

Exhibit 2

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and between

99 CENTS ONLY STORES LLC,

as Seller,

and

RUSS GROUP, INC.,

as Buyer

August 1, 2024

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE 1	Definitions2
Section 1.1	Definitions 2
ARTICLE 2	Agreement; Purchase Price8
Section 2.1	Agreement to Sell and Purchase 8
Section 2.2	Purchase Price 8
Section 2.3	Allocation of Purchase Price 8
ARTICLE 3	Deposit.....8
Section 3.1	Deposit..... 8
ARTICLE 4	Title and Survey9
Section 4.1	Permitted Title Exceptions 9
Section 4.2	Title Insurance..... 9
ARTICLE 5	Intentionally Omitted10
ARTICLE 6	Inspection and Confidentiality10
Section 6.1	Access..... 10
Section 6.2	Confidentiality..... 11
ARTICLE 7	Conditions Precedent, Casualty Damage or Condemnation11
Section 7.1	Conditions Precedent Favoring Buyer. 11
Section 7.2	Conditions Precedent Favoring the Seller 12
Section 7.3	Risk of Casualty. 13
Section 7.4	Risk of Condemnation..... 14
ARTICLE 8	Representations, Warranties and Covenants15
Section 8.1	Buyer Representations..... 15
Section 8.2	Seller Representations 19
Section 8.3	Seller's Actual Knowledge..... 20
Section 8.4	Notice of Breach..... 20
ARTICLE 9	Covenants of Seller; Bankruptcy Court Matters21
Section 9.1	Covenants of Seller 21
Section 9.2	Bankruptcy Court Matters 22
ARTICLE 10	Closing.....23
Section 10.1	Time and Place of Closing. 23
Section 10.2	Seller's Deliveries 23

TABLE OF CONTENTS
(continued)

	<u>PAGE</u>
Section 10.3 Buyer's Deliveries	23
Section 10.4 Apportionments	24
Section 10.5 Closing Costs	25
ARTICLE 11 Real Estate Commission	26
ARTICLE 12 Termination and Default	26
Section 12.1 Termination without Default	26
Section 12.2 Buyer Default	26
Section 12.3 Seller Default	27
Section 12.4 Breach of Representations	27
ARTICLE 13 Intentionally Omitted	28
ARTICLE 14 Escrow Account	28
Section 14.1 Escrow Account	28
Section 14.2 Taxes	28
ARTICLE 15 Miscellaneous	28
Section 15.1 Entire Agreement	28
Section 15.2 Binding on Successors and Assigns	28
Section 15.3 Assignment by Buyer	28
Section 15.4 Waiver	28
Section 15.5 Governing Law; Jurisdiction	29
Section 15.6 Counterparts	29
Section 15.7 Notices	29
Section 15.8 Attorneys' Fees	30
Section 15.9 Income Tax Matters	31
Section 15.10 Time Periods	31
Section 15.11 Modification of Agreement	31
Section 15.12 Further Instruments	31
Section 15.13 Descriptive Headings; Word Meaning	31
Section 15.14 Time of the Essence	31
Section 15.15 Construction of Agreement	31
Section 15.16 Limitations on Liability	31
Section 15.17 Severability	32
Section 15.18 Joint and Several	32

Exhibits and Schedules

Exhibit A:	Form of Deed
Exhibit B:	Form of Bill of Sale
Exhibit C:	Form of Omnibus Assignment
Exhibit D:	Form of FIRPTA Certificate
Exhibit E:	Form of Seller Closing Update Certificate
Exhibit F:	Form of Buyer Closing Update Certificate
Schedule A:	Property Address(es) (Owned Real Properties)
Schedule B:	Legal Description(s) (Owned Real Properties)
Schedule C:	Assigned Leased Property Leases
Schedule D:	Assigned Service Contracts

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “Agreement”) is dated as of August 1, 2024 (the “Effective Date”) by and between (a) **99 CENTS ONLY STORES LLC**, a California limited liability company (the “Company” or “Seller”), and (b) **RUSS GROUP, INC.**, an Ohio corporation, or an entity in which Ronald Russ is a principal, (together with its permitted successors and assigns, “Buyer”).

RECITALS

A. On April 7, 2024 (the “Petition Date”), the Company and certain of its Affiliates filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court” and such bankruptcy proceeding, the “Bankruptcy”).

B. Each applicable Seller is the owner of that certain real property briefly described (and noted as being owned by it) on Schedule A, which real property consists of: (i) the land more particularly described in Schedule B (the “Land”) and (ii) all of Seller’s right, title and interest in, to and under all of the following:

1. strips and gores of land within or adjoining the Land, land lying in the bed of any street to the center line thereof, and privileges, rights of way, easements and other rights appurtenant to or used in connection with the ownership and operation of the Land (the “Appurtenances”);
2. buildings and improvements erected on the Land (the “Improvements”; each Land, together with the related the Improvements and Appurtenances, an “Owned Real Property”; and each Owned Real Property, collectively, the “Owned Real Properties”);
3. Personal Property;
4. Assigned Service Contracts; and
5. Intangible Property (all of the foregoing, including, for the avoidance of doubt, the Land, collectively, the “Owned Property”).

C. Each applicable Seller is also the owner of the tenant’s or lessee’s interest in those certain real property leases briefly described (and noted as belonging to it) on Schedule C (collectively, the “Assigned Leased Property Leases”; all of Seller’s right, title and interest in, to and under such Assigned Leased Property Leases, collectively, the “Leasehold Interests”; and the Leasehold Interests, together with the Owned Property, collectively, the “Property”).

D. Buyer desires to purchase, accept and assume from Seller, and Seller desires to sell, convey, assign and transfer to Buyer, subject to and upon the terms and conditions contained in this Agreement, the Property pursuant to an order issued by the Bankruptcy Court which is consistent with the terms of this Agreement, which approves the foregoing transactions pursuant to section 363 of the Bankruptcy Code and which is otherwise in form and substance (i) satisfactory

to the DIP Agent and (ii) reasonably satisfactory to Seller (such order, the “Sale Order”, and all of the foregoing, collectively, the “Transaction”).

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1

Definitions

Section 1.1 Definitions. Capitalized terms used in this Agreement shall have the meanings set forth below:

“Adjusted Purchase Price Balance” shall mean the Purchase Price less the Deposit, as such amount shall be adjusted to reflect the pro-rations contemplated in Section 10.4 of this Agreement and any other adjustments or credits required by this Agreement.

“Adjustment Date” shall have the meaning set forth in Section 10.4(a).

“Advisors” shall mean, with respect to any Person, any directors, officers, employees, investment bankers, financial or other professional advisors, accountants, agents, attorneys, consultants, or other representatives of such Person.

“Affiliate” shall mean, respect to any Person, any other Person that, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. The term “**Affiliated**” shall have the correlative meaning.

“Agreement” shall mean this Agreement, including all Exhibits and Schedules attached hereto, as the same may be amended, modified, or supplemented from time to time in writing by Seller and Buyer.

“Assigned Leased Property Leases” shall have the meaning set forth in Recital C.

“Assigned Service Contracts” shall mean those certain contracts more particularly described on Schedule D.

“Bankruptcy Code” shall mean Title 11, United States Code, 11 U.S.C. §§ 101-1532.

“Bankruptcy Court” shall have the meaning given to such term in Recital A.

“Bill of Sale” shall mean a bill of sale in the form attached hereto as Exhibit B.

“Business Day” shall mean any day of the week other than (a) Saturday and Sunday, (b) a day on which banking institutions in the State of New York are obligated or authorized by law or executive action to be closed to the transaction of normal banking business, or (c) a day on which governmental functions in New York, New York or the State of New York are interrupted because

of extraordinary events such as hurricanes, power outages, declarations of national or local emergency or acts of terrorism.

“Buyer” has the meaning set forth in the preamble of this Agreement.

“Buyer Representations” shall have the meaning set forth in Section 8.1.

“Buyer Representatives” shall have the meaning set forth in Section 6.1.

“Buyer Closing Update Certificate” shall mean a certificate in substantially the form of Exhibit F attached hereto.

“Closing” shall mean the consummation of the Transaction pursuant to the terms of this Agreement.

“Closing Date” shall have the meaning set forth in Section 10.1(c).

“Code” shall mean the Internal Revenue Code of 1986, and all amendments thereto and all regulations issued thereunder.

“Consequential Damages” shall mean, with respect to an indemnified matter, consequential, speculative or similar special damages incurred by the indemnified party.

“Control” shall mean, with respect to any Person, (a) the ownership of more than fifty percent (50%) of the Equity Interests of such Person or (b) the power (whether or not exercised) to elect a majority of the directors of such Person or to exercise voting control of such Person or to otherwise direct or cause the direction of the management and policies of such Person through the ownership of Equity Interests, whether by contract or otherwise. The terms “Controlled by”, “Controlling” and “under common Control with” shall have their respective correlative meanings.

“Deed” shall mean a special warranty deed or its equivalent conveying the Owned Real Property from Seller to Buyer in the form attached hereto as Exhibit A.

“Deposit” shall have the meaning set forth in Section 3.1(a).

“DIP Agent” shall mean the DIP Agent under the post-petition financing order approved by the Bankruptcy Court found at Docket number 467.

“DIP Credit Agreement” shall mean the DIP Credit Agreement approved pursuant to the post-petition financing order entered by the Bankruptcy Court, found at docket number 467.

“Dollars” and the sign “\$” mean the lawful money of the United States of America.

“Effective Date” has the meaning set forth in the Preamble of this Agreement.

“Environmental Laws” shall any and all federal, state, municipal and local laws, statutes, ordinances, rules, regulations, binding guidance or policies, orders, decisions, determinations, decrees or judgments, whether statutory or common law, as amended from time to time, now or hereafter in effect, or promulgated, pertaining to pollution, the environment, natural resources,

public health and safety and industrial hygiene (in each case, as the same relate to Hazardous Substances), including the management, use, generation, manufacture, labeling, registration, production, storage, release, discharge, spilling, leaking, emitting, injecting, escaping, abandoning, dumping, disposal, handling, treatment, removal, decontamination, cleanup, transportation or regulation of or exposure to any Hazardous Substance, including the Industrial Site Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act (as it relates to Hazardous Substances).

“Equity Interests” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interests or participations that confer on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” shall mean Chicago Title and Trust Company.

“Excluded Items” shall mean: (a) cash located at, or on deposit in accounts relating to, any Property; (b) materials relating to Seller’s marketing efforts for the sale of the Property, including communications with other potential purchasers; (c) financial statements and tax returns; (d) internal analyses, projections, memoranda or other similar materials; (e) employee files, (f) appraisals, (g) intellectual property; (h) software; (i) submissions relating to Seller’s obtaining of internal authorizations; and (j) attorney and accountant work product and all other materials subject to any legal privilege in favor of Seller.

