminate this Agreement with respect to such Property only by written notice given to Seller within ten (10) Business Days after Purchaser receives notice of the occurrence of such Casualty. If Purchaser so terminates this Agreement with respect to such Property, such termination right shall be subject to the terms of Section 1.2. If Purchaser does not so terminate this Agreement with respect to such Property, or if such Property is not deemed "materially damaged or destroyed," Purchaser will remain bound to purchase such Property for the full Allocated Purchase Price pursuant to the terms of this Agreement, without regard to the occurrence or effects of the Casualty; provided that, at the Closing, Seller will assign to Purchaser Seller's interest in the property insurance proceeds payable to Seller (if any) under Seller's insurance applicable to the Property(s) suffering such Casualty for the restoration of the physical damage to such Property(s), but net of any costs and expenses incurred by Seller prior to the Closing in connection with the Casualty, and Seller shall credit Purchaser at the Closing with the amount of the applicable insurance deductible pertaining to such Casualty. For purposes of this Section 15.1, a Property shall be deemed "**materially damaged or destroyed**" if the cost to repair and restore such Property exceeds an amount equal to five percent (5%) of the Allocated

Purchase Price for the individual Property that is materially damaged or destroyed or with respect to which Seller, as tenant under the applicable Lease, has not acknowledged, in writing, that it will not have a right to terminate such Lease post-Closing as a result of such Casualty. If this Agreement is terminated pursuant to this Section 15.1 as a result of Casualties to all of the Properties, the Deposit shall be returned to Purchaser.

15.2 If any condemnation proceedings are instituted, or notice of any condemnation or intent to condemn is given, with respect to all or any portion of any individual Property (a “**Condemnation**”) prior to the Closing, Seller shall promptly notify Purchaser thereof. If the Condemnation will result in a “material and adverse effect” (as hereinafter defined) to such Property, Purchaser may terminate this Agreement with respect to such Property only by written notice given to Seller within ten (10) Business Days after the date Purchaser receives notice of such Condemnation. If Purchaser so terminates this Agreement with respect to such Property, such termination right shall be subject to the terms of Section 1.2. If Purchaser does not so terminate this Agreement with respect to such Property, or if the Condemnation will not result in a “material and adverse effect” to such Property, Purchaser will remain bound to purchase the Property for the full Allocated Purchase Price pursuant to the terms of this Agreement, without regard to the occurrence or effect of the Condemnation; provided that, at the Closing, Seller will assign to Purchaser Seller’s interest in the award(s) payable to Seller on account of the Condemnation (if any), but net of any costs and expenses incurred by Seller prior to the Closing in connection with the Condemnation. For purposes of this Section 15.2, “**material and adverse effect**” shall mean the Condemnation will materially impair the value of the Property by more than five percent (5%) of the Allocated Purchase Price for the individual Property that is the subject of any such Condemnation or with respect to which Seller has not acknowledged, in writing, that it will not have the right to terminate such Lease post-Closing as a result of such Condemnation. If this Agreement is terminated pursuant to this Section 15.2 as a result of Condemnations with respect to all of the Properties, the Deposit shall be returned to Purchaser.

15.3 The Closing Date will be extended (including beyond the Outside Closing Date, if applicable) to allow for the time periods set forth in this Article 15.

**16. Intentionally Omitted.**

**17. Covenants of Seller.**

17.1 From and after the Due Diligence Date until the earlier of the Closing or the termination of this Agreement, Seller shall, except for those actions expressly contemplated or required to be taken by this Agreement or as consented to by Purchaser in writing, cause each individual Property to be operated in the ordinary course consistent with past practice.

17.2 From and after the Effective Date until the earlier of the Closing or the termination of this Agreement, Seller shall cause the existing insurance policies (or equivalent replacement policies) with respect to each individual Property to remain in force.

17.3 From and after the Effective Date until the earlier of the Closing or the termination of this Agreement, Seller shall (i) operate the Properties in compliance in all material respects with Applicable Laws and all Underlying Documents, and (ii) promptly following receipt thereof, provide Purchaser with copies of all written notices of violation of Applicable Laws and the Underlying Documents.

17.4 From and after the Effective Date until the earlier of the Closing or the termination of this Agreement, none of the Improvements shall be removed from the Land, unless (i) in the ordinary course of business or if the same is replaced by Improvements of equal or greater utility and value or (ii) if the same is obsolete.

17.5 From and after the Effective Date until the earlier of the Closing or the termination of this Agreement, Seller shall not alienate, encumber, lease or otherwise transfer part of any Property or any interest therein (i) unless discharged in full prior to the Closing Date with releases or discharges delivered contemporaneously with, or prior to, the Closing Date, and (ii) except as would be permitted by the tenant under the Leases.

17.6 From and after the Effective Date until the Closing, there shall have been no material adverse change in the financial condition of Guarantor or Seller since the date of the most recent financial statements of Seller and/or Guarantor delivered to Purchaser prior to the Effective Date.

17.7 Notwithstanding anything herein to the contrary, Seller may, without Purchaser's consent and without cost to Purchaser (unless otherwise set forth herein or unless otherwise approved by Purchaser) (i) take such actions, if any, with respect to the Property, reasonably necessary to comply with the terms of any insurance requirements or to comply with Applicable Laws, (ii) take such actions as it deems reasonably necessary to repair any insured or uninsured casualty or damage, and (iii) take such actions with respect to any Property reasonably necessary to prevent loss of life, personal injury or property damage.

17.8 From and after the Effective Date until the earlier of the Closing or the termination of this Agreement, Seller shall, and Seller shall use commercially reasonable efforts to cause all employees, agents, contractors and subcontractors of Seller to, keep and maintain the Land and the Improvements thereon, including the soil and ground water thereof, in material compliance with, and not affirmatively cause or knowingly permit the Land or the Improvements thereon, including the soil and ground water thereof, to be in material violation of, any applicable Hazardous Materials Laws, except as may be described in the Environmental Reports.

17.9 From and after the Effective Date until the earlier of the Closing or the termination of this Agreement, Seller shall advise Purchaser in writing as soon as reasonable practicable of: (i) any written notices received by Seller, or its officers, partners, members, shareholders, beneficiaries, employees or agents (whether such written notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation occurring on or about any Land or the Improvements thereon of any applicable Hazardous Materials Laws; (ii) any and all enforcement, clean-up, removal or other governmental or regulatory actions instituted, completed or threatened in respect of any Land or the Improvements thereon pursuant to any Hazardous Materials Laws; (iii) all claims made or threatened by any third party against Seller or any Land or the Improvements thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "**Hazardous Materials Claims**"); and (iv) Seller's actual discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Land and the Improvements thereon that could reasonably be likely to cause such Land or Improvements or any part thereof to be subject to any Hazardous Materials Claims, except as may be described in the Environmental Reports.

#### **18. Defaults; Damages.**

18.1 Purchaser Defaults. In the event that Purchaser shall default under this Agreement, Purchaser and Seller agree that the damages that Seller shall sustain as a result thereof shall be substantial and shall be extremely difficult and impractical to determine. Purchaser and Seller therefore agree that if Purchaser fails to perform any or all of the terms, covenants, conditions and agreements to be performed by Purchaser hereunder, whether at or as of the Closing, Seller's sole and exclusive remedy shall be to receive as liquidated damages (but not as a penalty) the Deposit from Escrow Agent, and thereafter

neither Purchaser nor Seller shall have any further liability or obligation to the other hereunder, except for such liabilities and obligations as are expressly stated to survive the termination of this Agreement. Purchaser and Seller agree that, considering all of the facts and circumstances existing as of the Effective Date, the amount of the Deposit is a fair and reasonable estimate of the damages that Seller would incur in the event of a default by Purchaser under this Agreement and constitutes full liquidated damages pursuant to O.C.G.A. § 13-6-7 (and under any other statute and common law principle as may be deemed applicable to the recovery of damages under this Agreement). Seller hereby waives any right to receive damages or other relief in excess of the amount of the Deposit.

## 18.2 Seller Pre-Closing Defaults.

18.2.1 In the event that Seller shall default under this Agreement in any material respect, then Purchaser shall be entitled, as its sole remedy, to either: (i) terminate this Agreement and receive (A) the immediate return of the Deposit, and (B) prompt reimbursement or payment by Seller of all of Purchaser's third-party, out-of-pocket, documented costs and expenses actually incurred in connection with Purchaser's due diligence for the transactions contemplated hereby and any reasonable, third-party, out-of-pocket, documented capital markets costs (including forfeited loan deposits, lender legal fees, loan fees, breakage and hedging costs), not to exceed ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) in the aggregate, and Seller shall not have any further liability or obligation to Purchaser hereunder nor shall Purchaser have any further liability or obligation to Seller hereunder, except for such obligations of the parties respectively as are specifically stated to survive the termination of this Agreement or (ii) treat this Agreement as being in full force and effect and pursue only the remedy of specific performance against Seller.

18.2.2 Except as otherwise expressly set forth herein, Purchaser waives any right to pursue any other remedy at law or in equity for such default of Seller, including, without limitation, any right to seek, claim or obtain damages, other than in the case of Seller's fraud.

18.3 Right to Cure. Neither party hereto shall be in default hereunder other than a default of Purchaser's obligation to effectuate the Closing (for which there shall be no cure period) until such time as the party not in default shall have given written notice thereof to the defaulting party and an opportunity to cure the same for a period of five (5) Business Days (for any failure to timely pay or deposit any amount of money required to be paid or deposited under this Agreement) or ten (10) Business Days (for any other default) following the delivery of the written notice, prior to exercising any right or remedy to which the party not in default may be entitled.

18.4 Defaults Discovered Post-Closing. If Purchaser closes the transactions contemplated by this Agreement and, after the Closing Date but before the applicable Survival Date, Purchaser discovers a breach of any of Seller's representations or warranties hereunder or under any certificates and other documents executed at, or in connection with, the Closing, other than the Deeds, Leases and Guaranties (to which it is acknowledged the Survival Date and the Post-Closing Cap do not apply), Purchaser shall have the right, until the time period set for in Section 26.2, to sue Seller for actual damages incurred by Purchaser as a result of such breach or breaches. However, in any such event or events, Seller shall not have any liability to Purchaser for all or any of such matters in excess of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) in the aggregate (the "Post-Closing Damage Cap"). However, in any such event or events, no claim for breach of a representation or warranty may be made unless the claims, individually or in the aggregate, shall be in excess of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) (the "Floor"), in which event the full amount of such claims (i.e., without regard to the Floor) shall be actionable. Purchaser shall not seek, pursue, or enter any judgment or collect (or attempt to collect) an amount in excess of the Post-Closing Damage Cap. The provisions of this Section 18.4 shall survive the Closing until the Survival Date set forth in Section 26.1.

18.5 Limitation on Default. Notwithstanding anything to the contrary, neither Seller's nor Purchaser's inability to satisfy a condition of this Agreement shall be considered a default by such party hereunder unless such inability results from the breach of such party's express obligations, representations or warranties hereunder; provided nothing herein shall relieve any party from using commercially reasonable efforts to satisfy the conditions of this Agreement.

18.6 Limitations on Liability and Remedies. Notwithstanding anything contained herein to the contrary, if prior to the Closing Date, either Purchaser or Seller has or obtains actual knowledge that (a) the other party has defaulted on its obligations hereunder in any respect, and the non-defaulting party nevertheless proceeds with the Closing, then the default by the defaulting party as to which the other party shall have such knowledge shall be deemed waived by the non-defaulting party and the defaulting party shall have no liability to the non-defaulting party or its successors and assigns in respect thereof or (b) any of Seller's representations or warranties set forth in Article 9, or Purchaser's representations and warranties set forth in Article 10, are untrue in any respect, and the other party nevertheless proceeds with the Closing, then the breach by the breaching party of the representations and warranties as to which the other party shall have such knowledge shall be deemed waived by the non-breaching party, such representations and warranties shall be deemed modified to conform them to the information that the non-breaching party shall have knowledge of and the breaching party shall have no liability to the other party or its successors or assigns in respect thereof. If a party has or obtains knowledge that (i) the other party has defaulted on its obligations hereunder in any respect or (ii) any of any of the other party's representations or warranties set forth in Article 9 or Article 10, as applicable, are untrue in any material respect, such party shall so notify the other party in writing (x) on or before the date that is the second (2<sup>nd</sup>) Business Day after obtaining such knowledge, or (y) on or before the Closing Date if a party, obtains such knowledge one (1) Business Day prior to the Closing Date or on the Closing Date. Neither Seller nor Purchaser shall have any liability under this Agreement for consequential, indirect, punitive or special damages.

#### 19. Escrow Agent.

19.1 Escrow Agent shall hold the proceeds of the Deposit in escrow in a special bank account (or as otherwise agreed in writing by Seller, Purchaser and Escrow Agent) until the Closing Date or sooner termination of this Agreement and shall pay over or apply such proceeds in accordance with the terms of this Article 19. Escrow Agent shall hold such proceeds in an interest-bearing account, and any interest earned thereon shall be paid to the same party entitled to the escrowed proceeds, and the party receiving such interest shall pay any income taxes thereon. Seller and Purchaser shall each provide a form W-9 to Escrow Agent concurrently with or prior to the Effective Date. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrow Agent to Seller and credited against the Purchase Price pursuant to and in accordance with Article 2.

19.2 If any party makes a written demand upon Escrow Agent for payment of the proceeds of the Deposit, then Escrow Agent shall give written notice to the other parties of such demand. If such written demand is made by Purchaser prior to 5:00 p.m. (Eastern Time) on the Due Diligence Date, Escrow Agent shall promptly return the Deposit to, or as directed by, Purchaser without the need for consent from Seller or lapse of the ten (10)-Business Day period described below. If Escrow Agent does not receive a written objection from the other parties to the proposed payment within ten (10) Business Days after the giving of such notice, Escrow Agent is hereby authorized to make such payment. Except with respect to a notice from Purchaser pursuant to the second sentence of this Section 19.2, if Escrow Agent does receive such written objection within such ten (10)-Business Day period or if for any other reason Escrow Agent in good faith shall elect not to make such payment, Escrow Agent shall continue to hold such amount until otherwise directed by written instructions from both Seller and Purchaser or a final judgment of a court of competent jurisdiction. However, Escrow Agent shall have the right at any

time to deposit the escrowed proceeds and interest thereon, if any, with the clerk of the appropriate court of the county in which the Property is located. Escrow Agent shall give written notice of such deposit to Seller and Purchaser. Upon such deposit, Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder.

19.3 The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that Escrow Agent shall not be deemed to be the agent of either of the parties, and that Escrow Agent shall not be liable to any of the parties for any act or omission on its part unless involving gross negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including out-of-pocket attorneys' fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent involving gross negligence on the part of Escrow Agent.

19.4 Escrow Agent shall not have any duties or responsibilities except those set forth in this Agreement and shall not incur any liability in acting upon any signature, notice, request, waiver, consent, receipt or other instrument or document believed in good faith by Escrow Agent to be genuine, and Escrow Agent may assume that any Person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so. Escrow Agent shall have no duty to determine (and shall not be affected by any knowledge concerning) the validity, authenticity or enforceability of any specification or certification made in any certificate or notice.

