

1 **NOSSAMAN LLP**  
2 CHRISTOPHER D. HUGHES (SBN 254864)  
3 chughes@nossaman.com  
4 621 Capitol Mall, 25th Floor  
5 Sacramento, CA 95814  
6 Telephone: 916.442.8888  
7 Facsimile: 916.442.0382

8 Attorneys for Kimberly J. Husted,  
9 Chapter 7 Trustee

10  
11 **UNITED STATES BANKRUPTCY COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**  
13 **SACRAMENTO DIVISION**

14 In re  
15 TRONG DINH NGUYEN,  
16  
17 Debtor.

Case No: 16-21659-D-7

DCN: NOS-007

**EXHIBITS IN SUPPORT OF CHAPTER 7  
TRUSTEE’S MOTION TO APPROVE  
SALE OF PROPERTY; TO APPROVE  
OVERBIDDING PROCEDURES; AND TO  
ALLOW AND PAY ADMINISTRATIVE  
EXPENSES**

Date: December 12, 2018  
Time: 10:00 a.m.  
Dept. D (Courtroom 34)

18  
19  
20 Kimberly J. Husted, Chapter 7 Trustee in the above captioned Chapter 7 case (“Trustee”),  
21 by and through her attorney of record, hereby submits the following exhibits in support of the  
22 above-captioned motion.  
23

<u>Exhibit Number</u>	<u>Description</u>
Exhibit 1	Original Schedules A/B
Exhibit 2	Amended Schedules A/B
Exhibit 3	Purchase Agreement

EXHIBIT 1

Case 16-21659 Filed 03/17/16 Doc 1

## Fill in this information to identify your case:

United States Bankruptcy Court for the:

EASTERN DISTRICT OF CALIFORNIA

Case number (if known)

Chapter you are filing under:

☒ Chapter 7☐ Chapter 11☐ Chapter 12☐ Chapter 13☐ Check if this an amended filing

## Official Form 101

## Voluntary Petition for Individuals Filing for Bankruptcy

12/15

The bankruptcy forms use you and Debtor 1 to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use you to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be yes if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

## Part 1: Identify Yourself

## About Debtor 1:

## About Debtor 2 (Spouse Only in a Joint Case):

## 1. Your full name

Write the name that is on your government-issued picture identification (for example, your driver's license or passport).

Bring your picture identification to your meeting with the trustee.

Trong

First name

Dinh

Middle name

Nguyen

Last name and Suffix (Sr., Jr., II, III)

First name

Middle name

Last name and Suffix (Sr., Jr., II, III)

## 2. All other names you have used in the last 8 years

Include your married or maiden names.

## 3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)

xxx-xx-6478

Case 16-21659 Filed 03/17/16 Doc 1

Debtor 1 **Trong Dinh Nguyen**

Case number (if known)

17.1. **Checking Account** **Checking Acct #XXXXX1329 at Chase, Fair Oaks and Watt branch, Sacramento, CA** **\$526.00**

18. **Bonds, mutual funds, or publicly traded stocks**

Examples: Bond funds, investment accounts with brokerage firms, money market accounts

☒ No☐ Yes.....

Institution or issuer name:

19. **Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture**☐ No☒ Yes. Give specific information about them.....

Name of entity:

% of ownership:

**70% stock in World of Good Taste, Inc.**  
**(remaining stock is held by an unrelated person)**  
**Not publicly traded. Assets are primarily**  
**fixtures, equipment and some cash. Liabilities**  
**are in loans and leases. Liabilities vastly exceed**  
**assets. Balance sheet will be provided to the**  
**trustee.**

**100%**  
**Separate**  
**Property**  
**Interest in**  
**70% of**  
**stock**

%

**\$1.00**

**49.5% Stock in Fulcrum Industries, Inc.**  
**Corporation shares are absolutely worthless**

%

**\$1.00**20. **Government and corporate bonds and other negotiable and non-negotiable instruments**

Negotiable instruments include personal checks, cashiers' checks, promissory notes, and money orders.

Non-negotiable instruments are those you cannot transfer to someone by signing or delivering them.

☒ No☐ Yes. Give specific information about them

Issuer name:

21. **Retirement or pension accounts**

Examples: Interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans

☐ No☒ Yes. List each account separately.

