

**IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA**

**LACY MUNCY**

**Plaintiff,**

**v.**

**Civil Action No.:17-C-3**

**Honorable Miki Thompson**

**VICTORY LANE EXPRESS GROCERY, LLC**

**Defendant/Counterclaim and Third- Party Plaintiff,**

**v.**

**LACY MUNCY, individually,  
Counterclaim Defendant,**

**and**

**MUNCY'S VICTORY LANE GAS AND CONVENIENCE STORE,  
a West Virginia sole proprietorship,**

**Third-Party Defendant.**

Admitted to Record  
2017 JUL 21 AM 11:37  
Mingo County Circuit Clerk

Comes now the, Defendant/Counterclaimant and Third-Party Plaintiff, Victory Lane Express Grocery, LLC ("Victory Lane") by and through its undersigned attorney, Nathan D. Brown, of Ferrell & Brown, PLLC, pursuant to Rules 13 and 14 of the *West Virginia Rules of Civil Procedure*, and for its counterclaim and third-party complaint states and avers as follows:

**PARTIES**

1. Defendant and Counterclaim/Third-Party Plaintiff, Victory Lane Express Grocery, LLC, ("Victory Lane") is at all time pertinent hereto a West Virginia Limited Liability Company duly formed under the rules and regulations of the State of West Virginia.

2. Plaintiff and Counterclaim Defendant, Lacy Muncy, is believed at all times herein to be a resident of the State of West Virginia.

3. Third-Party Defendant, Muncy's Victory Lane Gas and Convenience Store, ("Muncy's Victory Lane"), is a West Virginia sole proprietorship located in or around Borderland, Williamson, West Virginia. Plaintiff and Counterclaim Defendant, Lacy Muncy, is its sole owner.

### FACTS

4. On January 9, 2013, Plaintiff and Victory Lane entered into two separate and distinct contracts for the sale and purchase of both the business and the surrounding land.

5. Initially, on January 9, 2013, the parties entered into what is labeled the "Bill of Sale" and which is attached hereto as **Exhibit A**.

6. In the Bill of Sale, Victory Lane entered into an agreement to purchase essentially all items located at the store except for the land. .

7. Victory Lane further understood and was informed the Bill of Sale included the physical store along with various other items.

8. The Plaintiff and Victory Lane's transaction was broken down into two documents to allow Victory Lane to purchase the store, and in case of default, the Plaintiff would maintain the land.

9. The purchase price for the store and items therein was Four Hundred Twenty-Five Thousand Dollars (\$425,000) as reflected in the Bill of Sale.

10. Victory Lane paid Four Hundred Thousand Dollars (\$400,000) down and entered into a Ninety Day Promissory Note for the remaining Twenty-Five Thousand Dollars (\$25,000). Please See **Exhibit B** attached hereto.

11. As promised in **Exhibit B**, Victory Lane paid the remaining Twenty-Five Thousand Dollars (\$25,000) in a timely manner unto the Plaintiff.

12. Victory Lane also entered into a Lease Agreement ("Agreement") with Plaintiff to purchase the real property on which the store building and contents previously mentioned were located.

13. On January 9, 2013, Victory Lane and Plaintiff entered into an agreement whereby the Victory Lane agreed to purchase two tracts of land containing 1.33 acres and 1.08 acres respectively. Please see **Exhibit C** attached hereto.

14. The purchase price for he said land was One Million Dollars (\$1,000,000).

15. As part of the agreement, Victory Lane began making payments on a monthly basis unto the Plaintiff in the amount of Five Thousand Dollars (\$5,000).

16. Further, as contemplated by the Agreement, Victory Lane had **"(5) years – or Sixty (60) payments** of \$5,000 each to reduce the base purchase price of the Premises to \$700,000." (emphasis added).

17. Per the agreement, the Victory Lane had until February 1, 2018, to pay unto the Plaintiff Three Hundred Thousand Dollars (\$300,000) before being in breach of the Agreement.