## **20. Notices.**

20.1 All notices, demands, requests or other communication required to be given or which may be given hereunder shall be in writing and shall be deemed to have been properly given, unless otherwise provided herein, if (a) deposited in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested, (b) delivered to such party, or an agent of such party, in person or by commercial courier, (c) sent by electronic copy, evidenced by confirmed receipt and concurrently followed by a "hard" copy of same delivered to the party by mail, personal delivery or overnight delivery pursuant to clauses (a), (b) or (d) hereof, or (d) sent (prepaid) by reputable nationally recognized overnight courier for next Business Day delivery. Such notice, demand, request or communication shall be deemed to have been duly given, on the date received, or the date delivery is refused if hand delivered. The attorney for any party may give a notice on behalf of such party. Notices shall be addressed as follows:

If to Seller, to:

200 NW Phosphate Boulevard  
Mulberry, Florida 33860  
Attention: Phil Bayt  
Email: phil.bayt@badcock.com

with copies to:

c/o Franchise Group, Inc.  
109 Innovation Court, Suite J  
Delaware, Ohio 43015  
Attention: Eric Seeton, CFO  
Email: eseeton@franchisegrp.com

and:

c/o Franchise Group, Inc.  
109 Innovation Court, Suite J  
Delaware, Ohio 43015  
Attention: Tiffany McMillan-McWaters, Deputy General Counsel  
Email: tmcwaters@Franchisegrp.com

and:

Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Melissa Fischetti, Esq.  
Email: mfischetti@willkie.com

If to Purchaser, to:

cMesirow Realty Sale-Leaseback, Inc.  
353 North Clark Street  
Chicago, Illinois 60654  
Attention: Senior Managing Director  
Email: garry.cohen@mesirow.com  
doug.barker@mesirow.com

with a copy to:

Goldberg Kohn Ltd.  
55 East Monroe Street, Suite 3300  
Chicago, Illinois 60603  
Attention: Jami L. Brodey  
Email: jami.brodey@goldbergkohn.com

If to Escrow Agent, to:

First American Title Insurance Company  
National Commercial Services  
5201 Blue Lagoon Drive, Suite 974  
Miami, Florida 33126  
Attention: Vanessa Abreu, Esq., VP and Division Area Manager-NCS Miami  
Email: vabreu@firstam.com

or to such other Person and/or address as shall be specified by any party in a notice given to the other party pursuant to the provisions of this

Section 20.1.

21. **Brokers.**

21.1 Purchaser and Seller each warrant and represent to the other that this transaction was not brought about by any broker other than B. Riley Real Estate, LLC (the "**Broker**"). Seller will pay the Broker a brokerage commission pursuant to a separate agreement with the Broker. Purchaser and Seller each shall and hereby does agree to indemnify and hold the other party harmless from and against any and all claims, demands or causes of action or other liability (including, without limitation, reasonable attorneys' fees and disbursements) against the indemnified party arising from or pertaining to any

violation, on their respective parts, of the foregoing representation and warranty. The representations, warranties and indemnity contained in this Section 21.1 shall survive the Closing and the delivery of the instruments contemplated hereunder or if the Closing does not occur, the termination of this Agreement.

**22. Confidentiality.**

22.1 The parties agree that they will not disclose the contents of this Agreement or any agreement contemplated hereby or executed by the parties prior to the Effective Date other than the Leases to any third parties without the consent of the other party, except as may be required or, based on the advice of counsel, advisable to ensure compliance with any applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency having jurisdiction over such party; provided that the disclosing party has given the other party no less than two (2) Business Days' prior written notice of such intended disclosure if the disclosing party is permitted to do so. Nothing contained in this Section 22.1 shall be construed as prohibiting the parties from disclosing the contents of this Agreement (A) on a confidential basis to its counsel, accountants, insurance agents, consultants, and other agents, or governmental authorities, (B) with respect to Purchaser, to parties from which it is seeking financing or equity investment including their agents and rating agencies, or (C) with respect to Seller, any existing lender or mortgagee. Without in any way limiting the foregoing, Purchaser agrees that any and all materials and information provided by Seller or made available to Purchaser which constitutes Confidential Information, shall be kept strictly confidential in accordance with the terms of this Section 22.1; provided, however, that Purchaser may disclose the terms of this Agreement and the Leases during any investor or earnings call conducted by Purchaser as required by applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency provided such disclosure does not include the economic or other material terms of the transaction contemplated by this Agreement or the Leases, or any financial information regarding Seller and provided further that Purchaser has given Seller no less than two (2) Business Days' prior written notice of such intended disclosure if Purchaser is permitted to do so. The provisions of this Section 22.1 shall survive the termination of this Agreement until the Survival Date set forth in Section 26.1.

**23. Public Disclosure; Press Releases.**

23.1 Prior to the Closing, Seller and Purchaser each agree that it will not issue any press release, advertisement or other public communication with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, (i) Seller and Purchaser shall each have the right to make any filings or issue any press releases, advertisements, or other public communications required by applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency without the prior written consent of the other party hereto, (ii) Seller and Purchaser each may make an announcement to, or otherwise communicate with, its direct and indirect investors, employees and owners regarding this Agreement and/or the transactions contemplated herein, without the consent of the other party, provided such announcements or communications do not include the economic or other material terms of the transaction contemplated by this Agreement or the Leases, or any financial information regarding Seller, and (iii) Seller shall have the right to make any filings or issue any press releases, advertisements, or other public communications as made or issued in the ordinary course of Seller's business without the prior written consent of Purchaser, provided that no such press releases, advertisements or other public communications shall contain the economic terms of this Agreement without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed). At or prior to the Closing, upon request of either party, the parties shall reasonably agree upon a joint press announcement of this transaction.

**24. Further Assurances.**

24.1 The parties agree to do such other and further acts and things, and to execute and deliver such instruments and documents, as either may reasonably request from time to time, on or after the Closing Date, in furtherance of the purposes of this Agreement. The provisions of this Section 24.1 shall survive the Closing until the Survival Date set forth in Section 26.1.

25. **Miscellaneous.**

25.1 This Agreement, the Exhibits and the Schedules attached hereto, together with the Seller's Documents and the Purchaser's Documents, constitute the entire agreement between the parties with respect to the subject matter hereof, and all understandings and agreements heretofore or simultaneously had between the parties are merged in, superseded by and contained in this Agreement.

25.2 No waiver by any party to any breach hereunder shall be deemed a waiver of any other or subsequent breach..

25.3 This Agreement may not be altered, amended, changed, waived, discharged, terminated or modified in any respect or particular unless the same shall be in writing and signed by or on behalf of the party to be charged therewith; and any consent, waiver, approval or authorization shall be effective only if signed by the party granting such consent, waiver, approval or authorization.

25.4 Subject to the provisions of Section 25.8, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators and successors and permitted assigns.

25.5 This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof

25.6 This Agreement shall be construed and enforced in accordance with the laws of the State of New York without regard to principles of conflicts of laws, except as to real property matters directly relating to an individual Property, which matters shall be governed by the laws of the State in which the applicable individual Property is located. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

25.7 This Agreement (or any memorandum hereof) may not be recorded by Purchaser and any recordation thereof shall be deemed a material default under this Agreement.

25.8 Except as expressly provided in this Section 25.8, Purchaser may not directly or indirectly assign or transfer this Agreement or any of its rights hereunder without Seller's prior written consent in each instance, which consent may be granted or withheld in Seller's sole and absolute discretion. No consent given by Seller to any assignment shall be construed as a consent to any other assignment, and any unpermitted assignment made by Purchaser shall be void. Notwithstanding the foregoing, Purchaser may, without Seller's consent, (i) assign this Agreement to one or more limited liability companies of which Purchaser is the manager, general partner or managing member and owns no less than twenty percent (20%) of the direct or indirect ownership interests, provided Seller receives a written assignment and assumption of this Agreement at least ten (10) Business Days prior to the Closing, provided, however, that such assignment and assumption shall not relieve Purchaser of its obligations hereunder; or (ii) direct that title to the Property be transferred at the Closing to one or more limited liability companies of which Purchaser is the manager, general partner or managing member and owns no less than twenty percent (20%) of the direct or indirect ownership interests, provided Seller receives such direction in writing at least ten (10) Business Days prior to the Closing.

25.9 The captions, Section and Article titles and Exhibit and Schedule names contained in this Agreement are for convenience and reference only and shall not be used in construing this Agreement.

25.10 The Exhibits and Schedules attached hereto are hereby made part of this Agreement.

25.11 The terms “hereof,” “herein,” and “hereunder” and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular article or provision, unless expressly so stated. All words or terms used in this Agreement, regardless of the number (i.e., singular or plural) or gender in which they are used, shall be deemed to include any other number (i.e., singular or plural) and any other gender as the context may require. For the purposes of this Agreement, and without intending to expand the meaning of the phrase “commercially reasonable efforts”, the parties hereto acknowledge that commercially reasonable efforts will not be interpreted as requiring the initiation or settlement of litigation, disproportionate payouts to any partners, or the payment of money (other than usual and customary expenses associated with negotiating and closing transaction of the nature set forth herein).

25.12 For the purposes of this Agreement, “knowledge” with respect to or matters “known” by (a) Seller shall mean matters as to which the following individual has actual, present and personal knowledge without any independent investigation or any duty or responsibility to make any inquiry, review or investigation: Robert Burnette (the “**Seller Knowledge Party**”); and (b) Purchaser shall mean matters as to which the following individuals have actual, present and personal knowledge without any independent investigation or any duty or responsibility to make any inquiry, review or investigation: Garry W. Cohen, Gerald Levin, Douglas Barker and Daniel J. Nyhan (collectively, the “**Purchaser Knowledge Parties**”). Actual knowledge shall not be deemed to exist merely by assertion by Purchaser or Seller of a claim that any of the foregoing persons should have known of such facts or circumstances, if such person did not have actual knowledge thereof. Seller represents and warrants to Purchaser that the individual named within the definition of Seller Knowledge Party is appropriately positioned to provide knowledge of the representations and warranties set forth in this Agreement. Purchaser represents and warrants to Seller that the individuals named within the Purchaser Knowledge Parties are appropriately positioned to provide knowledge of the representations and warranties set forth in this Agreement. None of the Seller Knowledge Party or the Purchaser Knowledge Parties shall have any personal liability pursuant to this Agreement.

25.13 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Each party may rely upon a facsimile or other electronic counterpart (including “.pdf”) of this Agreement or any instrument delivered in connection herewith signed by the other party with the same effect as if such party had received an original counterpart signed by such other party.

25.14 If any provision of this Agreement, or the application of such provision to any Person or circumstance, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the Person or circumstance other than those in respect of which it is invalid or unenforceable, except those provisions which are made subject to or conditioned upon such invalid or unenforceable provisions, shall not be affected thereby.

25.15 The submission of this Agreement to Purchaser does not create a binding obligation on the part of Seller. This Agreement shall not be binding on Purchaser or Seller until Purchaser has signed this Agreement and delivered the signed Agreement and the Deposit to Seller and a counterpart hereof executed by Seller has been delivered to Purchaser.

25.16 If any party obtains a judgment against any other party by reason of breach of this Agreement, reasonable attorneys' fees and disbursements as fixed by the court shall be included in such judgment. As used herein, "reasonable attorneys' fees" means reasonable attorneys' fees actually incurred by the prevailing party at standard hourly rates, without incorporation of any statutory presumption or calculation under O.C.G.A. § 13-1-11 (or successor statute thereto).

25.17 Time is of the essence of this Agreement. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which the period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a Business Day, in which case the period shall be deemed to run until the end of the next day which is a Business Day.

25.18 Whenever two or more parties constitute Purchaser, all such parties shall be jointly and severally liable for performing Purchaser's obligations hereunder. Whenever two or more parties constitute Seller, all such parties shall be jointly and severally liable for performing Seller's obligations hereunder.

25.19 The following terms used but not otherwise defined herein shall have the following meanings:

25.19.1 "**Business Day**:" shall mean any day other than a Saturday, Sunday or bank holiday in the City of New York, State of New York or the City of Chicago, State of Illinois.

25.19.2 "**Person**" shall mean any individual, corporation, limited liability company, limited partnership, general partnership, association, joint stock company, joint venture, estate, trust (including any beneficiary thereof), unincorporated organization, government or any political subdivision thereof, governmental unit or authority or any other entity.

25.19.3 "**Taxes**" shall mean any federal, state, local or foreign, real property, personal property, sales, use, room, occupancy, ad valorem or similar taxes, assessments, levies, charges or fees imposed by any governmental or regulatory authority on Seller with respect to the Property, including, without limitation, any interest, penalty or fine with respect thereto, but expressly excluding any federal, state, local or foreign income, capital gain, gross receipts, capital stock, franchise, profits, estate, gift or generation skipping tax, transfer, documentary stamp, recording or similar tax, levy, charge or fee incurred with respect to the transaction described in this Agreement.

**25.20 State-Specific Required Provisions.** Additional to be determined and inserted in coordination with local counsel.

25.20.1 Florida.

a. If any portion of a Property located in Florida is, or has been at any time since January 1, 2018, subject to a lease, on or before the expiration of the Due Diligence Date, Seller shall apply for a certificate of compliance with the Florida Department of Revenue ("**DOR**") related to the payment of all sales taxes for rentals collected by Seller under the Lease prior to the Closing (which can be requested online at <http://www.taxapp.floridarevenue.com/TaxClearanceLetter>) (the "**Sales Tax Compliance Certificate**") and provide Purchaser with a copy of such written application or confirmation of online application (together with a copy of the driver's license of the signatory thereto, and proof of authority of the signatory thereto making such request). Upon Seller's receipt from the DOR, Seller shall provide Purchaser with the Sales Tax Compliance Certificate (or the DOR's response to the request, if a certificate is not issued) and such other related correspondence indicating the last date through which

Florida sales tax returns (“**Form DR-15**”) have been filed with the DOR and whether any outstanding liabilities are due with respect to those returns. On or prior to the Closing Date, Seller shall (i) remit to the DOR any outstanding sales tax amounts set forth in any such DOR response letter and all other Florida sales tax collected by Seller and not remitted to the DOR as of the Closing Date, and (ii) file with the DOR a final Form DR-15 with respect thereto. Notwithstanding anything to the contrary herein, nothing herein shall relieve Seller from being obligated to pay for any and all sales tax due on rents paid or owing under the Lease prior to the Closing (“**Pre-Closing Rental Sales Tax**”) and Seller shall indemnify Purchaser for any liabilities incurred by Purchaser as a result of the Seller failing to pay for any Pre-Closing Rental Sales Tax. The provisions of this Section shall survive Closing.

- b. As required by Florida statute, the following notification is provided: “**RADON GAS**: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.”