Type of account:

Institution name:

**IRA**

**Husband's IRA Acct#XXXXXXXXX213 through**  
**Charles Schwab, Fair Oaks Blvd and Monroe**  
**branch, Sacramento, CA 95825 (IRA was**  
**started approximately 25 years ago)**

**\$10,500.00****IRA**

**Debtor's estranged wife's IRA**  
**Acct#XXXXXXXXX848 through Charles**  
**Schwab, Fair Oaks Blvd and Monroe branch,**  
**Sacramento, CA 95825 (IRA was started**  
**approximately 15 years ago, so part of it is**  
**community property)**

**\$10,500.00**22. **Security deposits and prepayments**

Your share of all unused deposits you have made so that you may continue service or use from a company

Examples: Agreements with landlords, prepaid rent, public utilities (electric, gas, water), telecommunications companies, or others

☒ No☐ Yes.....

Institution name or individual:

23. **Annuities (A contract for a periodic payment of money to you, either for life or for a number of years)**☒ No☐ Yes.....

Issuer name and description.

EXHIBIT 2

Case 16-21659 Filed 05/16/16 Doc 29

## Fill in this information to identify your case:

Debtor 1	<b>Trong Dinh Nguyen</b>		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse if, filing)			
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	EASTERN DISTRICT OF CALIFORNIA		
Case number (If known)	2016-21659		

☐ Check if this is an amended filing

## Official Form 106Sum

## Summary of Your Assets and Liabilities and Certain Statistical Information

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Fill out all of your schedules first; then complete the information on this form. If you are filing amended schedules after you file your original forms, you must fill out a new *Summary* and check the box at the top of this page.

## Part 1: Summarize Your Assets

	Your assets Value of what you own
1. <b>Schedule A/B: Property</b> (Official Form 106A/B)	
1a. Copy line 55, Total real estate, from Schedule A/B.....	\$ 750,000.00
1b. Copy line 62, Total personal property, from Schedule A/B.....	\$ 57,945.56
1c. Copy line 63, Total of all property on Schedule A/B.....	\$ 807,945.56

## Part 2: Summarize Your Liabilities

	Your liabilities Amount you owe
2. <b>Schedule D: Creditors Who Have Claims Secured by Property</b> (Official Form 106D)	
2a. Copy the total you listed in Column A, <i>Amount of claim</i> , at the bottom of the last page of Part 1 of Schedule D...	\$ 0.00
3. <b>Schedule E/F: Creditors Who Have Unsecured Claims</b> (Official Form 106E/F)	
3a. Copy the total claims from Part 1 (priority unsecured claims) from line 6e of Schedule E/F.....	\$ 0.00
3b. Copy the total claims from Part 2 (nonpriority unsecured claims) from line 6j of Schedule E/F.....	\$ 5,958,503.75
<b>Your total liabilities</b>	\$ 5,958,503.75

## Part 3: Summarize Your Income and Expenses

4. <b>Schedule I: Your Income</b> (Official Form 106I)	
Copy your combined monthly income from line 12 of Schedule I.....	\$ 3,369.88
5. <b>Schedule J: Your Expenses</b> (Official Form 106J)	
Copy your monthly expenses from line 22c of Schedule J.....	\$ 6,242.00

## Part 4: Answer These Questions for Administrative and Statistical Records

6. Are you filing for bankruptcy under Chapters 7, 11, or 13?
- ☐ No. You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.
- ☒ Yes
7. What kind of debt do you have?
- ☐ Your debts are primarily consumer debts. *Consumer debts* are those "incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). Fill out lines 8-9g for statistical purposes. 28 U.S.C. § 159.
- ☒ Your debts are not primarily consumer debts. You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.

Official Form 106Sum Summary of Your Assets and Liabilities and Certain Statistical Information

page 1 of 2

Case 16-21659 Filed 05/16/16 Doc 29

Debtor 1 **Trong Dinh Nguyen**

Case number (if known) **2016-21659**

17.1. **Checking Account** **Checking Acct #XXXXX1329 at Chase, Fair Oaks and Watt branch, Sacramento, CA** **\$526.00**

**18. Bonds, mutual funds, or publicly traded stocks**

*Examples: Bond funds, investment accounts with brokerage firms, money market accounts*

☒ No

☐ Yes..... Institution or issuer name:

**19. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture**

☐ No

☒ Yes. Give specific information about them.....