18. Currently, Victory Lane has paid Two Hundred Ten Thousand Dollars (\$210,000) of the Three Hundred Thousand Dollars (\$300,000), and now has ten (10) months to remit the remaining money.

19. Prior to the completion of this Agreement, the Plaintiff breached the Agreement with Victory Lane, and then illegally seized the land on which the building and contents previously purchased by Victory Lane is situated.

20. Not only has the Plaintiff illegally seized the land which under contract by the parties to purchase, Plaintiff has also begun to operate his own business, Muncy's Victory Lane, out of Victory Lane's property.

21. All the while, the Plaintiff and Muncy's Victory Lane have been unjustly enriched respectively Six Hundred Thirty-Five Thousand Dollars (\$635,000) in total payments made by Victory Lane to Plaintiff, and further, Muncy's Victory Lane continues to operate its business out of Victory Lane's building, with Victory Lane's content while failing to pay rent or profits of any monies to Victory Lane.

#### **COUNT I – BREACH OF CONTRACT**

22. Victory Lane repeats and reasserts the allegations in the preceding paragraphs verbatim as fully set forth within.

23. Victory Lane asserts that Plaintiff, Lacy Muncy's affirmative actions in entering the leased premises and prohibiting Victory Lane from performing under the Lease Agreement constitutes a breach of contract thereby entitling Victory Lane a present award of damages and other relief as dictated by the Court.

#### **COUNT II – CONVERSION**

24. Victory Lane repeats and reasserts the allegations in the preceding paragraphs verbatim as fully set forth within.

25. Through their scheme to retake the building and the items listed in the Bill of Sale, both Lacy Muncy and Muncy's Victory Lane conspired to convert and did convert money and property of Victory Lane by taking possession of and exerting control over money and property of

Victory Lane, and depriving Victory Lane of money and property though Lacy Muncy and Muncy's Victory Lane had no legal right to do so.

### **COUNT III - UNJUST ENRICHMENT**

26. Victory Lane repeats and reasserts the allegations in the preceding paragraphs verbatim as fully set forth within.

27. Lacy Muncy and Muncy's Victory Lane received money and property from Victory Lane to which Mr. Muncy or his business, Muncy's Victory Lane, have no valid claim.

28. Victory Lane paid unto Lacy Muncy Four Hundred Twenty-Five Thousand Dollars (\$425,000) in payments for the building and personal property located in or around Borderland, West Virginia and which Muncy's Victory Lane is operating.

29. Victory Lane paid unto Lacy Muncy Two Hundred Ten Thousand Dollars (\$210,000) in payments toward the purchase of the real property in the Lease Agreement prior to Mr. Muncy's breach of the Agreement and taking over of the property.

### **COUNT IV- TORTIOUS INTERFERENCE**

30. Lacy Muncy and Muncy's Victory Lane have conspired to tortuously interfere and did tortuously interfere with the business of Victory Lane by concocting and implementing a scheme to inset themselves into and convert for their use the property, both personal and real, from Victory Lane's business

31. Through their tortuous interference, Lacy Muncy and Muncy's Victory Lane have appropriated hundreds of thousands of dollars in earning capacity and have destroyed the business of Victory Lane.

## **COUNT V – ACCOUNTING FOR PROFITS AND DAMAGES**

32. The termination and/or breach of the Lease Agreement was wrongful in that it was caused by Lacy Muncy's breach of contract and his contractual obligations with Victory Lane.

33. Further, Lacy Muncy and Muncy's Victory Lane wrongfully started and operated a business with Victory Lane's property and assets all to the detriment of Victory Lane.

34. Victory Lane has yet to receive either its interest or profits for the uses of its property and assets.

35. As a result of the wrongful actions by Lacy Muncy and Muncy's Victory Lane, Victory Lane has suffered damages, including but not limited to, loss of income, loss of assets, aggravation, annoyance, and inconvenience.

