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CARRIE WEN S. BURKE  
CLERK IDAHO

Attorneys for Plaintiff/Counterdefendant Recuperos, LLC

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho limited liability  
company,

Plaintiff,

vs.

AMERICAN FOOD STORES, LLC, a  
California limited liability company,

Defendant.

AMERICAN FOOD STORES, LLC, a  
California limited liability company,

Counterclaimant,

vs.

RECUPEROS, LLC, an Idaho limited liability  
company,

Counterdefendant.

Civil No. 04-229-S-BLW

**SECOND AFFIDAVIT  
OF BRIAN NAEVE**



8. Attached hereto and identified as Exhibit "B" is a true and correct copy of the notice of termination of the Purchase Agreement, dated January 16, 2004.

9. Throughout the negotiation of the Purchase Agreement, and the subsequent Settlement Agreement, dated January 28, 2004, between the parties, the defendant was represented by counsel.

10. Despite the defendant's attempts to scuttle a transaction with Super America, LLC ("SAL"), the plaintiff was able to hold the deal together and, eventually, the Subject Properties were sold to SAL.

11. In order to preserve the SAL transaction, the plaintiff was forced to make several concessions because of the defendant's claims. Such concessions included an agreement by the plaintiff to remove the lis pendens or cause the title to insure over the lis pendens, an agreement to indemnify SAL for any damages or losses if such insurance or such removal could not be secured and, finally, an agreement to escrow \$550,000 of the Subject Properties sales proceeds to guarantee the plaintiff's obligations as to the lis pendens.

12. After this Court's July 2, 2004, Memorandum Decision and Order, the plaintiff obtained the issuance of an Order to Show Cause from a Colorado state court in order to seek removal of the lis pendens.

13. Attached hereto and identified as Exhibit "C" is a true and correct copy of an Order and Decree, dated August 3, 2004, from the Colorado state court, relating to the validity and removal of the lis pendens.

14. Attached hereto and identified as Exhibits "D" through "G" are true and correct copies of four rerecorded lis pendens in Weld County, Colorado, which indicate recordation within one hour of the Colorado court's ruling discussed above.

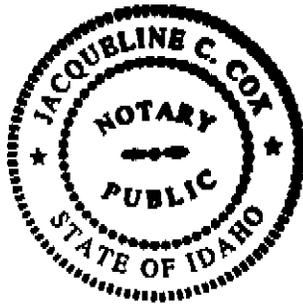
Further your affiant sayeth naught.

DATED this 10 day of August, 2004.

*Brian Naeve*

BRIAN NAEVE

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of August, 2004.



*Jacquiline C. Cox*  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise, Idaho  
My Commission Expires 7-19-2005

**CERTIFICATE OF SERVICE**

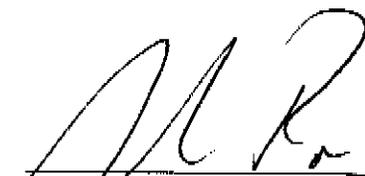
I HEREBY CERTIFY that on this 11 day of August, 2004, I caused a true and correct copy of the foregoing **SECOND AFFIDAVIT OF BRIAN NAEVE** to be served by the method indicated below, and addressed to the following:

Robert L. Chortek  
BERLINER COHEN  
10 Almaden Boulevard, 11th Floor  
San Jose, CA 95113-2233  
Fax: (408) 998-5388

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

R. Wade Curtis  
BELNAP & CURTIS, P.L.L.P.  
1401 Shoreline Drive, Suite 2  
Post Office Box 7685  
Boise, Idaho 83707-1685  
Fax: (208) 345-4461

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

  
\_\_\_\_\_  
Michael O. Roe

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is made and entered into as of November 12, 2003 (the "Effective Date"), by and between Recuperos, LLC, an Idaho limited liability company ("Seller"), and American Food Stores, LLC, a California limited liability company ("Buyer").

### RECITALS

- A. Seller is the owner of certain convenience stores operated under the name "Everyday Convenience Stores" which are located in the State of Colorado, and are more particularly described on **Exhibit A** and **Exhibit B** attached hereto (the "Stores").
- B. Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, certain assets of Seller that are related to the Stores, as set forth more specifically herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1. Transfer of Assets.

1.1. Purchase and Sale of Assets. At the Closing, as hereinafter defined, in consideration of the covenants, representations, warranties and obligations of Seller and Buyer hereunder, and subject to the conditions hereinafter set forth, Seller shall sell, assign, transfer, convey, and deliver to Buyer, and Buyer shall purchase from Seller, all right, title, and interest in and to the following assets (collectively, the "Property"):

1.1.1. Owned Real Property. Fee simple title in and to those parcels of real property described in **Exhibit A** to this Agreement (collectively, the "Owned Real Property"). The Owned Real Property shall also include all of the Seller's right, title and interest in and to the following: (i) all easements, tenements, hereditaments, privileges and appurtenances in any way belonging to the Owned Real Property and the Improvements (defined below), (ii) any land lying in the bed of any highway, street, road, avenue or access way, open or proposed, in front of or abutting or adjoining the Owned Real Property and the Improvements, (iii) the use of all strips and rights of way, if any, abutting, adjacent, contiguous to or adjoining the Owned Real Property and the Improvements, and (iv) all other rights and appurtenances belonging or in any way pertaining thereto including, without limitation, all water, wastewater and other utility rights and capacities;

1.1.2. Leased Real Property. Seller's right, title, and interest, including security and other deposits thereunder, as lessor under those real property leases (the "Real Property Leases") described on **Exhibit B** to this Agreement (the "Leased Real Property"). Seller shall use reasonable efforts to obtain any required consents to assign the Leased Real Property.



1.1.3. Improvements. All improvements, and all appurtenances to such improvements, located on the Owned Real Property, including, without limitation, buildings, outside storage areas, signage, and pylon signs, driveways, walkways and parking areas, but in all events only to the extent of Seller's interest in the same (collectively, the "Improvements").

1.1.4. Equipment. All items of equipment and tangible personal property (other than inventory) located at the Stores or held in storage at an off-site facility in the State of Colorado, including, without limitation, all furniture, machinery, equipment, tools, spare parts (but only if such spare parts are located at any Store), computers (including any software and related licenses to utilize the same), shelving, refrigeration equipment, freezers, supplies, tanks, pumps, canopies, signage, fixtures and furnishings (collectively, the "Equipment"), but in all events only to the extent of Seller's interest in the same and except that equipment and tangible personal property leased pursuant to the Assumed Equipment Leases (as defined below). The Equipment shall also include all of the Seller's right, title and interest, as lessee, under leases covering any machinery, equipment, furniture, computers, appliances and all other tangible personal property not owned by the Seller, but utilized by the Seller, on the date of closing in connection with the use and operation of any of the Property, but excluding those leases that the related lessor does not consent to the assignment of Seller's lessee interest to the Buyer and further excluding those leases with respect to which the Buyer does not assume Seller's obligations thereunder at Closing, (collectively, the "Assumed Equipment Leases");

1.1.5. Inventory. All saleable fuel, merchandise, tobacco products, and other inventory of Seller located at each of the Stores as of the Closing Date (the "Inventory").

1.1.6. Governmental Licenses and Permits. All right, title and interest in all licenses, permits, applications, registrations, exemptions, franchises, consents, waivers, variances, authorizations, approvals and orders issued by any federal, state, municipal or other governmental authority relating to the Property (collectively, the "Permits"), to the extent they are assignable.

1.1.7. Contracts. All of Seller's right, title and interest in contracts relating to the operation of the Stores (including, without limitation, motor fuel sales, supply or other similar agreements of the Seller), but excluding (a) any management or other similar agreement with FFP Operating Partners, L.P. or any of its affiliates (collectively the "Management Company") for the management and operation of any of the Stores, and (b) those contracts that (i) are not cancelable without penalty or premium within thirty (30) days after Closing or (ii) any other party (other than Seller) to the applicable contract does not consent in writing prior to Closing to the assignment of Seller's interest under such contract to the Buyer (collectively, the "Contracts").

1.1.8. Goodwill. Subject to Section 1.5, all goodwill and going concern value related to the Property.

1.1.9. Deposits. All prepaid items, deposits and other similar assets of the Seller related to the Property, including but not limited to, lease and utility deposits, which exist at Closing and relate to the Property (collectively, "Deposits");

1.1.10. Cash. Any Cash on hand at each of the Stores, in amounts requested by Buyer to be retained in each of the Stores as of the Closing Date. Otherwise, Seller will be entitled to all cash on hand in the Stores as of the Closing Date.

1.1.11. Trademarks; Signage. All trademarks, trade names, and service marks used in connection with the Stores, whether registered or unregistered, and all goodwill associated with such trademarks and all signage related to any of the Stores.

1.2. Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Property to Buyer shall be made by deeds, assignments, a bill of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below.

1.3. Excluded Assets. The Property shall not include any contracts not cancelable without penalty or premium within thirty (30) days after Closing, including, without limitation, motor fuel sales, supply or other similar agreements of the Seller, leases, agreements, vendor contracts, management agreements and building service agreements to which the Seller is a party and that relate to the operation of the Stores, other than the Real Property Leases and the Assumed Equipment Leases.

1.4. Assumed Liabilities. At Closing, the Buyer shall only assume the operating liabilities of the Seller under the Real Property Leases, the Assumed Equipment Leases, the Permits and the Contracts, but only to the extent such liabilities are attributable to Seller's obligations under the Real Property Leases, the Assumed Equipment Leases, the Permits, and the Contracts accruing and arising after Closing (the "Assumed Liabilities"), and all of the Property shall be conveyed and transferred to the Buyer free and clear of all liens, security interests and other encumbrances other than, with respect to the Owned Real Property and the Leased Real Property: (i) the lien of current real property taxes, personal property taxes, water charges, sewer rents and assessments not yet due and payable or payable but not yet delinquent (all of said amounts to be prorated between Seller and Buyer as of Closing), and (ii) covenants, conditions, restrictions, rights of way, easements and other matters of public record as of the date of Closing.

