

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

CENTRAL GROCERS, INC., *et al.*,¹

Debtors.

)

) Chapter 11

)

) Case No. 17-13886 (PSH)

)

) (Jointly Administered)

)

**NOTICE OF MOTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019(a) FOR ENTRY OF AN ORDER
APPROVING SETTLEMENT AND COMPROMISE OF CLAIMS**

PLEASE TAKE NOTICE that on October 23, 2017, the Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the chapter 11 cases of the above captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) filed the **Motion of the Official Committee of Unsecured Creditors Pursuant to Federal Rule of Bankruptcy Procedure 9019(a) for Entry of an Order Approving Settlement and Compromise of Claims** (the “**Motion**”). By the Motion, the Committee seeks authority and approval, pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, to enter into and implement the Settlement Agreement and Release (a copy of which is attached to the proposed order filed with the Motion, the “**Settlement Agreement**”²), to bind each of the Debtors and each of the Debtors’ estates to the terms of the Settlement Agreement, to settle the Challenge³ and any potential Challenge, claim, cause of action or other matters against the Agent and Lenders on the terms and conditions contained in the Settlement Agreement, and to grant the releases contained in the Settlement Agreement. The Settlement Agreement provides for, among other things, (i) a cash payment by the Lenders to the Debtors’ estates in the amount of \$9 million; (ii) the Debtors’ representative shall collect, sell, liquidate, and/or dispose of all remaining assets of the Debtors and pay the proceeds of such assets to Agent, for the benefit of the Lenders, except for those assets specifically carved out in the Settlement Agreement which are preserved for the Debtors’ estates or are shared with the Debtors’ estates; and (iii) retention of the right to pursue additional

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Central Grocers, Inc. (3170), CGI Joliet, LLC (7014), Currency Express, Inc. (2650), Raceway Central, LLC (2161), Raceway Central Calumet Park LLC (2161), Raceway Central Chicago Heights LLC (2161), Raceway Central Downers Grove LLC (2161), Raceway Central Joliet North LLC (2161), Raceway Central LLC North Valpo (2161), Raceway Central Wheaton LLC (2161), Strack and Van Til Super Market, Inc. (2184), and SVT, LLC (1185).

² Reference to the Settlement Agreement should be made for the complete terms thereto. In the event there are any inconsistencies with the terms of the Settlement and the summary set forth herein, the terms of the Settlement Agreement shall govern.

³ Capitalized terms used but not defined in this Notice have the meanings ascribed to such terms in the Motion.

potential claims or causes of action for the benefit of the Debtors' estates. The terms and conditions of the Settlement Agreement are described in further detail in the Motion.

PLEASE TAKE FURTHER NOTICE that you may obtain a copy of the Motion (including the Settlement Agreement) free of charge by visiting the case website maintained by Prime Clerk LLC, notice and claims agent for these chapter 11 cases, available at <https://cases.primeclerk.com/centralgrocers> or by calling (866) 727-8489. You may also obtain copies of any pleadings in the above-referenced cases by visiting the Prime Clerk LLC website or by visiting the Court's website at www.ilnb.uscourts.gov, in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that the Committee has requested that the Motion be heard at the omnibus hearing on **November 16, 2017, at 11:00 a.m. (Central Time)** (the "**Hearing**") before the Honorable Judge Pamela S. Hollis or any other judge who may be sitting in her place and stead, in Courtroom 644 in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, at which time you may appear if you deem fit.

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be filed on the docket of the above-captioned lead case by no later than **November 6, 2017, at 4:00 p.m. (Central Time)** (the "**Objection Deadline**") and be served on the following so as to be received by such parties no later than the Objection Deadline: (i) the undersigned counsel to the Committee; (ii) counsel to the administrative agent under DIP Facility and the Prepetition Revolving Credit Facility, (a) Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, Delaware 19801 (Attn: Regina S. Kelbon, Esq. and Victoria A. Guilfoyle, Esq.), (b) Blank Rome LLP, One Logan Square 130, North 18th Street, Philadelphia, Pennsylvania 19103 (Attn: Mark I. Rabinowitz, Esq.), and (c) Goldberg Kohn Ltd., 55 East Monroe Street, Suite 3300, Chicago, Illinois 60603-5792 (Attn: Ronald Barliant, Esq.); (iii) the Office of the United States Trustee for the Northern District of Illinois; and (iv) those parties that have requested to receive notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure, a list of which is available at <https://cases.primeclerk.com/centralgrocers>.

PLEASE TAKE FURTHER NOTICE that if an Objection to the Motion is not filed and received by no later than the Objection Deadline, the Court may enter an order granting the relief requested in the Motion without further notice or hearing.

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PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted upon default.

Dated: October 23, 2017

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF CENTRAL GROCERS, INC., *ET*
AL.

By: /s/ Kevin H. Morse

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**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re) Chapter 11
)
CENTRAL GROCERS, INC., <i>et al.</i> ,) Case No. 17-13886 (PSH)
)
Debtors. ¹) (Jointly Administered)
)

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019(a) FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT AND COMPROMISE OF CLAIMS**

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the chapter 11 cases of the above captioned debtors and debtors-in-possession (the “Debtors”) by and through its undersigned counsel and on behalf of each of the Debtors and each of the Debtors’ estates, hereby moves (the “Settlement Motion”), pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order, substantially in the form attached hereto as **Exhibit A**, approving the settlement and compromise (the “Settlement Order”) of claims and causes of action, by and among the Committee, PNC Bank, National Association, in its capacity as Administrative Agent, Collateral Agent (“Agent”) and in its capacity as a lender (“PNC”), Bank of the West, Bank of America, N.A., U.S. Bank,

¹ The debtors in these chapter 11 cases, along with the last four of each debtor’s federal tax identification number, as applicable, are Central Grocers, Inc. (“CGI”) (3170), CGI Joliet, LLC (7014), Currency Express, Inc. (2650), Raceway Central, LLC (2161), Raceway Central Calumet Park LLC (2161), Raceway Central Chicago Heights LLC (2161), Raceway Central Downers Grove LLC (2161), Raceway Central Joliet North LLC (2161), Raceway Central LLC North Valpo (2161), Raceway Central Wheaton LLC (2161), Strack and Van Til Super Market, Inc. (2184), and SVT, LLC (1185).

National Association, The Northern Trust Company, and First Midwest Bank (together, the “Lenders”, and collectively with the Committee, the “Parties”),² as set forth herein.

Preliminary Statement

1. The Committee seeks the Court’s approval to enter into the Settlement Agreement and Release, substantially in the form attached as Exhibit 1 to the Settlement Order (the “Settlement Agreement”) to resolve, on a global and consensual basis, the many issues and disputes among the Committee, on behalf of itself, the Debtors and each of the Debtors’ estates, and the Secured Parties in these challenging chapter 11 cases. Importantly, not only will the proposed Settlement Agreement pave the way for a potential material return to certain of the Debtors’ priority and non-priority unsecured creditors – a constituency owed in excess of \$140 million – it will also resolve, without the need for protracted and costly litigation, the claims alleged in the proposed complaint (the “Proposed Complaint”) filed with the pending *Motion of the Official Committee of Unsecured Creditors for an Order Granting the Committee (I) Derivative Standing to Assert, Prosecute, and Settle Certain Causes of Action on Behalf of the Debtors’ Estates; and (II) Certain Related Relief* (the “Standing Motion”) [Docket No. 555].

2. In particular, the Settlement Agreement will resolve the following claims and causes of action that were set forth in the Proposed Complaint: (i) an action to avoid and recover the SVT Mortgages (as defined in the Standing Motion)³ as preferences; (ii) an action to avoid the DC ABL Second Mortgage (as defined in the Standing Motion) as a fraudulent transfer; (iii) an action to avoid the Raceway Mortgages (as defined in the Standing Motion) as fraudulent transfers; (iv) an action to obtain a declaratory judgment that the DC ABL Second Mortgage has

² PNC and the Lenders, as prepetition and postpetition lenders to the Debtors, as applicable, are collectively referred to herein as the “Secured Parties.”

³ Capitalized terms used but not defined in this Settlement Motion shall have the meaning ascribed to such terms in the Standing Motion, the Settlement Agreement, or the Final DIP Order, as applicable.

been released and discharged; (v) an action to obtain a declaratory judgment that the Raceway Mortgages have been released and discharged; (vi) an action to obtain a declaratory judgment that neither PNC nor Bank of the West holds a valid, perfected, or enforceable lien on certain specified assets; and (vii) the existence of a valid Diminution Claim (as defined below) (collectively, the “Causes of Action”).

3. In consideration for settling the Challenge, including the Causes of Action, the Diminution Claim, and any other potential Challenge, claim, cause of action or other matters on the terms and conditions contained in the Settlement Agreement, the Settlement Agreement provides for, among other things, (i) a cash payment by the Lenders to the Debtors’ estates in the amount of \$9 million; (ii) the Debtors’ representative shall collect, sell, liquidate, and/or dispose of all remaining assets of the Debtors and pay the proceeds of such assets to Agent, for the benefit of the Lenders, except for those assets specifically carved out in the Settlement Agreement which are preserved for the Debtors’ estates or are shared with the Debtors’ estates; (iii) retention of the right to pursue additional potential claims or causes of action for the benefit of the Debtors’ estates; and (iv) the granting of releases as described below. **The Committee estimates that the value of the Settlement to unsecured creditors could be in excess of \$23.6 million.**⁴

4. The Committee submits that approval of the Settlement Agreement and entry of the Settlement Order are in the best interest of the Debtors’ estates, comply with Bankruptcy Rule 9019 and will avoid costly and time-consuming litigation that would otherwise result with respect to the Standing Motion, the Proposed Complaint, and the Diminution Claim, and provide for recoveries to unsecured creditors. As such, the Committee respectfully requests that the

⁴ As described below, the estimated value of the Settlement is based in part on the valuation of certain assets that may produce materially higher or materially lower recoveries.

Court approve the Settlement Motion, authorize the Parties to enter into the Settlement Agreement attached as Exhibit 1 to the Settlement Order, and enter the Settlement Order.

Jurisdiction and Venue

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and 157(b)(2)(O). Venue is proper in this District pursuant to 28 U.S.C. § 1408(1).

Background

6. On May 2, 2017, certain creditors of Central Grocers, Inc. (“CGI”) commenced an involuntary case against CGI under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Illinois (the “Court”).