36. Victory Lane demands an accounting of Muncy's Victory Lane's gross profit since its illegal takeover of Victory Lane's property.

## **COUNT VI – FRAUD**

37. The acts and conduct of Lacy Muncy and Muncy's Victory Lane as alleged above were fraudulent in nature and Victory Lane was damaged as a result of such acts.

38. The acts and conduct of Lacy Muncy and Muncy's Victory Lane were willful and wanton and in reckless disregard of Victory Lane's rights entitling it to punitive damages in conjunction with all other damages properly pled in this Complaint.

## **COUNT VII – DECLARATORY JUDGMENT**

39. Pursuant to West Virginia Code § 55-13-1 et.seq., Victory Lane request a declaration from the Court that Lacy Muncy breached his Agreement with Victory Lane, and

thereby, Lacy Muncy and Muncy's Victory Lane became unjustly enriched by Mr. Muncy's actions.

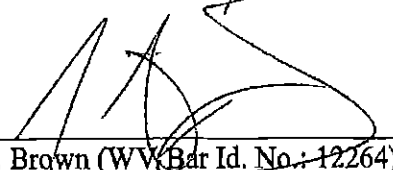
**PRAYER FOR RELIEF**

**WHEREFORE**, Counter Claim and Third-Party Plaintiff, Victory Lane, demands judgment against Lacy Muncy and Muncy's Victory Lane in the amount Five Million Dollars (\$5,000,000) and other relief for the following:

- A. A declaration that Lacy Muncy breached the Lease Agreement that he entered into with Victory Lane, and thereby, both he and Muncy's Victory Lane became unjustly enriched by his actions;
- B. Actual Damages;
- C. Compensatory Damages;
- D. Damages for emotional distress, annoyance, and inconvenience;
- E. Disgorgement of Muncy's Victory Lane's profits and restitution;
- F. Creation of a constructive trust;
- G. Punitive and exemplary damages;
- H. Pre-judgment interest;
- I. Attorney Fees and Cost; and
- J. All other equitable and legal relief which is deemed fair and just by the Court.

**A JURY TRIAL IS DEMANDED**

Respectfully submitted,

  
Nathan D. Brown (WV Bar Id. No. 12264)

Joshua S. Ferrell (WV Bar Id. No.: 11607)  
Ferrell & Brown, PLLC  
Post Office Box 401  
160 East Second Avenue  
Williamson, West Virginia 25661  
(304) 235-5674 (telephone)  
(304) 235-5675 (facsimile)



# EXHIBIT A

**BILL OF SALE**

**LACY MUNCY**, with the address of 35 West Fifth Avenue, Williamson, West Virginia 25661 ("Seller"), for the consideration of Four Hundred Twenty-five Thousand Dollars (\$425,000.00), Four Hundred Thousand (\$400,000.00) cash in paid on the date of the execution of this document and Twenty-five Thousand (\$25,000.00) to be paid by Buyer to Seller within ninety (90) days of the date of the execution of this document, does hereby sell, grant, transfer and deliver unto **VICTORY LANE EXPRESS GROCERY, LLC**, a West Virginia limited liability company, of the address of 100 Victory Lane, Williamson, West Virginia 25661 ("Buyer"), all of his personal property, equipment, tools and miscellaneous supplies and stock held for resale located at 100 Victory Lane, US Route 119, Borderland, Mingo County, West Virginia ("Property").

Buyer has inspected and inventoried the Property and accepts same in its current condition.

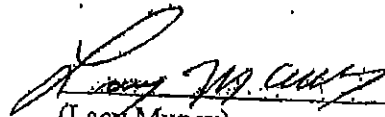
Buyer shall have all right and title to the Property in itself, its successors and assigns.

Seller for himself, his successors and assigns, hereby represents, guarantees and warrants that he is the lawful owner of the Property; that the Property is free from all encumbrances; that Seller has the right to sell the Property; and that Seller will defend that right against the lawful claims and demands of all persons. If, however, there is a valid encumbrance against the Property, the purchase price of the Property shall be reduced by the amount required by Buyer to discharge any encumbrance, and Seller shall not have any further liability with respect to that breach of warranty.

