

Hearing Date: July 23, 2020, at 2:00 p.m.
Objection Deadline: July 22, 2020 at 12:00 p.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: Chapter 11
	:
FAIRWAY GROUP HOLDINGS CORP., et al.,	: Case No. 20-10161 (JLG)
	:
Debtors.¹	: (Jointly Administered)
	:
-----X	

**STATEMENT OF INTEREST OF PAUL S. CONTE AND PASQUALE J. CONTE
WITH RESPECT TO THE DEBTORS' MOTION FOR ENTRY OF ORDER
AUTHORIZING SALE TO BOGOPA ENTERPRISES, INC.**

TO THE HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

Paul S. Conte and Pasquale J. Conte (collectively, the “Contes”), prospective bidders for assets of the Debtors and their affiliates, by and through their undersigned attorneys, respectfully submit the following statement of interest (this “Statement of Interest”), with respect to the *Motion*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Fairway Group Holdings Corp. (2788); Fairway Group Acquisition Company (2860); Fairway Bakery LLC (4129); Fairway Broadway LLC (8591); Fairway Chelsea LLC (0288); Fairway Construction Group, LLC (2741); Fairway Douglaston LLC (2650); Fairway East 86th Street LLC (3822); Fairway eCommerce LLC (3081); Fairway Georgetowne LLC (9609); Fairway Greenwich Street LLC (6422); Fairway Group Central Services LLC (7843); Fairway Group Plainview LLC (8643); Fairway Hudson Yards LLC (9331); Fairway Kips Bay LLC (0791); FN Store LLC (9240); Fairway Paramus LLC (3338); Fairway Pelham LLC (3119); Fairway Pelham Wines & Spirits LLC (3141); Fairway Red Hook LLC (8813); Fairway Stamford LLC (0738); Fairway Stamford Wines & Spirits LLC (3021); Fairway Staten Island LLC (1732); Fairway Uptown LLC (8719); Fairway Westbury LLC (6240); and Fairway Woodland Park LLC (9544). The location of the Debtors’ corporate headquarters is 2284 12th Avenue, New York, New York 10027. Fairway Community Foundation Inc., a charitable organization, owned by Fairway Group Holdings Corp., is not a debtor in these proceedings.

for Entry of Order Authorizing Sale to Bogopa Enterprises, Inc. [Docket No. 586] (the “Sale Motion”). Through this Statement of Interest, the Contes respectfully state as follows:

STATEMENT OF INTEREST

1. This Statement of Interest is submitted to inform the Bankruptcy Court that Seven Seas, Red Hook, LLC (“Seven Seas”)² has submitted to the Debtors a bid (the “Seven Seas Bid”) for the assets of the Debtors described in the asset purchase agreement (the “Bogopa APA”) attached to Sale Motion, on terms higher and better than are currently proposed by Bogopa Enterprises, Inc. (“Bogopa”) under the Bogopa APA and Sale Motion.

2. As set forth in the *Declaration of Paul S. Conte in Support of the Statement of Interest*, (the “Conte Declaration”) attached hereto as **Exhibit 1**, Seven Seas is prepared and able to close on the terms described in this Statement of Interest and the attached exhibits in a short timeframe that would not prejudice the administration of the Debtors’ cases.

3. In the Sale Motion, the Debtors describe having been engaged in a process to sell two stores located at (a) 480-50 Van Brunt Street, Brooklyn, New York 11231 (the “Red Hook Store”) and (b) 242-02 61st Avenue, Douglaston, New York 11362 (the “Douglaston Store”) and related assets free and clear of liens, claims, interests, and encumbrances.

4. Over the past several weeks, the Contes have repeatedly expressed to the Debtors an interest in bidding to purchase the assets related to the Douglaston Store and the Red Hook Store, and to take assignment of the respective leases. Counsel to the Contes has, on multiple occasions over the past several weeks, attempted to engage with Debtors’ counsel in connection with a potential bid by the Contes for the Red Hook Store and the Douglaston Store, including but

² The proposed buyer under the Seven Seas APA is a limited liability company that will be formed if the Debtors select the Seven Seas Bid. A similar structure was used in Seven Seas Georgetowne, LLC’s acquisition of the Georgetowne Store.

not limited to, sending a draft asset purchase agreement to Debtors' counsel on July 8, 2020, and follow up letters to Debtors' counsel dated July 14, 2020, and July 17, 2020.

5. Rather than engage the Contes in negotiations regarding the contemplated acquisition, the Debtors first responded to the Contes on July 17, 2020, by sending a copy of the Sale Motion and the Bogopa APA, attached thereto.

6. Having reviewed the Sale Motion and the Bogopa APA, the Contes submitted to the Debtors the Seven Seas Bid for the Douglaston Store and the Red Hook Store, on higher and better terms than those proposed in the Sale Motion and the Bogopa APA.

7. As highlighted below and as set forth in the proposed asset purchase agreement (the "Seven Seas APA") attached hereto as **Exhibit 2**, the Seven Seas Bid is substantially higher and better than the provisions set forth in the Bogopa APA. In particular:³

- a. Subject to the same adjustments as the Bogopa APA, under the Seven Seas APA, Seven Seas proposes to pay \$4,200,000 as consideration for the Acquired Assets.
 - i. The Seven Seas APA proposes to pay \$2,400,000 for the Douglaston Store. The Bogopa APA proposes to pay \$100,000 for the Douglaston Store.
 - ii. The Seven Seas APA proposes to pay \$1,800,000 for the Red Hook Store, including the furniture, fixtures, and equipment. The Bogopa APA proposes to pay \$5,000 for furniture, fixtures, and equipment of the Red Hook Store.
 - b. While both the Seven Seas APA and the Bogopa APA contemplate the assumption and assignment of the Douglaston Store, the Seven Seas APA also proposes to assume the lease of the Red Hook Store, as opposed to entering into a new lease with the Red Hook Store's landlord, as contemplated by the Bogopa APA.
8. As illustrated in the redline comparing the Seven Seas APA to the Bogopa APA, attached hereto as **Exhibit 3**, all differences between the Seven Seas APA and the Bogopa APA

³ Capitalized terms not defined in this paragraph shall have the meanings ascribed in the Seven Seas APA.

are either de minimis, or demonstrate that the terms of the Seven Seas APA are higher and better than the terms of the Bogopa APA.

9. The Contes and Seven Seas are able to demonstrate adequate assurance of future performance to counterparties of the unexpired leases to be assumed and assigned under the terms of the Seven Seas APA in the same manner as was deemed adequate by this Court upon this Court's April 20, 2020 approval of the assignment of the lease relating to the Debtors' store located at 2149 Ralph Avenue, Brooklyn, NY 11234 (the "Georgetowne Store") to Seven Seas Georgetowne, LLC, an entity affiliated with the Contes [Dkt No. 448].

10. Furthermore, the Contes and Seven Seas are in a position to close the purchase under the terms of the Seven Seas APA. As set forth in the commitment letter (the "Commitment Letter") from Key Food Stores Cooperative, Inc. ("Key Food"), under which Key Food has committed to provide a term loan of up to \$5,000,000 attached hereto as **Exhibit 4**, the Contes and Seven Seas have secured the required financing to close the proposed sale. The Contes and Seven Seas are prepared to share financial statements and other records with the Debtors to demonstrate the Contes' and Seven Seas' ability to close the acquisition of the Seven Seas APA, in the same manner as was satisfactory to the Debtors in connection with the acquisition of the Georgetowne Store.

[Remainder of page intentionally left blank]

WHEREFORE, the Contes respectfully requests that the Court (a) take judicial notice of the Seven Seas Bid, and (b) grant such other and further relief as is just, proper, and equitable.

Dated: July 22, 2020
New York, New York

/s/ Mark I. Bane
ROPE & GRAY LLP
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1211 Avenue of the Americas
New York, New York 10036-8704
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
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EXHIBIT 1

Declaration of Paul S. Conte in Support of the Statement of Interest

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: **Chapter 11**
: **Case No. 20-10161 (JLG)**
: **(Jointly Administered)**
: **Debtors.¹**
: **Chapter 11**
: **Case No. 20-10161 (JLG)**
: **(Jointly Administered)**
: **Debtors.¹**
-----X

**DECLARATION OF PAUL S. CONTE
IN SUPPORT OF THE STATEMENT OF INTEREST**

I, Paul S. Conte, under penalty of perjury declare as follows:

1. I submit this declaration (the “Declaration”) in support of the *Statement of Interest of Paul S. Conte and Pasquale J. Conte with Respect to the Debtors’ Motion for Entry of an Order Authorizing Sale to Bogopa Enterprises, Inc.*, (the “Statement of Interest”).²

2. Over the last several weeks, I have attempted to contact the Debtors’ to engage in negotiations regarding a bid to purchase the assets related to the Debtors’ Douglaston Store, Red Hook Store, and to take assignment of the respective leases. Despite my efforts, the Debtors did not engage in substantive negotiations regarding the terms of a competitive bid. Rather than engage in negotiations regarding the contemplated acquisition, the Debtors first responded to my

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Fairway Group Holdings Corp. (2788); Fairway Group Acquisition Company (2860); Fairway Bakery LLC (4129); Fairway Broadway LLC (8591); Fairway Chelsea LLC (0288); Fairway Construction Group, LLC (2741); Fairway Douglaston LLC (2650); Fairway East 86th Street LLC (3822); Fairway eCommerce LLC (3081); Fairway Georgetowne LLC (9609); Fairway Greenwich Street LLC (6422); Fairway Group Central Services LLC (7843); Fairway Group Plainview LLC (8643); Fairway Hudson Yards LLC (9331); Fairway Kips Bay LLC (0791); FN Store LLC (9240); Fairway Paramus LLC (3338); Fairway Pelham LLC (3119); Fairway Pelham Wines & Spirits LLC (3141); Fairway Red Hook LLC (8813); Fairway Stamford LLC (0738); Fairway Stamford Wines & Spirits LLC (3021); Fairway Staten Island LLC (1732); Fairway Uptown LLC (8719); Fairway Westbury LLC (6240); and Fairway Woodland Park LLC (9544). The location of the Debtors’ corporate headquarters is 2284 12th Avenue, New York, New York 10027. Fairway Community Foundation Inc., a charitable organization, owned by Fairway Group Holdings Corp., is not a debtor in these proceedings.

² Capitalized terms shall have the meanings ascribed in the Statement of Interest unless otherwise defined herein.

attempts to negotiate on July 17, 2020, by sending a copy of the Sale Motion, and the Bogopa APA, attached thereto.

3. I am a member of Seven Seas Georgetowne, LLC, which purchased the Georgetowne Store, pursuant to an order of the Bankruptcy Court entered on April 20, 2020 following an auction process, and I have followed the Debtors' cases closely.

4. In connection with Seven Seas Georgetowne, LLC's acquisition of the Georgetowne Store, Seven Seas Georgetowne, LLC shared documents and other records with the Debtors and other contract counterparties to demonstrate Seven Seas Georgetowne, LLC's adequate assurance of future performance. I am prepared to share similar documents and records with the Debtors and the applicable contract counterparties in support of the Seven Seas Bid.

5. I have submitted to the Debtors an offer for the acquisition of the Debtors' assets related to the Douglaston Store, the Red Hook Store, and to take assignment of the respective leases. A copy of the offer letter is attached to this Declaration. The Contes and Seven Seas are prepared and able to close on the terms set forth in the Seven Seas APA in a short timeframe that would not prejudice the administration of the Debtors' cases.

6. Further, the Contes and Seven Seas have secured the required financing to close the acquisition of the Seven Seas APA, as demonstrated by the Commitment Letter attached to the Statement of Interest as **Exhibit 4**. I am prepared to share financial statements and other records with the Debtors to demonstrate the Contes' and Seven Seas' ability to close the acquisition of the Seven Seas APA, in the same manner as was satisfactory to the Debtors in connection with the acquisition of the Georgetowne Store.

[Remainder of page intentionally left blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
and correct to the best of my knowledge and belief.

Executed on July 22, 2020

 /s/ Paul S. Conte
Paul S. Conte

OFFER LETTER

July 22, 2020

Fairway Group Holdings Corp.
c/o Scott Moses
PJ SOLOMON
1345 Avenue of the Americas, 31st Floor
New York, New York 10105

All:

We are pleased to submit this offer (the “Offer”) to acquire the Red Hook and Douglaston stores (the “Stores”) owned by Fairway Group Holdings Corp. and/or certain of its affiliates (“Fairway” or the “Company”) in a transaction structured as a purchase and sale of assets pursuant to an asset purchase agreement (“APA”). Having reviewed the recent Sale Motion and the Bogopa APA, we are confident that the terms of our Offer for the Douglaston Store and the Red Hook Store are higher and better than those of the Bogopa APA and provide certainty to closing.

By way of background, Pasquale and Paul Conte have been members of Key Food Stores Co-Operative, Inc. (“Key Food”) for over 17 years, and Paul Conte currently serves as a member of Key Food’s Board of Directors. Key Food, originally founded in 1937 by a small group of grocery store operators with the idea of joining together to provide customers quality products at low prices, has grown to include over 140 members who collectively operate over 270 stores under established banners such as Key Food, Food Dynasty, Food Universe, The Food Emporium, SuperFresh, Gala Foods Supermarkets, and others. The Contes, themselves, currently own eight Key Food stores, all of which are well-maintained and operated in a professional manner. Three of these stores, operating under the Food Emporium banner, were acquired in the 2015 bankruptcy auction of The Great Atlantic & Pacific Tea Company, better known as A&P. The Contes have transformed all three from troubled, failing stores to successful and profitable locations.

The Offer, conditioned upon approval of the Bankruptcy Court, consists of the following elements:

- A. **Proposed Stores and Valuation:** The Contes propose to purchase (1) store #1004, located at (i) 475 Van Brunt Street, Brooklyn, NY 11231, (ii) 264 Conover Street, Brooklyn, NY 11231 and (iii) 480-500 Van Brunt Street, Brooklyn, NY 11231 and (2) store #1009, located at 242-02 61st Avenue, Douglaston, NY 11362, for \$4,200,000 million (excluding the value of inventory). The Contes propose to purchase the Stores as a going concern with all inventory and other specified assets (subject to reasonable exclusions consistent with the APA and excluding any intellectual property). The Offer assumes that the leases between the Company and

Fairway Group Holdings Corp.
July 22, 2020
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the owners of the respective Store properties (the “Leases” will be assigned to the purchaser and that the Stores will be operated in the ordinary course prior to closing.

- B. **Treatment of Inventory:** The Contes are interested in acquiring each Store’s inventory at cost, currently estimated at \$875,000 for the Red Hook Store and \$800,000 for the Douglaston Store, each of which will be incremental to the cash purchase price. The inventory value is subject to adjustment based on the planned updated pre-close inventory count. The Contes’ intent is to pay acquired cost for the inventory to be reflected in the APA schedules, and in a manner consistent with the definitions in the APA.
- C. **Proposed APA:** An electronic copy of the APA has been provided along with the Offer.
- D. **Form of Consideration:** The Stores will be acquired for 100% cash at close.
- E. **Financing:** The acquisition of the Stores will be funded with a combination of the Contes’ existing cash on hand and/or a draw on Key Food’s revolving credit facility, which may be drawn upon for purposes of the Contes’ acquisition of the Stores. The Contes have obtained from Key Food a fully committed debt financing letter in an aggregate amount of \$5 million, all of which is available to finance the acquisition of the Stores. This letter, which has been provided along with the Offer, will not require any conditionality associated with obtaining such debt financing. At the anticipated signing date, the Contes will have cash in an amount that, together with the proceeds from the proposed debt financing, will be sufficient to pay the purchase price and other expenses for the proposed transaction.
- F. **Adequate Assurance Information:** The Contes are contemporaneously providing to Fairway’s counsel adequate assurances information showing that the Contes are able to perform all of the obligations under the Store leases. In addition, a pro forma income statement for each Store is available to be shared with the relevant landlord on a confidential basis, if necessary.

Should you have any questions regarding the Offer, please contact Paul Conte (718-782-1222 ext. 5 or psctapps@aol.com). If you have legal questions regarding the Offer, please contact Jane Goldstein (212-596-9230 or jane.goldstein@ropesgray.com).

All information contained herein or related to the contents of the Offer, including its terms, is confidential and should not be disclosed to anyone other than the Company and its legal and financial advisors except as required by law or as required pursuant to the Bidding Procedures.

We look forward to hearing from you.

Sincerely,

Fairway Group Holdings Corp.

July 22, 2020

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We look forward to hearing from you.



Pasquale J. Conte

Sincerely,



Paul S. Conte

EXHIBIT 2

Seven Seas APA

ASSET PURCHASE AGREEMENT

BY AND AMONG

FAIRWAY GROUP HOLDINGS CORP.,

FAIRWAY RED HOOK LLC,

FAIRWAY DOUGLASTON LLC,

AND

SEVEN SEAS [____], LLC

JULY [__], 2020

THIS DOCUMENT SHALL BE KEPT CONFIDENTIAL PURSUANT TO THE TERMS OF THE CONFIDENTIALITY AGREEMENT ENTERED INTO BY THE RECIPIENT HEREOF AND, IF APPLICABLE, ITS AFFILIATES AND REPRESENTATIVES, WITH RESPECT TO THE SUBJECT MATTER HEREOF.

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Exhibit A Form of Escrow Agreement
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Exhibit C Form of Assignment and Assumption Agreement
Exhibit D Form of Lease Assignment and Assumption Agreement

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of July 15, 2020, by and among FAIRWAY GROUP HOLDINGS CORP., a Delaware corporation (the “Company”). FAIRWAY RED HOOK LLC, a Delaware limited liability company, and FAIRWAY DOUGLASTON LLC, a Delaware limited liability company (together with the Company, “Sellers”), and SEVEN SEAS [____], LLC, a New York limited liability company (“Buyer”). Each of Buyer and each Seller is referred to herein as a “Party” and, collectively, as the “Parties”.

WITNESSETH

WHEREAS, Sellers and certain of their affiliates have filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on January 23, 2020 in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”):

WHEREAS, Sellers operate supermarkets located at 480-500 Van Brunt Street, Brooklyn, NY, 11231 (the “Red Hook Store”) and 242-02 61st Avenue, Douglaston, NY, 11362 (the “Douglaston Store”, and together with the Red Hook Store, the “Stores”, and each a “Store”): and

WHEREAS, subject to the terms and upon the conditions set forth herein, Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to purchase, acquire and assume from Sellers, all of the Acquired Assets (as defined below) and Assumed Liabilities (as defined below), all as more specifically provided herein.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement:

“Acquired Assets” means, without duplication, all of Sellers’ right, title, and interest in and to all of the following assets of Sellers directly used or held for use exclusively in the operation of the Stores and (to the extent applicable) located at the Stores on the Closing Date:

(a) all Inventory of Sellers Related to the Business (other than Excluded Inventory);

(b) the Furnishings and Equipment owned by Sellers and Related to the Business (other than Excluded Furnishings and Equipment);

(c) the leases set forth on Section 1.1 of the Disclosure Schedule under the heading “Assumed Leases” (the “Assumed Leases”) and (to the extent of Sellers’ interest therein)

the buildings, fixtures and improvements located on or attached to such real property, and all rights arising therefrom, and all tenements, hereditaments, appurtenances and other real property rights appertaining thereto, and all rights of Sellers under any agreement (including any subordination, non-disturbance and attornment agreements) with the lessor of an Assumed Lease or its lenders, subject to the rights of the applicable landlord (including rights to ownership or use of such property) under the Assumed Leases;

(d) all rights under those Contracts set forth on Section 1.1 of the Disclosure Schedules under the heading “Transferred Contracts” (including a Modified Labor Agreement), other than those Contracts that expire or that are terminated prior to the Closing in accordance with their respective terms (such Contracts, together with the Assumed Leases, the “Transferred Contracts”) and the right to possess or use the property that is the subject of the Transferred Contract; provided, that Sellers shall not reject or terminate any Contract used or held for use exclusively in the operation of the Store without Buyer’s consent from and after the date hereof;

(e) to the extent assignable or transferable, all warranties and similar guarantees related to any of the foregoing;

(f) to the extent that any Affected Union enters into a Modified Labor Agreement with Buyer, all rights under such Modified Labor Agreement;

(g) with respect to each Store, the amount of cash that is in such Store following the close of business on the date which is the date before the Closing, subject to adjustment on a dollar for dollar basis based on the actual amount of cash in such Store as determined on the Inventory Date by the Inventory Taker as set forth in Section 2.6 (the “Per Store Cash Closing Balance”):

(h) all Permits of Sellers exclusively Related to the Business, to the extent requested by Buyer and assignable to Buyer under applicable Law (and, for the avoidance of doubt, solely to the extent the applicable Governmental Authority consents to or otherwise approves the assignment or transfer of the applicable Permit) other than those Permits listed on Section 1.1 of the Disclosure Schedule under the heading “Excluded Permits”;

(i) all in-store processors, front-end systems, point-of-sale systems (including self-checkout equipment), credit card readers, computers, computer equipment, hardware, software, peripherals, pin pads, direct access storage devices and a flood protection system, in each case, that are exclusively related to the operation of the Business, located at the Stores and owned by Sellers and solely to the extent no information that identifies or could be used to identify an individual person, including “personally identifiable information” as defined by the Bankruptcy Code, 11 U.S.C. §101(41 A), (“Personal Information”) is transferred in connection therewith;

(j) all email addresses of those customers who (x) expressly indicated that any of the Stores is such customer’s preferred store or (y) expressly provided a zip code and any of the Stores was the closest store operated by the Sellers (the “Store Exclusive Emails”), subject to Section 5.12; provided, however, that notwithstanding anything to the contrary in this Agreement,

any transfer of customer data shall be subject to the Bankruptcy Code, and if the Bankruptcy Court requires the appointment of a consumer privacy ombudsman, there shall be no transfer of any Store Exclusive Emails until the Bankruptcy Court permits such transfer; provided, further, that the cost of such ombudsman (if one is appointed) shall be borne solely by Buyer; and

(k) all books and records of Sellers exclusively related to operation of the Business, including records relating to payroll, sales, and expenses, the plans, specifications, keys, key cards, passwords, and combinations for the Store and those other items set forth on Section 1.1 of the Disclosure Schedule under the heading “Acquired Assets”;

provided, however, notwithstanding anything to the contrary set forth in this definition, the Acquired Assets shall not include any Excluded Assets.

“Affected Labor Agreements” means the collective bargaining agreements covering any of the Covered Employees, each of which is listed on Section 1.1 of the Disclosure Schedule under the heading “Affected Labor Agreements”, none of which are to be assumed by the Buyer.

“Affected Unions” means the unions identified on Section 1.1 of the Disclosure Schedule under the heading “Affected Unions”.

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by Contract, or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Allocation Principles” has the meaning set forth in Section 2.7.

“Antitrust Law” means the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act, and all other Laws and Decrees that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition, whether in the United States or elsewhere.

“Assignment and Assumption Agreement” has the meaning set forth in Section 2.5(a)(ii).

“Assumed Leases” has the meaning set forth in the definition of Acquired Assets.

“Assumed Liabilities” means solely the following Liabilities of each of the Sellers as of the Closing Date Related to the Business:

- (a) all Liabilities under the Transferred Contracts (excluding all Cure Costs);
- (b) all amounts allocated to Buyer under Section 2.7, and, to the extent not exempt under the Sale Order, all Transfer Taxes allocated to Buyer pursuant to Section 6.5;

(c) all Prorated Charges apportioned to Buyer in accordance with Section 2.8;
and

(d) to the extent that any Affected Union enters into a Modified Labor Agreement with Buyer, all Liabilities arising under such Modified Labor Agreement, in each case, from and after the Closing Date;

provided, however, that notwithstanding anything to the contrary set forth in this definition, the Assumed Liabilities shall not include any Excluded Liabilities.

“Bankruptcy Cases” means the Chapter 11 cases of Sellers and certain of their Affiliates.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bidding Procedures Order” means the order of the Bankruptcy Court, entered into in the Bankruptcy Cases on February 21, 2020 as Document Number 208.

“Bill of Sale” has the meaning set forth in Section 2.5(a)(i).

“Bonding Requirements” means standby letters of credit, guarantees, indemnity bonds and other financial commitment credit support instruments issued by third parties on behalf of Sellers or any of their respective Subsidiaries or Affiliates regarding any of the Acquired Assets.

“Business” means the operation of the Stores by Sellers.

“Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the Laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.

“Buyer” has the meaning set forth in the preamble.

“Buyer 401(k) Plan” has the meaning set forth in Section 6.4(d).

“Buyer Proration Amount” has the meaning set forth in Section 2.8(d).

“Cash Equivalents” means cash, checks, money orders, funds in time and demand deposits or similar accounts, marketable securities, short-term investments, and other cash equivalents and liquid investments.

“Cash Purchase Price” has the meaning set forth in Section 2.3(a).

“Claim” has the meaning set forth in section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Section 2.4.

“Closing Date” has the meaning set forth in Section 2.4.

“COBRA” has the meaning set forth in Section 6.4(g).

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreement” shall mean each collective bargaining agreement, labor contract or memorandum of understanding entered into with a union governing the terms and conditions of employment of a Covered Employee.

“Company” has the meaning set forth in the preamble.

“Confidentiality Agreement” means the confidentiality agreement, dated as of September 11, 2019, by and between the Company and Key Food Stores Co-Operative, Inc., and acknowledged by Paul Conte in the Confidentiality Acknowledgment Agreement.

“Contract” means any agreement, contract, license, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and signed by parties intending to be bound thereby.

“Contracting Parties” has the meaning set forth in Section 9.12.

“Covered Employee” means an employee of the Company or any of its Subsidiaries at the Closing whose duties relate primarily to the Business, including such employees who are on short-term disability, long-term disability, military leave, or any other approved leave of absence as of the Closing.

“Cure Costs” means all amounts payable in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Buyer of the Transferred Contracts.

“Damages” means any actual losses, claims, liabilities, debts, damages, fines, penalties or costs (in each case, including reasonable out-of-pocket expenses).

“Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.

“Disclosure Schedule” has the meaning set forth in Article III.

“Douglaston Inventory, Cash and Prepaid Amount” has the meaning set forth in Section 2.3(a)(ii).

“Douglaston Store” has the meaning set forth in the recitals.

“Employee Benefit Plans” has the meaning set forth in Section 3.9(a).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” means Citibank, N.A.

“Escrow Agreement” means that certain Escrow Agreement, dated as of the date hereof, by and among Sellers, Buyer, and the Escrow Agent, a copy of which is attached hereto as Exhibit A.

“Escrow Amount” has the meaning set forth in Section 2.3(b).