7. On May 4, 2017, each of the Debtors, including CGI, commenced voluntary cases under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of Delaware.

8. On May 15, 2017, the United States Trustee for the District of Delaware appointed the Committee. No trustee or examiner has been appointed in the Chapter 11 Cases.

9. On June 8, 2017, the Delaware bankruptcy court entered an order [Del. ECF No. 368] (the “Final DIP Order”), which, among other things, (i) authorized and approved the Debtors entering into that certain Debtor-in-Possession Credit Agreement, dated as of May 19, 2017; (ii) authorized the Debtors’ use of the \$205,000,000 post-petition debtor-in-possession financing facility subject to the terms and conditions set forth therein; (iii) established certain deadlines and procedures with respect to challenges to, *inter alia*, the prepetition liens and claims of Agent and the Lenders and the Debtors’ stipulations and releases with respect thereto; and

(iv) granted Agent and the Lenders adequate protection liens and claims to protect against the diminution in value of the Prepetition Collateral (the “Diminution Claim”).

10. On June 13, 2017, the Chapter 11 Cases were transferred to the Court, including the Chapter 11 Case of CGI, which was consolidated into the involuntary chapter 7 case pending before the Court.

11. On August 14, 2017, the Committee filed the Standing Motion, thereby tolling the Initial Challenge Period for the Committee solely with respect to the claims asserted in the Proposed Complaint. If timely filed, the Proposed Complaint would constitute a Challenge under the Final DIP Order.

12. The Standing Motion is scheduled for hearing on November 16, 2017. At that hearing, the Parties intend to present to the Court an *Agreed Order Granting the Official Committee of Unsecured Creditors Standing, As Set Forth Herein, Nunc Pro Tunc to October 23, 2017* (the “Consent Order”). Pursuant to the Consent Order, if entered by the Court, the Committee will, among other things, be granted standing, *nunc pro tunc* to October 23, 2017, to enter into and implement the Settlement Agreement, to bind each of the Debtors and each of the Debtors’ estates to the terms of the Settlement Agreement, to settle the Challenge and any potential Challenge, claim, cause of action or other matters on the terms and conditions contained in the Settlement Agreement, and to grant the releases contained in the Settlement Agreement.

The Settlement

13. The salient terms of the Settlement Agreement are summarized as follows⁵:

⁵ Reference to the Settlement Agreement should be made for the complete terms thereto. In the event there are any inconsistencies with the terms of the Settlement and the summary set forth herein, the terms of the Settlement Agreement shall govern.

a. Confirmation of Prepetition Lien and Claim Matters. The Parties stipulate and agree, *inter alia*, that (i) the Debtors' stipulations and waivers in paragraph D of the Final DIP Order are binding, conclusive, and final on each of the Debtors, each of the Debtors' estates, and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtors or any of them), examiner with expanded powers, any other estate representative, and all parties in interest and all of their successors in interest and assigns, including, without limitation, the Committee; and (ii) the Prepetition Lien and Claim Matters are binding on each of the Debtors, each of the Debtors' estates, and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtors or any of them), examiner with expanded powers, any other estate representative, and all parties in interest and all of their successors in interest and assigns, including, without limitation, the Committee.

b. Termination of Challenge Period. The Challenge Period shall be deemed expired and terminated and all potential Challenges with respect to the Secured Parties' liens are forever barred and no challenge shall be made to any Diminution Liens and Claims.

c. Maturity of DIP Facility and Use of Cash Collateral. The DIP Facility matures on November 5, 2017 (the "Maturity Date") and the Committee, for itself and, on behalf of each of the Debtors' estates, and the Secured Parties agree that the Secured Parties have no obligation to make any advances or loans under the DIP Facility or permit the use of the Secured Parties' cash collateral (except as otherwise provided in the Final DIP Order, including Paragraphs 27 and 46 thereof) after the Maturity Date. For the avoidance of doubt, the terms of the Final DIP Order (except as expressly modified in the Settlement Agreement) shall remain in full force and effect, including, without limitation, all rights of Agent with respect to the

Lenders. Any monies required after the Maturity Date to fund the administrative costs and expenses of the Chapter 11 Cases, or a Chapter 11 Case that is converted to one under chapter 7, that were incurred after the Maturity Date, shall be borne entirely by the Debtors' estates. For the avoidance of doubt, except to the extent permitted under the Final DIP Order, no funds currently remaining in any escrow accounts (*i.e.*, utility reserve escrow, cure costs escrow, professional fee carve-out, etc.) currently held by the Debtors shall be used to pay any administrative expenses incurred after the Maturity Date without the express written consent of Agent, *provided, however*, that no more than \$500,000 of funds remaining in the Carve-Out Reserve Account (as defined in the Final DIP Order) as of the Maturity Date shall be used to fund the Back End Carve-Out (as defined in the Final DIP Order), for fees and expenses Retained Professionals (as defined in the Final DIP Order), as indicated on an estimated budget provided to Agent, incurred after the Maturity Date through the earlier of (i) the date the Chapter 11 Cases are converted to cases under chapter 7, and (ii) December 15, 2017 (the earlier of (i) and (ii), the "Back End Expiration Date"), with no more than \$100,000 of such funds being allocated for Committee Professionals. The Trigger Date (as defined in the Final DIP Order) shall be deemed to have occurred as of the Maturity Date solely for the purposes of invoking the Back End Carve-Out in accordance with the terms of Paragraph 3 of the Settlement Agreement. All unused funds remaining in the Carve-Out Reserve Account and Back End Carve-Out on the Back End Expiration Date shall be immediately returned to the Agent for the benefit of the Lenders, unless otherwise directed by Agent.

d. Lenders' Deficiency Claim. The Settlement Agreement provides, *inter alia*, that the Lenders collectively shall have an allowed general unsecured deficiency claim in an amount to be determined pursuant to the Settlement Agreement which in no event shall exceed

\$90 million in the aggregate (the “Deficiency Claim”). The Deficiency Claim shall be calculated as the remaining amount of all Obligations, after receipt and application of the proceeds from the sale/liquidation of the Debtors’ remaining assets that are not paid to or preserved for the benefit of the Debtors’ estates, and shall be joint and several against CGI, SVT, LLC (“SVT”) and Strack and Van Til Super Market, Inc. (“Strack” and together with CGI and SVT, the “Select Debtors”). The Deficiency Claim shall entitle the Lenders to, *inter alia*, (i) receive distributions from the estates of the Select Debtors as set forth in the Settlement Agreement⁶, (ii) vote on any chapter 11 plan proposed for by the Select Debtors, and (iii) vote in the election of any chapter 11 or chapter 7 trustee for each of the Select Debtors.

e. Limited Waiver of Secured Parties’ Lien on Equity Interests in Raceway Central. Agent, on behalf of the Lenders, agrees not to assert or to receive the benefit of its lien on the membership interests of Raceway Central, LLC held by CGI to the extent necessary to forego the benefit of the agreement among Indiana Grocery Group and various pension funds asserting claims against the Debtors (the “Pension Funds”) under which the Pension Funds agreed to waive 50% of the distribution on their general unsecured claims against certain Debtors.

f. Cash Settlement Payment. Within three (3) business days of the Settlement Effective Date (as defined in the Settlement Agreement), the Lenders agree to make an unrestricted cash payment to the Debtors’ estates in the amount of \$9 million.

⁶ The Lenders agree that with respect to each distribution on account of general unsecured claims of a Select Debtor, if any, the Lenders’ pro rata distribution on account of the Deficiency Claim (“Lender Incremental Distribution”) shall be set aside in and separately reserved to be used by the applicable representative of the estate of such Select Debtor(s) to make a supplemental pro rata distribution to all other holders of allowed general unsecured claims against such Select Debtor(s), until such time as the aggregate Lender Incremental Distribution equals \$1.5 million, after which the Lenders shall receive their pro rata distribution of any future distributions from the Select Debtors on account of the Deficiency Claim.

g. Debtors' Remaining Assets. The representatives of each Debtor's estate and/or a chapter 7 trustee, as applicable, shall, *inter alia*, (i) collect, sell, liquidate, and/or dispose of each Debtor's remaining assets and pay in kind to Agent, for the benefit of the Lenders, and (ii) to the extent appropriate, pursue and prosecute all claims and causes of action on behalf of the Debtors' estates, including the Member Actions and Director Actions (each, as defined in the Settlement Agreement). All of the Net Proceeds (as defined in the Settlement Agreement) of each such sale, collection, or disposition shall be remitted, without deduction, to Agent, for the benefit of the Lenders, as and when received, provided, however, that, *inter alia*:

- i. One hundred percent (100%) of the Net Proceeds at the closing of the sale of real estate identified as 13001 Ashland Ave, Calumet Park, Illinois, and 6525-6551 Columbia Ave, Hammond, Indiana shall be paid to the Debtors' estates;
- ii. Fifty-five percent (55%) of the Net Proceeds at the closing of the sale of each of the real estate identified as 1212 75th Street, Downers Grove, Illinois; 501 South County Farm Road, Wheaton, Illinois; 1590 North Larkin Ave, Joliet, Illinois; and 571 West 14th Street, Chicago Heights, Illinois shall be paid to the Debtors' estates, with the remaining forty-five percent (45%) being paid to Agent, for the benefit of the Lenders;
- iii. Twenty-five percent (25%) of the Net Proceeds of Receivables and Member Actions shall be paid to the Debtors' estates with the balance paid to the Agent, for the benefit of the Lenders; and seventy-five percent (75%) of the Net Proceeds of the Director Actions shall be paid to the Debtors' estates with the balance paid to the Agent, for the benefit of the Lenders (the collections referenced in this sub-clause (iii), as further described in the Settlement Agreement, are the "Shared Collections")⁷;
- iv. Distributions made on account of intercompany accounts/receivables, and/or intercompany loan receivables owed (i) by SVT to CGI and (ii) by CGI to SVT (collectively, the "Designated Intercompany Accounts"), if any, in excess of

⁷ The Secured Parties' aggregate recovery from their percentages of the Shared Collections shall not exceed \$20 million (the "Shared Collections Cap"). Any Shared Collections in excess of the Shared Collections Cap, subject to Paragraph 11 of the Settlement Agreement, shall be paid to the Debtors' estates, *provided, however*, that if the Debtors' estates have not received Net Proceeds of \$2.5 million ("Shared Collections Floor") by the later of (i) one year from the Settlement Effective Date or (ii) December 31, 2018 (the later of (i) and (ii) the "Shared Collections Date"), the Lenders agree to pay to the Debtors' estates the difference between the actual amount received by the Debtors' estates from the Shared Collections and the Shared Collections Floor (the "True Up Amount"), and the Secured Parties shall be paid all Net Proceeds of the Shared Collections after the Shared Collections Date until they are reimbursed for the True Up Amount.

