UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
FAIRWAY GROUP HOLDINGS CORP., *et al.*,	:	**Case No. 20-10161 (JLG)**
Debtors.[1]	:	**(Jointly Administered)**
	:	**(ECF No. 586)**

ORDER (I) APPROVING ASSET PURCHASE AGREEMENT AMONG THE DEBTORS AND BOGOPA ENTERPRISES, INC.; (II) AUTHORIZING SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES; (III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH; AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated July 17, 2020 (ECF No. 586) (the "**Sale Motion**"), of Fairway Group Holdings Corp. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**") seeking, among other things, entry of an order (the "**Sale Order**"), pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "**Local Rules**"), (i) authorizing the sale of the assets identified in that certain Asset Purchase

[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.

Agreement, dated as of July 15, 2020 by and among Fairway Group Holdings Corp. and certain of its wholly-owned Debtor subsidiaries, as the Sellers, and Bogopa Enterprises, Inc., as the Buyer, as amended pursuant to that certain Amendment and Waiver to Asset Purchase Agreement, dated as of July 27, 2020, by and among Fairway Group Holdings Corp. and certain of its wholly-owned Debtor subsidiaries and Bogopa Enterprises, Inc. (as may be further amended pursuant to the terms thereof and this Sale Order, the "**Purchase Agreement**," a copy of which is annexed hereto as **Exhibit 1**), to Bogopa Enterprises, Inc., or its permitted assigns (the "**Buyer**") free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code, (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases of nonresidential real property of the Debtors in connection therewith; and (iii) granting related relief, all as more fully set forth in the Sale Motion; and the Court having entered this Court's prior order, dated February 21, 2020 (ECF No. 202) (the "**Bidding Procedures Order**"),[2] approving competitive bidding procedures for the Debtors' assets (the "**Bidding Procedures**") and granting certain related relief, pursuant to which the Debtors have agreed, among other things, to sell the Acquired Assets to the Buyer, including assumption and assignment of the lease relating to the Debtors' store located at 242-02 61st Avenue, Douglaston, New York 11362 (the "**Douglaston Lease**") and the transfer of assets related to the lease for the Debtors' store located at 480-500 Van Brunt Street, Brooklyn, New York 11231 (the "**Red Hook Lease**") on the terms and conditions set forth in the Purchase Agreement (collectively, the "**Sale Transaction**"), which was the successful bid for the Acquired Assets at the supplemental auction for such assets held on July 27, 2020 (the "**Supplemental Auction**"); and upon the notice of Supplemental Auction (ECF No. 609)

[2] Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement (as defined herein) or, if not defined in the Purchase Agreement, the meanings ascribed to them in the Sale Motion.

and notice of Successful Bidder (ECF No. 635); and the court having conducted a hearing to consider approval of the Sale Transaction on July 30, 2020 (the "**Sale Hearing**"), at which time all interested parties were offered an opportunity to be heard with respect to the Sale Transaction; and the Court having reviewed and considered (i) the Sale Motion and the exhibits thereto, (ii) the Purchase Agreement, and (iii) the arguments and representations of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that due and proper notice of the Sale Motion, the Purchase Agreement, the Bidding Procedures Order, and the proposed form of this Sale Order (the "**Proposed Sale Order**") having been provided in accordance with the Bidding Procedures Order; and it appearing that the Sale Transaction is in the best interests of the Debtors, their estates and creditors, and all parties in interest in these chapter 11 cases; and upon the record of the Sale Hearing and these chapter 11 cases; and after due deliberation thereon; and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Fed. R. Bankr. P. 7052**. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. The Court's findings shall also include any oral findings of fact and conclusions of law made by the Court during or at the conclusion of the Sale Hearing.

B. **Jurisdiction and Venue**. This Court has jurisdiction to decide the Sale Motion, and jurisdiction over the Sale Transaction and the property of the Debtors' estates, including the Acquired Assets, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This matter is a core

proceeding pursuant to 28 U. S.C. § 157(b)(2). Venue of these chapter 11 cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Statutory and Rule Predicates**. The statutory and other legal predicates for the relief sought in the Sale Motion are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, 6006, 9007, and 9014, Local Rules 6004-1 and 6006-1, and the Amended Guidelines for the Conduct of Asset Sales, Approved by Administrative Order Number 383 in the United States Bankruptcy Court for the Southern District of New York.

