



## TERMS AND CONDITIONS OF SALE FOR THE ASSETS OF HEALTHY SPOT, LLC AND ITS SUBSIDIARIES

On Wednesday, February 1, 2023, at 2:00 p.m. California time, at the law offices of Rutan & Tucker, LLP, 18575 Jamboree Road, 9th Floor, Irvine, CA 92612, ThreeSixty Asset Advisors, LLC ("Auctioneer"), acting solely in its capacity as agent for secured party Oaktree Fund Administration, LLC ("Secured Party"), will conduct a public auction sale (the "Auction") at which Auctioneer will offer for sale to Qualified Bidders (as defined below) the assets of Healthy Spot, LLC and its subsidiaries (collectively, "Company") described on Exhibit A attached hereto (collectively, the "Assets"). Qualified Bidders may also participate in the Auction remotely via videoconference.

These Terms and Conditions of Sale may be updated, amended, modified, or superseded (collectively, "Updated Terms") by Auctioneer at any time and from time to time, up to and including the closing of the Auction, by any of the following methods: (i) by posting Updated Terms to its website at <https://360assetadvisors.com>, (ii) by distributing Updated Terms in writing at the Auction, or (iii) by making an oral announcement of Updated Terms at the Auction. These Terms and Conditions of Sale, as updated, amended, modified, or superseded by any Updated Terms (if any), are referred to herein as the "Terms". The Auction and the offer and sale of the Assets are subject in all respects to the Terms. Any potential bidder interested in participating in the Auction (an "Interested Party") is responsible to stay apprised of the Terms and is advised to regularly check Auctioneer's website for any Updated Terms and to carefully pay attention to any Updated Terms that may be distributed in writing or announced orally at the Auction.

### **BIDDING AND SALE PROCESS**

**Auction Registration.** Interested Parties must contact Auctioneer by phone at 888.345.SOLD, ext. 117, or via e-mail at [info@360assetadvisors.com](mailto:info@360assetadvisors.com) to obtain information on how to register for the Auction and to be included on any e-mail correspondence from Auctioneer concerning the Auction (including to receive the videoconference access information necessary for Qualified Bidders to participate in the Auction remotely). Information obtained at the time of registration will also opt Interested Parties into Auctioneer's sale notification system, from which an Interested Person may opt out by following the instructions at the bottom of each sale notice received from Auctioneer or by emailing [support@360assetadvisors.com](mailto:support@360assetadvisors.com). Auctioneer confirms that an Interested Party's information will not be sold, or otherwise shared with any third parties, except as may be required to comply with a legal sale process.

**Qualified Bidders.** Only Qualified Bidders or their representatives will be allowed to participate in the Auction (whether in-person or by videoconference). In order to qualify as a "Qualified Bidder", an Interested Party must: (i) complete all registration forms required by Auctioneer completely and accurately by the deadline therefor prescribed by Auctioneer, (ii) acknowledge, accept and agree with the Terms, (iii) accept the provided asset purchase agreement template (including all exhibits, schedules and attachments thereto) as the approved and acceptable asset purchase agreement (the "Purchase Agreement") to be signed upon the award of bid to the winning Qualified Bidder, (iv) provide evidence at the Auction of an original, valid cashier's check from a reputable banking institution in the amount of \$500,000 payable to "Oaktree Fund Administration, LLC" (the "Deposit")<sup>1</sup>, and (v) provide proof of financial capability to close on the Assets (pursuant to and in accordance with the Terms and the Purchase Agreement) in a form acceptable to Auctioneer and Secured Lender. In addition, any individual bidding at the Auction on behalf of a Qualified Bidder must be at least 18 years of age and legally authorized to act on behalf of the Qualified Bidder.

**Bidding Process.** The Auction will take place onsite at the law offices of Rutan & Tucker, LLP located at 18575 Jamboree Road in Irvine, California and online via videoconference. Only Qualified Bidders or their representatives will be permitted access to the Auction (whether in-person or by videoconference). The opening bid shall be announced by Auctioneer at the commencement of the bidding process. Once bidding is open, Qualified Bidders shall be able to increase bids in the increments determined solely by Auctioneer, in cooperation with Secured Party, and as may be adjusted by Auctioneer at any time during the bidding process. In the event of a dispute between two or more Qualified Bidders, Auctioneer, at its sole discretion, may reopen the bidding or designate one of the Qualified Bidders as the high bidder. All bids (i) must be "all cash" to be paid in full at Closing (as defined below), (ii) shall not be subject to any contingencies, holdbacks, escrows, or earnouts of any kind, (iii) shall not include any breakup fee, termination fee, expense reimbursement or any similar fee, (iv) shall not include any restrictions on disclosing the bid terms to other Qualified Bidders, and (v) shall comply with all other requirements of the Terms. The Auction will close when Auctioneer determines no additional bids are forthcoming, at which time Auctioneer will award the bid to the highest and final Qualified Bidder, who shall then be deemed the winning bidder and purchaser ("Purchaser"). The date and time of the Auction