“Excluded Assets” means, without duplication, all assets of Sellers as of the Closing that are not expressly included in the Acquired Assets, including:

(a) any of Sellers’ other supermarkets, distribution centers, administrative offices and facilities, and all assets or properties located thereon or otherwise related thereto that are not identified as Acquired Assets;

(b) any asset of Sellers that is (i) not located in the Stores and not Related to the Business or (ii) inseparable from any other business of Sellers or any of their Affiliates (other than the Business), in each case, including (A) organizational documents, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates, and other documents relating to Sellers’ organization, maintenance, existence, and operation; (B) books and records related to (1) Taxes paid or payable by Sellers or (2) any claims, obligations or liabilities not included in Assumed Liabilities; and (C) any Tax refund, deposit, prepayment, credit, attribute, or other Tax asset of or with respect to any of the Sellers;

(c) all capital stock of the Company or any of the Company’s Subsidiaries;

(d) all Cash Equivalents (other than the Per Store Cash Closing Balances) and accounts receivable;

(e) all Permits that are not part of the Acquired Assets as provided herein;

(f) all insurance policies and binders and all rights thereunder, including all rights to recoveries, refunds and credits and to make claims thereunder;

(g) all of Sellers’ rights under this Agreement or any Related Agreement;

(h) all of Sellers’ rights under any Contracts related to any Excluded Asset, unless such Contract is a Transferred Contract;

(i) any and all automobiles, trucks, tractors, and trailers;

(j) any other rebate, payment, reimbursement or refund arising from the Business prior to the Closing;

(k) other than the right to use or possess any property which is the subject of a Transferred Contract, all leased equipment located at or used in the Stores;

(l) any assets or other funding vehicle related to any Employee Benefit Plan;

(m) the Furnishings and Equipment described on Section 1.1 of the Disclosure Schedule under the heading “Excluded Furnishings and Equipment” (the “Excluded Furnishings and Equipment”):

(n) all (i) books and records that Sellers are required by Law to retain or that Sellers determine are necessary or advisable to retain; provided, however, that Buyer, subject to applicable Law, shall have the right to make copies of any portions of such retained books and records Related to the Business, Acquired Assets or Assumed Liabilities, or Transferred Employees; (ii) information management systems of Sellers, other than those specifically listed as “Acquired Assets”; (iii) documents relating to proposals to acquire the Business by Persons other than Buyer; and (iv) personnel files for Covered Employees who are not hired by Buyer;

(o) all Contracts other than the Transferred Contracts;

(p) any Employee Benefit Plan, pension plan or other employee agreement other than a Modified Labor Agreement;

(q) all Excluded Inventory;

(r) all claims, proceeds, causes of action, choses in action, rights of recovery and rights of set-off of any kind against any Person arising out of or relating to the Acquired Assets in connection with events occurring on or before the Closing (other than any proceeds explicitly contemplated to be transferred to Buyer hereunder) including those arising under chapter 5 of the Bankruptcy Code;

(s) except as otherwise specifically provided for herein, all customer data and information derived from branded loyalty promotion or co-branded credit card programs and other similar information related to customer purchases at the Store as well as any Personal Information that is in the possession or control of any Seller and that may not be transferred or disclosed pursuant to applicable Law or such Seller’s privacy policies or notices in effect at the time of collection of such Personal Information;

(t) adequate assurance deposits posted in accordance with section 366 of the Bankruptcy Code;

(u) any Intellectual Property owned by Sellers, including, for the avoidance of doubt, but not limited to, the names “Fairway” or “Fairway Markets” and any derivatives thereof, any name, Mark, or other indicia of origin that includes, relates to or derives from any such name, or any related abbreviations, acronyms or other formatives based on any such name, whether alone or in combination with any other words, phrases, or designs, and all registrations, applications and renewals thereof, all rights and goodwill associated therewith and any name,

Mark, or other indicia of origin that is confusingly similar thereto or derived therefrom (collectively, the "Seller Marks"): and

(v) those items set forth on Section 1.1 of the Disclosure Schedule under the heading "Excluded Assets".

"Excluded Furnishings and Equipment" has the meaning set forth in the definition of Excluded Assets.

"Excluded Inventory" means the following inventory of goods, merchandise or other inventory of Sellers located at the Stores: (a) branded (including any "Fairway" branded) private label inventory, (b) damaged, obsolete or unsalable items, including items which have passed their 'sell by' date, which 'sell by' date shall be no less than five (5) Business Days following the Closing Date for grocery items other than any dairy products; (c) any scanned based traded merchandise (including greeting cards and magazines) or merchandise held on consignment; (d) any seasonal or holiday item for any season or holiday which will not occur within 120 days after the Closing Date; and (e) any inventory item that, as of the Closing Date, is not transferable under applicable Law.

"Excluded Liabilities" means, without duplication, any Liability which is not an Assumed Liability, including the following Liabilities of Sellers:

(a) any Liability not relating to or arising out of the Business or the Acquired Assets, including any Liability exclusively relating to or exclusively arising out of the Excluded Assets;

(b) any Liability of Sellers for Taxes (except as provided for in Section 2.8 and Section 6.5 or constituting Cure Costs);

(c) all indebtedness of Sellers for borrowed money, all accounts payable (except for Cure Costs), and any Claims against Sellers that are not Assumed Liabilities;

(d) all Liabilities of Sellers under this Agreement or any Related Agreement and the transactions contemplated hereby or thereby; and

(e) any Liability of any Seller or any of its Affiliates under any Employee Benefit Plan, Multi employer Plan or other pension or benefit plan, unless expressly included herein or otherwise in writing by Buyer.

"Furnishings and Equipment" means all fixtures, trade fixtures, store models, shelving, and refrigeration equipment owned by Sellers and located at the Store, including those items listed on Section 1.1 of the Disclosure Schedule under the headings "Furnishings and Equipment".

"GAAP" means United States generally accepted accounting principles consistently applied.

“Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity (including the IRS).

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“Independent Accounting Firm” has the meaning set forth in Section 2.7.

“Intellectual Property” means: (a) all issued patents and patent applications, together with all reissuances, continuations, continuations-in-part, divisionals, extensions and reexaminations thereof; (b) all trademarks, service marks, trade dress, logos, trade names, and Internet domain names, together with all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith (“Marks”); (c) all copyrights, together with all registrations and applications for registration therefor and renewals in connection therewith; (d) all trade secrets, know-how, technology, improvements, and inventions; and (e) all computer software (including data and databases).

“Interest Rate” means the prime lending rate reported by the Wall Street Journal as of the date of the payment was due plus one and one-half percent (1.5%) per month (or, if lower, the maximum interest rate allowed by law), compounded monthly, until the date such payment is made.

“Interim Cash” has the meaning set forth in Section 2.6(g).

“Inventory” means all inventory of goods, merchandise, food, beverages, Supplies, tobacco inventory and other products (including, to the extent transferable to Buyer pursuant to the transactions contemplated hereby and under applicable Law, alcohol and other alcoholic beverages), in each case, that is offered for sale to customers at the Stores and owned by Sellers, other than Excluded Inventory.

“Inventory Count” has the meaning set forth in Section 2.6(a).

“Inventory Date” has the meaning set forth in Section 2.6(a).

“Inventory Escrow Amount” has the meaning set forth in Section 2.4.

“Inventory Purchase Price” has the meaning set forth in Section 2.6(b).

“Inventory Taker” has the meaning set forth in Section 2.6(a).

“IRS” means the U.S. Internal Revenue Service.

“Knowledge of Sellers” means the actual knowledge of the individuals identified on Section 1.1 of the Disclosure Schedule under the heading “Knowledge Parties”.

“Law” means any constitution applicable to, and any statute, treaty, code, rule, regulation, ordinance, or legally binding requirement of, any Governmental Authority.

“Lease” means a lease, sublease, license, concession, option, contract, extension letter, easement, reciprocal easement, assignment, termination agreement, subordination agreement, non-disturbance agreement, estoppel certificate or other agreement (written or oral), and any amendments or supplements to the foregoing, and recorded memoranda of any of the foregoing, in each case Related to the Business and all other documents related thereto including, with respect to the Red Hook Store, an energy purchase agreement and lease agreement for the adjoining parking lot.

“Lease Assignment and Assumption Agreement” has the meaning set forth in Section 2.5(a)(iii).

“Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

“Lien” means any mortgage, pledge, lien, charge, Claims, security interest, option, right of first refusal, easement, security agreement or other encumbrance or restriction on the use or transfer of any property; provided, however, that “Lien” shall not be deemed to include any license of Intellectual Property.

“Loss” has the meaning set forth in Section 2.10.

“Marks” has the meaning set forth in the definition of Intellectual Property.

“Material Adverse Effect” means any effect or change that has a material adverse effect on the condition of the Acquired Assets or the Business, taken as a whole, other than any effects or changes arising from or related to, (a) general business or economic conditions in any of the geographical areas in which the Store operates, (b) any condition or occurrence affecting retail grocery generally, (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack, (d) financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index), (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any natural disaster, fire, flood, hurricane, tornado, or other weather event, (f) changes in Law or accounting rules, (g) the taking of any action contemplated by this Agreement or any Related Agreement or taken with the consent of the other Party, (h) any effects or changes as a result of the announcement or pendency of this Agreement, (i) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code, (j) the sale of the Excluded Assets to any third parties by any Seller or any of its Affiliates, (k) any effects or changes arising from or related to the breach of the Agreement by Buyer, (l) any failure by Sellers to meet internal or published projections, estimates or forecasts of revenues, earnings or other measures of financial or operating performance by any period, (m) the failure of Sellers to obtain any consent, permit, authorization, waiver or approval required in connection with the transactions contemplated hereby, (n) any items set forth in the Disclosure Schedule, or (o) any matter of

which Buyer is aware on the date hereof (provided, that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded by this clause (o), except in the case of the foregoing clauses (a), (b), (c) or (f), to the extent such effect or change is (or would reasonably be expected to be) disproportionately adverse with respect to the Acquired Assets or the Business, in each case, taken as a whole, compared to other Persons in the industry in which Sellers conduct the Business, but, in such case, only the incremental disproportionate impact of such effects, changes, conditions, circumstances, developments or events shall be taken into account in determining whether a “Material Adverse Effect” has occurred).

“Modified Labor Agreement” means a new collective bargaining agreement with an Affected Union that is entered into by Buyer and an Affected Union.

“Monthly Prorated Charges” has the meaning set forth in Section 2.8(a).

“Multiemployer Plan” has the meaning set forth in Section 3.9(c).

“Net Prorated Charges” has the meaning set forth in Section 2.8(d).

“Non-Party Affiliates” has the meaning set forth in Section 9.12.

“Order” means any order, judgment, injunction, ruling, writ, award or Decree of any Governmental Authority.

“Ordinary Course of Business” means the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice.

“Outside Date” has the meaning set forth in Section 8.1(b)(ii).

“Party” and “Parties” have the meanings set forth in the preamble.

“Per Store Cash Closing Balance” has the meaning set forth in the definition of Acquired Assets.

“Permit” means any franchise, approval, permit, license, order, registration, certificate, variance or similar right obtained from any Governmental Authority.

“Permitted Lien” means: (a) Liens for Taxes not yet due and payable; (b) with respect to leased or licensed real or personal property, the terms and conditions of the lease, license, sublease or other occupancy agreement applicable thereto to the extent same is an Acquired Asset; (c) with respect to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property; (d) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not reasonably be expected to have a Material Adverse Effect; (e) matters that would be disclosed on an accurate survey of the real property; (f) Liens shown in any title commitment, report or policy, or otherwise of record, other than Liens arising under the UCC, Liens securing any judgment, or any Lien

securing the payment of money; (g) Liens arising out of, under or in connection with this Agreement or any Related Agreement; and (h) Liens created by or through, or resulting from, any facts or circumstances relating to Buyer or its Affiliates.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or any other entity, including any Governmental Authority or any group of any of the foregoing.

“Personal Information” has the meaning set forth in the definition of Acquired Assets.

“Proceeding” means any action, cause of action, suit, claim, investigation, audit, demand, hearing or proceeding, whether civil, criminal, administrative, or arbitral, whether at Law or in equity and whether before any Governmental Authority.

“Proposal” has the meaning set forth in Section 6.3.

“Prorated Charges” means (a) the Monthly Prorated Charges, (b) the non-monthly real estate related payments prorated pursuant to Section 2.8(b) and (c) the real estate Taxes and assessments and other Taxes (other than Transfer Taxes), in each case, (i) imposed upon or assessed directly against the Acquired Assets as of the Closing (including personal property Taxes and similar Taxes), in each case, for the Tax period in which the Closing occurs and (ii) prorated pursuant to Section 2.8(c).

“Proration Period” has the meaning set forth in Section 2.8(c).

“Purchase Price” has the meaning set forth in Section 2.3(a).

“Purchase Price Allocation” has the meaning set forth in Section 2.7.

“Red Hook Inventory, Cash and Prepaid Amount” has the meaning set forth in Section 2.3(a)(ii).

“Red Hook Leases” means the Leases relating to the Red Hook Store.

“Red Hook Store” has the meaning set forth in the recitals.

“Related Agreements” means the Bill of Sale, the Assignment and Assumption Agreement and the Lease Assignment and Assumption Agreement.

“Related Orders” has the meaning set forth in Section 5.4(c)(ii).

“Related to the Business” means used or held for use exclusively in the operation of the Store by a Seller or, in the case of a Liability, to the extent accrued, reserved or incurred in connection with the operation of the Stores by a Seller.

“Representative” means, when used with respect to a Person, the Person’s controlled Affiliates (including Subsidiaries) and such Person’s and any of the foregoing Persons’ respective

officers, directors, managers, members, stockholders, partners, employees, agents, incorporators, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants), and financing sources.

“Required Permits” means, the Temporary Retail Permit for Grocery Beer and Wine Products issued by the New York State Liquor Authority, Perishable Agricultural Commodities Act license issued by the United States Department of Agriculture, and the Food Processing Establishment License issued by the Department of Agriculture and Markets of the State of New York, as applicable to each Store.

“Sale Hearing” means a hearing before the Bankruptcy Court to approve this Agreement and the Sale Order.

“Sale Order” means an order of the Bankruptcy Court in form and substance reasonably satisfactory to the Parties (a) approving (i) this Agreement and the execution, delivery, and performance by Sellers of this Agreement and the other instruments and agreements contemplated hereby; (ii) the sale of the Acquired Assets to Buyer free and clear of all Liens, other than any Permitted Liens or any Assumed Liabilities; (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein; and (iv) the assumption and assignment to Buyer of the Transferred Contracts on the terms set forth herein; (b) determining that Buyer is a good faith Buyer, and that Buyer is not a successor to the Sellers for any purpose; and (c) providing that the Closing will occur in accordance with the terms and conditions hereof.

“Seller 401(k) Plan” has the meaning set forth in Section 6.4(d).

“Seller Marks” has the meaning set forth in the definition of “Acquired Assets”.

“Seller Proration Amount” has the meaning set forth in Section 2.8(d).

“Sellers” has the meaning set forth in the preamble.

“Store” has the meaning set forth in the recitals.

“Store Exclusive Emails” has the meaning set forth in the definition of Acquired Assets.

“Subsidiary” means, with respect to any Person, on any date, any other Person (a) the accounts of which would be consolidated with and into those of the applicable Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date or (b) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests or more than fifty percent (50%) of the profits or losses are, as of such date, owned, controlled or held by such Person or one or more subsidiaries of such Person.

“Supplies” shall mean cleaning supplies (including materials, solutions and waxes), small wares, office supplies, production supplies and any similar items at the Store.

“Tax” or “Taxes” means any United States federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether disputed or not.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transfer Tax” has the meaning set forth in Section 6.5.

“Transferred Contracts” has the meaning set forth in the definition of “Acquired Assets”.

“Transferred Employee” has the meaning set forth in Section 6.4(a).

“Treasury Regulations” means the regulations promulgated by the U.S. Department of the Treasury under the Code, including proposed and temporary regulations.

“UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“WARN Act” means, collectively, the Worker Adjustment and Retraining Notification Act of 1989 and any similar state or local Law.

Section 1.2 Interpretations. Unless otherwise indicated herein to the contrary:

(a) When a reference is made in this Agreement to an Article, Section, Exhibit, Schedule, clause or subclause, such reference shall be to an Article, Section, Exhibit, Schedule, clause or subclause of this Agreement.

(b) The words “include,” “includes” or “including” and other words or phrases of similar import, when used in this Agreement, shall be deemed to be followed by the words “without limitation.”

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(d) The word “if” and other words of similar import shall be deemed, in each case, to be followed by the phrase “and only if.”

(e) The use of “or” herein is not intended to be exclusive.

(f) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa.

(g) All terms defined in this Agreement have their defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

(h) References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References herein to a Person are also to its successors and permitted assigns. Any reference herein to a Governmental Authority shall be deemed to include reference to any successor thereto.

(i) Any reference herein to “Dollars” or “\$” shall mean United States dollars.

(j) The specification of any dollar amount in the representations, warranties, or covenants contained in this Agreement is not intended to imply that such amounts or higher or lower amounts are or are not material, and Buyer shall not use the fact of the setting of such amounts in any dispute or controversy between the Parties as to whether any obligation, item, or matter is or is not material. References in this Agreement to materials or information “furnished to Buyer” and other phrases of similar import include all materials or information made available to Buyer or its Representatives in the data room prepared by Sellers or provided to Buyer or its Representatives in response to requests for materials or information.

(k) References from or through any date means, unless otherwise specified, from and including or through and including such date, respectively. References to “days” shall refer to calendar days unless Business Days are specified. If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

(l) Unless the context otherwise requires, the word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not simply mean “if.”

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Acquired Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer will purchase from Sellers, and Sellers will sell, transfer, assign, convey, and deliver to Buyer, all of the Acquired Assets free and clear of Liens or Claims to the maximum extent permitted under applicable bankruptcy law, except for Permitted Liens.

Section 2.2 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, as partial consideration for the Acquired Assets, Buyer shall, effective as of the Closing, assume all Assumed Liabilities. Buyer agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms thereof (excluding Cure Costs).

Section 2.3 Consideration; Deposit; Escrow Amount.

(a) The consideration for the Acquired Assets shall be (i) an aggregate Dollar amount equal to the sum of (A) four million six hundred seventy five thousand (\$5,875,000) (subject to adjustment pursuant to the final sentence of this Section 2.3(a)) (the "Cash Purchase Price"), plus (B) the Seller Proration Amount, if any, minus (C) the Buyer Proration Amount, if any (such calculation, the "Purchase Price") and (ii) Buyer's assumption of the Assumed Liabilities. The components of the Cash Purchase Price shall be as follows:

(i) \$2,400,000 to the Douglaston Store;

(ii) \$800,000 (the "Douglaston Inventory, Cash and Prepaid Amount") (subject to adjustment pursuant to the final sentence of this Section 2.3(a)) to the Inventory and Per Store Cash Closing Balance attributable to the Douglaston Store;

(iii) \$1,800,000 to the Red Hook Store; and

(iv) \$875,000 (the "Red Hook Inventory, Cash and Prepaid Amount") (subject to adjustment pursuant to the final sentence of this Section 2.3(a)) to the Inventory and Per Store Cash Closing Balance attributable to the Red Hook Store.

After the completion of the Inventory Count, to the extent the amounts of Inventory and Per Store Cash Closing Balances delivered by Sellers to Buyer at Closing are less than or greater than the applicable amounts set forth in clauses (ii) and (iv), above, the Cash Purchase Price shall be increased or decreased, as applicable, by such amount on a dollar for dollar basis. The Red Hook Inventory, Cash and Prepaid Amount and Douglaston Inventory Cash and Prepaid Amount, as applicable, shall be then so adjusted.

(b) Upon execution of this Agreement, pursuant to the terms of the Escrow Agreement, Buyer shall deposit with the Escrow Agent the sum of four hundred sixty seven thousand five hundred dollars (\$467,500) by wire transfer of immediately available funds (the "Escrow Amount"), to be released by the Escrow Agent and delivered to either Buyer or Sellers, in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrow Amount (together with all accrued investment income thereon, if any) shall be distributed as follows:

(i) if the Closing shall occur, the Escrow Amount shall be paid to Sellers and applied towards the Purchase Price payable by Buyer to Sellers under Section 2.3(a) and all accrued investment income thereon, if any, shall be delivered to Buyer at the Closing;

(ii) if this Agreement is terminated by Sellers pursuant to Section 8.1(d) (subject to Buyer's right to contest the validity of Sellers' termination) the Escrow Amount, together with all accrued investment income thereon, if any, shall be delivered to Sellers; or

(iii) if this Agreement is terminated for any reason other than by any Seller pursuant to Section 8.1(d), the Escrow Amount, together with all accrued investment income thereon, shall in each case be returned to Buyer.

Section 2.4 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York (or such other location as shall be mutually agreed upon by Sellers and Buyer) (the "Closing Date"), as soon as reasonably practicable, and in no event later than three (3) Business Days, following the date upon which the last to be satisfied or waived of each of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions) shall have been satisfied or waived in accordance with this Agreement; provided, however, that if at such time each of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing) has been satisfied or waived, Buyer has not obtained the Required Permits for each Store, Buyer may extend the date by which the Closing is to occur, on a one-time basis, until the earlier to occur of (i) the date all of the Required Permits for each Store are obtained and (ii) August 24, 2020 by providing prior written notice to Sellers of such extension; provided, further, however that Buyer may not extend the date by which the Closing is to occur to a date later than July 31, 2020 without first (x) depositing with the Escrow Agent an amount equal to the Cash Purchase Price by wire transfer of immediately available funds (the "Inventory Escrow Amount"), and (y) delivering to Sellers the written consents of each of the landlords of the Red Hook Store and the Douglaston Store, as applicable, to extend the deadline by which Sellers must reject or assume the applicable Leases to no earlier than August 30, 2020. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and be effective, and title to and risk of loss associated with the Acquired Assets, shall be deemed to occur at 12:01 am, New York City time, on the Closing Date.

Section 2.5 Closing Payments and Deliveries.

(a) At the Closing, Sellers will deliver or cause to be delivered to Buyer the following:

(i) a duly executed Bill of Sale substantially in the form of Exhibit B (the "Bill of Sale");

(ii) a duly executed Assignment and Assumption Agreement substantially in the form of Exhibit C (the "Assignment and Assumption Agreement");

(iii) a duly executed Assignment and Assumption of Lease for each of the Assumed Leases substantially in the form of Exhibit D (each a "Lease");

Assignment and Assumption Agreement” and collectively, the “Lease Assignment and Assumption Agreements”):

(iv) an executed certificate of non-foreign status from each Seller in compliance with Treasury Regulations Section 1.1445-2;

(v) a duly executed certificate from an officer of each Seller to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) is satisfied;

(vi) all keys, passwords and codes necessary to access the Stores, each of which shall be delivered in person at the Closing; and

(vii) certified copy(s) of the Sale Order.

(b) At the Closing, Buyer will deliver or cause to be delivered to Sellers the following:

(i) the Purchase Price (less the Escrow Amount, which shall be released to Sellers by the Escrow Agent), by wire transfer of immediately available funds, to an account or accounts as directed by Sellers;

(ii) the Bill of Sale duly executed by Buyer;

(iii) the Assignment and Assumption Agreement duly executed by Buyer;

(iv) the Lease Assignment and Assumption Agreements duly executed by Buyer;

(v) a duly executed certificate from an officer of Buyer to the effect that each of the conditions specified in Section 7.3(a) and Section 7.3(b) are satisfied.

Section 2.6 Inventory.

(a) A physical count of the Inventory and the Per Store Cash Closing Balance, and calculation of the value thereof, at the Stores (the “Inventory Count”) shall be made by an inventory taker as agreed upon by the Parties (the “Inventory Taker”) no more than two (2) days prior to (A) the earlier of the (i) anticipated Closing Date and (ii) the date on which Buyer acquires the inventory pursuant to Section 2.4, or (B) on such other date as the Parties may mutually agree (the date of such physical count being the “Inventory Date”). The Inventory Taker shall conduct the physical count of the Inventory in accordance with the terms and conditions of this Section 2.6 and the usual and customary practices of the industry (and according to the Inventory Taker’s established inventory policies and procedures, copies of which shall be furnished to Buyer and Sellers prior to the Inventory Date).

(b) The fees and expenses of the Inventory Taker shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Sellers. The physical inventory (and the Inventory Purchase Price to be paid by Buyer for the Inventory) shall not include Inventory that is Excluded Inventory. The Inventory Taker shall value all Inventory carried in the Stores on the Inventory Date, excluding the Excluded Inventory (but including any portion or all of the Excluded Inventory that Buyer deems Inventory), at cost (such value, the “Inventory Purchase Price”). Except for the Excluded Inventory, all merchandise received at each Store prior to the commencement of the physical count of the Inventory at the Stores must be included in the inventory taking process, and shall be set forth on the Inventory Count.

(c) Buyer, on the one hand, and Sellers collectively, on the other hand, shall each appoint a Representative to be present during the physical count of the Inventory. At an agreed-upon date and time no later than one (1) day prior to the start of the physical count of the Inventory at a Store, such Representatives shall tour such Store to agree upon items of Excluded Inventory and to ensure segregation of such items from the Inventory to be counted in connection with the physical count at such Store. Such Representatives shall cooperate in good faith to agree on the inclusion of any item of merchandise as Inventory and/or the valuation of any such item of Inventory. In the event that such Representatives do not agree on the value of the Inventory for the Stores because such Representatives disagree as to whether certain items should be counted as Excluded Inventory or as to Sellers’ cost of Inventory, the opinion of the Inventory Taker shall be final and binding.

(d) The Inventory Count shall (i) be summarized for each Store using an inventory certificate to be provided by the Inventory Taker, which must be executed by a Representative of Buyer and a Representative of Sellers prior to either such Representative leaving such Store and (ii) show the total cost of the Inventory for each Store determined in the manner provided in this Section 2.6.

(e) Buyer shall make application to the applicable authorities to transfer any alcohol and alcoholic beverages included in the Inventory to Buyer, and any such application shall be made promptly after the execution of this Agreement and shall be diligently pursued by Buyer, at Buyer’s sole cost and expense. Sellers, at no out-of-pocket cost or expense to Sellers, shall reasonably cooperate with Buyer and use their commercially reasonable efforts to (i) obtain the issuance of temporary licenses to sell any alcohol and alcoholic beverages included in the Inventory, (ii) provide any documents or information necessary to assist in effectuating said transfer, (iii) to the extent required by Law, surrender their existing licenses to sell any alcohol and alcoholic beverages and (iv) execute such consents or other documents as may reasonably be required to effectuate any of (i) - (iv) of this subsection.

(f) Notwithstanding Sellers’ obligations in Section 5.1 to conduct the Business in the Ordinary Course of Business, Sellers may sell down Excluded Inventory without replenishment prior to the Inventory Date.

(g) Immediately on completion of the Inventory Count, (i) all receipts from Inventory sold shall become property of Buyer (the “Interim Cash”) except as required by applicable Law, Sellers shall grant Buyer access to the Stores to begin provisioning the Stores

with Buyer's goods, all of which shall remain the property of Buyer until the Closing. If the Closing does not occur for any reason, Buyer shall be entitled to remove its goods from the Stores and the Interim Cash shall be paid to Sellers.

(h) The Parties shall meet at a mutually agreed date prior to the Closing to review the status of the Inventory and the valuation methodology to be employed by the Inventory Taker.

Section 2.7 Allocation: Dispute Resolution. Buyer and Sellers agree to allocate the Purchase Price (as finally determined hereunder) and the Assumed Liabilities among the Acquired Assets in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (the "Allocation Principles"), provided, however, that for the purposes of this Section 2.7, the Parties shall not be required to allocate the Purchase Price in accordance with Section 2.3(a). No later than thirty (30) days after the Closing Date, Sellers shall deliver to Buyer an allocation of the Purchase Price and the Assumed Liabilities as of the Closing Date among the Acquired Assets, determined in a manner consistent with the Allocation Principles (the "Purchase Price Allocation") for Buyer's review and comment. Any reasonable comments provided by Buyer to Sellers under this Section 2.7 within thirty (30) days of the delivery of the Purchase Price Allocation shall be considered by Sellers in good faith. If Buyer agrees in writing with the Purchase Price Allocation or fails to provide comments to the Purchase Price Allocation within thirty (30) days following receipt thereof from Sellers, the Purchase Price Allocation shall be conclusive and binding on the Parties. If the Parties are unable to agree on the Purchase Price Allocation after good faith consultation, the matters in dispute shall be referred for resolution to a nationally recognized accounting firm reasonably acceptable to Sellers and Buyer (in either case, the "Independent Accounting Firm"), the expenses (including engagement fees) of which shall be borne equally by Buyer, on the one hand, and Sellers collectively, on the other hand. The Independent Accounting Firm shall resolve any disputed matters as promptly as practicable, and the Independent Accounting Firm's decision with respect to any such matter shall be conclusive and binding on the Parties. None of the Parties will take any position inconsistent with the Purchase Price Allocation on any Tax Return or in any audit or Tax proceeding, in each case, unless otherwise required by applicable Law or by a final determination by a Governmental Authority. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 2.7 shall survive the Closing without limitation.

Section 2.8 Proration.

(a) On the Closing Date all monthly payments for the month in which the Closing occurs (including base rent, common area maintenance fees, and utility charges) under the Leases and the Assumed Leases (the "Monthly Prorated Charges") shall be apportioned and prorated between Sellers and Buyer as of the Closing Date with (i) Buyer bearing the expense of Buyer's proportionate share of such Monthly Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Monthly Prorated Charges under the applicable Lease or Assumed Lease and the denominator being the total number of days in the lease month in which the Closing occurs, times (B) the number of days in such lease month following the day that immediately precedes the Closing Date, and (ii) Sellers bearing the remaining portion of such Monthly Prorated Charges.