## 2. Consideration.

2.1. Purchase Price - Property Other than Inventory, Cash and Deposits. The purchase price ("Purchase Price") for all Property shall be the sum of: (a) the Non-Inventory, Cash and Deposit Purchase Price, (b) the Inventory Purchase Price, (c) the Deposit Purchase Price, and (d) the Cash Purchase Price. The purchase price for all Property other than Inventory, Cash and Deposits (the "Non-Inventory, Cash and Deposit Purchase Price"), shall be Ten Million Dollars (\$10,000,000), plus the amount, if any, paid by Seller to Circle K Stores, Inc. (or its affiliates) to purchase the fee interest at Unit 5714, which shall be paid as follows:

2.1.1 (a) Buyer shall finance the Non-Inventory, Cash and Deposit Purchase Price to through the assumption of a portion of the debt (the "Assumed Amount") currently owed by Seller to Wachovia Trust Company, N.A. as Owner Trustee and Wells Fargo Bank Minnesota, N.A. as Indenture Trustee of the ACLC Business Loans Receivables Trust 1999-1 and Wachovia Trust Company, N.A. as Owner Trustee and Wells Fargo Bank Minnesota, N.A. as Indenture Trustee of the ACLC Business Loans Receivables Trust 1999-2 (collectively

"Seller's Lender"). Buyer shall execute an assumption agreement (the "Assumption Agreement") whereby Buyer agrees to assume the Assumed Amount on the terms set forth herein. The Assumed Amount shall be further evidenced by the execution by Buyer of a promissory note (the "Assumed Note") in the amount of the Assumed Amount. The Assumed Amount shall be the sum of the following: (1) \$10,000,000; plus (2) the amount, if any paid by Seller to Circle K Stores, Inc. (or its affiliates) to purchase the fee interest at Unit 5714; minus (3) the excess portion of the Cash Payment (as defined in Section 3.1.4(b) below) that is remaining after allocating the Cash Payment to (a) the Non-Inventory, Cash and Deposit Purchase Price, (b) the Inventory Purchase Price, (c) the Deposit Purchase Price, and (d) the Cash Purchase Price, and (e) any other closing, title or other costs required to be paid on the Closing Date by Buyer under this Agreement limited in the aggregate to \$95,000.00; minus (4) the Earnest Money. The Assumed Note shall bear interest at the rate of 8.5% per annum, with monthly payments due on the first day of each month commencing on the first day of the first month after the Closing Date and continuing for one hundred eighty (180) months (i.e. 15 years) thereafter at which time all amounts due and owing under the Assumed Note shall be due and payable. The monthly payments shall be in an amount that fully amortizes the Assumed Amount at the applicable interest rate over the one hundred eighty month term of the Assumed Note. Buyer may prepay the Assumed Note in whole or in part at any time without penalty or premium. At or prior to the Closing Date when the actual Assumed Amount is determined in accordance with the formula set forth above, Buyer and Seller shall allocate the Assumed Amount among the Stores (the "Payoff Amounts"). The Assumed Note shall contain a provision allowing Borrower to obtain the release of the lien of Seller's Lender for any particular Store by paying to Seller's Lender the Payoff Amount (plus accrued interest) allocated to the Store being paid off. In addition to the Assumption Agreement and Assumed Note, Buyer shall execute or otherwise cause to be executed the following documents: (i) modifications to the applicable deeds of trust (collectively the "Modifications") that are currently recorded against the Stores which amends the applicable deeds of trust to evidence and secure the Assumed Note and Assumed Amount; (ii) a pledge and security agreement (the "Security Agreement") whereby Buyer pledges all inventory, equipment and other personal property to be owned by Buyer at the Stores as security for the Assumed Note; and (iii) any other standard loan documents required by Seller or Seller's Lender. The Assumption Agreement, Assumed Note, Modifications, Security Agreement, and all other loan document required by Seller or Seller's Lender are hereinafter collectively referred to as the "Financing Documents". The Financing Documents shall be in form and substance acceptable to Seller and Seller's Lender. Within five (5) days of the Effective Date, Buyer shall deliver or cause to be delivered to Seller the current personal financial statements of the equity owners of the Buyer for Seller's Lender to review.

2.1.2. Deleted Stores; Adjustments in the Event of a Material Adverse Change.

(a) Notwithstanding Section 2.1 above, in the event there is a Material Adverse Change in the condition of the Property or Stores, Buyer, at its option and in its sole discretion, may either (i) proceed with the Closing and take title to the affected Property or Stores provided that any proceeds of any insurance, condemnation or similar proceedings, if applicable, due to Seller related to such Material Adverse Change shall be delivered or assigned by Seller to Buyer at Closing, or (ii) proceed to Closing with respect to all of the other Property hereunder (excluding the applicable Store(s) affected by Material Adverse Change, including the Property related thereto), in which case the parties shall negotiate in good faith a reduction of the Purchase Price equal to the fair market value of the Property located at the applicable Store(s) for

which such Material Adverse Change shall have occurred. In such event, the Buyer shall not be obligated to purchase the applicable Store(s) for which such Material Adverse Change shall have occurred, including the Property related thereto, unless and until seven (7) days after the Buyer is furnished with reasonable evidence that such Material Adverse Change has been cured to the reasonable satisfaction of the Buyer. Notwithstanding the foregoing, if such Material Adverse Change for the applicable Store(s) is not cured to the reasonable satisfaction of the Buyer on or before the Closing Date, then Buyer, at its option, shall either (i) waive the foregoing curative requirement of the Seller with respect to such Material Adverse Change and proceed to purchase such Store(s) and the Property related thereto, or (ii) terminate this Agreement as to such Store(s), whereupon, the Buyer shall have no further obligations hereunder to the Seller with respect to such Store(s). In the event that the parties are unable to negotiate an acceptable reduction in the Purchase Price, the parties shall select a neutral third party appraiser who is qualified to value convenience store businesses and property to determine the amount of the Purchase Price reduction, which shall be binding on the parties. If the parties are unable to agree on the selection of a third party appraiser, the parties shall each select its own third party appraiser, and the two appraisers shall promptly and mutually appoint a third independent qualified appraiser to determine the amount of the Purchase Price reduction. Provided, however, that if the excluded Store(s) shall result in a Purchase Price reduction equal to or greater than \$1,000,000, Seller may elect to terminate this Agreement, and cause the return of the Deposit (minus the At Risk Earnest Money) to Buyer, whereupon the parties shall have no further obligations to each other.

(b) For purposes of this Section 2.1.2, "Material Adverse Change" shall mean the destruction of, any damage in excess of \$75,000 in restoration costs to, or the institution or maintenance of condemnation or similar proceedings with respect to any of the Property or Stores. In the event there is any damage with respect to any of the Property or Stores that is equal to or less than \$75,000 in restoration costs, the parties shall proceed with the Closing with respect to such affected Property or Stores and Buyer shall be entitled to (i) any casualty proceeds due to Seller as a result of such damage and (ii) a credit against the Purchase Price in the amount of any deductible offsetting such casualty proceeds.

(a) For purposes of this Section 2.1.2, the following curative measures for the applicable type of Material Adverse Change shall be deemed to be satisfactory to the Buyer: (i) with respect to the destruction of, or any material damage to, any of the Property or Stores, the Seller shall have (A) furnished the Buyer with satisfactory proof that the applicable destruction or damage is covered by casualty or hazard insurance maintained by the Seller in an amount necessary to cover all replacement and restorative costs necessary to fully replace and restore the applicable Store(s) to its condition as of the date of the applicable destruction or damage, (B) assigned to the Buyer such insurance coverage in a manner so as to cause the Buyer to be the sole party to negotiate, compromise and settle any coverage claim as to such destruction or damage, (C) to the extent reasonably required under the terms of the applicable insurance policy, furnished the Buyer with the written consent of the applicable insurance carrier to such assignment by the Seller to the Buyer of such insurance coverage, and (D) paid to the Buyer the entire amount of any deductible(s) applicable to such insurance coverage; and (ii) with respect to the institution or maintenance of condemnation or similar proceedings with respect to any of the Property or Stores, the Seller shall have (A) furnished the Buyer with reasonably satisfactory evidence that the proceeds offered to be paid by the applicable governmental entity with respect to such condemnation or other similar proceeding for the applicable Store(s) subject to such proceedings is the approximate fair market value of

such affected Store(s), and (B) assigned to the Buyer all proceeds payable with respect to such condemnation or other similar proceeding.

2.2. Purchase Price - Inventory. The purchase price for Property consisting of Inventory (the "Inventory Purchase Price") shall be determined as of the Closing Date and shall be the total of the following:

(a) With respect to Inventory consisting of petroleum products, one hundred percent (100%) of Seller's delivered cost for such petroleum products; plus

(b) With respect to (i) Inventory consisting of "retail inventory" (including tobacco products), seventy percent (70%) of the retail price of such inventory and (ii) Inventory consisting of "cost inventory," one hundred percent (100%) of the book value of such inventory.

The Inventory Purchase Price shall be payable in cash in the manner specified in Section 3.1.4.

2.3. Purchase Price - Deposits. The Purchase Price for the Deposits of any kind whatsoever relating to the Stores or the Property that exists as of the Closing Date, shall be the aggregate amount of all such deposits (the "Deposit Purchase Price"). The Deposit Purchase Price shall be payable in cash in the manner specified in Section 3.1.4.

2.4. Purchase Price - Cash. The Purchase Price for the Cash shall be determined as of the Closing Date and shall be equal to the aggregate amount of such Cash (the "Cash Purchase Price") and shall be payable in cash in the manner specified in Section 3.1.4.