Name of entity:

% of ownership:

**70% stock in World of Good Taste, Inc.  
(remaining stock is held by an unrelated person)  
Not publically traded. Assets are primarily  
fixtures, equipment and some cash. Liabilities  
are in loans and leases. Liabilities vastly exceed  
assets. Balance sheet will be provided to the  
trustee.**

**100%  
Separate  
Property  
Interest in  
70% of  
stock %**

**\$1.00**

**49.5% Stock in Fulcrum Industries, Inc.  
Corporation shares are absolutely worthless**

**%**

**\$1.00**

**20. Government and corporate bonds and other negotiable and non-negotiable instruments**

*Negotiable instruments include personal checks, cashiers' checks, promissory notes, and money orders.*

*Non-negotiable instruments are those you cannot transfer to someone by signing or delivering them.*

☒ No

☐ Yes. Give specific information about them

Issuer name:

**21. Retirement or pension accounts**

*Examples: Interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans*

☐ No

☒ Yes. List each account separately.

Type of account:

Institution name:

**IRA**

**AMEND: Husband's IRA  
Acct#XXXXXXXXX213 through Charles  
Schwab, Fair Oaks Blvd and Monroe branch,  
Sacramento, CA 95825 (IRA was started  
approximately 25 years ago) Most recent  
contribution was made from debtor's 2015  
income tax refunds and other cash. \$5,250 for  
2015 and 2016.**

**\$10,500.00**

**IRA**

**AMEND: Debtor's estranged wife's IRA  
Acct#XXXXXXXXX848 through Charles  
Schwab, Fair Oaks Blvd and Monroe branch,  
Sacramento, CA 95825 (IRA was started  
approximately 15 years ago, so part of it is  
community property) Most recent  
contribution was made from debtor's  
estranged wife's 2015 income tax refunds and  
other cash. \$5,250 for 2015 and 2016.**

**\$10,500.00**

EXHIBIT 3



### ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is executed and entered into as of November 14, 2018 (the "Execution Date"), by and between the following parties (each a "Party" and collectively, the "Parties"): (a) Kimberly Husted, acting in her sole capacity as the Chapter 7 Trustee (in such capacity, the "Seller"), for the bankruptcy estate of the Debtor (as defined below); and (b) LABOU FRESH, Inc. ("Buyer"); with reference to the following facts.

### RECITALS

A. On March 17, 2016 ("Petition Date"), Trong Dinh Nguyen ("Debtor") filed his voluntary petition for relief under Chapter 7 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court, Eastern District of California, Sacramento Division (the "Bankruptcy Court"), initiating Case No.16-21659-D-7 ("Bankruptcy Case"). Mr. Roberts was subsequently appointed as the Chapter 7 Trustee and acted solely in his capacity as the court-appointed Chapter 7 Trustee, and not as an individual. On or about June 15, 2018, Mr. Roberts retired from the case and Ms. Husted was appointed as the successor Trustee and is acting solely in her capacity as the court-appointed Chapter 7 Trustee, and not as an individual.

B. The Debtor's schedules list a seventy percent (70%) interest in a corporation called World of Good Tastes, Inc. The 70% interest in World of Good Tastes, Inc. is property of the Bankruptcy Estate. The Trustee has agreed with the minority shareholder to market and sell 100% of the ownership interest in World of Good Tastes, Inc. (hereafter, the "Business") with the net proceeds apportioned accordingly between the minority shareholder and the Bankruptcy Estate.