“Final Closing Statement” shall have the meaning set forth in Section 10.4(d).

“FIRPTA Certificate” shall mean a certificate in substantially the form of Exhibit D attached hereto.

“Governmental Authorities” shall mean, collectively, any government, court, regulatory or administrative agency, commission or authority or other governmental instrumentality, federal, state, municipal or local, domestic, foreign or multinational entity or body having jurisdiction over (a) the Person in question or (b) the applicable Property or any part thereof.

“Hazardous Materials” shall mean each and every element, compound, chemical mixture, emission, contaminant, pollutant, material, waste or other substance (including radioactive substances, whether solid, liquid or gaseous) which is defined, determined or identified as hazardous or toxic under any Environmental Law or for which liability or standards of care or a requirement for investigation or remediation are imposed under, or that are otherwise subject to, any Environmental Law, including, without limitation, asbestos, asbestos containing materials, urethane, polychlorinated biphenyls, any petroleum product, petroleum derived products and/or its constituents or derivatives, and any caustic, flammable or explosive materials. Without limiting the generality of the foregoing, the term shall mean and include:

- (a) “hazardous substances” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products of a type and in a quantity regularly found at properties with a standard of operation and maintenance comparable to the applicable Property;
- (b) “hazardous waste” and “regulated substances” as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;
- (c) “hazardous materials” as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder;
- (d) “chemical substance or mixture” as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder; and
- (e) “hazardous materials” as defined under all applicable environmental protection statutes of each state and municipality in which the Demised Premises are located.

“Improvements” has the meaning set forth in the Recitals of this Agreement.

“Land” has the meaning set forth in the Recitals of this Agreement.

“Laws and Regulations” shall mean, collectively, all present and future building, fire, sanitary, zoning, environmental, housing and other statutes, laws, ordinances, codes, orders, restrictions, resolutions, requirements, rules and regulations of all Governmental Authorities having jurisdiction with respect to the Real Property or any part thereof, including, without limitation, landmark designations and all zoning variances and special exceptions, if any.

“Lease” means any leases, subleases, occupancy agreements and other similar agreements demising or granting an interest in space at any applicable real property.

“Lien” shall mean adverse interests, security interests, claims, liens, pledges, options, warrants, judgments, encumbrances, charges, voting trusts, voting agreements, proxies or other similar arrangements, restrictions or legal or equitable limitations (other than Permitted Exceptions).

“Losses” shall mean, with respect to a particular indemnified matter, any and all claims, demands, causes of action, losses, liabilities, costs and expenses (including reasonable attorneys’ fees, court costs and disbursements) arising from or in connection with such matter, but excluding in all cases Consequential Damages.

“made available to Buyer” (or words to similar effect herein) shall mean that the applicable information or documentation has been posted to any virtual data room for the Transaction to which Buyer or its affiliates have been given access as of the applicable date or otherwise.

“Material Casualty” shall mean any damage or destruction to all or any portion of the Owned Real Property that was not caused by Buyer or any agent or affiliate thereof that: (a) would cost in the aggregate twenty-five percent (25%) or more of the Purchase Price to repair and restore in the

certified opinion of an architect, insurance examiner, contractor or engineer engaged by Seller and approved by Buyer (which approval shall not be unreasonably withheld, conditioned or delayed) (an “Approved Engineer”); or (b) otherwise (in each case, on a permanent basis) either (i) materially limits or materially restricts ingress and egress to and from such Owned Real Property, or (ii) reduces the current parking at the Owned Real Property such that the Owned Real Property is no longer compliant with Laws and Regulations pertaining to zoning.

“Material Condemnation” shall mean any taking by eminent domain of all or any portion of the Owned Real Property that: (a) includes any portion of the principal building comprising the Improvements on such Owned Real Property; (b) results in an award that is twenty-five percent (25%) or more of the Purchase Price; or (c) otherwise (in each case, on a permanent basis) either (i) materially limits or materially restricts ingress and egress to and from such Owned Real Property, or (ii) reduces the current parking at the Owned Real Property such that the Owned Real Property is no longer compliant with Laws and Regulations pertaining to zoning.

“Maximum Liability” shall have the meaning set forth in Section 12.4(c).

“Notice of Claim” shall have the meaning set forth in Section 12.4(b).

“OFAC” shall mean the Office of Foreign Assets Control of the Department of Treasury.

“Omnibus Assignment” shall mean an Omnibus Assignment (Contracts and Other Property Rights) pertaining to the Property in the form attached hereto as Exhibit C.

“Ordinary Course” shall mean the ordinary and usual course of operations of the Owned Real Property, consistent with past practice and taking into account the preparation, commencement and pendency of the Bankruptcy.

“Parties” shall mean, collectively, Seller and Buyer.

“PDF” shall have the meaning set forth in Section 15.6.

“Permitted Applications” shall have the meaning set forth in Section 3.1(c)

“Permitted Exceptions” shall have the meaning set forth in Section 4.1.

“Person” shall mean any individual, estate, trust, partnership, limited liability company, limited liability partnership, corporation, governmental agency or other legal entity and any unincorporated association.

“Personal Property” shall mean all fixtures, equipment, machinery, furniture, furnishings, fittings and other articles of personal property (including, without limitation, supplies, signage, inventory and tenant files and other books and records) that are (a) attached or affixed to, or located on, or used or employed in connection with, any Owned Real Property and the use, maintenance, ownership or operation thereof and (b) owned by Seller.

“Pre-Closing Period” shall have the meaning set forth in Section 9.1(a).

“Preliminary Closing Statement” shall have the meaning set forth in Section 10.4(d).

“Property” shall have the meaning set forth in Recital .

“Property Taxes” shall have the meaning set forth in Section 10.4(b).

“Purchase Price” shall have the meaning set forth in Section 2.2.

“Qualified Assignee” shall have the meaning set forth in Section 15.3.

“Required Removal Exceptions” shall have the meaning set forth in Section 4.2(d).

“Sale Order” have the meaning set forth in Recital D.

“Scheduled Closing Date” shall mean fifteen (15) days after the Sale Order is entered by the Bankruptcy Court.

“Seller” has the meaning set forth in the preamble of this Agreement.

“Seller Failure” has the meaning set forth in Section 12.3(a).

“Seller Parties” shall mean Seller, its Affiliates and its and their direct and indirect owners, agents, officers, directors, trustees, Advisors, brokers, managers, members, partners, employees, representatives, principals, Affiliates, contractors, attorneys, accountants and other consultants, or the successors and assigns of any of the foregoing parties.

“Seller Representations” shall mean the representations and warranties of Seller expressly set forth in Section 8.2.

“Seller’s Actual Knowledge” shall have the meaning set forth in Section 8.3.

“Seller Closing Update Certificate” shall mean a certificate in substantially the form of Exhibit E attached hereto.

“State” shall mean the state or commonwealth in which the Owned Real Property is located.

“Title Commitment” shall mean each title commitment (if any) for the Owned Real Property made available to Buyer by or on behalf of Seller in connection with the Transaction prior to the Effective Date.

“Title Company” shall mean Chicago Title Insurance Company.

“Transaction” shall have the meaning set forth in Recital D.

ARTICLE 2

Agreement; Purchase Price

Section 2.1 Agreement to Sell and Purchase. In consideration of the payment of the Purchase Price by Buyer to Seller and for other good and valuable consideration, Seller shall sell, assign, transfer and convey the Property to Buyer, and Buyer shall purchase, acquire, accept and assume the Property from Seller, subject to and in accordance with the terms and conditions of this Agreement.

Section 2.2 Purchase Price. The aggregate Purchase Price for the Property shall be One Million One Hundred Sixty Five Thousand and No/100 Dollars (\$1,165,000.00) (the “Purchase Price”). Subject to the adjustments and apportionments as hereinafter set forth, the Purchase Price shall be paid to Seller on the Closing Date by wire transfer of immediately available federal funds to an account designated by Seller prior to Closing.

Section 2.3 Allocation of Purchase Price. At Closing, the entire Purchase Price shall be allocated to the Property and, in connection therewith and in furtherance thereof: (a) the Parties shall execute all forms required to be filed for tax purposes with any taxing authority in a manner consistent with such allocation; and (b) the Parties agree that the value of the Personal Property that is included in the Transaction contemplated by this Agreement is *de minimis*, and no part of the Purchase Price is allocable thereto.

ARTICLE 3

Deposit

Section 3.1 Deposit.

(a) Prior to the Effective Date, Buyer deposited with Escrow Agent, by wire transfer of immediately available funds, One Hundred Sixteen Thousand Five Hundred and No/100 Dollars (\$116,500.00) (together with any interest earned thereon and as reduced by any Permitted Applications, the “Deposit”).

(b) If the Closing occurs, the Deposit shall be released to Seller and credited against the Purchase Price. The Deposit shall, once delivered, be a “hard deposit” and shall be non-refundable to Buyer except as otherwise expressly provided in this Agreement.

(c) Buyer acknowledges that Seller has or shall decline to reject the Assigned Leased Property Leases in connection with the Bankruptcy, in reliance upon Buyer’s agreement to assume such Assigned Leased Property Leases upon the terms set forth in this Agreement. Accordingly, Buyer hereby irrevocably authorizes Seller to, from time to time as required under the terms of the Assigned Leased Property Leases, utilize such portions of the Deposit as may be required to make payments of base rent and additional rent coming due prior to Closing under such Assigned Leased Property Leases. Any such applications of the Deposit by Seller in accordance with this Section 3.1(c) shall be referred to herein as “Permitted Applications”.

ARTICLE 4

Title and Survey

Section 4.1 Permitted Title Exceptions. Seller shall transfer the Owned Property subject to the following exceptions and other title matters (collectively, the “Permitted Exceptions”):

(a) all present and future building, zoning and other restrictions, regulations, requirements, laws, ordinances, resolutions and orders of any State, municipal, Federal or other governmental authority, including without limitation all boards, bureaus, commissions, departments and bodies thereof, now or hereafter having or acquiring jurisdiction over the Property or the use or improvement thereof;

(b) all matters (other than Required Removal Exceptions) disclosed in any Title Commitment or in any survey, environmental site assessment or other materials, in each case, made available to Buyer prior to the Effective Date;

(c) the rights, if any, relating to construction, maintenance and operation of public utility lines, wires, poles, cables, pipes, distribution boxes and other equipment and installations on, over and under the Owned Property;

(d) real estate taxes, water charges, sewer rents and other utilities (i) not yet due and payable, (ii) being contested in good faith by appropriate proceedings or (iii) nonpayment of which is permitted or required by the Bankruptcy Code, subject to the adjustments provided for herein;

(e) mechanics’, materialmen’s, artisans’, shippers, warehousemen’s or other similar liens for amounts (i) not yet due and payable or (ii) being contested in good faith by appropriate proceedings;

(f) the Assigned Leased Property Leases and Assigned Service Contracts;

(g) any matters that are or have been created by Buyer or any Buyer Representatives;

(h) any matters that are or will be removed or released by operation of the Sale Order;
and

(i) any other matter that does not, individually or in the aggregate, materially and adversely affect the use, occupancy or operation of the Owned Real Properties for their current uses.