(b) As to all non-monthly real estate related payments, including the percentage rent payable under any Lease or Assumed Lease, the same shall be apportioned between Sellers and Buyer as of 12:01 a.m. on the Closing Date. If any amounts are payable in installments, all installments due through the Closing together with the accrued but unpaid portion of any other installments not yet due as of the Closing shall be prorated based on the periods of time covered by such installments occurring before and after the Closing Date. The provisions of this subparagraph shall survive Closing.

(c) (i) Real estate Taxes and assessments and (ii) other Taxes (in each case, other than Transfer Taxes) imposed upon or assessed directly against the Acquired Assets or any Lease as of the Closing, in each case, for the Tax period in which the Closing occurs (the “Proration Period”), shall be apportioned and prorated between Sellers and Buyer as of the Closing Date with Buyer bearing the expense of Buyer’s proportionate share of such Taxes that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (B) the number of days in the Proration Period following the Closing Date. If the Closing shall occur before a new real estate or other applicable Tax rate is fixed for the applicable property, or if the amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration of Taxes for such property at the Closing shall be upon the basis of the old Tax rate for the preceding fiscal year applied to the latest assessed valuation. Promptly after the new Tax rate is fixed, the apportionment of Taxes shall be recomputed by the Parties and any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at the Closing shall be promptly corrected and the proper party reimbursed within thirty (30) days following such recomputation. The provisions of this subparagraph shall survive closing.

(d) The net amount of all Prorated Charges under Section 2.8(a), Section 2.8(b) and Section 2.8(c) shall be reduced, including below zero, by the amount of any such Prorated Charges that were paid by Sellers prior to the Closing (the “Net Prorated Charges”). To the extent that the Net Prorated Charges is a positive number (i.e., Sellers have not paid the entirety of their net Prorated Charges) such amount shall be referred to as the “Buyer Proration Amount” and if a negative number (i.e., Sellers have paid more than their net Prorated Charges) such amount shall be referred to as the “Seller Proration Amount”. Except as set forth in this Section 2.8, no amounts paid or payable under or in respect of any Acquired Assets or group of Acquired Assets shall be apportioned and prorated between Sellers and Buyer.

Subject to the last two sentences of Section 2.8(c), if any of the items subject to apportionment under the foregoing provisions cannot be apportioned at the Closing because of the unavailability of the information necessary to compute such apportionment, or if any errors or omissions in computing apportionments at the Closing are discovered subsequent to the Closing, such item(s) shall be reapportioned and such errors and omissions corrected as soon as practicable after the Closing Date (and for a period of ninety (90) days thereafter) and the proper Party reimbursed.

Section 2.9 Removal of Excluded Assets. As promptly as practicable following the Closing Date (and in any event within ten (10) Business Days), Sellers shall remove at their

expense all of the Excluded Assets that are located at the Stores. Any Excluded Assets not timely removed by Sellers may be disposed of by Buyer in its sole and unreviewable discretion, without the incurrence of any Liability on the part of Buyer.

Section 2.10 Casualty and Condemnation. If, during the period beginning on the date hereof and ending on the Closing Date, any Acquired Assets (not including Inventory), or any Store, are damaged or destroyed, by fire or other casualty, and the amount required to repair, restore or reconstruct such Acquired Asset(s) to the condition it was in prior to the casualty (the “Loss”) exceeds \$750,000 (as determined by Sellers’ insurance appraiser), then the Cash Purchase Price shall be reduced by the amount of such Loss (provided that any such reduction shall in no event exceed the amount allocated to the applicable asset in Section 2.3). In each case, Sellers shall have the right to any insurance proceeds with respect thereto. If any Acquired Assets constituting the property on which a Store is located is subject to a taking or condemnation which materially interferes with Buyer’s ability to operate the subject Store in substantially the same manner as operated by Sellers as of the date hereof, then Buyer may elect not to purchase such Store and the Cash Purchase Price shall be reduced by the amount allocated to the Acquired Assets with respect to such Store. The foregoing shall represent Buyer’s sole and exclusive rights and recourse with respect to an event described in this Section 2.10. For the avoidance of doubt, the foregoing shall be subject to any rights of the applicable landlord or its lender(s) as to any affected Store. This Agreement shall stay in full force and effect with respect to any Store subject to a casualty, condemnation or taking.

ARTICLE III SELLERS’ REPRESENTATIONS AND WARRANTIES

Sellers represent and warrant to Buyer that the statements contained in this Article III are true and correct except as set forth in the disclosure schedule accompanying this Agreement (the “Disclosure Schedule”).

Section 3.1 Organization; Good Standing and Qualification. Each Seller is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the Laws of the state of its incorporation or formation. Each Seller has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or other organizational power and authority to own, lease and operate its assets and to carry on its business, as now being conducted, except where the failure to be so organized, existing, or in good standing or have such power and authority would not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authorization of Transaction. Subject to the Bankruptcy Court’s entry of the Sale Order and any other Related Order to close the sale of the Acquired Assets in accordance with this Agreement, each Seller has full power and authority (including full corporate or other organizational power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which each Seller is a party have been duly authorized by such Seller. Upon due execution hereof by each Seller, this Agreement (assuming due

authorization and delivery by Buyer) shall constitute, subject to the Bankruptcy Court's entry of the Sale Order and any other Related Order, the valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.3 No Conflict: Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II). will (a) conflict with or result in a breach of the organizational documents of any Seller, (b) subject to the entry of the Sale Order and any other Related Order, materially violate any Law or Decree to which any Seller is subject in respect of the Acquired Assets, or (c) subject to the entry of the Sale Order and any other necessary Order to close the sale of the Acquired Assets, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any material Contract to which any Seller is a party or to which any of the Acquired Assets is subject, except, in the case of either clause (b) or (c), for such conflicts, violations, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Other than (x) the applicable requirements of the HSR Act and (y) as required or pursuant to the Bankruptcy Code, the Sale Order and any other Related Order, no Seller is required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or materially impair or delay any Seller's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 3.4 Real Property. Section 3.4 of the Disclosure Schedule sets forth the location of the Stores, each of which is leased to a Seller by a third party, and a list of all Assumed Leases. Sellers have made available to Buyer a true and complete copy of each Assumed Lease to the extent in their possession. With respect to each Assumed Lease, (a) assuming due authorization and delivery by the other party thereto, such Assumed Lease constitutes the valid and legally binding obligation of each Seller party thereto and, to the Knowledge of Sellers, the counterparty thereto, enforceable against such Seller and, to the Knowledge of Sellers, the counterparty thereto in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity, and (b) neither such Seller nor, to Knowledge of Sellers, the counterparty thereto is in breach or default under such Assumed Lease, except (i) for those defaults that will be cured in accordance with the Sale Order or waived in accordance with section 365 of the Bankruptcy Code (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Assumed Leases) or (ii) to the extent such breach or default would not reasonably be expected to be material to the Business. Sellers have no written notice of any pending or threatened taking of any of the property subject to any Assumed Lease.

Section 3.5 Proceedings; Decrees. Other than the Bankruptcy Case, as of the date of this Agreement, there is no Proceeding pending for which Sellers have received notice that (a) would reasonably be expected to have a Material Adverse Effect or (b) challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. To the Knowledge of Sellers, no Seller is subject to any outstanding Decree that would (i) reasonably be expected to have a Material Adverse Effect or (ii) prevent or materially delay such Seller's ability to consummate the transactions contemplated hereby or perform in any material respect its obligations hereunder.

Section 3.6 Labor Relations. No Seller is a party to or bound by any Collective Bargaining Agreement covering the Covered Employees.

Section 3.7 Brokers' Fees. Other than the fees and expenses payable to Peter J. Solomon Company and CBRE, Inc. in connection with the transactions contemplated hereby, which shall be borne by Sellers, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay.

Section 3.8 Taxes. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) Sellers (with respect to the Business) have filed all Tax Returns required to be filed with the appropriate Tax authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Sellers), and all Taxes shown as due on such Tax Returns have been paid.

(b) Sellers (with respect to the Business) have withheld and paid over to the appropriate Tax authority (or is properly holding for such payment) all Taxes required by Law to be withheld and paid in connection with amounts owing to any employee or independent contractor.

(c) Notwithstanding anything in this Agreement to the contrary, the representations and warranties made in this Section 3.8 and Section 3.9 are the sole and exclusive representations and warranties made by Sellers regarding Taxes.

Section 3.9 Employee Benefits and Costs.

(a) Section 3.9(a) of the Disclosure Schedule lists all "employee benefit plans," as defined in section 3(3) of ERISA, and all other material employee benefit plans or arrangements (other than governmental plans and statutorily required benefit arrangements), including bonus or incentive plans, deferred compensation arrangements, severance pay, sick leave, vacation pay, disability, medical insurance and life insurance maintained or contributed to by Sellers and their Subsidiaries as of the date hereof with respect to Covered Employees (the "Employee Benefit Plans").

(b) True, correct and complete copies of the following documents, with respect to each of the Employee Benefit Plans, have, to the extent applicable, been made available to

Buyer: (i) any plan documents, and all material amendments thereto, (ii) the most recent Forms 5500 and (iii) the most recent summary plan descriptions (including letters or other documents updating such descriptions).

(c) No Employee Benefit Plan is an “employee pension benefit plan” (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA, Section 412 of the Code or Section 302 of ERISA (including any “multiemployer plan” within the meaning of Section (3)(37) of ERISA (a “Multiemployer Plan”).

(d) Each of the Employee Benefit Plans sponsored by Sellers and its Subsidiaries that is intended to qualify under Section 401(a) of the Code has been determined by the IRS to be so qualified, and, to the Knowledge of Sellers, nothing has occurred with respect to the operation of any such plan which could reasonably be expected to result in the revocation of such favorable determination.

(e) Each of the Employee Benefit Plans has been established, maintained and operated in accordance with its terms and the requirements of all applicable Laws, except as would not reasonably be expected to have a Material Adverse Effect.

(f) There are no material claims or causes of action pending or, to the Knowledge of Sellers, threatened in writing during the one (1) year prior to the date of this Agreement against Sellers in connection with any Employee Benefit Plan. As of the date hereof, Sellers are not engaged or involved in any Proceedings brought by or on behalf of any of the Covered Employees and, to the Knowledge of Sellers, no such Proceedings have been threatened in writing during the one (1) year prior to the date of this Agreement, except for such Proceedings that would not reasonably be expected to have a Material Adverse Effect.

(g) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (alone or in conjunction with any other event) will (i) entitle any Covered Employee to any compensation or benefit (or increase thereto) or (ii) accelerate the time of payment or vesting, or trigger any payment or funding, of any compensation or benefits with respect to any Covered Employee under any Employee Benefit Plan.

(h) Section 3.9(h) of the Disclosure Schedule contains a complete list of all employees of each Store as of the date of this Agreement to whom Buyer is obligated to make offers of employment, including the beginning date of employment, rate of pay or salary, and benefits attributable to such employee.

Section 3.10 Compliance with Laws; Permits.

(a) Sellers are in compliance with all Laws applicable to the Business, except where the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect. Sellers have not received any written notice of or been charged with the violation of any Laws, except where such violation would not reasonably be expected to result in a Material Adverse Effect.

(b) Sellers have all Permits which are required for the operation of the Business as presently conducted, except where the absence of which would not reasonably be expected to result in a Material Adverse Effect. Sellers are not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which Sellers are parties, except where such default or violation would not reasonably be expected to result in a Material Adverse Effect.

Section 3.11 Title to Assets. Immediately prior to the Closing, Sellers will have good and valid title to, or the right to use, the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens). Pursuant to the Sale Order, Sellers will convey such title or rights to use, all of the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens). None of the Acquired Assets in Seller's possession as of the Closing shall be the property of others, or held on consignment, except as set forth in Section 3.11 of the Disclosure Schedule.

Section 3.12 Financial Statements. The financial statements set forth in Section 3.12 of the Disclosure Schedule, present fairly in all material respects the sales and expenses generated from and incurred at the Stores for the periods specified.

Section 3.13 Occupancy. No Person other than Sellers or its business invitees has the right to occupy any of the Stores. The Stores shall be delivered to Buyer on the Closing Date free of the right of any other Person to occupy or use such properties. There are no licensee's with respect to any Lease or Assumed Lease.

ARTICLE IV BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to each Seller that the statements contained in this Article IV are true and correct, except as set forth in Buyer's disclosure schedule accompanying this Agreement.

Section 4.1 Organization of Buyer; Good Standing and Qualification. Buyer is a limited liability company duly organized, validly existing, and in good standing under the Laws of the State of New York and has all requisite corporate or similar power and authority to own, lease, and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction. Buyer has full power and authority to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Buyer is a party have been duly authorized by Buyer. This Agreement (assuming due authorization and delivery by Sellers) constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.3 No Conflict; Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II) will (a) conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Buyer, (b) violate any Law or Decree to which Buyer is, or its assets or properties are, subject or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (b) or (c), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis. Other than the applicable requirements of the HSR Act, Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.4 Proceedings; Decrees. There is no Proceeding pending or, to the knowledge of Buyer, threatened in writing that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Neither Buyer nor any of its Subsidiaries is subject to any outstanding Decree that would prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.5 Brokers' Fees. Buyer has not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Sellers or any of their Affiliates could become liable or obligated to pay.

Section 4.6 Sufficient Funds; Adequate Assurances. Buyer has, and upon the Closing will have, immediately available funds sufficient for the satisfaction of all of Buyer's obligations under this Agreement, including the payment of the Purchase Price and all fees, expenses of, and other amounts required to be paid by, Buyer in connection with the transactions contemplated hereby. Buyer has not incurred, and is not contemplating or aware of, any obligation, commitment, restriction or other Liability of any kind, in each case that would impair or adversely affect such resources, funds or capabilities.

Section 4.7 Buyer Information. As of the date hereof, Buyer has disclosed to Sellers any and all potential issues under any Antitrust Law that may be credibly raised about the transactions contemplated hereby. As of the date hereof, Buyer has provided to Sellers true, correct, and complete information relating to the businesses and sales of Buyer and its Subsidiaries and joint ventures upon which Sellers can reasonably determine whether any objections to the transactions contemplated hereby may be credibly asserted under any Antitrust Law.

Section 4.8 Disclaimer of Other Representations and Warranties. Buyer hereby acknowledges that, except for the representations and warranties contained in Article III (as modified by the Disclosure Schedule) or expressly contained in any Related Agreement, neither Sellers nor any other Person shall be deemed to have made, and none of Buyer or its Representatives is relying on, any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding any Sellers, any Acquired Assets, any Assumed Liabilities or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in this Article IV or any Related Agreement, BUYER HEREBY ACKNOWLEDGES THAT NO SELLER MAKES ANY OTHER (AND HEREBY DISCLAIMS EACH OTHER) REPRESENTATION, WARRANTY, OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION, OR USE OF THE ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT, SHOULD THE CLOSING OCCUR, BUYER WILL ACQUIRE THE ACQUIRED ASSETS AND ASSUME THE ASSUMED LIABILITIES ON AN “AS IS” CONDITION AND ON A “WHERE IS” BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WITH RESPECT TO ENVIRONMENTAL, HEALTH, OR SAFETY MATTERS). Buyer hereby acknowledges that Sellers disclaim all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant, or representative of Sellers or any of their Affiliates).

ARTICLE V PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

Section 5.1 Conduct of the Business Pending the Closing.

(a) Prior to the Closing, except (i) as set forth on Section 5.1(a) of the Disclosure Schedule, (ii) as required by applicable Law or by order of the Bankruptcy Court, (iii) as required or contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), each Seller will use commercially reasonable efforts to (A) conduct the Business only in the Ordinary Course of Business, (B) preserve the present business operations, organization and goodwill of the Business and (C) preserve the present relationships with material vendors and suppliers of the Business.

(b) Except (i) as set forth on Section 5.1(b) of the Disclosure Schedule, (ii) as required or contemplated by applicable Law or by order of the Bankruptcy Court, (iii) as otherwise contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), no Seller shall, solely as it relates to the Business:

(i) other than in the Ordinary Course of Business, as required by any applicable collective bargaining agreement or Law or pursuant to any Contract in effect as of the date of this Agreement or as permitted by any Employee Benefit Plan, with respect to any Transferred Employees (A) materially increase the annual level of compensation of any Covered Employee or (B) materially increase the coverage or benefits available under any (or create any new) Employee Benefit Plan;

(ii) subject any of the Acquired Assets to any Lien, except for Permitted Liens and any Lien securing any debtor in possession loan facility or granted in an order authorizing use of cash collateral; provided, however, Sellers' obligation to deliver the Acquired Assets free of Liens shall include any Liens granted under any debtor in possession loan facility or cash collateral order; or

Section 5.2 Cooperation.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, except as otherwise specifically provided in Section 5.2 or Section 5.4.

(b) Without limiting the generality of the foregoing, Buyer shall not take any action, or permit any of its Subsidiaries to take any action, to materially diminish the ability of any Party to consummate, or materially delay any Party's ability to consummate, the transactions contemplated hereby, including any action that is intended or would reasonably be expected to result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VII to not be satisfied.

Section 5.3 Regulatory Approvals.

(a) Subject to the terms and conditions herein, each of the Parties shall use their respective best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper, or advisable to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable, and in any case, prior to the Outside Date (including the satisfaction, but not waiver, of the conditions precedent set forth in Article VII). Each of the Parties shall use their respective best efforts to obtain consents of all Governmental Authorities necessary to consummate the transactions contemplated by this Agreement (including the provision of any notices to and making of any filings with any Governmental Authorities). If necessary, in the determination of the Parties, each Party shall make an appropriate filing pursuant to the HSR Act within ten (10) Business Days after the date of this Agreement (unless mutually agreed in writing). Each Party shall supply as promptly as practicable to the appropriate Governmental Authorities any information and documentary material that may be requested pursuant to the HSR Act. Without limiting the foregoing, (i) the Parties shall not voluntarily extend any waiting period or other applicable time period under the

HSR Act or enter into any agreement with any Governmental Authority to delay, or otherwise not to consummate as soon as practicable the transactions contemplated hereby, except with the prior written consent of the other Parties, which consent may be withheld in the sole discretion of the non-requesting Party, and (ii) Buyer and Sellers agree, at Buyer's sole cost, to take any and all actions that are necessary or reasonably advisable to avoid or eliminate each and every impediment under the HSR Act that may be asserted or required by any Governmental Authority to consummate the transactions contemplated by this Agreement as expeditiously as possible, and in any event prior to the Outside Date, including (A) proposing, negotiating, committing to, effecting and agreeing to, by consent decree, hold separate order, or otherwise, the sale, divestiture, license, hold separate, and other disposition of, any entities, operations, assets, divisions, businesses, product lines, customers or facilities of the Business or Buyer, or their respective Affiliates, (B) creating, terminating, amending or assigning existing relationships, ventures, contractual rights, or obligations of the Business or Buyer, (C) amending, assigning, or terminating existing licenses or other agreements (and entering into such new licenses or other agreements), (D) otherwise taking or committing to any and all actions that would limit Buyer's freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, products, or equity interests of the Business or Buyer, or their respective Affiliates, and (E) entering into any governmental order, consent decree or other agreement to effectuate any of the foregoing. All filing fees incurred in connection with the HSR Act shall be borne by Buyer.

(b) Each Party to this Agreement shall promptly notify the other Parties of any oral or written communication it receives from any Governmental Authority relating to the matters that are the subject of this Agreement, permit the other Parties to review in advance any communication proposed to be made by such Party (or its advisors) to any Governmental Authority, and provide the other Parties with copies of all correspondence, filings or other communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement. No Party shall agree to participate in any meeting or substantive discussion with any Governmental Authority in respect of any such filings, investigation or other inquiry unless, to the extent reasonably practicable, it consults with the other Parties in advance and, to the extent practicable and permitted by such Governmental Authority, gives the other Parties the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement and applicable Law, the Parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods under any Law in any relevant jurisdiction. Nothing in this Section 5.3(b) shall be applicable to Tax matters.

(c) In the event any Proceeding by any Governmental Authority or other Person is commenced that questions the validity or legality of the transactions contemplated hereby, seeks to temporarily or permanently enjoin the transactions contemplated hereby, or seeks Damages in connection therewith, Buyer agrees to cooperate with Sellers and use best efforts to defend against such Proceeding and, if any Decree is issued in any such Proceeding, to use best efforts to have such Decree vacated, lifted, reversed or overturned and to cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated hereby.

(d) Notwithstanding anything in this Agreement to the contrary, Buyer acknowledges on behalf of itself and its Affiliates and its and their Affiliates and Representatives, successors and assigns that the operation of the Business shall remain in the dominion and control of Sellers until the Closing and that Buyer and its Affiliates and Representatives shall not provide, directly or indirectly, any directions or orders to any director, officer or employee of Sellers with respect to the operation of the Business, except as specifically contemplated or permitted by this Article V or as otherwise consented to in advance by an executive officer of Sellers.

Section 5.4 Bankruptcy Court Matters.

(a) INTENTIONALLY OMITTED

(b) INTENTIONALLY OMITTED

(c) Bankruptcy Court Filings.

(i) INTENTIONALLY OMITTED.

(ii) Sellers shall diligently seek entry of the Sale Order and any other necessary orders to close the sale of the Acquired Assets (the “Related Orders”) by the Bankruptcy Court in accordance with the terms and conditions of the Bidding Procedures Order. Buyer and Sellers understand and agree that the consummation of the transactions contemplated by this Agreement is subject to approval by the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and any Related Orders including a finding of adequate assurance of future performance by Buyer, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Sellers, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Acquired Assets hereunder. In the event the entry of the Sale Order shall be appealed, Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(iii) Sellers shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Transferred Contracts and to determine the amount of the Cure Costs; provided, that nothing herein shall preclude Sellers from filing such motions, to reject any Contracts that are not Transferred Contracts.

Section 5.5 Notices and Consents.

(a) Sellers will give, or will cause to be given, any notices to third parties, and each of the Parties will use its commercially reasonable efforts to obtain any third party consents or sublicenses, in connection with the matters referred to in Section 5.5(a) of the Disclosure

Schedule or as are otherwise required to consummate the transactions contemplated hereby; provided, however, that (i) except as to the Affected Unions and Affected Labor Agreements, Sellers shall control all correspondence and negotiations with third parties regarding any such matters, (ii) neither the Company nor any of its Subsidiaries shall be required to pay any consideration therefor, (iii) Sellers shall not be obligated to initiate any Proceedings to obtain such consent or approval, and (iv) Buyer shall pay any reasonable costs, or bear any reasonable effects as a result of amendments or modifications to any Transferred Contract, in either case as is necessary to obtain such consent or sublicense, and if Buyer refuses to pay such costs, such Transferred Contract shall be excluded from the transactions hereunder and there shall be no adjustment to the Purchase Price on account of such exclusion and Buyer will indemnify Sellers for any Damages as a result thereof, including any Damages from any inability of Sellers (including any Subsidiary of any Seller) to perform under a Contract that otherwise would be a Transferred Contract as a result of the other transactions contemplated hereby and would not otherwise be a general unsecured claim against the Sellers' estates.

(b) Without limiting Section 5.3, each of the Parties will give any notices to, make any filings with, and use its reasonable best efforts to obtain any authorizations, consents, and approvals of Governmental Authorities in connection with the matters referred to in Section 5.5(b) of the Disclosure Schedule or as are otherwise necessary and appropriate to consummate the transactions contemplated hereby (including obtaining the Required Permits for the Stores, if applicable). In furtherance of the foregoing, Buyer shall make application to the applicable authorities to obtain the Required Permits for the Stores, and any such application shall be made promptly after the execution of this Agreement and shall be diligently pursued by Buyer, at Buyer's sole cost and expense. Buyer shall use reasonable best efforts to expeditiously obtain the Required Permits for the Stores and Sellers, at no out-of-pocket cost or expense to Sellers, shall reasonably cooperate with Buyer in obtaining such Required Permits. Buyer shall engage an expeditor to assist Buyer in obtaining such Required Permits for the Stores.

(c) Seller will give notices required by any WARN Act applicable to the employees of the Stores within a reasonable amount of time after the date of this Agreement.

Section 5.6 Notice of Developments. Each Seller and Buyer will give prompt written notice to the other Parties of (a) the existence of any fact or circumstance, or the occurrence of any event, of which to the Knowledge of Sellers, or to the knowledge of Buyer, as applicable, would reasonably be likely to cause a condition to a Party's obligations to consummate the transactions contemplated hereby set forth in Article VII not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; provided, however, that the delivery of any such notice pursuant to this Section 5.6 shall not (i) be deemed to amend or supplement this Agreement, (ii) cure any breach of, or non-compliance with, any other provision of this Agreement or (iii) limit the remedies available to the Party receiving such notice; provided, further, that the terms and conditions of the Confidentiality Agreement shall apply to any information provided under this Section 5.6. The Parties agree that Buyer and Sellers' respective compliance or failure of compliance with this Section 5.6 shall not be taken into account for purposes of determining whether the conditions referred to in Section 7.1, Section 7.2 or Section 7.3, respectively, shall have been satisfied.

Section 5.7 Access; No Contact. Upon the reasonable request of Buyer, and to the extent not otherwise prohibited by applicable Law, (i) after the date of this Agreement and prior to Closing, Sellers will permit Buyer and its Representatives to have, upon reasonable advance written notice, reasonable access to all premises, properties, books and records included in the Acquired Assets (including for purposes of effecting the installation of point of sale systems on up to fifty percent (50%) of the cash registers at each Store), and to management of Sellers, during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of any Seller and (ii) Sellers will permit Buyer and its Representatives to discuss possible modifications to any Red Hook Lease or Assumed Lease with the applicable counterparty thereto, and to interview employees to whom Buyer is required or intends to provide offers of employment in accordance with Section 6.4(a); provided, however, that, for avoidance of doubt, (a) the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto or any confidentiality obligations to which Sellers are bound and (b) Buyer and its Representatives shall not conduct any intrusive sampling or testing of environmental media such as soil, groundwater or building materials; provided, further, that the auditors and accountants of any Seller, or any of their respective Affiliates or the Business shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants. If reasonably requested by Sellers, Buyer shall enter into a customary and mutually acceptable joint defense agreement with Sellers with respect to any information to be provided to Buyer pursuant to this Section 5.7. Prior to the Closing, except as provided above, Buyer shall not, and shall cause its Representatives not to, contact any employees, vendors, customers, suppliers, landlords or licensors of any Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of each Seller.

Section 5.8 Bulk Transfer Laws. Buyer acknowledges that Sellers will not comply with the provisions of any bulk transfer Laws or similar Laws of any jurisdiction in connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

Section 5.9 Replacement Bonding Requirements. On or prior to the Closing Date, Buyer shall, at the election of Buyer, either (a) provide replacement guarantees, standby letters of credit, security deposits or other assurances of payment with respect to all Bonding Requirements, in form and substance reasonably satisfactory to Sellers and any landlords, banks or other counterparty thereto, and, both prior to and following the Closing Date, Buyer and Sellers shall cooperate to obtain a release in form and substance reasonably satisfactory to Buyer and Sellers with respect to all Bonding Requirements, (b) Buyer shall deliver to Sellers an irrevocable, unconditional standby letter of credit in favor of Sellers in an amount equal to the amount of such Bonding Requirements, issued by a bank rated "A" or better by Standard and Poor's, in form and substance reasonably satisfactory to Sellers or (c) elect to have the Sellers' method of satisfying the Bonding Requirements apply to Buyer, to the extent transferrable. For the avoidance of doubt, on or prior to the Closing Date, Buyer shall replace the Sellers' security deposit or letter of credit with the landlord of the Douglaston Store and either (i) facilitate with the landlord the return of such security deposit or letter of credit to Sellers, or (ii) shall pay Sellers the entire

amount of the security deposit or letter of credit and take over or otherwise replace the security deposit or letter of credit with the landlord.

Section 5.10 Third Party Data. Prior to the Closing Date and upon the request of Buyer, Sellers will consent to any reasonable request from the grocery delivery service known as ‘Instacart’ or other third party service providers to provide copies of batch files and other similar information regarding to deliveries and in-store inventory at the Stores to Buyer.

Section 5.11 Costs and Expenses Reimbursement. If, in accordance with Section 2.4, Buyer elects to extend the Closing Date beyond July 31, 2020, Buyer shall pay Sellers the costs and expenses of operating the Stores (including any corporate overhead related to the Stores), from July 31, 2020 until the earlier to occur of the Closing or the termination of this Agreement on a weekly basis within two (2) Business Days after receiving an invoice from Sellers. To the extent Buyer has complied with its payment obligations set forth in this Section 5.11, Sellers shall pay on the Closing Date or the date the Agreement is terminated, any revenue generated during such period.