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<sup>1</sup> Secured Party may, on a case by case basis in its sole and absolute discretion, accept a Deposit in cash by wire transfer of immediately available funds to an account designated by Secured Party in lieu of a cashier's check. Any Interested Party wishing to inquire as to the possibility of submitting its deposit by wire transfer should contact Auctioneer, who will coordinate such request for consideration by Secured Party.



may be postponed or continued at any time and for any reason in the sole discretion of Secured Party prior to the closing of the Auction. Unless otherwise announced by Auctioneer at the time of the Auction, the Auction is "with reserve" and, therefore, Auctioneer may withdraw any or all Assets from sale at the Auction until it announces completion of the Auction by announcing "sold."

**Credit Bidding.** Secured Party is automatically a Qualified Bidder and, without limitation of its right to bid in cash, may credit bid up to the full amount of obligations owed to it by Company. Other than the Deposit requirement, its ability to credit bid, and rights attributable to it in its capacity as a secured creditor of Company, Secured Party will be obligated to the same Terms as all other bidders.

**Deposit.** Concurrently with its execution of the Purchase Agreement, Purchaser will deliver the non-refundable Deposit to Secured Party.

**Purchase Agreement.** Immediately prior to commencement of the Auction, the Purchase Agreement will be presented by Auctioneer to each Qualified Bidder. Upon the fall of the hammer at the Auction, Purchaser will be required to execute the Purchase Agreement and other necessary documents ("Ancillary Documents") in the form designated by Auctioneer and Secured Party. The Purchase Agreement must be signed in the name of Purchaser and, unless expressly agreed upon in writing by Secured Party in its sole discretion, may not be assigned to any other person or entity. The terms of the Purchase Agreement are expressly non-negotiable. In the event of any conflicting terms between the Terms and the Purchase Agreement, the terms of the Purchase Agreement shall control. A draft of the Purchase Agreement is available in the Data Room (see "Representations – Due Diligence" below); provided, however, that changes may be made to such draft prior to commencement of the Auction, and the Purchase Agreement in the form presented pursuant to the first sentence of this paragraph shall be the final and binding version of the Purchase Agreement to be executed by Purchaser (subject to any changes or modifications thereto as may be agreed to by Secured Party in its sole and absolute discretion). It is each Qualified Bidder's responsibility to obtain, read, and understand the provisions of the Purchase Agreement and any Ancillary Documents before bidding at the Auction. Secured Party's obligations to Purchaser are exclusively as set forth in the Purchase Agreement. Auctioneer is not a party to the Purchase Agreement and does not guarantee the outcome of the sale transaction between Secured Party and Purchaser.

**Payment of Purchase Price Balance; Transfer Documents.** Title to the Assets shall pass to Purchaser upon payment of the balance of the purchase price and execution and delivery of applicable transfer documents as follows:

Payment of Purchase Price Balance. The balance of the purchase price bid by Purchaser (i.e., the full purchase price bid by Purchaser less the Deposit) shall be paid to Secured Party by 1:00 p.m. California time on Friday, February 3, 2023, which date and/or time may be extended by Secured Party in its sole and absolute discretion (the "Closing Date"). The balance of the purchase price must be paid by cashier's check from a reputable banking institution payable to "Oaktree Fund Administration, LLC" or by wire transfer of immediately available funds to an account designated by Secured Party. If Purchaser does not pay the balance of the purchase price and close the transactions contemplated under the Purchase Agreement (the "Closing") by the Closing Date: (i) Purchaser shall be in material breach of the Purchase Agreement, (ii) Purchaser shall forfeit its Deposit to Secured Party and lose any and all rights to acquire the Assets, (iii) Secured Party may sell the Assets to the Qualified Bidder that had the next highest bid at the Auction or via a subsequent public or private sale, and (iv) Secured Party may exercise any and all other rights and remedies available to it in law or at equity, including specific performance or actual and punitive damages against Purchaser. Purchaser hereby agrees to pay to Secured Party (in addition to Secured Party's retention of the Deposit) any and all costs, expenses and deficiencies resulting from or incurred by Secured Party as a result of a sale of the Assets pursuant to subpart (iii) of the immediately preceding sentence or the exercises of other rights and remedies by Secured Party pursuant to subpart (iv) of the immediately preceding sentence, in each case together with all charges, fees and expenses (including reasonably attorneys' fees) in conjunction with such resale or exercise of rights and remedies.