\$1,500,000, in the aggregate, shall be paid to and retained by Agent, for the benefit of the Lenders. All other distributions made on account of intercompany accounts/receivables, and/or intercompany loan receivables, if any, shall be paid free and clear of any lien or interest of the Agent or the Lenders;

- v. The Net Proceeds of all avoidance actions to recover Class B stock redemptions shall be preserved for the Debtors' estates;
- vi. The Net Proceeds of all tort claims and causes of action by the Debtors' estates against third parties (other than the Member Actions and Director Actions), including avoidance actions and commercial tort claims that may be asserted by any Debtor or trustee, shall be preserved for the benefit of the Debtors' estates; and
- vii. Agent shall have consent rights, not to be unreasonably withheld, over the settlement of each Receivable owed by, and each Member Action against, an individual or entity affiliated with a director or officer of any Debtor. Agent shall have consent rights, not to be reasonably withheld, over the settlement of each Receivable owed by, and each Member Action, against any other individual or entity where the asserted gross amount of such Receivable and/or Member Action exceeds \$700,000.00 in the aggregate. The relevant representative of the Debtors' estates shall consult with Agent (x) on the choice of professionals retained to collect and/or pursue the Receivables and the Member Actions, and (y) subject to any necessary common interest agreement, strategy for the collection and pursuit of the Receivables and Member Actions. The relevant representative of the Debtors' estates shall consult with Agent on (i) the choice of the professionals retained to litigate the Director Actions, and (ii) subject to any necessary common interest agreement, strategy for the collection and pursuit of the Director Actions including any proposed settlements. The relevant representative of the Debtors' estates shall also provide to Agent periodic updates on the progress of the Shared Collections every two calendar weeks and upon the reasonable request of the Agent.

h. Refund of Segregated Funds. The Settlement Agreement provides, among other things, that all monies remaining in the segregated account established pursuant to paragraph 46(b) of the Final DIP Order after satisfaction of valid and documented PACA/PASA claims (as defined in the Final DIP Order) shall be returned/paid over by Debtors (or the Debtors' representative) to Agent, for the benefit of the Lenders. All other monies remaining in segregated accounts, including, without limitations, escrow accounts holding funds to pay Debtors' utilities, cure costs, and the carve-out reserve account, shall be returned to the Agent,

for the benefit of the Lenders, as soon as practicable, but only in accordance with the terms of the Court Orders governing the establishment of such segregated accounts.

i. Unasserted Employee WARN Act Administrative Claims. The Lenders agree to fund the payment of any administrative priority claims filed prior to the expiration of the bar date to be established in these Chapter 11 Cases (or converted chapter 7 cases) and subsequently allowed in favor of any of the Debtors' employees that were terminated postpetition for wages owed under the Workers Adjustment and Retraining Notification Act of 1988 (29 U.S.C. § 211 *et seq.*) ("WARN") in an amount not to exceed \$1.2 million in the aggregate (the "WARN Claim Cap"), *provided, however*, that any amount up to the WARN Claim Cap funded by the Lenders shall result in a dollar for dollar reduction in the Debtors' estates' share of the Net Proceeds of the Shared Collections in excess of the Shared Collections Floor. The Debtors have represented to Agent that all post-petition wages for each of the Debtors' employees have been paid in full, including all wages covered by the WARN Act. It is Agent's position that there are no valid WARN Act claims and disputes the allowance of any such claims. The Secured Parties (and the Committee, if it still exists) reserve the right to contest or object to any claim asserted under the WARN Act.

j. Retention of Select Third Party Claims. The Parties agree, *inter alia*, that the Settlement Agreement shall not affect any Secured Party's direct claims or causes of action against non-debtor parties (and right to retain recoveries therefrom) other than claims against the Debtors' (i) trade vendors, (ii) members, and (iii) directors and officers ((i) through (iii) are the "Designated Parties") which direct claims against the Designated Parties (the "Secured Party Direct Claims") shall not be pursued by the Secured Parties, *provided, however*, the Agent, with the consent of the Required Lenders (as defined in the Final DIP Order), shall have the sole and

absolute discretion to assign the Secured Party Direct Claims as set forth more fully in the Settlement Agreement.

k. Modification of Final DIP Order; Increase of Carve-Out Cap. The Parties agree, *inter alia*, that (a) the \$2,500,000.00 of the Carve-Out Cap (as defined in the Final DIP Order) applicable to the Committee's Retained Professionals (as defined in the Final DIP Order) shall be increased by \$750,000.00 to \$3,250,000.00 in the aggregate (the "Modified Committee Carve-Out"), which increase shall be funded to the Carve-Out Reserve Account within three (3) days of the Settlement Effective Date, (b) the limitations and restrictions contained in Paragraph 29 of the Final DIP Order, including the restrictions on the Committee Professionals' incurrence of Ineligible Professional Expenses and the \$135,000.00 cap to investigate Prepetition Lien and Claim Matters, shall be inapplicable to the Committee's Retained Professionals, and (c) any funds in the Carve-Out Reserve Account (as defined in the Final DIP Order) allocated to Retained Professionals other than the Committee's Retained Professionals that would otherwise be reimbursed to the Lenders under the terms of the Final DIP Order, may be used by the Lenders to fund the Modified Committee Carve-Out, provided, that, in no event shall the Modified Committee Carve-Out be used to pay or reimburse any legal fees or expenses of Committee Members. Any funds remaining from the Modified Committee Carve-Out after all allowed Committee Professional fees and expenses are paid shall be made available for distribution to the Debtors' estates in accordance with Paragraph 10 of the Settlement Agreement.

l. Release. Upon the Settlement Effective Date, the Committee, for itself and on behalf of each Debtor and each of the Debtors' estates, and each of their representatives, successors and assigns (including, without limitation, a chapter 7 or chapter 11 trustee appointed

or elected for the Debtors or any of them), and in a manner binding upon each of the Debtors' estates and the Committee and each of their successors and assigns (the "Releasing Parties"), hereby each irrevocably and unconditionally release, acquit and forever discharge Agent and each Lender, and each of their respective successors and assigns, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, consultants, advisors, and employees, each in their capacities as such (the "Lender Parties") from any and every claim, cross-claim, loss, or damages (whether consequential, direct or indirect), demand, liability, action or cause of action, liabilities, debts, controversies, agreements, trespasses, judgments, executions, and demands of any nature whatsoever, whether at law or in equity, whether known or unknown, foreseen or unforeseen, matured or contingent, which the Releasing Parties jointly or severally have, ever had, might have had or might have in the future, arising out of, relating to, or in connection with, in whole or in part, any event, act, omission, or transaction occurring from the beginning of time to the date of this Settlement Agreement, and relating in any way to the Lender Parties or any one or more of them, jointly or severally; provided, however, nothing herein shall be deemed to release or discharge any obligations of the Lender Parties under this Settlement Agreement.

m. Conditions to Effectiveness. This Settlement Agreement is subject to (i) entry by the Court of the Consent Order, (ii) the Consent Order becoming a Final Order, and (iii) occurrence of the Settlement Effective Date. If the Settlement Motion is denied by the Court or the Settlement Effective Date does not occur, then each of the Parties shall have all the rights, claims, liens, and causes of action, and defenses with respect thereto, in respect of each other prior to the execution and delivery of the Settlement Agreement as if the Settlement Agreement had never been executed and delivered.

Relief Requested

14. By this Motion, the Committee requests entry of an order, pursuant to Bankruptcy Rule 9019(a): (i) approving the Settlement Agreement; and (ii) authorizing the Parties to enter into the Settlement Agreement.

Basis for Relief Requested

15. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). “A settlement should be approved by a bankruptcy court if the settlement is in the best interest of the estate.” *In re Quay Corp., Inc.*, 372 B.R. 378, 382 (Bankr. N.D. Ill. 2007) (citing *In re Griffin Trading Co.*, 270 B.R. 883, 903 (Bankr. N.D. Ill. 2001)). “In determining whether a settlement is in the best interest of the estate, courts compare the settlement’s terms with the litigation’s probable costs and benefits, and examine the litigation’s probability of success, the litigation’s complexity, and the litigation’s attendant expense, inconvenience and delay. *Id.* (citing *In re Telesphere Commc’ns, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994) (citing *In re Energy Co-op., Inc.*, 886 F.2d 921 (7th Cir. 1989)) and *LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.)*, 841 F.2d 159 (7th Cir. 1987)).

16. A decision to approve a particular compromise or settlement is within the sound discretion of the bankruptcy court. *In re Commercial Loan Corp.*, 316 B.R. 690, 697 (Bankr. N.D. Ill. 2004) (citing *In re Andreuccetti*, 975 F.2d 413, 421 (7th Cir. 1992)). Because “[c]ompromises are tools for expediting the administration of the case and reducing administrative costs[,]” they “are favored in bankruptcy.” *In re Quay Corp., Inc.*, 372 B.R. at 382 (citing *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000)). “Only if the settlement ‘falls below the lowest point in the range of reasonableness’ should the trustee’s decision be disturbed.” *Id.*

(citing *In re Energy Co-op.*, 886 F.2d at 929 and *In re Telesphere Commc'ns, Inc.*, 179 B.R. at 553).

17. The Committee asserts that the terms of the Settlement Agreement provide for a greater recovery to all creditor constituencies versus the litigation that is almost certain to ensue if the Settlement Agreement is not approved. The Committee also asserts that if the Parties had to litigate the causes of action in the Proposed Complaint as well as the Diminution Claim, such litigation would have been protracted and complex involving, among other things, the issue of solvency, the value of the Lenders' collateral on the Petition Date and on its disposition date, and analysis of the appropriate standards for the calculation of the Diminution Claim, to name a few. Even if the Committee were successful in litigation and, for example, defeated the Lenders' defenses to the Causes of Action including defenses grounded in "new value", solvency and reasonably equivalent value, if the Lenders were to succeed in asserting a Diminution Claim, the Lenders would be entitled to virtually all of the Debtors' assets in any event. This would include, among other assets, properties subject to avoidable mortgages, properties or assets that were unencumbered as of the Petition Date, or properties as in the case of CGI Joliet that were encumbered only by a mortgage securing a claim in an amount well less than the value of the property.