Section 4.2 Title Insurance.

(a) **Title Policy.** At Closing, Buyer may elect to obtain (i) an owner’s policy of title insurance for itself and/or (ii) a lender’s policy of title insurance for any applicable lender to Buyer or its affiliates, and Seller agrees that it shall reasonably cooperate with Buyer, at no material out-of-pocket cost to Seller, in connection therewith, including, without limitation, by delivering any customary and reasonable owner’s affidavits and other similar documentation; provided, however,

(A) in no event shall any such election to obtain a title insurance policy entitle Buyer to any adjournment or extension of the Scheduled Closing Date or any other deadline or milestone hereunder, (B) the issuance of any such title insurance policy shall not be a condition to Buyer's obligation to proceed to Closing hereunder, (C) any such owner's or lender's title insurance policy shall be at Buyer's sole cost and expense and (D) for the avoidance of doubt, Buyer's obligation to proceed to Closing hereunder shall not be subject to any financing contingency.

(b) **Required Removal Exceptions.** Notwithstanding anything to the contrary set forth in this Agreement, Seller agrees to remove (or cause to be removed) from title to the Owned Real Properties the following ("Required Removal Exceptions"): (i) all existing mortgages, deeds of trust, deeds to secured debt and other liens and security interests encumbering any Owned Real Property and securing obligations of Seller or any of its Affiliates for borrowed money and (ii) any title encumbrance or exception voluntarily recorded against any Owned Real Property by (or with the written consent of) Seller or any of its Affiliates after the Effective Date in violation of the terms of this Agreement. If Seller fails to remove a Required Removal Exception on or prior to Closing, subject to any adjournment rights of Seller provided in this Article, Buyer shall have the right to exercise its rights and remedies provided in Section 12.3 to terminate this Agreement or to seek specific performance of Seller's obligation hereunder by delivering written notice to Seller within five (5) days after Buyer becomes aware of such failure. If Buyer does not timely terminate this Agreement pursuant to Section 12.3 or commence an action for specific performance, the Required Removal Exception will be deemed a Permitted Exception and Seller and Buyer shall proceed with Closing without abatement or adjustment to the Purchase Price.

(c) **Other Liens and Violations.** Notwithstanding the foregoing or anything to the contrary in this Agreement, in no event shall Seller be responsible for taking any action with respect to any liens or violations with respect to the Property other than Required Removal Exceptions ("Other Liens"), all of which shall be assumed by Buyer as of Closing; provided, however, that if any such Other Lien (i) is not a Permitted Exception and (ii) has been liquidated and reduced to a monetary amount and can be cured by the payment thereof (together with any related fine or other penalty), then (A) for the avoidance of doubt, the same shall not affect the Parties' obligations hereunder to proceed to Closing in accordance with the provisions hereof and (B) unless Seller elects in its sole and absolute discretion to cure (and does so cure) such Violation at or prior to Closing, Buyer shall receive a credit against the Adjusted Purchase Price Balance in the amount required to effect such cure of the applicable Other Liens.

ARTICLE 5

Intentionally Omitted

ARTICLE 6

Inspection and Confidentiality

Section 6.1 Access. Buyer, personally or through its authorized agents or representatives (the "Buyer Representatives"), shall have the right, from the Effective Date through the Closing Date, to enter upon any Owned Real Property and to make such investigations, including appraisals, engineering studies, soil tests, environmental studies and underwriting

analyses, as Buyer deems necessary or advisable, subject to the following conditions and limitations: (a) such entry and investigations shall be conducted at reasonable times and upon forty-eighty hours' prior written notice to Seller; (b) a representative of Seller shall have the right to be present during such entry or investigations; and (c) such entry or investigations shall be subject to the rights of any tenants or other counterparties under Leases and neither Buyer nor any Buyer Representatives shall interfere with the use, occupancy or enjoyment of the Property by any such Persons or their respective employees, contractors, customers or guests; (d) neither Buyer nor Buyer Representatives shall damage such Owned Real Property or any portion thereof; (e) unless Seller agrees otherwise, before Buyer or Buyer Representatives conduct any investigations or inspections of such Owned Real Property, including inspections of building systems, the Improvements or any invasive testing or inspections, Buyer or Buyer Representatives, as applicable, shall deliver to Seller a certificate of insurance naming Seller as an additional insured, evidencing commercial general liability insurance (including property damage, bodily injury and death) issued by an insurance company having a rating of at least "A-/VII" by A.M. Best Company, with limits of at least \$3,000,000 per occurrence and \$5,000,000 in the aggregate for bodily or personal injury or death; (f) without Seller's prior written consent, which Seller may give or withhold in its sole and absolute discretion, Buyer shall not perform any invasive testing at, on or around such Owned Real Property, including, without limitation, any Phase II exams, soil borings or other invasive tests; (g) Buyer shall use commercially diligent efforts to perform all on-site due diligence reviews on an expeditious and efficient basis; and (h) Buyer shall indemnify, hold harmless and defend the Seller Parties from and against all Losses resulting from or relating to any entry and/or inspections conducted by Buyer or Buyer Representatives, including, without limitation, Losses incurred in making any and all repairs necessitated to cure any damage to such Owned Real Property resulting from such activities but excluding Losses from the mere discovery of conditions existing as of the time of inspection. The foregoing indemnification obligation shall survive the Closing or termination of this Agreement.

Section 6.2 Confidentiality.

(a) The Parties acknowledge that Buyer or its applicable Affiliates entered into a certain non-disclosure agreement in favor of Seller or its Affiliates in connection with the Transaction (the "NDA"). The terms of the NDA are hereby incorporated by reference herein with the same force and effect as if fully stated herein, and any breach by Buyer or its applicable Affiliate that is a party thereto of any of its or their obligations thereunder shall be deemed to constitute a breach by Buyer hereunder.

(b) The provisions of this Section 6.2 (and the provisions of the NDA incorporated by reference herein) shall survive the termination of this Agreement until the later of (i) the one (1)-year anniversary of the date of such termination or (ii) the expiration of the related survival period under the NDA.

ARTICLE 7

Conditions Precedent, Casualty Damage or Condemnation

Section 7.1 Conditions Precedent Favoring Buyer.

(a) Buyer's obligations under this Agreement are subject to the timely fulfillment of the conditions set forth in this Section 7.1 on or before the Scheduled Closing Date. Each condition may be waived in whole or in part only by written notice of such waiver from Buyer to Seller:

(i) Seller shall have executed and delivered to Buyer, or deposited in escrow with Escrow Agent, all instruments and documents required to be delivered to Buyer at Closing under this Agreement;

(ii) Seller shall have performed and complied in all material respects with all of the other terms of this Agreement to be performed and complied with by it prior to or at the Closing; and

(iii) subject to Section 8.4, on the Scheduled Closing Date, the Seller Representations shall be true, complete and accurate, in all material respects, on and as of the Effective Date and on and as of the Scheduled Closing Date as if then remade on and as of the Closing Date, except that Seller shall not be deemed to have breached the foregoing condition precedent by reason of: (A) changes that are: (1) caused by the acts or omissions of Buyer or any Buyer Representatives, (2) a result of the ownership or operation of the Property in the Ordinary Course occurring after the Effective Date and that did not arise by reason of a breach of any covenant made by Seller under this Agreement; or (3) caused by matters that are outside of the reasonable control of Seller and that did not arise by reason of a breach of any covenant made by Seller under this Agreement; or (B) casualty or condemnation (which shall be governed exclusively by Section 7.3 and Section 7.4, respectively).

(b) If the conditions precedent in favor of Buyer set forth above in Section 7.1(a) are not satisfied in all material respects as of the Scheduled Closing Date, Buyer may elect in its sole discretion not later than the Scheduled Closing Date, and as its sole remedy, either to: (i) waive such condition and proceed with the Closing as contemplated by this Agreement (without any reduction in the Purchase Price); (ii) terminate this Agreement by written notice thereof to Seller, in which event the Deposit shall be returned to Buyer and, except for those obligations which expressly survive the termination of this Agreement, the Parties shall have no further obligations or liabilities to each other hereunder; or (iii) to the extent such failure is the result of a Seller default hereunder beyond applicable notice and cure periods expressly provided for herein, exercise its rights and remedies under Section 12.3.

(c) Buyer acknowledges and agrees that its obligation to perform under this Agreement and consummate the Closing is not contingent upon Buyer's ability to obtain any (i) governmental or quasi-governmental approval of changes or modifications in use or zoning, (ii) modification of any existing land use restrictions, or (iii) consents to assignments of any service contracts or other agreements which Buyer requests.

Section 7.2 Conditions Precedent Favoring the Seller. Seller's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 7.2 on or before the Scheduled Closing Date. Each condition may be waived in whole or part only by written notice of such waiver from Seller to Buyer:

(a) Buyer shall have delivered the Adjusted Purchase Price Balance to Escrow Agent;

(b) Buyer shall have executed and delivered to Seller, or deposited in escrow with Escrow Agent, all instruments and documents required to be delivered by Buyer at the Closing under this Agreement;

(c) Buyer shall have performed and complied in all material respects with all of the terms of this Agreement to be performed and complied with by Buyer prior to or at the Closing;

(d) The Buyer Representations shall be true, accurate and complete in all material respects on and as of the Effective Date and on and as of the Closing Date as if then remade on and as of the Closing Date; and

(e) The Bankruptcy Court shall have entered the Sale Order.

Section 7.3 Risk of Casualty.

(a) If, prior to the Closing Date, all or any part of the Improvements are damaged by fire or other casualty, Seller shall promptly give notice to Buyer of such fact and thereafter, promptly following Seller's receipt thereof, an estimate of the cost and time to restore prepared by an Approved Engineer.

(b) If, prior to the Closing Date, a Material Casualty occurs, Buyer may, at Buyer's option and in its sole discretion, elect to either (i) terminate this Agreement and receive a return of the Deposit or (ii) proceed to Closing in accordance with the terms hereof with no reduction in the Purchase Price.