C. Pursuant to Sections 105 and 363 of the Bankruptcy Code, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, all of the Debtor's right, title and interest in and to the assets described in Section 2.1 of this Agreement (the "Transaction"). The entire Transaction is subject to approval by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of this Agreement, the Parties hereby agree as follows:

### ARTICLE 1

#### BANKRUPTCY COURT APPROVAL OF THIS AGREEMENT

1.1 Binding Effect: Entry of Approval Order. Article 1 and Article 4 of this Agreement are effective upon the Execution Date. Except for Article 1 and Article 4, this Agreement will become effective only upon the entry by the Bankruptcy Court of one or more final and binding orders of the Bankruptcy Case (collectively, the "Approval Order") (a) approving this Agreement and the sale of the Business to Buyer pursuant to this Agreement. If no Appeal of the Approval Order (an "Appeal") is timely filed pursuant to Rule 8002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), or if an appeal of the Approval Order is timely filed pursuant to Bankruptcy Rule 8002, but no stay ("Stay") of the execution of the Approval

Order is issued pursuant to Bankruptcy Rule 7062 pending resolution of the Appeal, then the Parties will proceed with the Transaction.

**1.2 Bankruptcy Court Approval.**

1.2.1 Filing of Sale Motion. Seller and Buyer acknowledge and agree that this Agreement and the transactions contemplated hereby are subject to (i) Seller's right to accept a superior bid at any overbid auction that may be held in connection with the sale hearing to approve the proposed sale of the Business (the "Auction") and (ii) contingent upon the approval and authorization of the Bankruptcy Court. Seller agrees to file a motion (the "Sale Motion") as promptly as reasonably practicable following the Execution Date, and to seek Bankruptcy Court approval of this Agreement and the transactions contemplated hereby at the scheduled hearing for Judge Robert Bardwil on December 12, 2018 on 21 days notice. At the hearing on the Sale Motion Trustee will accept overbidding from qualified bidders including Buyer if such other Bidders appear and wish to participate.

1.2.2 Approval Order. Following the filing of the Sale Motion and to the extent Buyer is declared the successful bidder at the Auction, Seller shall use its reasonable best efforts to perform such other acts as may be necessary to permit Seller to consummate the transactions contemplated by this Agreement. Any changes to the form of the Approval Order affecting the economic terms of such transactions, or the closing conditions thereto, must be approved by Buyer in its sole and absolute discretion and by Seller in its sole and absolute discretion. Any other changes to the form of the Approval Order must be approved by Buyer in its reasonable discretion and by Seller in its reasonable discretion. In the event an Appeal of the Approval Order is filed, Seller and Buyer shall each use their respective commercially reasonable efforts to defend such Appeal or, by mutual written agreement, shall close the transactions contemplated hereby unless such closing is subject to a Stay. Seller shall give Buyer reasonable advance written notice of any hearings regarding motions respecting the Approval Order.

1.3 Cooperation in Bankruptcy Court Matters. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller or ordered by the Bankruptcy Court to assist in obtaining entry of the Approval Order, including, without limitation, furnishing affidavits, non-confidential financial information, confidential information subject to a reasonable form of confidentiality agreement, or other documents or information for filing with the Bankruptcy Court, and shall make its employees and representatives available to be interviewed by Seller's attorneys and to testify before the Bankruptcy Court and at depositions in connection with the foregoing. If Buyer is declared the Successful Bidder and a written objection to the Sale Motion is filed that, if upheld, would prohibit or otherwise prevent the Closing (as defined below) from occurring pursuant to the terms of this Agreement, Seller and Buyer shall use commercially reasonable efforts to have such objection overruled.

**ARTICLE 2**

**PURCHASE AND SALE OF ASSETS; PURCHASE PRICE; DEPOSIT**

2.1 Purchase and Sale of Business; Assumption of Liabilities. Subject to the terms and conditions of this Agreement, including, without limitation, approval of the Bankruptcy Court,

Seller hereby agrees to sell, transfer, assign, convey and deliver to Buyer, all of the Debtor's right, title and interest in and to the following (collectively, the "Business"), as-is, where-is, without any representation or warranty, express or implied, to the extent the same are used solely in connection with the Business:

(a) All shares (100% ownership interest) of World of Good Taste, Inc.

2.2 **Purchase Price; Good Faith Deposit.** The purchase price for the Business shall be Ninety Thousand and No/100 Dollars (\$90,000.00) ("Purchase Price").