Transfer Documents. Title to the Assets shall pass to Purchaser upon its payment of the balance of the purchase price as set forth above under "Payment of Purchase Price Balance" and the execution and delivery of the bill of sale, assignment and assumption agreement, and such other documents and agreements as may be applicable to the Assets.

**Transition Services Agreement.** Company has agreed in principle to a form of Transition Services Agreement, a copy of which will be posted in the Data Room (the "Transition Services Agreement"), to assist in transitioning the Assets and related business operations to Purchaser. Purchaser agreeing to the Transition Services Agreement is optional and is not a condition to any Qualified Bidder bidding on or being the successful bidder for the Assets. Further, enforcing any obligation of the Company to enter into the Transition Services Agreement shall be the sole responsibility of Purchaser. Neither Auctioneer, Secured Party, CriticalPoint Partners, LLC ("CPP"), nor any of their respective officers, directors, employees, agents, representatives or any other affiliates thereof (collectively, "Sale Parties") make any representation, warranty or guarantee of any kind or nature concerning the Transition Services Agreement, including the terms of the Transition Services Agreement,



whether Company will enter into the Transition Services Agreement with Purchaser, or Company's performance under or ability to perform under the Transition Services Agreement. The provisions of "Representations – "AS-IS" Sale" below apply, *mutatis mutandis*, to the Transition Services Agreement.

## REPRESENTATIONS

**"AS-IS" Sale.** The condition of the Assets being offered varies. Qualified Bidders understand and agree that all Assets are purchased and accepted by Purchaser **"AS IS – WHERE IS", "IN PLACE" and "WITH ALL FAULTS, KNOWN AND UNKNOWN," WITHOUT RECOURSE, REPRESENTATION OR WARRANTY, WHETHER EXPRESSED OR IMPLIED, AND WITHOUT ANY WARRANTY RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT, OR THE LIKE.** NO SALE PARTY NOR ANY OTHER PERSON OR ENTITY MAKES ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES WHATSOEVER CONCERNING THE ASSETS, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, AS TO QUALITY, QUANTITY, CONDITION, LOCATION, USEABILITY, SALEABILITY, WEIGHT, MEASUREMENT, YEAR, MODEL, MECHANICAL CONDITION, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER SPECIFICATIONS. THE SALE OF THE ASSETS TO PURCHASER SHALL NOT BE INVALIDATED AS A RESULT OF, AND NO SALE PARTY NOR ANY OTHER PERSON OR ENTITY SHALL HAVE ANY LIABILITY FOR, ANY INFORMATION PROVIDED OR MADE AVAILABLE CONCERNING THE ASSETS (REGARDLESS IF SUCH INFORMATION IS MATERIALLY INACCURATE OR INCOMPLETE). Descriptions of the Assets have been prepared for informational purposes only and shall not be relied upon by Qualified Bidders (including Purchaser) for accuracy or completeness. By submitting a bid, a Qualified Bidder affirms it has waived its right to inspect the Assets prior to bidding. Each Qualified Bidder is encouraged to personally inspect the Assets and documentation relating thereto, and hereby accepts the condition of the Assets PRIOR TO ITS BID SUBMISSION. No Sale Party nor any other person or entity shall be liable for any relief, including damages, rescission, reformation, allowance or adjustment, based on the failure of the Assets to conform to any description, standard or expectation.