### 3. Closing Transactions.

#### 3.1. Closing.

3.1.1. Closing Date. The sale provided for hereunder shall be accomplished upon the satisfaction of the terms and conditions set forth herein (the "Closing Date," and the accomplishment of such sale, the "Closing"); provided, however, that the Closing Date shall be on or before thirty (30) days after expiration of the "Due Diligence Expiration Date" as defined in Section 4.2.7.

3.1.2. Inventory Count at Closing. Two days prior to the anticipated Closing Date, Seller will notify Buyer of Seller's anticipated book inventory number and cash on hand, as of the Closing Date, for the Stores that will be sold to the Buyer. Seller and Buyer shall undertake a physical count or test audit of the Inventory and cash on hand to determine the exact amount of Inventory and cash in such Stores on the Closing Date and the cost of such Inventory. The Closing shall occur as soon as possible upon completion of such count or audit (the "Closing Audit"). Any third party costs associated with the conduct of the Closing Audit shall be paid by the Buyer.

3.1.3. Itemization of Deposits. Not later than five (5) days prior to the anticipated Closing Date, Seller shall provide Buyer with a written itemized list of Deposits which shall be deemed to be accurate and conclusive unless prior to the Closing Date, Buyer provides Seller with written confirmation from the entity or individual listed in such itemized list

as the recipient of a deposit that such recipient has not received a deposit in the amount reflected in such list, in which event the amount of such deposit used to determine the Deposit Purchase Price shall be based upon the amount verified by the recipient of such deposit.

3.1.4. Payment of Purchase Price.

(a) Payment of Non-Inventory, Cash and Deposit Purchase Price. On the Closing Date, Buyer shall deliver the Financing Documents for the Assumed Amount as defined above.

(b) Payment of Inventory Purchase Price, Deposit Purchase Price, and Cash Purchase Price. On the Closing Date, Buyer shall pay the Seller a cash payment (the "Cash Payment") equal to the sum of \$1,750,000. The Inventory Purchase Price, Deposit Purchase Price, and Cash Purchase Price shall be paid from the Cash Payment.

3.2. Intentionally Omitted.

3.3. Seller's Deliveries to Buyer at Closing. On the Closing Date, Seller shall deliver to Buyer the documents set forth in this Section 3.3.

3.3.1. Special Warranty Deeds, in form as attached hereto as **Exhibit C**, pursuant to which Seller grants, transfers, and assigns the Owned Real Property to the Buyer (the "Deeds").

3.3.2. An Assignment and Assumption of Leases and Contracts, duly executed by Seller, substantially in the form attached as **Exhibit D** to this Agreement, pursuant to which Seller assigns the Real Property Leases, the Assumed Equipment Leases, the Contracts and Permits, if any (the "Assignment of Leases and Contracts").

3.3.3. A Bill of Sale, duly executed by Seller, substantially in the form attached as **Exhibit E** to this Agreement, pursuant to which Seller transfers the Equipment, Inventory and other Property to Buyer (the "Bill of Sale").

3.3.4. An Assignment of Intangible Property, duly executed by Seller, in the form attached as **Exhibit F** to this Agreement, pursuant to which Seller assigns to Buyer its interest, if any, in and to the intangible property to Buyer (the "Assignment of Intangible Property")

3.3.5. Any such other documents or other things reasonably contemplated by this Agreement to be delivered by Seller to Buyer at the Closing.

3.4. Buyer's Deliveries to Seller at Closing. On the Closing Date, Buyer shall deliver to Seller the documents set forth in this Section 3.4.

3.4.1. A counterpart of the Assignment of Leases and Contracts, duly executed by Buyer.

3.4.2 The originals of the Financing Documents.

3.4.3 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Buyer to Seller at the Closing.

3.5. Payment of Obligations; Prorations. All obligations with respect to all Stores that arise out of transactions or events occurring prior to the Closing Date for such Stores, shall be paid in full by Seller on or before the Closing Date or satisfactory provisions shall have been made on or before the Closing Date to ensure payment of such amounts by Seller after Closing, and all obligations arising out of transactions or events arising from and after the Closing Date shall be paid in full or otherwise be the responsibility of Buyer.

3.6. Sales, Use and Other Taxes. Any sales, purchase, transfer, stamp, documentary stamp, use or similar taxes under the laws of the State of Colorado, or any subdivision thereof, which may be payable by reason of the sale of the Property under this Agreement or the transactions contemplated herein shall be the responsibility of Buyer.

3.7. Possession. Right to possession of all Stores subject to the Closing and all Property relating to such Stores shall transfer to Buyer on the Closing Date. Seller shall transfer and deliver to Buyer on the Closing Date such keys, lock and safe combinations and other similar items as Buyer shall require to obtain immediate and full occupation and control of the Property. If any asset or item of property located at a Store on the Closing Date does not constitute Property, Buyer shall, if aware that the item is owned by a third party, notify and instruct such third party within seven (7) days of the Closing Date to remove such item from the Store.

3.8. Cash/Receivables. Except as otherwise provided herein, Seller will be entitled to all Cash on hand in each of the Stores as of the Closing Date. If Buyer desires to have Cash retained in each of the Stores on the Closing Date, it shall advise Seller two (2) days prior to the Closing Date of the amount of Cash to be retained in each of the Stores, and Buyer shall pay for such Cash at Closing as provided in Section 3.1.4(b). Seller shall be entitled to all receivables (including without limitation credit card receivables, accrued rebates and cash receivables) for transactions occurring prior to the Closing Date for any particular Store. Assuming Closing occurs, Buyer shall be entitled to receivables (including without limitation credit card receivables) for transactions occurring on and after the Closing Date for any particular Store that is purchased by Buyer. Any chargebacks on such receivables shall be borne by the party entitled to the benefit of the underlying receivable. If Seller or Buyer receives payment for receivables belonging to the other, it shall promptly transmit such funds to the other party; if Seller or Buyer is charged with chargebacks that are the responsibility of the other party, it shall be entitled to prompt reimbursement from the other party. Nothing in the foregoing is intended to imply that Buyer has the right to use Seller's merchant number or otherwise use or take advantage of Seller's contracts with credit card companies. Buyer shall make appropriate arrangements to obtain its own merchant number so that all credit card transactions occurring on the Closing Date (assuming Closing occurs) will be charged to Buyer's account and not to Seller's account. The foregoing is merely intended to provide for mutual reimbursement in the case of error.

3.9. Utilities. Seller shall be responsible for payment of the utility bills for utility costs incurred at each Store related to the Owned Real Property and the Leased Real Property for periods prior to the Closing Date. Assuming Closing occurs, Buyer shall be responsible for all utility costs incurred at the Stores related to the Owned Real Property and the Leased Real Property for periods on and after the Closing Date. Buyer shall make arrangements to have all utilities related to the Stores being purchased by Buyer transferred to the account of Buyer as of the Closing. If Seller or Buyer is billed or pays for utility bills that are the responsibility of the other party, such party shall be entitled to reimbursement from the other.

3.10. Lottery Tickets. To the extent Buyer has made arrangements with state lottery authorities for the transfer to Buyer of lottery tickets in Seller's possession, Seller shall cooperate with Buyer to effectuate such transfer.

#### 4. Conditions Precedent to Closing.

4.1. Conditions to Seller's Obligations. Seller's obligation to make the deliveries required of Seller at the Closing Date and to close the transaction subject to this Agreement shall be subject to the satisfaction or waiver by Seller of each of the following conditions

4.1.1. Buyer shall, in all material respects, have performed or tendered performance of each and every covenant on Buyer's part to be performed which, by its terms, is capable of performance before the Closing.

4.1.2. All of the representations and warranties of Buyer contained herein shall continue to be true and correct at the Closing in all material respects.

4.1.3. Buyer shall have executed and delivered at the Closing, the documents required to be delivered by Buyer under Section 3.4.

4.1.4. Buyer shall have delivered (or shall have made arrangements that are acceptable to Seller to deliver) at the Closing, all cash and other documents required of Buyer to be delivered hereunder at the Closing.

4.1.5. No action, suit or other proceedings brought by any governmental agency shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.2. Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing Date and to close the transaction subject to this Agreement shall be subject to the satisfaction or waiver by Buyer of each of the following conditions:

4.2.1. Seller shall, in all material respects, have performed or tendered performance of each and every covenant on Seller's part to be performed which, by its terms, is capable of performance before the Closing.

4.2.2. All representations and warranties of Seller contained herein shall continue to be true and correct at the Closing in all material respects.

4.2.3. Seller shall have executed and delivered (or shall have made arrangements that are acceptable to Buyer to deliver) at the Closing, the documents required to be delivered at Closing under Section 3.3.

4.2.5. Seller shall have delivered (or shall have made arrangements that are acceptable to Buyer to deliver) at the Closing, all cash and other documents required of Seller to be delivered hereunder at the Closing.

4.2.6. No action, suit or other proceedings brought by any governmental agency or other third party shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.2.7. The Buyer shall have completed, to its satisfaction, its due diligence investigation (described in Section 8.1); provided that such condition shall expire on 11:59 P.M. (Boise, Idaho time) on that date that is thirty (30) days after Effective Date (the "Due Diligence Expiration Date"), and thereafter shall not preclude the closing of the transactions contemplated hereby.

4.2.8. The Title Company (as hereinafter defined) is in a position and is prepared to issue to Buyer each Title Policy as described in Section 10.16.

4.3. Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing Date:

(i) By mutual written consent of the parties;

(ii) By the Buyer, if Buyer is not in breach or default under this Agreement, (a) if any of the representations and warranties contained in Section 5 were incorrect when made or at any time thereafter, (b) except as otherwise provided in Section 4.2, if any of the conditions to Closing contained in Section 4.2 shall have not been complied with or performed on or before the Closing Date and such noncompliance or nonperformance shall not have been waived in writing by the Buyer, or (c) if, as a result of its due diligence investigation (described in Section 8.1), the Buyer determines, in its sole discretion, to terminate the Agreement and provides written notice of such determination to Seller on or before the Due Diligence Expiration Date.