2.3 The Purchase Price shall be payable as follows:

2.3.1 **Good Faith Deposit.** Within two (2) business days of the Execution Date, Buyer shall provide a deposit of \$9,000.00 (the "Good Faith Deposit") and deliver such amount to the Trustee to be held in escrow. This amount is in addition to any other deposit made by Buyer pursuant to a Nondisclosure Agreement ("Deposit"). The Good Faith Deposit and the Deposit shall be credited against the Purchase Price at Closing. The Good Faith Deposit and the Deposit shall be refundable if the Buyer does not become the Purchasing Party.

2.3.2 **Balance.** On or before 12:00 p.m. (Pacific Time) on the Closing Date, Buyer shall pay the balance of the Purchase Price over and above the Good Faith Deposit in cash or certified funds to Seller in accordance with Seller's instructions.

### ARTICLE 3

#### CLOSING

3.1 **Closing Date and Place.** Each Party will perform all acts required of such Party pursuant to this Agreement to enable the Closing to occur by no later than December 15<sup>th</sup>, 2018, at the offices of Seller's counsel or the escrow agent, or at such other place and/or on such other date as shall be agreed upon by Buyer and Seller or ordered by the Bankruptcy Court. As used in this Agreement, "Closing" means the occurrence of each of the events set forth in Section 3.2 hereto, and "Closing Date" means the date upon which the Closing occurs.

3.2 **Closing.** The "Closing" means the occurrence of all of the following events, which the Parties will cause to occur concurrently pursuant to this Agreement:

(a) Seller has delivered to Buyer a certified copy of the Approval Order, no Stay has been issued, and any applicable time for filing an Appeal has expired.

(b) Seller has executed and delivered to Buyer a Bill of Sale.

(c) Buyer has paid to Seller an amount equal to the balance of the Purchase Price plus any cure costs or expenses due pursuant to Section 7.1 hereof.

(d) The representations of each Party contained in Article 4 hereof are true and correct at and as of the Closing Date with the same effect as though made at and as of the Closing Date.

(e) Each Party has duly performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by such Party.

(f) Neither Party shall have terminated this Agreement pursuant to Section 6.1 hereof.

#### ARTICLE 4

##### REPRESENTATIONS

4.1 Representations of Seller. Seller hereby makes the following representations and warranties ("Seller's Representations") to Buyer:

4.1.1 Legal Capacity of Debtor. Seller is the Chapter 7 Trustee, duly appointed by the United States Bankruptcy, Eastern District of California, Sacramento Division, acting in her sole capacity as the Chapter 7 Trustee for the Debtor.

4.1.2 Brokers and Finders. Except for Seller's business broker, represented by Connie Wright, whose fees will be paid from Seller's proceeds, Seller has not retained any broker or finder in connection with the Transaction so as to give rise to any claim against Buyer for any brokerage or finder's commission, fee or similar compensation.

4.1.3 Anti-Terrorism Laws. Seller represents and warrants to Buyer that Seller is not, and will not be, a person or entity with whom Buyer is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001, and regulations promulgated pursuant thereto, including, without limitation, persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, "Anti-Terrorism Laws").

4.1.4 No Other Representations. Seller makes no representation or warranty, express or implied, to Buyer, and hereby disclaims any representation or warranty, express or implied, with respect to the Business, or any other matter, including any representation or warranty as to merchantability, fitness for a particular purpose or future results, other than as expressly set forth in this Section 4.1.

4.2 Representations of Buyer. Buyer hereby makes the following representations and warranties ("Buyer's Representations") to Seller:

4.2.1 Buyer's Status. Buyer is a/an Corporation duly organized, validly existing and in good standing under the laws of the State of California.

4.2.2 Legal Capacity of Buyer. (a) Buyer has the requisite power, authority, and legal capacity to make, execute, enter into, and deliver this Agreement and to perform its obligations under this Agreement, (b) any person executing and delivering this Agreement on behalf of Buyer is duly authorized to do so; and (c) neither this Agreement nor the performance by Buyer of any obligation of Buyer under this Agreement will violate any provision of any article, by-



law, operating agreement or partnership agreement of Buyer or any contract, covenant, agreement, condition, restriction, injunction or order by which Buyer is bound.

4.2.3 Consents. Except for the Approval Order, no consent, approval, authorization, permit, order, filing, registration or qualification of or with any court, governmental authority or third person is required to be obtained by Buyer in connection with the execution and delivery by Buyer of this Agreement or the consummation by Buyer of the Transaction.