(c) In the event of a fire or other casualty that is not a Material Casualty, or if there is a Material Casualty and Buyer elects to proceed pursuant to Section 7.3(b)(ii), (i) Buyer shall proceed to Closing in accordance with the terms hereof with no reduction in the Purchase Price, (ii) Buyer shall have the right to participate with Seller in the adjustment and settlement of such casualty insurance claim and (iii) Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to the insurance proceeds payable on account of such damage (net of collection costs and costs of repair with respect to such casualty reasonably incurred by Seller), including without limitation, rental interruption insurance with respect to periods following Closing. With respect to any Material Casualty, Buyer shall be deemed to have elected to proceed under Section 7.3(b)(ii) unless, within ten (10) Business Days from the occurrence of such Material Casualty, Buyer provides Seller with written notice that Buyer elects to terminate this Agreement with respect to the Property pursuant to Section 7.3(b)(i).

(d) Any disputes under this Section 7.3 as to whether there has occurred a Material Casualty shall be resolved by expedited arbitration before a single arbitrator acceptable to Seller and Buyer in their reasonable judgment in accordance with the commercial arbitration rules of the American Arbitration Association; provided that if Seller and Buyer fail to agree on an arbitrator within five (5) days after a dispute arises, then either party may request that The Real Estate Board of New York, Inc. designate an arbitrator. Such arbitrator shall be an independent architect or engineer having at least ten (10) years of experience in the construction of commercial real estate in the State where the Property is located. The determination of the arbitrator shall be conclusive and binding upon the parties and the costs and expenses of such arbitrator shall be borne equally by Seller and Buyer.

(e) Whether or not the Property or any portion thereof is located in the State of New York, this Section 7.3 is an express agreement to the contrary of Section 5-1311 of the New York General Obligations Law or any Laws and Regulations providing for an allocation of risk among parties to a contract.

Section 7.4 Risk of Condemnation.

(a) If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, or shall be the subject of a duly noticed hearing held by a Governmental Authority relating to a pending taking in the exercise of the power of eminent domain, Seller shall promptly give notice to Buyer of such fact.

(b) If, prior to the Closing Date, a Material Condemnation occurs, Buyer may, at Buyer's option and in its sole discretion, elect to either (i) terminate this Agreement and receive a return of the Deposit or (ii) proceed to Closing in accordance with the terms hereof without reduction in the Purchase Price.

(c) In the event of a condemnation by right of eminent domain that is not a Material Condemnation, or if there is a Material Condemnation and Buyer elects to proceed under Section 7.4(b)(ii), (i) Buyer shall proceed to Closing in accordance with the terms hereof (without reduction in the Purchase Price) and (ii) Seller shall assign to Buyer on the Closing Date all condemnation awards and proceeds payable as a result of such condemnation (net of collection costs reasonably incurred by Seller). With respect to any Material Condemnation, Buyer shall be deemed to have elected to proceed under Section 7.4(b)(ii) unless, within ten (10) days from the occurrence of such Material Condemnation, Buyer provides Seller with written notice that Buyer elects to terminate this Agreement with respect to the Property pursuant to Section 7.4(b)(i).

(d) Any disputes under this Section 7.4 as to whether there has occurred a Material Condemnation shall be resolved by expedited arbitration before a single arbitrator acceptable to Seller and Buyer in their reasonable judgment in accordance with the commercial arbitration rules of the American Arbitration Association; provided that if Seller and Buyer fail to agree on an arbitrator within five (5) days after a dispute arises, then either party may request that The Real Estate Board of New York, Inc. designate an arbitrator. Such arbitrator shall be an independent architect or engineer having at least ten (10) years of experience in the construction of commercial real estate in the State where the Property is located. The determination of the arbitrator shall be conclusive and binding upon the parties and the costs and expenses of such arbitrator shall be borne equally by Seller and Buyer.

(e) Whether or not the Property or any portion thereof is located in the State of New York, this Section 7.4 is an express agreement to the contrary of Section 5-1311 of the New York General Obligations Law or any Laws and Regulations providing for an allocation of risk among parties to a contract.

ARTICLE 8

Representations, Warranties and Covenants

Section 8.1 Buyer Representations. Subject to the limitations set forth in this Agreement, Buyer hereby represents and warrants to, and covenants with, Seller as follows (the “Buyer Representations”):

(a) Buyer acknowledges that it is an experienced and sophisticated purchaser of commercial real estate projects such as the Property and that, prior to the Effective Date, it has had a full and complete opportunity to (i) review all information and documentation relating to the Property made available to Buyer by or on behalf of Seller and (ii) conduct such other investigations, examinations, inspections and analyses of the Property as Buyer has deemed necessary or appropriate. Buyer further acknowledges that, except for the Seller Representations, Buyer has not relied upon any statements, representations or warranties by any Seller Party or any agent of any Seller Party, including Broker;

(b) Buyer acknowledges and agrees that it is purchasing the Property subject to the Property being in “**AS IS, WHERE IS**” AND “**WITH ALL FAULTS, LIABILITIES, AND DEFECTS, LATENT OR OTHERWISE, KNOWN OR UNKNOWN**” basis condition with respect to all facts, circumstances, conditions and defects (and Seller shall have no obligation to determine or correct any such facts, circumstances, conditions or defects and Buyer assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property), and, subject to Section 7.3 and Section 7.4 of this Agreement with respect to the Owned Property, loss by casualty or condemnation excepted, with no right of set-off or, except as expressly set forth herein, reduction in the Purchase Price, and that, except for the Seller Representations, such sale shall be without representation or warranty of any kind, express or implied, including any warranty of income potential, operating expenses, uses, merchantability or fitness for a particular purpose, and Seller does hereby disclaim and renounce any such representation or warranty. Buyer specifically acknowledges that, except as expressly provided in the Seller Representations, Buyer is not relying on, either directly or indirectly, any representations or warranties of any kind whatsoever, express or implied, from Seller, any other Seller Party or any other Person as to any matters concerning the Property, including, without limitation: (i) the income from or value of the Property; (ii) any income to be derived from the Property; (iii) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon, including the possibilities for further development of the Property or construction thereon; (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property or any improvements thereon; (v) the manner, quality, state of repair or lack of repair of the Property (including the roof, foundation, HVAC systems or any other component of the Property or any improvements thereon); (vi) the nature, quality or condition of the Property, including with respect to water conditions, soil, geological or geotechnical condition (including soil expansiveness, corrosivity, or stability, or seismic, hydrological, geological and topographical conditions and configurations, including, without limitation, any opinions or conclusions of any soils engineer(s) retained to perform geotechnical and/or soils studies or to oversee any soils engineering aspects of developing the Property); (vii) the compliance of or by Seller, the Property, or its operation with any Laws and Regulations; (viii) the manner or quality of the construction or materials incorporated into the Property; (ix) compliance with Environmental Laws or land use

laws, rules, regulations, orders, codes or requirements, including the Americans with Disabilities Act of 1990; (x) the presence or absence of radon gas, methane gas, asbestos any other Hazardous Materials at, on, under, or adjacent to the Property; (xi) the conformity of any improvements to any plans or specifications, including, without limitation, any plans and specifications that may have been or may be provided to Buyer; (xii) the conformity of the Property to past, current or future applicable zoning or building requirements; (xiii) deficiency of any shoring; (xiv) deficiency of any drainage; (xv) the fact that all or a portion of the Property may be located on or near an earthquake fault line or in or near an earthquake or seismic hazard zone; (xvi) the existence of vested land use, zoning or building entitlements affecting the Property; (xvii) water rights or the availability of or access to water; (xviii) the presence or suitability of any utilities or availability thereof; (xix) the completeness or accuracy of any information provided to Buyer by the Seller Parties or their agents; (xx) any matters relating to the leases or the tenants; (xxi) any knowledge that any Seller Party may have relating to the Property that is has, or has not, shared with Buyer; and/or (xxii) any other matter relating to the Property or to the development, construction, operation, leasing or sale of the Property. Buyer acknowledges that to the extent required to be operative, the disclaimers and warranties contained herein are “conspicuous” disclaimers for purposes of any applicable law, rule, regulation or order. Buyer further acknowledges and agrees that, except for the Seller Representations (as the same may be updated at Closing), no Seller Party is under any duty to make any affirmative disclosures or inquiry regarding any matter which may or may not be known to Seller or any of the other Seller Parties, and Buyer, for itself and for its successors and assigns, hereby expressly waives and releases each of the Seller Parties from any such duty that otherwise might exist; provided, however, that the foregoing provision shall not prevent Buyer from relying on the Seller Representations, subject to the limitations and conditions relating thereto set forth in this Agreement;

(c) Except as expressly provided below in this Section 8.1(c), Buyer, for Buyer and Buyer’s successors and assigns, irrevocably and unconditionally releases the Seller Parties from, and irrevocably and unconditionally waives all claims and liabilities against the Seller Parties for or attributable to, the following:

(i) any and all statements or opinions heretofore or hereafter made, or information furnished, by or on behalf of the Seller Parties to Buyer or any of Buyer’s agents or representatives (other than to the extent that the same constitute a breach of Seller Representations of which Buyer had no knowledge as and when such Seller Representations were made); and

(ii) any and all Losses of any kind or nature whatsoever, whether known, unknown, foreseen or unforeseen, attributable to the Property, whether arising or accruing before, on or after the Closing and whether attributable to events or circumstances which have heretofore or may hereafter occur, including all Losses with respect to the structural, physical, or environmental condition of the Property including claims or liabilities relating to the presence, discovery or removal of any Hazardous Materials in, at, under or about the Property and any other matters described in Section 8.1(b);

Buyer acknowledges and agrees that (A) Buyer may hereinafter discover facts different from or in addition to those now (or as of the Closing) known to Buyer, (B) Buyer’s agreement to release, acquit and discharge the Seller Parties as set forth herein shall remain in full force and effect notwithstanding the existence or discovery of any such additional or different facts, (C) Buyer

knowingly waives any rights, privileges and benefits under any federal, state or local law which may negatively impact the validity or enforceability of any part of the releases set forth in this Agreement, (D) upon the completion of the Closing, the Seller Parties shall be deemed to have satisfied all of their respective obligations, covenants and liabilities in this Agreement and in any documents executed by the Seller Parties in connection herewith other than those obligations of the Seller that, by the express terms of this Agreement, survive the Closing (in which case such survival shall be subject to the limitations set forth in this Agreement) and (E) Buyer irrevocably covenants never to commence or prosecute, or to collude with others to commence or prosecute, against any Seller Party any action or proceeding based upon any claim covered by the foregoing release;

provided, however, that the foregoing releases and waivers set forth in this Section 8.1(c) are not intended and shall not be construed to affect or impair any rights or remedies that Buyer may have against Seller as a result of a breach of any of the Seller Representations, or of any covenant of Seller expressly set forth in this Agreement, subject to the terms and limitations on the Seller's liability as expressly set forth elsewhere in this Agreement.

Buyer understands the legal significance of the foregoing provisions and acknowledges and agrees that the provisions of Section 8.1(b)-(c) were a material factor in Seller's agreement to complete the Transaction and Seller's acceptance of the Purchase Price and that Seller is unwilling to consummate the Transaction unless the Seller Parties are expressly released as set forth in Section 8.1(b)-(c).