As consideration for the above-described transfer, Seller this date acknowledges receipt of the sum of Four Hundred Twenty-five Thousand Dollars (\$425,000.00), \$400,000.00 cash in hand paid by Buyer unto Seller and a \$25,000.00 ninety-day Promissory Note, representing the total purchase price of the Property. The receipt and sufficiency of the full consideration for this Bill of Sale is hereby acknowledged by Seller.

IN WITNESS WHEREOF, Seller and Buyer have caused this Bill of Sale to be executed, Buyer by its duly authorized representative, as of this the 9th day of January, 2013.

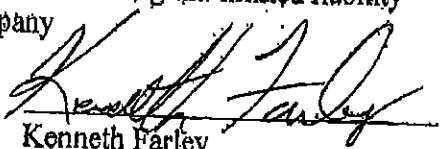
SELLER:

  
(Lacy Muncy)

BUYER:

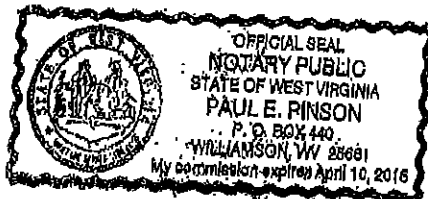
VICTORY LANE EXPRESS GROCERY,  
LLC, a West Virginia limited liability  
company

By:

  
Kenneth Farley

Its: Member

Witness 



# EXHIBIT B

COPY

NINETY-DAY PROMISSORY NOTE

AMOUNT: \$25,000.00

Williamson, West Virginia

DATED: January 9, 2013

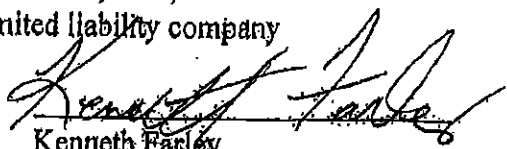
FOR VALUE RECEIVED, the undersigned, VICTORY LANE EXPRESS GROCERY, LLC, a West Virginia limited liability company, of the address of 100 Victory Lane, Williamson, West Virginia 25661, hereinafter referred to as "Borrower," hereby promises and agrees to pay to the order of LACY MUNCY, of the address of 35 West Fifth Avenue, Williamson, West Virginia 25661, his heirs and assigns, the principal amount of Twenty-five Thousand Dollars (\$25,000.00), without interest, ninety (90) days from the date hereof.

The Borrower waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance or default of this Note.

IN WITNESS WHEREOF, the undersigned has caused its name to be subscribed to this Note by its duly authorized representative, as of the day and year first above written.

VICTORY LANE EXPRESS  
GROCERY, LLC,  
a limited liability company

By:

  
Kenneth Farley

Its: Member

# EXHIBIT C

## LEASE/PURCHASE AGREEMENT

THIS LEASE/PURCHASE AGREEMENT, made and entered into as of this the 9<sup>th</sup> day of January, 2013, by and between LACY MUNCY, of the address of 35 West Fifth Avenue, Williamson, West Virginia 25661, party of the first part and hereinafter referred to as "Lessor/Seller," and VICTORY LANE EXPRESS GROCERY, LLC, a West Virginia limited liability company, of the address of 100 Victory Lane, Williamson, West Virginia 25661, party of the second part and hereinafter referred to as "Lessee/Buyer,"

WHEREAS, by virtue of a Deed of Conveyance dated March 25, 2008, of record in the Office of the Clerk of the County Commission of Mingo County, West Virginia, in Deed Book 419, at page 505, Lessor/Seller was vested with all right, title and interest in and to those certain pieces or parcels of surface real estate containing 1.33 acres and 1.08 acres, more or less, situate near Alley Branch, a tributary of the Tug Fork River, at Borderland, in Tug River District, Mingo County, West Virginia, being hereinafter referred to as "the Premises"; and