25.20.2. Georgia

- a. With respect to the Property located in the State of Georgia, Seller shall execute and deliver at the Closing either (i) an affidavit of Seller’s residency as required by Georgia law (or as to the residency of Seller’s parent, if Seller is a “disregarded entity” for federal income tax purposes) sufficient to enable Purchaser not to withhold at the Closing any portion of the Allocated Purchase Price applicable thereto under O.C.G.A. § 48-7-128, or (ii) an Affidavit of Seller’s Gain in the form promulgated under applicable Georgia Department of Revenue Regulations issued under said Section 48-7-128 (and in the case of this clause (ii), the sum required to be remitted to the Department of Revenue of the State of Georgia (the “**DOR**”) based upon the Affidavit of Seller’s Gain shall be withheld from Seller’s Purchase Price proceeds and deposited with Escrow Agent at the Closing for Escrow Agent to remit to the State of Georgia); and.

- b. Seller shall cause Seller’s Broker to execute and deliver at the Closing a commercial real estate broker’s affidavit and lien waiver reasonably sufficient to release and discharge such Property from any and all lien rights of Seller’s Broker.

26. **Survival.**

26.1 The acceptance by Purchaser of the Deeds and assignments referred to in Article 12 shall be deemed to be an acknowledgment, for all purposes, of the full performance and discharge of every representation, agreement and obligation on the part of Seller to be performed by it pursuant to the provisions of this Agreement, except for the following provisions which are to survive the Closing until the Survival Date and any other provisions of this Agreement which are specifically stated to survive the Closing. The “**Survival Date**” shall mean the following with respect to the Articles or Sections set forth below:

<u>Article or Section</u>	<u>Survival Period</u>
<u>Section 6.2</u> (second to last sentence only) (No Representation Regarding Due Diligence Materials)	Indefinitely
<u>Section 6.3.1</u> (Purchaser Investigation Indemnity)	Indefinitely
<u>Section 6.4</u> (Purchaser Return of Information Indemnity)	Indefinitely
<u>Article 7</u> (Expenses)	Indefinitely
<u>Section 9.1</u> (Seller's Representations), other than the representations and warranties in <u>Sections 9.1.1-9.1.4, 9.1.16 and 9.1.20</u>	6 months
<u>Sections 9.1.1-9.1.4, 9.1.16 and 9.1.20</u>	Indefinitely
<u>Section 9.3</u> (Limitations on Seller's Representations)	Indefinitely
<u>Article 10</u> (Purchaser's Representations)	Indefinitely
<u>Section 11.2</u> (Release)	Indefinitely
<u>Section 18.4</u> (Defaults Discovered Post-Closing)	Indefinitely
<u>Article 21</u> (Brokers)	Indefinitely
<u>Article 22</u> (Confidentiality)	Indefinitely
<u>Article 24</u> (Further Assurances)	3 years
<u>Section 26.1</u> (Survival)	Indefinitely
<u>Article 27</u> (Tax Contests)	Indefinitely
Article 28 (Waiver of Jury Trial)	Indefinitely

26.2 Notice of any claim made by Purchaser or Seller on the basis of a breach of a provision of this Agreement which survives the Closing shall be given on or before the applicable Survival Date. In the event that either party shall fail to give such notice prior to the applicable Survival Date, such party shall be deemed to have waived all claims in connection with any such provision. Any litigation with respect to such claim shall be commenced within ninety (90) days after the applicable Survival Date. Time shall be of the essence with respect to giving notice hereunder and commencing any litigation.

26.3 The provisions of this Article 26 shall survive the Closing until the Survival Date set forth in Section 26.1.

## **27. Tax Contests.**

27.1 Taxes. Seller shall retain the right to commence, continue and settle any proceeding to contest any Taxes for any taxable period whether prior to or following the Closing Date, subject to the terms and conditions of the Leases, and shall be entitled to any refunds or abatements of Taxes for such periods awarded in any such proceedings.

27.2 Cooperation. Seller and Purchaser shall use commercially reasonable efforts to cooperate with the party contesting the Taxes (at no cost or expense to the party not contesting the Taxes other than any *de minimis* cost or expense or any cost or expense which the contesting party agrees in writing to reimburse) and to execute and deliver any documents and instruments reasonably requested by the party contesting the Taxes in furtherance of the contest of such Taxes.

27.3 Survival. The provisions of this Article 27 shall survive the Closing until the Survival Date set forth in Section 26.1.

28. **Waiver of Jury Trial**.

28.1 TO THE EXTENT PERMITTED BY APPLICABLE LAW, PURCHASER AND SELLER HERETO SHALL, AND THEY HEREBY DO, INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF PURCHASER AND SELLER HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. The provisions of this Section 28.1 shall survive the Closing until the Survival Date set forth in Section 26.1.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

**SELLER:**  
**W.S. BADCOCK CORPORATION,**  
a Florida corporation

By: Robert B. Burnette /s/  
Robert  
Name: B. Burnette  
Title: President

**PURCHASER:**  
**MESIROW REALTY SALE-LEASEBACK, INC.,**  
an Illinois corporation

By: Douglas Barker /s/ M.  
M.  
Name: Douglas Barker  
Title: Managing Director Senior

[Signature Page to Purchase and Sale Agreement]

**CONSENT OF ESCROW AGENT:**

FIRST AMERICAN TITLE INSURANCE COMPANY ("**Escrow Agent**") hereby agrees to: (i) accept and carry out the escrow instructions set forth in this Agreement, (ii) carry out the responsibilities of Escrow Agent as provided in this Agreement; and (iii) be bound by this Agreement in the performance of its duties as Escrow Agent.

DATED: April 15, 2022 **FIRST AMERICAN TITLE INSURANCE COMPANY**

By: /s/ Erin Tahany  
Name: Erin Tahany  
Title: Title & Escrow Operations Manager

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[Signature Page to Purchase and Sale Agreement]



**PURCHASE AND SALE AGREEMENT**

This **PURCHASE AND SALE AGREEMENT** (this "**Agreement**") made as of this 26th day of April, 2022 (the "**Effective Date**"), by and between **W.S. BADCOCK CORPORATION**, a Florida corporation having an address at 200 NW Phosphate Boulevard, Mulberry, Florida 33860 ("**Seller**"), and **CAI INVESTMENTS SUB SERIES 100, LLC**, a Nevada limited liability company having an address at 9325 W. Sahara Avenue, Las Vegas, Nevada 89117 ("**Purchaser**").

**RECITALS:**

**WHEREAS**, Seller is the fee owner of those certain plots, pieces or parcels of land commonly known by the addresses set forth on Exhibit C attached hereto and more particularly described on Exhibit A attached hereto (individually or collectively, the "**Land**"), and on which Seller operates its business (individually or collectively, the "**Business**"); and

**WHEREAS**, Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller the Property (as hereinafter defined), subject to the terms and conditions of this Agreement;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

1. **Sale and Purchase.**

1.1 **Property.** Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, upon and subject to the terms and conditions hereinafter set forth, (a) the Land; (b) all buildings and improvements currently located on the Land (collectively, the "**Improvements**"); (c) all plans, specifications and studies pertaining to the Land, in Seller's possession or under its control; (d) all mineral, oil and gas rights, water rights, sewer rights and other utility rights allocated to Seller with respect to the Land; (e) any and all leases and rental agreements relating to the Land, including, without limitation, all rent, prepaid rent, security deposits and other payments and deposits (other than the Subleases (as hereinafter defined) and all rent, prepaid rent, security deposits and other payments and deposits with respect to the Subleases); and (f) all appurtenances, easements, licenses, privileges and other property interests belonging to Seller with respect to the Land, free and clear of any liens, encumbrances, claims or security interests, other than as appearing on any Title Report and/or Survey, all Permitted Encumbrances (as such term is defined in Section 4.1), but expressly excluding all right, title and interest of Seller and Currents and Cooling, Inc., a Florida corporation ("**Subtenant**"), if any, in and to all fixtures, equipment and personal property (regardless of whether attached or appurtenant to the Land or the Improvements and regardless of whether used in connection with the operation of the Business) and/or as otherwise disclosed herein (collectively, the "**Property**").

1.2 **All or Nothing Purchase and Sale.** Purchaser and Seller acknowledge and agree that the individual Properties shall be sold together as a package. Except as expressly set forth herein, any rights of Purchaser contained herein to terminate this Agreement shall require termination of the entire Agreement and shall not be construed as giving Purchaser the right to exclude, or terminate only as to, one (1) or more of the individual Properties.

2. **Purchase Price.**

2.1 The purchase price to be paid by Purchaser to Seller for the Property (the "**Purchase Price**") is EIGHTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$18,500,000.00), subject to adjustment as otherwise provided under this Agreement. The Purchase Price shall be paid by Purchaser as follows:

2.1.1 No later than three (3) Business Days following the Effective Date, and as a condition to the effectiveness hereof (TIME BEING OF THE ESSENCE with respect to such date), Purchaser shall deliver to First American Title Insurance Company, 5201 Blue Lagoon Drive, Suite 974, Miami, Florida 33126, Attention: Vanessa Abreu, Esq., Email: vabreu@firstam.com ("**Escrow Agent**") an amount equal to TWO hundred thousand AND NO/100 DOLLARS (\$200,000.00) (together with any interest earned thereon, the "**Initial Deposit**") by wire transfer of immediately available funds, to be held in escrow in accordance with Article 19;

2.1.2 In the event Purchaser does not terminate this Agreement on or before the Due Diligence Date (as hereinafter defined) in accordance with the terms hereof, no later than three (3) Business Days following the Due Diligence Date (TIME BEING OF THE ESSENCE with respect to such date), Purchaser shall deliver to Escrow Agent an additional deposit in the amount of THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) (together with any interest thereon, the "**Additional Deposit**", and collectively with the Initial Deposit, the "**Deposit**") by wire transfer of immediately available funds, to be held in escrow in accordance with Article 19; and

2.1.3 Purchaser shall, on or before 12:00 p.m. (Eastern Time) on the Closing Date, deliver to Escrow Agent by wire transfer of immediately available funds an amount equal to (i) the Purchase Price as apportioned, adjusted and prorated pursuant to Article 7 or as otherwise provided under this Agreement less (ii) the amount of the Deposit plus (iii) any other amounts required to be paid by Purchaser at the Closing.

2.2 On the day after the Due Diligence Date, the Deposit shall become non-refundable; provided, however, that the Deposit shall be refundable to Purchaser if Purchaser terminates this Agreement in accordance with the provisions of this Agreement which expressly provide for the return of the Deposit to Purchaser upon such termination. In any instance where the Deposit is to be returned to Purchaser, Purchaser shall be entitled to a refund of only so much of the Deposit that has been delivered to Escrow Agent pursuant to the terms of this Agreement.

2.3 At the Closing, Escrow Agent shall disburse the Purchase Price apportioned, adjusted and prorated to reflect closing costs, prorations and other adjustments made pursuant to Article 7 to Seller as Seller may direct or in accordance with a closing statement prepared and approved by Seller and Purchaser.

2.4 Seller and Purchaser mutually agree that one hundred percent (100%) of the Purchase Price is attributable to the real property.

3. **Leaseback.**

3.1 Purchaser and Seller shall enter into a lease agreement with respect to each individual Property substantially on the form attached hereto as Exhibit B, pursuant to which Purchaser shall, from

and after the Closing Date, lease each individual Property to Seller, at the rent and pursuant to the terms and conditions contained therein (each, a “**Lease**” and collectively, the “**Leases**”). The initial rent amounts of the Leases are set forth on Exhibit C attached hereto. With respect to each Lease, Franchise Group, Inc., a Delaware corporation (“**Guarantor**”), shall enter into a lease guaranty in form and substance reasonably acceptable to Seller, Purchaser, and Guarantor (each, a “**Guaranty**”).

#### 4. **State of Title of Property and Violations.**

4.1 **Permitted Encumbrances.** The Property is being sold and is to be conveyed subject only to the matters described in Sections 4.1.1 through 4.1.8 and Section 4.2 (collectively, the “**Permitted Encumbrances**”):

4.1.1 Any and all present and future zoning restrictions, regulations, requirements, laws, ordinances, resolutions and orders applicable to the Property, and all other laws, requirements, orders, rules, or regulations, now or hereafter in effect, of any governmental or quasi-governmental authority, department or agency having jurisdiction over the Property or any part thereof.

4.1.2 The state of facts shown on the Surveys and any state of facts a current and accurate survey of the Property would show.

4.1.3 Real estate taxes and assessments for the fiscal year in which the Closing occurs.

4.1.4 Rights and easements of utility companies to lay, install, maintain or operate wires, lines, cables, pipes, holes, boxes and other fixtures, facilities or equipment in, over and upon the Property or any portion thereof.

4.1.5 Any exceptions caused by Purchaser, its agents, representatives or employees.

4.1.6 Such matters as Escrow Agent shall be willing without any additional premium to omit as exceptions to coverage.

4.1.7 Such matters that are not timely objected to in accordance with Section 5.2.1, but expressly excluding Required Title Clearance Items (as hereinafter defined) which will in no event be Permitted Encumbrances.

4.1.8 The liens or encumbrances listed on, and/or disclosed by, the Title Reports, other than any matters Seller is expressly obligated to have removed pursuant to Article 5 below.

#### 4.2 **Violation Objections and Termination Rights.**

4.2.1 The Property is being sold and is to be conveyed subject to all notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by or any federal, state, county or municipal department having jurisdiction affecting or against the Property, subject to Seller’s express representations contained in this Agreement.

#### 5. **Title Insurance and Ability of Seller to Convey.**

5.1 Purchaser acknowledges receipt prior to the Effective Date of certain commitments (collectively, the “**Title Reports**”) to issue owner’s policies of title insurance with respect to the Property from Escrow Agent bearing the commitment numbers set forth on Exhibit C attached hereto. On the Closing Date, Purchaser will purchase (at Seller’s expense) from Escrow Agent owner’s title insurance policies for the Property insuring Purchaser in the amount of the Purchase Price. Purchaser acknowledges receipt prior to the Effective Date of certain ALTA surveys of the Property performed by a registered surveyor and as further described on Exhibit C attached hereto, which shall be certified to Purchaser, Seller, Escrow Agent, and any other party required by Purchaser (collectively, the “**Surveys**”); it being understood that obtaining a Survey shall not constitute a condition to, or delay, the Closing. Purchaser will deliver a copy of any updated Title Report and any updated Survey to Seller and Escrow Agent promptly after Purchaser’s receipt thereof. Except as otherwise specifically provided in Section 5.2 and Section 5.3, Seller shall not be obligated to incur any expense, or to bring any action or proceeding, to remove any exceptions or objections to title or to render title to the Property marketable and/or indefeasible and shall not be obligated to grant an abatement in the Purchase Price with respect to any such exception or objection. Nothing herein contained shall be construed to limit Purchaser’s right to specific performance in the event of Seller’s willful default hereunder. Seller shall have the right, but not the obligation, to a reasonable adjournment or adjournments of the Closing to remove any defect in or objection to title disclosed on or prior to the Closing Date in any Title Report and/or Survey, any update to any Title Report and/or Survey, or otherwise which does not constitute a Permitted Encumbrance (including, but not limited to, any Required Title Clearance Item (as such term is defined in Section 5.2.1)). Purchaser acknowledges and agrees that Seller makes no representation or warranty regarding the condition of title to the Land or the Improvements.