18. As a result, the Committee submits that approval of the Settlement Agreement will avoid the attendant litigation costs, eliminate further delays and uncertainty, afford a global resolution of all litigation among the Parties in all forums, and allow these chapter 11 cases to be concluded in an efficient and cost effective manner, all while providing substantial value to creditors. For these reasons, the Settlement Agreement is in the best interest of the Debtors, each of the Debtors' estates and all stakeholders and, accordingly, should be approved.

WHEREFORE, the Committee respectfully requests that the Court enter the Settlement Order, substantially in the form attached hereto as **Exhibit A**, (i) approving in its entirety the Settlement Agreement, substantially in the form attached to the Settlement Order as Exhibit 1 and binding each Debtor and each Debtor's estate to the terms and conditions of the Settlement Agreement; (ii) authorizing and approving the Parties entering into the Settlement Agreement; and (iii) granting such other additional relief that is just and proper.

Dated: October 23, 2017

Respectfully submitted,

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF CENTRAL GROCERS, INC., *ET*
AL.

By: /s/ Kevin H. Morse

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
CENTRAL GROCERS, INC., <i>et al.</i> , ¹) Case No. 17-13886 (PSH)
)
Debtors.) (Jointly Administered)
)
) Related ECF No.: ____

**ORDER AUTHORIZING AND APPROVING SETTLEMENT AGREEMENT BY
AND AMONG THE SECURED PARTIES AND THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS OF CENTRAL GROCERS, INC., *ET AL.*,
ON BEHALF OF ITSELF, EACH OF THE DEBTORS,
AND EACH OF THE DEBTORS' ESTATES**

This matter is before the Court upon the motion (the “**Settlement Motion**”) of the Official Committee of Unsecured Creditors of Central Grocers, Inc., *et al.* (the “**Committee**”) seeking entry of an order pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) authorizing and approving the Settlement Agreement and Release, a copy of which is annexed to this Order as **Exhibit 1** (the “**Settlement Agreement**”)² by and among the Committee, for itself and on behalf of each of the above-captioned Debtors and each of the Debtors’ estates, and PNC Bank, National Association, in its capacity as Administrative Agent and Collateral Agent (“**Agent**”) and in its capacity as a lender, Bank of the West, Bank of America, N.A., U.S. Bank, National Association, The Northern Trust Company, and First Midwest Bank (each, a “**Lender**” and collectively with Agent, the “**Secured Parties**”); and the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Central Grocers, Inc. (3170), CGI Joliet, LLC (7014), Currency Express, Inc. (2650), Raceway Central, LLC (2161), Raceway Central Calumet Park LLC (2161), Raceway Central Chicago Heights LLC (2161), Raceway Central Downers Grove LLC (2161), Raceway Central Joliet North LLC (2161), Raceway Central LLC North Valpo (2161), Raceway Central Wheaton LLC (2161), Strack and Van Til Super Market, Inc. (2184), and SVT, LLC (1185).

² Capitalized terms used but not defined in this Order shall have the meanings ascribed to such terms in the Settlement Motion or in the Settlement Agreement, as applicable.

Court having entered, previously or contemporaneously with the entry of this Order, an order (the “**Standing Order**”) granting the Committee, *nunc pro tunc* to October 23, 2017, standing and authority pursuant to Bankruptcy Rule 9019, *inter alia*, to enter into, implement and bind each of the Debtors and each of the Debtors’ estates to the Settlement Agreement; and the Committee having properly filed this Settlement Motion in accordance with Bankruptcy Rule 9019, as described more fully in the Standing Order; and the Court having jurisdiction to decide the Settlement Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334(b); and consideration of the Settlement Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(a)-(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Settlement Motion having been provided and the hearing on the Motion having been provided in accordance with Bankruptcy Rules 2002 and 9019, and such notice being adequate and appropriate under the circumstances and it appearing no other or further notice need be provided; and a hearing having been held before the Court to consider the relief requested in the Settlement Motion, and based upon the record of the hearing and all the proceedings before the Court; and the Court having found and determined that entry of this Order is in the best interests of the Debtors, their estates, creditors, and all parties in interest, and that the legal and factual bases set forth in the Settlement Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Settlement Motion is granted pursuant to Bankruptcy Rule 9019 and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules; and it is further

ORDERED that the Settlement Agreement is authorized and approved in its entirety, and each of the terms and conditions of the Settlement Agreement are incorporated by reference into, and are an integral part of, this Order; and it is further

ORDERED that the Committee is authorized, *nunc pro tunc* to the filing of the Settlement Motion, to enter into and implement the Settlement Agreement, to bind each of the Debtors and each of the Debtors' estates to the terms of the Settlement Agreement, to settle the Challenge and any other potential Challenge, claim, cause of action, dispute over the Diminution Liens and Claims, and other matters on the terms and conditions contained in the Settlement Agreement, and to grant on behalf of each Debtor's estates the releases contained in the Settlement Agreement; and it is further

ORDERED that this Order and the Settlement Agreement shall be binding on and enforceable against the Committee, each of the Debtors, each of the Debtors' estates and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtors or any of them), an examiner with expanded powers, any other estate representative, and all parties in interest and all of their successors in interest; and it is further

ORDERED that, all proceeds to be paid to or preserved for the benefit of the Debtors' estates as set forth in the Settlement Agreement, including the Cash Payment, shall be held jointly by the applicable Debtors' representative(s) in a segregated escrow account pending further order of the Court approving an allocation of such proceeds among the Debtors; and it is further

ORDERED that, notwithstanding any contrary provision of the Bankruptcy Code, Bankruptcy Rules, or Local Rules of this Court, the terms and conditions set forth in this Order immediately shall be effective and enforceable upon its entry.

Dated: _____, 2017
Chicago, Illinois

The Honorable Pamela S. Hollis
Chief United States Bankruptcy Judge

EXHIBIT 1

Settlement Agreement

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Settlement Agreement**”) is made as of this 23rd day of October, 2017 by and among PNC Bank, National Association, in its capacity as Administrative Agent and Collateral Agent (“**Agent**”) and in its capacity as a lender (“**PNC**”), Bank of the West (“**BOW**”), Bank of America, N.A. (“**BANA**”), U.S. Bank, National Association (“**USB**”), The Northern Trust Company (“**NTC**”), and First Midwest Bank (“**FMB**”), together with PNC, BOW, BANA, USB, NTC, collectively, the “**Lenders**”), and the Official Committee of Unsecured Creditors of Central Grocers, Inc., *et al.*, (the “**Committee**”) on behalf of itself and on behalf of each of the Debtors and each of the Debtors’ estates. Agent and the Lenders, as prepetition and postpetition lenders to the Debtors, as applicable, are collectively referred to herein as the “**Secured Parties**”. The Secured Parties and the Committee, for itself and on behalf of each of the Debtors and each of the Debtors’ estates, are sometimes herein referred to collectively as the “**Parties**”.

BACKGROUND

A. On May 2, 2017 (the “**Illinois Petition Date**”), certain creditors of Central Grocers, Inc. (“**CGI**”) commenced an involuntary case against CGI under chapter 7 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Illinois (the “**Court**”).

B. On May 4, 2017, (the “**Delaware Petition Date**”) each of CGI, CGI Joliet, LLC, Currency Express, Inc., Raceway Central, LLC, Raceway Central Calumet Park LLC, Raceway Central Chicago Heights LLC, Raceway Central Downers Grove LLC, Raceway Central Joliet North LLC, Raceway Central LLC North Valpo, Raceway Central Wheaton LLC, Strack and Van Til Super Market, Inc., and SVT, LLC (collectively, the “**Debtors**”),¹ commenced voluntary cases under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the District of Delaware (the “**Delaware Court**”).

C. On May 15, 2017, the United States Trustee for the District of Delaware appointed the Committee. No trustee or examiner has been appointed in the Chapter 11 Cases.

D. On June 13, 2017, the Chapter 11 Cases were transferred to the Court, including the Chapter 11 Case of CGI, which was consolidated into the involuntary chapter 7 case pending before the Court.

E. Pursuant to that certain Credit Agreement, dated as of June 15, 2011 (as amended, restated, supplemented, or otherwise modified, from time to time, the “**Revolving Credit Agreement**”), by and among (i) CGI, as borrower, (ii) Strack and Van Til Super Market, Inc. (“**Strack**”), SVT, LLC (“**SVT**”), Raceway Central, LLC (“**Raceway Central**”) and Currency Express, Inc. (“**Currency**”), as guarantors (Strack, SVT, Raceway Central, and Currency, collectively, the “**Revolving Credit Guarantors**” and, together with CGI, the “**Revolving**

¹ The “**Raceway Debtors**” are Raceway Central, LLC, Raceway Central Calumet Park LLC, Raceway Central Chicago Heights LLC, Raceway Central Downers Grove LLC, Raceway Central Joliet North LLC, Raceway Central LLC North Valpo, and Raceway Central Wheaton LLC.

Credit Obligors”), (iii) PNC, as administrative agent, and as a Lender, and (iv) each of the other Lenders, the Lenders agreed to make revolving loans to CGI on the terms set forth in the Revolving Credit Agreement. The Revolving Credit Agreement, as originally executed, was amended by (a) a First Amendment dated as of December 7, 2012, (b) a Second Amendment dated as of April 24, 2013, (c) a Third Amendment dated as of January 28, 2014, (d) a Fourth Amendment dated as of October 28, 2016 (the “**Fourth Amendment**”), (e) a Forbearance Agreement and Fifth Amendment dated as of January 27, 2017 (the “**Fifth Amendment**”), (f) a First Amendment to Forbearance Agreement and Sixth Amendment dated as of March 6, 2017, and (g) a Second Amendment to Forbearance Agreement and Seventh Amendment dated as of March 31, 2017. The revolving loan facility created under the Revolving Credit Agreement is referred to hereinafter, from time to time, as the “**Revolving Credit Facility**”).

F. Performance and payment of the existing and future obligations under, in connection with, or otherwise described in the Revolving Credit Facility (the “**Revolving Credit Obligations**”) are guaranteed by each of the Revolving Credit Guarantors under a Continuing Agreement of Guaranty and Suretyship, dated as of June 15, 2011.