(iii) By the Seller, (a) if any of the representations and warranties contained in Section 6 were incorrect when made or at any time thereafter or (b) if any of the conditions to Closing contained in Section 4.1 shall have not been complied with or performed on or before

the Closing Date and such noncompliance or nonperformance shall not have been waived in writing by the Seller.

4.4. Effect of Termination. The following provisions shall apply in the event of a termination of the Agreement:

(a) If this Agreement is terminated by either Buyer or Seller pursuant to the provisions of Section 4.3, this Agreement shall forthwith become void and there shall be no further obligations on the part of Buyer or Seller (except as set forth in Sections 10.8, 10.10, 10.11, 10.14, and 10.15, each of which shall survive termination in its entirety).

4.5. Refund of Earnest Money. The Earnest Money (less the At Risk Earnest Money) is refundable to Buyer solely in the event this Agreement is terminated: (i) by Buyer as a result of Seller's default hereunder, (ii) under the provisions of Section 2.1.2, or (iii) if Buyer terminates this Agreement as a result of its due diligence in accordance with Section 4.3(ii)(c), and in no other event (regardless of whether such event may allow Buyer to terminate this Agreement) shall the Earnest Money (less the At Risk Earnest Money) be refundable to Buyer.

4.6. Liquidated Damages. If this Agreement is terminated and Seller is entitled to retain the Earnest Money pursuant to Section 4.5, such retention of the Earnest Money shall be as liquidated damages to Seller, and shall be Seller's sole and exclusive remedy. The parties further agree that the amount of liquidated damages established by this provision is a reasonable estimate, under the circumstances existing on the date of execution of this Agreement, of what Seller's damages would be in the event of a default by Buyer.

## 5. Seller's Representations and Warranties.

Seller hereby makes the following representations and warranties to Buyer:

5.1. Validity of Agreement. The execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all requisite organizational action on the part of the Seller. This Agreement, when executed and delivered by Seller, shall constitute the valid and binding obligation of Seller enforceable in accordance with its terms.

5.2. Organization, Standing and Power. Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Idaho and has all requisite organizational power and authority to own, lease and operate its properties, to carry on its business as now being conducted, to execute, deliver and perform this Agreement and all writings relating hereto, and to consummate the transactions contemplated thereby. Seller is qualified to do business in the State of Colorado.

5.3. Authorization of Seller. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Seller, do not and will not: (i) conflict with or result in a breach of the articles of organization or the operating agreement of Seller; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority applicable to Seller or, to the best of Seller's knowledge, the Property; or (iii) violate or conflict with or constitute a default under any agreement, instrument

or writing of any nature to which Seller is a party or by which Seller or its assets or properties may be bound.

5.4. Title to Property. Seller has good and marketable title to the Owned Real Property, except for those matters related to the Owned Real Property set forth in Schedule B to the Title Reports. To the best of Seller's knowledge, other than certain leased equipment, Seller owns all of the Equipment, Inventory and other Property (other than the Owned Real Property which is addressed in the preceding sentence) located at each of the Stores as of the Effective Date, free and clear of any liens, encumbrances, claims, escrows, rights of first refusal, charges, pledges, options, mortgages, deeds of trust, security interests or agreements, restrictions on sale, transfer or disposition, or other material imperfections of title of any type or description, except for those liens or other matters to be released at Closing. Seller will not convey, transfer or otherwise dispose of the Property except for Inventory sold in the ordinary course of business of the Stores.

5.5. Litigation. There are no actions, suits, or other proceedings pending or, to the best of Seller's actual knowledge, threatened against Seller involving the Property or the Stores, at law or in equity or before or by any court or governmental authority or any board of arbitration or similar entity, which would have a material adverse effect upon the Property or the financial or business condition, operations, results of operations or prospects of the Stores as a whole.

5.6. No Notice of Condemnation. Seller has not received any notice that the Property or any portion thereof is or will be subject to any condemnation proceeding or proceeding in eminent domain.

## 6. Buyer's Warranties and Representations.

Buyer hereby makes the following representations and warranties to Seller:

6.1. Validity of Agreement. This Agreement, when executed and delivered by Buyer, shall constitute the valid and binding obligation of Buyer enforceable in accordance with its terms.

6.2. Capacity. Buyer has full capacity to understand, execute, deliver and perform this Agreement and all writings relating hereto and to consummate the transactions contemplated thereby.

6.3. Authorization of Buyer. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority applicable to Buyer, or (ii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

## 7. "AS IS" Transaction.

(a) EXCEPT AS SET FORTH IN SECTION 5 OF THIS AGREEMENT, OR IN THE DEEDS, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND

SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN ANY WARRANTY OF TITLE SET FORTH IN THE DEEDS TO BE DELIVERED BY SELLER AT CLOSING), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (1) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY; (2) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY (IF ANY); AND (3) THE MANNER, QUALITY, STATE OR REPAIR OR LACK OF REPAIR OF THE PROPERTY. BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY AGENT OF SELLER. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND KNOWLEDGE AND THAT OF BUYER'S CONSULTANTS IN PURCHASING THE PROPERTY. BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS BUYER DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON THE SAME. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS" WITH ALL FAULTS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS TO OR AFFECTING THE PROPERTY BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY. THE TERMS AND CONDITIONS OF THIS SECTION SHALL EXPRESSLY SURVIVE THE CLOSING, SHALL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND SHALL BE INCORPORATED INTO THE DEEDS (EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN SUCH DEEDS). SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN THE DETERMINATION OF THE PURCHASE PRICE FOR THE PROPERTY.

8. Conduct Prior to Closing.

8.1. Access to Records and Properties; Information.

8.1.1. Access to Records and Properties of Seller. Buyer shall have the right to conduct a due diligence review of the Property, at its sole cost and expense, which review shall be completed on or before the Due Diligence Expiration Date. The Seller shall (i) provide the Buyer and its representatives with access to the Property, together with such records as are reasonably requested by the Buyer for the purpose of reviewing the business and operations of the Seller; (ii) provide the Buyer and its representatives with information reasonably requested by them concerning the Property, including without limitation, the records, financial condition, legal compliance, environmental liabilities and results of operations of the Stores; and (iii) otherwise cooperate with and assist the Buyer and its representatives in connection with their review thereof. The Buyer's due diligence investigation into the business and financial condition of the Property (including without limitation, any environmental due diligence investigation, title and survey review, appraisal review, confirmation of satisfactory zoning and other necessary approvals and permits, and review of the Real Property Leases and the Assumed Equipment Leases) shall be completed on or before the Due Diligence Expiration Date. Upon termination of this Agreement, any information which has been furnished by Seller hereunder will be promptly returned or destroyed (and you shall acknowledge in writing such destruction), accompanied by all copies of such documentation, within ten (10) days after Seller makes a written request.

8.1.2. Contract, Permits, Licenses and Employee Information. Seller has provided or otherwise made available to Buyer (a) a complete listing of all material contracts, permits and licenses associated with the Stores or the Property, and (b) a complete listing of the employees working at such Stores and all district managers having responsibility for such Stores, including such information as names, titles, salaries, and location of employment.

8.2. Operation of the Stores Pending Closing.

8.2.1. Operation of the Stores Pending Closing. Unless Buyer otherwise consents, during the period from the Effective Date to the Closing Date, Seller shall operate the Stores related to the Owned Real Property and the Leased Real Property as currently operated and only in the ordinary course and, consistent with such operation, shall use commercially reasonable efforts to preserve the value of such Stores. During the period from the Due Diligence Expiration Date until the Closing Date, Buyer shall have the right (at Buyer's expense) to assign people to work with management of the Seller and the Management Company to prepare for the transition to Buyer's ownership, and Seller shall instruct the Management Company to reasonably cooperate with such persons to help ensure an orderly transition; provided, however, that Buyer will not interfere with the operation of business of the Seller or the Management Company or place any undue burden on Seller or the Management Company in conducting such activity.

8.2.2. Suppliers. During the period from the Effective Date to the Closing Date, Buyer shall have the right to negotiate with any vendors to Seller regarding such vendors' supplying the Stores with fuel or merchandise after Closing. Seller shall endeavor to terminate all fuel and vendor supply contracts for the Stores purchased by Buyer by the Closing

Date, but in no event later than thirty (30) days after Closing; provided however, that Seller shall only be obligated to pay for fuel and supplies purchased prior to the Closing.

8.2.4. Lessors. During the period from the Effective Date to the Closing Date, Buyer shall have the right to negotiate with any lessors to Seller regarding the purchase of the Leased Property or regarding any new or amended terms of a lease related to the Real Property Leases to become effective after the Closing.

8.3. Notices of Certain Events. Buyer and Seller shall each promptly notify the other party of:

(i) any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the transactions contemplated by this Agreement;

(ii) any notice or other communication from any governmental entity in connection with the transactions contemplated by this Agreement;

(iii) any actions, suits, claims, investigations or proceedings commenced or, to its knowledge, threatened, relating to the consummation of the transactions contemplated by this Agreement;

(iv) the occurrence, or failure to occur, of any condition, event or development that causes any representation or warranty contained in this Agreement to be untrue or inaccurate; or

(v) any failure on the part of such party to comply with or perform in any material respect any agreement or covenant to be complied with or performed by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 8.3 shall not limit or otherwise affect the remedies available hereunder to Buyer or Seller.