4.2.4 Brokers and Finders. Buyer has not retained any broker or finder in connection with the Transaction so as to give rise to any valid claim against Seller for any brokerage or finder's commission, fee or similar compensation.

4.2.5 Terms of Sale; Investigation. Buyer shall have until 11:59 a.m. on December 5, 2018 to conduct any investigation of the Business. Seller will take all reasonable steps to ensure that Buyer has access to all necessary information to conduct the investigation. After 12:00 p.m. on December 5, 2018, Buyer will be deemed to have made such investigation as it has deemed appropriate in connection with the decision to enter into this Agreement. Buyer has had the opportunity to inspect the Business, visit with Seller and meet with Seller's representatives to discuss the Business. Buyer is relying on the results of such investigation and the advice of its own advisors and has not relied upon any statement or representation made by Seller or Debtor or any director, officer, employee, agent, attorney, accountant, or affiliate thereof, other than the covenants, representations and warranties of Seller set forth in this Agreement. Seller makes no representations or warranties, express or implied, of any kind concerning the past, present or future profitability or viability of the Business, except as expressly set forth in this Agreement. Buyer acknowledges that EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, BUYER WILL ACCEPT THE BUSINESS AND THE ASSUMED LIABILITIES, AT THE CLOSING "AS-IS, WHERE-IS" AND "WITH ALL FAULTS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED.

4.2.6 Anti-Terrorism Laws. Buyer represents and warrants to Seller that Buyer is not, and will not be, a person or entity with whom Seller is restricted from doing business under any Anti-Terrorism Laws. The sources of all cash used in connection with the Transaction will be fully disclosed to Seller and the Bankruptcy Court prior to Closing, including any and all funds provided by a foreign national individual or entity of any country other than the United States of America.

4.2.7 Acknowledgement of Trustee Capacity. Buyer acknowledges that Kimberly Husted is executing this Agreement solely in her legal capacity as the Trustee of the Debtor, and that Kimberly Husted or her respective officers, directors, shareholders, attorneys, accountants, agents, heirs, successors, assigns, or employees shall have any personal or corporate liability whatsoever in connection with the performance of any obligations of Seller under this Agreement. Buyer agrees to look solely to the estate of the Debtor for the recovery of any judgment obtained by Buyer arising from or in connection with Seller's obligations under this Agreement.

4.3 Solvency; Availability of Funds.

4.3.1 As of the Closing Date and immediately after consummating the transactions contemplated by this Agreement, Buyer represents, warrants and covenants that it will not (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable liabilities as they become due and payable), (ii) have unreasonably small capital with which to engage in its business, or (iii) have incurred or planned to incur debts beyond its ability to repay such debts as they mature.

4.3.2 Buyer has cash available on hand, permitted borrowing capacity under existing facilities, or firm financing (debt or equity) commitments that together are, and at the Closing, Buyer will have cash and working capital available that is, sufficient to enable it to pay the Purchase Price and any other amounts required hereunder and to consummate the transactions contemplated hereby. Buyer acknowledges that its obligation to consummate the Agreement and the other transactions contemplated hereby is not subject to any financing contingency.

## ARTICLE 5

### OTHER OBLIGATIONS PENDING CLOSING

5.1 **Conduct of Business.** Except as otherwise specifically permitted or required by this Agreement, Seller does not operate the Business. Subject to the approval of the Bankruptcy Court, if necessary, and with prior notice to Buyer, Seller may also elect to close the Business if, in Seller's judgment, such closure is in the best interest of the Debtor's estate.

5.2 **No Inconsistent Actions.** Following the Execution Date, neither Buyer nor Seller will take any action inconsistent with this Agreement pending either the Closing or the termination of this Agreement pursuant to Article 6 hereof, but that this provision in no way prevents the Seller and/or the Seller, the Trustee and/or her employees agents or professionals from providing information to and/or soliciting potential bidders in connection with the sale.