5.2 Title Objections and Termination Rights.

5.2.1 Subject to Section 5.4, to the extent the same affects the Property, Seller shall eliminate any mortgage or deed of trust, regardless of amount, executed by Seller and other monetary liens caused by or through Seller and affecting the Property not exceeding FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) (the “**Title Cure Cap**”) (the “**Required Title Clearance Items**”). If the Property becomes subject after the Effective Date but prior to the Closing Date to one or more liens or encumbrances that do not constitute Permitted Encumbrances or Required Title Clearance Items (any such lien or encumbrance, individually or collectively, a “**Title Objection Matter**”), then Purchaser shall furnish Seller with a written statement of objections, if any, to any such Title Objection Matter within two (2) Business Days of becoming aware of any individual Title Objection Matter (TIME BEING OF THE ESSENCE with respect to such date).

5.2.2 To the extent all such Title Objection Matters may be removed and/or cured solely by the payment of a sum of money not exceeding the Title Cure Cap, Seller shall remove and/or cure the same. To the extent such Title Objection Matters may not be removed and/or cured solely by payment of a sum of money not exceeding the Title Cure Cap or the cost to remove and/or cure such Title Objection Matters exceeds the Title Cure Cap, Seller shall have the option (each of the foregoing, “**Seller’s Cure Options**”) to elect to (x) remove and/or cure the same at its sole cost and expense, or (y) elect not to take any action (“**No-Action Election**”), in which case Purchaser may make a Purchaser Title Election (as such term is defined in Section 5.2.3). Seller shall have the right to elect any of Seller’s Cure Options as Seller becomes aware of Title Objection Matters, but shall have the right to alter or amend its election as Seller becomes aware of additional Title Objection Matters. Seller shall have the right to a reasonable adjournment or adjournments of the Closing Date in order to make such election. If Seller fails to

deliver notice of a Seller Cure Option in accordance with and pursuant to the terms of this Section 5.2.2, Seller shall be deemed to have made a No-Action Election.

5.2.3 Provided that Seller elects the No-Action Election or is deemed to have made a No-Action Election, Purchaser shall have the right to provide Seller notice of Purchaser's intent to terminate this Agreement (the "**Purchaser Title Election**") only to the extent that a Title Objection Matter will cost in excess of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) to remove and/or remedy. Purchaser shall make the Purchaser Title Election (if at all) by written notice to Seller delivered (i) on or before the second (2nd) Business Day after delivery of Seller's notice electing the No-Action Election, or (ii) on or before the Closing Date if Seller's notice electing the No-Action Election is delivered one (1) Business Day prior to the Closing Date or on the Closing Date.

5.2.4 If Purchaser affirmatively elects not to make the Purchaser Title Election or fails to deliver notice of making the Purchaser Title Election in accordance with and pursuant to the terms of Section 5.2.3, Purchaser shall be deemed to have failed to make the Purchaser Title Election, and Purchaser shall be required, subject to the terms and conditions of this Agreement, to close on the transactions contemplated pursuant to this Agreement and accept title subject to the Title Objection Matter(s) without any reduction or credit to the Purchase Price, except Seller will remain obligated, subject to the terms and conditions of this Agreement, to satisfy all Required Title Clearance Items. If Purchaser makes the Purchaser Title Election, Purchaser shall be entitled to the return of the Deposit, this Agreement shall be null and void, and the parties hereto shall be relieved of all further obligation and liability hereunder, except with respect to such terms that expressly survive termination pursuant to the terms hereof.

5.3 If Seller shall so request, Purchaser will allow Seller to pay from the balance of the Purchase Price as much thereof as may be necessary to satisfy any lien or encumbrance which Seller is obligated or elects to cure hereunder.

5.4 At the Closing, subject to the provisions of this Article 5, Seller shall convey to Purchaser fee simple title to the Property free of all liens and encumbrances other than the Permitted Encumbrances.

## 6. **Diligence**.

6.1 **Deliveries by Seller**. Prior to the Effective Date, Purchaser received an offering package with respect to the Property and/or was granted access to Property-related materials, including those certain agreements, documents, reports, and other written material and instruments more particularly set forth on Exhibit E attached hereto (collectively, the "**Offering Package**"). If not already provided to Purchaser prior to the Effective Date, Seller shall deliver or make available, or cause to be delivered or made available, to Purchaser for inspection, any additional documents, information and/or reports reasonably requested by Purchaser which are in the actual possession or control of Seller (together with the Offering Package, all documents, reports, and materials delivered to Purchaser by or on behalf of Seller or otherwise actually reviewed by Purchaser, the "**Due Diligence Materials**"), including, without limitation, the items listed on Exhibit E-1, which are hereby requested by Purchaser and shall be provided by Seller within ten (10) days following the Effective Date. The Due Diligence Materials do not (and are not required to) include any documentation or information which Seller must keep confidential, or any items which are protected by any attorney-client privilege. It is expressly agreed and understood that none of Seller nor its representatives shall be required to create any report or statement for Purchaser that is not created in the ordinary course of owning or operating the Property.

6.2 No Representations Regarding Due Diligence Materials. By making available to or furnishing Purchaser with the Due Diligence Materials, Seller does not make any warranty or representation with respect to the accuracy, completeness, conclusions or statements expressed in the Due Diligence Materials. Seller shall make available to or furnish Purchaser with any other existing written information, reports or updates of such Due Diligence Materials, to the extent in existence, within five (5) Business Days following reasonable request by Purchaser, but failure to deliver or make available same shall not in and of itself constitute a default hereunder, or otherwise constitute a failure of a condition to the Closing. Purchaser hereby waives any and all claims against Seller or any party that prepared or furnished the Due Diligence Materials arising out of any inaccuracy, incompleteness, conclusions or statements expressed in the Due Diligence Materials furnished or made available by Seller or any other party. The immediately preceding sentence of this Section 6.2 shall survive the Closing until the Survival Date (as such term is defined in Section 26.1) set forth in Section 26.1 or the termination of this Agreement.

6.3 Access to the Property.

6.3.1 Provided Purchaser has delivered evidence of Purchaser's Liability Insurance (as hereinafter defined) to Seller and Seller has approved the same (which approval shall not be unreasonably withheld, conditioned or delayed), Seller will allow Purchaser and its employees, agents, prospective lenders, attorneys, contractors, and representatives (collectively, "**Purchaser's Representatives**"), prior to the Due Diligence Date at reasonable times during normal business hours upon two (2) Business Days' prior notice (but subject to the rights of Subtenant under the Subleases) and without material interruption of Seller's management of the Property or interference with Subtenant, residents, occupants or employees at the Property, to enter upon the Property (i) for the purpose of updating Surveys, inspections, engineering studies, Phase I environmental assessments and any other non-invasive tests, structural examinations or studies which Purchaser may reasonably deem necessary, and (ii) to inspect the Property and, to the extent permitted by law, all books, records and accounts relating to the operation thereof (collectively, clauses (i) and (ii), the "**Investigations**"). Purchaser shall be solely responsible for all of the costs and expenses of any Investigations and shall conduct such Investigations in good faith and with due diligence. Notwithstanding the foregoing, Seller's prior written consent (which consent may be granted or withheld in Seller's sole and absolute discretion) shall be required for any Investigations which involve invasive or destructive testing of the Property (or any portion thereof and including, without limitation, any Phase II environmental assessments or boring of the Property in connection with an environmental audit or otherwise) or any alteration of the Property (or any portion thereof). In the event Seller does provide its consent to any such invasive testing or alteration, Purchaser shall promptly restore the Property to its condition immediately prior to, as applicable, such test or alteration. Purchaser shall (i) fully comply with all laws, rules and regulations applicable to Property and/or the Investigations and all other activities undertaken in connection therewith, (ii) not interfere with the use, occupancy, management, maintenance or operation of the Property (or any portion thereof) by Seller or Subtenant under that certain (i) Commercial Lease Agreement, dated as of October 1, 2021, between Subtenant and Seller, and (ii) Commercial Lease Agreement, dated as of October 1, 2021, between Subtenant and Seller (collectively, the "**Subleases**") (or any of their respective agents, representatives, residents, occupants, guests, invitees, contractors, or employees), and (iii) schedule all such Investigations at Seller's convenience and shall permit Seller to have a representative present during all Investigations undertaken hereunder. Purchaser hereby agrees to indemnify, defend and hold harmless Seller and each other Released Party (as such term is

defined in Section 11.2) from and against any and all loss, cost, expense, damage, claim and liability (including, without limitation, reasonable attorneys' fees and disbursements), suffered or incurred by Seller or any other Released Party and arising out of or in connection with (i) Purchaser and/or Purchaser's Representatives entry upon the Property, (ii) any Investigations and other activities conducted with respect to the Property by Purchaser or Purchaser's Representatives, and (iii) any liens or encumbrances filed or recorded against the Property as a consequence of any and all Investigations and other activities undertaken by Purchaser or Purchaser's Representatives. Purchaser shall procure, prior to entry upon the Property, and maintain for at least one (1) year after the Effective Date commercial general liability insurance covering Purchaser on an occurrence, as opposed to claims made, basis and providing for an each occurrence limit of \$1,000,000, personal & advertising injury limit of \$1,000,000 resulting in a combined general aggregate limit of not less than \$2,000,000 per occurrence with no deductible and an additional \$5,000,000 in Umbrella/Excess limits issued by companies and in form and substance reasonably satisfactory to Seller ("**Purchaser's Liability Insurance**"). All of Purchaser's Liability Insurance shall be primary and not contributing with any insurance maintained by Seller to the extent of Purchaser's indemnity contained in this Section 6.3.1. Seller shall be named as an additional insured under all of Purchaser's Liability Insurance and Seller shall be given written notice at least thirty (30) days prior to cancellation, material amendment or reduction of any such coverage. The provisions of this Section 6.3.1 shall not in any way be deemed to amend the provisions of Article 11. The indemnity set forth in this Section 6.3.1 shall survive the Closing and/or the termination of this Agreement until the Survival Date set forth in Section 26.1.

6.3.2 Purchaser and/or Purchaser's Representatives shall not contact, communicate or otherwise interfere with the normal conduct by Seller, Subtenant, or employees of the Property of their business at the Property.

6.4 Return of Information Upon Termination. If this Agreement is terminated by any party pursuant to the terms of this Agreement, then Purchaser shall return to Seller all Due Diligence Materials delivered to Purchaser and/or Purchaser's Representatives as well as a copy of any and all reports studies, data, analysis and surveys that Purchaser and/or Purchaser's Representatives discover, commission or generate in connection with or resulting from their due diligence activities on the Property (collectively, the "**Information**"). All of the Information shall be deemed confidential, and Purchaser acknowledges and agrees that the Information is subject to the confidentiality provisions of Section 22.1. Purchaser shall indemnify the Released Parties from and against any and all Claims (as such term is defined in Section 11.2) resulting from, arising out of or in connection with Purchaser's and/or Purchaser's Representatives' breach of its obligations under this Section 6.4. The indemnity set forth in this Section 6.4 shall survive the Closing and/or the termination of this Agreement until the Survival Date set forth in Section 26.1.

6.5 Purchaser's Unconditional Right to Terminate. Purchaser shall have the right to terminate this Agreement for any reason whatsoever by notifying Seller in writing of such termination on or before 11:59 p.m. (Eastern Time) on the date that is thirty (30) days following the Effective Date (the "**Due Diligence Date**") (TIME BEING OF THE ESSENCE as to such time and date). If Purchaser duly terminates this Agreement in accordance with the foregoing provisions of this Section 6.5, this Agreement shall terminate, Purchaser shall be entitled to the return of the Deposit without the consent of Seller and the parties shall have no further liability to one another arising from this Agreement, except that the following provisions of this Agreement shall survive such termination and be enforceable by the parties after termination: namely, Sections 6.2, 6.3 (other than with respect to access to the Property), 6.4, this 6.5, 7.1, 19, 21.1, 22.1, and 23.1. If Purchaser does not duly terminate this Agreement in accordance with

the foregoing provisions of this Section 6.5, or if Purchaser delivers written notice of its acceptance of the Property to Seller on or before 11:59 p.m. (Eastern Time) on the Due Diligence Date, Purchaser shall be obligated to consummate the transaction hereunder on the Closing Date and shall be deemed to have approved its due diligence investigation of the Property, including, without limitation, all laws, ordinances and regulations pertaining to the Property and all engineering, zoning and environmental matters pertaining to the Property. Prior to the Due Diligence Date, Purchaser shall within two (2) Business Days notify Seller of its discovery of any inaccuracy in any representation or warranty of Seller hereunder and Seller shall have the right, from time to time, until one (1) Business Day prior to the Due Diligence Date, to update any Exhibit attached hereto or modify any representation or warranty made by Seller herein by giving Purchaser written notice of any such update and/or modification prior to the Due Diligence Date (each, a “**Seller’s Modification Notice**”), without incurring any cost, expense, liability or obligation, and without the same constituting a breach or default under this Agreement; provided, however, in such event, Purchaser shall have the right to terminate this Agreement if such update has a material adverse effect on the transactions contemplated hereby, as determined by Purchaser in Purchaser’s reasonable judgment and, if the representation or warranty became inaccurate due to a Seller Control Event (as hereinafter defined), Purchaser shall (i) receive a return of the Deposit from Escrow Agent and (ii) recover all of the third-party, out-of-pocket, documented costs actually incurred by Purchaser in connection with the transactions contemplated hereby, not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00). Purchaser agrees that, if Seller sends a Seller’s Modification Notice, the Exhibits attached hereto and/or representations and warranties contained herein shall be deemed modified to reflect the updates and/or modifications made thereto by Seller as of the last Seller’s Modification Notice.

## **7. Expenses.**

7.1 Each party shall pay its own costs and expenses in connection with the transactions contemplated hereby, including the fees and expenses of its attorneys, accountants, consultants and engineers. Seller shall pay (a) one-half (1/2) of the fees and costs due to Escrow Agent in connection with the transactions contemplated herein, (b) transfer taxes, documentary stamp taxes, recording taxes, and other taxes, fees, charges and expenses required to be paid in connection with the sale of the Property, (c) all due diligence expenses and charges, including, without limitation, any expenses and charges for engineering reports, appraisals, environmental reports, or property condition reports, obtained by, or on behalf of, Purchaser, in connection with the transactions contemplated herein, (d) all expenses of or related to the issuance of standard coverage for any ALTA owner’s title insurance policy, including any incremental costs for extended coverage, if applicable, and any endorsements thereto mutually agreed to by Purchaser and Seller, acting reasonably, that are permitted by state law and reasonably customary in similar commercial transactions in which the Property is located, (e) the cost of any Survey, (f) recording fees for recordation of the Deeds, and (g) the cost of releasing all liens, judgments and other encumbrances that are to be released of record (subject to the limitations set forth herein) and the fees associated with recording any such releases. Purchaser shall pay (i) one-half (1/2) of the fees and costs due to Escrow Agent in connection with the transactions contemplated herein, (ii) any other costs associated with Purchaser’s financing of the Property (including, without limitation, mortgage recording taxes, to the extent the same are required to be paid), (iii) all expenses of or related to the issuance of standard coverage for any ALTA lender’s title insurance policy, including any incremental costs for extended coverage, if applicable, and any endorsements thereto), and (iv) the cost of any updates to any Survey. Any other customary closing costs shall be paid by Purchaser and Seller in accordance with local custom in the State and jurisdiction in which the Property to which the applicable costs relate is located. The provisions of this Section 7.1 shall survive the Closing until the Survival Date set forth in Section 26.1.