#### 8.4. Employee Matters.

8.4.1 Hiring Employees. Buyer shall have the right to offer employment to any employees or district managers of Seller or the Management Company that are actively involved in the store level operation or district management of the Stores, as Buyer, in its sole discretion, shall determine. Such employment shall be upon terms and conditions determined by Buyer and shall not necessarily be upon the same terms as employment by Seller or Management Company prior to the Closing Date. Buyer may offer employment to any or all store level employees and any or all district managers, but not to regional managers, administrative or executive personnel, but Buyer is under no obligation to do so. Buyer shall provide final notice to Seller at least seven (7) days before the anticipated Closing Date of any district managers or store level employees to whom Buyer does not intend to offer employment so that Seller or the Management Company may terminate or transfer such persons on the Closing Date.

8.4.2 Employee Benefits. Buyer shall have no responsibility or liability for payment of any amounts due to or under any benefit plans maintained by Seller or the Management Company, or otherwise arising from events that occurred prior to the Closing Date in connection with obligations to employees.

10.2. Entire Agreement. This instrument and the documents to be executed pursuant hereto contain the entire agreement between the parties relating to the sale of the Property. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

10.3. Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the parties hereto.

10.4. Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

10.5. Further Assurances. Each party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by any other party hereto for the purpose of giving effect to the transactions contemplated herein or the intentions of the parties with respect thereto.

10.6. Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. Notwithstanding the foregoing, to the extent that a party proceeds with the Closing, such party shall be deemed to have waived for all purposes any condition precedent set forth in this Agreement or any rights or remedies it may have by reason of the failure of any condition Closing.

10.7. Brokerage Obligations. Seller and Buyer each represent and warrant to the other that such party has incurred no liability to any real estate broker, finder or agent with respect to the payment of any commission regarding the consummation of the transaction contemplated hereby. It is agreed that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Buyer or Seller in connection with this transaction, all such claims shall be handled and paid by the party whose actions form the basis of such claim and such party shall indemnify, defend (with counsel reasonably satisfactory to the party entitled to indemnification), protect and save and hold the other harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

10.8. Payment of Fees and Expenses. The Seller shall pay (a) its own legal and other related expenses in connection with the transactions contemplated hereby, (b) the cost of each Title Policy (as defined below), (c) fifty percent (50%) of any closing costs, and (d) all other expenses agreed to be paid by the Seller under the terms of this Agreement. The Buyer shall pay (a) its own legal and other related expenses in connection with the transactions contemplated hereby, (b) fifty percent (50%) of any closing costs, and (c) all other costs and expenses agreed to be paid by the Buyer under the terms of this Agreement.

10.9. Investigations and Survival. The respective representations, warranties, covenants and agreements of Seller and Buyer herein, and in any certificates or other documents delivered prior to or at the Closing, shall survive Closing and not be deemed waived or otherwise affected by any investigation made by any party hereto nor shall they be affected by the Closing.

10.10. Binding Effect. This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.

10.11. Good Faith. All parties hereto agree to do all acts and execute all documents required to carry out the terms of this Agreement and to act in good faith with respect to the terms and conditions contained herein before and after Closing.

10.12. Construction. In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.

10.13. Counterparts. This Agreement may be signed in counterparts. The parties further agree that this Agreement may be executed by the exchange of facsimile signature pages provided that by doing so the parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

10.14. Indemnity. Seller shall release, indemnify and hold harmless the Buyer, together with its principals, agents and affiliates, from all claims, actions or liabilities relating to the Property which relate to or arise out of events occurring during Seller's ownership of the Property prior to the Closing Date. Buyer shall release, indemnify and hold harmless the Seller, together with its principals, agents and affiliates, from all claims, actions or liabilities relating to the Property which relate to or arise out of events occurring on and after the Closing Date.

10.15. Confidentiality. Without the express written consent of all the parties hereto, each of the parties hereto agrees to maintain in confidence and not disclose to any other person the existence of this letter or the terms of the proposed transaction, other than disclosures to those professionals and advisors who have a need to know, or any other disclosures required by law, provided, that Seller can disclose this transaction to third parties it routinely discloses such matters to as part of its normal business practices. In the event that the Seller or the Buyer are at any time requested or required (by oral questions, interrogatories, request for information or documents, subpoena or similar process) to disclose any information supplied to such party in connection with this transaction, the Seller and the Buyer agree to provide the other party prompt notice of such request so that an appropriate protective order may be sought and/or the Buyer or the Seller, as applicable, may waive such party's compliance with the terms of this paragraph.

10.16. Title Review.

(a) As soon as reasonably practicable after the Effective Date, Seller shall cause First American Title Company (the "Title Company") to furnish to Buyer Commitments for Title Insurance in Colorado standard form (the "Title Reports") from the Title Company addressed to Buyer covering each Owned Real Property, pursuant to which the Title Company shall commit to issue to Buyer a Standard Owner's Policy of Title Insurance (each a "Title Policy") insuring the Buyer's fee simple title in and to each of the Owned Real Property and the Improvements located thereon, subject to: (1) the matters set forth in Section 1.4(i) and (ii), (2) standard printed exceptions normally set forth in a Standard Owner's Policy of Title Insurance, and (3) other matters with respect to the Owned Real Property that are reflected or addressed on the Title Reports which Buyer has not objected to or has waived any objection in accordance

with the provisions of this Section 10.16. Each Title Report shall be accompanied by legible copies of all instruments described in such Title Report evidencing exceptions or encumbrances upon title to the applicable Owned Real Property covered thereby. Buyer shall have until ten (10) days from receipt thereof to reasonably object in writing to the condition of the title to the Owned Real Property (individually, a "Title Defect", collectively, "Title Defects") as set forth therein (other than the matters set forth in subsections 1 and 2 above which are deemed permitted exceptions). If any such Title Defects affect five (5) or more Stores, and, if Seller is unable or unwilling to cure such Title Defects prior to Closing, Buyer shall have the option of (i) proceeding with the Closing, in which case the parties shall negotiate in good faith a reduction of the Purchase Price equal to the diminution in value of the affected Stores resulting from such Title Defects or (ii) terminating this Agreement, with no further obligations hereunder. If any such Title Defects affect four (4) or fewer Stores, the parties shall proceed with the Closing; provided, however, that the parties shall negotiate in good faith a reduction of the Purchase Price equal to the diminution in value of the affected Store(s) resulting from such Title Defects. Any additional extended coverage title insurance shall be at the sole cost and expense of Buyer, provided, however that there is no delay in the Closing Date due to Buyer's request to obtain any extended coverage. In the event this Agreement is terminated for any reason other than as a result of a breach or default of this Agreement by Seller, Buyer shall be responsible for any title insurance cancellation fee and any costs incurred in ordering the Title Reports.

(b) Notwithstanding the provisions of Section 10.16(a) hereof, in lieu of Seller furnishing Buyer at Closing with a separate Title Policy for each of the Owned Real Property locations and the Improvements located thereon, Buyer may elect at Closing to cause one or more of such Owned Real Property locations and the Improvements located thereon, together with other real properties currently owned by Buyer, to be collectively insured under a single Title Policy in one or more instances. In such event, Seller agrees to reasonably cooperate with Buyer in obtaining the issuance of each such Title Policy in accordance with the applicable title insurance requirements of this Agreement, but only insofar as (i) each such Title Policy covers one or more of the Owned Real Property locations and the Improvements located thereon (and not any other real properties currently owned by Buyer), (ii) Seller's aggregate obligation for payment of title insurance premiums hereunder for all Title Policies shall not exceed the aggregate liability that Seller would have incurred under Section 10.16 hereof if each of the Owned Real Property locations and the Improvements located thereon were insured at Closing by a separate Title Policy covering only the applicable Owned Real Property location and the Improvements located thereon, and (iii) such election to combine a Title Policy shall not delay the Closing Date.

10.17 Jurisdiction and Venue. This Agreement shall be deemed to have been executed and delivered within the State of Idaho, and the rights and obligations of the parties hereto shall be construed and enforced with, and governed by, the laws of the State of Idaho, without regard to principles of conflicts of law. The parties further agree, warrant and consent that jurisdiction and venue for any legal proceeding between the parties to this Agreement arising out of or related to this Agreement, is proper in a federal district court sitting in Ada County, State of Idaho.

10.18 Assignment. Buyer acknowledges and agrees that Seller may assign this Agreement in Seller's sole and absolute discretion. Buyer will not assign this Agreement without obtaining Seller's prior written consent, which consent may be withheld by Seller in its sole and absolute discretion for any reason whatsoever, provided, however, that Buyer may with

prior notice to Seller assign this Agreement to a limited partnership, limited liability company or other entity where Buyer or Buyer's members are the sole general partner, managing member, member or shareholder. Any allowed assignment by Buyer of this Agreement in accordance with this Section 10.18, will not be effective until Buyer delivers to Seller a fully executed copy of the assignment instrument, which instrument must be satisfactory to Seller in both form and substance and pursuant to which the assignee assumes and agrees to perform for the benefit of Seller the obligations of Buyer under this Agreement, and pursuant to which the assignee makes the warranties and representations required of Buyer under this Agreement and such other representations and warranties as Seller may reasonably require. Any such assignment will not release Buyer from any of its obligations under this Agreement.