Section 5.12 Store Exclusive Emails. Prior to the Closing, at such time as Sellers and Buyer mutually agrees to do so, Sellers shall send an email to all of the Store Exclusive Emails indicating that Sellers are transferring the Stores to Buyer and providing each such customer an opportunity to “opt in” or “opt out” of any future communications to those emails from Sellers or Buyer. Sellers shall allow Buyer a reasonable opportunity to review and comment on the contents of such email transmission.

Section 5.13 Inventory Closing. If Buyer extends the Closing in accordance with Section 2.4, and the Closing has not occurred by August 24, 2020, Buyer agrees and acknowledges that Buyer is obligated to acquire all Inventory as of such date and such Inventory shall be transferred to Buyer, and the Inventory Escrow Amount, as adjusted pursuant to Section 2.3(a), shall be released to Sellers.

ARTICLE VI OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing:

Section 6.1 Further Assurances. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will, at the requesting Party’s sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Buyer all of the Acquired Assets or to confirm Buyer’s assumption of the Assumed Liabilities.

Section 6.2 Access: Enforcement: Record Retention. From and after the Closing, upon request by any Seller, Buyer will permit Sellers and their Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the

normal business operations of Buyer, to all premises, properties, personnel, books and records, and Contracts of or related to the Acquired Assets or the Assumed Liabilities for any reasonable business purpose, including (a) preparing Tax Returns and in connection with any audit with respect to any Taxes, (b) monitoring or enforcing rights or obligations of any Seller under this Agreement or any of the Related Agreements, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Buyer to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, (ii) such action could reasonably be expected to result in violation of applicable Law, or (iii) providing such access or information would reasonably be expected to be disruptive to its normal business operations. Buyer agrees to maintain the files or records which are contemplated by the first sentence of this Section 6.2 in a manner consistent in all material respects with its document retention and destruction policies, as in effect from time to time, for six (6) years following the Closing.

Section 6.3 Treatment of Affected Labor Agreements. With respect to Covered Employees under an Affected Labor Agreement, Buyer shall engage in good faith negotiations, in coordination with Sellers, to reach mutually satisfactory modifications to the relevant Affected Labor Agreement with each of the Affected Unions and to enter into a Modified Labor Agreement with each of the Affected Unions. Sellers consent to Buyer having direct conversations and negotiations, not including Sellers, with each of the Affected Unions concerning the terms and conditions of a Modified Labor Agreement; provided, that Buyer shall provide reasonably advance notice to Sellers in advance of any direct conversations and negotiations with the Affected Unions and Buyer shall keep Sellers apprised of the status of such negotiations and developments as promptly as practicable. Such Modified Labor Agreement shall constitute a Transferred Contract. Buyer, in coordination with Sellers, shall propose a Modified Labor Agreement to each Affected Union (each, a “Proposal”), which Proposal may be modified as a result of Buyer’s and/or Sellers’ good faith negotiations with the Affected Unions. Buyer agrees to cooperate with Sellers in providing each Affected Union with complete and reliable information to allow the Affected Unions to evaluate the Proposal. For all purposes under this Section 6.3. Buyer acknowledges the requirements of sections 1113 and 1114 of the Bankruptcy Code and agrees to use good faith reasonable best efforts to cooperate with Sellers in ensuring compliance with any applicable provisions thereof.

Section 6.4 Covered Employees.

(a) Offer of Employment. At least five (5) days prior to the Closing Date, Buyer or one of its Affiliates shall make a written offer of employment, effective as of the Closing Date, to substantially all, but in any event, no less than ninety percent (90%) of the Covered Employees that are subject to an Affected Labor Agreement (A) at the same location of employment as such Covered Employee’s location of employment as of immediately prior to Closing or at a location operated by Buyer’s Affiliates that is within a reasonable commuting distance from such Covered Employee’s current location of employment, (B) on the same terms and conditions of employment as in effect immediately prior to Closing, except as modified by a Modified Labor Agreement, or as otherwise set forth in this Agreement, and (C) with compensation and benefits at a level consistent with the compensation and benefits offered to Buyer’s employees in its other locations and otherwise with Section 6.4(c) or Section 6.4(c) of the

Disclosure Schedule. For purposes of this Section 6.4, any Covered Employee who becomes employed by Buyer or one of its Affiliates in accordance with this Section 6.4(a) is referred to as a “Transferred Employee.” With respect to union-represented Covered Employees, such offers shall also be consistent with the terms and conditions required by the Modified Labor Agreements, as applicable. With respect to any Covered Employee who is on a long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Covered Employee returning to active status within a reasonable period. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Modified Labor Agreements, as applicable, at any time following the Closing Date. All offers of employment to Covered Employees not governed by a Modified Labor Agreement shall be for “at will” employment. Notwithstanding anything to the contrary set forth in this Section 6.4, no Covered Employee shall be offered an employment contract.

(b) Covered Employees and Employee Benefit Plans.

(i) Liabilities. Effective as of the Closing, Buyer shall, or shall cause an Affiliate to, assume any and all Liabilities relating to, arising out of, or resulting from the employment or services, of any Transferred Employee, to the extent such Liabilities are based on any event which first occurs or exists on or after the Closing. Nothing set forth herein shall require Buyer to assume any Liability of Sellers to any employee arising out of Sellers’ operation of the Business or any business or arising from operation or ownership of the Acquired Assets, prior to Closing. Sellers shall retain, as the case may be, any and all Liabilities relating to, arising out of, or resulting from the employment or services, or termination of employment or services, of any Transferred Employee, including under any Collective Bargaining Agreement, to the extent such Liabilities arise prior to the Closing. Nothing contained herein shall obligate Buyer to pay or satisfy any liability to any employee of Sellers for any severance benefits.

(ii) Benefit Plans. Effective as of the Closing, Sellers or an applicable Subsidiary shall terminate the participation of each Transferred Employee and such Transferred Employee’s eligible dependents in each Employee Benefit Plan.

(c) Compensation and Benefits.

(i) Commencing on the Closing Date and continuing through the first anniversary of the Closing Date, Buyer or its Affiliates shall provide or cause to be provided to the Transferred Employees not covered by a Modified Labor Agreement who remain in Buyer’s employ, (A) a base salary or wage rate, as applicable, and (B) employee benefits, no less favorable than provided to other employees working in stores operated by Buyer or its Affiliates in New York City.

(ii) Buyer or its Affiliates shall provide Transferred Employees with the severance benefits provided to other employees working in stores operated by

Buyer or its Affiliates in New York City, or under any Modified Labor Agreement, as applicable.

(iii) As of the Closing Date, Buyer will honor the governing Modified Labor Agreements to the extent executed prior to Closing.

(d) 401(k) Plan. Effective as of the Closing, and subject to the terms of the Modified Labor Agreements, each Transferred Employee eligible to participate in the tax-qualified defined contribution plan maintained by Sellers and their Subsidiaries (the “Seller 401(k) Plan”) shall be eligible to participate in a defined contribution plan sponsored by Buyer or its Affiliates that is intended to be qualified under Section 401(a) of the Code (a “Buyer 401(k) Plan”). Effective as of the Closing, in accordance with the terms of the Seller 401(k) Plan, the Seller 401(k) Plan shall provide Transferred Employees with the right to elect a distribution from the Seller 401(k) Plan and Buyer shall use commercially reasonable efforts to cause the Buyer 401(k) Plan to accept the rollover by any Transferred Employees of any “eligible rollover distribution” (within the meaning of Section 402(c)(4) of the Code) from the Seller 401(k) Plan, including plan loans.

(e) Multiemployer Plans. The Sale Order shall provide that with respect to any Multiemployer Plan, pension plan, or Employee Benefit Plan to which a Seller is a party or by which it is bound, Buyer shall have no Liability.

(f) Accrued Vacation. Subject to the terms of the Modified Labor Agreements (i) Buyer or its Affiliates shall provide each Transferred Employee with credit for the same number of vacation and sickness benefit days such Transferred Employee has accrued but not used between January 1, 2020 and the Closing Date, subject to and in accordance with applicable Law or Buyer’s policies governing other employees working in stores operated in New York City by Buyer or its Affiliates.

(g) Welfare Benefit Claims; COBRA. On the Closing Date, Sellers and their Subsidiaries shall cease to provide welfare coverage to each Transferred Employee and his or her covered dependents who are covered by a welfare benefit plan sponsored by Sellers and their Subsidiaries, and Buyer or its Affiliates shall commence providing such coverage to such individuals, subject to and in accordance with Buyer’s policies governing other New York City employees of Buyer or its Affiliates. Sellers shall be responsible in accordance with its applicable welfare plans (and the applicable welfare plans of their Subsidiaries) in effect prior to the Closing Date for all reimbursement claims (such as medical and dental claims) for expenses incurred, and for all non-reimbursement claims (such as life insurance claims) incurred, under Sellers’ or their Subsidiaries’ Employee Benefit Plans that are welfare benefit plans prior to the Closing Date by the Transferred Employees and their dependents. Buyer or its Affiliates shall be responsible in accordance with the applicable welfare plans of Buyer’s Affiliate for all reimbursement claims (such as medical and dental claims) for expenses incurred, and for all non-reimbursement claims (such as life insurance claims) based on facts or events which first occur on or after the Closing Date (or the date of commencement of employment with Buyer, if later) by Transferred Employees and their dependents. For purposes of this Section 6.4(g), a claim shall be deemed to have been incurred as follows: (i) for health, dental and prescription drug benefits,

upon provision of such services, (ii) for life, accidental death and dismemberment and business travel accident insurance benefits, upon the death, disability or accident giving rise to such benefits, and (iii) for hospital- provided health, dental, prescription drug or the benefits that become payable with respect to any hospital confinement, on such employee's admission to the hospital. Sellers or their Subsidiaries shall provide coverage required by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") under Sellers' or their Subsidiaries' Employee Benefit Plans that are group health plans with respect to qualifying events occurring prior to the Closing Date. Buyer and its Affiliates shall provide coverage required by COBRA to Transferred Employees and their eligible dependents or beneficiaries under Buyer's group health plans with respect to qualifying events occurring on and after the Closing Date.

No Third Party Beneficiary Rights. The Parties agree that nothing in this Section 6.4, whether express or implied, is intended to create any third party beneficiary rights in any Covered Employee.

Cooperation. After the Closing Date, the parties shall cooperate with each other to provide such current information regarding the Transferred Employees on an ongoing basis as may be necessary to facilitate determinations of eligibility for, and payments of benefits to, the Transferred Employees under any applicable employee benefit that continues to be maintained by Sellers or their Affiliates. Buyer shall, and shall cause its Affiliates to, permit Transferred Employees to provide such assistance to Sellers as may be required in respect of claims against Sellers or their Affiliates, whether asserted or threatened, to the extent that, in Sellers' opinion, (i) a Transferred Employee has knowledge of relevant facts or issues, or (ii) a Transferred Employee's assistance is reasonably necessary in respect of any such claim, at no cost or expense to Buyer. Sellers shall provide Buyer with all relevant records (or copies thereof) with respect to all Transferred Employees' employment by Buyer to the extent allowed by Law.

Section 6.5 Transfer Taxes. To the extent that any such Taxes are payable, Buyer shall pay any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income Tax, fee or governmental charge (a "Transfer Tax") imposed under applicable Law in connection with the transactions contemplated hereby. Accordingly, if any Seller is required by Law to pay any such Transfer Taxes, Buyer shall promptly reimburse such Seller for the amount of such Transfer Taxes actually paid by such Seller. The party that is required by applicable Law to file any Tax Returns in connection with Transfer Taxes described in the immediately preceding sentence shall prepare and timely file such Tax Returns. The Parties shall cooperate to permit the filing party to prepare and timely file any such Tax Returns.

Section 6.6 Insurance Matters. Buyer acknowledges that, upon Closing, all insurance coverage provided in relation to Sellers, the Stores or the Acquired Assets that is maintained by any Seller or its Affiliates (whether such policies are maintained with third party insurers or with such Seller or its Affiliates) shall cease to provide any coverage to Buyer, the Stores or the Acquired Assets, and no further coverage shall be available to Buyer, the Stores or the Acquired Assets under any such policies.

Section 6.7 Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this

Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required (a) by applicable Law or Decree of the Bankruptcy Court or (b) any announcement by Sellers to its employees, customers and suppliers to the extent Sellers reasonably determines in good faith that such announcement is necessary or advisable in connection with the transactions contemplated hereby. If any such announcement or other disclosure is required by applicable Law or a Decree of the Bankruptcy Court, the disclosing Party shall give the nondisclosing Parties prior notice of, and an opportunity to comment on, the proposed disclosure. The Parties acknowledge that Sellers shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order.

Section 6.8 Use of Seller Marks. The Seller Marks may appear on some of the Acquired Assets, including on signage. Buyer acknowledges and agrees that it does not have and, upon consummation of the transactions contemplated by this Agreement, will not have, any right, title, interest, license, or other right to use the Seller Marks. Buyer shall refrain from the use and display of the Acquired Assets on which the Seller Marks are affixed.

ARTICLE VII

CONDITIONS TO OBLIGATION TO CLOSE

Section 7.1 Conditions to Each Party's Obligations. The respective obligation of each Party to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

- (a) all applicable waiting periods under any Antitrust Law shall have expired or otherwise been terminated;
- (b) no material Decree shall be in effect that prohibits the consummation of the transactions contemplated by this Agreement; and
- (c) the Bankruptcy Court shall have entered (i) the Sale Order and (ii) any Related Order (if any), and no order staying, reversing, modifying, or materially amending such orders shall be in effect on the Closing Date.

Section 7.2 Conditions to Buyer's Obligations. Buyer's obligation to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

- (a) the representations and warranties set forth in Article III shall have been true and correct on the date hereof and as of the Closing in all material respects (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);
- (b) Sellers shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;
- (c) each delivery contemplated by Section 2.5(a) to be delivered to Buyer shall have been delivered; and

Section 7.3 Conditions to Sellers' Obligations. Sellers' obligations to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(a) the representations and warranties set forth in Article IV shall have been true and correct in all material respects (except that any representation or warranty that is qualified by materiality shall have been true and correct in all respects) on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);

(b) Buyer shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects; and

(c) each payment contemplated by Section 2.5(b) to be made to Sellers shall have been made, and each delivery contemplated by Section 2.5(b) to be delivered to Sellers shall have been delivered.

Section 7.4 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 7.2 or Section 7.3, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its reasonable best efforts (or best efforts, with respect to those matters contemplated by Section 5.3) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant hereunder.

ARTICLE VIII TERMINATION

Section 8.1 Termination of Agreement. The Parties may terminate this Agreement at any time prior to the Closing as provided below:

(a) by the mutual written consent of the Parties;

(b) by any Party by giving written notice to the other Parties if:

(i) any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available to Buyer if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of Buyer to have fulfilled any of its obligations under this Agreement; or

(ii) the Closing shall not have occurred on or prior to July 31, 2020 or such later date as may be extended pursuant to Section 2.4 (the "Outside Date");

provided, however, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Sellers, then the breaching Party may not terminate this Agreement pursuant to this Section 8.1(b)(ii).

(c) by Buyer by giving written notice to each Seller if there has been a breach by any Seller of any representation, warranty, covenant or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Buyer at the Closing set forth in Section 7.2(a) and Section 7.2(b), and such breach has not been waived by Buyer, or, if such breach is curable, cured by such Seller prior to the earlier to occur of (i) ten (10) days after receipt of Buyer's notice of intent to terminate and (ii) the Outside Date.

(d) by any Seller by giving written notice to Buyer and the other Sellers if there has been a breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Sellers at the Closing set forth in Section 7.3(a) and Section 7.3(b), and such breach has not been waived by such Seller, or, if such breach is curable, cured by Buyer prior to the earlier to occur of (i) ten (10) days after receipt of such Seller's notice of intent to terminate; provided, that such right to cure shall not apply to a breach by Buyer of Section 5.5(b), and (ii) the Outside Date;

(e) by Sellers or Buyer if the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement;

(f) by Sellers by giving written notice to Buyer, if the Closing has not occurred by August 24, 2020.

Section 8.2 Effect of Termination. If any Party validly terminates this Agreement pursuant to Section 8.1, all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I, Section 4.8, Section 8.3, Article IX, and this Section 8.2 shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 8.3) to the other Party hereunder; provided, however, that nothing in this Section 8.2 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, or intentionally fraudulent); provided, further, that the maximum Liability of Buyer shall not exceed the aggregate of the Cash Purchase Price and the maximum Liability of Sellers under this Agreement shall not exceed the aggregate of the Cash Purchase Price.

Section 8.3 Lease Indemnity. If this Agreement is terminated pursuant to Section 8.1(d), following entry of a final non-appealable Sale Order, Buyer shall indemnify Sellers for all Liabilities and Damages arising out of any Lease assumed by Sellers which is not transferred by Sellers to any other Person.

ARTICLE IX
MISCELLANEOUS

Section 9.1 Survival. Except for any covenant that by its terms is to be performed (in whole or in part) by any Party following the Closing, none of the representations, warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 2.5(a) or Section 2.5(b) shall survive, and each of the same shall terminate and be of no further force or effect as of, the Closing.

Section 9.2 Expenses. Except as otherwise expressly set forth herein, each Party will bear its own costs and expenses incurred in connection with the preparation and execution of this Agreement and the Related Agreements, the compliance herewith and therewith and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants. For the avoidance of doubt, Buyer shall pay all recording fees arising from the transfer of the Acquired Assets.

Section 9.3 Entire Agreement. This Agreement, together with any documents, instruments and certificates explicitly entered referred to herein, the Related Agreements and the Confidentiality Agreement constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

Section 9.4 Incorporation of Exhibits and Disclosure Schedule. The Exhibits to this Agreement and the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties. Buyer may, upon prior written notice to Sellers,

assign this Agreement to one or more subsidiaries of Buyer, provided, however, any such assignment shall not reduce or limit Buyer's obligations under this Agreement.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) on the day such communication was sent by e-mail unless the sender receives a "bounceback" or similar indication that the e-mail was not delivered to the recipient; or (d) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Seller: Fairway Group Holdings Corp.
2284 12th Avenue
New York, NY 10027
Attention: Nathalie Augustin
E-mail: Nathalie.Augustin@fairwaymarket.com

With a copy (which shall not constitute notice to Sellers) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Ray C. Schrock, P.C., Gavin Westerman and Sunny Singh
E-mail: ray.schrock@weil.com, gavin.westerman@weil.com and sunny.singh@weil.com

If to Buyer: Seven Seas [____], LLC
Attention: Pasquale J. Conte
51-47 69th Street
Flushing, NY 11377
Email: psctapps@aol.com; Attention: Paul Conte

With a copy (which shall not constitute notice to Buyer) to:

Key Food Stores Co-Operative, Inc.
1200 South Avenue Staten Island, NY 20314
Attention: Dean Janeway
Facsimile: (718) 697-8296
E-mail: DeanJ@HQ.Keyfoods.com

and

Ropes & Gray, LLP
1211 Avenue of the Americas

New York, NY 10036-8704
Attention: Jane D. Goldstein
Facsimile: (617) 235-0376
Email: Jane.Goldstein@ropesgray.com

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 9.7.

Section 9.8 Governing Law and Venue: Submission to Jurisdiction: Selection of Forum; Waiver of Trial by Jury.

(a) This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the state of New York without regard to the conflict of laws rules or principles thereof (or any other jurisdiction) to the extent that such laws, rules or principles would direct a matter to another jurisdiction, except as otherwise required under the laws of the state of New York.

(b) Each of the Parties agrees that: (i) it shall bring any Proceeding in connection with, arising out of or otherwise relating to this Agreement, any instrument or other document delivered pursuant to this Agreement or the transactions contemplated by this Agreement exclusively in the Bankruptcy Courts; and (ii) solely in connection with such Proceedings, (A) irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Courts, (B) waives any objection to the laying of venue in any such Proceeding in the Bankruptcy Courts, (C) waives any objection that the Bankruptcy Courts are an inconvenient forum or do not have jurisdiction over any Party, (D) agrees that mailing of process or other papers in connection with any such Proceeding in the manner provided in Section 9.7 or in such other manner as may be permitted by applicable Law shall be valid and sufficient service thereof and (E) it shall not assert as a defense any matter or claim waived by the foregoing clauses (A) through (D) of this Section 9.8(b) or that any Order issued by the Bankruptcy Courts may not be enforced in or by the Bankruptcy Courts; provided, however, that (x) if the Bankruptcy Cases have not been commenced or (y) upon the closing of the Bankruptcy Cases, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the U.S. District Court for the Southern District of New York sitting in New York County or the Commercial Division of the Courts of the State of New York sitting in the County of New York and any appellate court from any thereof, for the resolution of any such Proceeding. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Proceeding arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby.

(c) EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 9.9 Specific Performance. Each Party acknowledges and agrees that irreparable damage would occur, and no adequate remedy other than specific performance would exist at Law or in equity, in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached (or any Party threatens such a breach). Therefore, it is agreed that each Party shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any Party may have under this Agreement or otherwise. The Parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to applicable Law or inequitable for any reason, and not to assert that a remedy of monetary Damages would provide an adequate remedy for any such breach or that Buyer or Sellers, as applicable, otherwise have an adequate remedy at Law.

Section 9.10 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

Section 9.11 No Third Party Beneficiaries. Except as set forth in this Section 9.11 and Section 9.12, this Agreement shall not confer any rights or remedies upon any Person other than Buyer, each Seller, and their respective successors and permitted assigns.

Section 9.12 Non-Recourse. All claims or causes of action (whether in contract or in tort, at Law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement or the Related Agreements may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (the "Contracting Parties"). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any Contracting Party's Representatives ("Non- Party Affiliates"), shall have any Liability (whether in contract or in tort, at Law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or Affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or the Related Agreements or based on, in respect of, or by reason of this Agreement or the Related Agreements or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at Law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise;

and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or the Related Agreements or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 9.12.

Section 9.13 Interest. If any payment required to be made to a Party under this Agreement is made after the date on which such payment is due, interest shall accrue on such amount from (but not including) the due date of the payment to (and including) the date such payment is actually made at the Interest Rate. All computations of interest pursuant to this Agreement shall be made on the basis of a year of three hundred sixty five (365) days, in each case for the actual number of days from (but not including) the first day to (and including) the last day occurring in the period for which such interest is payable.

Section 9.14 Limitation on Liability. Notwithstanding anything to the contrary in this Agreement or any Related Agreement, in no event shall any Party have any Liability under this Agreement or any Related Agreement for any consequential, special, incidental, indirect or punitive damages, lost profits or similar items (including loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to a breach or alleged breach of this Agreement); provided, that such limitation with respect to lost profits shall not limit any Party's right to recover contract damages in connection with such Party's failure to close in breach or violation of this Agreement.

Section 9.15 Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.16 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Sellers in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure for all purposes of this Agreement and all other sections of the Disclosure Schedule to which such matter relates. The listing of any matter shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the listing of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers' representations, warranties, or covenants set forth in this Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the applicable section of the Disclosure Schedule in which they are directly or indirectly referenced. The information contained in the Disclosure Schedule is in all respects provided subject to the Confidentiality Agreement.

Section 9.17 Headings: Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.18 Counterparts: Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

Section 9.19 Limitations Under Applicable Law. Notwithstanding anything to the contrary contained in this Agreement, Sellers' obligations hereunder shall be subject to limitations under applicable Law, including Sections 1113 and 1114 of the Bankruptcy Code.

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DISCLOSURE SCHEDULE
to the
PURCHASE AGREEMENT
BY AND AMONG
FAIRWAY GROUP HOLDINGS CORP.,
FAIRWAY [_____] LLC,
AND
SEVEN SEAS [_____] LLC

Dated as of [_____] , 2020

Disclosure Schedule

This Disclosure Schedule has been prepared and delivered in accordance with that certain Purchase Agreement (the “Agreement”), dated as of [____], 2020, by and among Fairway Group Holdings Corp., a Delaware corporation (the “Company”), Fairway [____] LLC, a Delaware limited liability company (together with the Company, “Sellers”) and Seven Seas [____], LLC, a New York limited liability company (“Buyer”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement. The Disclosure Schedule is subject to the terms and conditions of the Agreement, which are deemed incorporated herein by reference.

The information provided in the Disclosure Schedule is being provided in confidence on the terms and subject to the conditions of the Agreement and solely for the purpose of making disclosures to the Buyer under the Agreement. In disclosing this information, Sellers expressly do not waive any attorney-client privilege associated with such information or any protection afforded by the work-product doctrine with respect to any of the matters disclosed or discussed herein.

Certain agreements and other matters are listed in one or more Sections of the Disclosure Schedule for informational purposes only, notwithstanding the fact that, because they do not fall within the relevant minimum thresholds or materiality standards set forth in the Agreement, they are not required to be referred to or disclosed herein by the terms of the Agreement, and disclosure of any such item shall not in any way modify the standard for disclosure set forth in the Agreement or be deemed to require a similar level of disclosure on that or on any other Section of the Disclosure Schedule. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the listing of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers’ representations, warranties, or covenants set forth in the Agreement. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure for all purposes of the Agreement and all other sections of the Disclosure Schedule to which such matter relates.

The listing of any matter, information or item in the Sections of the Disclosure Schedule shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under the Agreement or falls within relevant minimum thresholds or materiality standards set forth in the Agreement. The information contained in the Disclosure Schedule is in all respects provided subject to the Confidentiality Agreement.

Section 1.1(a)
Assumed Leases

1. [Lease Agreement, dated as of June 4, 2008, by and between Douglaston Shopping Center Owner, LLC and Fairway Douglaston, LLC, as amended]
2. [Lease Agreement, dated January 24, 2005, by and between Kings Harbor View Associates Limited Partnership and Fairway Red Hook LLC, as amended (and related leases)]

Section 1.1(b)

Transferred Contracts

1. [Lease Agreement, dated as of June 4, 2008, by and between Douglaston Shopping Center Owner, LLC and Fairway Douglaston, LLC, as amended]
2. [Lease Agreement, dated January 24, 2005, by and between Kings Harbor View Associates Limited Partnership and Fairway Red Hook LLC, as amended (and related leases)]

Section 1.1(c)

Other Acquired Assets

1. None.

Section 1.1(d)

Affected Labor Agreements

Section 1.1(e)

Affected Unions

Section 1.1(f)

Seller Marks (as defined under Excluded Assets)

TRADEMARKS

COPYRIGHTS

PATENT

Section 1.1(g)

Excluded Furnishings and Equipment

Section 1.1(h)

Other Excluded Assets

1. [None.]

Section 1.1(i)
Furnishings and Equipment

Section 1.1(j)

Knowledge Parties

1. [Abel T. Porter (Chief Executive Officer)
2. Brad Schneider (Chief Financial Officer)
3. Charles Farfaglia (Senior Vice President of Human Resources)
4. Maureen Page (Vice President – Finance)]

Section 3.1

Organization; Good Standing and Qualification

1. None.

Section 3.2

Authorization of Transaction

1. None.

Section 3.3

No Conflict; Government Filings

Section 3.4

Real Property

Store Location

1. [480-500 Van Brunt Street, Brooklyn, NY, 11231 (and related premises)]
2. [242-02 61st Avenue, Douglaston, NY, 11362]

Leases

1. The leases set forth in Section 1.1(a) of this Disclosure Schedule is incorporated herein by reference.

Section 3.5

Proceedings; Decrees

1. None.

Section 3.6

Labor Relations

Section 3.7

Brokers' Fees

1. None.

Section 3.8

Taxes

1. None.

Section 3.9(a)

Employee Benefits and Costs

Section 3.9(h)

Employee Benefits and Costs

Section 3.12

Financial Statements

Section 5.1(a)

Conduct of the Business Pending Closing

1. None.

Section 5.1(b)

Conduct of the Business Pending Closing

Section 5.5(a)

Notice and Consents

1. None.

Section 5.5(b)

Governmental Authorizations

1. None.

BILL OF SALE

This **BILL OF SALE** (this “Bill of Sale”) is entered into and effective as of [____], 2020, by and among Fairway Group Holdings Corp., a Delaware corporation (the “Company”), and the direct and indirect wholly-owned Subsidiaries of the Company that are signatories thereto (together with the Company, the “Sellers”) and Seven Seas [____], LLC, a New York limited liability company (“Buyer”). Sellers and Buyer are referred to collectively herein as the “Parties.”