**Due Diligence.** No Interested Party shall be provided access to the Data Room (as defined below) or any other due diligence or other information concerning the Assets unless and until it has executed a nondisclosure agreement with CPP in form and substance acceptable to Secured Party ("Nondisclosure Agreement"). It is each Interested Party's responsibility to access and carefully review the documents contained in the digital data room relating to the Assets (the "Data Room"). By participating in the Auction, each Qualified Bidder acknowledges and agrees that it has reviewed all such materials prior to submitting a bid or has knowingly and willingly proceeded in the bidding process without reviewing such materials. Each Interested Party further acknowledges and agrees that any information contained in the Data Room or otherwise obtained, directly or indirectly, from or through any Sale Party is provided or made available, as applicable, without any independent investigation or verification whatsoever on the part of any Sale Party and without representation, warranty or guarantee of any kind or nature, including as to its accuracy or completeness. It is each Interested Party's sole and exclusive responsibility to conduct its own due diligence; to assess the accuracy and completeness of the information contained in the Data Room or otherwise obtained, directly or indirectly, from or through any Sale Party; and to independently verify and confirm to the Interested Party's satisfaction any estimates, projections, or assumptions relating thereto, none of which may be considered to be representations, warranties or guaranties. In connection therewith, each Interested Party has the sole and exclusive responsibility to select and consult with any and all professional advisors of such Interested Party's choosing in determining whether to become a Qualified Bidder and to bid at the Auction. Each Interested Party acknowledges and agrees that it has relied exclusively on its own investigation and determinations and the advice of its own professional advisors, and expressly represents that it has not relied upon any statement made or information provided by any Sale Party, whether through the Data Room, by other documents or material, by any oral, written or electronic communications, or otherwise.

**No Conditions or Contingencies.** Each Qualified Bidder acknowledges and agrees that (i) the Closing is not contingent upon inspection or due diligence, and waives any inspection periods that might otherwise be provided in a conventional sales transaction; (ii) no Sale Party shall have any liability for any relief, including damages of any kind, rescission or reformation of the Purchase Agreement, or adjustment to the terms of the Purchase Agreement, based upon any failure of the Assets to conform to any description provided or made available to Qualified Bidders, or to any standard or any expectation that a Qualified Bidder may have in connection with the Assets, and (iii) that Closing is not subject to any financing or any other contingency of any kind. Each Qualified Bidder warrants and represents that by participating in the Auction (i) it has completed its due diligence and is accepting each Asset as it is, where it is, with all faults, and without caveat, condition or contingency, (ii) it has actual authority to enter each bid placed by it, to pay the Deposit, to enter into the Purchase Agreement and any Ancillary Documents, and to consummate the Closing, and (iii) any bid it makes on the Assets constitutes an irrevocable offer to buy the Assets for the full amount of the bid. The provisions of this section do not preclude Purchaser from financing the purchase of the Assets; however the failure of Purchaser, for any reason, to obtain financing, or the failure of any lender having provided such a commitment to fund thereunder, shall not excuse Purchaser from the performance of its obligations under the Purchase Agreement and to pay the purchase price and consummate the Closing, whether or not financing is obtained.



**Article 9 Sale.** The Auction is being conducted as a secured party sale pursuant to Article 9 of the Uniform Commercial Code, as enacted in California as Division 9 of the California Commercial Code ("Article 9"), which shall convey to Purchaser right, title and interest in the Assets pursuant to and subject to the terms and conditions of Article 9 and other applicable law.

**Asset Description.** The Assets are Article 9 collateral of Secured Party under its Loan Agreement dated as of April 21, 2022, as amended by that certain First Amendment to Loan Agreement dated as of August 12, 2022, and that certain Guarantee and Security Agreement dated as of April 21, 2022.

**Leases.** Purchaser is solely responsible for negotiating assignments of the existing leases or negotiating new leases for any premises leased by Company where any of the Assets are located, if so desired by Purchaser, and the Closing is not contingent on the assignment of any such leases or Purchaser negotiating any new leases.

**Permits.** Purchaser is solely responsible for obtaining any government permits, licenses or approvals necessary for the ownership and operation of the Assets.

**Employees.** Purchaser is solely responsible for employing former Company employees as Purchaser desires to employ and the Closing is not contingent on any such employment.

## OTHER

**Agent for Secured Party.** Auctioneer is representing Secured Party solely in the capacity as its agent in facilitating the Auction and bidding process. CPP is representing Secured Party solely to market the Assets to prospective Interested Parties.

**Electronic Communications.** Each Interested Party acknowledges and agrees that all agreements, notices, disclosures, disclaimers, and other communications provided on a Sale Party's website or communicated to an Interested Party by e-mail, text or other electronic communication (collectively, "Electronic Communication") satisfy any legal requirement that such communications be in writing and hereby consent to receiving any and all such communications by Electronic Communication.