WHEREAS, the parties desire to enter into this Lease/Purchase Agreement defining their respective rights, duties and liabilities relating to the Premises.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

### SECTION ONE

#### DESCRIPTION OF PREMISES

Lessor/Seller leases to Lessee/Buyer the Premises identified as those certain pieces or parcels of surface real estate as described in the aforesaid deed and containing 1.33 acres and 1.08 acres, more or less, situate near Alley Branch, a tributary of the Tug Fork River, at Borderland, in Tug River District, Mingo County, West Virginia.

## SECTION TWO

### TERM OF LEASE

Before Lessee/Buyer makes its first payment, it owes Lessor/Seller One Million Dollars (\$1,000,000.00) toward the purchase price of the Premises, should it purchase same pursuant to this agreement. The parties agree that Lessee/Buyer shall pay rent toward the One Million Dollar (\$1,000,000.00) purchase price of the Premises. This Lease/Purchase Agreement begins on February 1, 2013, and ends at the earlier date of either: (1) January 31, 2018, unless extended by the Option Term set forth in this Section, or (2) the date upon which Lessee/Buyer purchases the Premises.

Beginning February 1, 2013, Lessee/Buyer will begin paying Lessor/Seller Five Thousand Dollars (\$5,000.00) per month, which amount is to apply against the base One Million Dollar purchase price of the Premises, if Lessee/Buyer purchases the Premises. Lessee/Buyer will have five (5) years - or sixty (60) payments of \$5,000.00 each - to reduce the base purchase price of the Premises to \$700,000.00 - to purchase the Premises for the remaining base purchase price of \$700,000.00 (\$1,000,000.00 - \$300,000.00 = \$700,000.00). In addition to the base purchase price (as reduced by the monthly payments), upon Lessee/Buyer's purchase of the Premises, Lessee/Buyer will pay to Lessor/Seller Thirty Thousand Dollars (\$30,000.00) for each full year this Lease/Purchase Agreement is in effect, said amount to be pro-rated for a partial year, plus all Mingo County, West Virginia, real property taxes paid or obligated to be paid by Lessor/Seller beginning with Tax Year 2013.

Upon Lessee/Buyer's payment of the aforesaid purchase price, Lessor/Seller, or his heirs and assigns, will convey the Premises unto Lessee/Buyer by general warranty deed.



In consideration for Lessee/Buyer's monthly payments, Lessor/Seller and his heirs and assigns agree not to transfer, sell or encumber the Premises during the term of this Lease/Purchase Agreement.

Should Lessee/Buyer fail to pay the full purchase price of the Premises, all as identified herein, the payments made by Lessee/Buyer to Lessor/Seller will be considered non-refundable rental payments, and Lessee/Buyer shall surrender the Premises to Lessor/Seller immediately upon termination of this Lease/Purchase Agreement.

Should Lessee/Buyer not purchase the Premises on or before January 31, 2018, Lessee/Buyer shall have the right to extend the term of this Lease for a period of five (5) years commencing on the 1st day of February, 2018, and ending on the 31st day of January, 2023 (the "Option Term"). Said Option Term shall be under the same terms and conditions as the original term of this Lease except for: (1) Lessee/Buyer shall become "Tenant" and Lessor/Seller shall become "Landlord"; (2) Tenant shall no longer have the option to purchase the Premises; and (3) a cost of living adjustment, which shall be calculated as follows:

As of February 1, 2018, if the Consumer Price Index for all items for the month of November, 2017, shows a rise over the same Price Index for the month of November, 2012 (website: Consumer Price Index)<sup>1</sup>, then the monthly rental for that year (and the succeeding four [4] years) shall be determined by increasing the monthly rental for each of the five (5) years of the Option Term by the same percentage as the percentage of increase that such Price Index showed from November, 2012, to November, 2017. (For

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<sup>1</sup>The Consumer Price Index for all items (see: U.S. Bureau of Labor Statistics Table Containing History of CPI-U U.S. City Average All Items from 1913 to present).

example, if the Consumer Price Index for all items on November, 2017, shows a 15% increase over the Consumer Price Index of all items on November, 2012, then the monthly rental from February 1, 2018, to January 31, 2023, shall be increased 15% from \$5,000.00 to \$5,750.00 to determine the Option Term's five (5) years' monthly rental.