G. The Revolving Credit Obligors’ obligations under the Revolving Credit Facility are secured pursuant to a Guaranty and Security Agreement, dated as of June 15, 2011 (the “**Revolving Credit Security Agreement**”). To secure the Revolving Credit Obligations, under the Revolving Credit Security Agreement, each of the Revolving Credit Obligors granted a valid, binding, perfected, and enforceable first-priority lien on and security interest in substantially all of its then existing and thereafter acquired personal property, including, without limitation, accounts, monies, cash, cash equivalents, deposit accounts, goods, inventory, equipment, chattel paper, securities and all other investment property, contract rights, instruments, documents, and general intangibles, and the proceeds thereof (the “**Prepetition Personal Property Collateral**”), in favor of Agent for the benefit of the Lenders.

H. In conjunction with the Fourth Amendment and certain modifications to the Revolving Credit Facility set forth in the Fourth Amendment, and, as security for the Revolving Credit Obligations, CGI Joliet, LLC (“**CGI Joliet**”), a subsidiary of CGI, granted BOW, in its capacity as Collateral Agent for PNC (as administrative agent under the Revolving Credit Facility), a second-priority mortgage, made as of October 28, 2016, and recorded on November 3, 2016 (the “**DC Revolving Credit Second Mortgage**”), on the distribution and warehousing facility owned by CGI Joliet, located at 2600 W. Haven Avenue, Joliet, Illinois (the “**Distribution Center**”).

I. In conjunction with the Fifth Amendment and certain modifications to the Revolving Credit Facility set forth in the Fifth Amendment, and, as security for the Revolving Credit Obligations, each of the Debtors identified below mortgaged to PNC, as administrative agent under the Revolving Credit Facility, their respective real properties (“**Raceway Properties**”, together with the Distribution Center, collectively the “**Prepetition Real Property Collateral**”; the Prepetition Personal Property Collateral and the Prepetition Real Property Collateral are collectively referred to as the “**Prepetition Collateral**”) pursuant to the following mortgages:

- Mortgage, Security Agreement, Assignment of Leases and Rents, And Financing Statement, by Raceway Central Chicago Heights LLC, in favor of PNC Bank, National Association, as Administrative Agent, dated February 17, 2017 (the “**Raceway Chicago Heights Mortgage**”);
- Mortgage, Security Agreement, Assignment of Leases and Rents, And Financing Statement, by Raceway Central Downers Grove LLC, in favor of PNC Bank, National Association, as Administrative Agent, dated February 17, 2017 (the “**Raceway Downers Grove Mortgage**”);
- Mortgage, Security Agreement, Assignment of Leases and Rents, And Financing Statement, by Raceway Central Joliet North LLC, in favor of PNC Bank, National Association, as Administrative Agent, dated February 20, 2017 (the “**Raceway Joliet Mortgage**”);
- Mortgage, Security Agreement, Assignment of Leases and Rents, And Financing Statement, by Raceway Central LLC North Valpo, in favor of PNC Bank, National Association, as Administrative Agent, dated February 20, 2017 (the “**Raceway North Valpo Mortgage**”);
- Mortgage, Security Agreement, Assignment of Leases and Rents, And Financing Statement, by Raceway Central Wheaton LLC, in favor of PNC Bank, National Association, as Administrative Agent, dated February 20, 2017 (the “**Raceway Wheaton Mortgage**” and together with the Raceway Chicago Heights Mortgage, Raceway Downers Grove Mortgage, Raceway Joliet Mortgage and Raceway North Valpo Mortgage, the “**Raceway Mortgages**”); and
- three separate Mortgage, Security Agreement, Assignment of Leases and Rents, And Financing Statements, each by SVT, LLC, in favor of PNC Bank, National Association, as Administrative Agent, each dated February 20, 2017, and with respect to the properties at 1836 Calumet Avenue, Whiting, IN 46394, 2244-45th Street, Highland, IN 46322, and 9605 Lincoln Plaza, Cedar Lake, IN 46303 (collectively, the “**SVT Mortgages**” and together with the DC Revolving Credit Second Mortgage and the Raceway Mortgages, the “**Mortgages**”).

J. As of the Illinois Petition Date and the Delaware Petition Date, the Debtors’ outstanding principal obligations under the Revolving Credit Facility totaled approximately \$200 million, and approximately \$2.4 million in outstanding undrawn letters of credit.

K. On June 8, 2017, the Delaware Court entered its *Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 (I) Authorizing the Debtors, on a Final Basis, to (A) Obtain Postpetition Senior Secured Superpriority Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* (the “**Final DIP Order**”), which, among other things, (i) authorized and approved the Debtors entering into that certain *Debtor-in-Possession Credit Agreement*, dated as of May 19, 2017 (“**DIP Credit Agreement**”); (ii) authorized the Debtors’ use of the

\$205,000,000 post-petition debtor-in-possession financing facility (the “**DIP Facility**”) subject to the terms and conditions set forth therein; (iii) established certain deadlines and procedures with respect to challenges to, *inter alia*, the prepetition liens and claims of the Secured Parties and the Debtors’ stipulations and releases with respect thereto; (iv) granted to the Secured Parties liens on all DIP Collateral (as defined in the Final DIP Order) and DIP Superpriority Claims (as defined in the Final DIP Order) against the Debtors; and (v) granted to the Secured Parties adequate protection liens and claims. Certain liens and claims were limited to the diminution in value of the Lenders’ collateral (the “**Diminution Liens and Claims**”).

L. On July 19, 2017, the Court entered its *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interest and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith and, (IV) Granting Related Relief* [Dkt. No. 374], which authorized and approved the sale of certain assets including, without limitation, certain Debtors’ leaseholds and real property of Strack, SVT, Raceway Central, LLC, and Currency Express, Inc. to Indiana Grocery Group, LLC (“**IGG**”) as a going concern (the “**IGG Sale**”). As required by the Final DIP Order, the net proceeds of the IGG Sale were paid to Agent for the benefit of the Lenders.

M. On July 26, 2017, the Court entered its *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interest and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith and, (IV) Granting Related Relief* [Dkt. No. 439], which authorized and approved the sale of the Distribution Center (“**DC Sale**”) to SuperValu Holdings, Inc. As required by the Final DIP Order, the net proceeds of the DC Sale, after satisfaction of prior liens, were paid to Agent for the benefit of the Lenders.

N. The following real property assets of certain Debtors remain to be sold:

- a. Parcels of real estate identified as 13001 Ashland Ave, Calumet Park, Illinois, and 6525-6551 Columbia Ave, Hammond, Indiana (collectively, the “**Type I Real Properties**”); and
- b. Parcels of real estate identified as 1212 75th Street, Downers Grove, Illinois; 501 South County Farm Road, Wheaton, Illinois; 1590 North Larkin Ave, Joliet, Illinois; and 571 West 14th Street, Chicago Heights, Illinois (collectively, the “**Type II Real Properties**”).

O. On August 14, 2017, the Committee timely filed its *Motion of the Official Committee of Unsecured Creditors for an Order Granting the Committee (i) Derivative Standing to Assert, Prosecute, and Settle Certain Causes of Action on Behalf of the Debtors’ Estates; and (ii) Certain Related Relief* [Dkt. No. 555] (“**Standing Motion**”), thereby tolling the Initial Challenge Period (as defined in the Final DIP Order) solely for the Committee and solely with respect to the claims asserted in the draft complaint against the Lenders attached as an exhibit to

the Standing Motion.² The claims asserted in the draft complaint seek, *inter alia*, to avoid liens and mortgages on and security interests in the Distribution Center, Prepetition Real Property Collateral, and the real estate and leaseholds sold in connection with the IGG Sale.

P. On October 12, 2017, the Court entered its *Order (I) Approving the Purchase Agreement Between Debtor Raceway Central, LLC and Buyer; (II) Authorizing the Sale of Certain of the Assets of Debtor Raceway Central LLC to Buyer Free and Clear of All Liens, Claims, Encumbrances, and Interests; (III) Authorizing and Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases of Nonresidential Real Property in Connection Therewith; and (IV) Granting Related Relief* [Dkt. No. 835], which authorized and approved the sale of certain real property located in Hammond, Indiana. As required by the Final DIP Order, upon closing of this sale the net proceeds are to be paid to Agent for the benefit of the Lenders. The Parties have agreed that Agent shall hold these proceeds in escrow pending the Settlement Effective Date.

Q. The Debtors have advised Agent that all post-petition wages for each of the Debtors' employees have been paid in full including all wages covered by the WARN Act (as defined below).

R. The Parties have engaged in good faith settlement negotiations regarding the resolution of the claims asserted in the draft complaint attached to the Standing Motion and any other potential Challenge, causes of action, dispute over the Diminution Liens and Claims, and other matters, and have reached an agreement (the "**Settlement**"), which is memorialized herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound hereby, the Committee, for itself and on behalf of each of the Debtors and each of the Debtors' estates, and the Secured Parties agree as follows:

1. Settlement Effective Date and Related Matters. Simultaneously with the execution and delivery of this Settlement Agreement, the Committee shall file a motion in the Court in the form attached as Exhibit "A" hereto (the "**Settlement Motion**") to approve this Settlement Agreement under Fed. R. Bankr. P. 9019 and otherwise applicable bankruptcy law. Prior to entry of the Settlement Order (defined below), the Parties shall present a consent order ("**Consent Order**") to the Court granting the Committee standing to bring a Challenge and authorizing the Committee, for itself and on behalf of each of the Debtors and each of the Debtors' estates, to, *inter alia*, file the Settlement Motion *nunc pro tunc* to October 23, 2017, enter into, implement, and bind the Debtors and Debtors' estates to this Settlement Agreement, settle the Challenge, and grant the releases on behalf of the Debtors' estates contained herein. The Settlement shall be evidenced and implemented by and in accordance with this Settlement Agreement and the Order entered on the docket granting the Settlement Motion and approving this Settlement Agreement (the "**Settlement Order**"). The Consent Order and Settlement Order each, as entered by the

² Each of Agent and the Committee reserves its respective rights concerning any dispute over whether the Committee's preparation and filing of the Standing Motion and draft complaint constitutes a Challenge (as defined in the Final DIP Order). Any such dispute shall be deemed settled upon the Settlement Effective Date.