WHEREAS, Sellers and Buyer are parties to that certain Asset Purchase Agreement, dated [____], 2020 (the “Purchase Agreement”) (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement); and

WHEREAS, the execution and delivery of this Bill of Sale is contemplated by Sections 2.5(a)(i) and 2.5(b)(ii) of the Purchase Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, and in consideration of the representations, warranties and covenants set forth in the Purchase Agreement, the Parties hereby agree as follows:

1. Sale and Acceptance of Acquired Assets. For true and lawful consideration paid to Sellers by Buyer, the sufficiency of which is hereby acknowledged, effective as of the Closing, Buyer hereby purchases from Sellers and Sellers hereby sell, transfer, assign, convey, and deliver to Buyer all of its right, title and interest in and to the Acquired Assets (excluding any bulk coffee beans), in each case free and clear of Liens or Claims to the maximum extent permitted under applicable bankruptcy law, except for Permitted Liens. As of the Closing, Buyer hereby accepts the foregoing sale, transfer, assignment, conveyance and delivery.

2. Conflict. The sale, transfer, assignment, conveyance, and delivery of the Acquired Assets made hereunder are made in accordance with and subject to all the terms and conditions of the Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference and which terms and conditions shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of a conflict between the terms and conditions of this Bill of Sale and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede, and prevail. Notwithstanding anything to the contrary in this Bill of Sale, nothing herein is intended to, nor shall it, extend, amplify, reduce or otherwise alter the representations, warranties, covenants, obligations, and remedies of the Parties contained in the Purchase Agreement or the survival thereof.

3. Notices. Any notice, request, or other document to be given hereunder to any Party shall be given in the manner specified in Section 9.7 of the Purchase Agreement. Any Party may change its address for receiving notices, requests, and other documents by giving written notice of such change to the other Parties.

4. Severability. The invalidity or unenforceability of any provision of this Bill of Sale shall not affect the validity or enforceability of any other provisions of this Bill of Sale.

5. Enforceability. In the event that any of the provisions of this Bill of Sale shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Bill of Sale shall otherwise remain in full force and effect.

6. Amendments and Waivers. No amendment of any provision of this Bill of Sale shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Bill of Sale shall be construed as an implied amendment or agreement to amend or modify any provision of this Bill of Sale. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Bill of Sale shall be binding unless this Bill of Sale is amended or modified in writing pursuant to the first sentence of this Section 6 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

7. Further Assurances. In case at any time after the Closing any further action is necessary to carry out the purposes of this Bill of Sale, each of the Parties will, at the requesting Party's sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Buyer all of the Acquired Assets or to confirm Buyer's assumption of the Assumed Liabilities.

8. Counterparts; Facsimile and Electronic Signatures. This Bill of Sale may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Bill of Sale or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

9. Governing Law. This Bill of Sale shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the state of New York without regard to the conflict of laws rules or principles thereof (or any other jurisdiction) to the extent that such laws, rules or principles would direct a matter to another jurisdiction, except as otherwise required under the laws of the state of New York.

10. Succession and Assignment. This Bill of Sale shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Bill of Sale or any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties.

11. Third Party Beneficiaries and Obligations. This Bill of Sale shall not confer any rights or remedies upon any Person other than Buyer, each Seller, and their respective successors and permitted assigns.

12. Entire Agreement. This Bill of Sale, together with the Purchase Agreement and the exhibits and the documents referred to in the Purchase Agreement, the Related Agreements and the Confidentiality Agreement constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

* * * * *

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

SELLERS:

FAIRWAY GROUP HOLDINGS CORP.

By: _____
Name:
Title:

FAIRWAY [_____] LLC

By: _____
Name:
Title:

[Signature Page to Bill of Sale]

BUYER:

SEVEN SEAS [____], LLC

By: _____

Name:

Title:

[Signature Page to Bill of Sale]

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “Agreement”) is entered into and effective as of [____], 2020, by and among Fairway Group Holdings Corp., a Delaware corporation (the “Company”), and the direct and indirect wholly-owned Subsidiaries of the Company that are signatories thereto (together with the Company, the “Sellers”) and Seven Seas [____], LLC, a New York limited liability company (“Buyer”). Sellers and Buyer are referred to collectively herein as the “Parties.”

WHEREAS, the Parties are parties to that certain Asset Purchase Agreement, dated [____], 2020 (the “Purchase Agreement”) (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement); and

WHEREAS, the execution and delivery of this Agreement is contemplated by Sections 2.5(a)(ii) and 2.5(b)(iii) of the Purchase Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, and in consideration of the representations, warranties and covenants set forth in the Purchase Agreement, the Parties hereby agree as follows:

- 1) Assignment and Assumption. Effective as of the Closing, Sellers hereby sell, transfer, assign, convey, and deliver to Buyer, all of the Acquired Assets (excluding the Assumed Lease and any bulk coffee beans), including, without limitation, all of Sellers’ right, title, and interest in and to the Transferred Contracts (excluding the Assumed Lease), free and clear of Liens or Claims to the maximum extent permitted under applicable bankruptcy law, except for Permitted Liens, and Buyer hereby assumes all Assumed Liabilities and agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms thereof, in each case to the extent provided in the Purchase Agreement.
- 2) Conflict. The assignment and assumption of the Acquired Assets and the Assumed Liabilities made hereunder are made in accordance with and subject to the Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede, and prevail. Notwithstanding anything to the contrary in this Agreement, nothing herein is intended to, nor shall it, extend, amplify, impair, or otherwise alter the representations, warranties, covenants, obligations, or remedies of the Parties contained in the Purchase Agreement or the survival thereof.
- 3) Notices. Any notice, request, or other document to be given hereunder to any Party shall be given in the manner specified in Section 9.7 of the Purchase Agreement. Any Party may change its address for receiving notices, requests, and other documents by giving written notice of such change to the other Parties.
- 4) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement.
- 5) Enforceability. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

- 6) Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 6 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
- 7) Further Assurances. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will, at the requesting Party's sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Buyer all of Sellers' right, title and interest in and to the Acquired Assets or to confirm Buyer's assumption of the Assumed Liabilities.
- 8) Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original
- 9) Governing Law. This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the state of New York without regard to the conflict of laws rules or principles thereof (or any other jurisdiction) to the extent that such laws, rules or principles would direct a matter to another jurisdiction, except as otherwise required under the laws of the state of New York.
- 10) Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties.
- 11) Third Party Beneficiaries and Obligations. This Agreement shall not confer any rights or remedies upon any Person other than Buyer, each Seller, and their respective successors and permitted assigns.
- 12) Entire Agreement. This Agreement, together with the Purchase Agreement and the exhibits and the documents referred to in the Purchase Agreement, the Related Agreements and the Confidentiality Agreement constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

* * * * *

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

SELLERS:

FAIRWAY GROUP HOLDINGS CORP.

By: _____

Name:

Title:

FAIRWAY [_____] LLC

By: _____

Name:

Title:

[Signature Page to Assignment and Assumption Agreement]

BUYER:

SEVEN SEAS [_____], LLC

By: _____

Name:

Title:

[Signature Page to Assignment and Assumption Agreement]

ASSIGNMENT AND ASSUMPTION OF LEASE

This **ASSIGNMENT AND ASSUMPTION OF LEASE** (this "Assignment") is entered into and effective as of [●], 2020, by and among Fairway Group Holdings Corp., a Delaware corporation (the "Company"), Fairway [] LLC, a Delaware limited liability company and a direct or indirect wholly-owned subsidiary of the Company (together with the Company, the "Sellers") and Seven Seas [], LLC, a New York limited liability company ("Buyer"). Sellers and Buyer are referred to collectively herein as the "Parties."

WHEREAS, the Parties are parties to that certain Asset Purchase Agreement, dated [], 2020 (the "Purchase Agreement") (capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Purchase Agreement);

WHEREAS, the execution and delivery of this Assignment is contemplated by Sections 2.5(a)(iii) and 2.5(b)(iv) of the Purchase Agreement; and

WHEREAS, Sellers desire to sell, transfer, assign, convey, and deliver to Buyer the Lease described in Schedule I attached hereto including all amendments, modifications, and supplements thereto (collectively, the "Lease"), and Buyer desires to accept an assignment of the Lease together with all right, title, and interest of Sellers thereunder. The property encumbered by the Lease (the "Leased Premises") is described on Schedule II attached hereto.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in the Purchase Agreement, and in consideration of the representations, warranties and covenants set forth in the Purchase Agreement, the Parties hereby agree as follows:

- 1) Assignment of Lease. Effective as of the Closing, Sellers hereby sell, transfer, assign, convey, and deliver to Buyer all of Sellers' estate, right, title and interest as tenant of the leasehold estate described under the Lease, and Buyer hereby accepts the sale, transfer, assignment, conveyance, and delivery of Sellers' estate, rights, title and interest in, to and under such leasehold estate.
- 2) Assumption of Lease. Effective as of the Closing, Sellers hereby assign and Buyer hereby unconditionally and irrevocably assumes and agrees to pay, discharge, or perform when due, and release and discharge Sellers and their successors and assigns completely and forever from, all obligations and liabilities of any kind arising out of, or required to be performed under, such assigned Lease on or after the Closing Date, except as otherwise expressly provided under the Purchase Agreement.
- 3) Condition of the Leased Premises. Sellers shall deliver, and Buyer shall accept, possession of the Leased Premises in its "AS-IS, WHERE-IS, WITH ALL FAULTS" condition and without any representation or warranty, orally or in writing, by Sellers. No promise of Sellers to alter, remodel, or improve the Leased Premises has been made by Sellers to Buyer.
- 4) Conflict. The assignment and assumption of the Lease (and the obligations thereunder) made hereunder are made in accordance with and subject to all the terms and conditions of the Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference and which terms and conditions shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede, and prevail. Notwithstanding anything to the

contrary in this Assignment, nothing herein is intended to, nor shall it, extend, amplify, reduce or otherwise alter the representations, warranties, covenants, obligations and remedies of the Parties contained in the Purchase Agreement or the survival thereof.

- 5) Notices. Any notice, request, or other document to be given hereunder to any Party shall be given in the manner specified in Section 9.7 of the Purchase Agreement. Any Party may change its address for receiving notices, requests, and other documents by giving written notice of such change to the other Parties.
- 6) Severability. The invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of any other provisions of this Assignment.
- 7) Enforceability. In the event that any of the provisions of this Assignment shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Assignment shall otherwise remain in full force and effect.
- 8) Amendments and Waivers. No amendment of any provision of this Assignment shall be valid unless the same shall be in writing and signed by each Party. No waiver of any breach of this Assignment shall be construed as an implied amendment or agreement to amend or modify any provision of this Assignment. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Assignment shall be binding unless this Assignment is amended or modified in writing pursuant to the first sentence of this Section 8. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
- 9) Counterparts; Facsimile and Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Assignment or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.
- 10) Governing Law. This Assignment shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the state of New York without regard to the conflict of laws rules or principles thereof (or any other jurisdiction) to the extent that such laws, rules or principles would direct a matter to another jurisdiction, except as otherwise required under the laws of the state of New York.
- 11) Succession and Assignment. This Assignment shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Assignment or any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties.

- 12) Third Party Beneficiaries and Obligations. This Assignment shall not confer any rights or remedies upon any Person other than Buyer, each Seller, and their respective successors and permitted assigns.
- 13) Recordation. Subject to the following two sentences, this Assignment shall be recorded in the appropriate public records of the county in which the Leased Premises is located to the extent permitted by law and each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Party may reasonably request to give full effect to this Assignment and effectuate such recordation. Sellers make no representation regarding the recordability of this Assignment, nor the Lease or related documents. Sellers shall bear no liability for the failure of the Lease, this Assignment, or related documents to be recorded.
- 14) Entire Agreement. This Assignment, together with the Purchase Agreement and the exhibits and the documents referred to in the Purchase Agreement, the Related Agreements and the Confidentiality Agreement constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

* * * * *

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

FAIRWAY GROUP HOLDINGS CORP.

By: _____
Name:
Title:

[Signature Page to Assignment and Assumption of Lease]

FAIRWAY [_____] LLC

By: _____

Name:

Title:

[Signature Page to Assignment and Assumption of Lease]

SEVEN SEAS [____], LLC

By: _____

Name:

Title:

[Signature Page to Assignment and Assumption of Lease]

SCHEDULE I

Leases

1. [Lease Agreement, dated as of June 4, 2008, by and between Douglaston Shopping Center Owner, LLC and Fairway Douglaston, LLC, as amended]
2. [Lease Agreement, dated January 24, 2005, by and between Kings Harbor View Associates Limited Partnership and Fairway Red Hook LLC, as amended (and related leases)]

SCHEDULE II

Leased Premises

1. [480-500 Van Brunt Street, Brooklyn, NY, 11231 (and related premises)]
2. [242-02 61st Avenue, Douglaston, NY, 11362]

EXHIBIT 3

Redline Comparison of Seven Seas APA to Bogopa APA

ASSET PURCHASE AGREEMENT

BY AND AMONG

FAIRWAY GROUP HOLDINGS CORP.,

FAIRWAY RED HOOK LLC,

FAIRWAY DOUGLASTON LLC,

AND

~~BOGOPA ENTERPRISES, INC.~~
SEVEN SEAS [_____], LLC

JULY [__], 2020

~~July 15, 2020~~

THIS DOCUMENT SHALL BE KEPT CONFIDENTIAL PURSUANT TO THE TERMS OF THE CONFIDENTIALITY AGREEMENT ENTERED INTO BY THE RECIPIENT HEREOF AND, IF APPLICABLE, ITS AFFILIATES AND REPRESENTATIVES, WITH RESPECT TO THE SUBJECT MATTER HEREOF.

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EXHIBITS

Exhibit A	Form of Escrow Agreement
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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of July 15, 2020, by and among FAIRWAY GROUP HOLDINGS CORP., a Delaware corporation (the “Company”). FAIRWAY RED HOOK LLC, a Delaware limited liability company, and FAIRWAY DOUGLASTON LLC, a Delaware limited liability company (together with the Company, “Sellers”), and ~~BOGOPA ENTERPRISES, INC.~~ SEVEN SEAS [_____], LLC, a New York ~~corporation~~ limited liability company (“Buyer”). Each of Buyer and each Seller is referred to herein as a “Party” and, collectively, as the “Parties”.

WITNESSETH

WHEREAS, Sellers and certain of their affiliates have filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on January 23, 2020 in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”):

WHEREAS, Sellers operate supermarkets located at 480-500 Van Brunt Street, Brooklyn, NY, 11231 (the “Red Hook Store”) and 242-02 61st Avenue, Douglaston, NY, 11362 (the “Douglaston Store”, and together with the Red Hook Store, the “Stores”, and each a “Store”): and

WHEREAS, subject to the terms and upon the conditions set forth herein, Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to purchase, acquire and assume from Sellers, all of the Acquired Assets (as defined below) and Assumed Liabilities (as defined below), all as more specifically provided herein.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement:

“Acquired Assets” means, without duplication, all of Sellers’ right, title, and interest in and to all of the following assets of Sellers directly used or held for use exclusively in the operation of the Stores and (to the extent applicable) located at the Stores on the Closing Date:

- (a) all Inventory of Sellers Related to the Business (other than Excluded Inventory);
- (b) the Furnishings and Equipment owned by Sellers and Related to the Business (other than Excluded Furnishings and Equipment);

(c) the leases set forth on Section 1.1 of the Disclosure Schedule under the heading “Assumed Leases” (the “Assumed Leases”) and (to the extent of Sellers’ interest therein) the buildings, fixtures and improvements located on or attached to such real property, and all rights arising therefrom, and all tenements, hereditaments, appurtenances and other real property rights appertaining thereto, and all rights of Sellers under any agreement (including any subordination, non-disturbance and attornment agreements) with the lessor of an Assumed Lease or its lenders, subject to the rights of the applicable landlord (including rights to ownership or use of such property) under the Assumed Leases;

(d) all rights under those Contracts set forth on Section 1.1 of the Disclosure Schedules under the heading “Transferred Contracts” (including a Modified Labor Agreement), other than those Contracts that expire or that are terminated prior to the Closing in accordance with their respective terms (such Contracts, together with the Assumed Leases, the “Transferred Contracts”) and the right to possess or use the property that is the subject of the Transferred Contract; provided, that Sellers shall not reject or terminate any Contract used or held for use exclusively in the operation of the Store without Buyer’s consent from and after the date hereof;

(e) to the extent assignable or transferable, all warranties and similar guarantees related to any of the foregoing;

(f) to the extent that any Affected Union enters into a Modified Labor Agreement with Buyer, all rights under such Modified Labor Agreement;

(g) with respect to each Store, the amount of cash that is in such Store following the close of business on the date which is the date before the Closing, subject to adjustment on a dollar for dollar basis based on the actual amount of cash in such Store as determined on the Inventory Date by the Inventory Taker as set forth in Section 2.6.2.6 (the “Per Store Cash Closing Balance”):

(h) all Permits of Sellers exclusively Related to the Business, to the extent requested by Buyer and assignable to Buyer under applicable Law (and, for the avoidance of doubt, solely to the extent the applicable Governmental Authority consents to or otherwise approves the assignment or transfer of the applicable Permit) other than those Permits listed on Section 1.1 of the Disclosure Schedule under the heading “Excluded Permits”;

(i) all in-store processors, front-end systems, point-of-sale systems (including self-checkout equipment), credit card readers, computers, computer equipment, hardware, software, peripherals, pin pads, direct access storage devices and a flood protection system, in each case, that are exclusively related to the operation of the Business, located at the Stores and owned by Sellers and solely to the extent no information that identifies or could be used to identify an individual person, including “personally identifiable information” as defined by the Bankruptcy Code, 11 U.S.C. §101(41 A), (“Personal Information”) is transferred in connection therewith;

(j) all email addresses of those customers who (x) expressly indicated that any of the Stores is such customer’s preferred store or (y) expressly provided a zip code and any of the Stores was the closest store operated by the Sellers (the “Store Exclusive Emails”), subject to

Section ~~5.125.12~~; provided, however, that notwithstanding anything to the contrary in this Agreement, any transfer of customer data shall be subject to the Bankruptcy Code, and if the Bankruptcy Court requires the appointment of a consumer privacy ombudsman, there shall be no transfer of any Store Exclusive Emails until the Bankruptcy Court permits such transfer; provided, further, that the cost of such ombudsman (if one is appointed) shall be borne ~~solely~~solely by Buyer; and

(k) all books and records of Sellers exclusively related to operation of the Business, including records relating to payroll, sales, and expenses, the plans, specifications, keys, key cards, passwords, and combinations for the Store and those other items set forth on Section 1.1 of the Disclosure Schedule under the heading “Acquired Assets”;

provided, however, notwithstanding anything to the contrary set forth in this definition, the Acquired Assets shall not include any Excluded Assets.

“Affected Labor Agreements” means the collective bargaining agreements covering any of the Covered Employees, each of which is listed on Section 1.1 of the Disclosure Schedule under the heading “Affected Labor Agreements”, none of which are to be assumed by the Buyer.

“Affected Unions” means the unions identified on Section 1.1 of the Disclosure Schedule under the heading “Affected Unions”.

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by Contract, or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Allocation Principles” has the meaning set forth in Section 2.7.

“Antitrust Law” means the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act, and all other Laws and Decrees that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition, whether in the United States or elsewhere.

“Assignment and Assumption Agreement” has the meaning set forth in Section 2.52.5(a)(ii).

“Assumed Leases” has the meaning set forth in the definition of Acquired Assets.

“Assumed Liabilities” means solely the following Liabilities of each of the Sellers as of the Closing Date Related to the Business:

(a)-(a) all Liabilities under the Transferred Contracts (~~including~~excluding all Cure Costs);

(b)-(b) all amounts allocated to Buyer under Section 2.7; and, to the extent not exempt under the Sale Order, all Transfer Taxes allocated to Buyer pursuant to Section 6.5.6.5;

(c)-(c) all Prorated Charges apportioned to Buyer in accordance with Section 2.8.2.8; and

(d)-(d) to the extent that any Affected Union enters into a Modified Labor Agreement with Buyer, all Liabilities arising under such Modified Labor Agreement, in each case, from and after the Closing Date;

provided, however, that notwithstanding anything to the contrary set forth in this definition, the Assumed Liabilities shall not include any Excluded Liabilities.

“Bankruptcy Cases” means the Chapter 11 cases of Sellers and certain of their Affiliates.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bidding Procedures Order” means the order of the Bankruptcy Court, entered into in the Bankruptcy Cases on February 21, 2020 as Document Number 208.

“Bill of Sale” has the meaning set forth in Section 2.5.2.5(a)(i).

“Bonding Requirements” means standby letters of credit, guarantees, indemnity bonds and other financial commitment credit support instruments issued by third parties on behalf of Sellers or any of their respective Subsidiaries or Affiliates regarding any of the Acquired Assets.

“Business” means the operation of the Stores by Sellers.

“Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the Laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.

“Buyer” has the meaning set forth in the preamble.

“Buyer 401(k) Plan” has the meaning set forth in Section 6.4(d).

“Buyer Proration Amount” has the meaning set forth in Section 2.8(d).

“Cash Equivalents” means cash, checks, money orders, funds in time and demand deposits or similar accounts, marketable securities, short-term investments, and other cash equivalents and liquid investments.

“Cash Purchase Price” has the meaning set forth in Section 2.3(a).

“Claim” has the meaning set forth in section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Section 2.42.4.

“Closing Date” has the meaning set forth in Section 2.42.4.

“COBRA” has the meaning set forth in Section 6.4(g).

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreement” shall mean each collective bargaining agreement, labor contract or memorandum of understanding entered into with a union governing the terms and conditions of employment of a Covered Employee.

“Company” has the meaning set forth in the preamble.

“Confidentiality Agreement” means the confidentiality agreement, dated as of September 11, 2019, by and between the Company and Buyer Key Food Stores Co-Operative, Inc., and acknowledged by Paul Conte in the Confidentiality Acknowledgment Agreement.

“Contract” means any agreement, contract, license, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and signed by parties intending to be bound thereby.

“Contracting Parties” has the meaning set forth in Section 9.129.12.

“Covered Employee” means an employee of the Company or any of its Subsidiaries at the Closing whose duties relate primarily to the Business, including such employees who are on ~~short-term~~ short-term disability, long-term disability, military leave, or any other approved leave of absence as of the Closing.

“Cure Costs” means all amounts payable in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Buyer of the Transferred Contracts.

“Damages” means any actual losses, claims, liabilities, debts, damages, fines, penalties or costs (in each case, including reasonable out-of-pocket expenses).

“Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.

“Disclosure Schedule” has the meaning set forth in Article III.

“Douglaston Inventory, Cash and Prepaid Amount” has the meaning set forth in Section 2.3(a)(ii).

“Douglaston Store” has the meaning set forth in the recitals.

“Employee Benefit Plans” has the meaning set forth in Section 3.9(a).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” means Citibank, N.A.

“Escrow Agreement” means that certain Escrow Agreement, dated as of the date hereof, by and among Sellers, Buyer, and the Escrow Agent, a copy of which is attached hereto as Exhibit A.

“Escrow Amount” has the meaning set forth in Section 2.3(b).

“Excluded Assets” means, without duplication, all assets of Sellers as of the Closing that are not expressly included in the Acquired Assets, including:

~~(a)~~ (a) any of Sellers’ other supermarkets, distribution centers, administrative offices and facilities, and all assets or properties located thereon or otherwise related thereto that are not identified as Acquired Assets;

~~(b)~~ (b) any asset of Sellers that is (i) not located in the Stores and not Related to the Business or (ii) inseparable from any other business of Sellers or any of their Affiliates (other than the Business), in each case, including (A) organizational documents, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates, and other documents relating to Sellers’ organization, maintenance, existence, and operation; (B) books and records related to (1) Taxes paid or payable by Sellers or (2) any claims, obligations or liabilities not included in Assumed Liabilities; and (C) any Tax refund, deposit, prepayment, credit, attribute, or other Tax asset of or with respect to any of the Sellers;

~~(c)~~ (c) all capital stock of the Company or any of the Company’s Subsidiaries;

~~(d)~~ (d) all Cash Equivalent (other than the Per Store Cash Closing Balances) and accounts receivable;

- ~~(e)~~(e) all Permits that are not part of the Acquired Assets as provided herein;
- ~~(f)~~(f) all insurance policies and binders and all rights thereunder, including all rights to recoveries, refunds and credits and to make claims thereunder;
- ~~(g)~~(g) all of Sellers' rights under this Agreement or any Related Agreement;
- ~~(h)~~(h) all of Sellers' rights under any Contracts related to any Excluded Asset, unless such Contract is a Transferred Contract;
- ~~(i)~~(i) any and all automobiles, trucks, tractors, and trailers;
- ~~(j)~~(j) any other rebate, payment, reimbursement or refund arising from the Business prior to the Closing;
- ~~(k)~~(k) other than the right to use or possess any property which is the subject of a Transferred Contract, all leased equipment located at or used in the Stores;
- ~~(l)~~(l) any assets or other funding vehicle related to any Employee Benefit Plan;
- ~~(m)~~(m) the Furnishings and Equipment described on Section 1.1 of the Disclosure Schedule under the heading "Excluded Furnishings and Equipment" (the "Excluded Furnishings and Equipment"):
 - ~~(n)~~(n) all (i) books and records that Sellers are required by Law to retain or that Sellers determine are necessary or advisable to retain; provided, however, that Buyer, subject to applicable Law, shall have the right to make copies of any portions of such retained books and records Related to the Business, Acquired Assets or Assumed Liabilities, or Transferred Employees; (ii) information management systems of Sellers, other than those specifically listed as "Acquired Assets"; (iii) documents relating to proposals to acquire the Business by Persons other than Buyer; and (iv) personnel files for Covered Employees who are not hired by Buyer;
- ~~(o)~~(o) all Contracts other than the Transferred Contracts;
- ~~(p)~~(p) any Employee Benefit Plan, pension plan or other employee agreement other than a Modified Labor Agreement;
- ~~(q)~~(q) all Excluded Inventory;
- ~~(r)~~(r) all claims, proceeds, causes of action, choses in action, rights of recovery and rights of set-off of any kind against any Person arising out of or relating to the Acquired Assets in connection with events occurring on or before the Closing (other than any proceeds explicitly contemplated to be transferred to Buyer hereunder) including those arising under chapter 5 of the Bankruptcy Code;

~~(s)~~(s) except as otherwise specifically provided for herein, all customer data and information derived from branded loyalty promotion or co-branded credit card programs and other similar information related to customer purchases at the Store as well as any Personal Information that is in the possession or control of any Seller and that may not be transferred or disclosed pursuant to applicable Law or such Seller's privacy policies or notices in effect at the time of collection of such Personal Information;

~~(t)~~(t) adequate assurance deposits posted in accordance with section 366 of the Bankruptcy Code;

~~(u)~~(u) any Intellectual Property owned by Sellers, including, for the avoidance of doubt, but not limited to, the names "Fairway" or "Fairway Markets" and any derivatives thereof, any name, Mark, or other indicia of origin that includes, relates to or derives from any such name, or any related abbreviations, acronyms or other formatives based on any such name, whether alone or in combination with any other words, phrases, or designs, and all registrations, applications and renewals thereof, all rights and goodwill associated therewith and any name, Mark, or other indicia of origin that is confusingly similar thereto or derived therefrom (collectively, the "Seller Marks"); and

~~(v)~~(v) those items set forth on Section 1.1 of the Disclosure Schedule under the heading "Excluded Assets".

"Excluded Furnishings and Equipment" has the meaning set forth in the definition of Excluded Assets.

"Excluded Inventory" means the following inventory of goods, merchandise or other inventory of Sellers located at the Stores: (a) branded (including any "Fairway" branded) private label inventory, (b) damaged, obsolete or unsalable items, including items which have passed their 'sell by' date, which 'sell by' date shall be no less than five (5) Business Days following the Closing Date for grocery items other than any dairy products; (c) any scanned based traded merchandise (including greeting cards and magazines) or merchandise held on consignment; (d) any seasonal or holiday item for any season or holiday which will not occur within 120 days after the Closing Date; and (e) any inventory item that, as of the Closing Date, is not transferable under applicable Law.