The releases contained in Section 8.1(b)-(c) and elsewhere in this Agreement include claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist, which, if known by Buyer, would materially affect Buyer's release of the Seller Parties. Buyer specifically waives the provisions of any law of any state, territory or jurisdiction the import of which is as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Notwithstanding anything to the contrary in this Agreement, the provisions of Section 8.1(b)-(c) shall survive the Closing or termination of this Agreement.

(d) Buyer is a corporation, duly formed, validly existing and in good standing under the Laws and Regulations of the State of Ohio. This Agreement constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to general principles of equity and to bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect affecting the rights of creditors or debtors generally. Buyer has the power to enter into, execute and deliver this Agreement and to perform its obligations hereunder.

(e) There are no actions, suits or proceedings pending or, to the knowledge of Buyer, threatened, against or affecting Buyer which, if determined adversely to Buyer, would adversely affect its ability to perform its obligations pursuant to the terms of this Agreement.

(f) Neither (i) the execution, delivery or performance of this Agreement by Buyer nor (ii) compliance herewith (A) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) the charter documents or by-laws of Buyer, (2) to the best of Buyer's knowledge, any law or any order, writ, injunction or decree of any court or Governmental Authority, or (3) to the best of Buyer's knowledge, any agreement or instrument to which Buyer is a party or by which it is bound or (B) results in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument.

(g) No authorization, consent or approval of any Governmental Authority (including courts) is required for the execution and delivery by Buyer of this Agreement or the performance of its obligations pursuant to the terms of this Agreement.

(h) Buyer is currently (i) in compliance with, and shall at all times during the term of this Agreement remain in compliance with, the regulations of OFAC and any statute, executive order (including Executive Order 13224, dated September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism") or regulations relating thereto, and (ii) not listed on, and shall not during the term of this Agreement be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or any other similar list maintained by OFAC or any other Governmental Authority pursuant to any authorizing statute, executive order or regulation. Buyer has taken, and shall continue to take until Closing, such measures as are required by applicable law to ensure that funds used to pay to Seller the Purchase Price are derived (A) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated and (B) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

(i) Buyer's rights under this Agreement do not, and its acquisition of the Property shall not, constitute "plan assets" within the meaning of 29 C.F.R. Section 2510.3-101, because one or more of the following circumstances is true:

(i) Equity interests in Buyer are publicly offered securities, within the meaning of 29 C.F.R. Section 2510.3-101(b)(2);

(ii) Less than twenty-five (25%) percent of all equity interests in Buyer are held by "benefit plan investors" within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); or

(iii) Buyer qualifies as an "operating company", "venture capital operating company" or a "real estate operating company" within the meaning of 29 C.F.R. Section 2510.3-101(c), (d) or (e);

(j) Buyer is not a "governmental plan" within the meaning of Section 3(32) of ERISA and the execution of this Agreement and the purchase of the Property by Buyer is not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

(k) Buyer has not (i) filed any petition in bankruptcy or made any assignment for the benefit of creditors, (ii) filed any petition seeking reorganization or arrangement or other action

under Federal or State bankruptcy laws wherein Buyer is named a debtor, or (iii) received written notice of any such petition or action filed or initiated against it.

(l) Buyer has, or will have on the Closing Date, cash on hand sufficient to pay the Adjusted Purchase Price and all other amounts required to be paid by Buyer at Closing pursuant to this Agreement.

The representations and warranties of Buyer contained in this Section 8.1 shall survive the Closing, but only to the extent provided in Section 12.4(b).

Section 8.2 Seller Representations. Subject to the limitations set forth in this Agreement, Seller hereby represents and warrants to Buyer as of the Effective Date as follows (the “Seller Representations”):

(a) Seller is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of California. Seller has the power to enter into, execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder.

(b) Seller’s execution and delivery of this Agreement and performance of its obligations hereunder have been duly authorized by all necessary action on the part of Seller, and do not violate or conflict with Seller’s organizational documents, any judgment, decree or order of any court applicable to or affecting Seller, breach the provisions of or constitute a default under any material contract to which Seller is a party or by which Seller is bound, or violate or conflict with any Laws and Regulations applicable to Seller.

(c) There is no action, suit, litigation, hearing or administrative proceeding pending or, to Seller’s Actual Knowledge, threatened against Seller or the Property in any court, administrative bureau, or other regulatory setting, that, if determined adversely to Seller, would reasonably be expected to materially and adversely affect Seller’s ability to perform its obligations pursuant to the terms of this Agreement.

(d) Seller is not is a “foreign person” as such term is defined in Section 1445(e)(3) of the Code.

(e) Seller is currently (i) in compliance with, and shall at all times during the term of this Agreement remain in compliance with, the regulations of the OFAC and any statute, executive order (including Executive Order 13224, dated September 24, 2001 and entitled “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”), or regulations relating thereto and (ii) not listed on, and shall not during the term of this Agreement be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or any other similar list maintained by OFAC or any other Governmental Authority pursuant to any authorizing statute, executive order or regulation.

(f) Seller has delivered or made available to Buyer true and complete (in all material respects) copies of all (i) Assigned Leased Property Leases and (ii) leases (if any) of any portion of the Owned Property. Except as a result of the Bankruptcy, neither Seller nor, to the Knowledge of Seller, any other party thereto is in default under any of the Assigned Leased Property Leases in any material respect. Notwithstanding anything to the contrary herein, the termination of any

Assigned Leased Property Lease between the Effective Date and Closing by any party thereto other than Seller or its Affiliates shall not constitute a default by Seller or otherwise affect the obligations of Seller to sell, and Buyer to buy, the remainder of the Property in accordance with the terms hereof.

(g) Except for (i) the Assigned Service Contracts, (ii) other Permitted Exceptions and (iii) contracts that will be rejected by Seller in the Bankruptcy, Seller is not a party to any service contracts with respect to the Owned Real Property that will be binding on Buyer from and after Closing.

(h) There are no condemnation or eminent domain proceedings pending, or to Seller's Actual Knowledge, threatened in writing against any Owned Property.

(i) Neither Seller nor Seller nor any entity that would be considered a single employer with Seller or Seller under Code Section 414(b) or Code Section 414(c) maintains, contributes to, or otherwise has incurred any liability with respect to any "employee benefit plan" within the meaning of Section 3(3) of ERISA with respect to persons who are or were employed at the Property or otherwise perform or performed services at the Property.

(j) Other than any right of first offer and/or right of first negotiation included in any Permitted Exception, Seller has not granted any option, right of first offer, right of first refusal or any other similar right in favor of any Person with respect to the purchase of any Owned Property (or any portion thereof).

The representations and warranties of Seller contained in this Section 8.2 shall survive the Closing, but only to the extent provided in Section 12.4(b).

Section 8.3 Seller's Actual Knowledge.

(a) Whenever a representation is qualified by the phrase "to Seller's Actual Knowledge", "to Seller's knowledge" or words of similar import, the accuracy of such representation shall be based solely on the actual (as opposed to constructive or imputed) knowledge of those senior executives of the Company which have principal oversight over the Company's and its subsidiaries' owned and leased real properties, without investigation or inquiry. Buyer acknowledges that nothing herein shall impose any liability on or create any duties running from such Persons to Buyer and Buyer agrees that no such Persons shall have any personal or other liability under this Agreement or in connection with the Transaction.

Section 8.4 Notice of Breach.

(a) To the extent that, before the Effective Date, Buyer obtained actual knowledge that any of the Seller Representations are inaccurate, untrue, or incorrect in any way, such representations and warranties shall be deemed modified to reflect such actual knowledge as of the Effective Date. For purposes of this Agreement, Buyer shall be deemed to have actual knowledge that any representation or warranty contained herein is inaccurate, untrue, or incorrect to the extent that: (i) Buyer or any of its Affiliates has actual knowledge of any fact or information which is inconsistent with such representation or warranty at the time such representation or warranty was made; and/or (ii) any written materials delivered to Buyer or any of its Affiliates or

made available to Buyer or the Buyer Representatives prior to the Effective Date contain information inconsistent with any such representations and warranties. As of the Scheduled Closing Date, Buyer shall also be deemed to have actual knowledge that any representation or warranty contained herein is inaccurate, untrue, or incorrect to the extent that: (A) any written materials delivered to Buyer or any of its Affiliates thereof or made available to Buyer from and after the Effective Date, but prior to the Scheduled Closing Date, contain information inconsistent with any such representations and warranties and (B) Buyer or any of its Affiliates has actual knowledge of any fact or information which is inconsistent with such representation or warranty at the time such representation or warranty was made.

(b) If, after the Effective Date but prior to the Scheduled Closing Date, Buyer or any Affiliate thereof first obtains actual knowledge that any of the Seller Representations made herein is untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within five (5) Business Days of obtaining such actual knowledge (but, in any event, prior to the Scheduled Closing Date). In such event, Seller shall have the right (but not the obligation) to attempt to cure such misrepresentation or breach and shall, at its option, be entitled to a reasonable adjournment of the Scheduled Closing Date (not to exceed forty-five (45) days in the aggregate with all other adjournment rights exercised by Seller hereunder) for the purpose of such cure. If Seller elects to attempt to so cure but is unable to so cure any misrepresentation or breach of warranty, or elects not to cure the same, then Buyer, as its sole remedy for any and all such materially untrue, inaccurate or incorrect representations or warranties, shall elect within five (5) Business Days thereafter either to (i) waive such misrepresentations or breaches of representations and warranties and consummate the Transaction without any reduction of or credit against the Purchase Price or (ii) terminate this Agreement in its entirety by written notice given to Seller on the Scheduled Closing Date (or prior to the Scheduled Closing Date if Seller elects not to cure the same), in which event this Agreement shall be terminated, the Deposit shall be returned to Buyer, and, thereafter, no Party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives any termination of this Agreement.

ARTICLE 9

Covenants of Seller; Bankruptcy Court Matters

Section 9.1 Covenants of Seller. Except as (a) required by applicable Laws and Regulations, (b) expressly contemplated herein or (c) required, authorized or restricted pursuant to the Bankruptcy Code, any order of the Bankruptcy Court in connection with the Bankruptcy or the DIP Credit Agreement, between the Effective Date and the Closing Date or earlier termination of this Agreement (the “Pre-Closing Period”):

(a) Seller shall use commercially reasonable efforts to carry on business with respect to the Property in the Ordinary Course;

(b) Seller shall not terminate or reject any Assigned Leased Property Lease or Assigned Service Contract; and

(c) Seller shall not grant any Lien (other than a Permitted Exception) with respect to the Property.

Section 9.2 Bankruptcy Court Matters.

(a) During the Pre-Closing Period, each Party shall use commercially reasonable efforts to obtain the Sale Order.