**Technical Problems.** Each Interested Party acknowledges and agrees that technical problems with hardware, software, or internet connectivity, as well as human errors, may arise and may affect, without limitation, access to a Sale Party's website, access to the Data Room, or the ability to participate in the Auction by videoconference. Each Interested Party further acknowledges and agrees that these and other technical problems may develop at any time and with or without notice. Each Interested Party acknowledges and agrees that no Sale Party is in any way responsible for any such technical problems, and that no Interested Party (even if a Qualified Bidder) has any absolute or other right to be able to participate in the Auction or bid on the Assets, as a result of any such technical problems or otherwise. Notwithstanding the foregoing, each Interested Party further acknowledges and agrees that, in the event of any such technical problems, Auctioneer reserves the right in its sole discretion, in consultation with Secured Party, to allow bidding by telephone or other methods, to extend the bidding time for the Auction, to postpone or cancel the Auction, to list the Assets for sale at another time, or to elect to not sell any or all of the Assets.

**Certain Sale Party Rights.** In addition to, and not in limitation of, any other rights of any Sale Party set forth in the Terms, the Purchase Agreement, any Ancillary Documents, or any other document or agreement contemplated by any of the foregoing, each Interested Party acknowledges and agrees that Secured Party reserves the right in its sole discretion, for any reason or for no reason to: (i) determine who has access to and who may bid at the Auction, (ii) postpone, continue or cancel the Auction, (iii) withdraw any one or more Assets from the Auction, (iv) change any terms of the Auction (including by the Terms) or particular conditions of sale upon announcement by the Auctioneer prior to or during the course of the Auction, (v) reject any and all registrations, bids or participation in the Auction of any kind, (vi) select the Purchaser, and (viii) remove any person (including any Qualified Bidder or any representative of any Qualified Bidder) from the Auction. Each Interested Party further acknowledges and agrees that no Sale Party makes any representations, warranties or guarantees as to the manner in which the Auction or the sale of the Assets will be managed, and that any acceptance of a winning bid prior to the execution of a binding Purchase Agreement may be rescinded by Secured Party in the Secured Party's sole and absolute discretion and for any reason whatsoever including the receipt of a subsequent bid, and that Secured Party's obligation to sell the Assets pursuant to the Auction shall not be binding until the Purchase Agreement is duly executed and delivered by Secured Party and Purchaser. Announcements made by Auctioneer at the Auction take precedence over all written materials to the extent such announcements are in conflict with the terms of any such written materials. Auctioneer reserves the right to correct any mistakes or typographical errors made in any of its announcements or in any documents related to the Auction.



**Indemnification.** Each Interested Party shall indemnify, defend and hold harmless each and every Sale Party from and against any and all claims, demands, charges, causes of action, losses, liabilities, deficiencies, fines, penalties, damages, costs, and expenses (including reasonable attorney's fees and costs) (collectively, the "Damages") that any Sale Party may suffer, incur, sustain or become subject to as a result of or in connection with: (i) any breach by such Interested Party of any material representation, warranty, obligation or covenant set forth in the Terms, the Nondisclosure Agreement, or any other document or agreement entered into between such Interested Party with any Sale Party (including, with respect to Purchaser, the Purchase Agreement), or (ii) any grossly negligent or more culpable act by such Interested Party or its officers, directors, employees, agents, representatives or any other affiliates thereof.

**Taxes.** Any and all sales, use, excise, stamp, documentary, filing, recording, transfer or similar fees or taxes or governmental charges assessed upon or with respect to the transfer of Assets to Purchaser shall be the sole and exclusive responsibility and obligation of Purchaser.

**Limitation of Liability.** Each Interested Party acknowledges and agrees that no Sale Party shall be liable for any Damages of any type or nature (whether in contract, tort or otherwise) sustained or claimed by such Interested Party or any other person or entity in connection with the Auction, the sale of any Assets, or the failure of Secured Party or any other person or entity to complete the sale of any or all of the Assets. If and solely to the extent the immediately preceding sentence is determined to be unenforceable in any jurisdiction, in no event shall the Sale Parties' aggregate Damages to any Interested Party for any act or omission of any Sale Party occurring in connection with the Auction, the sale of any Assets, or the failure of Secured Party or any other person or entity to complete the sale of any or all of the Assets, exceed the amount that such Interested Party has actually paid as a Deposit or as a payment for the Assets. IN NO EVENT WILL ANY SALE PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOSSES RELATED TO BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE AUCTION OR THE SALE OF THE ASSETS, EVEN IF ONE OR MORE SALE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This limitation shall apply regardless of whether the damages arise out of breach of contract, tort, or any other legal theory or form of action.