"Excluded Liabilities" means, without duplication, any Liability which is not an Assumed Liability, including the following Liabilities of Sellers:

~~(a)~~(a) any Liability not relating to or arising out of the Business or the Acquired Assets, including any Liability exclusively relating to or exclusively arising out of the Excluded Assets;

~~(b)~~(b) any Liability of Sellers for Taxes (except as provided for in Section 2.82.8 and Section 6.56.5 or constituting Cure Costs);

~~(e)~~(c) all indebtedness of Sellers for borrowed money, all accounts payable (except for Cure Costs), and any Claims against Sellers that are not Assumed Liabilities;

~~(d)~~(d) all Liabilities of Sellers under this Agreement or any Related Agreement and the transactions contemplated hereby or thereby; and

~~(e)~~(e) any Liability of any Seller or any of its Affiliates under any Employee Benefit Plan, Multi employer Plan or other pension or benefit plan, unless expressly included herein or otherwise in writing by Buyer.

“Furnishings and Equipment” means all fixtures, trade fixtures, store models, shelving, and refrigeration equipment owned by Sellers and located at the Store, including those items listed on Section 1.1 of the Disclosure Schedule under the headings “Furnishings and Equipment”.

“GAAP” means United States generally accepted accounting principles consistently applied.

“Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity (including the IRS).

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“Independent Accounting Firm” has the meaning set forth in Section 2.7.

“Intellectual Property” means: (a) all issued patents and patent applications, together with all reissuances, continuations, continuations-in-part, divisionals, extensions and reexaminations thereof; (b) all trademarks, service marks, trade dress, logos, trade names, and Internet domain names, together with all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith (“Marks”); (c) all copyrights, together with all registrations and applications for registration therefor and renewals in connection therewith; (d) all trade secrets, know-how, technology, improvements, and inventions; and (e) all computer software (including data and databases).

“Interest Rate” means the prime lending rate reported by the Wall Street Journal as of the date of the payment was due plus one and one-half percent (1.5%) per month (or, if lower, the maximum interest rate allowed by law), compounded monthly, until the date such payment is made.

“Interim Cash” has the meaning set forth in Section 2.6(g).

“Inventory” means all inventory of goods, merchandise, food, beverages, Supplies, tobacco inventory and other products (including, to the extent transferable to Buyer pursuant to the transactions contemplated hereby and under applicable Law, alcohol and other alcoholic beverages), in each case, that is offered for sale to customers at the Stores and owned by Sellers, other than Excluded Inventory.

“Inventory Count” has the meaning set forth in Section 2.6(a).

“Inventory Date” has the meaning set forth in Section 2.6(a).

“Inventory Escrow Amount” has the meaning set forth in Section 2.4.2.4.

“Inventory Purchase Price” has the meaning set forth in Section 2.6(b).

“Inventory Taker” has the meaning set forth in Section 2.6(a).

“IRS” means the U.S. Internal Revenue Service.

“Knowledge of Sellers” means the actual knowledge of the individuals identified on Section 1.1 of the Disclosure Schedule under the heading “Knowledge Parties”.

“Law” means any constitution applicable to, and any statute, treaty, code, rule, regulation, ordinance, or legally binding requirement of, any Governmental Authority.

“Lease” means a lease, sublease, license, concession, option, contract, extension letter, easement, reciprocal easement, assignment, termination agreement, subordination agreement, ~~non-disturbance~~non-disturbance agreement, estoppel certificate or other agreement (written or oral), and any amendments or supplements to the foregoing, and recorded memoranda of any of the foregoing, in each case Related to the Business and all other documents related thereto including, with respect to the Red Hook Store, an energy purchase agreement and lease agreement for the adjoining parking lot.

“Lease Assignment and Assumption Agreement” has the meaning set forth in Section 2.5(a)(iii).

“Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

“Lien” means any mortgage, pledge, lien, charge, Claims, security interest, option, right of first refusal, easement, security agreement or other encumbrance or restriction on the use or transfer of any property; provided, however, that “Lien” shall not be deemed to include any license of Intellectual Property.

“Loss” has the meaning set forth in Section 2.10.10.

“Marks” has the meaning set forth in the definition of Intellectual Property.

“Material Adverse Effect” means any effect or change that has a material adverse effect on the condition of the Acquired Assets or the Business, taken as a whole, other than any effects or changes arising from or related to, (a) general business or economic conditions in any of the geographical areas in which the Store operates, (b) any condition or occurrence affecting retail

grocery generally, (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack, (d) financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index), (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any natural disaster, fire, flood, hurricane, tornado, or other weather event, (f) changes in Law or accounting rules, (g) the taking of any action contemplated by this Agreement or any Related Agreement or taken with the consent of the other Party, (h) any effects or changes as a result of the announcement or pendency of this Agreement, (i) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code, (j) the sale of the Excluded Assets to any third parties by any Seller or any of its Affiliates, (k) any effects or changes arising from or related to the breach of the Agreement by Buyer, (l) any failure by Sellers to meet internal or published projections, estimates or forecasts of revenues, earnings or other measures of financial or operating performance by any period, (m) the failure of Sellers to obtain any consent, permit, authorization, waiver or approval required in connection with the transactions contemplated hereby, (n) any items set forth in the Disclosure Schedule, or (o) any matter of which Buyer is aware on the date hereof (provided, that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded by this clause (o), except in the case of the foregoing clauses (a),

(b), (c) or (f), to the extent such effect or change is (or would reasonably be expected to be) disproportionately adverse with respect to the Acquired Assets or the Business, in each case, taken as a whole, compared to other Persons in the industry in which Sellers conduct the Business, but, in such case, only the incremental disproportionate impact of such effects, changes, conditions, circumstances, developments or events shall be taken into account in determining whether a “Material Adverse Effect” has occurred).

“Modified Labor Agreement” means a new collective bargaining agreement with an Affected Union that is entered into by Buyer and an Affected Union.

“Monthly Prorated Charges” has the meaning set forth in Section 2.8.2.8(a).

“Multiemployer Plan” has the meaning set forth in Section 3.9(c).

“Net Prorated Charges” has the meaning set forth in Section 2.8(d).

“Non-Party Affiliates” has the meaning set forth in Section 9.12.

“Order” means any order, judgment, injunction, ruling, writ, award or Decree of any Governmental Authority.

“Ordinary Course of Business” means the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice.

“Outside Date” has the meaning set forth in Section 8.1(b)(ii).

“Party” and “Parties” have the meanings set forth in the preamble.

“Per Store Cash Closing Balance” has the meaning set forth in the definition of Acquired Assets.

“Permit” means any franchise, approval, permit, license, order, registration, certificate, variance or similar right obtained from any Governmental Authority.

“Permitted Lien” means: (a) Liens for Taxes not yet due and payable; (b) with respect to leased or licensed real or personal property, the terms and conditions of the lease, license, sublease or other occupancy agreement applicable thereto to the extent same is an Acquired Asset; (c) with respect to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property; (d) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not reasonably be expected to have a Material Adverse Effect; (e) matters that would be disclosed on an accurate survey of the real property; (f) Liens shown in any title commitment, report or policy, or otherwise of record, other than Liens arising under the UCC, Liens securing any judgment, or any Lien securing the payment of money; (g) Liens arising out of, under or in connection with this Agreement or any Related Agreement; and (h) Liens created by or through, or resulting from, any facts or circumstances relating to Buyer or its Affiliates.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or any other entity, including any Governmental Authority or any group of any of the foregoing.

“Personal Information” has the meaning set forth in the definition of Acquired Assets.

“Proceeding” means any action, cause of action, suit, claim, investigation, audit, demand, hearing or proceeding, whether civil, criminal, administrative, or arbitral, whether at Law or in equity and whether before any Governmental Authority.

“Proposal” has the meaning set forth in Section 6.3.

“Prorated Charges” means (a) the Monthly Prorated Charges, (b) the non-monthly real estate related payments prorated pursuant to Section 2.8(b) and (c) the real estate Taxes and assessments and other Taxes (other than Transfer Taxes), in each case, (i) imposed upon or assessed directly against the Acquired Assets as of the Closing (including personal property Taxes and similar Taxes), in each case, for the Tax period in which the Closing occurs and (ii) prorated pursuant to Section 2.8(c).

“Proration Period” has the meaning set forth in Section 2.8(c).

“Purchase Price” has the meaning set forth in Section 2.3(a).

“Purchase Price Allocation” has the meaning set forth in Section 2.7.

“Red Hook Inventory, Cash and Prepaid Amount” has the meaning set forth in Section 2.3(a)(ii).

“Red Hook Leases” means the Leases relating to the Red Hook Store.

“Red Hook Store” has the meaning set forth in the recitals.

“Related Agreements” means the Bill of Sale, the Assignment and Assumption Agreement and the Lease Assignment and Assumption Agreement.

“Related Orders” has the meaning set forth in Section 5.45.4(c)(ii).

“Related to the Business” means used or held for use exclusively in the operation of the Store by a Seller or, in the case of a Liability, to the extent accrued, reserved or incurred in connection with the operation of the Stores by a Seller.

“Representative” means, when used with respect to a Person, the Person’s controlled Affiliates (including Subsidiaries) and such Person’s and any of the foregoing Persons’ respective officers, directors, managers, members, stockholders, partners, employees, agents, incorporators, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants), and financing sources.

“Required Permits” means, the Temporary Retail Permit for Grocery Beer and Wine Products issued by the New York State Liquor Authority, Perishable Agricultural Commodities Act license issued by the United States Department of Agriculture, and the Food Processing Establishment License issued by the Department of Agriculture and Markets of the State of New York, as applicable to each Store.

“Sale Hearing” means a hearing before the Bankruptcy Court to approve this Agreement and the Sale Order.

“Sale Order” means an order of the Bankruptcy Court in form and substance reasonably satisfactory to the Parties (a) approving (i) this Agreement and the execution, delivery, and performance by Sellers of this Agreement and the other instruments and agreements contemplated hereby; (ii) the sale of the Acquired Assets to Buyer free and clear of all Liens, other than any Permitted Liens or any Assumed Liabilities; (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein; and (iv) the assumption and assignment to Buyer of the Transferred Contracts on the terms set forth herein; (b) determining that Buyer is a good faith

Buyer, and that Buyer is not a successor to the Sellers for any purpose; and (c) providing that the Closing will occur in accordance with the terms and conditions hereof.

“Seller 401(k) Plan” has the meaning set forth in Section 6.4(d).

“Seller Marks” has the meaning set forth in the definition of “Acquired Assets”.

“Seller Proration Amount” has the meaning set forth in Section 2.8(d).

“Sellers” has the meaning set forth in the preamble.

“Store” has the meaning set forth in the recitals.

“Store Exclusive Emails” has the meaning set forth in the definition of Acquired Assets.

“Subsidiary” means, with respect to any Person, on any date, any other Person (a) the accounts of which would be consolidated with and into those of the applicable Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date or (b) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests or more than fifty percent (50%) of the profits or losses are, as of such date, owned, controlled or held by such Person or one or more subsidiaries of such Person.

“Supplies” shall mean cleaning supplies (including materials, solutions and waxes), small wares, office supplies, production supplies and any similar items at the Store.

“Tax” or “Taxes” means any United States federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether disputed or not.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transfer Tax” has the meaning set forth in Section 6.56.5.

“Transferred Contracts” has the meaning set forth in the definition of “Acquired Assets”.

“Transferred Employee” has the meaning set forth in Section 6.4(a).

“Treasury Regulations” means the regulations promulgated by the U.S. Department of the Treasury under the Code, including proposed and temporary regulations.

“UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“WARN Act” means, collectively, the Worker Adjustment and Retraining Notification Act of 1989 and any similar state or local Law.

Section 1.2 Interpretations. Unless otherwise indicated herein to the contrary:

~~(a)~~(a) When a reference is made in this Agreement to an Article, Section, Exhibit, Schedule, clause or subclause, such reference shall be to an Article, Section, Exhibit, Schedule, clause or subclause of this Agreement.

~~(b)~~(b) The words “include,” “includes” or “including” and other words or phrases of similar import, when used in this Agreement, shall be deemed to be followed by the words “without limitation.”

~~(c)~~(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

~~(d)~~(d) The word “if” and other words of similar import shall be deemed, in each case, to be followed by the phrase “and only if.”

~~(e)~~(e) The use of “or” herein is not intended to be exclusive.

~~(f)~~(f) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa.

~~(g)~~(g) All terms defined in this Agreement have their defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

~~(h)~~(h) References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References herein to a Person are also to its successors and permitted assigns. Any reference herein to a Governmental Authority shall be deemed to include reference to any successor thereto.

~~(i)~~(i) Any reference herein to “Dollars” or “\$” shall mean United States dollars.

(j) The specification of any dollar amount in the representations, warranties, or covenants contained in this Agreement is not intended to imply that such amounts or higher or lower amounts are or are not material, and Buyer shall not use the fact of the setting of such amounts in any dispute or controversy between the Parties as to whether any obligation, item, or matter is or is not material.

~~(h)~~ References in this Agreement to materials or information “furnished to Buyer” and other phrases of similar import include all materials or information made available to Buyer or its Representatives in the data room prepared by Sellers or provided to Buyer or its Representatives in response to requests for materials or information.

~~(j)~~ (k) References from or through any date means, unless otherwise specified, from and including or through and including such date, respectively. References to “days” shall refer to calendar days unless Business Days are specified. If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

~~(m)~~ (l) Unless the context otherwise requires, the word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not simply mean “if.”

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Acquired Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer will purchase from Sellers, and Sellers will sell, transfer, assign, convey, and deliver to Buyer, all of the Acquired Assets free and clear of Liens or Claims to the maximum extent permitted under applicable bankruptcy law, except for Permitted Liens.

Section 2.2 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, as partial consideration for the Acquired Assets, Buyer shall, effective as of the Closing, assume all Assumed Liabilities. Buyer agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms thereof, ~~including paying or causing to be paid, at or prior to the Closing, all~~ (excluding Cure Costs).

Section 2.3 Consideration; Deposit; Escrow Amount.

~~(a)~~ (a) The consideration for the Acquired Assets shall be (i) an aggregate Dollar amount equal to the sum of (A) ~~one~~ four million ~~seven~~ six hundred ~~and eighty~~ seventy five thousand ~~dollars~~ (\$1,780,000,5,875,000) (subject to adjustment pursuant to the final sentence of this Section 2.3(a)) (the “Cash Purchase Price”), plus (B) the Seller Proration Amount, if any, minus (C) the Buyer Proration Amount, if any (such calculation, the “Purchase Price”) and (ii) Buyer’s assumption of the Assumed Liabilities. The components of the Cash Purchase Price shall be as follows:

~~(i)~~ (i) ~~\$100,000~~ 2,400,000 to the Douglaston Store;

~~(ii)~~ (ii) \$800,000 (the “Douglaston Inventory; Cash and Prepaid Amount”) (subject to adjustment pursuant to the final sentence of this Section 2.3(a)) to the Inventory and Per Store Cash Closing Balance attributable to the Douglaston Store;

~~(iii)~~ (iii) \$5,000 to the furniture, fixtures and equipment at the (iii) \$1,800,000 to the Red Hook Store; and

~~(iv)~~ (iv) \$875,000 (the “Red Hook Inventory, Cash and Prepaid Amount”) (subject to adjustment pursuant to the final sentence of this Section 2.3(a)) to the Inventory and Per Store Cash Closing Balance attributable to the Red Hook Store.

After the completion of the Inventory Count, to the extent the amounts of Inventory and Per Store Cash Closing Balances delivered by Sellers to Buyer at Closing are less than or greater than the applicable amounts set forth in clauses (ii) and (iv), above, the Cash Purchase Price shall be increased or decreased, as applicable, by such amount on a dollar for dollar basis. The Red Hook Inventory, Cash and Prepaid Amount and Douglaston Inventory Cash and Prepaid Amount, as applicable, shall be then so adjusted.

~~(b)~~ (b) Upon execution of this Agreement, pursuant to the terms of the Escrow Agreement, Buyer shall deposit with the Escrow Agent the sum of ~~onefour~~ onefour hundred ~~and seventy eight~~ sixty seven thousand five hundred dollars (~~\$178,000~~ 467,500) by wire transfer of immediately available funds (the “Escrow Amount”), to be released by the Escrow Agent and delivered to either Buyer or Sellers, in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrow Amount (together with all accrued investment income thereon, if any) shall be distributed as follows:

~~(i)~~ (i) if the Closing shall occur, the Escrow Amount shall be paid to Sellers and applied towards the Purchase Price payable by Buyer to Sellers under Section 2.3(a) and all accrued investment income thereon, if any, shall be delivered to Buyer at the Closing;

~~(ii)~~ (ii) if this Agreement is terminated by Sellers pursuant to Section 8.1(d) (subject to Buyer’s right to contest the validity of Sellers’ termination) the Escrow Amount, together with all accrued investment income thereon, if any, shall be delivered to Sellers; or

~~(iii)~~ (iii) if this Agreement is terminated for any reason other than by any Seller pursuant to Section 8.1(d), the Escrow Amount, together with all accrued investment income thereon, shall in each case be returned to Buyer.

Section 2.4 Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York (or such other location as shall be mutually agreed upon by Sellers and Buyer) (the “Closing Date”), as soon as reasonably practicable, and in no event later than three (3) Business Days, following the date upon which the last to be satisfied or waived of each of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but ~~subject~~ subject to the satisfaction or waiver of those conditions) shall have been satisfied or waived in accordance with this Agreement; provided, however, that if at such time each of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing) has been satisfied or waived, Buyer has not obtained the Required Permits for each Store, Buyer may extend the date by which the Closing is to occur, on a

one-time basis, until the earlier to occur of (i) the date all of the Required Permits for each Store are obtained and (ii) August 24, 2020 by providing prior written notice to Sellers of such extension; provided, further, however that Buyer may not extend the date by which the Closing is to occur to a date later than July 31, 2020 without first (x) depositing with the Escrow Agent an amount equal to the Cash Purchase Price by wire transfer of immediately available funds (the "Inventory Escrow Amount"), and (y) delivering to Sellers the written consents of each of the landlords of the Red Hook Store and the Douglaston Store, as applicable, to extend the deadline by which Sellers must reject or assume the applicable Leases to no earlier than August 30, 2020. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and be effective, and title to and risk of loss associated with the Acquired Assets, shall be deemed to occur at 12:01 am, New York City time, on the Closing Date.

Section 2.5 Closing Payments and Deliveries.

~~(a)~~(a) At the Closing, Sellers will deliver or cause to be delivered to Buyer the following:

~~(i)~~(i) a duly executed Bill of Sale substantially in the form of Exhibit B (the "Bill of Sale");

~~(ii)~~(ii) a duly executed Assignment and Assumption Agreement substantially in the form of Exhibit C (the "Assignment and Assumption Agreement");

~~(iii)~~(iii) a duly executed Assignment and Assumption of Lease for each of the Assumed Leases substantially in the form of Exhibit D (each a "Lease Assignment and Assumption Agreement" and collectively, the "Lease Assignment and Assumption Agreements");

~~(iv)~~(iv) an executed certificate of non-foreign status from each Seller in compliance with Treasury Regulations Section 1.1445-2;

~~(v)~~(v) a duly executed certificate from an officer of each Seller to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) is satisfied;

~~(vi)~~(vi) all keys, passwords and codes necessary to access the Stores, each of which shall be delivered in person at the Closing; and

~~(vii)~~(vii) certified copy(s) of the Sale Order.

~~(b)~~(b) At the Closing, Buyer will deliver or cause to be delivered to Sellers the following:

(i) the Purchase Price (less the Escrow Amount, which shall be released to Sellers by the Escrow Agent), by wire transfer of immediately available funds, to an account or accounts as directed by Sellers;

~~(ii)~~(ii) the Bill of Sale duly executed by Buyer;

~~(iii)~~(iii) the Assignment and Assumption Agreement duly executed by Buyer;

~~(iv)~~(iv) the Lease Assignment and Assumption Agreements duly executed by Buyer;

~~(v)~~(v) a duly executed certificate from an officer of Buyer to the effect that each of the conditions specified in Section 7.3(a) and Section 7.3(b) are satisfied.

Section 2.6 Inventory.

~~(a)~~(a) A physical count of the Inventory and the Per Store Cash Closing Balance, and calculation of the value thereof, at the Stores (the "Inventory Count") shall be made by an inventory taker as agreed upon by the Parties (the "Inventory Taker") no more than two (2) days prior to (A) the earlier of the (i) anticipated Closing Date and (ii) the date on which Buyer acquires the inventory pursuant to Section 2.42.4, or (B) on such other date as the Parties may mutually agree (the date of such physical count being the "Inventory Date"). The Inventory Taker shall conduct the physical count of the Inventory in accordance with the terms and conditions of this Section 2.62.6 and the usual and customary practices of the industry (and according to the Inventory Taker's established inventory policies and procedures, copies of which shall be furnished to Buyer and Sellers prior to the Inventory Date).

~~(b)~~(b) The fees and expenses of the Inventory Taker shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Sellers. The physical inventory (and the Inventory Purchase Price to be paid by Buyer for the Inventory) shall not include Inventory that is Excluded Inventory. The Inventory Taker shall value all Inventory carried in the Stores on the Inventory Date, excluding the Excluded Inventory (but including any portion or all of the Excluded Inventory that Buyer deems Inventory), at cost (such value, the "Inventory Purchase Price"). Except for the Excluded Inventory, all merchandise received at each Store prior to the commencement of the physical count of the Inventory at the Stores must be included in the inventory taking process, and shall be set forth on the Inventory Count.

~~(c)~~(c) Buyer, on the one hand, and Sellers collectively, on the other hand, shall each appoint a Representative to be present during the physical count of the Inventory. At an agreed-upon date and time no later than one (1) day prior to the start of the physical count of the Inventory at a Store, such Representatives shall tour such Store to agree upon items of Excluded Inventory and to ensure segregation of such items from the Inventory to be counted in connection with the physical count at such Store. Such Representatives shall cooperate in good faith to agree on the inclusion of any item of merchandise as Inventory and/or the valuation of any such item of Inventory. In the event that such Representatives do not agree on the value of the Inventory for the Stores because such Representatives disagree as to whether certain items should be counted as Excluded Inventory or as to Sellers' cost of Inventory, the opinion of the Inventory Taker shall be final and binding.

~~(d)~~(d) The Inventory Count shall (i) be summarized for each Store using an inventory certificate to be provided by the Inventory Taker, which must be executed by a Representative of Buyer and a Representative of Sellers prior to either such Representative leaving such Store and (ii) show the total cost of the Inventory for each Store determined in the manner provided in this Section 2.6.

~~(e)~~(e) Buyer shall make application to the applicable authorities to transfer any alcohol and alcoholic beverages included in the Inventory to Buyer, and any such application shall be made promptly after the execution of this Agreement and shall be diligently pursued by Buyer, at Buyer's sole cost and expense. Sellers, at no out-of-pocket cost or expense to Sellers, shall reasonably cooperate with Buyer and use their commercially reasonable efforts to (i) obtain the issuance of temporary licenses to sell any alcohol and alcoholic beverages included in the Inventory, (ii) provide any documents or information necessary to assist in effectuating said transfer, (iii) to the extent required by Law, surrender their existing licenses to sell any alcohol and alcoholic beverages and (iv) execute such consents or other documents as may reasonably be required to effectuate any of (i) - (iv) of this subsection.

~~(f)~~(f) Notwithstanding Sellers' obligations in Section 5.15.1 to conduct the Business in the Ordinary Course of Business, Sellers may sell down Excluded Inventory without replenishment prior to the Inventory Date.

~~(g)~~(g) Immediately on completion of the Inventory Count, (i) all receipts from Inventory sold shall become property of Buyer (the "Interim Cash") except as required by applicable Law, Sellers shall grant Buyer access to the Stores to begin provisioning the Stores with Buyer's goods, all of which shall remain the property of Buyer until the Closing. If the Closing does not occur for any reason, Buyer shall be entitled to remove its goods from the Stores and the Interim Cash shall be paid to Sellers.

~~(h)~~(h) The Parties shall meet at a mutually agreed date prior to the Closing to review the status of the Inventory and the valuation methodology to be employed by the Inventory Taker.

Section 2.7 Allocation: Dispute Resolution. Buyer and Sellers agree to allocate the Purchase Price (as finally determined hereunder) and the Assumed Liabilities among the Acquired Assets in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (the "Allocation Principles"), provided, however, that for the purposes of this Section 2.7.2.7, the Parties shall not be required to allocate the Purchase Price in accordance with Section 2.32.3(ata). No later than thirty (30) days after the Closing Date, Sellers shall deliver to Buyer an allocation of the Purchase Price and the Assumed Liabilities as of the Closing Date among the Acquired Assets, determined in a manner consistent with the Allocation Principles (the "Purchase Price Allocation") for Buyer's review and comment. Any reasonable comments provided by Buyer to Sellers under this Section 2.7 within thirty (30) days of the delivery of the Purchase Price Allocation shall be considered by Sellers in good faith. If Buyer agrees in writing with the Purchase Price Allocation or fails to provide comments to the Purchase Price Allocation within thirty (30) days following receipt thereof from Sellers, the Purchase Price Allocation shall be conclusive and binding on the Parties. If the Parties are unable to agree on the Purchase Price Allocation after good faith consultation, the matters in dispute shall be referred for resolution to a nationally recognized

accounting firm reasonably acceptable to Sellers and Buyer (in either case, the “Independent Accounting Firm”), the expenses (including engagement fees) of which shall be borne equally by Buyer, on the one hand, and Sellers collectively, on the other hand. The Independent Accounting Firm shall resolve any disputed matters as promptly as practicable, and the Independent Accounting Firm’s decision with respect to any such matter shall be conclusive and binding on the Parties. None of the Parties will take any position inconsistent with the Purchase Price Allocation on any Tax Return or in any audit or Tax proceeding, in each case, unless otherwise required by applicable Law or by a final determination by a Governmental Authority. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 2.72.7 shall survive the Closing without limitation.

Section 2.8 Proration.

~~(a)~~(a) On the Closing Date all monthly payments for the month in which the Closing occurs (including base rent, common area maintenance fees, and utility charges) under the Leases and the Assumed Leases (the “Monthly Prorated Charges”) shall be apportioned and prorated between Sellers and Buyer as of the Closing Date with (i) Buyer bearing the expense of Buyer’s proportionate share of such Monthly Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Monthly Prorated Charges under the applicable Lease or Assumed Lease and the denominator being the total number of days in the lease month in which the Closing occurs, times (B) the number of days in such lease month following the day that immediately precedes the Closing Date, and (ii) Sellers bearing the remaining portion of such Monthly Prorated Charges.

~~(b)~~(b) As to all non-monthly real estate related payments, including the percentage rent payable under any Lease or Assumed Lease, the same shall be apportioned between Sellers and Buyer as of 12:01 a.m. on the Closing Date. If any amounts are payable in installments, all installments due through the Closing together with the accrued but unpaid portion of any other installments not yet due as of the Closing shall be prorated based on the periods of time covered by such installments occurring before and after the Closing Date. The provisions of this subparagraph shall survive Closing.

~~(c)~~(c) (i) Real estate Taxes and assessments and (ii) other Taxes (in each case, other than Transfer Taxes) imposed upon or assessed directly against the Acquired Assets or any Lease as of the Closing, in each case, for the Tax period in which the Closing occurs (the “Proration Period”), shall be apportioned and prorated between Sellers and Buyer as of the Closing Date with Buyer bearing the expense of Buyer’s proportionate share of such Taxes that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (B) the number of days in the Proration Period following the Closing Date. If the Closing shall occur before a new real estate or other applicable Tax rate is fixed for the applicable property, or if the amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration of Taxes for such property at the Closing shall be upon the basis of the old Tax rate for the preceding fiscal year applied to the latest assessed valuation. Promptly after the new Tax rate is fixed, the apportionment of Taxes shall be recomputed by the Parties and any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at the

Closing shall be promptly corrected and the proper party reimbursed within thirty (30) days following such recomputation. The provisions of this subparagraph shall survive closing.