Tenant must give written notice to Landlord not later than ninety (90) days before the expiration of the original Term of this agreement as to Tenant's intention to renew this agreement as a lease for the Option Term.

### **SECTION THREE**

#### **NOTICES**

Any notice desired to be served may be made by mailing the same postage prepaid by registered or certified mail, return receipt requested, addressed as follows:

**IF TO LESSOR/SELLER:** Lacy Muncy  
35 West Fifth Avenue  
Williamson, West Virginia 25661

**IF TO LESSEE/BUYER:** Victory Lane Express Grocery, LLC  
100 Victory Lane  
Williamson, West Virginia 25661

### **SECTION FOUR**

#### **RENTAL**

Buyer shall pay to Lessor/Seller as rent for the Premises the sum of Five Thousand Dollars (\$5,000.00) per month (which will be applied to the purchase price pursuant to SECTION TWO hereof) during the five (5) year term of this Lease/Purchase Agreement. Said payments being due on the first day of each month, with first installment commencing

on February 1, 2013. Payments shall be mailed to the Lessor/Seller at his address of Post Office Box 35 West Fifth Avenue, Williamson, West Virginia 25661.

#### SECTION FIVE

##### RESTRICTIONS OF USE

During the term of this Lease/Purchase Agreement, Lessee/Buyer shall not use or permit the Premises, or any part thereof, to be used for any purposes other than as a gasoline station/convenience store. Lessee/Buyer shall neither permit on the Premises any act, sale, or storage that may be prohibited under standard forms of fire insurance policies, nor use the Premises for any such purposes. In addition, no use shall be made or permitted to be made that shall result in (1) waste on the Premises, or (2) a public or private nuisance, or (3) improper, unlawful or objectionable use.

#### SECTION SIX

##### TAXES

Lessor/Seller shall pay all real property taxes and local assessments on the Premises, when due, with full reimbursement therefor to Lessor/Seller from Lessee/Buyer (pursuant to SECTION TWO hereof) should Lessee/Buyer purchase the Premises. Lessee/Buyer shall pay all personal property taxes and local assessments on all property placed on or within the Premises when due, without any reimbursement from Lessor/Seller.

#### SECTION SEVEN

##### ALTERATIONS AND MODIFICATIONS - REPAIRS

Lessee/Buyer shall take good care of the Premises and shall not alter or materially change the Premises without the written consent of the Lessor/Seller. All alterations,

improvements and changes that Lessee/Buyer may desire shall be performed under the direction of the Lessor/Seller, at the expense of the Lessee/Buyer. All damage or injury done to the Premises by Lessee/Buyer's act, waste or neglect, or by the act, waste or neglect of any person who may be in or on the Premises with the consent of the Lessee/Buyer shall be the responsibility of the Lessee/Buyer. Lessee/Buyer shall, at the termination of this Lease/Purchase Agreement, surrender the Premises to Lessor/Seller in good condition and repair, reasonable wear and tear excepted, unless Lessee/Buyer purchases the Premises.

The Lessee/Buyer shall, during the term of this Lease/Purchase Agreement, at its sole expense, keep the Premises in as good order and repair as it was at the date of commencement of this Lease/Purchase Agreement, reasonable wear and tear excepted. Lessee/Buyer shall not knowingly commit or willingly permit to be committed any act or thing contrary to the rules and regulations prescribed by the local Health Department, or which shall be contrary to the rules and regulations of any federal, state or municipal authority.