**10.19 Not an Offer. SELLER'S DELIVERY OF UNSIGNED COPIES OF THIS AGREEMENT IS SOLELY FOR THE PURPOSE OF REVIEW AND COMPLETION BY THE PARTY TO WHOM DELIVERED, AND NEITHER THE DELIVERY NOR ANY PRIOR COMMUNICATIONS BETWEEN THE PARTIES, WHETHER ORAL OR WRITTEN, SHALL IN ANY WAY BE CONSTRUED AS AN OFFER BY SELLER, NOR IN ANY WAY IMPLY THAT SELLER IS UNDER ANY OBLIGATION TO ENTER THE TRANSACTION WHICH IS THE SUBJECT OF THIS AGREEMENT. THE COMPLETION AND EXECUTION OF THIS AGREEMENT BY BUYER CONSTITUTES AN OFFER WHICH SHALL NOT BE DEEMED ACCEPTED BY SELLER UNLESS AND UNTIL SELLER HAS SIGNED THIS AGREEMENT AND DELIVERED A DUPLICATE ORIGINAL TO BUYER. BUYER ACKNOWLEDGES AND AGREES THAT SELLER MAY HAVE OR MAY BE SENDING OUT PURCHASE AGREEMENTS TO OTHER INTERESTED BUYERS. BUYER ACKNOWLEDGES AND AGREES THAT SELLER MAY ACCEPT OR NOT ACCEPT ANY COMPLETED AND EXECUTED PURCHASE AGREEMENT, INCLUDING THIS AGREEMENT RECEIVED BY SELLER FROM PROSPECTIVE BUYERS, IN ITS SOLE AND ABSOLUTE DISCRETION. NOTHING CONTAINED HEREIN OR IN ANY OTHER PURCHASE AGREEMENT OR COMMUNICATIONS BETWEEN ANY PARTIES SHALL OBLIGATE SELLER TO ACCEPT ANY OFFER RECEIVED BY SELLER**

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IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the day and year first above written.

**SELLER:**

Recuperos, LLC,  
an Idaho limited liability company

By: Its Manager, AMRESKO Commercial  
Finance, Inc.

By: \_\_\_\_\_  
Name: D. Craig Christensen  
Its: Vice President

**BUYER:**

American Food Stores, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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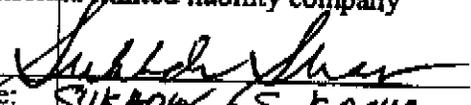
IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the day and year first above written.

**SELLER:**  
Recuperos, LLC,  
an Idaho limited liability company

By: Its Manager, AMRESKO Commercial Finance, Inc.

By:   
Name: D. Craig Christensen  
Its: Vice President

**BUYER:**  
American Food Stores, LLC,  
a California limited liability company

By:   
Name: SUKADW E. KAPUR  
Its: Member

## LIST OF EXHIBITS

Exhibit A	Owned Real Property
Exhibit B	Leased Real Property
Exhibit C	Form of Special Warranty Deed
Exhibit D	Form of Assignment and Assumption of Leases and Contracts
Exhibit E	Form of Bill of Sale
Exhibit F	Form of Assignment of Intangible Property

**EXHIBIT A****OWNED REAL PROPERTY**

Store #	Address	City	State	County	Zip	Lease/ Fee
5700	1275 13 St	Boulder	CO	Boulder	80302	Fee
5701	1502 S Tejon St.	Colorado Springs	CO	El Paso	80906	Fee
5702	906 Peterson Rd.	Colorado Springs	CO	El Paso	80906	Fee
5703	1823 N. Circle Dr.	Colorado Springs	CO	El Paso	80909	Fee
5708	949 S. Taft Hill Rd.	Ft. Collins	CO	Larimar	80522	Fee
5709	2603 8 Ave	Garden City	CO	Weld	80631	Fee
5710	1025 13 St.	Greeley	CO	Weld	80631	Fee
5711	504 11 Ave.	Greeley	CO	Weld	80631	Fee
5713	1090 S Union Blvd	Lakewood	CO	Jefferson	80228	Fee
5716	10610 S Longs Way	Parker	CO	Douglas	80134	Fee
5717	17840 Cottonwood	Parker	CO	Douglas	80134	Fee
5718	300 Justin Ave	Platteville	CO	Weld	80651	Fee

**EXHIBIT B**

**LEASED REAL PROPERTY**

Store #	Address	City	State	County	Zip	Lease/ Fee
5705	4595 Pecos St.	Denver	CO	Denver	80211	Lease
5706	5001 Lowell Blvd	Denver	CO	Denver	80211	Lease
5707	799 6th St	Durango	CO	La Plata	81301	Lease
***5714	12015 W Cedar Dr	Lakewood	CO	Jefferson	80226	Lease
5715	300 E Pagosa	Pagosa Springs	CO	Archuleta	81147	Lease
5719	7990 N Federal Blvd	Westminster	CO	Adams	80030	Lease
5720	5990 W 38 Ave	Wheat Ridge	CO	Jefferson	80033	Lease

\*\*\* Unit 5714 will be deemed deleted from Exhibit B and included on Exhibit A if Seller purchases the fee interest in Unit 5714 prior to closing.

**EXHIBIT C**

**FORM OF SPECIAL WARRANTY DEED**

RECORDED AT \_\_\_\_\_ O'CLOCK \_\_\_\_ M., \_\_\_\_\_

This instrument prepared by and upon

recordation should be returned to:

Unit No. \_\_\_\_\_  
\_\_\_\_\_ County, Colorado

**SPECIAL WARRANTY DEED**

THIS DEED, made this \_\_\_\_ day of \_\_\_\_\_, 2003, between **Recuperos, LLC**, an Idaho limited liability company, whose address c/o AMRESKO Commercial Finance, Inc., 412 E. Parkcenter Blvd., Suite 300, Boise, Ada County, Idaho 83706 ("Grantor"), and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Grantee");

WITNESS, that the Grantor, for and in consideration of the sum of (\$10.00) TEN DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto the Grantee, its successors and assigns forever, all the real property, together with improvements, if any, situate, lying and being in the County of \_\_\_\_\_ and State of Colorado more particularly described on Exhibit A attached hereto and incorporated herein by reference.

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

SUBJECT TO any and all easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded restrictions, condominium declaration reservations, rights to levy liens for assessments, covenants, conditions, oil and gas leases, mineral severances and other instruments, other than conveyances of the surface fee estate, that affect the Property; rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments, protrusions or overlapping of improvements; standby fees and taxes for the current year, the payment of

which Grantee assumes; and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee, its successors and assigns forever. The Grantor, for itself and its successors, does covenant and agree that it shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor. The singular number shall include the plural, the plural and the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

GRANTOR:

Recuperos, LLC,  
an Idaho limited liability company

By: Its Manager, AMRESKO Commercial  
Finance, Inc.

By: \_\_\_\_\_  
Name: D. Craig Christensen  
Its: Vice President

STATE OF IDAHO            )  
  ) ss.  
COUNTY OF ADA            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, a Notary Public, personally appeared D. Craig Christensen known or identified to me to be the Vice President of AMRESKO Commercial Finance, Inc., as Manager of Recuperos, LLC, an Idaho limited liability company, the limited liability company that executed the instrument, or the person who executed the instrument on behalf of said liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

**EXHIBIT A**

(to form of Special Warranty Deed)

[TO BE COMPLETED WITH LEGAL DESCRIPTION OF OWNED REAL PROPERTY  
BEING PURCHASED]

## EXHIBIT D

### FORM OF ASSIGNMENT AND ASSUMPTION OF LEASES AND OTHER CONTRACTS

#### ASSIGNMENT AND ASSUMPTION OF LEASES AND OTHER CONTRACTS

This Assignment and Assumption of Leases and Other Contracts ("Assignment") is made and entered into as of \_\_\_\_\_, 2003, by and between Recuperos, LLC, an Idaho limited liability company ("Seller"), and \_\_\_\_\_ ("Buyer").

#### RECITALS

A. Pursuant to an Asset Purchase Agreement (the "Agreement") dated as of \_\_\_\_\_, 2003, Seller is selling to Buyer various assets owned by Seller and which have been used by Seller in connection with Seller's operation of a chain of convenience stores doing business in the State of Colorado under the name "Everyday Convenience Stores".

B. In connection with the Agreement, Seller has agreed to assign to Buyer, and Buyer has agreed to assume from Seller, various rights and obligations arising from certain contracts and agreements of Seller.

C. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Assignment by Seller. Seller hereby sells, assigns, transfers, conveys, and delivers to Buyer all of Seller's right, title and interest in and to, including security and other deposits thereunder, in and to the following items, but only to the extent related to those Stores described in Exhibit A attached hereto (expressly excluding any of the following described items not related to any Stores not described in Exhibit A attached hereto): (a) each Real Property Lease set forth on Exhibit B attached hereto, (b) each Assumed Equipment Lease, and (c) each other Contract, including, but not limited to, those agreements set forth on Exhibit C attached hereto. All of the foregoing are hereafter referred to as the "Assigned Contracts." To the extent required under the provisions of any Real Property Lease, Seller shall remain liable to the landlord for the obligations of tenant thereunder in accordance with the applicable Real Property Lease.

2. Assignment Made Without Representations or Warranties. The assignment by Seller to Buyer of the Assigned Contracts is made without any representations or warranties whatsoever, whether express or implied, other than those, if any, set forth in the Agreement or in any document or certificate delivered at Closing.

3. Assumption by Buyer. Effective as of the Closing Date, Buyer hereby assumes all of the Assumed Liabilities.

4. Assumption Limited to Assumed Liabilities. Buyer is only assuming obligations under the Assumed Liabilities. Buyer is not assuming any other liabilities, obligations or agreements whatsoever.