~~(d)~~ (d) The net amount of all Prorated Charges under Section 2.8(a), Section 2.8(b) and Section 2.8(c) shall be reduced, including below zero, by the amount of any such Prorated Charges that were paid by Sellers prior to the Closing (the “Net Prorated Charges”). To the extent that the Net Prorated Charges is a positive number (i.e., Sellers have not paid the entirety of their net Prorated Charges) such amount shall be referred to as the “Buyer Proration Amount” and if a negative number (i.e., Sellers have paid more than their net Prorated Charges) such amount shall be referred to as the “Seller Proration Amount”. Except as set forth in this Section 2.8.2.8, no amounts paid or payable under or in respect of any Acquired Assets or group of Acquired Assets shall be apportioned and prorated between Sellers and Buyer.

~~(e)~~ Subject to the last two sentences of Section 2.8(c), if any of the items ~~subject~~ subject to apportionment under the foregoing provisions cannot be apportioned at the Closing because of the unavailability of the information necessary to compute such apportionment, or if any errors or omissions in computing apportionments at the Closing are discovered subsequent to the Closing, such item(s) shall be reapportioned and such errors and omissions corrected as soon as practicable after the Closing Date (and for a period of ninety (90) days thereafter) and the proper Party reimbursed.

Section 2.9 Removal of Excluded Assets. As promptly as practicable following the Closing Date (and in any event within ten (10) Business Days), Sellers shall remove at their expense all of the Excluded Assets that are located at the Stores. Any Excluded Assets not timely removed by Sellers may be disposed of by Buyer in its sole and unreviewable discretion, without the incurrence of any Liability on the part of Buyer.

Section 2.10 Casualty and Condemnation. If, during the period beginning on the date hereof and ending on the Closing Date, any Acquired Assets (not including Inventory), or any Store, are damaged or destroyed, by fire or other casualty, and the amount required to repair, restore or reconstruct such Acquired Asset(s) to the condition it was in prior to the casualty (the “Loss”) exceeds \$750,000 (as determined by Sellers’ insurance appraiser), then the Cash Purchase Price shall be reduced by the amount of such Loss (provided that any such reduction shall in no event exceed the amount allocated to the applicable asset in Section 2.3.2.3). In each case, Sellers shall have the right to any insurance proceeds with respect thereto. If any Acquired Assets constituting the property on which a Store is located is subject to a taking or condemnation which materially interferes with Buyer’s ability to operate the subject Store in substantially the same manner as operated by Sellers as of the date hereof, then Buyer may elect not to purchase such Store and the Cash Purchase Price shall be reduced by the amount allocated to the Acquired Assets with respect to such Store. The foregoing shall represent Buyer’s sole and exclusive rights and recourse with respect to an event described in this Section 2.10.2.10. For the avoidance of doubt, the foregoing shall be subject to any rights of the applicable landlord or its lender(s) as to any affected Store. This Agreement shall stay in full force and effect with respect to any Store subject to a casualty, condemnation or taking.

ARTICLE III SELLERS' REPRESENTATIONS AND WARRANTIES

Sellers represent and warrant to Buyer that the statements contained in this Article III are true and correct except as set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule").

Section 3.1 Organization; Good Standing and Qualification. Each Seller is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the Laws of the state of its incorporation or formation. Each Seller has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or other organizational power and authority to own, lease and operate its assets and to carry on its business, as now being conducted, except where the failure to be so organized, existing, or in good standing or have such power and authority would not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authorization of Transaction. Subject to the Bankruptcy Court's entry of the Sale Order and any other Related Order to close the sale of the Acquired Assets in accordance with this Agreement, each Seller has full power and authority (including full corporate or other organizational power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which each Seller is a party have been duly authorized by such Seller. Upon due execution hereof by each Seller, this Agreement (assuming due authorization and delivery by Buyer) shall constitute, subject to the Bankruptcy Court's entry of the Sale Order and any other Related Order, the valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.3 No Conflict: Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II). will (a) conflict with or result in a breach of the organizational documents of any Seller, (b) subject to the entry of the Sale Order and any other Related Order, materially violate any Law or Decree to which any Seller is subject in respect of the Acquired Assets, or (c) subject to the entry of the Sale Order and any other necessary Order to close the sale of the Acquired Assets, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any material Contract to which any Seller is a party or to which any of the Acquired Assets is subject, except, in the case of either clause (b) or (c), for such conflicts, violations, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Other than (x) the applicable requirements of the HSR Act and (y) as required or pursuant to the Bankruptcy Code, the Sale Order and any other Related Order, no Seller is required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be

expected to have a Material Adverse Effect or prevent or materially impair or delay any Seller's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 3.4 Real Property. Section 3.4 of the Disclosure Schedule sets forth the location of the Stores, each of which is leased to a Seller by a third party, and a list of all Assumed Leases. Sellers have made available to Buyer a true and complete copy of each Assumed Lease to the extent in their possession. With respect to each Assumed Lease, (a) assuming due authorization and delivery by the other party thereto, such Assumed Lease constitutes the valid and legally binding obligation of each Seller party thereto and, to the Knowledge of Sellers, the counterparty thereto, enforceable against such Seller and, to the Knowledge of Sellers, the counterparty thereto in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity, and (b) neither such Seller nor, to Knowledge of Sellers, the counterparty thereto is in breach or default under such Assumed Lease, except (i) for those defaults that will be cured in accordance with the Sale Order or waived in accordance with section 365 of the Bankruptcy Code (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Assumed Leases) or (ii) to the extent such breach or default would not reasonably be expected to be material to the Business. Sellers have no written notice of any pending or threatened taking of any of the property subject to any Assumed Lease.

Section 3.5 Proceedings; Decrees. Other than the Bankruptcy Case, as of the date of this Agreement, there is no Proceeding pending for which Sellers have received notice that (a) would reasonably be expected to have a Material Adverse Effect or (b) challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. To the Knowledge of Sellers, no Seller is subject to any outstanding Decree that would (i) reasonably be expected to have a Material Adverse Effect or (ii) prevent or materially delay such Seller's ability to consummate the transactions contemplated hereby or perform in any material respect its obligations hereunder.

Section 3.6 Labor Relations. No Seller is a party to or bound by any Collective Bargaining Agreement covering the Covered Employees.

Section 3.7 Brokers' Fees. Other than the fees and expenses payable to Peter J. Solomon Company and CBRE, Inc. in connection with the transactions contemplated hereby, which shall be borne by Sellers, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay.

Section 3.8 Taxes. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) Sellers (with respect to the Business) have filed all Tax Returns required to be filed with the appropriate Tax authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Sellers), and all Taxes shown as due on such Tax Returns have been paid.

(b) Sellers (with respect to the Business) have withheld and paid over to the appropriate Tax authority (or is properly holding for such payment) all Taxes required by Law to be withheld and paid in connection with amounts owing to any employee or independent contractor.

~~(c)~~(c) Notwithstanding anything in this Agreement to the contrary, the representations and warranties made in this Section ~~3.8~~3.8 and Section ~~3.9~~3.9 are the sole and exclusive representations and warranties made by Sellers regarding Taxes.

Section 3.9 Employee Benefits and Costs.

(a) Section 3.9(a) of the Disclosure Schedule lists all “employee benefit plans,” as defined in section 3(3) of ERISA, and all other material employee benefit plans or arrangements (other than governmental plans and statutorily required benefit arrangements), including bonus or incentive plans, deferred compensation arrangements, severance pay, sick leave, vacation pay, disability, medical insurance and life insurance maintained or contributed to by Sellers and their Subsidiaries as of the date hereof with respect to Covered Employees (the “Employee Benefit Plans”).

~~(b)~~(b) True, correct and complete copies of the following documents, with respect to each of the Employee Benefit Plans, have, to the extent applicable, been made available to Buyer: (i) any plan documents, and all material amendments thereto, (ii) the most recent Forms 5500 and (iii) the most recent summary plan descriptions (including letters or other documents updating such descriptions).

~~(c)~~(c) No Employee Benefit Plan is an “employee pension benefit plan” (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA, Section 412 of the Code or Section 302 of ERISA (including any “multiemployer plan” within the meaning of Section (3)(37) of ERISA (a “Multiemployer Plan”).

~~(d)~~(d) Each of the Employee Benefit Plans sponsored by Sellers and its Subsidiaries that is intended to qualify under Section 401(a) of the Code has been determined by the IRS to be so qualified, and, to the Knowledge of Sellers, nothing has occurred with respect to the operation of any such plan which could reasonably be expected to result in the revocation of such favorable determination.

~~(e)~~(e) Each of the Employee Benefit Plans has been established, maintained and operated in accordance with its terms and the requirements of all applicable Laws, except as would not reasonably be expected to have a Material Adverse Effect.

~~(f)~~(f) There are no material claims or causes of action pending or, to the Knowledge of Sellers, threatened in writing during the one (1) year prior to the date of this Agreement against Sellers in connection with any Employee Benefit Plan. As of the date hereof, Sellers are not engaged or involved in any Proceedings brought by or on behalf of any of the Covered Employees and, to the Knowledge of Sellers, no such Proceedings have been threatened

in writing during the one (1) year prior to the date of this Agreement, except for such Proceedings that would not reasonably be expected to have a Material Adverse Effect.

~~(g)~~(g) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (alone or in conjunction with any other event) will (i) entitle any Covered Employee to any compensation or benefit (or increase thereto) or (ii) accelerate the time of payment or vesting, or trigger any payment or funding, of any compensation or benefits with respect to any Covered Employee under any Employee Benefit Plan.

~~(h)~~(h) Section 3.9(h) of the Disclosure Schedule contains a complete list of all employees of each Store as of the date of this Agreement to whom Buyer is obligated to make offers of employment, including the beginning date of employment, rate of pay or salary, and benefits attributable to such employee.

Section 3.10 Compliance with Laws; Permits.

(a) Sellers are in compliance with all Laws applicable to the Business, except where the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect. Sellers have not received any written notice of or been charged with the violation of any Laws, except where such violation would not reasonably be expected to result in a Material Adverse Effect.

(b) Sellers have all Permits which are required for the operation of the Business as presently conducted, except where the absence of which would not reasonably be expected to result in a Material Adverse Effect. Sellers are not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which Sellers are parties, except where such default or violation would not reasonably be expected to result in a Material Adverse Effect.

Section 3.11 Title to Assets. Immediately prior to the Closing, Sellers will have good and valid title to, or the right to use, the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens). Pursuant to the Sale Order, Sellers will convey such title or rights to use, all of the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens). None of the Acquired Assets in Seller's possession as of the Closing shall be the property of others, or held on consignment, except as set forth in Section 3.11 of the Disclosure Schedule.

Section 3.12 Financial Statements. The financial statements set forth in Section 3.12 of the Disclosure Schedule, present fairly in all material respects the sales and expenses generated from and incurred at the Stores for the periods specified.

Section 3.13 Occupancy. No Person other than Sellers or its business invitees has the right to occupy any of the Stores. The Stores shall be delivered to Buyer on the Closing Date free of the right of any other Person to occupy or use such properties. There are no licensee's with respect to any Lease or Assumed Lease.

ARTICLE IV
BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to each Seller that the statements contained in this Article IV are true and correct, except as set forth in Buyer's disclosure schedule accompanying this Agreement.

Section 4.1 Organization of Buyer; Good Standing and Qualification. Buyer is a ~~corporation~~limited liability company duly organized, validly existing, and in good standing under the Laws of the State of New York and has all requisite corporate or similar power and authority to own, lease, and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction. Buyer has full power and authority to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Buyer is a party have been duly authorized by Buyer. This Agreement (assuming due authorization and delivery by Sellers) constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.3 No Conflict; Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II) will (a) conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Buyer, (b) violate any Law or Decree to which Buyer is, or its assets or properties are, subject or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (b) or (c), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis. Other than the applicable requirements of the HSR Act, Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.4 Proceedings; Decrees. There is no Proceeding pending or, to the knowledge of Buyer, threatened in writing that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Neither Buyer nor any of its Subsidiaries is subject to any outstanding Decree that would prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.5 Brokers' Fees. Buyer has not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Sellers or any of their Affiliates could become liable or obligated to pay.

Section 4.6 Sufficient Funds; Adequate Assurances. Buyer has, and upon the Closing will have, immediately available funds sufficient for the satisfaction of all of Buyer's obligations under this Agreement, including the payment of the Purchase Price and all fees, expenses of, and other amounts required to be paid by, Buyer in connection with the transactions contemplated hereby. Buyer has not incurred, and is not contemplating or aware of, any obligation, commitment, restriction or other Liability of any kind, in each case that would impair or adversely affect such resources, funds or capabilities.

Section 4.7 Buyer Information. As of the date hereof, Buyer has disclosed to Sellers any and all potential issues under any Antitrust Law that may be credibly raised about the transactions contemplated hereby. As of the date hereof, Buyer has provided to Sellers true, correct, and complete information relating to the businesses and sales of Buyer and its Subsidiaries and joint ventures upon which Sellers can reasonably determine whether any objections to the transactions contemplated hereby may be credibly asserted under any Antitrust Law.

Section 4.8 Disclaimer of Other Representations and Warranties. Buyer hereby acknowledges that, except for the representations and warranties contained in Article III (as modified by the Disclosure Schedule) or expressly contained in any Related Agreement, neither Sellers nor any other Person shall be deemed to have made, and none of Buyer or its Representatives is relying on, any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding any Sellers, any Acquired Assets, any Assumed Liabilities or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in this Article IV or any Related Agreement, BUYER HEREBY ACKNOWLEDGES THAT NO SELLER MAKES ANY OTHER (AND HEREBY DISCLAIMS EACH OTHER) REPRESENTATION, WARRANTY, OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION, OR USE OF THE ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT, SHOULD THE CLOSING OCCUR, BUYER WILL ACQUIRE THE ACQUIRED ASSETS AND ASSUME THE ASSUMED LIABILITIES ON AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WITH RESPECT TO ENVIRONMENTAL, HEALTH, OR SAFETY MATTERS). Buyer hereby acknowledges that Sellers disclaim all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant, or representative of Sellers or any of their Affiliates).

ARTICLE V PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

Section 5.1 Conduct of the Business Pending the Closing.

~~(a)~~(a) Prior to the Closing, except (i) as set forth on Section 5.1(a) of the Disclosure Schedule, (ii) as required by applicable Law or by order of the Bankruptcy Court, (iii) as required or contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), each Seller will use commercially reasonable efforts to (A) conduct the Business only in the Ordinary Course of Business, (B) preserve the present business operations, organization and goodwill of the Business and (C) preserve the present relationships with material vendors and suppliers of the Business.

~~(b)~~(b) Except (i) as set forth on Section 5.1(b) of the Disclosure Schedule, (ii) as required or contemplated by applicable Law or by order of the Bankruptcy Court, (iii) as otherwise contemplated by this Agreement or (iv) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), no Seller shall, solely as it relates to the Business:

~~(i)~~(i) other than in the Ordinary Course of Business, as required by any applicable collective bargaining agreement or Law or pursuant to any Contract in effect as of the date of this Agreement or as permitted by any Employee Benefit Plan, with respect to any Transferred Employees (A) materially increase the annual level of compensation of any Covered Employee or (B) materially increase the coverage or benefits available under any (or create any new) Employee Benefit Plan;

~~(ii)~~(ii) subject any of the Acquired Assets to any Lien, except for Permitted Liens and any Lien securing any debtor in possession loan facility or granted in an order authorizing use of cash collateral; provided, however, Sellers' obligation to deliver the Acquired Assets free of Liens shall include any Liens granted under any debtor in possession loan facility or cash collateral order; or

Section 5.2 Cooperation.

~~(a)~~(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, except as otherwise specifically provided in Section 5.25.2 or Section 5.45.4.

~~(b)~~(b) Without limiting the generality of the foregoing, Buyer shall not take any action, or permit any of its Subsidiaries to take any action, to materially diminish the ability of any Party to consummate, or materially delay any Party's ability to consummate, the transactions contemplated hereby, including any action that is intended or would reasonably be expected to

result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VII to not be satisfied.

Section 5.3 Regulatory Approvals.

~~(a) Subject~~(a) Subject to the terms and conditions herein, each of the Parties shall use their respective best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper, or advisable to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable, and in any case, prior to the Outside Date (including the satisfaction, but not waiver, of the conditions precedent set forth in Article VII). Each of the Parties shall use their respective best efforts to obtain consents of all Governmental Authorities necessary to consummate the transactions contemplated by this Agreement (including the provision of any notices to and making of any filings with any Governmental Authorities). If necessary, in the determination of the Parties, each Party shall make an appropriate filing pursuant to the HSR Act within ten (10) Business Days after the date of this Agreement (unless mutually agreed in writing). Each Party shall supply as promptly as practicable to the appropriate Governmental Authorities any information and documentary material that may be requested pursuant to the HSR Act. Without limiting the foregoing, (i) the Parties shall not voluntarily extend any waiting period or other applicable time period under the HSR Act or enter into any agreement with any Governmental Authority to delay, or otherwise not to consummate as soon as practicable the transactions contemplated hereby, except with the prior written consent of the other Parties, which consent may be withheld in the sole discretion of the non-requesting Party, and (ii) Buyer and Sellers agree, at Buyer's sole cost, to take any and all actions that are necessary or reasonably advisable to avoid or eliminate each and every impediment under the HSR Act that may be asserted or required by any Governmental Authority to consummate the transactions contemplated by this Agreement as expeditiously as possible, and in any event prior to the Outside Date, including (A) proposing, negotiating, committing to, effecting and agreeing to, by consent decree, hold separate order, or otherwise, the sale, divestiture, license, hold separate, and other disposition of, any entities, operations, assets, divisions, businesses, product lines, customers or facilities of the Business or Buyer, or their respective Affiliates, (B) creating, terminating, amending or assigning existing relationships, ventures, contractual rights, or obligations of the Business or Buyer, (C) amending, assigning, or terminating existing licenses or other agreements (and entering into such new licenses or other agreements), (D) otherwise taking or committing to any and all actions that would limit Buyer's freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, products, or equity interests of the Business or Buyer, or their respective Affiliates, and (E) entering into any governmental order, consent decree or other agreement to effectuate any of the foregoing. All filing fees incurred in connection with the HSR Act shall be borne by Buyer.

~~(b)~~(b) Each Party to this Agreement shall promptly notify the other Parties of any oral or written communication it receives from any Governmental Authority relating to the matters that are the subject of this Agreement, permit the other Parties to review in advance any communication proposed to be made by such Party (or its advisors) to any Governmental Authority, and provide the other Parties with copies of all correspondence, filings or other communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement. No Party shall agree to participate in any meeting or substantive discussion with any

Governmental Authority in respect of any such filings, investigation or other inquiry unless, to the extent reasonably practicable, it consults with the other Parties in advance and, to the extent practicable and permitted by such Governmental Authority, gives the other Parties the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement and applicable Law, the Parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods under any Law in any relevant jurisdiction. Nothing in this Section 5.3(b) shall be applicable to Tax matters.

~~(e)~~(c) In the event any Proceeding by any Governmental Authority or other Person is commenced that questions the validity or legality of the transactions contemplated hereby, seeks to temporarily or permanently enjoin the transactions contemplated hereby, or seeks Damages in connection therewith, Buyer agrees to cooperate with Sellers and use best efforts to defend against such Proceeding and, if any Decree is issued in any such Proceeding, to use best efforts to have such Decree vacated, lifted, reversed or overturned and to cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated hereby.

~~(d)~~(d) Notwithstanding anything in this Agreement to the contrary, Buyer acknowledges on behalf of itself and its Affiliates and its and their Affiliates and Representatives, successors and assigns that the operation of the Business shall remain in the dominion and control of Sellers until the Closing and that Buyer and its Affiliates and Representatives shall not provide, directly or indirectly, any directions or orders to any director, officer or employee of Sellers with respect to the operation of the Business, except as specifically contemplated or permitted by this Article V or as otherwise consented to in advance by an executive officer of Sellers.

Section 5.4 Bankruptcy Court Matters.

~~(a)~~(a) INTENTIONALLY OMITTED

~~(b)~~(b) INTENTIONALLY OMITTED

~~(c)~~(c) Bankruptcy Court Filings.

~~(i)~~(i) INTENTIONALLY OMITTED.

~~(ii)~~(ii) Sellers shall diligently seek entry of the Sale Order and any other necessary orders to close the sale of the Acquired Assets (the "Related Orders") by the Bankruptcy Court in accordance with the terms and conditions of the Bidding Procedures Order. ~~Sellers shall seek to include in the Sale Order, at Sellers' election, a statement providing either that (x) Sellers are rejecting the Red Hook Leases upon the Closing or (y) that the Red Hook Leases will terminate upon the Closing, but only if Buyer obtains the landlord's consent to the inclusion of such language in the Sale Order and the waiver of Sellers' obligation to make rent payments or pay any penalties upon such termination.~~ Buyer and Sellers understand and agree that the consummation of the transactions contemplated by this Agreement is subject to approval by the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and

any Related Orders including a finding of adequate assurance of future performance by Buyer, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Sellers, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Acquired Assets hereunder. In the event the entry of the Sale Order shall be appealed, Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

~~(iii)~~ (iii) Sellers shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Transferred Contracts and to determine the amount of the Cure Costs; provided, that nothing herein shall preclude Sellers from filing such motions, to reject any Contracts that are not Transferred Contracts.

Section 5.5 Notices and Consents.

~~(a)~~ (a) Sellers will give, or will cause to be given, any notices to third parties, and each of the Parties will use its commercially reasonable efforts to obtain any third party consents or sublicenses, in connection with the matters referred to in Section 5.5(a) of the Disclosure Schedule or as are otherwise required to consummate the transactions contemplated hereby; provided, however, that (i) except as to the Affected Unions and Affected Labor Agreements, Sellers shall control all correspondence and negotiations with third parties regarding any such matters, (ii) neither the Company nor any of its Subsidiaries shall be required to pay any consideration therefor, (iii) Sellers shall not be obligated to initiate any Proceedings to obtain such consent or approval, and (iv) Buyer shall pay any reasonable costs, or bear any reasonable effects as a result of amendments or modifications to any Transferred Contract, in either case as is necessary to obtain such consent or sublicense, and if Buyer refuses to pay such costs, such Transferred Contract shall be excluded from the transactions hereunder and there shall be no adjustment to the Purchase Price on account of such exclusion and Buyer will indemnify Sellers for any Damages as a result thereof, including any Damages from any inability of Sellers (including any Subsidiary of any Seller) to perform under a Contract that otherwise would be a Transferred Contract as a result of the other transactions contemplated hereby and would not otherwise be a general unsecured claim against the Sellers’ estates.

~~(b)~~ (b) Without limiting Section 5.35.3, each of the Parties will give any notices to, make any filings with, and use its reasonable best efforts to obtain any authorizations, consents, and approvals of Governmental Authorities in connection with the matters referred to in Section 5.5(b) of the Disclosure Schedule or as are otherwise necessary and appropriate to consummate the transactions contemplated hereby (including obtaining the Required Permits for the Stores, if applicable). In furtherance of the foregoing, Buyer shall make application to the applicable authorities to obtain the Required Permits for the Stores, and any such application shall be made promptly after the execution of this Agreement and shall be diligently pursued by Buyer, at Buyer’s sole cost and expense. Buyer shall use reasonable best efforts to expeditiously obtain the Required Permits for the Stores and Sellers, at no out-of-pocket cost or expense to Sellers, shall reasonably

cooperate with Buyer in obtaining such Required Permits. Buyer shall engage an expeditor to assist Buyer in obtaining such Required Permits for the Stores.

~~(e)~~(c) Seller will give notices required by any WARN Act applicable to the employees of the Stores within a reasonable amount of time after the date of this Agreement.

Section 5.6 Notice of Developments. Each Seller and Buyer will give prompt written notice to the other Parties of (a) the existence of any fact or circumstance, or the occurrence of any event, of which to the Knowledge of Sellers, or to the knowledge of Buyer, as applicable, would reasonably be likely to cause a condition to a Party's obligations to consummate the transactions contemplated hereby set forth in Article VII not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; provided, however, that the delivery of any such notice pursuant to this Section 5.65.6 shall not (i) be deemed to amend or supplement this Agreement, (ii) cure any breach of, or non-compliance with, any other provision of this Agreement or (iii) limit the remedies available to the Party receiving such notice; provided, further, that the terms and conditions of the Confidentiality Agreement shall apply to any information provided under this Section 5.65.6. The Parties agree that Buyer and Sellers' respective compliance or failure of compliance with this Section 5.65.6 shall not be taken into account for purposes of determining whether the conditions referred to in Section 7.1-7.1, Section 7.27.2 or Section 7.3-7.3, respectively, shall have been satisfied.

Section 5.7 Access; No Contact. Upon the reasonable request of Buyer, and to the extent not otherwise prohibited by applicable Law, (i) after the date of this Agreement and prior to Closing, Sellers will permit Buyer and its Representatives to have, upon reasonable advance written notice, reasonable access to all premises, properties, books and records included in the Acquired Assets (including for purposes of effecting the installation of point of sale systems on up to fifty percent (50%) of the cash registers at each Store), and to management of Sellers, during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of any Seller and (ii) Sellers will permit Buyer and its Representatives to discuss possible modifications to any Red Hook Lease or Assumed Lease with the applicable counterparty thereto, and to interview employees to whom Buyer is required or intends to provide offers of employment in accordance with Section 6.4(a); provided, however, that, for avoidance of doubt, (a) the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto or any confidentiality obligations to which Sellers are bound and (b) Buyer and its Representatives shall not conduct any intrusive sampling or testing of environmental media such as soil, groundwater or building materials; provided, further, that the auditors and accountants of any Seller, or any of their respective Affiliates or the Business shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants. If reasonably requested by Sellers, Buyer shall enter into a customary and mutually acceptable joint defense agreement with Sellers with respect to any information to be provided to Buyer pursuant to this Section 5.75.7. Prior to the Closing, except as provided above, Buyer shall not, and shall cause its Representatives not to, contact any employees, vendors, customers, suppliers, landlords or

licensors of any Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of each Seller.

Section 5.8 Bulk Transfer Laws. Buyer acknowledges that Sellers will not comply with the provisions of any bulk transfer Laws or similar Laws of any jurisdiction in connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

Section 5.9 Replacement Bonding Requirements. On or prior to the Closing Date, Buyer shall, at the election of Buyer, either (a) provide replacement guarantees, standby letters of credit, security deposits or other assurances of payment with respect to all Bonding Requirements, in form and substance reasonably satisfactory to Sellers and any landlords, banks or other counterparty thereto, and, both prior to and following the Closing Date, Buyer and Sellers shall cooperate to obtain a release in form and substance reasonably satisfactory to Buyer and Sellers with respect to all Bonding Requirements, (b) Buyer shall deliver to Sellers an irrevocable, unconditional standby letter of credit in favor of Sellers in an amount equal to the amount of such Bonding Requirements, issued by a bank rated “A” or better by Standard and Poor’s, in form and substance reasonably satisfactory to Sellers or (c) elect to have the Sellers’ method of satisfying the Bonding Requirements apply to Buyer, to the extent transferrable. For the avoidance of doubt, on or prior to the Closing Date, Buyer shall replace the Sellers’ security deposit or letter of credit with the landlord of the Douglaston Store and either (i) facilitate with the landlord the return of such security deposit or letter of credit to Sellers, or (ii) shall pay Sellers the entire amount of the security deposit or letter of credit and take over or otherwise replace the security deposit or letter of credit with the landlord.

Section 5.10 Third Party Data. Prior to the Closing Date and upon the request of Buyer, Sellers will consent to any reasonable request from the grocery delivery service known as ‘Instacart’ or other third party service providers to provide copies of batch files and other similar information regarding to deliveries and in-store inventory at the Stores to Buyer.

Section 5.11 Costs and Expenses Reimbursement. If, in accordance with Section 2.42.4, Buyer elects to extend the Closing Date beyond July 31, 2020, Buyer shall pay Sellers the costs and expenses of operating the Stores (including any corporate overhead related to the Stores), from July 31, 2020 until the earlier to occur of the Closing or the termination of this Agreement on a weekly basis within two (2) Business Days after receiving an invoice from Sellers. To the extent Buyer has complied with its payment obligations set forth in this Section 5.11.11, Sellers shall pay on the Closing Date or the date the Agreement is terminated, any revenue generated during such period.