#### **SECTION EIGHT**

#### **WATER DAMAGE**

It is expressly agreed and understood by and between the parties to this Lease/Purchase Agreement that the Lessor/Seller shall not be liable under any circumstances for any damage or injury by water, which may be sustained by the said Lessee/Buyer or other person or for any other damage or injury from whatever cause.

#### **SECTION NINE**

#### **INDEMNIFY LESSOR/SELLER**

In consideration of said Premises being leased to Lessee/Buyer for the above rental, Lessee/Buyer agrees that he, at all times, will indemnify and keep harmless Lessor/Seller

from all losses, damage, liabilities and expenses, which, subsequent to the execution of this Lease/Purchase Agreement, may arise or be claimed against Lessor/Seller and be in favor of any person, firm or corporation, for any injuries or damages to the person or property of any person, firm or corporation, consequent upon or arising from the use or occupancy of said Premises by Lessee/Buyer including the cost of attorney's fees, or consequent upon or arising from any acts, omissions, neglect or fault of Lessee/Buyer, or consequent upon or arising from Lessee/Buyer's failure to comply with the aforesaid laws, ordinances or regulations; that Lessor/Seller shall not be liable to Lessee/Buyer for any damages, losses or injuries to the person or property of Lessee/Buyer which, subsequent to the execution of this Lease/Purchase Agreement, may be caused by the acts, neglect, omissions or faults of any person, firm or corporation, and that Lessee/Buyer will indemnify and keep harmless Lessor/Seller from all damages, liabilities, losses, injuries or expenses, which, subsequent to the execution of this Lease/Purchase Agreement, may arise or be claimed against Lessor/Seller and be in favor of any person, firm or corporation, for any injuries or damages to the person or property of any person, firm or corporation including attorney's fees, where said injuries or damages arose about or upon said Premises.

#### SECTION TEN

##### INSURANCE ON PREMISES

Lessee/Buyer agrees that Lessor/Seller shall carry property casualty insurance and One Million Dollars (\$1,000,000.00) liability insurance on the Premises naming Lessor/Seller as insured, with full and immediate reimbursement of the premium payments therefor by Lessee/Buyer to Lessor/Seller.

#### SECTION ELEVEN

##### INSURANCE OF PERSONAL PROPERTY

Lessee/Buyer shall be solely and exclusively responsible for obtaining and maintaining insurance on its personal property located within the premises.

#### SECTION TWELVE

##### ASSIGNMENT AND SUBLEASE

The Lessee/Buyer shall not sublet said Premises or any part thereof, nor assign or otherwise encumber all or any part of this Lease/Purchase Agreement, either voluntarily or involuntarily or by operation of law, without in each case the prior written consent of Lessor/Seller and subject to terms and conditions of this Lease/Purchase Agreement.

#### SECTION THIRTEEN

##### BREACH OR DEFAULT

Lessee/Buyer shall have breached this Lease/Purchase Agreement and shall be considered in default hereunder if (1) Lessee/Buyer fails to make monthly payments when due and does not make the delinquent payment within ten (10) days after receipt of notice thereof from Lessor/Seller, or (2) Lessee/Buyer fails to perform or comply with any of the covenants or conditions of this Lease/Purchase Agreement and such failure continues for a period of ten (10) days after receipt of notice thereof from Lessor/Seller.

#### SECTION FOURTEEN

##### EFFECT OF BREACH OR DEFAULT

In the event of a breach of this Lease/Purchase Agreement as set forth in Section Thirteen, the rights of Lessor/Seller shall be as follows:

- (1) Lessor/Seller shall have the right to cancel and terminate this Lease/Purchase Agreement, as well as all of the rights, title and interest of Lessee/Buyer hereunder, by

giving the Lessee/Buyer not less than thirty (30) days notice of the cancellation and termination following Lessee/Buyer's breach or default. On expiration of the time fixed in the notice, this Lease/Purchase Agreement and the right, title and interest of Lessee/Buyer hereunder shall terminate, and Lessee/Buyer shall vacate the premises.