## ARTICLE 6

### TERMINATION

6.1 **Grounds for Termination.** This Agreement may be terminated upon the occurrence of any of the following events, by:

(a) Mutual written agreement of the Parties at any time prior to entry of the Approval Order;

(b) Buyer or Seller, if Buyer is not declared the successful bidder or a back-up bidder at the Auction;

(c) any Party not in default of this Agreement, if the Closing does not occur on or before 5:00 p.m. (Pacific time) on December 15<sup>th</sup>, 2018 (provided, that if the Closing does not occur prior to such date due to a material breach of this Agreement by a Party, such breaching Party may not terminate this Agreement pursuant to this Section 6.1(c));

(d) by either Party if there shall be in effect a final, non-appealable order of a governmental body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby, it being agreed that the Parties shall promptly appeal any adverse determination that is not non-appealable (and pursue such appeal with reasonable diligence);

(e) any Party not in default of this Agreement, upon a material breach and default of this Agreement by the other Party which breach and default remains uncured for a period of three (3) business days following the date upon which written notice of the breach and default is given by the non-defaulting Party to the defaulting Party;

(f) Buyer, if as of the time of the Closing, any Seller's Representation is materially untrue, unless waived by Buyer;

(g) Seller, if as of the time of the Closing, any Buyer's Representation is materially untrue;

(h) Buyer, if Seller fails to timely satisfy any material obligation of Seller pursuant to this Agreement required to be satisfied prior to or at the Closing; and

(i) Seller, if Buyer fails to timely satisfy any material obligation of Buyer pursuant to this Agreement required to be satisfied prior to or at the Closing.

6.2 **No Obligation to Terminate.** Except as may be otherwise set forth in this Agreement, no Party having a right to terminate this Agreement pursuant to Section 6.1 will be required to exercise such right, or otherwise be prohibited from enforcing this Agreement by reason of having any such unexercised right to terminate this Agreement.

6.3 **Notice of Termination.** Any Party terminating this Agreement pursuant to Section 6.1 will give immediate notice of such termination to the other Party at the notices address(es) set forth in Section 7.17, specifying in the notice the provision of this Agreement pursuant to which the termination is made.

6.4 **Effect of Exercising Right of Termination.** If this Agreement is validly terminated as provided herein, then, except as set forth in Section 2.3.1 and as may be required to enforce the provisions of Section 2.3.1, each Party will promptly return to the other Party any monies, documents or other property of the other Party in its possession or control received pursuant to or in contemplation of this Agreement, this Agreement will terminate and be of no further force or effect, and each Party will have no further obligation or liability to the other by reason of this Agreement. Nothing in this Section 6.4 shall relieve any Party of any liability for fraud, intentional misrepresentation or willful breach of this Agreement prior to the date of termination.

## ARTICLE 7

### **MISCELLANEOUS**

7.1 **Expenses.** Buyer assumes all expenses allocable to the period from and after the Closing. Each Party shall assume and bear its own expenses, costs and fees incurred in the

preparation and execution of this Agreement and compliance herewith, including attorneys' and accountants' fees, whether or not the Transaction is consummated; provided, that if any Party commences legal proceedings against the other Party to enforce the provisions of this Agreement or to declare any rights or obligations under this Agreement, the prevailing Party will recover from the losing Party its costs of suit, including reasonable attorneys' fees, as determined by the Bankruptcy Court in such proceeding.

7.2 **Integration.** This Agreement (including all Schedules and Exhibits), are the sole agreements between the Parties regarding the Transaction. All prior and contemporaneous negotiations and agreements between the Parties, oral or written, regarding the Transaction, are hereby superseded. No Party has the authority to orally modify this Agreement, or to make any oral representation or oral agreement regarding this Agreement or the Transaction.

7.3 **Amendment, Waiver and Modification.** Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated except by written consent of the Party against which such change, waiver, discharge or termination is sought to be enforced, or by order of the Bankruptcy Court.

7.4 **Construction.** The Parties acknowledge that each Party was represented by legal counsel (or had the opportunity to be represented by legal counsel) in connection with this Agreement and that each of them and its legal counsel have reviewed and revised this Agreement, or have had an opportunity to do so, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or any Exhibits or Schedules hereto or thereto.

7.5 **Captions; Capitalized Terms.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Capitalized terms used in the Schedules and Exhibits hereto and not otherwise defined therein shall have the meanings ascribed to them in this Agreement.