**Risk of Loss.** All risks of loss shall pass to Purchaser on the fall of the hammer, notwithstanding that title to the Property will not transfer to Purchaser until payment in full of the purchase price and final execution of the various transfer documents as described in more detail above.

**Reliance on Websites.** Any information provided on a Sale Party's website is made available solely for general information purposes and no Sale Party makes any representation, warranty or guaranty as to the accuracy, completeness or usefulness of such information or that such information is up-to-date. Any information provided on a Sale Party's website is subject in all respects to the provisions set forth in the "Representations – Due Diligence" section above.

**Assumption of Risk.** Any person inspecting the Assets assumes all risks of damage or loss to persons (including death or disability) or property and shall exercise proper precautions at all times for the protection of persons and property and shall comply with all applicable safety and health requirements and laws. No Sale Party shall be liable for any damage or loss to persons (including death or disability) or property in connection with any inspection of the Assets, including by reason of any defect in or about the condition of the Assets or the properties at which the Assets are located or any surrounding properties. Each Interested Party specifically releases the Sale Parties from any and all such liability.

**Not an Offer Capable of Acceptance.** Any information in the Data Room, on any website, in any brochure, e-mail or postcard, or in any and all other information regarding the Assets shall not constitute an offer to sell any Assets capable of being accepted. Offers to purchase the Assets at the Auction are void where prohibited by law.

**Audio and Video Recording.** The Sale Parties have the right to make image, video and audio recordings of the Auction, to use said recordings in their respective sole and absolute discretion, and, if deemed appropriate, to make them public. Qualified Bidders, participants and other persons present at the Auction give their consent to such recordings by being present at and/or participating in the Auction. However, no Qualified Bidder, participant or other person (other than the Sale Parties) shall make any image, video or audio recording of the Auction, all of which are expressly prohibited.

**Compliance with Laws; Hazardous Materials.** Purchaser agrees to comply with all federal, state and local laws and regulations that may apply to it in connection with its acquisition of the Assets (including all export control and related laws, and governmental safety and environmental standards). Certain of the Assets may contain "hazardous substances" as that term (or any similar term) is defined under federal, state or local environment laws and regulations. No Sale Party has any duty to remove or dispose of any hazardous substances that are contained in or are a part of the Assets. Purchaser agrees to indemnify, defend and hold harmless the Sale Parties from and against any and all Damages



in connection with the existence, presence, removal, disposal, shipment, or use of the Assets in accordance with "Other – Indemnification" above.

**Severability.** If any provision of the Terms is deemed to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts of the Terms shall not be affected.

**Governing Law.** The validity, construction and performance of the Terms shall be governed by the substantive law of the State of California as applied to agreements among California residents entered into and to be performed entirely within California, without giving effect to its conflict of laws provisions.

**Arbitration.** Any and all claims, controversies or disputes arising out of or relating to the Terms or the Auction, including but not limited to any claims relating to the construction, interpretation, enforceability or any breach of the Terms, will be settled by final and binding arbitration in Orange County, California, or such other location as may be mutually agreed by the parties, in accordance with the Comprehensive Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect. To the extent permitted by law, the hearing and all filings and other proceedings shall be treated in a private and confidential manner by the arbitrator and all parties and representatives, and shall not be disclosed except as necessary for any related judicial proceedings. The arbitration will be conducted before a single arbitrator to be mutually agreed upon by the parties from JAMS' panel of arbitrators. In the event that the parties are unable to mutually agree upon the arbitrator, JAMS shall provide a slate of seven arbitrators from its arbitrator panel and each party shall have the opportunity to strike three names and rank the remaining four arbitrators in order of preference. JAMS shall then select the highest ranked arbitrator to preside over the arbitration. The arbitrator will have jurisdiction to determine the arbitrability of any claim. All costs and fees of the arbitrator (whether charged by JAMS or the individual arbitrator) shall be borne by the party bringing the arbitration. The arbitrator shall have the authority to grant all monetary or equitable relief available under the laws of the State of California.