(2) Lessor/Seller may elect, but shall not be obligated to make any payment required of Lessee/Buyer herein or comply with any agreement, term or condition required hereby to be performed by Lessee/Buyer, and Lessor/Seller shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Lessor/Seller shall not be deemed to waive or release Lessee/Buyer's default or Lessor/Seller's right to take any action as may be otherwise permissible hereunder in the case of any default.

If either of the parties at any time elects to make payments or perform any act, required by the other herein, the party making such payment shall be reimbursed by the other party for all costs and expenses paid upon demand.

## SECTION FIFTEEN

### UTILITIES

Lessee/Buyer shall be solely and exclusively responsible for the following utility payments for the Premises: Electricity, gas, telephone, television, garbage, water, sewer charges, if any, and any other item classified as utility. If Lessor/Seller shall pay monies or incur any expense in connection with this section under this Lease/Purchase Agreement, the amounts so paid or incurred, shall, at Lessor/Seller's option, and on notice to Lessee/Buyer,

be considered additional rentals payable by Lessee/Buyer with the next monthly payment thereafter to become due and payable, and may be collected or enforced as provided by law in respect of rentals.

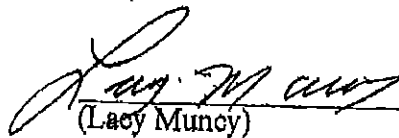
**SECTION SIXTEEN**

**REMEDIES OF PARTIES CUMULATIVE**

The remedies herein given to Lessor/Seller and Lessee/Buyer shall be cumulative, and the exercise of any one remedy by Lessor/Seller and/or Lessee/Buyer shall not be to the exclusion of any other remedy.

**IN WITNESS WHEREOF**, the parties have executed this Lease/Purchase Agreement, **IN DUPLICATE**, Lessee/Buyer by its duly authorized representative, as of the day and year first above written.

**LESSOR/SELLER:**

  
(Lacy Muncy)

**LESSEE/BUYER:**

VICTORY LANE EXPRESS  
GROCERY, LLC, a West Virginia limited  
liability company

By:

  
Kenneth Farley

Its: Member



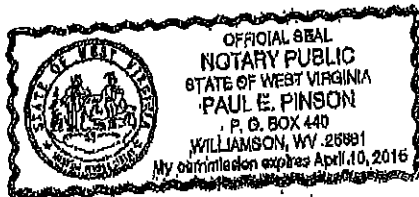
STATE OF WEST VIRGINIA,

COUNTY OF MINGO, TO-WIT:

The foregoing instrument was acknowledged before me on this 9th day of January, 2013, by LACY MUNCY.

My commission expires:

April 10, 2015



\_\_\_\_\_  
NOTARY PUBLIC

(NOTARIAL SEAL)

STATE OF WEST VIRGINIA,

COUNTY OF MINGO, TO-WIT:

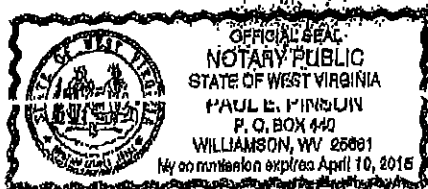
The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 2013, by KENNETH FARLEY, member of VICTORY LANE EXPRESS GROCERY, LLC, a West Virginia limited liability company, for and on behalf of said company.

My commission expires:

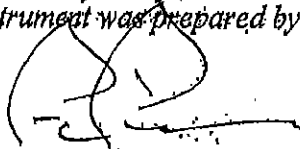
April 10, 2015

\_\_\_\_\_  
NOTARY PUBLIC

(NOTARIAL SEAL)



*It is hereby certified that this  
instrument was prepared by:*



*PAUL E. PINSON (WV State Bar ID#2914)  
Attorney at Law  
101 Dickinson Street  
Post Office Box 440  
Williamson, West Virginia 25661  
Telephone: 304-235-3000*