## **8. Adjustments and Closing Costs.**

8.1 In view of the subsequent lease of each individual Property by Purchaser to Seller pursuant to the Leases and Seller's obligations thereunder, there shall be no proration of insurance, taxes, special assessments, utilities or any other costs related to the Property between Seller and Purchaser at the Closing. Rent payable under the Leases shall be prorated as of the Closing Date.

## 9. **Representations and Warranties of Seller.**

9.1 **Representations and Warranties.** Seller represents and warrants to Purchaser that as of the Effective Date the following representations and warranties are true in all material respects and the same shall be true in all material respects as of the Closing Date (subject to Seller's right to update as provided in Section 6.5 and subject to the terms of Section 9.3.2):

9.1.1 Seller is a corporation validly existing and in good standing under the laws of the State of Florida. Subject to any consent required under Seller's organizational documents (the "**Required Seller Consents**"), which Required Seller Consents shall be obtained on or prior to the Closing, Seller has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement (collectively, the "**Seller's Documents**") and to perform all obligations arising under this Agreement and the Seller's Documents. Subject to Seller obtaining the Required Seller Consents, this Agreement and the Seller's Documents constitute the legal, valid and binding obligations of Seller enforceable against Seller in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and except as may be limited by general equitable principles. Subject to obtaining the Required Seller Consents, Seller is authorized to enter into this Agreement and the transactions contemplated hereby. If, for any reason, Seller is unable to secure the Required Seller Consents, then Purchaser may terminate this Agreement and, in such event, Purchaser shall (i) receive a return of the Deposit from Escrow Agent and (ii) recover all of the third-party, out-of-pocket, documented costs actually incurred by Purchaser in connection with the transactions contemplated hereby, not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00).

9.1.2 Subject to Seller obtaining the Required Seller Consents, this Agreement and the Seller's Documents do not and will not contravene any provision of the organizational documents of Seller, any judgment, order, decree, writ, injunction, or any other agreement binding on Seller, or any provision of any existing law or regulation to which Seller is a party or is bound. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not require (except to the extent, specifically set forth herein) any consent by any third party (including, without limitation, the consent of any direct or indirect owner of Seller) other than the Required Seller Consents.

9.1.3 To Seller's actual knowledge, no litigation, or governmental or agency proceeding or investigation is pending or threatened in writing against Seller which would materially impair or adversely affect Seller's ability to perform its obligations under this Agreement and consummate the transactions contemplated herein.

9.1.4 To Seller's actual knowledge, Seller and each individual Property is in compliance in all material respects with all applicable laws relating to the ownership, current operation or current use of any individual Property. Seller has not directly received any written notice or other written communication from any governmental or regulatory authority or any other Person regarding any actual, alleged or potential material violation of, or failure to comply in all material respects with, any applicable law relating to any individual Property which remains uncured.

9.1.5 There is no contemplated, pending or threatened bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or any other proceeding under any federal or state bankruptcy or similar law, whether voluntary or involuntary, affecting Seller or any affiliates thereof.

9.1.6 Seller is not currently identified as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (the "**OFAC List**") or is a Person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

9.1.7 Seller has not received written notice of condemnation or eminent domain proceedings affecting a Property and Seller has no actual knowledge that any such proceedings are contemplated.

9.1.8 Seller has not received any written notice from, and, to Seller's actual knowledge, there are no grounds for, any association, declarant or easement holder requiring the correction of any condition with respect to the Property, or any part thereof, by reason of a material violation of any other restrictions or covenants recorded against the Property. To Seller's actual knowledge, Seller is not in default in any material respect under any such document.

9.1.9 There are no tenant improvement allowances, non-monetary tenant improvement obligations of Seller, leasing commissions and/or rent concessions with respect to the current term of any Sublease.

9.1.10 There are no service contracts that will be binding on Purchaser after the Closing.

9.2 Survival. The provisions of Section 9.1 shall survive the Closing until the Survival Date set forth in Section 26.1.

9.3 Limitations on Seller's Representations.

9.3.1 Those provisions of this Article 9 and the representations and warranties set forth in such provisions, shall survive the Closing until the Survival Date set forth in Section 26.1. Notwithstanding anything contained herein to the contrary, absent fraud or intentional misrepresentation, Seller shall have no obligation or liability to Purchaser, prior to or after the Closing (if the Closing shall occur), in any respect of the inaccuracy or breach of any representation or warranty of Seller hereunder (and such default, inaccuracy and/or breach by Seller shall be deemed waived by Purchaser), to the extent such default, inaccuracy or breach (1) is or becomes actually known to Purchaser or Purchaser's Representatives prior to the Closing Date or is included in any Due Diligence Materials actually delivered to or made available for review by Purchaser in accordance with the terms hereof or in any other materials obtained by

Purchaser or Purchaser's Representatives in connection with the transactions contemplated hereby (including any third party reports commissioned by Purchaser or Purchaser's Representatives) (collectively, "**Purchaser's Diligence Materials**") and Purchaser does not, prior to the Closing Date, provide written notice thereof to Seller, (2) arises due to an act permitted or required to be taken by Seller hereunder, or (3) arises from the act or omission of Purchaser or Purchaser's Representatives or was consented to by Purchaser in writing. The provisions of this Section 9.3 shall survive the Closing until the Survival Date set forth in Section 26.1.

9.3.2. Without limiting the foregoing, to the extent that Seller or Purchaser becomes aware of any conflict with or inaccuracy in the representations and warranties set forth herein (a "**Representation Breach**") after the Effective Date and prior to the Closing, the party having actual knowledge of such Representation Breach (the "**Recipient**") shall provide to the other party (the "**Maker**") a written notice thereof within two (2) Business Days after obtaining such knowledge. The Maker will have the right, but not the obligation, to cure the Representation Breach within five (5) Business Days after the Maker's receipt of such notice (and if reasonably required, the Closing will be extended to allow for such cure and the Recipient's response). Regardless of whether such cure is attempted or effected by the Maker, the Recipient, within three (3) Business Days following the end of the Maker's five (5)-Business Day cure period (but in any event, prior to the Closing), shall have the right to either (i) terminate this Agreement (and, if the Maker is Seller, Purchaser may only terminate if the Representation Breach has a material adverse effect on the transactions contemplated hereby, as determined by Purchaser in Purchaser's reasonable judgment); or (ii) proceed with the transaction described herein. If the Recipient elects to terminate this Agreement pursuant to this Section 9.3.2, the Deposit shall be returned to Purchaser (unless the Representation Breach resulted from a Purchaser Control Event (as hereinafter defined), and (A) in the event the Representation Breach resulted from a Seller Control Event, the Representation Breach shall be a Seller default hereunder and Purchaser shall be entitled to all rights and remedies afforded to Purchaser hereunder with respect to a Seller default pursuant to Section 18.2.1 or (B) in the event the Representation Breach resulted from a Purchaser Control Event, the Representation Breach shall be a Purchaser default hereunder and Seller shall be entitled to all rights and remedies afforded to Seller hereunder with respect to a Purchaser default pursuant to Section 18.1). To the extent this Agreement is terminated in its entirety, neither Party will have any further rights or obligations under this Agreement except for the provisions of this Agreement which by their express terms survive the termination of this Agreement prior to the Closing. If the Recipient does not elect to so terminate this Agreement (whether or not the Recipient has disclosed the Representation Breach to the Maker, and whether or not such Representation Breach is the result of a Seller Control Event or a Purchaser Control Event, as the case may be), the Recipient shall be deemed to have proceeded in accordance with subsection (ii) above and shall be conclusively and automatically deemed to have waived any rights that the Recipient may have against the Maker as a result of such Representation Breach, and the Maker will have no liability whatsoever with respect to the Representation Breach. Nothing herein shall be deemed to modify or alter the terms of any Lease or the obligations of the tenant thereunder with respect to any Property. For purposes hereof, Purchaser shall not be deemed to have knowledge or be aware of a Representation Breach unless Christopher Beavor has actual, conscious knowledge of such fact, or Seller has delivered a written notice pursuant to this Agreement.

9.3.3. As used herein, (x) "**Seller Control Event**" shall mean (a) a representation or warranty by Seller that was untrue when made or (b) the failure of any of Seller's representations and warranties to remain true and correct as of Closing, but only if such failure is as a direct result of or directly caused by any act or omission by Seller, its employees or agents in contravention of this Agreement; and (y) "**Purchaser Control Event**" shall mean (a) a representation or warranty by Purchaser that was untrue when made or (b) the failure of any of Purchaser's representations

and warranties to remain true and correct as of Closing, but only if such failure is as a direct result of or directly caused by any act or omission by Purchaser, its employees or agents in contravention of this Agreement.

9.4 Seller does not represent or warrant that any particular Sublease will be in force or effect as of the Closing Date or that Subtenant under any Sublease will not be in default under such Sublease. If any Sublease is not in effect or a party to any Sublease is in default or Subtenant is in arrears in the payment of rent, such fact shall not, in any way, relieve Purchaser of its obligation to purchase the Property or entitle Purchaser to a reduction in the Purchase Price. The termination of any Sublease shall not affect the obligations of Purchaser hereunder.

#### **10. Representations and Warranties of Purchaser.**

10.1 **Representations and Warranties.** Purchaser represents and warrants to Seller that as of the Effective Date the following representations and warranties (and all other representations and warranties of Purchaser contained herein) are true in all material respects and shall be true in all material respects on the Closing Date:

10.1.1 Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Nevada. At the Closing, Purchaser or its permitted assignee will be authorized to do business in each jurisdiction in which the Property is located. Purchaser has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement (collectively, the "**Purchaser's Documents**") and to perform all obligations arising under this Agreement and the Purchaser's Documents. This Agreement and the Purchaser's Documents constitute the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and except as may be limited by general equitable principles. Purchaser is duly authorized to enter into this Agreement and the transactions contemplated hereby.

10.1.2 This Agreement and the Purchaser's Documents do not and will not contravene any provision of the organizational documents of Purchaser, any judgment, order, decree, writ, injunction, or any other agreement binding on Purchaser, or any provision of any existing law or regulation to which Purchaser is a party or is bound.

10.1.3 The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not require (except to the extent, specifically set forth herein) any consent by any third party (including, without limitation, the consent of any direct or indirect owner of Purchaser).

10.1.4 Purchaser or any assignee permitted pursuant to the terms hereof will have the financial wherewithal to perform its obligations hereunder.

10.1.5 To Purchaser's knowledge, no litigation, or governmental or agency proceeding or investigation is pending or threatened against Purchaser which would materially impair or adversely affect Purchaser's ability to perform its obligations under this Agreement and consummate the transactions contemplated herein.

10.1.6 Purchaser is not currently identified on the OFAC List or is a Person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo,

economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

10.2 Survival. Those provisions of Section 10.1 and the representations and warranties set forth in such provisions (and all other representations and warranties of Purchaser contained herein), shall survive the Closing until the Survival Date set forth in Section 26.1.

**11. Condition of Property; Release of Claims.**

11.1 CONDITION OF PROPERTY. PURCHASER IS PURCHASING THE PROPERTY "AS-IS, WHERE IS AND WITH ALL FAULTS" IN ITS PRESENT CONDITION, SUBJECT TO REASONABLE USE, WEAR, TEAR AND NATURAL DETERIORATION OF THE PROPERTY BETWEEN THE EFFECTIVE DATE AND THE CLOSING DATE AND FURTHER AGREES THAT (i) SELLER SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE PROPERTY AND (ii) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND IN ANY SELLER'S DOCUMENTS DELIVERED AT THE CLOSING, NEITHER SELLER, ANY AFFILIATE NOR ANY DIRECT OR INDIRECT AGENT, MEMBER, PARTNER, EMPLOYEE OR REPRESENTATIVE OF SELLER EITHER HAS MADE OR WILL MAKE OR WILL BE ALLEGED TO HAVE MADE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, REGARDING THE PROPERTY OR ANY PART THEREOF, OR ANYTHING RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, AND (iii) PURCHASER, IN EXECUTING, DELIVERING AND PERFORMING THIS AGREEMENT, HAS NOT AND DOES NOT RELY UPON ANY STATEMENT, INFORMATION, OR REPRESENTATION TO WHOMSOEVER MADE OR GIVEN, WHETHER TO PURCHASER OR OTHERS, AND WHETHER DIRECTLY OR INDIRECTLY, VERBALLY OR IN WRITING, MADE BY ANY PERSON, EXCEPT AS EXPRESSLY SET FORTH HEREIN. IN ADDITION TO THE FOREGOING, IF PURCHASER FAILS TO TERMINATE PRIOR TO 11:59 P.M. ON THE DUE DILIGENCE DATE, THEN PURCHASER SHALL BE DEEMED TO HAVE REPRESENTED THAT PURCHASER HAS EXAMINED ALL OF THOSE ITEMS SET FORTH IN THE DUE DILIGENCE MATERIALS AND IS FAMILIAR WITH THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY AND HAS CONDUCTED SUCH INVESTIGATION OF THE AFFAIRS AND CONDITION OF THE PROPERTY AS PURCHASER HAS CONSIDERED APPROPRIATE. AS OF THE EFFECTIVE DATE, PURCHASER SHALL BE DEEMED TO HAVE REPRESENTED THAT (I) EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN ANY SELLER'S DOCUMENTS DELIVERED AT THE CLOSING, NEITHER SELLER, ANY AFFILIATE OF SELLER NOR ANY DIRECT OR INDIRECT AGENT, MEMBER, PARTNER, EMPLOYEE OR REPRESENTATIVE OF SELLER EITHER HAS MADE OR WILL MAKE OR WILL BE ALLEGED TO HAVE MADE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER TO PURCHASER, WHETHER EXPRESS OR IMPLIED, AND, IN PARTICULAR, THAT NO SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES HAVE BEEN MADE OR WILL BE MADE OR WILL BE ALLEGED TO HAVE BEEN MADE WITH RESPECT TO THE PHYSICAL CONDITION, ENVIRONMENTAL CONDITION OR OPERATION OF THE PROPERTY, THE ACTUAL OR PROJECTED REVENUE AND EXPENSES OF THE PROPERTY, THE ENFORCEABILITY OF ANY THIRD-PARTY AGREEMENT(S), THE ZONING AND OTHER LAWS, REGULATIONS AND RULES APPLICABLE TO THE PROPERTY OR THE COMPLIANCE OF THE PROPERTY THEREWITH, THE QUANTITY, QUALITY OR CONDITION OF THE ARTICLES OF PERSONAL PROPERTY AND FIXTURES INCLUDED IN THE TRANSACTIONS CONTEMPLATED HEREBY, THE USE OR OCCUPANCY OF THE PROPERTY OR ANY PART THEREOF OR ANY OTHER MATTER OR THING AFFECTING OR RELATED TO THE PROPERTY OR THE TRANSACTIONS CONTEMPLATED HEREBY, EXCEPT AS, AND SOLELY TO THE EXTENT, HEREIN SPECIFICALLY SET FORTH, (II) EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN ANY