(b) Buyer shall promptly take all actions reasonably requested by Seller to assist in obtaining the Sale Order and any other order of the Bankruptcy Court reasonably necessary in connection with the Transaction, in each case as promptly as practicable, including furnishing affidavits, financial information, or other documents or information for filing with the Bankruptcy Court and making such employees and Advisors of Buyer and its Affiliates available to testify before the Bankruptcy Court for the purposes of, among other things, providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under the Bankruptcy Code, as well as demonstrating Buyer’s ability to pay and perform or otherwise satisfy all obligations and liabilities to be assumed by Buyer in connection with the Property at Closing.

(c) Buyer shall appear formally or informally in the Bankruptcy Court if reasonably requested by Seller or required by the Bankruptcy Court in connection with the Transaction.

(d) Buyer shall provide adequate assurance of future performance as required under the Bankruptcy Code for the Assigned Leased Property Leases and Assigned Service Contracts. Buyer agrees that it will take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Leased Property Leases and Assigned Service Contracts, such as furnishing affidavits, financial information and other documents or information for filing with the Bankruptcy Court and making Buyer’s and its Affiliates’ Advisors available to testify before the Bankruptcy Court.

(e) Nothing herein shall prevent Seller from modifying any bidding procedures applicable to the Transaction as necessary or appropriate to maximize value for Seller’s estates in accordance with any applicable order of the Bankruptcy Court.

(f) Seller’s obligations under this Agreement and in connection with the Transactions are subject to entry of and, to the extent entered, the terms of any applicable orders of the Bankruptcy Court (including, without limitation, the entry of the Sale Order). Nothing in this Agreement shall require the Seller or any of its Affiliates to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders.

ARTICLE 10

Closing

Section 10.1 Time and Place of Closing.

(a) The Closing shall take place commencing at 11:00 a.m. (EST), with the Adjusted Purchase Price Balance received by 3:00 p.m. (EST), with Escrow Agent, on the Scheduled Closing Date, TIME BEING OF THE ESSENCE, subject to the Seller's and Buyer's right to adjourn the Closing as expressly permitted under this Agreement.

(b) The date on which the Closing shall actually occur under this Agreement is referred to herein as the "Closing Date".

Section 10.2 Seller's Deliveries. By not later than 5:00 p.m. (EST) on the Business Day immediately preceding the Closing Date, Seller shall deliver or cause to be delivered to the Title Company (for recording or delivery to Buyer, as applicable, upon the completion of Closing) each of the following items, each executed by Seller and acknowledged to the extent appropriate:

- (a) a Deed for each Owned Real Property, in form sufficient for recording;
- (b) a Bill of Sale for the Personal Property;
- (c) an Omnibus Assignment;
- (d) a Leased Property Lease Assignment for each Assigned Leased Property Lease;
- (e) the Seller Closing Update Certificate reaffirming the Seller Representations as of the Closing Date (subject to the rights of Seller to update such representations and warranties as set forth in Section 7.1(a)(iii));
- (f) the Final Closing Statement;
- (g) the FIRPTA Certificate;
- (h) all security codes and master keys to any portion of the Property, to the extent in Seller's possession; and
- (i) such other documents as may be required by the express terms of this Agreement to be delivered by Seller and such other customary conveyance documents, certificates, deeds and other instruments as Buyer may reasonably require to carry out the Transaction and as are customary in like transactions in the State in which any applicable Owned Property is located.

Section 10.3 Buyer's Deliveries. By not later than 5:00 p.m. (EST) on the Business Day immediately preceding the Scheduled Closing Date (except in the case of the funds to be deposited by Buyer pursuant to Section 10.3(a) below, as to which delivery shall be on the Scheduled Closing Date), Buyer shall deliver to the Escrow Agent (for delivery to Seller upon the completion of

Closing), each of the following items, each executed by Buyer and acknowledged to the extent appropriate:

(a) immediately available federal funds sufficient to pay the Adjusted Purchase Price Balance (subject to apportionments and adjustments as set forth herein) and Buyer's share of all escrow costs and closing expenses, which funds, together with the Deposit, shall be released to Seller and credited against the balance of the Purchase Price at Closing;

(b) an Omnibus Assignment;

(c) a Leased Property Lease Assignment for each Assigned Leased Property Lease;

(d) the Buyer Closing Update Certificate;

(e) the Final Closing Statement; and

(f) such other documents as may be required by the express terms of this Agreement to be delivered by Buyer and such other customary documents, certificates and other instruments as Seller or the Title Company may reasonably require to carry out the Transaction and as are customary in like transactions in the State in which any applicable Owned Property is located.

Section 10.4 Apportionments.

(a) **Adjustments and Prorations.** The following items shall be apportioned or adjusted between Seller and Buyer as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date (the "Adjustment Date") on the basis of the actual number of days of the month which shall have elapsed as of the Closing Date and based upon the actual number of days in the month in which the Closing occurs and a 365-day year, and otherwise as set forth in this Section 10.4, in all cases such that Seller shall be charged with the economic benefits and burdens of being a beneficial owner of the Property through and including the day preceding the Closing Date, and Buyer shall be charged with the economic benefits and burdens of being a beneficial owner of the Property from and after the Closing Date:

(i) Real estate taxes and assessments for the Owned Real Properties;

(ii) Utility charges for the Owned Real Properties;

(iii) Common assessments and Property assessments arising under any Permitted Exceptions;

(iv) Prepaid fees or other amounts in respect of any Intangible Property;

(v) Any amounts prepaid or payable under the Accepted Service Contracts;

(vi) All rents, including without limitation, percentage rents, if any, and any additional charges and expenses under the Assigned Leased Property Leases, except to the extent the same are paid by virtue of a Permitted Application;

(vii) All other operating expenses with respect to the Owned Real Properties; and

(viii) such other items with respect to each Owned Real Property as are customarily apportioned in real estate closings of commercial properties in the State in which such Owned Real Property is located.

The foregoing prorations shall be paid by means of an adjustment to the balance of the Purchase Price payable pursuant to Section 2.1, which adjustment shall be an increase in the event of a net amount due to Seller, or a decrease in the event of a net amount due to Buyer, in either case resulting in the Adjusted Purchase Price Balance. Subject to the adjustments and prorations set forth in this Section 10.4, in no event shall Buyer be entitled to any interest in any working capital in the legal or beneficial possession or control of the Seller.

(b) **Preliminary and Final Closing Statements.** All pro-rations and payments to be made under the foregoing provisions of this Section 10.4 shall be made on the basis of a written closing statement, which Seller shall endeavor to provide to Buyer at least three (3) Business Days prior to the Scheduled Closing Date (the “Preliminary Closing Statement”) showing the net amount due either to Seller or Buyer as a result of the adjustments and pro-rations provided for in this Section 10.4. On or prior to the Scheduled Closing Date, Seller and Buyer shall jointly agree upon any adjustments, pro-rations and/or additions to be made to the Preliminary Closing Statement in accordance with the terms of this Agreement and, upon the final determination of such adjustments, pro-rations and/or additions, Seller and Buyer shall each execute the final closing statement (the “Final Closing Statement”) which shall reflect the net amount due to Seller after such adjustments, pro-rations and/or additions. The adjustments, pro-rations and determinations agreed to by Seller and Buyer in the Final Closing Statement shall be conclusive and binding on the Parties hereto, except for any items that are not capable of being determined at the time the Final Closing Statement is agreed to by Seller and Buyer, which items shall be determined and paid in the manner set forth in the Final Closing Statement. Prior to and following the Closing, each Party shall provide the other with such information as the other shall reasonably request in order to finalize any such post-Closing adjustments. Notwithstanding anything in this Agreement to the contrary, any claim for any adjustment under this Section 10.4 will only be valid if made in writing with specificity and only if made on or before the date that is sixty (60) days after the Closing Date.

(c) **Survival.** The terms of this Section 10.4 shall survive the Closing.

Section 10.5 Closing Costs.

(a) Seller shall pay (i) Seller’s own attorneys’ fees and (ii) to the extent that it is customary in the jurisdiction in which any applicable portion of the Property is located for a seller to pay the same, any recording fees payable in connection with recording a Deed;

(b) Buyer shall pay (i) the cost of any survey or owner’s or lender’s title insurance policy and all other due diligence costs incurred by Buyer elects in connection with the Transaction, (ii) to the extent that it is customary in the jurisdiction in which any applicable portion of the Property is located for a buyer to pay the same, any recording fees payable in connection

with recording a Deed, (iii) the cost of recording any memorandum of an Assigned Leased Property Lease that Buyer elects to record after Closing, and (iv) Buyer's own attorneys' fees.

(c) All other customary purchase and sale closing costs shall be allocated among the Parties in accordance with local custom in the jurisdiction in which each applicable portion of the Property is located, it being acknowledged by the Parties that the Transaction is exempt from transfer taxes pursuant to applicable Laws and Regulations.

(d) The provisions of this Section 10.5 shall survive the Closing.

ARTICLE 11

Real Estate Commission

Seller shall be obligated to pay any real estate commissions and/or brokerage fees to [Hilco or Jefferies] (the "Brokers") in connection with the Transaction in accordance with separate written agreements between Seller and Brokers. Each Party represent and warrant to the other Party that (a) it dealt with no broker other than the Brokers and (b) no other brokerage fee or real estate commission is or shall be due or owing in connection with the Transaction as a result of the acts of the representing Party. Each Party hereby indemnify and hold the other Party harmless from any and all Losses incurred by reason of any breach of the foregoing representations and warranties by such representing Party. Seller shall further indemnify and hold Buyer harmless from and against all Losses which may arise by reason of any claim asserted by any Broker in connection with this Agreement or any Broker's representation of Seller. The provisions of this Article 11 shall survive the Closing or the termination of this Agreement.

ARTICLE 12

Termination and Default

Section 12.1 Termination without Default. If the Closing does not occur because of the failure of any condition precedent to Buyer's obligations expressly set forth in this Agreement or for any other reason except (a) a default by Buyer as provided in Section 12.2 or (b) as a result of the actions or omissions of any Affiliate of Buyer, the Deposit shall be returned to Buyer promptly, whereupon this Agreement shall terminate, and no Party shall have any further obligation to the other hereunder except for those obligations which expressly survive the termination of this Agreement.

Section 12.2 Buyer Default. If the Closing is not consummated due to Buyer's failure to perform its obligations under this Agreement, which failure is not cured within three (3) Business Days after written notice from Seller of such failure, then Seller shall be entitled to terminate this Agreement upon written notice, in which case (a) the Deposit shall be delivered to Seller as liquidated damages for Buyer's breach of this Agreement, it being agreed between the Parties that the actual Losses to Seller in the event of such breach are impractical to ascertain and the amount of the Deposit is a reasonable estimate thereof and (b) upon such termination, this Agreement shall terminate and the Parties shall have no further obligations to each other with respect to the Property or otherwise; provided, however, that this Section 12.2 is intended only to

liquidate and limit Seller's right to damages arising due to Buyer's failure to purchase the Property in accordance with the terms of this Agreement and shall not limit the obligations of Buyer or Seller that survive the termination of this Agreement.