Court, shall be in form and substance reasonably acceptable to Agent and the Committee, and the Settlement Order shall provide that the Settlement is binding on each of the Debtors and each of the Debtors' estates, and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtors or any of them), examiner with expanded powers, any other estate representative, and all parties in interest and all of their successors in interest. The "**Settlement Effective Date**" is a date upon which each of the Settlement Order and the Consent Order, respectively, becomes a Final Order, unless Agent, with the consent of the Required Lenders (as defined in the DIP Credit Agreement) and the Committee, if still in existence, agrees in writing that the Settlement Order and/or the Consent Order need not become a Final Order.³

2. Confirmation of Prepetition Lien and Claim Matters; Allowance of Secured Claim; Confirmation of Diminution Liens and Claims; Termination of Challenge Period. The Parties hereby stipulate and agree that:

a. The Debtors' stipulations and waivers in Paragraph D of the Final DIP Order are binding, conclusive, and final on each of the Debtors and each of the Debtors' estates, and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtors or any of them), examiner with expanded powers, any other estate representative, and all parties in interest and all of their successors in interest and assigns, including, without limitation, the Committee, as more fully described in Paragraph 28(b) of the Final DIP Order.

b. The Prepetition Lien and Claim Matters (defined in the Final DIP Order) are binding on the each of the Debtors and each of the Debtors' estates, and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtors or any of them), examiner with expanded powers, any other estate representative, and all parties in interest and all of their successors in interest and assigns, including, without limitation, the Committee.

c. As of the Petition Date, the Lenders hold an allowed secured claim of not less than \$202,400,000.00, under the Revolving Credit Facility.

d. The Secured Parties' liens on all of the Debtors' pre- and post-petition assets, whether granted pre- or post-petition under the DIP Facility or pursuant to the Diminution Liens and Claims, are hereby confirmed and reaffirmed as valid, perfected, enforceable and non-avoidable security interests, mortgages, and liens granted by the applicable Debtors.

³ "**Final Order**" shall mean an order entered by the Court as to which the time to appeal, petition for certiorari, or motion for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing by the entity possessing such right, or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired.

e. The Challenge Period (defined in the Final DIP Order) shall be deemed terminated and expired, and all potential Challenges with respect to the Secured Parties' liens are forever barred and no challenge shall be made to any Diminution Liens and Claims.

f. The Secured Parties' right to retain payments, collections, and proceeds received to date (except as otherwise provided in Paragraph 7(c)(i) below) and anticipated to be received or recovered hereafter, consistent with the terms of this Settlement, whether or not included in the DIP Budget, including, without limitation, all tax refunds and deposit refunds, whenever arising and whether received in the time period stated on the DIP Budget or thereafter, is not subject to any challenge or recovery by any person or for any reason whatsoever, and such payments, collections, and proceeds are and shall remain property of the Lenders.

3. Maturity of DIP Facility and Use of Cash Collateral. The DIP Facility matures on November 5, 2017 ("**Maturity Date**"), and the Committee, for itself and, on behalf of each of the Debtors' estates, and the Secured Parties agree that the Secured Parties have no obligation to make any advances or loans under the DIP Facility or permit the use of the Secured Parties' cash collateral (except as otherwise provided in the Final DIP Order, including Paragraphs 27 and 46 thereof) after the Maturity Date. For the avoidance of doubt, the terms of the Final DIP Order and the DIP Credit Agreement (except as expressly modified herein) shall remain in full force and effect, including, without limitation, all rights of Agent with respect to the Lenders. Any monies required after the Maturity Date to fund the administrative costs and expenses of the Chapter 11 Cases, or a Chapter 11 Case that is converted to one under chapter 7, that are incurred after the Maturity Date shall be born entirely by the Debtors' estates. For the avoidance of doubt, except to the extent expressly permitted under the Final DIP Order, no funds currently remaining in any escrow accounts (i.e., utility reserve escrow, cure costs escrow, professional fee carve-out, etc.) currently held by the Debtors shall be used to pay any administrative expenses incurred after the Maturity Date without the express written consent of Agent, *provided, however*, that no more than \$500,000 of funds remaining in the Carve-Out Reserve Account (as defined in the Final DIP Order) as of the Maturity Date shall be used to fund the Back End Carve-Out (as defined in the Final DIP Order), for fees and expenses Retained Professionals (as defined in the Final DIP Order), as indicated on an estimated budget provided to Agent, incurred after the Maturity Date through the earlier of (i) the date the Chapter 11 Cases are converted to cases under chapter 7, and (ii) December 15, 2017 (the earlier of (i) and (ii), the "**Back End Expiration Date**"), with no more than \$100,000 of such funds being allocated for Committee Professionals. The Trigger Date (as defined in the Final DIP Order) shall be deemed to have occurred as of the Maturity Date solely for the purposes of invoking the Back End Carve-Out in accordance with the terms of this Paragraph 3. All unused funds remaining in the Carve-Out Reserve Account and Back End Carve-Out on the Back End Expiration Date shall be immediately returned to the Agent for the benefit of the Lenders, unless otherwise directed by Agent.

4. Lenders' Deficiency Claim. Without limiting the rights of the Secured Parties to receive all proceeds with respect to their secured claims (except as provided in Paragraphs 5 and 7 herein), the Lenders collectively shall have an allowed general unsecured deficiency claim in an amount to be determined as provided below, which in no event shall exceed \$90 million in the aggregate ("**Deficiency Claim**"), which claim shall be calculated as the remaining amount of all

Obligations (as defined in the Final DIP Order), after receipt and application of the proceeds from the sale/liquidation of the Debtors' remaining assets that are not, pursuant to the terms hereof, paid to or preserved for the benefit of the Debtors' estates, and shall be joint and several against the Select Debtors (defined below). For the avoidance of doubt, to the extent the Lenders make payments under Paragraphs 6 and/or 13 of this Settlement Agreement from monies received and previously applied against the Obligations, the Obligations shall be increased by the amounts paid herein. The Deficiency Claim shall entitle the Lenders to, *inter alia*, receive distributions from the estates of CGI, Strack, and SVT (collectively, the "**Select Debtors**") as set forth herein, vote on any chapter 11 plan proposed for or by the Select Debtors (whether a joint plan or an individual debtor plan), and, to the extent permitted under applicable law, vote in the election of any chapter 11 or chapter 7 trustee for each of the estates of the Select Debtors. For the purposes of voting for any trustee, upon the Settlement Effective Date the Lenders shall not be deemed to hold an adverse interest to the Debtors' estates. The Lenders agree that with respect to each distribution on account of general unsecured claims against a Select Debtor, if any, the Lenders' pro rata distribution on account of the Deficiency Claim ("**Lender Incremental Distribution**") shall be set aside in and separately reserved to be used by the applicable representative of the estate of such Select Debtor(s) to make a supplemental pro rata distribution to all other holders of allowed general unsecured claims against such Select Debtor(s), until such time as the aggregate Lender Incremental Distribution equals \$1.5 million, after which the Lenders shall receive their pro rata distribution on account of the Deficiency Claim. The Lenders shall not share in the distribution of the Lender Incremental Distribution. The Parties agree that no Secured Party shall be required to file a proof of claim to preserve or assert the Deficiency Claim in the Chapter 11 Cases or in any Chapter 11 Case converted to one under chapter 7. By entry of the Settlement Order, the Deficiency Claim shall be deemed allowed as of the Settlement Effective Date in an amount as calculated above and, if necessary, reflected on the relevant Debtors' claims registry, without prejudice to the right of Agent to subsequently modify the calculation, if appropriate, in accordance with the terms of this Paragraph 4. Prior to the first anticipated distribution on account of allowed general unsecured claims, Agent, with the consent of the Required Lenders, shall provide a calculation of the Deficiency Claim to the applicable trustee/administrator of the Debtors' estates ("**Estate Representative**") and, if still existing, the Committee. If Agent and the Estate Representative (or the Committee, if applicable) agree on Agent's calculation of the Deficiency Claim, Agent shall file a notice of the agreed claim on the applicable Select Debtors' claims registry. If Agent and the Estate Representative (or the Committee, if applicable) do not agree on Agent's calculation of the Deficiency Claim, the Estate Representative and/or the Committee, as the case may be shall have fifteen (15) days from receipt of the calculation to file an objection with the Court contesting Agent's calculation. The Court will determine the appropriate calculation of the Deficiency Claim upon Agent's receipt of appropriate notice of the objection, an opportunity to respond, and a hearing.

5. Limited Waiver of Secured Parties' Lien on Equity Interests in Raceway Central. Agent, on behalf of the Lenders, agrees not to assert or receive the benefit of its lien on the membership interests of Raceway Central, LLC held by CGI to the extent, and only to the extent, necessary to forego the benefit of the agreement (the "**Covenant Not to Sue Agreement**") among IGG and various pension funds asserting claims against the Debtors (the "**Pension**

Funds”) under which the Pension Funds agreed to waive 50% of the distribution on their general unsecured claim against certain Debtors.

6. Cash Settlement Payment. Within three (3) business days after the Settlement Effective Date, the Lenders agree to make an unrestricted cash payment to the Debtors’ estates in the amount of \$9,000,000.00 (collectively, the “**Cash Payment**”).