5. Assignment Subject to Agreement. This Assignment is delivered pursuant to the Agreement and is subject to the terms of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

**SELLER:**

RECUPEROS, LLC, an Idaho limited liability company

By: AMRESKO Commercial Finance, Inc.,  
a Nevada corporation, its Manager

By: \_\_\_\_\_  
D. Craig Christensen, Vice President

**BUYER:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

(to Form of Assignment and Assumption of Leases and Other Contracts)

**EXHIBIT B**

(to Form of Assignment and Assumption of Leases and Other Contracts)

## EXHIBIT C

(to Form of Assignment and Assumption of Leases and Other Contracts)

a. All of Seller's right, title and interest in and to those certain Access Agreements entered into between Duke and Long Distributing Company, Inc., a Kentucky corporation, as grantor, and Circle K Stores Inc., a Texas corporation, as grantee, more specifically identified as follows:

<u>Date</u> <u>Executed</u>	<u>Store No."</u>	<u>Address</u>
05/25/1999	5703	1823 N Circle Drive, Colorado Springs, CO
05/24/1999	5705	4595 Pecos St, Denver, CO
05/24/1999	5711	504 11th Ave, Greeley, CO
05/24/1999	5713	1090 S Union Blvd, Lakewood, CO
05/24/1999	5715	300 E Pagosa, Pagosa Springs, CO
05/24/1999	5718	300 Justin Ave, Platteville, CO
05/24/1999	5719	7990 N Federal Blvd, Westminster, CO
05/24/1999	5710	1025 18th St, Greeley, CO
05/24/1999	5714	12015 W Cedar Dr, Lakewood, CO

b. All of Seller's right, title and interest in and to those certain Access Agreements entered into between Seller and Circle K Stores Inc., a Texas corporation, as grantee, more specifically identified as follows:

<u>Date</u> <u>Executed</u>	<u>Store No."</u>	<u>Address</u>
07/31/2002	5708	949 S. Taft Hill Rd., Ft. Collins, CO
07/31/2002	5716	10610 S. Longs Way, Parker, CO

## II. Assignments and Assumptions of Leases

All of Seller's right, title and interest in and to those certain Assignments and Assumptions of Leases entered into as of May 26, 1999 between Circle K Stores Inc., a Texas corporation, as assignor, and Duke and Long Distributing Company, Inc., a Kentucky corporation, as assignee, more specifically identified as follows:

<u>Property Location</u>	<u>Store No.</u>	<u>Lessor</u>
Denver County, CO	5705	Rio Grande Operating Credit Union
Denver County, CO	5706	John S. Potter
La Plata County, CO	5707	Gorman Engineering Co., Inc.
Archuleta County, CO	5715	Gregory J. Pantages and Mary Pantages, an undivided 1/2 interest and William D. Nicholas and Ida P. Nicholas, an undivided 1/2 interest
7990 N. Federal Blvd. Westminster, CO	5719	Fairview Co.
Jefferson County, CO	5720	Fred L. Spallone, Inc.

**EXHIBIT E**

**FORM OF BILL OF SALE**

**BILL OF SALE**

This Bill of Sale is delivered as of \_\_\_\_\_, 2003 from Recuperos, LLC, an Idaho limited liability company ("Seller"), to \_\_\_\_\_ ("Buyer").

**RECITALS**

A. Pursuant to an Asset Purchase Agreement (the "Agreement") dated as of \_\_\_\_\_, 2003, Seller is selling to Buyer various assets owned by Seller and which have been used by Seller in connection with Seller's operation of a chain of convenience stores doing business in the State of Colorado under the name "Everyday Convenience Stores".

B. In connection with the Agreement, Seller has agreed to sell to Buyer certain personal property owned or held by Seller.

C. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby delivers this Bill of Sale to Buyer:

1. Bill of Sale. Seller hereby grants, transfers, sells, and assigns to Buyer all of the Property located at or otherwise related to those Stores described in Exhibit A attached hereto, except for those items otherwise transferred to Buyer pursuant to the Special Warranty Deeds, the Assignment and Assumption of Leases and Other Contracts, and the Assignment of Intangible Property.

2. Sale Made Without Representations or Warranties. The sale by Seller to Buyer of the foregoing property is made without any representations or warranties whatsoever, whether express or implied, other than those, if any, set forth in the Agreement or in any document or certificate delivered at Closing.

3. Bill of Sale Subject to Agreement. This Bill of Sale is delivered pursuant to the Agreement and is subject to the terms of the Agreement.

IN WITNESS WHEREOF, Seller has delivered this Bill of Sale to Buyer as of the day and year first above written.

**SELLER:** RECUPEROS, LLC, an Idaho limited liability company

By: AMRESKO Commercial Finance, Inc.,  
a Nevada corporation, its Manager

By: \_\_\_\_\_  
D. Craig Christensen, Vice President

**EXHIBIT F**

**FORM OF ASSIGNMENT OF INTANGIBLE PROPERTY**

**ASSIGNMENT OF INTANGIBLE PROPERTY**

This Assignment of Intangible Property ("Assignment") is delivered as of \_\_\_\_\_, 2003 from Recuperos, LLC, an Idaho limited liability company ("Seller") to \_\_\_\_\_ ("Buyer").

**RECITALS**

A. Pursuant to an Asset Purchase Agreement (the "Agreement") dated as of \_\_\_\_\_, 2003, Seller is selling to Buyer various assets owned by Seller and which have been used by Seller in connection with Seller's operation of a chain of convenience stores doing business under the name "Everyday Convenience Stores."

B. In connection with the Agreement, Seller has agreed to assign to Buyer certain intangible property held by Seller.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Assignment by Seller. Seller hereby sells, assigns, transfers, conveys, and delivers to Buyer all of Seller's right, title, and interest in and to all intangible personal property described in Exhibit A hereto.
2. Assignment Made Without Representations or Warranties. The assignment by Seller to Buyer of the above property is made without any representations or warranties whatsoever, whether express or implied, other than those, if any, set forth in the Agreement.
3. Assignment Subject to Agreement. This Assignment is delivered pursuant to the Agreement and is subject to the terms of the Agreement.

IN WITNESS WHEREOF, this Assignment is being delivered as of the day and year first above written.

Recuperos, LLC, an Idaho limited liability company

By: AMRESKO Commercial Finance, Inc.,  
a Nevada corporation, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



Brian Naeve  
Asset Manager  
direct: (208) 333-2046

January 16, 2004

VIA FEDERAL EXPRESS, Email, and FACSIMILE

*OK sent 1/16/04 via all three methods.*

Sukhdev Kapur  
American Food Stores, LLC  
13249 Paramount Drive  
Saratoga, CA 95070

Ref: Special Servicing Recupero Date: 16JAN04 SHIPPING \$6.18  
Dept: Wgt: 0.5 LBS SPECIAL \$0.28  
HANDLING \$0.00  
TOTAL \$6.46

SERVICE: PRIORITY OVERNIGHT  
TRACK: 4830 7759 5377

Manjit Sahota  
American Food Stores  
1810 E. Bridge Street  
Brighton, CO 80601

Ref: Special Servicing Recupero Date: 16JAN04 SHIPPING \$6.18  
Dept: Wgt: 0.5 LBS SPECIAL \$0.28  
HANDLING \$0.00

TOTAL \$6.46

SERVICE: PRIORITY OVERNIGHT  
TRACK: 4830 7759 5368

Re: Termination of Asset Purchase Agreement the (the "Agreement") dated November 12, 2003 between Recupros, LLC ("Seller") and American Food Stores, LLC ("Buyer")

Dear Sukhdev and Manjit:

This is to inform you that Seller hereby terminates the Agreement pursuant to Section 4.3(iii) thereof, due to Buyer's breach of certain terms and conditions of the Agreement, including Buyer's failure to comply with the provisions contained in Sections 3.1.1, 4.1.1 and 9(iii). As set forth in Section 10.3, the Agreement may only be modified, amended or supplemented by a written instrument duly executed by all parties. No such instrument has been executed, and, therefore, no amendment to the Agreement has occurred.

Pursuant to Sections 4.5, 4.6 and 9 of the Agreement, Seller hereby demands immediate release to Seller of the Earnest Money, plus interest, as liquidated damages. Additionally, as set forth in Section 8.1.1 of the Agreement, Seller hereby requests that Buyer return to Seller, to the attention of Brian Naeve within ten (10) days of the date hereof, all copies of all due diligence information and documentation which has been previously furnished by Seller to Buyer, specifically including but not limited to those items outlined in the attached letter dated November 12, 2003.

Sincerely,

Brian Naeve  
Asset Manager

cc: D. Craig Christensen, Esq.  
Charlie W. Volpe, Esq. (via email to charles.volpe@berliner.com)  
Lee Anne Clenney, Security Title Guaranty Co. (via email to lclenney@stgco.com)  
Noreen Ann Behringer, Security Title Guaranty Co. (via email to nbehring@stgco.com)

412 E. ParkCenter Boulevard, Suite 300  
Boise, Idaho 83706  
(208) 333-2000 ~ Fax (208) 333-2050  
www.amresco.com



<p>DISTRICT COURT, COUNTY OF WELD, STATE OF COLORADO</p> <p>Court Address: 901 9<sup>th</sup> Avenue Greeley, CO 80631</p> <hr/> <p><b>Petitioner:</b> RECUPEROS, LLC, an Idaho limited liability company</p> <p><b>Respondent:</b> AMERICAN FOOD STORES, LLC, a California limited liability company</p> <hr/> <p><b>Petitioner's Attorneys:</b> Name: FISHER, SWEETBAUM &amp; LEVIN, P.C. Alan D. Sweetbaum, Esq. E. James Wilder, Esq. Address: 1331 Seventeenth Street, Suite 1000 Denver, CO 80202</p> <p>Phone No.: (303) 296-3377 Atty. Reg. #: 13491 and 29526</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case No.: 2004CV1298</p>  <p>Ctrm/Div: 1</p>
<p><b>ORDER AND DECREE</b></p>	

THIS MATTER comes before the Court pursuant to Petitioner's Verified Petition for Order to Show Cause Why Lien Should Not Be Removed, and this Court's Order to Show Cause Why Lien Should Not Be Removed dated July 14, 2004. The Court being fully advised,

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAWS:

1. Jurisdiction and venue are proper in this matter, as the real property that is the subject of this Petition is located in Weld County, Colorado.
2. At the pertinent time, Petitioner Recuperos, LLC ("Recuperos") was the owner of four parcels of land located in Weld County, Colorado identified as follows (collectively the "Subject Properties"):



- a. PVI 16515-A L 18-19-20  
BLK 50 TOG with S2 VAC ALLEY ADJ TO SAID LOTS  
300 JUSTIN AV PLATTEVILLE 80651  
Parcel No. 121119306009  
Also known by street and number as: 300 Justin Ave., Platteville, CO  
("First Property")
- b. GCT 6045 L1-2 BLK 16 KENDRICK 2ND ALSO VACATED S 10'  
26th ST ADJ TO 2603 S 8 AV GARDEN  
Parcel No. 096117317017  
Also known by street and number as: 2603 S. 8th Ave., Garden City, CO  
("Second Property")
- c. GR 4634 W15' N140' L6 & N140' L7-8 BLK 26 504 11 AV GREELEY  
80631  
Parcel No. 096105305023  
Also known by street and number as: 504 11th Ave., Greeley, CO  
("Third Property")
- d. GR 5433 S90' W125' L3 BLK 95 1025 13 ST GREELEY 80631  
Parcel No. 096108208003  
Also known by street and number as: 1025 13th St., Greeley, CO  
("Fourth Property")

3. On or about November 12, 2003, Recuperos and Respondent American Food Stores, LLC ("AFS") entered into an Asset Purchase Agreement, pursuant to the terms of which AFS agreed to purchase the assets from Recuperos (the "Purchase Agreement").