Section 12.3 Seller Default.

(a) If, in the absence of a Buyer default, the Closing is not consummated because of a failure by Seller to perform its obligations in accordance with the terms of this Agreement (a "Seller Failure"), which Seller Failure is not cured by Seller within three (3) Business Days after written notice from Buyer, then Buyer may, as its sole and exclusive remedy at law or in equity, either: (i) terminate this Agreement by giving written notice thereof to the Seller, in which event (A) the Deposit will promptly be returned to the Buyer and (B) the Parties shall have no further obligations to each other except for those obligations which expressly survive the termination of this Agreement; (ii) waive such Seller Failure and consummate the Transaction contemplated hereby in accordance with the terms of this Agreement; or (iii) specifically enforce Seller's obligation to consummate the Transaction in accordance with the terms and conditions of this Agreement (and, in connection with such election, Seller hereby waives any requirement for the securing or posting of any bond by Buyer in connection with the pursuit of such remedy); provided, however, that (1) as a condition precedent to Buyer's election to bring an action for specific performance as the result of such Seller Failure hereunder, Buyer must commence such action within fifteen (15) days after the occurrence of such breach and (2) Buyer agrees that its failure timely to commence such an action for specific performance within such fifteen (15) day period shall be deemed a waiver by it of its right to commence such an action.

(b) Notwithstanding the foregoing or anything herein to the contrary: if the Closing is not consummated because of a Seller Failure or Seller's inability to timely cure any such Seller Failure as provided in Section 12.3(a) above, and such Seller Failure is a result of any actions or omissions of Buyer or any Affiliate of Buyer, then Buyer shall be deemed to have elected to proceed pursuant to Section 12.3(a)(ii) with respect to such Seller Failure (and such Seller Failure shall not constitute a default by Seller hereunder).

(c) This Section 12.3 is intended only to limit Buyer's right to damages arising due to Seller's failure to consummate the Transaction in accordance with the terms of this Agreement and shall not limit the obligations of Seller that survive the termination of this Agreement.

Section 12.4 Breach of Representations.

(a) Each of the Seller Representations and Buyer Representations and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in Contract, in tort or at law or in equity) may be brought in respect thereof after the Closing. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term for such survival is specified, then for one (1) year following the Closing Date, and

nothing in this Section 12.4 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Notwithstanding this Section 12.4, nothing in this Section 12.4 shall limit any right or remedies available to Buyer in respect of a claim for fraud.

(b) The provisions of this Section 12.4 shall survive the Closing.

ARTICLE 13

Intentionally Omitted

ARTICLE 14

Escrow Account

Section 14.1 Escrow Account. The funds represented by the Deposit may be, but shall not be required to be, held in escrow by Seller in an interest-bearing bank account with Citibank, N.A., JPMorgan Chase Bank, N.A. or any other bank in New York City that is a member of the New York City Clearinghouse Association (an “Approved Bank”). The Deposit shall become the property of Seller upon the occurrence of the Closing in accordance with the terms of this Agreement.

Section 14.2 Taxes. Unless Seller retains the deposit pursuant to Section 12.2, Buyer shall pay all taxes on and with respect to the Deposit. Seller shall not be responsible for any diminution in value of the Deposit, the loss of any principal or interest thereon, or penalties incurred with respect thereto, for any reason whatsoever; provided that the Deposit is held by Seller as provided in this Article 14.

ARTICLE 15

Miscellaneous

Section 15.1 Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the Transaction, and it supersedes all prior discussions, understandings or agreements among Parties. All Exhibits and Schedules attached hereto are a part of this Agreement and are incorporated herein by reference.

Section 15.2 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 15.3 Assignment by Buyer. Without the prior written consent of Seller (which may be granted or withheld in Seller’s sole and absolute discretion), Buyer shall not, directly or indirectly, assign this Agreement or any of its rights hereunder.

Section 15.4 Waiver. The excuse or waiver of the performance by a Party of any obligation of the other Party under this Agreement shall only be effective if evidenced by a written statement signed by the Party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any Party of the breach of any covenant of this

Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

Section 15.5 Governing Law; Jurisdiction.

(a) This Agreement and all documents executed and delivered in connection herewith shall be construed in accordance with the internal laws of the State of New York without regard to the principles of choice of law or conflicts of law.

(b) In recognition of the benefits of having any disputes with respect to this Agreement resolved by an experienced and expert person, the Parties hereby agree that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by any party hereto on or with respect to this Agreement or which in any way relates, directly or indirectly, to this Agreement or any event, transaction, or occurrence arising out of or in any way connected with this Agreement, the Property, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING.**

(c) Each of the Parties: (i) irrevocably submits itself to the jurisdiction of the courts of any state or federal court in the Borough of Manhattan, County of New York, State of New York, for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or any documents delivered in connection herewith; (ii) waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court; and (iii) consents to service of process by registered mail at the address to which notices are to be given if personal service is not with the exercise of reasonable efforts possible. The provisions of this Section 15.5 shall survive the Closing or termination of this Agreement.

Section 15.6 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. The exchange of signature pages by facsimile or Portable Document Format (“PDF”) transmission shall constitute effective delivery of such signature pages. Signatures of the Parties transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 15.7 Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered (a) upon the delivery (or refusal to accept delivery) by messenger or overnight express delivery service (or, if such date is not on a Business Day, on the Business Day next following such date), or (b) upon the delivery of a PDF via email transmission on a Business Day (or, if such date is not on a Business Day, on the Business Day next following such date), addressed as follows:

To Seller: 99 Cents Only Stores LLC
1730 Flight Way

Suite 100
Tustin, CA 92782
Attention: Christopher Wells
Email: cwells@alvarezandmarsal.com

with a copy to: Milbank LLP
55 Hudson Yards
New York, New York 10001
Attention: Mike Price; Lauren Doyle; Brian Kinney
Email: mprice@milbank.com; ldoyle@milbank.com;
bkinney@milbank.com

To Buyer: Russ Group, Inc.
635 W. 7th Street, Suite 310
Cincinnati, OH 45203
Attention: Ronald Russ
Email: rruss@russgroupinc.com

with a copy to: Mark Dall, Esq.
11051 Mirador Lane
Fishers, IN 46037
Attention:
Email: raymarcabl@att.net

To Escrow Agent: Chicago Title Insurance Company
10 South LaSalle Street, Suite 3100
Chicago, Illinois 60603
Attention: Eric Anderson
Email: Eric.Anderson@ctt.com

Any address or name specified above may be changed by notice given to the addressee by the other Party in accordance with this Section 15.7. The inability to deliver notice because of a changed address of which no notice was given as provided above, or because of rejection or other refusal to accept any notice otherwise appropriately given as provided above, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any Party hereto may be given by the counsel for such Party.

Section 15.8 Attorneys' Fees. In the event of a judicial or administrative proceeding or action by one Party against the other Party with respect to the interpretation or enforcement of this Agreement, the prevailing Party shall be entitled to recover reasonable out-of-pocket costs and expenses, including reasonable attorneys' fees and expenses, whether at the investigative, pretrial, trial or appellate level. The prevailing Party shall be determined by the court based upon an assessment of which Party's major arguments or position prevailed. The provisions of this Section 15.8 shall survive the Closing or termination of this Agreement.

Section 15.9 Income Tax Matters. The Parties hereto hereby agree that Escrow Agent shall act as “the person responsible for closing” the Transaction pursuant to Section 6045(e) of the Code and shall prepare and file all informational returns, including IRS Form 1099-S, and shall otherwise comply with the provisions of Section 6045(e) of the Code.

Section 15.10 Time Periods. Any reference in this Agreement to the time for the performance of obligations or elapsed time shall mean consecutive calendar days, months, or years, as applicable. In the event the time for performance of any obligation hereunder expires on a day that is not a Business Day, the time for performance shall be extended to the next Business Day.

Section 15.11 Modification of Agreement. No modification of this Agreement shall be deemed effective unless in writing and signed by all Parties.

Section 15.12 Further Instruments. Each Party, promptly upon the request of the other, shall execute and have acknowledged and delivered to the other or to Escrow Agent, as may be appropriate, any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement and which are consistent with the provisions of this Agreement.

Section 15.13 Descriptive Headings; Word Meaning. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement. Words such as “herein”, “hereinafter”, “hereof” and “hereunder” when used in reference to this Agreement, refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. The word “including” shall not be restrictive and shall be interpreted as if followed by the words “without limitation.”

Section 15.14 Time of the Essence. TIME IS OF THE ESSENCE TO THIS AGREEMENT AND TO ALL DATES AND TIME PERIODS SET FORTH HEREIN, INCLUDING, WITHOUT LIMITATION, EACH PARTY’S OBLIGATION TO CONSUMMATE THE CLOSING ON THE APPLICABLE SCHEDULED CLOSING DATE, AS SAME MAY BE ADJOURNED AND/OR EXTENDED PURSUANT TO THE EXPRESS TERMS OF THIS AGREEMENT.

Section 15.15 Construction of Agreement. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that the Parties have contributed substantially and materially to the preparation of this Agreement.

Section 15.16 Limitations on Liability. Notwithstanding anything to the contrary in this Agreement, (a) subject to any additional limitations on Seller Parties’ liability set forth elsewhere in this Agreement, in no event shall any of the Seller Parties (other than Seller) or any of the direct or indirect owners of any of the Seller Parties (including Seller) have any personal liability under this Agreement and (b) subject to any additional limitations on Buyers’ liability set forth elsewhere

in this Agreement, in no event shall any of the direct or indirect owners of Buyer have any personal liability under this Agreement. The acceptance of the Deed by the Buyer shall constitute full performance of all of Seller's obligations hereunder other than those obligations of Seller, if any, that by the express terms hereof are to survive the Closing.

Section 15.17 Severability. The Parties hereto intend and believe that each provision in this Agreement comports with all applicable local, state and federal laws and judicial decisions. If, however, any provision in this Agreement is found by a court of law to be in violation of any applicable local, state, or federal law, statute, ordinance, administrative or judicial decision, or public policy, or if in any other respect such a court declares any such provision to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all Parties hereto that, consistent with and with a view towards preserving the economic and legal arrangements among the Parties hereto as expressed in this Agreement, such provision shall be given force and effect to the fullest possible extent, and that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable provision were not contained herein, and that the rights, obligations, and interests of the parties under the remainder of this Agreement shall continue in full force and effect.