7. Debtors’ Remaining Assets. The representative of each Debtor’s estate and/or a chapter 7 trustee, as applicable, shall (i) collect, sell, liquidate, and/or dispose of each Debtor’s remaining assets and pay in kind to Agent, for the benefit of the Lenders, without deduction or setoff of any kind, the proceeds as and when received, except as provided below, and (ii) to the extent appropriate, pursue and prosecute all claims and causes of action on behalf of the Debtors’ estates, including the Member Actions and Director Actions (both defined below). All of the net proceeds of each such sale, collection, or disposition (i.e., gross proceeds less the reasonable direct costs and expenses incurred in connection with such sale or other disposition, including brokers’ fees, professional fees (to the extent incurred after the Settlement Effective Date) associated with any sale, collection, or prosecution of any claim or cause of action, transaction fees, and transfer and similar taxes) (the “**Net Proceeds**”), and all amounts to be received by the Debtors whether or not contemplated by the approved DIP budget (including, without limitation, all tax refunds, deposit refunds, segregated funds, utility reserves, cure cost reserves, and carve-out reserves (except, solely with respect to the carve-out reserves, as otherwise provided in the Final DIP Order), whenever arising and whether received in the time period stated on the DIP Budget or thereafter) shall be remitted, without deduction except as otherwise expressly set forth below, to Agent, for the benefit of the Lenders, as and when received, provided, however, that:

a. One hundred percent (100%) of the Net Proceeds at the closing on the sale of each of the Type I Real Properties shall be paid to the Debtors’ estates;

b. Fifty-five percent (55%) of the Net Proceeds at the closing on the sale of each of the Type II Real Properties shall be paid to the Debtors’ estates, with the remaining forty-five percent (45%) being paid to Agent for the benefit of the Lenders;

c. All Net Proceeds from (i) the Debtors’ account receivables and loan receivables (other than proceeds of Designated Intercompany Accounts (as defined below)) collected from and after September 8, 2017 (“**Receivables**”), (ii) all unlawful dividend claims, avoidance actions and/or commercial tort claims against members, Class A and Class B shareholders, patrons, and customers (other than Stock Redemption Actions (defined below)) (the “**Member Actions**”), and (iii) any other causes of actions and commercial tort claims against the Debtors’ former and current directors and officers, in their capacity as such (the “**Director Actions**”, together with the Member Actions, collectively, the “**Shared Actions**”) (the items in clauses (i) through (iii), collectively, the “**Shared Collections**”) shall be shared between the Secured Parties and the Debtors’ estates as follows:

i. Twenty-five percent (25%) of the Net Proceeds of the Receivables and Member Actions shall be paid to the Debtors’ estates (as and when

- collected) with the remaining seventy-five percent (75%) paid to Agent for the benefit of the Lenders (as and when collected);
- ii. Seventy-five percent (75%) of the Net Proceeds of the Director Actions shall be paid to the Debtors' estates (as and when collected) with the remaining twenty-five percent (25%) paid to Agent for the benefit of the Lenders (as and when collected);

provided, however, the Secured Parties' aggregate recovery from their percentages of the Shared Collections shall not exceed \$20,000,000.00 (the "**Shared Collections Cap**") with any Shared Collections in excess of the Shared Collections Cap, subject to Paragraph 11 below, paid to the Debtors' estates; *provided further, however*, that if the Debtors' estates have not received Net Proceeds of \$2,500,000.00 ("**Shared Collections Floor**") by the later of (i) one year from the Settlement Effective Date, or (ii) December 31, 2018 (the later of (i) and (ii) the "**Shared Collections Date**"), the Lenders agree to pay to the Debtors' estates the difference between the actual amount received by the Debtors' estates from the Shared Collections and the Shared Collections Floor (the "**True Up Amount**"), and the Secured Parties shall be paid all Net Proceeds of the Shared Collections after the Shared Collections Date until they are reimbursed for the True Up Amount;

d. Distributions made on account of intercompany accounts/receivables, and/or intercompany loan receivables owed (i) by SVT to CGI, and (ii) by CGI to SVT (collectively, the "**Designated Intercompany Accounts**"), if any, in excess of \$1,500,000, in the aggregate, shall be paid to and retained by Agent, for the benefit of the Lenders. All other distributions made on account of intercompany accounts/receivables, and/or intercompany loan receivables, if any, shall be paid free and clear of any lien or interest of the Agent or the Lenders;

e. The Net Proceeds of all avoidance actions to recover Class B stock redemptions ("**Stock Redemption Actions**") shall be preserved for the Debtors' estates; and

f. The Net Proceeds of all tort claims and causes of action by the Debtors' estates against third parties (other than the Member Actions and Director Actions), including avoidance actions and commercial tort claims that may be asserted by any Debtor or trustee, shall be preserved for the benefit of the Debtors' estates. For the avoidance of doubt, the foregoing is not intended to and shall not diminish Secured Parties' right to receive all remaining proceeds as set forth in this Paragraph 7, including, without limitation, tax refunds, deposit refunds, and escrow account refunds.

8. Agent's Consent and Consultation Rights on Shared Collections.

a. Agent shall have consent rights, not to be unreasonably withheld, over the settlement of each Receivable owed by, and each Member Action against, an individual or entity affiliated with a director or officer of any Debtor. Agent shall have consent rights, not to be reasonably withheld, over the settlement of each Receivable owed by, and each Member Action, against any other individual or entity where the asserted gross amount of such Receivable and/or Member Action exceeds \$700,000.00 in the aggregate. The relevant representative of the Debtors' estates shall consult with Agent (x) on the choice of professionals retained to collect

and/or pursue the Receivables and the Member Actions, and (y) subject to any necessary common interest agreement, strategy for the collection and pursuit of the Receivables and Member Actions. To the extent this provision is inconsistent with the Court's *Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Authorizing and Approving Procedures for Settling De Minimis Claims and Causes of Action of the Debtors* [Dkt. No. 783], this Settlement shall be deemed to modify such Order.

b. The relevant representative of the Debtors' estates shall consult with Agent on (i) the choice of the professionals retained to litigate the Director Actions, and (ii) subject to any necessary common interest agreement, strategy for the collection and pursuit of the Director Actions including any proposed settlements.

c. The relevant representative of the Debtors' estates shall provide to Agent periodic updates on the progress of the Shared Collections every two calendar weeks and upon the reasonable request of the Agent.

9. Refund of Segregated Funds.

a. All monies remaining in the segregated account established pursuant to paragraph 46(b) of the Final DIP Order after satisfaction of valid and documented PACA/PASA claims shall be returned/paid over by the applicable Debtors' representative(s) to Agent, for the benefit of the Lenders. In the interim, promptly following execution of this Settlement Agreement, the applicable Debtors' representative shall send notice, in accordance with paragraph 46(b) of the Final DIP Order, notifying the requisite parties that such Debtors' representative shall return/pay over to Agent the monies in the subject segregated account that exceed the total amount of all asserted and disputed PACA/PASA claims (in other words, sufficient funds will be left in the segregated account to cover the remaining unresolved PACA/PASA claims).

b. All other monies remaining in segregated accounts, including, without limitations, escrow accounts holding funds to pay the Debtors' utilities, cure costs, and the carve-out reserve account, shall be returned to the Agent, for the benefit of the Lenders, as soon as practicable but only in accordance with the terms of the Court Orders (including the Final DIP Order) governing the establishment of such segregated accounts.

10. Allocation of Settlement Proceeds. All proceeds to be paid to or preserved for the benefit of the Debtors' estates as set forth herein, including the Cash Payment, (a) shall be held jointly by the applicable Debtors' representative(s) in a segregated escrow account pending further order of the Court approving an allocation of such proceeds among the Debtors; and (b) shall, except with respect to Deficiency Claim, be distributed solely for the benefit of creditors other than Secured Parties, and the Secured Parties agree not to assert any Diminution Claim or secured claim in or to such proceeds. The Secured Parties agree not to contest or otherwise oppose any request to allocate among the Debtors' estates the amounts paid to or reserved for the Debtors' estates under this Settlement, *provided, however*, (i) the approval of this Settlement Agreement is not conditioned upon Court approval of such allocation, and (ii) the Debtors or other estate representative shall make payment from the escrow account in satisfaction of any

allowed fees and expenses of the Committee's special litigation counsel, Reid Collins & Tsai LLP. Once an allocation of the amounts paid to or reserved for the Debtors' estates under this Settlement is approved by the Court, no reallocation of such amounts prior to the distribution thereof to creditors can be sought that adversely impacts the Deficiency Claim.

11. Unasserted Employee WARN Act Administrative Claims. The Lenders agree to fund the payment of any administrative priority claims filed prior to the expiration of the bar date to be established in these Chapter 11 Cases (or converted chapter 7 cases) and subsequently allowed in favor of any of the Debtors' employees that were terminated post-petition for wages owed under the Workers Adjustment and Retraining Notification Act of 1988 (29 U.S.C. § 2100 *et seq.*) ("**WARN Act**") in an amount not to exceed \$1,200,000.00 in the aggregate (the "**WARN Claim Cap**"), *provided, however*, that any amount up to the WARN Claim Cap funded by the Lenders under this Paragraph 11 shall result in a dollar for dollar reduction in the Debtors' estates' share of the Net Proceeds of the Shared Collections in excess of the Shared Collections Floor, *provided, further*, that the Secured Parties (and the Committee, if it still exists) reserve the right to contest or object to any claim asserted under the WARN Act.

12. Retention of Select Third Party Claims. This Settlement Agreement shall not affect any Secured Party's direct claims or causes of action against non-debtor parties (and right to retain recoveries therefrom) other than claims against the Debtors' (i) trade vendors, (ii) members, and (iii) directors and officers ((i) through (iii) are collectively the "**Designated Parties**"), which direct claims against the Designated Parties (the "**Secured Party Direct Claims**") shall not be pursued by the Secured Parties; *provided, however*, the Agent, with the consent of the Required Lenders, shall have the sole and absolute discretion to assign the Secured Party Direct Claims, on terms and conditions acceptable to Agent in its sole discretion, to the Debtors and/or the Debtors' estates to pursue the Secured Party Direct Claims against any of the Designated Parties, with any recoveries therefrom to be treated as Shared Collections in respect of Member Actions or Director Actions, as the case may be.

13. Modification of Carve-Out; Increase of Carve-Out Cap. The Parties agree that (a) the \$2,500,000.00 of the Carve-Out Cap (as defined in the Final DIP Order) applicable to the Committee's Retained Professionals (as defined in the Final DIP Order) shall be increased by \$750,000.00 to \$3,250,000.00 in the aggregate (the "**Modified Committee Carve-Out**"), which increase shall be funded to the Carve-Out Reserve Account within three (3) days of the Settlement Effective Date, (b) the limitations and restrictions contained in Paragraph 29 of the Final DIP Order, including the restrictions on the Committee Professionals' incurrence of Ineligible Professional Expenses and the \$135,000.00 cap to investigate Prepetition Lien and Claim Matters, shall be inapplicable to the Committee's Retained Professionals, and (c) any funds in the Carve-Out Reserve Account (as defined in the Final DIP Order) allocated to Retained Professionals other than the Committee's Retained Professionals that would otherwise be reimbursed to the Lenders under the terms of the Final DIP Order, may be used by the Lenders to fund the Modified Committee Carve-Out; *provided*, that, in no event shall the Modified Committee Carve-Out be used to pay or reimburse any legal fees or expenses of Committee Members. Any funds remaining from the Modified Committee Carve-Out after all allowed Committee Professional fees and expenses are paid shall be made available for distribution to the Debtors' estates in accordance with Paragraph 10 above.