D. **Notice and Opportunity to Object**. Sufficient notice of, and a fair and reasonable opportunity to object to and to be heard with respect to the Sale Motion, the Sale Hearing, the Sale Transaction, the sale of the Acquired Assets free and clear of any Interests or Claims (as defined herein), the Proposed Sale Order, and the assumption and assignment of the Douglaston Lease to Buyer and the rejection of the Red Hook Lease pursuant to this Sale Order, as applicable, has been provided by the Debtors, as required by sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 and in compliance with the Bidding Procedures Order, to all persons entitled to such notice, including, but not limited to, the following: (i) all counterparties to the Douglaston Lease and the Red Hook Lease (the "**Counterparties**" and, each, a "**Counterparty**"), (ii) all other Sale Notice Parties (as defined in the Sale Motion); and (iii) all other persons and entities as directed by the Bankruptcy Court. Such notice was good, sufficient, and appropriate under the circumstances, and complied in all respects with the Bankruptcy Code, the Bankruptcy Rules, and the Bidding Procedures Order except as otherwise ordered by the Court. No other or further notice of the foregoing is required.

E. **Disclosures**. The disclosures made by the Debtors in the Sale Motion and any related notices and documents filed with the Court concerning the Purchase Agreement, the

Bidding Procedures Order, the hearing to consider approval of the Sale Motion, the Sale Transaction, and the Sale Hearing were good, complete, and adequate.

F. **Final Order**. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

G. **Sound Business Purpose**. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of the Purchase Agreement and the Sale Transaction and in entering into the Purchase Agreement and related or ancillary agreements thereto (collectively, the "**Related Agreements**"). The Debtors' entry into and performance under the Purchase Agreement and the Related Agreements (i) are a result of due deliberation by the Debtors and constitute a sound and reasonable exercise of the Debtors' business judgment consistent with their fiduciary duties; (ii) provide value to and are beneficial to the Debtors' estates, and are in the best interests of the Debtors and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. Business justifications for the Sale Transaction include, but are not limited to, the following: (a) the Purchase Agreement constitutes the highest or best offer received for the Acquired Assets; (b) the Purchase Agreement presents the best opportunity to maximize the value of the Acquired Assets; (c) unless the Sale Transaction and all of the other transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for pursuant to the Purchase Agreement, recoveries to the Debtors' creditors may be materially diminished; (d) the value of the Debtors' estates will be maximized through the sale of the Acquired Assets pursuant to the Purchase Agreement; and (e) the Purchase Agreement presents the best opportunity for continued employment for a significant number of the Debtors' employees.

H. **Highest or Best Value**. The Debtors and their advisors, including PJ Solomon, L.P., engaged in a robust and extensive marketing and sale process over a period of over fourteen (14) months, both prior to the Commencement Date and through the postpetition sale process pursuant to the Bidding Procedures and the Bidding Procedures Order. The Debtors conducted a fair and open sale process. As a result of the marketing process and Supplemental Auction conducted by the Debtors following the Global Auction pursuant to the Bidding Procedures Order, substantial additional value was generated for the Sellers' estates. The sale process and the Bidding Procedures were non-collusive, duly noticed, and provided a full, fair, and reasonable opportunity for any person or entity to make an offer to purchase the Acquired Assets. The process conducted by the Debtors and their advisors resulted in the highest or best value for the Acquired Assets for the Debtors and their estates, and any other available transaction would not have yielded as favorable an economic result for the Debtors' estates, creditors, and other parties in interest.

I. **Fair Consideration**. The consideration to be paid by the Buyer under the Purchase Agreement (i) constitutes fair and reasonable consideration for the Acquired Assets, (ii) is the highest or best offer for the Acquired Assets, (iii) will provide a greater recovery for the Debtors' estates and creditors than would be provided by any other practically available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and other laws of the United States, any state, territory, possession, the District of Columbia, or any other applicable jurisdiction with laws substantially similar to the foregoing.