SELLER'S DOCUMENTS DELIVERED AT THE CLOSING, NEITHER SELLER, ANY AFFILIATE OF SELLER NOR ANY DIRECT OR INDIRECT AGENT, MEMBER, PARTNER, EMPLOYEE OR REPRESENTATIVE OF ANY OF THE FOREGOING HAVE MADE OR WILL MAKE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER TO PURCHASER, WHETHER EXPRESS OR IMPLIED, AND, IN PARTICULAR, THAT NO SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES HAVE BEEN MADE OR WILL BE MADE WITH RESPECT TO THE TRUTH, ACCURACY OR COMPLETENESS OF ANY MATERIALS, DATA OR OTHER INFORMATION, INCLUDING, WITHOUT LIMITATION, THE CONTENTS OF SELLER'S BOOKS AND RECORDS, CONTRACTS, ANY PROPERTY CONDITION REPORTS, ENGINEERING REPORTS, PHYSICAL CONDITION SURVEYS, INFORMATIONAL BROCHURE WITH RESPECT TO THE PROPERTY, RENT ROLLS OR INCOME AND EXPENSE STATEMENTS, WHICH SELLER OR SELLER'S REPRESENTATIVES MAY HAVE DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER AND/OR PURCHASER'S REPRESENTATIVES IN CONNECTION WITH THE PROPERTY AND PURCHASER REPRESENTS, WARRANTS AND AGREES THAT ANY SUCH MATERIALS, DATA AND OTHER INFORMATION DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER AND/OR PURCHASER'S REPRESENTATIVES ARE DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER AS A CONVENIENCE AND ACCOMMODATION ONLY AND EXPRESSLY DISCLAIMS ANY INTENT TO RELY ON ANY SUCH MATERIALS, DATA AND OTHER INFORMATION, (III) EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN ANY SELLER'S DOCUMENTS DELIVERED AT THE CLOSING, PURCHASER HAS NOT RELIED UPON ANY SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES OR UPON ANY STATEMENTS MADE IN ANY INFORMATIONAL BROCHURE WITH RESPECT TO THE PROPERTY AND HAS ENTERED INTO THIS AGREEMENT WITH THE EXPRESS INTENTION OF MAKING AND RELYING SOLELY ON ITS OWN INDEPENDENT INVESTIGATION, INSPECTION, ANALYSIS, APPRAISAL, EXAMINATION AND EVALUATION OF THE FACTS AND CIRCUMSTANCES, AND (IV) PURCHASER ACKNOWLEDGES THAT THE PROPERTY MAY NOT BE IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED, AND SELLER MAKES NO REPRESENTATIONS WITH RESPECT TO SAME AND WITHOUT LIMITING THE FOREGOING, EXCEPT AS, AND SOLELY TO THE EXTENT, HEREIN SPECIFICALLY SET FORTH, SELLER HAS MADE NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING HAZARDOUS MATERIALS (AS SUCH TERM IS DEFINED IN SECTION 11.2) OF ANY KIND OR NATURE ON, ABOUT OR WITHIN THE PROPERTY OR THE PHYSICAL CONDITION OF THE PROPERTY AND PURCHASER AGREES TO ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, CONSTRUCTION OR MECHANICAL DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS MAY NOT HAVE BEEN (AND/OR MAY NOT BE) REVEALED BY PURCHASER'S INVESTIGATIONS, THE ENVIRONMENTAL REPORTS, AND/OR THE PROPERTY CONDITION REPORTS. NOTHING IN THIS SECTION 11.1 SHOULD BE CONSTRUED AS LIMITING PURCHASER'S REMEDIES FOLLOWING A BREACH OF SELLER'S REPRESENTATIONS AND WARRANTIES.

11.2 Release of Claims. Without limiting any provision in this Agreement, Purchaser, for itself and any of its successors and assigns and their affiliates, hereby irrevocably and absolutely waives its right to recover from, and forever releases and discharges, and covenants not to file or otherwise pursue any legal action (whether based on contract, statutory rights, common law or otherwise) against Seller, its affiliates and any direct or indirect partner, member, trustee, beneficiary, director, shareholder, controlling person, affiliate officer, employee or agent, of any of the foregoing, and any of their respective heirs, successors, and assigns (each, a "**Released Party**" and collectively, the "**Released Parties**") with respect to any and all suits, actions, proceedings, investigations, demands, claims, liabilities, obligations, fines, penalties, liens, judgments, losses, injuries, damages, settlement expenses or costs of whatever kind

or nature, whether direct or indirect, known or unknown, contingent or otherwise (including any action or proceeding brought or threatened or ordered by any governmental or regulatory authority), in each case arising in connection with this Agreement, but not under the Leases, including, without limitation, attorneys' fees and expenses, and investigation and remediation costs that may arise on account of or in any way be connected with (i) the Investigations by Purchaser and Purchaser's Representatives permitted pursuant to Section 6.3, and (ii) the Property or any portion thereof, including, without limitation, Section 11.1 (collectively, "**Claims**"), including, without limitation, the physical, environmental and structural condition of the Property or any law or regulation applicable thereto, or any other matter relating to the use, presence, discharge or release of Hazardous Materials on, under, in, above or about the Property; provided, however, that Purchaser does not waive its rights, if any, to recover from, or release or discharge or covenant not to bring any action against (i) Seller or any Released Party for any act that constitutes fraud or intentional misrepresentation, (ii) Seller for any breach of the representations or warranties set forth in this Agreement, subject to the limitations and conditions provided in this Agreement, or (iii) Seller for its express obligations under this Agreement or any Seller's Documents delivered at the Closing. In connection with this Section 11.2, Purchaser expressly waives the benefits of any provision or principle of federal or state law or regulation that may limit the scope or effect of the foregoing waiver and release to the extent applicable. For purposes of this Agreement, the term "**Hazardous Materials**" shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or other material that is hazardous, toxic, ignitable, corrosive, carcinogenic or otherwise presents a risk of danger to human, plant or animal life or the environment or that is defined, determined or identified as such in any federal, state or local law, rule or regulation (whether now existing or hereafter enacted or promulgated) or any judicial or administrative order or judgment, in each case relating to the protection of human health, safety and/or the environment, including, but not limited to, any materials, wastes or substances that are included within the definition of (A) "hazardous waste" in the federal Resource Conservation and Recovery Act; (B) "hazardous substances" in the federal Comprehensive Environmental Response, Compensation and Liability Act; (C) "pollutants" in the federal Clean Water Act; (D) "toxic substances" in the federal Toxic Substances Control Act; and (E) "oil or hazardous materials" in the laws or regulations of any State. The provisions of this Section 11.2 shall survive the Closing until the Survival Date set forth in Section 26.1.

12. **Documents or Instruments To be Delivered by Seller at the Closing.** At the Closing, Seller will deliver (or cause to be delivered) the following to Purchaser or Escrow Agent, with respect to each individual Property, as applicable (in addition to any items or documents otherwise required by this Agreement):

12.1 An original special warranty deed without covenants (or the state-specific counterpart thereof) substantially in the form attached hereto as Exhibit D ("**Deed**") executed and acknowledged by Seller and in proper form for recording conveying the Land and the Improvements, subject to the Permitted Encumbrances.

12.2 An original counterpart to the certificate that Seller is not a "foreign person" under the Foreign Investment in Real Property Tax Act in such form as reasonably acceptable to Seller, executed by Seller.

12.3 A certificate executed by Seller stating that all of the representations and warranties set forth in Section 9.1 are true and correct in all material respects as of the Closing Date, as updated as permitted pursuant to Section 9.1.

12.4 An owner's affidavit for the benefit of Escrow Agent in such form as reasonably required by Escrow Agent and reasonably acceptable to Seller.

- 12.5 A closing statement in a form agreed to by Seller and Purchaser, executed by Seller and Purchaser.
- 12.6 With respect to each individual Property, an original counterpart to each Lease.
- 12.7 With respect to each Lease, an original counterpart to a memorandum of lease in recordable form and substance as set forth on Exhibit F attached hereto (each, a "**Memorandum of Lease**").
- 12.8 With respect to each Lease, an original counterpart to each Guaranty.
- 12.9 With respect to each Lease, an original counterpart to a recognition, non-disturbance and attornment agreement in form and substance reasonably acceptable to Seller, Purchaser, and any DST (as hereinafter defined) (each, a "**Tenant Recognition Agreement**").
- 12.10 With respect to the Subleases, an original counterpart to a Subtenant Recognition Agreement in form and substance reasonably acceptable to Seller, Purchaser and Subtenant (the "**Subtenant Recognition Agreement**").
- 12.11 If Purchaser is financing any Property, with respect to each such financed Property, an original counterpart to an Estoppel Certificate and Subordination Non-Disturbance and Attornment Agreement, in form and substance reasonably acceptable to Seller and Purchaser's lender (each, an "**SNDA**"), to be provided to Seller by Purchaser before the Due Diligence Date.
- 12.12 A counterpart to the assignment of guaranties and warranties in form and substance as set forth on Exhibit G attached hereto (the "**Assignment of Guaranties and Warranties**").
- 12.13 Any additional instruments and documents reasonably requested by Escrow Agent in order to confirm corporate existence, structure, and/or authority of Seller.
- 12.14 Any state, county and municipal transfer declarations or notices which are legally or customarily required to be executed by the applicable Seller to effectuate the conveyance and transfer of the Property owned by such Seller as contemplated hereby.
- 12.15 Such other instruments and documents or payments as may be reasonably required to consummate the transaction herein contemplated.
13. **Documents or Instruments to be Delivered by Purchaser at the Closing.** At the Closing, Purchaser will deliver (in addition to any items or documents otherwise required by this Agreement) the following to Seller or Escrow Agent, with respect to each individual Property, as applicable:
- 13.1 The balance of the Purchase Price pursuant to and in accordance with Article 2.
- 13.2 A certificate executed by Purchaser stating that all of the representations and warranties set forth in Section 10.1 are true and correct in all material respects of the Closing Date.
- 13.3 A closing statement in a form agreed to by Seller and Purchaser, executed by Purchaser.
- 13.4 With respect to each individual Property, an original counterpart to each Lease.
- 13.5 With respect to each Lease, an original counterpart to each Memorandum of Lease.

13.6 With respect to each Lease, an original counterpart to each Tenant Recognition Agreement.

13.7 With respect to the Subleases, an original counterpart to the Subtenant Recognition Agreement.

13.8 If Purchaser is financing any Property, with respect to each such financed Property, an original counterpart to each SNDA from Purchaser and Purchaser's lender.

13.9 A counterpart to the Assignment of Guaranties and Warranties.

13.10 Any state, county and municipal transfer declarations or notices which are legally or customarily required to be executed by the applicable Purchaser to effectuate the conveyance and transfer of the Property purchased by such Purchaser as contemplated hereby.

13.11 Any additional instruments and documents reasonably requested by Escrow Agent in order to confirm corporate existence, structure, and/or authority of Purchaser.

13.12 Such other instruments and documents or payments as may be reasonably required to consummate the transaction herein contemplated.

**14. Conditions to Closing.**

14.1 Conditions to Seller's Obligation to Sell. Seller's obligation to consummate the transactions as contemplated by this Agreement and to deliver the documents and instruments required under Article 12 is subject to satisfaction of the following conditions (any of which may be waived by notice from Seller):

14.1.1 The delivery to Escrow Agent of the Purchase Price, adjusted as provided herein, plus the payment by Purchaser to the appropriate parties of any closing costs to be paid by Purchaser hereunder.

14.1.2 Purchaser shall have completed all of the other deliveries required of Purchaser under Article 13 (which may be delivered into escrow), and all such documents and instruments shall be in the form required hereby, or if no form is required hereby, then in form and substance reasonably satisfactory to Seller and its attorney.

14.1.3 All representations and warranties of Purchaser contained in this Agreement shall be true in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date and Purchaser shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Purchaser prior to or by the Closing Date (including, but not limited to, the delivery by Purchaser of the items described in Article 13).

14.2 Conditions to Purchaser's Obligation to Purchase. Purchaser's obligation to consummate the transactions contemplated by this Agreement and to deliver the balance of the Purchase Price and the other documents and instruments required under Article 13 is subject to satisfaction of the following conditions (any of which may be waived by notice from Purchaser):

14.2.1 All representations and warranties of Seller contained in this Agreement shall be true in all material respects at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date and Seller shall have performed and complied in all

material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or by the Closing Date. This Section 14.2.1 is not intended to modify Sections 6.5 or 9.3.2.

14.2.2 Seller shall have completed all of the other deliveries required of Seller under Article 12 (which may be delivered into escrow), and all such documents and instruments shall be in the form required hereby, or if no form is required hereby, then in form and substance reasonably satisfactory to Purchaser and its attorney.

14.3 Consents. Unless specifically set forth herein to the contrary, Seller shall not be responsible for obtaining the consent of any party to the assignment of any environmental report, engineering report, Sublease, guaranty, warranty, or to the assignment of any other document or agreement to Purchaser and, in clarification thereof, if any such consent is required by any party to such document or agreement and such consent is not obtained by the Closing Date, Seller shall not be responsible for assigning such document or agreement to Purchaser and the failure to so assign such document or agreement shall not be considered a default hereunder or a failure to satisfy any condition hereof; provided, however, Seller agrees to use commercially reasonable efforts to obtain any such consents.

14.4 No Financing Contingency. It is expressly acknowledged by Purchaser that the Closing of the transactions contemplated by this Agreement is not subject to any financing contingency and that no financing for this transaction shall be provided by Seller. Without limiting the foregoing, Purchaser agrees that the ability or inability of Purchaser to obtain debt, equity investments or other financing in order to pay all of any part of the Purchase Price shall not be a contingency or condition to any of Purchaser's obligations under this Agreement.