14. Representations and Warranties.

a. Each of the Parties represents and warrants that they have carefully read this Settlement Agreement, the contents hereof are known to them, and that this Settlement Agreement is executed knowingly, voluntarily, and without duress or undue influence.

b. Each of the Parties represents and warrants that in executing this Settlement Agreement each rely solely upon its own judgment, belief, and knowledge, and on the advice and recommendations of its own independently selected counsel, concerning the nature, extent, and duration of its rights and claims, and that each has not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by any of the Parties or by any person representing them or any of them.

c. Each of the Parties represents and warrants that the persons and entities executing this Settlement Agreement have the legal authority to do so and/or have been duly authorized to do so.

15. No Admission of Liability. Nothing in this Settlement Agreement shall be deemed an admission of liability by any person or entity, whether party to this Settlement Agreement or otherwise.

16. Release. Upon the Settlement Effective Date, the Committee, for itself and on behalf of each Debtor and each of the Debtors' estates, and each of their representatives, successors and assigns (including, without limitation, a chapter 7 or chapter 11 trustee appointed or elected for the Debtors or any of them), and in a manner binding upon each of the Debtors' estates and the Committee and each of their successors and assigns (the "**Releasing Parties**"), hereby each irrevocably and unconditionally release, acquit and forever discharge Agent and each Lender, and each of their respective successors and assigns, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, consultants, advisors, and employees, each in their capacities as such (the "**Lender Parties**") from any and every claim, cross-claim, loss, or damages (whether consequential, direct or indirect), demand, liability, action or cause of action, liabilities, debts, controversies, agreements, trespasses, judgments, executions, and demands of any nature whatsoever, whether at law or in equity, whether known or unknown, foreseen or unforeseen, matured or contingent, which the Releasing Parties jointly or severally have, ever had, might have had or might have in the future, arising out of, relating to, or in connection with, in whole or in part, any event, act, omission, or transaction occurring from the beginning of time to the date of this Settlement Agreement, and relating in any way to the Lender Parties or any one or more of them, jointly or severally; *provided, however*, nothing herein shall be deemed to release or discharge any obligations of the Lender Parties under this Settlement Agreement.

17. Conditions to Effectiveness. This Settlement Agreement is subject to (i) entry by the Court of the Consent Order, (ii) occurrence of the Settlement Effective Date, and (iii) the Covenant Not to Sue Agreement being acceptable to each of Agent and the Committee, respectively, in their reasonable discretion. If the Settlement Motion is denied by the Court or the

Settlement Effective Date does not occur, then each of the Parties shall have all the rights, claims, liens, and causes of action, and defenses with respect thereto, in respect of each other prior to the execution and delivery of the Settlement Agreement as if the Settlement Agreement had never been executed and delivered.

18. Applicable Law/Retention of Jurisdiction. This Settlement Agreement shall in all respects be interpreted, enforced and governed by the laws of the State of Illinois. Any action to enforce, interpret, or construe any provision of this Settlement Agreement shall be brought and determined in the Court.

19. Construction of Settlement Agreement. This Settlement Agreement shall be construed as a whole according to its fair meaning and as if all Parties hereto had jointly prepared this Settlement Agreement. Whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural. Each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and neuter. The words “herein,” “hereunder” and “hereto” refer to this Settlement Agreement in its entirety rather than to a particular portion of this Settlement Agreement. Captions and headings in this Settlement Agreement are inserted for the convenience of the Parties for reference only and are not intended to be a part of, or affect the interpretation of, this Settlement Agreement.

20. Binding on Parties. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and assigns, each of the Debtors, each of the Debtors’ estates, and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtors or any of them), an examiner with expanded powers, and any other estate representative.

21. Unified Agreement. The Parties acknowledge and agree that this Settlement Agreement constitutes a unified understanding (unless specifically noted herein as not being necessary for the entry of an order approving the Settlement Agreement) and that failure of the Court to approve any provision hereof (unless waived in writing by the Committee (except to the extent the Committee no longer exists and then by the appropriate estate representative), and the Agent, on behalf of the Lenders) shall result in the Settlement Agreement being null and void.

22. Waiver. A breach of any provision of this Settlement Agreement can be waived only by a writing signed by the non-breaching party. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Settlement Agreement may be amended only by a written agreement executed by the Parties except to the extent the Committee no longer exists and then by the appropriate estate representative.

23. Entire Agreement. This Settlement Agreement constitutes the entire agreement between or among the Parties pertaining to the subject matter hereof, and there are no terms other than those contained herein. Any agreement previously entered into between the Parties and/or any of their affiliates or subsidiaries are terminated and shall be of no force and effect.

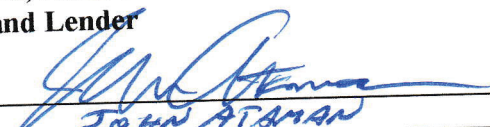
24. Further Action. The Parties hereto agree to execute promptly upon request any and all other documents and instruments necessary to effectuate the terms of this Settlement Agreement.

25. Counterparts. This Settlement Agreement may be executed in counterparts and by facsimile or PDF and when each of the Parties has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and all counterparts taken together shall constitute one and the same agreement, which shall be binding and effective as to all Parties. Facsimile and electronic copies shall be deemed original.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Settlement Agreement to be signed and executed as of the day and year first above written.

**PNC BANK, NATIONAL ASSOCIATION,
as Agent and Lender**

By: 
Name: JOHN ADAMS
Title: SVP

BANK OF THE WEST, as Lender

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A., as Lender

By: _____
Name: _____
Title: _____

U.S. BANK, NATIONAL ASSOCIATION, as Lender

By: _____
Name: _____
Title: _____

THE NORTHERN TRUST COMPANY, as Lender

By: _____
Name: _____
Title: _____

FIRST MIDWEST BANK, as Lender

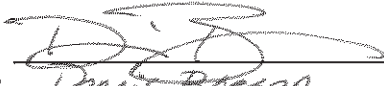
By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Settlement Agreement to be signed and executed as of the day and year first above written.

**PNC BANK, NATIONAL ASSOCIATION,
as Agent and Lender**

By: _____
Name: _____
Title: _____

BANK OF THE WEST, as Lender

By:  _____
Name: Denise B. Brown
Title: Senior Vice President

BANK OF AMERICA, N.A., as Lender

By: _____
Name: _____
Title: _____

U.S. BANK, NATIONAL ASSOCIATION, as Lender

By: _____
Name: _____
Title: _____

THE NORTHERN TRUST COMPANY, as Lender

By: _____
Name: _____
Title: _____

FIRST MIDWEST BANK, as Lender

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Settlement Agreement to be signed and executed as of the day and year first above written.

**PNC BANK, NATIONAL ASSOCIATION,
as Agent and Lender**

By: _____
Name: _____
Title: _____

BANK OF THE WEST, as Lender

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A., as Lender

By: Thomas Czerninski
Name: THOMAS CZERWINSKI
Title: VICE PRESIDENT

U.S. BANK, NATIONAL ASSOCIATION, as Lender

By: _____
Name: _____
Title: _____

THE NORTHERN TRUST COMPANY, as Lender

By: _____
Name: _____
Title: _____

FIRST MIDWEST BANK, as Lender

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Settlement Agreement to be signed and executed as of the day and year first above written.

**PNC BANK, NATIONAL ASSOCIATION,
as Agent and Lender**

By: _____
Name: _____
Title: _____


BANK OF THE WEST, as Lender

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A., as Lender

By: _____
Name: _____
Title: _____

U.S. BANK, NATIONAL ASSOCIATION, as Lender

By:  _____
Name: Christopher D. Zumberge
Title: Senior Vice President

THE NORTHERN TRUST COMPANY, as Lender

By: _____
Name: _____
Title: _____

FIRST MIDWEST BANK, as Lender

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Settlement Agreement to be signed and executed as of the day and year first above written.

**PNC BANK, NATIONAL ASSOCIATION,
as Agent and Lender**

By: _____
Name: _____
Title: _____

BANK OF THE WEST, as Lender

By: _____
Name: _____
Title: _____

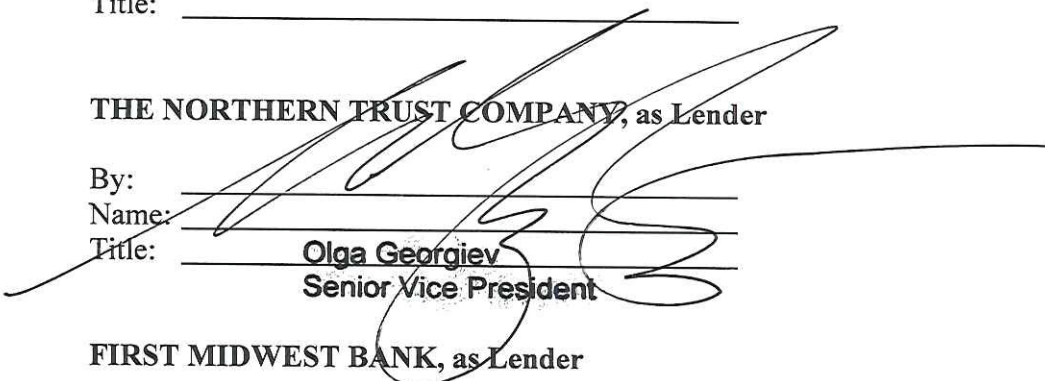
BANK OF AMERICA, N.A., as Lender

By: _____
Name: _____
Title: _____

U.S. BANK, NATIONAL ASSOCIATION, as Lender

By: _____
Name: _____
Title: _____

THE NORTHERN TRUST COMPANY, as Lender

By: _____
Name: _____
Title: _____

Olga Georgiev
Senior Vice President

FIRST MIDWEST BANK, as Lender

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Settlement Agreement to be signed and executed as of the day and year first above written.

**PNC BANK, NATIONAL ASSOCIATION,
as Agent and Lender**

By: _____
Name: _____
Title: _____

BANK OF THE WEST, as Lender

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A., as Lender

By: _____
Name: _____
Title: _____

U.S. BANK, NATIONAL ASSOCIATION, as Lender

By: _____
Name: _____
Title: _____

THE NORTHERN TRUST COMPANY, as Lender

By: _____
Name: _____
Title: _____

FIRST MIDWEST BANK, as Lender

By: Graine L Jack
Name: GRAEME L JACK
Title: Vice President

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF CENTRAL GROCERS, INC., *et al.*,
for itself and on behalf of each of the Debtors and each
of the Debtors' estates, by its counsel,**

By: 
Gianfranco Finizio