Section 5.12 Store Exclusive Emails. Prior to the Closing, at such time as Sellers and Buyer mutually agrees to do so, Sellers shall send an email to all of the Store Exclusive Emails indicating that Sellers are transferring the Stores to Buyer and providing each such customer an opportunity to “opt in” or “opt out” of any future communications to those emails from Sellers or Buyer. Sellers shall allow Buyer a reasonable opportunity to review and comment on the contents of such email transmission.

Section 5.13 Inventory Closing. If Buyer extends the Closing in accordance with Section 2.42.4, and the Closing has not occurred by August 24, 2020, Buyer agrees and acknowledges that Buyer is obligated to acquire all Inventory as of such date and such Inventory shall be transferred to Buyer, and the Inventory Escrow Amount, as adjusted pursuant to Section 2.3~~ta~~(a), shall be released to Sellers.

ARTICLE VI OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing:

Section 6.1 Further Assurances. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will, at the requesting Party's sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Buyer all of the Acquired Assets or to confirm Buyer's assumption of the Assumed Liabilities.

Section 6.2 Access: Enforcement: Record Retention. From and after the Closing, upon request by any Seller, Buyer will permit Sellers and their Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Buyer, to all premises, properties, personnel, books and records, and Contracts of or related to the Acquired Assets or the Assumed Liabilities for any reasonable business purpose, including (a) preparing Tax Returns and in connection with any audit with respect to any Taxes, (b) monitoring or enforcing rights or obligations of any Seller under this Agreement or any of the Related Agreements, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Buyer to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, (ii) such action could reasonably be expected to result in violation of applicable Law, or (iii) providing such access or information would reasonably be expected to be disruptive to its normal business operations. Buyer agrees to maintain the files or records which are contemplated by the first sentence of this Section 6.26.2 in a manner consistent in all material respects with its document retention and destruction policies, as in effect from time to time, for six (6) years following the Closing.

Section 6.3 Treatment of Affected Labor Agreements. With respect to Covered Employees under an Affected Labor Agreement, Buyer shall engage in good faith negotiations, in coordination with Sellers, to reach mutually satisfactory modifications to the relevant Affected Labor Agreement with each of the Affected Unions and to enter into a Modified Labor Agreement with each of the Affected Unions. Sellers consent to Buyer having direct conversations and negotiations, not including Sellers, with each of the Affected Unions concerning the terms and conditions of a Modified Labor Agreement; provided, that Buyer shall provide reasonably advance notice to Sellers in advance of any direct conversations and negotiations with the Affected Unions and Buyer shall keep Sellers apprised of the status of such negotiations and developments as promptly as practicable. Such Modified Labor Agreement shall constitute a Transferred Contract. Buyer, in coordination with Sellers, shall propose a Modified Labor Agreement to each Affected

Union (each, a “Proposal”), which Proposal may be modified as a result of Buyer’s and/or Sellers’ good faith negotiations with the Affected Unions. Buyer agrees to cooperate with Sellers in providing each Affected Union with complete and reliable information to allow the Affected Unions to evaluate the Proposal. For all purposes under this Section 6.36.3. Buyer acknowledges the requirements of sections 1113 and 1114 of the Bankruptcy Code and agrees to use good faith reasonable best efforts to cooperate with Sellers in ensuring compliance with any applicable provisions thereof.

Section 6.4 Covered Employees.

~~(a)~~ (a) Offer of Employment. At least five (5) days prior to the Closing Date, Buyer or one of its Affiliates shall make a written offer of employment, effective as of the Closing Date, to substantially all, but in any event, no less than ninety percent (90%) of the Covered Employees that are subject to an Affected Labor Agreement (A) at the same location of employment as such Covered Employee’s location of employment as of immediately prior to Closing or at a location operated by Buyer’s Affiliates that is within a reasonable commuting distance from such Covered Employee’s current location of employment, (B) on the same terms and conditions of employment as in effect immediately prior to Closing, except as modified by a Modified Labor Agreement, or as otherwise set forth in this Agreement, and (C) with compensation and benefits at a level consistent with the compensation and benefits offered to Buyer’s employees in its other locations and otherwise with Section 6.4(c) or Section 6.4(c) of the Disclosure Schedule. For purposes of this Section 6.46.4, any Covered Employee who becomes employed by Buyer or one of its Affiliates in accordance with this Section 6.4(a) is referred to as a “Transferred Employee.” With respect to union-represented Covered Employees, such offers shall also be consistent with the terms and conditions required by the Modified Labor Agreements, as applicable. With respect to any Covered Employee who is on a long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Covered Employee returning to active status within a reasonable period. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Modified Labor Agreements, as applicable, at any time following the Closing Date. All offers of employment to Covered Employees not governed by a Modified Labor Agreement shall be for “at will” employment. Notwithstanding anything to the contrary set forth in this Section 6.46.4, no Covered Employee shall be offered an employment contract.

~~(b)~~ (b) Covered Employees and Employee Benefit Plans.

~~(i)~~ (i) Liabilities. Effective as of the Closing, Buyer shall, or shall cause an Affiliate to, assume any and all Liabilities relating to, arising out of, or resulting from the employment or services, of any Transferred Employee, to the extent such Liabilities are based on any event which first occurs or exists on or after the Closing. Nothing set forth herein shall require Buyer to assume any Liability of Sellers to any employee arising out of Sellers’ operation of the Business or any business or arising from operation or ownership of the Acquired Assets, prior to Closing. Sellers shall retain, as the case may be, any and all Liabilities relating to, arising out of, or resulting from the employment or services, or termination of employment or services, of any Transferred Employee, including under any

Collective Bargaining Agreement, to the extent such Liabilities arise prior to the Closing. Nothing contained herein shall obligate Buyer to pay or satisfy any liability to any employee of Sellers for any severance benefits.

~~(ii)~~ (ii) Benefit Plans. Effective as of the Closing, Sellers or an applicable Subsidiary shall terminate the participation of each Transferred Employee and such Transferred Employee's eligible dependents in each Employee Benefit Plan.

~~(c)~~ (c) Compensation and Benefits.

(i) Commencing on the Closing Date and continuing through the first anniversary of the Closing Date, Buyer or its Affiliates shall provide or cause to be provided to the Transferred Employees not covered by a Modified Labor Agreement who remain in Buyer's employ, (A) a base salary or wage rate, as applicable, and (B) employee benefits, no less favorable than provided to other employees working in stores operated by Buyer or its Affiliates in New York City.

~~(ii)~~ (ii) Buyer or its Affiliates shall provide Transferred Employees with the severance benefits provided to other employees working in stores operated by Buyer or its Affiliates in New York City, or under any Modified Labor Agreement, as applicable.

~~(iii)~~ (iii) As of the Closing Date, Buyer will honor the governing Modified Labor Agreements to the extent executed prior to Closing.

~~(d)~~ (d) 401(k) Plan. Effective as of the Closing, and subject to the terms of the Modified Labor Agreements, each Transferred Employee eligible to participate in the tax-qualified defined contribution plan maintained by Sellers and their Subsidiaries (the "Seller 401(k) Plan") shall be eligible to participate in a defined contribution plan sponsored by Buyer or its Affiliates that is intended to be qualified under Section 401(a) of the Code (a "Buyer 401(k) Plan"). Effective as of the Closing, in accordance with the terms of the Seller 401(k) Plan, the Seller 401(k) Plan shall provide Transferred Employees with the right to elect a distribution from the Seller 401(k) Plan and Buyer shall use commercially reasonable efforts to cause the Buyer 401(k) Plan to accept the rollover by any Transferred Employees of any "eligible rollover distribution" (within the meaning of Section 402(c)(4) of the Code) from the Seller 401(k) Plan, including plan loans.

~~(e)~~ (e) Multiemployer Plans. The Sale Order shall provide that with respect to any Multiemployer Plan, pension plan, or Employee Benefit Plan to which a Seller is a party or by which it is bound, Buyer shall have no Liability.

~~(f)~~ (f) Accrued Vacation. ~~Subject~~ Subject to the terms of the Modified Labor Agreements (i) Buyer or its Affiliates shall provide each Transferred Employee with credit for the same number of vacation and sickness benefit days such Transferred Employee has accrued but not used between January 1, 2020 and the Closing Date, ~~subject~~ subject to and in accordance with

applicable Law or Buyer's policies governing other employees working in stores operated in New York City by Buyer or its Affiliates.

(g) Welfare Benefit Claims; COBRA. On the Closing Date, Sellers and their Subsidiaries shall cease to provide welfare coverage to each Transferred Employee and his or her covered dependents who are covered by a welfare benefit plan sponsored by Sellers and their Subsidiaries, and Buyer or its Affiliates shall commence providing such coverage to such individuals, subject to and in accordance with Buyer's policies governing other New York City employees of Buyer or its Affiliates. Sellers shall be responsible in accordance with its applicable welfare plans (and the applicable welfare plans of their Subsidiaries) in effect prior to the Closing Date for all reimbursement claims (such as medical and dental claims) for expenses incurred, and for all non-reimbursement claims (such as life insurance claims) incurred, under Sellers' or their

Subsidiaries' Employee Benefit Plans that are welfare benefit plans prior to the Closing Date by the Transferred Employees and their dependents. Buyer or its Affiliates shall be responsible in accordance with the applicable welfare plans of Buyer's Affiliate for all reimbursement claims (such as medical and dental claims) for expenses incurred, and for all non-reimbursement claims (such as life insurance claims) based on facts or events which first occur on or after the Closing Date (or the date of commencement of employment with Buyer, if later) by Transferred Employees and their dependents. For purposes of this Section 6.4(g), a claim shall be deemed to have been incurred as follows: (i) for health, dental and prescription drug benefits, upon provision of such services, (ii) for life, accidental death and dismemberment and business travel accident insurance benefits, upon the death, disability or accident giving rise to such benefits, and (iii) for hospital- provided health, dental, prescription drug or the benefits that become payable with respect to any hospital confinement, on such employee's admission to the hospital. Sellers or their Subsidiaries shall provide coverage required by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") under Sellers' or their Subsidiaries' Employee Benefit Plans that are group health plans with respect to qualifying events occurring prior to the Closing Date. Buyer and its Affiliates shall provide coverage required by COBRA to Transferred Employees and their eligible dependents or beneficiaries under Buyer's group health plans with respect to qualifying events occurring on and after the Closing Date.

~~(h)~~ No Third Party Beneficiary Rights. The Parties agree that nothing in this Section ~~6.4~~6.4, whether express or implied, is intended to create any third party beneficiary rights in any Covered Employee.

~~(i)~~ Cooperation. After the Closing Date, the parties shall cooperate with each other to provide such current information regarding the Transferred Employees on an ongoing basis as may be necessary to facilitate determinations of eligibility for, and payments of benefits to, the Transferred Employees under any applicable employee benefit that continues to be maintained by Sellers or their Affiliates. Buyer shall, and shall cause its Affiliates to, permit Transferred Employees to provide such assistance to Sellers as may be required in respect of claims against Sellers or their Affiliates, whether asserted or threatened, to the extent that, in Sellers' opinion, (i) a Transferred Employee has knowledge of relevant facts or issues, or (ii) a Transferred Employee's assistance is reasonably necessary in respect of any such claim, at no cost or expense to Buyer. Sellers shall provide Buyer with all relevant records (or copies thereof) with respect to all Transferred Employees' employment by Buyer to the extent allowed by Law.

Section 6.5 Transfer Taxes. To the extent that any such Taxes are payable, Buyer shall pay any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or other non-income Tax, fee or governmental charge (a “Transfer Tax”) imposed under applicable Law in connection with the transactions contemplated hereby. Accordingly, if any Seller is required by Law to pay any such Transfer Taxes, Buyer shall promptly reimburse such Seller for the amount of such Transfer Taxes actually paid by such Seller. The party that is required by applicable Law to file any Tax Returns in connection with Transfer Taxes described in the immediately preceding sentence shall prepare and timely file such Tax Returns. The Parties shall cooperate to permit the filing party to prepare and timely file any such Tax Returns.

Section 6.6 Insurance Matters. Buyer acknowledges that, upon Closing, all insurance coverage provided in relation to Sellers, the Stores or the Acquired Assets that is maintained by any Seller or its Affiliates (whether such policies are maintained with third party insurers or with such Seller or its Affiliates) shall cease to provide any coverage to Buyer, the Stores or the Acquired Assets, and no further coverage shall be available to Buyer, the Stores or the Acquired Assets under any such policies.

Section 6.7 Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required (a) by applicable Law or Decree of the Bankruptcy Court or (b) any announcement by Sellers to its employees, customers and suppliers to the extent Sellers reasonably determines in good faith that such announcement is necessary or advisable in connection with the transactions contemplated hereby. If any such announcement or other disclosure is required by applicable Law or a Decree of the Bankruptcy Court, the disclosing Party shall give the nondisclosing Parties prior notice of, and an opportunity to comment on, the proposed disclosure. The Parties acknowledge that Sellers shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order.

Section 6.8 Use of Seller Marks. The Seller Marks may appear on some of the Acquired Assets, including on signage. Buyer acknowledges and agrees that it does not have and, upon consummation of the transactions contemplated by this Agreement, will not have, any right, title, interest, license, or other right to use the Seller Marks. Buyer shall refrain from the use and display of the Acquired Assets on which the Seller Marks are affixed.

ARTICLE VII CONDITIONS TO OBLIGATION TO CLOSE

Section 7.1 Conditions to Each Party’s Obligations. The respective obligation of each Party to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

~~(a)~~(a) all applicable waiting periods under any Antitrust Law shall have expired or otherwise been terminated;

~~(b)~~(b) no material Decree shall be in effect that prohibits the consummation of the transactions contemplated by this Agreement; and

~~(c)~~(c) the Bankruptcy Court shall have entered (i) the Sale Order and (ii) any Related Order (if any), and no order staying, reversing, modifying, or materially amending such orders shall be in effect on the Closing Date.

Section 7.2 Conditions to Buyer's Obligations. Buyer's obligation to consummate the transactions contemplated hereby in connection with the Closing is ~~subject~~subject to satisfaction or waiver of the following conditions:

~~(a)~~(a) the representations and warranties set forth in Article III shall have been true and correct on the date hereof and as of the Closing in all material respects (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);

~~(b)~~(b) Sellers shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;

~~(c)~~(c) each delivery contemplated by Section 2.5(a) to be delivered to Buyer shall have been delivered; and

~~(d) Buyer has entered into a lease for the Red Hook Store that will be in effect as of the Closing Date and replace the applicable Lease(s) of Sellers.~~

Section 7.3 Conditions to Sellers' Obligations. Sellers' obligations to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

~~(a)~~(a) the representations and warranties set forth in Article IV shall have been true and correct in all material respects (except that any representation or warranty that is qualified by materiality shall have been true and correct in all respects) on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);

~~(b)~~(b) Buyer shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects; and

~~(c)~~(c) each payment contemplated by Section 2.5(b) to be made to Sellers shall have been made, and each delivery contemplated by Section 2.5(b) to be delivered to Sellers shall have been delivered.

Section 7.4 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 7.27.2 or Section 7.37.3, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its reasonable best efforts (or best efforts, with respect to those matters contemplated by Section 5.35.3) to satisfy the

conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant hereunder.

ARTICLE VIII TERMINATION

Section 8.1 Termination of Agreement. The Parties may terminate this Agreement at any time prior to the Closing as provided below:

~~(a)~~(a) by the mutual written consent of the Parties;

~~(b)~~(b) by any Party by giving written notice to the other Parties if:

(i) any court of competent jurisdiction or other competent

Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available to Buyer if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of Buyer to have fulfilled any of its obligations under this Agreement; or

(ii) the Closing shall not have occurred on or prior to July 31, 2020 or such later date as may be extended pursuant to Section 2.42.4 (the “Outside Date”); provided, however, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or Sellers, then the breaching Party may not terminate this Agreement pursuant to this Section 8.1(b)(ii).

~~(c)~~(c) by Buyer by giving written notice to each Seller if there has been a breach by any Seller of any representation, warranty, covenant or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Buyer at the Closing set forth in Section 7.2(a) and Section 7.2(b); and such breach has not been waived by Buyer, or, if such breach is curable, cured by such Seller prior to the earlier to occur of (i) ten (10) days after receipt of Buyer’s notice of intent to terminate and (ii) the Outside Date.

~~(d)~~(d) by any Seller by giving written notice to Buyer and the other Sellers if there has been a breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Sellers at the Closing set forth in Section 7.3(a) and Section 7.3(b); and such breach has not been waived by such Seller, or, if such breach is curable, cured by Buyer prior to the earlier to occur of (i) ten (10) days after receipt of such Seller’s notice of intent to terminate; provided, that such right to cure shall not apply to a breach by Buyer of Section 5.5(b); and (ii) the Outside Date;

~~(e)~~(e) by Sellers or Buyer if the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement;

~~(f) by Sellers by giving written notice to Buyer if Buyer has not delivered a copy of the lease(s) described in Section 7.2(d) duly executed by the parties thereto and a statement, duly executed by Buyer, that the condition set forth in Section 7.2(d) has been and shall be deemed to be satisfied as of the date such lease has been executed, to Sellers on or before July 10, 2020; or~~

~~(g)~~(f) by Sellers by giving written notice to Buyer, if the Closing has not occurred by August 24, 2020.

Section 8.2 Effect of Termination. If any Party validly terminates this Agreement pursuant to Section 8.1, all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I, Section 4.8.4.8, Section 8.3.8.3, Article IX, and this Section 8.2 shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 8.3.8.3) to the other Party hereunder; provided, however, that nothing in this Section 8.2 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, or intentionally fraudulent); provided, further, that the maximum Liability of Buyer shall not exceed the aggregate of the Cash Purchase Price and the maximum Liability of Sellers under this Agreement shall not exceed the aggregate of the Cash Purchase Price.

Section 8.3 Lease Indemnity. If this Agreement is terminated pursuant to Section 8.1(d), following entry of a final non-appealable Sale Order, Buyer shall indemnify Sellers for all Liabilities and Damages arising out of any Lease assumed by Sellers which is not transferred by Sellers to any other Person.

ARTICLE IX MISCELLANEOUS

Section 9.1 Survival. Except for any covenant that by its terms is to be performed (in whole or in part) by any Party following the Closing, none of the representations, warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 2.5(a) or Section 2.5(b) shall survive, and each of the same shall terminate and be of no further force or effect as of, the Closing.

Section 9.2 Expenses. Except as otherwise expressly set forth herein, each Party will bear its own costs and expenses incurred in connection with the preparation and execution of this Agreement and the Related Agreements, the compliance herewith and therewith and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants. For the avoidance of doubt, Buyer shall pay all recording fees arising from the transfer of the Acquired Assets.

Section 9.3 Entire Agreement. This Agreement, together with any documents, instruments and certificates explicitly entered referred to herein, the Related Agreements and the Confidentiality Agreement constitute the entire agreement between the Parties and supersede any

prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

Section 9.4 Incorporation of Exhibits and Disclosure Schedule. The Exhibits to this Agreement and the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties. Buyer may, upon prior written notice to Sellers, assign this Agreement to one or more subsidiaries of Buyer, provided, however, any such assignment shall not reduce or limit Buyer's obligations under this Agreement.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) on the day such communication was sent by e-mail unless the sender receives a "bounceback" or similar indication that the e-mail was not delivered to the recipient; or (d) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Seller:	Fairway	Group	Holdings	Corp.
	2284		12th	Avenue
	New	York,	NY	10027
	Attention:		Nathalie	Augustin
	E-mail:	Nathalie.Augustin@fairwaymarket.com		

With a copy (which shall not constitute notice to Sellers) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Ray C. Schrock, P.C., Gavin Westerman and Sunny Singh
E-mail: ray.schrock@weil.com, gavin.westerman@weil.com and sunny.singh@weil.com

If to Buyer: ~~Bogopa Enterprises, Inc.~~ Seven Seas [_____], LLC
~~650 Fountain Avenue Brooklyn, New York 11208 Attention:~~
~~Edward Suh, E.V.P.~~

Attention: Pasquale J. Conte
51-47 69th Street
Flushing, NY 11377
Email: ~~Edward.suh@bogopausa.com~~ psctapps@aol.com; Attention: Paul Conte

With a ~~copies to~~ copy (which shall not constitute notice to Buyer) to:

~~Harfenist Kraut & Perlstein LLP~~
~~3000 Marcus Avenue Suite 2E1~~
~~New York, New York 11042 Attn:~~
~~Allen Perlstein, Esq.~~

Key Food Stores Co-Operative, Inc.
1200 South Avenue Staten Island, NY 20314
Attention: Dean Janeway
Facsimile: (718) 697-8296
E-mail: DeanJ@HQ.Keyfoods.com

and

Ropes & Gray, LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Attention: Jane D. Goldstein
Facsimile: (617) 235-0376
Email: ~~Aperlstein@hkplaw.com~~ Jane.Goldstein@ropesgray.com

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 9.79.7.

Section 9.8 Governing Law and Venue: Submission to Jurisdiction: Selection of Forum:
Waiver of Trial by Jury.

~~(a)~~(a) This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the state of New York without regard to the conflict of laws rules or principles thereof (or any other jurisdiction) to the extent that such laws, rules or principles would direct a matter to another jurisdiction, except as otherwise required under the laws of the state of New York.

~~(b)~~(b) Each of the Parties agrees that: (i) it shall bring any Proceeding in connection with, arising out of or otherwise relating to this Agreement, any instrument or other document delivered pursuant to this Agreement or the transactions contemplated by this Agreement exclusively in the Bankruptcy Courts; and (ii) solely in connection with such Proceedings, (A) irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Courts, (B) waives any objection to the laying of venue in any such Proceeding in the Bankruptcy Courts, (C) waives any objection that the Bankruptcy Courts are an inconvenient forum or do not have jurisdiction over any Party, (D) agrees that mailing of process or other papers in connection with any such Proceeding in the manner provided in Section 9.79.7 or in such other manner as may be permitted by applicable Law shall be valid and sufficient service thereof and (E) it shall not assert as a defense any matter or claim waived by the foregoing clauses (A) through (D) of this Section 9.8(b) or that any Order issued by the Bankruptcy Courts may not be enforced in or by the Bankruptcy Courts; provided, however, that (x) if the Bankruptcy Cases have not been commenced or (y) upon the closing of the Bankruptcy Cases, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the U.S. District Court for the Southern District of New York sitting in New York County or the Commercial Division of the Courts of the State of New York sitting in the County of New York and any appellate court from any thereof, for the resolution of any such Proceeding. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Proceeding arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby.

~~(c)~~(c) EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 9.9 Specific Performance. Each Party acknowledges and agrees that irreparable damage would occur, and no adequate remedy other than specific performance would exist at Law or in equity, in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached (or any Party threatens such a breach). Therefore, it is agreed that each Party shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any Party may have under this Agreement or otherwise. The Parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to applicable Law or inequitable for any reason, and not to assert that a remedy of monetary Damages would provide an adequate remedy for any such breach or that Buyer or Sellers, as applicable, otherwise have an adequate remedy at Law.

Section 9.10 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

Section 9.11 No Third Party Beneficiaries. Except as set forth in this Section ~~9.11~~9.11 and Section ~~9.12~~9.12, this Agreement shall not confer any rights or remedies upon any Person other than Buyer, each Seller, and their respective successors and permitted assigns.

Section 9.12 Non-Recourse. All claims or causes of action (whether in contract or in tort, at Law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement or the Related Agreements may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (the “Contracting Parties”). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any Contracting Party’s Representatives (“Non- Party Affiliates”), shall have any Liability (whether in contract or in tort, at Law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or Affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or the Related Agreements or based on, in respect of, or by reason of this Agreement or the Related Agreements or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at Law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this

Agreement or the Related Agreements or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section ~~9.12~~9.12.

Section 9.13 Interest. If any payment required to be made to a Party under this Agreement is made after the date on which such payment is due, interest shall accrue on such amount from (but not including) the due date of the payment to (and including) the date such payment is actually made at the Interest Rate. All computations of interest pursuant to this Agreement shall be made on the basis of a year of three hundred sixty five (365) days, in each case for the actual number of days from (but not including) the first day to (and including) the last day occurring in the period for which such interest is payable.

Section 9.14 Limitation on Liability. Notwithstanding anything to the contrary in this Agreement or any Related Agreement, in no event shall any Party have any Liability under this Agreement or any Related Agreement for any consequential, special, incidental, indirect or punitive damages, lost profits or similar items (including loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to a breach or alleged breach of this Agreement); provided, that such limitation with respect to lost profits shall not limit any Party's right to recover contract damages in connection with such Party's failure to close in breach or violation of this Agreement.

Section 9.15 Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.16 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Sellers in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure for all purposes of this Agreement and all other sections of the Disclosure Schedule to which such matter relates. The listing of any matter shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the listing of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers' representations, warranties, or covenants set forth in this Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the applicable section of the Disclosure Schedule in which they are directly or indirectly referenced. The information contained in the Disclosure Schedule is in all respects provided subject to the Confidentiality Agreement.

Section 9.17 Headings: Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.18 Counterparts: Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

Section 9.19 Limitations Under Applicable Law. Notwithstanding anything to the contrary contained in this Agreement, Sellers' obligations hereunder shall be subject to limitations under applicable Law, including Sections 1113 and 1114 of the Bankruptcy Code.

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Summary report:	
Litéra® Change-Pro TDC 7.5.0.205 Document comparison done on 7/22/2020 11:39:57 AM	
Style name: RG_Default_Style	
Intelligent Table Comparison: Active	
Original DMS: iw://RGDMS/Active/85065005/1	
Modified DMS: iw://RGDMS/Active/85065005/2	
Changes:	
Add	301
Delete	307
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	608

EXHIBIT 4

Commitment Letter



July 21, 2020

Commitment Letter

Mr. Pasquale J. Conte
Mr. Paul S. Conte

S600 TAPPS Supermarkets
S1154 TAPPS Supermarkets
S1464 Ernst Klein 6th Avenue Foods
S1710 Ernst Klein 6th Avenue Foods
S1956 Seven Seas Union Sq, LLC
S1980 Seven Seas 49th St. LLC
S1982 Seven Seas 42nd St. LLC
S2480 Seven Seas Georgetowne, LLC

This letter is provided in support of a bid submitted by Paul S. Conte and Pasquale J. Conte (together, the "Bidder") for certain assets of Fairway Group Holdings Corp. and its other affiliated debtors (collectively, "Fairway") associated with (1) the Fairway Red Hook store located at (i) 475 Van Brunt Street, Brooklyn, NY 11231, (ii) 264 Conover Street, Brooklyn, NY 11231 and (iii) 480-500 Van Brunt Street, Brooklyn, NY 11231 (collectively, the "Red Hook Store Assets") and (2) the Fairway Douglaston store located at 242-02 61st Avenue, Douglaston, NY 11362 (the "Douglaston Store Assets") .

I hereby confirm, as an authorized officer of the Key Co-Op, that the Key Co-Op has committed to provide a term loan of up to \$5,000,000 (the "Term Loan") to the Bidder or its wholly owned designee as and when required in order to consummate the acquisition by such person of the Red Hook Store Assets and/or the Douglaston Store Assets, or to satisfy the obligations of the Bidder in the event of a breach of their obligations to Fairway to acquire such assets.

This commitment is unconditional, save for the execution and delivery of appropriate loan documentation, and shall remain open through August 31, 2020.

The Term Loan shall be for a 5 year term with a 10 year amortization schedule, shall be guaranteed by the guarantors listed below, and shall bear interest at 6.50% per annum and shall be otherwise on terms and subject to documentation substantially consistent with loans customarily provided to Key Co-Op Members.



GUARANTORS:

Mr. Pasquale J. Conte
Mr. Paul S. Conte
Tapps Supermarkets Inc
Ernst Klein 6th Ave Foods Inc
Seven Seas Union Square, LLC
Seven Seas 49th St. LLC
Seven Seas 42nd St. LLC
S2480 Seven Seas Georgetowne, LLC

Very truly yours,

KEY FOOD STORES CO-OPERATIVE, INC.


By: 
Name: Sharon Konzelman
Title: CFO

Please sign to acknowledge agreement and return to loans@keyfood.com.

PASQUALE J. CONTE


Date: July __, 2020

PAUL S. CONTE


Date: July __, 2020