14.5 The Closing. The closing of the transaction contemplated herein (the "Closing") shall be effectuated through an escrow with Escrow Agent pursuant to escrow instructions consistent with the terms and provisions of this Agreement and otherwise mutually satisfactory to Seller and Purchaser, on or before the date (as the same may be adjourned in accordance with this Agreement or as otherwise mutually agreed by the parties in writing, the "Initial Closing Date") that is thirty (30) days after the Due Diligence Date, subject only to the various adjournment rights of Seller or Purchaser explicitly permitted in this Agreement. Each party shall have the right to adjourn the Closing Date for three (3) Business Days (the "Adjourned Closing Date", together with the Initial Closing Date, the "Closing Date") by sending written notice of same to the non-electing party no later than two (2) Business Days prior to the Initial Closing Date or Adjourned Closing Date, as applicable. TIME SHALL BE OF THE ESSENCE WITH RESPECT TO BOTH PARTIES' OBLIGATION TO CLOSE HEREUNDER ON THE CLOSING DATE.

14.6 No Termination. Notwithstanding anything to the contrary contained herein, Purchaser shall not be entitled to terminate this Agreement and Seller shall not be liable to Purchaser, and Purchaser shall not receive a reduction in, or a credit against, the Purchase Price, in the event Subtenant vacates its premises, defaults under any Sublease in any respect, or if Subtenant terminates any Sublease in accordance with rights granted Subtenant under the terms of any Sublease, prior to the Closing Date.

## 15. Casualty; Condemnation.

15.1 Casualty. If the Property is "materially damaged or destroyed" (as hereinafter defined) by a fire or other casualty event (a "Casualty") prior to the Closing, Seller shall promptly notify Purchaser and Purchaser may terminate this Agreement by written notice given to Seller within ten (10) Business Days after Purchaser receives notice of the occurrence of such Casualty. If Purchaser does not so terminate this Agreement or if the Property is not deemed "materially damaged or destroyed,"

Purchaser will remain bound to purchase the Property pursuant to the terms of this Agreement, without regard to the occurrence or effects of the Casualty; provided that, at the Closing, Seller will assign to Purchaser Seller's interest in the property insurance proceeds payable to Seller (if any) under Seller's insurance applicable to the Property suffering such Casualty for the restoration of the physical damage to the Property, but net of any costs and expenses incurred by Seller prior to the Closing in connection with the Casualty, and Seller shall credit Purchaser at the Closing with the amount of the applicable insurance deductible pertaining to such Casualty. For purposes of this Section 15.1, the Property shall be deemed "**materially damaged or destroyed**" if the cost to repair and restore the Property exceeds an amount equal to fifteen percent (15%) of the Purchase Price.

15.2 If any condemnation proceedings are instituted, or notice of any condemnation or intent to condemn is given, with respect to all or any portion of the Property (a "**Condemnation**") prior to the Closing, and the Condemnation will result in a "material and adverse effect" (as hereinafter defined) to the Property, Seller shall promptly notify Purchaser and Purchaser may terminate this Agreement by written notice given to Seller within ten (10) Business Days after the date Purchaser receives notice of such Condemnation. If Purchaser does not so terminate this Agreement or if the Condemnation will not result in a "material and adverse effect" to the Property, Purchaser will remain bound to purchase the Property pursuant to the terms of this Agreement, without regard to the occurrence or effect of the Condemnation; provided that, at the Closing, Seller will assign to Purchaser Seller's interest in the award(s) payable to Seller on account of the Condemnation (if any), but net of any costs and expenses incurred by Seller prior to the Closing in connection with the Condemnation. For purposes of this Section 15.2, "**material and adverse effect**" shall mean the Condemnation will materially impair the value of the Property by more than fifteen percent (15%) of the Purchase Price.

#### **16. Discharge of Obligations.**

16.1 The delivery of the Deed by Seller in accordance with the provisions of this Agreement, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder. Except as otherwise set forth in Section 26.1, no representation or warranty of Seller shall survive Closing.

#### **17. Covenants of Seller.**

17.1 From and after the Due Diligence Date until the earlier of the Closing or the termination of this Agreement, Seller shall, except for those actions expressly contemplated or required to be taken by this Agreement or as consented to by Purchaser in writing, cause each individual Property to be operated in the ordinary course consistent with past practice.

17.2 Notwithstanding anything herein to the contrary, Seller may, without Purchaser's consent and without cost to Purchaser (unless otherwise set forth herein or unless otherwise approved by Purchaser) (i) take such actions, if any, with respect to the Property, reasonably necessary to comply with the terms of the Subleases and any insurance requirements or to comply with laws, rules or regulations of any governmental authority, (ii) take such actions as it deems reasonably necessary to repair any insured or uninsured casualty or damage, and (iii) take such actions with respect to the Property reasonably necessary to prevent loss of life, personal injury or property damage.

#### **18. Defaults; Damages.**

18.1 Purchaser Defaults. In the event that Purchaser shall default under this Agreement, Purchaser and Seller agree that the damages that Seller shall sustain as a result thereof shall be substantial and shall be extremely difficult and impractical to determine. Purchaser and Seller therefore agree that if Purchaser fails to perform any or all of the terms, covenants, conditions and agreements to be performed

by Purchaser hereunder, whether at or as of the Closing, Seller's remedy shall be to receive as liquidated damages (but not as a penalty) the Deposit from Escrow Agent, and thereafter neither Purchaser nor Seller shall have any further liability or obligation to the other hereunder, except for such liabilities and obligations as are expressly stated to survive the termination of this Agreement. Purchaser and Seller agree that, considering all of the facts and circumstances existing as of the Effective Date, the amount of the Deposit is a fair and reasonable estimate of the damages that Seller would incur in the event of a default by Purchaser under this Agreement.

## 18.2 Seller Pre-Closing Defaults.

18.2.1 In the event that on the Closing Date Seller has defaulted on its obligations hereunder in any material respect, then, subject to the provisions set forth below, Purchaser shall be entitled, as its sole remedy, to either: (x) treat this Agreement as being in full force and effect and pursue only the remedy of specific performance against Seller; or (y) terminate this Agreement and (i) receive a return of the Deposit from Escrow Agent and (ii) recover all of the third-party, out-of-pocket, documented costs actually incurred by Purchaser in connection with the transactions contemplated hereby, not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00), and Seller shall not have any further liability or obligation to Purchaser hereunder nor shall Purchaser have any further liability or obligation to Seller hereunder, except for such obligations (but not liabilities) of the parties respectively as are specifically stated to survive the termination of this Agreement.

18.2.2 Purchaser waives any right to pursue any other remedy at law or in equity for such default of Seller, including, without limitation, any right to seek, claim or obtain damages, other than in the case of Seller's fraud, but in no case shall Purchaser seek or shall Seller be liable for indirect, punitive, special or consequential damages. Notwithstanding anything contained herein to the contrary, if prior to the Closing Date, Purchaser has or obtains actual knowledge that (a) Seller has defaulted on its obligations hereunder in any respect, and Purchaser nevertheless proceeds with the Closing, then the default by Seller as to which Purchaser shall have such knowledge shall be deemed waived by Purchaser and Seller shall have no liability to Purchaser or its successors and assigns in respect thereof or (b) any of Seller's representations or warranties set forth in Article 9 are untrue in any respect, and Purchaser nevertheless proceeds with the Closing, then the breach by Seller of the representations and warranties as to which Purchaser shall have such knowledge shall be deemed waived by Purchaser, such representations and warranties shall be deemed modified to conform them to the information that Purchaser shall have knowledge of and Seller shall have no liability to Purchaser or its successors or assigns in respect thereof. If Purchaser has or obtains knowledge that (i) Seller has defaulted on its obligations hereunder in any respect or (ii) any of Seller's representations or warranties set forth in Article 9 are untrue in any material respect, Purchaser shall so notify Seller in writing (x) on or before the date that is the second (2<sup>nd</sup>) Business Day after obtaining such knowledge, or (y) on or before the Closing Date if Purchaser obtains such knowledge one (1) Business Day prior to the Closing Date or on the Closing Date.

18.3 Right to Cure. Notwithstanding anything contained herein to the contrary and without limiting any of Seller's rights set forth in this Agreement, in the event that Seller has defaulted hereunder and such default has caused direct actual damages in a liquidated amount to Purchaser not to exceed FIFTY Thousand and NO/100 DOLLARS (\$50,000.00) (the "**Pre-Closing Damage Cap**"), then, in such event, Seller shall be entitled, but shall not have any obligation, either: (a) prior to the Closing Date, to cure such default; or (b) provide Purchaser with a credit against the Purchase Price in an amount equal to Purchaser's actual direct damages up to the Pre-Closing Damage Cap and such default shall be deemed cured in its entirety and Purchaser shall remain obligated to purchase the Property without any further reduction in the Purchase Price. In the event that Seller has defaulted hereunder and such default has

caused direct actual damages in a liquidated amount to Purchaser that exceed the Pre-Closing Damage Cap, then Purchaser shall be entitled to terminate this Agreement and avail itself of the remedies available in Section 18.2.1.

18.4 Defaults Discovered Post-Closing. If Purchaser closes the transactions contemplated by this Agreement and, after the Closing Date but before the applicable Survival Date, Purchaser discovers a breach of any of Seller's representations or warranties hereunder or under any certificates and other documents executed at, or in connection with, the Closing, Purchaser shall have the right, until the applicable Survival Date, to sue Seller for actual direct damages incurred by Purchaser as a result of such breach or breaches, but in no case shall Purchaser seek or shall Seller be liable for indirect, punitive, special or consequential damages. However, in any such event or events, Seller shall not have any liability to Purchaser for all or any of such matters in excess of three percent (3%) of the Purchase Price in the aggregate (the "Post-Closing Damage Cap"). Purchaser shall not seek, pursue or enter any judgment or collect (or attempt to collect) an amount in excess of the Post-Closing Damage Cap. The provisions of this Section 18.4 shall survive the Closing until the Survival Date set forth in Section 26.1.

18.5 Limitation on Seller Default. Notwithstanding anything to the contrary, Seller's inability to satisfy a condition of this Agreement shall not be considered a default by Seller hereunder unless such inability results from the breach of Seller's express obligations hereunder; provided nothing herein shall relieve Seller from using commercially reasonable efforts to satisfy the conditions of this Agreement.

#### **19. Escrow Agent**

19.1 Escrow Agent shall hold the proceeds of the Deposit in escrow in a special bank account (or as otherwise agreed in writing by Seller, Purchaser and Escrow Agent) until the Closing Date or sooner termination of this Agreement and shall pay over or apply such proceeds in accordance with the terms of this Article 19. Escrow Agent shall hold such proceeds in an interest-bearing account, and any interest earned thereon shall be paid to the same party entitled to the escrowed proceeds, and the party receiving such interest shall pay any income taxes thereon. Seller and Purchaser shall each provide a form W-9 to Escrow Agent concurrently with or prior to the Effective Date. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrow Agent to Seller.

19.2 If any party makes a written demand upon Escrow Agent for payment of the proceeds of the Deposit, then Escrow Agent shall give written notice to the other parties of such demand. If Escrow Agent does not receive a written objection from the other parties to the proposed payment within ten (10) Business Days after the giving of such notice, Escrow Agent is hereby authorized to make such payment. If Escrow Agent does receive such written objection within such ten (10)-Business Day period or if for any other reason Escrow Agent in good faith shall elect not to make such payment, Escrow Agent shall continue to hold such amount until otherwise directed by written instructions from both Seller and Purchaser or a final judgment of a court of competent jurisdiction. However, Escrow Agent shall have the right at any time to deposit the escrowed proceeds and interest thereon, if any, with the clerk of the appropriate court of the county in which the Property is located. Escrow Agent shall give written notice of such deposit to Seller and Purchaser. Upon such deposit, Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder.

19.3 The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that Escrow Agent shall not be deemed to be the agent of either of the parties, and that Escrow Agent shall not be liable to any of the parties for any act or omission on its part unless involving gross negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including out-of-pocket attorneys' fees, incurred in connection with the performance of Escrow Agent's duties

hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent involving gross negligence on the part of Escrow Agent.

19.4 Escrow Agent shall not have any duties or responsibilities except those set forth in this Agreement and shall not incur any liability in acting upon any signature, notice, request, waiver, consent, receipt or other instrument or document believed in good faith by Escrow Agent to be genuine, and Escrow Agent may assume that any Person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so. Escrow Agent shall have no duty to determine (and shall not be affected by any knowledge concerning) the validity, authenticity or enforceability of any specification or certification made in any certificate or notice.

**20. Notices.**

20.1 All notices, demands, requests or other communication required to be given or which may be given hereunder shall be in writing and shall be deemed to have been properly given, unless otherwise provided herein, if (a) deposited in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested, (b) delivered to such party, or an agent of such party, in person or by commercial courier, (c) sent by electronic copy, evidenced by confirmed receipt and concurrently followed by a "hard" copy of same delivered to the party by mail, personal delivery or overnight delivery pursuant to clauses (a), (b) or (d) hereof, or (d) sent (prepaid) by reputable nationally recognized overnight courier for next Business Day delivery. Such notice, demand, request or communication shall be deemed to have been duly given, on the date received, or the date delivery is refused if hand delivered. The attorney for any party may give a notice on behalf of such party. Notices shall be addressed as follows:

If to Seller, to:

200 NW Phosphate Boulevard  
Mulberry, Florida 33860  
Attention: Phil Bayt  
Email: phil.bayt@badcock.com

with copies to:

c/o Franchise Group, Inc.  
109 Innovation Court, Suite J  
Delaware, Ohio 43015  
Attention: Eric Seeton, CFO  
Email: eseeton@franchisegrp.com

and:

c/o Franchise Group, Inc.  
109 Innovation Court, Suite J  
Delaware, Ohio 43015  
Attention: Tiffany McMillan-McWaters, Deputy General Counsel  
Email: tmcwaters@Franchisegrp.com

and:

Willkie Farr & Gallagher LLP  
787 Seventh Avenue

New York, New York 10019  
Attention: Melissa Fischetti, Esq.  
Email: mfischetti@willkie.com

If to Purchaser, to:

9325 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Attention: Matthew Tucker  
Email: matthew@caicap.com

with a copy to:

Moran, Reeves & Conn, PC  
100 Shockoe Slip, 4<sup>th</sup> Floor  
Richmond, Virginia 23219  
Attention: Joseph J. McQuade  
Email: jmcquade@moranreevesconn.com

If to Escrow Agent, to:

First American Title Insurance Company  
National Commercial Services 5201 Blue Lagoon Drive, Suite 974  
Miami, Florida 33126  
Attention: Vanessa Abreu, Esq., VP and Division Area Manager-NCS Miami  
Email: vabreu@firstam.com

or to such other Person and/or address as shall be specified by any party in a notice given to the other party pursuant to the provisions of this

Section 20.1.

**21. Brokers.**

21.1 Purchaser and Seller each warrant and represent to the other that this transaction was not brought about by any broker other than B. Riley Real Estate, LLC (the "**Broker**"). Seller will pay the Broker a brokerage commission pursuant to a separate agreement with the Broker. Purchaser and Seller each shall and hereby does agree to indemnify and hold the other party harmless from and against any and all claims, demands or causes of action or other liability (including, without limitation, reasonable attorneys' fees and disbursements) against the indemnified party arising from or pertaining to any violation, on their respective parts, of the foregoing representation and warranty. The representations, warranties and indemnity contained in this Section 21.1 shall survive the Closing and the delivery of the instruments contemplate hereunder or if the Closing does not occur, the termination of this Agreement.