**Attorneys' Fees.** In the event of any action or proceeding concerning the Terms or the Auction (including arbitration pursuant to the "Arbitration" section above), each party shall be responsible for its own attorneys' and experts' fees and costs, regardless of which party prevails in such action or proceeding.

**Interpretation.** The headings of sections in the Terms are provided for convenience only and will not affect the construction or interpretation of the Terms. For purposes of the Terms, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) unless where expressly provided otherwise, the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to the Terms as a whole. Unless the context otherwise requires, references herein to: (x) an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (y) a statute or law means such statute or law as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. All words used in the Terms will be construed to be of such gender or number as the circumstance or context requires.



EXHIBIT "A"  
Asset Schedule

"Assets" means the personal property for which a security interest can be created under Article 9 of each of (a) Healthy Spot LLC, a California limited liability company ("Healthy Spot"), (b) Healthy Spot Alpha, LLC, a California limited liability company ("Alpha"), (c) Healthy Spot Beta LLC, a California limited liability company ("Beta"), (d) Healthy Spot Gamma, LLC, a California limited liability company ("Gamma"), (e) Healthy Spot 007 LLC, a California limited liability company ("007"), (f) Healthy Spot 014 LLC, a California limited liability company ("014"), (g) Healthy Spot 016 LLC, a California limited liability company ("016"), (h) Healthy Spot B001 LLC, a California limited liability company ("B001"), (i) Healthy Spot Dot Com LLC, a California limited liability company ("Dotcom"), (j) Spot On Pet, LLC, a California limited liability company ("Spot", and together with Healthy Spot, Alpha, Beta, Gamma, 007, 014, 016, B001, and Dotcom, each a "Debtor" and collectively, the "Debtors"), whether presently owned or existing or hereafter arising or acquired or coming into existence from time to time, wherever located, and all additions and accessions thereto and all substitutions and replacements thereof, and all proceeds, products and accounts thereof, including, without limitation, all proceeds from the sale or transfer of the Assets and of insurance covering the same and of any tort claims in connection therewith, and shall include without limitation (all capitalized terms used below shall have their respective meanings as set forth in that certain Loan Agreement dated as of April 21, 2022, as amended by that certain First Amendment to Loan Agreement dated as of August 12, 2022 and that certain Guarantee and Security Agreement dated as of April 21, 2022):

- i. All goods and equipment now owned or hereafter acquired, including, without limitation, all machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;
- ii. All inventory, now owned or hereafter acquired, including, without limitation, all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of such Debtor's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above;
- iii. All contract rights and general intangibles now owned or hereafter acquired, including, without limitation, goodwill, leases, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, computer programs, computer discs, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payments of insurance and rights to payment of any kind;
- iv. All now existing and hereafter arising accounts, contract rights, royalties, license rights, accounts receivable and all other forms of obligations owing to such Debtor arising out of the sale or lease of goods, the licensing of technology or the rendering of services by such Debtor, whether or not earned by performance, and any and all credit insurance, guarantees, and other security therefor, as well as all merchandise returned to or reclaimed by such Debtor;
- v. All documents, securities entitlements, securities accounts, investment property, financial assets, letters of credit, letter-of-credit rights, commercial tort claims, certificates of deposit, instruments, chattel paper, notes receivable, now owned or hereafter acquired, and any and all credit insurance, guarantees, and other security therefor;
- vi. All Intellectual Property Rights now or hereafter owned, licensed or acquired, including, without limitation, all trademarks, service marks, trade names, domain names, and any goodwill associated therewith or symbolized thereby; all patents, patent applications; all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished; all trade secret rights, including all rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information; and all rights to sue for any past, present or future infringement, and all right to recover and retain any past, present or future damages and other proceeds in connection therewith;
- vii. All Grantor's Books relating to the foregoing and any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof;
- viii. To the extent not covered above, all other assets, personal property and rights of such Debtor which can be created under Article 9; and
- ix. The proceeds of all of the foregoing Assets.

Notwithstanding the foregoing, but without limiting or affecting in any way the Secured Party's rights and remedies or liens, the Assets being sold shall not include: (i) any deposit accounts (including any Excluded Accounts), (ii) cash held by the Debtors, (iii) the membership interests held by Healthy Spot in the other Debtors, (iv) leased or financed equipment, (v) any intent-to-use trademark applications, (vi) any assets or property outside of the scope of Article 9, nor (vii) such other assets and property, if any, as may be excluded from the public sale in the sole discretion of the Secured Party and announced at such sale.