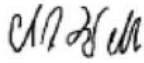
Section 15.18 Joint and Several. If Seller or Buyer consists of more than one person or entity, the constituent parties of Seller or Buyer, as the case may be, shall be jointly and severally liable for the obligations of Seller or Buyer, as the case may be, under this Agreement and the other documents to be executed and delivered by Seller or Buyer at the Closing. In addition, a default by one or more constituent parties of Seller or Buyer, as the case may be, shall be deemed a default by Seller or Buyer, as the case may be.

[The balance of this page has intentionally been left blank. Signature pages follow.]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

99 CENTS ONLY STORES LLC, a California
limited liability company

By: 
Name: Christopher Wells
Title: Chief Restructuring Officer

[Signatures continue on following page.]

BUYER:

RUSS GROUP, INC, an Ohio corporation


By: 
Name: Ronald B. Russ
Title: President

EXHIBIT A

FORM OF DEED

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:

[_____]
[_____]
[_____]

MAIL TAX STATEMENTS TO:

[_____]
[_____]
[_____]

(Space above this line for Recorder's use)

APN(s): []

THE UNDERSIGNED GRANTOR DECLARES:

DOCUMENTARY TRANSFER TAX is \$[_____]. [CITY TAX \$_____]

- ☐ Computed on full value of property conveyed, or
- ☐ Computed on full value less value of liens or encumbrances remaining at time of sale,
- ☐ Unincorporated area ☐ City of [CITY]

GRANT DEED

THIS GRANT DEED is made as of this [_____] day of [____], 2024 by [99 CENTS ONLY STORES LLC / 99 CENTS PROPCO LLC], a California limited liability company ("Grantor"), to [_____] a [_____] ("Grantee").

Witnesseth:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby GRANTS, BARGAINS, SELLS AND CONVEYS to Grantee that certain real property located in the City of [CITY], County of [COUNTY], State of California and legally described on Exhibit A attached hereto, together with all of Grantor's right, title and interest in and to all appurtenances thereon or in any way appertaining thereto and all of Grantor's right, title

and interest in and to all buildings, structures, fixtures and improvements located thereon, subject to all matters of record, all matters that would be ascertained from a survey, and all matters discoverable from a physical inspection of the property.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the day and year first set forth above.

GRANTOR: **[99 CENTS ONLY STORES LLC/99 CENTS
PROPCO LLC],**
a California limited liability company

By: _____

Name: _____

Title: _____

(All signatures must be acknowledged)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF [])
) ss:
COUNTY OF [])

On the ____ day of _____ in the year 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Notary Public

Exhibit A

Legal Description

EXHIBIT B

FORM OF BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that _____, a _____, a [California limited liability company/Delaware corporation] ("**Seller**"), in consideration of Ten Dollars (\$10.00) and other good and valuable consideration paid by _____, a _____ ("**Buyer**"), the receipt and sufficiency of which are hereby acknowledged, hereby sells, conveys, assigns, transfers, delivers and sets over to Buyer all of Seller's right, title and interest, if any, in and to all Personal Property (as such term and all other capitalized terms used and not otherwise defined herein are defined in that certain Asset Purchase Agreement between Seller, as seller, and [Buyer], as buyer, dated as of _____, 202[] (the "**Purchase Agreement**")) attached or affixed to, or located on, or used or employed in connection with, the Owned Real Property and excluding the Excluded Items.

TO HAVE AND TO HOLD the same unto Buyer, its successors and assigns to and for its and their own use and behalf forever.

Buyer agrees to pay all sales taxes payable by reason of the transfer to Buyer of said Personal Property.

BUYER ACKNOWLEDGES THAT THE PERSONAL PROPERTY IS HEREBY SOLD, ASSIGNED, TRANSFERRED AND CONVEYED TO BUYER ON AN "AS IS", "WHERE IS", "WITH ALL FAULTS" BASIS, WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTY, PROMISE, PROJECTION OR PREDICTION WHATSOEVER WITH RESPECT TO SUCH PERSONAL PROPERTY, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS SET FORTH IN THE PURCHASE AGREEMENT.

This Bill of Sale may be executed in any number of counterparts which, when taken together, shall constitute a single binding instrument. Execution and delivery of this Bill of Sale by transmission of a signed signature page by facsimile or PDF shall be sufficient for all purposes and shall be binding on any Person who so executes.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Seller and Buyer have executed this Bill of Sale as of
this _____ day of _____, 202[___].

SELLER:

[SELLER ENTITY], a [California limited liability
company/Delaware corporation]

By: _____

Name: _____

Title: _____

BUYER:

[BUYER ENTITY], a ☐

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF OMNIBUS ASSIGNMENT

THIS OMNIBUS ASSIGNMENT (CONTRACTS AND OTHER PROPERTY RIGHTS) (this “Assignment”), is made and entered into as of the ____ day of _____, 202[] (the “Effective Date”) by _____, a [California limited liability company/Delaware corporation], (“Assignor”) for the benefit of _____, a _____ (“Assignee”).

W i t n e s s e t h:

For Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns to Assignee all of Assignor’s right, title and interest in, to and under: (a) any strips and gores of land within or adjoining the Land (as this and all other capitalized terms used and not otherwise defined herein are defined in that certain Asset Purchase Agreement between Assignor, as seller, and [Assignee], as buyer, dated as of [], 202[] (the “Purchase Agreement”)), and any land lying in the bed of any street, road or avenue, opened or proposed, public or private, in front of or adjoining the Owned Real Property or any portion thereof, to the center line thereof, and all awards made or to be made in lieu thereof and any unpaid award for damage to the Owned Real Property by reason of change of grade of any street; (b) all Personal Property; (c) all easements, rights of way, privileges, licenses, appurtenances and other rights and benefits now or hereafter pertaining to the Land, including, without limitation, any air or development and zoning rights or privileges and easements relating to, affecting or appurtenant to the Land or any portion thereof; (d) all leases relating to the Owned Real Property, including all security deposits and advance rentals made thereunder and any guarantees related thereto; (e) all contracts pertaining to the operation of the Owned Real Property, including all management, leasing, service and maintenance agreements, and equipment leases; (f) all consents, authorizations, variances, licenses, permits and certificates of occupancy, if any, issued by any Governmental Authorities with respect to the Owned Real Property; (g) all intangible property associated with the Owned Real Property, including, without limitation, trademarks, logos, trade or business names, copyrights, mailing lists, internet domain names, promotional materials, business licenses and telephone numbers, if any, owned by or licensed to Seller and used by Seller with respect to its ownership, leasing and/or use or operation of the Owned Real Property; (h) all warranties, guaranties, indemnities and bonds relating to the Owned Real Property; (i) all site plans, architectural renderings, plans and specifications, as-built drawings, floor plans and other similar plans or diagrams relating to the Owned Real Property; and (j) all other assets relating to or benefiting the Owned Real Property or the ownership, occupancy, operation, maintenance and/or repair thereof (collectively, the “Assigned Property”).

TO HAVE AND TO HOLD unto Assignee and its successors and assigns to its and their own use and benefit forever.

THIS ASSIGNMENT IS MADE ON AN “AS-IS, WHERE-IS, WITH ALL FAULTS” BASIS, WITHOUT RECOURSE AND WITHOUT ANY REPRESENTATION OR

WARRANTY (EXPRESS OR IMPLIED) WHATSOEVER EXCEPT FOR THE REPRESENTATIONS OF SELLER EXPRESSLY SET FORTH IN THE PURCHASE AGREEMENT.

This Assignment is binding on, and inures to the benefit of, the parties hereto and their respective successors and assigns.

This Assignment may be executed in any number of counterparts which, when taken together, shall constitute a single binding instrument. Execution and delivery of this Assignment by transmission of a signed signature page by facsimile or PDF shall be sufficient for all purposes and shall be binding on any Person who so executes.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first above written.

ASSIGNOR:

_____, a [California limited
liability company/Delaware corporation]

By: _____
Name:
Title:

EXHIBIT D

FORM OF FIRPTA CERTIFICATE

[_____] , 202[]

Section 1445 of the Internal Revenue Code of 1986, as amended (the “Code”), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by [SELLER ENTIT(Y)/(IES)], a [California limited liability company/Delaware corporation] (“Seller”), the undersigned hereby certifies under penalties of perjury the following on behalf of Seller:

- (a) Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Treasury Regulations);
- (b) Seller is [not] a disregarded entity as defined in Treasury Regulations Section 1.1445-2(b)(2)(iii);
- (c) Seller’s U.S. employer identification number is [_____] ; and
- (d) Seller’s office address is [_____].

Seller understands that this certification may be disclosed to the Internal Revenue Service [] and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and, to the best of my knowledge and belief, it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of Seller.

Seller:

[SELLER ENTIT(Y)/(IES)],
a [California limited liability company/Delaware corporation]

By: _____

Name:

Title:

DATE: _____

EXHIBIT E

FORM OF SELLER CLOSING UPDATE CERTIFICATE

Pursuant to that certain Asset Purchase Agreement dated as of [____], 202[] (the “Agreement”) by and among [SELLER ENTIT(Y)/(IES)], a [California limited liability company/Delaware corporation] (“Seller”) and [BUYER ENTITY], a [] (“Buyer”) and subject to and in accordance with the terms and provisions thereof, Seller hereby certifies to Buyer that, as of the date hereof, the representations and warranties made by it in Section 8.2 of the Agreement continue to be true and correct [except for the following: _____].

Seller:

[SELLER ENTIT(Y)/(IES)],
a [California limited liability company/Delaware]

By: _____

Name:

Title:

DATE: _____

EXHIBIT F

FORM OF BUYER CLOSING UPDATE CERTIFICATE

Pursuant to that certain Asset Purchase Agreement dated as of [____], 202[] (the “Agreement”) by and among [SELLER ENTIT(Y)/(IES)], a [California limited liability company/Delaware corporation] (“Seller”) and [BUYER ENTITY], [] (“Buyer”) and subject to and in accordance with the terms and provisions thereof, Buyer hereby certifies to Seller that, as of the date hereof, the representations and warranties made by Buyer in Section 8.1 of the Agreement continue to be true and correct [except for the following: _____].

Buyer:

[BUYER ENTITY],
a [California limited liability company/Delaware corporation]

By: _____

Name:

Title:

DATE: _____

SCHEDULE A

PROPERTY ADDRESS(ES) (OWNED REAL PROPERTIES)

1. 606 E. Holt Ave, Pomona CA

SCHEDULE B

LEGAL DESCRIPTION(S) (OWNED REAL PROPERTIES)

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 5 OF [TRACT NO. 24700](#), IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 750 PAGES 51](#) TO 53 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

[APN: 8337-018-021](#)

SCHEDULE C

ASSIGNED LEASED PROPERTY LEASES

None.

SCHEDULE D

ASSIGNED SERVICE CONTRACTS

[To be inserted.]