**22. Confidentiality.**

22.1 The parties agree that, except as expressly provided in this Section 22.1, they will not disclose the contents of this Agreement or any agreement contemplated hereby or executed by the parties prior to the Effective Date other than the Leases to any third parties without the consent of the other party, except as may be required or, based on the advice of counsel, advisable to ensure compliance with any applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency having jurisdiction over such party; provided that the disclosing party has given the other party no less than two (2) Business Days' prior written notice of such intended disclosure. Nothing contained in this Section 22.1 shall be construed as prohibiting the parties from disclosing the contents of this Agreement

(A) on a confidential basis to its counsel, accountants, insurance agents, consultants, and other agents, or governmental authorities, (B) with respect to Purchaser, to parties from which it is seeking financing or equity investment including their agents, representatives and rating agencies, or (C) with respect to Seller, any existing lender or mortgagee. Without in any way limiting the foregoing, Purchaser agrees that any and all materials and information provided by Seller or made available to Purchaser, including, without limitation, the Information and the Due Diligence Materials, shall be kept strictly confidential in accordance with the terms of this Section 22.1. The provisions of this Section 22.1 shall survive the termination of this Agreement until the applicable Survival Date set forth in Section 26.1.

**23. Public Disclosure; Press Releases.**

23.1 Prior to the Closing, Seller and Purchaser each agree that it will not issue any press release, advertisement or other public communication with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, (i) Seller and Purchaser shall each have the right to make any filings or issue any press releases, advertisements, or other public communications required by applicable laws, rules or regulations of any governmental or regulatory authority or regulatory agency without the prior written consent of the other party hereto, (ii) Seller and Purchaser each may make an announcement to, or otherwise communicate with, its direct and indirect investors, employees and owners regarding this Agreement and/or the transactions contemplated herein, without the consent of the other party, provided such announcements or communications do not include the economic or other material terms of the transaction contemplated by this Agreement or the Leases, or any financial information regarding Seller, and (iii) Seller shall have the right to make any filings or issue any press releases, advertisements, or other public communications as made or issued in the ordinary course of Seller's business without the prior written consent of Purchaser. At or prior to the Closing, upon request of either party, the parties shall reasonably agree upon a joint press announcement of this transaction.

**24. Further Assurances.**

24.1 The parties agree to do such other and further acts and things, and to execute and deliver such instruments and documents, as either may reasonably request from time to time, on or after the Closing Date, in furtherance of the purposes of this Agreement. The provisions of this Section 24.1 shall survive the Closing until the Survival Date set forth in Section 26.1.

**25. Miscellaneous.**

25.1 This Agreement, the Exhibits and the Schedules attached hereto, together with the Seller's Documents and the Purchaser's Documents, constitute the entire agreement between the parties with respect to the subject matter hereof, and all understandings and agreements heretofore or simultaneously had between the parties are merged in, superseded by and contained in this Agreement.

25.2 No waiver by any party to any breach hereunder shall be deemed a waiver of any other or subsequent breach.

25.3 This Agreement may not be altered, amended, changed, waived, discharged, terminated or modified in any respect or particular unless the same shall be in writing and signed by or on behalf of the party to be charged therewith; and any consent, waiver, approval or authorization shall be effective only if signed by the party granting such consent, waiver, approval or authorization.

25.4 Subject to the provisions of Section 25.8, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators and successors and permitted assigns.

25.5 This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof.

25.6 This Agreement shall be construed and enforced in accordance with the laws of the State of New York without regard to principles of conflicts of laws, except as to real property matters directly relating to the Property, which matters shall be governed by the laws of the State in which the Property is located. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

25.7 This Agreement (or any memorandum hereof) may not be recorded by Purchaser and any recordation thereof shall be deemed a material default under this Agreement.

25.8 Purchaser may not directly or indirectly assign or transfer this Agreement or any of its rights hereunder without Seller's prior written consent in each instance, which consent may be granted or withheld in Seller's sole and absolute discretion. No consent given by Seller to any assignment shall be construed as a consent to any other assignment, and any unpermitted assignment made by Purchaser shall be void. Notwithstanding the foregoing, Purchaser may, without Seller's consent, assign this Agreement to an entity under common control with Purchaser provided Seller receives a written assignment and assumption of this Agreement at least ten (10) days prior to the Closing, provided, however, that such assignment and assumption shall not relieve Purchaser of its obligations hereunder. In addition, Purchaser may direct that title to the Property be transferred at the Closing to a Delaware statutory trust (a "**DST**") that is one hundred percent (100%) controlled by Purchaser and is owned up to one hundred percent (100%) by non-controlling third-party investors, and, in connection therewith, Purchaser may interpose a "master lease" between the Lease for each individual Property and the fee interest in such Property (a "**Master Lease**") under which the DST will be the landlord and an entity one hundred percent (100%) owned and controlled by CAI Investments, LLC, an affiliate of Purchaser, will be the tenant, provided that (A) Seller receives such direction in writing prior to the Due Diligence Date, and (B) (i) no such Master Lease shall increase or otherwise modify Seller's (as tenant under the applicable Lease) obligations or diminish Seller's (as tenant under the applicable Lease) rights under such Lease, (ii) the formation of such Master Lease structure shall be at Purchaser's and the DST's sole cost and expense, and (iii) Seller shall enter into the Tenant Recognition Agreement with the DST, as landlord under the Master Lease, (A) confirming that such Lease will not be disturbed upon the termination of the Master Lease and that such Lease will continue as a direct lease between Seller and the DST, (B) confirming that Tenant's Right of First Refusal (as defined in the Lease) shall apply to the DST's transfer of its interest in the Property as provided in the Lease, and (C) shall otherwise be reasonably acceptable to Seller and the DST.

25.9 The captions, Section and Article titles and Exhibit and Schedule names contained in this Agreement are for convenience and reference only and shall not be used in construing this Agreement.

25.10 The Exhibits and Schedules attached hereto are hereby made part of this Agreement.

25.11 The terms "hereof," "herein," and "hereunder" and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular article or provision, unless expressly so stated. All words or terms used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context

may require. For the purposes of this Agreement, and without intending to expand the meaning of the phrase “commercially reasonable efforts”, the parties hereto acknowledge that commercially reasonable efforts will not be interpreted as requiring the initiation or settlement of litigation, disproportionate payouts to any partners, or the payment of money (other than usual and customary expenses associated with negotiating and closing transaction of the nature set forth herein).

25.12 For the purposes of this Agreement, “knowledge” with respect to or matters “known” by (a) Seller shall mean matters as to which the following individual has actual, present and personal knowledge without any independent investigation or any duty or responsibility to make any inquiry, review or investigation: Robert Burnette; and (b) Purchaser shall mean matters as to which the following individuals have actual, present and personal knowledge without any independent investigation or any duty or responsibility to make any inquiry, review or investigation: Christopher Beavor. Actual knowledge shall not be deemed to exist merely by assertion by Purchaser or Seller of a claim that any of the foregoing persons should have known of such facts or circumstances, if such person did not have actual knowledge thereof. The individuals named in this Section 25.12 shall have no personal liability pursuant to this Agreement.

25.13 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Each party may rely upon a facsimile or other electronic counterpart (including “.pdf”) of this Agreement or any instrument delivered in connection herewith signed by the other party with the same effect as if such party had received an original counterpart signed by such other party.

25.14 If any provision of this Agreement, or the application of such provision to any Person or circumstance, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the Person or circumstance other than those in respect of which it is invalid or unenforceable, except those provisions which are made subject to or conditioned upon such invalid or unenforceable provisions, shall not be affected thereby.

25.15 The submission of this Agreement to Purchaser does not create a binding obligation on the part of Seller. This Agreement shall not be binding on Purchaser or Seller until Purchaser has signed this Agreement and delivered the signed Agreement and the Deposit to Seller and a counterpart hereof executed by Seller has been delivered to Purchaser.

25.16 If any party obtains a judgment against any other party by reason of breach of this Agreement, reasonable attorneys’ fees and disbursements as fixed by the court shall be included in such judgment.

25.17 Time is of the essence of this Agreement. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which the period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a Business Day, in which case the period shall be deemed to run until the end of the next day which is a Business Day.

25.18 Whenever two or more parties constitute Purchaser, all such parties shall be jointly and severally liable for performing Purchaser’s obligations hereunder. Whenever two or more parties constitute Seller, all such parties shall be jointly and severally liable for performing Seller’s obligations hereunder.

25.19 The following terms used but not otherwise defined herein shall have the following meanings:

25.19.1 “**Business Day**” shall mean any day other than a Saturday, Sunday or bank holiday in the City of New York, State of New York.

25.19.2 “**Person**” shall mean any individual, corporation, limited liability company, limited partnership, general partnership, association, joint stock company, joint venture, estate, trust (including any beneficiary thereof), unincorporated organization, government or any political subdivision thereof, governmental unit or authority or any other entity.

25.19.3 “**Taxes**” shall mean any federal, state, local or foreign, real property, personal property, sales, use, room, occupancy, ad valorem or similar taxes, assessments, levies, charges or fees imposed by any governmental or regulatory authority on Seller with respect to the Property, including, without limitation, any interest, penalty or fine with respect thereto, but expressly excluding any federal, state, local or foreign income, capital gain, gross receipts, capital stock, franchise, profits, estate, gift or generation skipping tax, transfer, documentary stamp, recording or similar tax, levy, charge or fee incurred with respect to the transaction described in this Agreement.

**25.20 State-Specific Required Provisions.**

25.20.1 Radon Gas. As required by Florida statute, the following notification is provided:

“**RADON GAS**: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.”

**26. Survival.**

26.1 The acceptance by Purchaser of the Deeds and assignments referred to in Article 12 shall be deemed to be an acknowledgment, for all purposes, of the full performance and discharge of every representation, agreement and obligation on the part of Seller to be performed by it pursuant to the provisions of this Agreement, except for the following provisions which are to survive the Closing until the Survival Date and any other provisions of this Agreement which are specifically stated to survive the Closing. The “**Survival Date**” shall mean the following with respect to the Articles or Sections set forth below:

<u>Article or Section</u>	<u>Survival Period</u>
<u>Section 6.2</u> (second to last sentence only) (No Representation Regarding Due Diligence Materials)	Indefinitely
<u>Section 6.3.1</u> (Purchaser Investigation Indemnity)	Indefinitely
<u>Section 6.4</u> (Purchaser Return of Information Indemnity)	Indefinitely
<u>Article 7</u> (Expenses)	Indefinitely
<u>Section 9.1</u> (Seller's Representations)	3 months
<u>Section 9.3</u> (Limitations on Seller's Representations)	Indefinitely
<u>Article 10</u> (Purchaser's Representations)	Indefinitely
<u>Section 11.2</u> (Release)	Indefinitely
<u>Section 18.4</u> (Defaults Discovered Post-Closing)	Indefinitely
<u>Article 21</u> (Brokers)	Indefinitely
<u>Article 22</u> (Confidentiality)	Indefinitely
<u>Article 24</u> (Further Assurances)	3 years
<u>Section 26.1</u> (Survival)	Indefinitely
<u>Article 27</u> (Tax Contests)	Indefinitely
Article 28 (Waiver of Jury Trial)	Indefinitely

26.2 Notice of any claim made by Purchaser or Seller on the basis of a breach of a provision of this Agreement which survives the Closing shall be given on or before the applicable Survival Date. In the event that either party shall fail to give such notice prior to the applicable Survival Date, such party shall be deemed to have waived all claims in connection with any such provision. Any litigation with respect to such claim shall be commenced within thirty (30) days after the applicable Survival Date. Time shall be of the essence with respect to giving notice hereunder and commencing any litigation.

26.3 The provisions of this Article 26 shall survive the Closing until the Survival Date set forth in Section 26.1.

## **27. Tax Contests.**

27.1 Taxes. Seller shall retain the right to commence, continue and settle any proceeding to contest any Taxes for any taxable period whether prior to or following the Closing Date, subject to the terms and conditions of the Leases, and shall be entitled to any refunds or abatements of Taxes for such periods awarded in any such proceedings.

27.2 Cooperation. Seller and Purchaser shall use commercially reasonable efforts to cooperate with the party contesting the Taxes (at no cost or expense to the party not contesting the Taxes other than any *de minimis* cost or expense or any cost or expense which the contesting party agrees in writing to

reimburse) and to execute and deliver any documents and instruments reasonably requested by the party contesting the Taxes in furtherance of the contest of such Taxes.

27.3 Survival. The provisions of this Article 27 shall survive the Closing until the Survival Date set forth in Section 26.1.

28. **Waiver of Jury Trial**.

28.1 TO THE EXTENT PERMITTED BY APPLICABLE LAW, PURCHASER AND SELLER HERETO SHALL, AND THEY HEREBY DO, INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF PURCHASER AND SELLER HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. The provisions of this Section 28.1 shall survive the Closing until the Survival Date set forth in Section 26.1.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

**SELLER:**  
**W.S. BADCOCK CORPORATION,**  
a Florida corporation

By: /s/ Robert B. Burnette  
Name: Robert B. Burnette  
Title: President

**PURCHASER:**  
**CAI INVESTMENTS SUB SERIES 100, LLC,**  
a Delaware statutory trust

By: /s/ Christopher Beavor  
Name: Christopher Beavor  
Title: Manager

[Signature Page to Purchase and Sale Agreement]

**CONSENT OF ESCROW AGENT:**

FIRST AMERICAN TITLE INSURANCE COMPANY ("**Escrow Agent**") hereby agrees to: (i) accept and carry out the escrow instructions set forth in this Agreement, (ii) carry out the responsibilities of Escrow Agent as provided in this Agreement; and (iii) be bound by this Agreement in the performance of its duties as Escrow Agent.

DATED: April 26, 2022 FIRST AMERICAN TITLE INSURANCE COMPANY

By: /s/ Erin Tahany

Name: Eric Tahany

Title: Title & Escrow Operations Manager

[Signature Page to Purchase and Sale Agreement]

I, Brian R. Kahn, certify that:

1. I have reviewed this quarterly report on Form 10-Q of FRANCHISE GROUP, INC.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal controls over financial reporting, or caused such internal controls over financial reporting to be designed under our supervision to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

May 5, 2022

By: /s/ Brian R. Kahn  
Brian R. Kahn  
Chief Executive Officer  
(Principal Executive Officer)

I, Eric F. Seeton, certify that:

1. I have reviewed this quarterly report on Form 10-Q of FRANCHISE GROUP, INC.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal controls over financial reporting, or caused such internal controls over financial reporting to be designed under our supervision to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

May 5, 2022

By: /s/ Eric F. Seeton  
Eric F. Seeton  
Chief Financial Officer  
(Principal Financial Officer)