7.6 **Further Assurances.** Each Party will promptly execute and deliver all documents and take all actions, including the payment of money, reasonably required to effectuate the Transaction and perform its duties pursuant to this Agreement.

7.7 **Assignment; Successors; Parties in Interest.** This Agreement shall not be assignable by Buyer without the prior written consent of Seller or order of the Bankruptcy Court. Any attempt to assign this Agreement without such consent or order shall be void and of no effect. This Agreement shall inure to the benefit of, and be binding on and enforceable against, each Party and such permitted successors and assigns of the respective Parties, and nothing in this Agreement, express or implied, is intended to confer upon any employee or affiliate of either Party or any other person any rights or remedies of any nature whatsoever under this Agreement.

7.8 **Time is of the Essence.** With respect to all dates and time periods set forth or referred to in this Agreement, time is of the essence, such that each Party will perform all acts required of such Party pursuant to this Agreement by the date or within the time period required pursuant to this Agreement.



7.9 **Business Day.** As used in this Agreement, the term "business day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in the State of California are closed.

7.10 **Access to Books and Records after Closing.** Buyer shall permit Seller to have access to the books and records provided through this sale relating to the Business for a period of three (3) years after the Closing, or such other period as required by the Bankruptcy Court. Notwithstanding the foregoing, Buyer agrees to notify Seller prior to destroying any books and records relating to the Business and allow Seller to make and retain copies, at Seller's expense, of such books and records.

7.11 **Sales and Transfer Taxes.** Buyer shall bear any sales or transfer tax arising from the Transaction.

7.12 **Section Headings.** All references to Sections, Schedules and Exhibits shall be deemed references to such parts of this Agreement, unless the context shall otherwise require. Disclosure of any fact or item in any Schedule hereto referenced by a particular Section in this Agreement shall, should the existence of the fact or item of its contents be relevant to any other Section, be deemed to be disclosed with respect to that other Section whether or not an explicit cross-reference thereto appears.

7.13 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument. This Agreement may be executed by facsimile signatures, which shall have the same force and effect as original signatures.

7.14 **Governing Law.** This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California, without giving effect to the conflict of laws and rules thereof. Each Party consents to the exclusive jurisdiction of the Bankruptcy Court.

7.15 **Notices.** Any notice by any Party to any other Party pursuant to this Agreement must be made in writing and delivered to the other Party at the address shown below, until written notice of a different address is given by the other Party pursuant to this Section. Payments to be made pursuant to this Agreement will be deemed made only upon actual receipt. Notices given by personal service will be deemed received upon delivery. Notices given by first class mail, postage prepaid, addressed to the address required by this Section, will be deemed received three (3) business days following the deposit thereof with the United States Post Office. Notices given by overnight courier service will be deemed received on the date of delivery confirmed by the courier service. Notices given by email facsimile transmission will be deemed received on the date upon which the email is sent, provided that a copy of any notice given by email must also be sent to the recipient by first class mail, postage prepaid, addressed to the address required by this Section. The rejection by a Party of a notice, the refusal by a Party to accept a notice, or the inability of another Party to deliver a notice because of a change of address of a Party of which no notice of change of address is given pursuant to this Agreement, will constitute delivery of the notice. Telephone numbers and e-mail addresses, if listed, are listed for convenience purposes only and not for the purpose of giving notice pursuant to this Agreement.

To Seller:

Kimberly Husted  
Chapter 7 Trustee  
11230 Gold Express Drive, Suite 310-411  
Gold River, CA 95670  
Email: kh7trustee@gmail.com

With copies to:

Nossaman, LLP  
621 Capitol Mall, Suite 250  
Sacramento, CA 95814  
Attn: Christopher D. Hughes  
Email: Chughes@nossaman.com

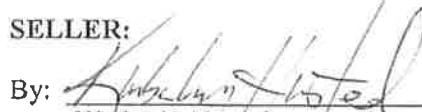
To Buyer:

With copies to:

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

**BUYER:**

LABOU FRESH, Inc., a

Date: 11/14/18By: Kwong VoongTitle: Owner**SELLER:**

By: Kimberly Husted  
Kimberly Husted, acting in her sole capacity as  
the Chapter 7 Trustee for the Debtor