4. AFS breached the terms of the Purchase Agreement and Recuperos terminated the Purchase Agreement on or about January 16, 2004.

5. On or about January 28, 2004, Recuperos and AFS entered into a Mutual Settlement and Release Agreement (the "Settlement Agreement").

6. On or about May 13, 2004, Recuperos filed suit in the United States District Court for the District of Idaho against AFS seeking, *inter alia*, a declaratory judgment that Recuperos was entitled to release of the deposit concerning the Purchase Agreement and Settlement Agreement (the "Action").

7. Although the Action made no claim to the title of real property and without asserting any such claim, AFS filed four separate Lis Pendens on the First Property, Second Property, Third Property and Fourth Property (collectively the "Lis Pendens"). Copies of the Lis Pendens are attached hereto.

8. Recuperos filed a Motion for Preliminary Injunction and Expungement of Lis Pendens in the Action. The Court entered a Memorandum Decision and Order on July 2, 2004. The Court found that under Colorado law that "the Lis Pendens now recorded do not meet the requirements of the Colorado statute." Order, p. 4. The Court found that AFS "improperly filed Lis Pendens on the properties[.]" *Id.* The Court, however, found that it was without jurisdiction to order the removal of the Lis Pendens and that such an action would be required by a court sitting in Colorado. The decision is binding on the parties and AFS is collaterally estopped from raising the issue of the validity of the Lis Pendens.

9. A Lis Pendens may be filed only in an action "wherein relief is claimed effecting the title to real property[.]" C.R.S. § 38-35-110(1). At the time the Lis Pendens were filed there was no claim in the Action affecting title to the Subject Properties. Therefore, as found by the United States District Court for the District of Idaho, there are no grounds for recording the Lis Pendens. Furthermore, the Subject Properties have since been sold and any Lis Pendens filed now would no longer be valid.

10. Pursuant to C.R.S. § 38-35-204 and C.R.C.P. 105.1, Recuperos is entitled to an order and decree that the Lis Pendens are declared invalid and be released.

11. The Lis Pendens should be removed as encumbrances from the Subject Properties.

12. Recuperos is entitled to an award of costs, including reasonable attorney fees, pursuant to C.R.C.P. 105.1 (a)(3).

13. On July 21, 2004, AFS was personally served with the Verified Petition, Order to Show Cause, Notice of Show Cause Hearing, and District Civil Cover Sheet by personally serving AFS's registered agent, Sukhdev Kapur and this Court has jurisdiction of AFS.

**IT IS HEREBY ORDERED, ADJUDGED and DECREED:**

A. The Lis Pendens filed against the First Property, Second Property, Third Property and Fourth Property are hereby declared spurious and invalid.

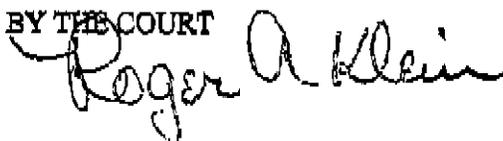
B. The Lis Pendens filed against the First Property, Second Property, Third Property and Fourth Property are hereby released and declared invalid.

C. Judgment is entered in favor of Petitioner and against Respondent in the amount of Petitioner's costs and reasonable attorney fees. Petitioner shall file an Affidavit of Attorney Fees and Costs within 15 days of the date of this Order. Respondent shall have 10 days in which to object to the amount of Petitioner's costs and attorney fees.

D. Certified copies of this Order may be recorded with the Clerk and Recorder of Weld County, Colorado.

Dated this            day of   AUG - 3 2004  , 2004.

BY THE COURT



\_\_\_\_\_  
District Court Judge

3205349 08/03/2004 02:5 Weld County, CO  
1 of 1 R 6.00 D 0.00 Steve Moreno Clerk & Recorder

349

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho LLC, )  
Plaintiff, )  
VS. )  
AMERICAN FOOD STORES, LLC, a )  
California LLC, )  
Defendant. )

Case No: CIV 04-229-S-BLW

LIS PENDENS

NOTICE is hereby given that a civil action has been commenced and is pending in the court named above wherein the parties named above have each asserted a claim affecting the title to real property and which claim or claims affect the following described real property situate in

WELD

County, State of Colorado, to wit:

PVT 16515-A L 18-19-20  
BLK 50 TOG with S2 VAC ALLEY ADJ TO SAID LOTS  
Parcel No. 121119306009

also known by street and number as: 300 Justin Ave., Platteville, CO

Dated this 13<sup>th</sup> day of June, 2004.

By: [Signature]  
Manjit Sahota, Mgr. Amer. Food Stores, LLC.

State of Colorado )  
) ss.  
City and County of Denver )

The above signature was sworn to and subscribed before me this 13<sup>th</sup> day of June, 2004.

My commission expires:

[Signature]  
Notary Public



My Comm. Expires 5/9/05



350

3205350 08/03/2004 02:59P Weld County, CO  
1 of 1 R 6.00 D 0.00 Steve Moreno Clerk & Recorder

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho LLC, )  
Plaintiff, )  
VS. )  
AMERICAN FOOD STORES, LLC, a )  
California LLC, )  
Defendant. )

Case No: CIV 04-229-S-BLW

LIS PENDENS

NOTICE is hereby given that a civil action has been commenced and is pending in the court named above wherein the parties named above have each asserted a claim affecting the title to real property and which claim or claims affect the following described real property situate in

Weld County, State of Colorado, to wit:

GR 5433 S90' W125' L3 BLK 95 1025 13 ST GREELEY 80631  
Parcel No.: 096108208003

also known by street and number as: 1025 13th St., Greeley, CO

Dated this 13<sup>th</sup> day of June, 2004.

By: [Signature]  
Manjit Sahota, Mgr. Amer. Food Stores, LLC.

State of Colorado )  
) ss.  
City and County of Denver )

The above signature was sworn to and subscribed before me this 13<sup>th</sup> day of June, 2004.

My commission expires:

[Signature]  
Notary Public  
JON ANGELO OLMEDO  
Notary Commission Expires - 12/31/05

EXHIBIT  
E

3205351 08/03/2004 02:59P Weld County, CO  
1 of 1 R 6.00 D 0.00 Steve Moreno Clerk & Recorder

351

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho LLC, )  
Plaintiff, )  
VS. )  
AMERICAN FOOD STORES, LLC, a )  
California LLC, )  
Defendant. )

Case No: CIV 04-229-S-BLW

LIS PENDENS

NOTICE is hereby given that a civil action has been commenced and is pending in the court named above wherein the parties named above have each asserted a claim affecting the title to real property and which claim or claims affect the following described real property situate in

WELD County, State of Colorado, to wit:

GR 4634 W15' N140' L6 & N140' L7-8 BLK 26 504 11 AV GREELEY 80631

also known by street and number as: 504 11th Ave., Greeley, CO

Dated this 13<sup>th</sup> day of June, 2004.

By: [Signature]  
Manjit Sahota, Mgr. Amer. Food Stores, LLC.

State of Colorado )  
) ss.  
City and County of Denver )

The above signature was sworn to and subscribed before me this 13<sup>th</sup> day of June, 2004.

My commission expires:

[Signature]  
Notary Public



3205352 08/03/2004 02:59P Weld County, CO  
1 of 1 R 6.00 D 0.00 Steve Moreno Clerk & Recorder

352

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho LLC, )  
Plaintiff, )  
VS. )  
AMERICAN FOOD STORES, LLC, a )  
California LLC, )  
Defendant. )

Case No: CIV 04-229-S-BLW

LIS PENDENS

NOTICE is hereby given that a civil action has been commenced and is pending in the court named above wherein the parties named above have each asserted a claim affecting the title to real property and which claim or claims affect the following described real property situate in

Weld County, State of Colorado, to wit:

GCT 6045 L1-2 BLK 16 KENDRICK 2ND ALSO VACATED S 10'  
26th ST ADJ TO 2603 S 8 AV GARDEN

Parcel No.: 096117317017

also known by street and number as 2603 S. 8th Ave., Garden City, CO

Dated this 13<sup>th</sup> day of June, 2004.

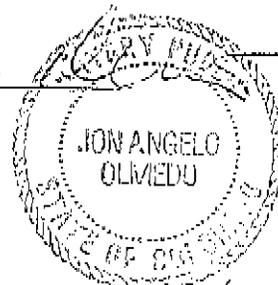
By: [Signature]  
Manjit Sahota, Mgr. Amer. Food Stores, L.L.C.

State of Colorado )  
) ss.  
City and County of Denver )

The above signature was sworn to and subscribed before me this 13<sup>th</sup> day of June, 2004.

My commission expires:

[Signature]  
Notary Public



My Comm. Expires 5/9/05