J. **No Successor or Other Derivative Liability**. By consummating the Sale Transaction pursuant to the Purchase Agreement (including operating the Stores in the Debtors' former premises, and offering employment to certain of the Sellers' employees): (i) Buyer is not a mere continuation of any Seller or any other Debtor or any Debtor's estate, and there is no

continuity, no common identity, and no continuity of enterprise between Buyer and any Debtor; (ii) Buyer is not a successor to any Debtor or any Debtor's estate by reason of any theory of law or equity, and the Sale Transaction does not amount to a consolidation, merger, or *de facto* merger of Buyer and the Debtors; and (iii) neither Buyer nor any of its successors, assigns, members, partners, principals, and shareholders (or equivalent) shall assume or in any way be responsible for any obligation for any Excluded Liability or under any collective bargaining agreement or labor practice agreement of the Debtors. The sale and transfer of the Acquired Assets to the Buyer, including the assumption by the Debtors and assignment, transfer, and/or sale to the Buyer of the Douglaston Lease, will not subject the Buyer to any liability (including any successor liability) with respect to the operation of the Debtors' business prior to the Closing or by reason of such transfer, except that, upon the Closing, the Buyer shall become liable for the applicable Assumed Liabilities (including all Cure Costs under the Douglaston Lease).

K. **No *Sub Rosa* Plan**. The Sale Transaction neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization of the Debtors. The Sale Transaction does not constitute a *sub rosa* or *de facto* plan of reorganization or liquidation as it does not propose to (i) impair or restructure existing debt of, or equity interests in, the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtors, (iii) circumvent chapter 11 safeguards, such as those set forth in sections 1125 and 1129 of the Bankruptcy Code, or (iv) classify claims or equity interests or extend debt maturities.

L. **Good Faith; No Collusion**. No party in interest has alleged that Buyer is not a good faith purchaser, or that the sale process has been improperly conducted. No evidence has been presented which calls into question the good faith of either the Buyer or the Sellers. The

Debtors, the Buyer, and their respective counsel and advisors, have negotiated, proposed, and entered into the Purchase Agreement, the Related Agreements, and each of the transactions contemplated therein in good faith, without collusion and from arm's-length bargaining positions. The Buyer is a "good faith purchaser" and is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. The Buyer has proceeded in good faith in all respects. Specifically, (i) the Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets; (ii) the Buyer has not violated section 363(n) of the Bankruptcy Code by any action or inaction; and (iii) all payments to be made by the Buyer and all other material agreements or arrangements entered into by the Buyer and the Debtors in connection with the Sale Transaction have been disclosed and are appropriate. The sale price in respect of the Acquired Assets was not controlled by any agreement among potential bidders, or by any agreement between Buyer and any other party in interest, and neither the Debtors nor the Buyer have engaged in collusion or any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under laws of the United States, any state, territory, or possession, or the District of Columbia. The Buyer is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Buyer and the Debtors.

M. **Notice to Counterparties**. Prior to the Sale Hearing, the Debtors have provided (i) notice of the Debtors' proposed assumption and assignment of the Douglaston Lease upon each Counterparty to such lease and (ii) notice of the Debtors' proposed rejection of the Red Hook

Lease upon each Counterparty to such lease. Provision of such notice was good, sufficient, and appropriate under the circumstances and no further notice need be given with respect to the Cure Costs for the assumption and assignment of the Douglaston Lease or with respect to the rejection of the Red Hook Lease. All Counterparties have had a reasonable opportunity to object to the assumption and assignment of the Douglaston Lease to the Buyer and the rejection of the Red Hook Lease. No defaults exist in the Debtors' performance under the Douglaston Lease as of the date of this Sale Order other than the failure to pay the Cure Costs or defaults that are not required to be cured.

N. **Cure Obligations**. In connection with the assumption and assignment of the Douglaston Lease, upon the Closing Date, the Buyer will become responsible for all Cure Costs associated with such lease arising prior to the Closing Date, including administrative expenses, and the Debtors shall have no further liability with respect thereto, including any requirement to reserve any amounts with respect to Cure Costs.

O. **Free and Clear Sale**. Except as provided in the Purchase Agreement or this Sale Order, the Debtors may sell the Acquired Assets free and clear of all liens, claims (including those that constitute a "claim" as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances, and other interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims, or claims for taxes of or against the Debtors, any claims under, or trusts or liens

created by, PACA[3] or PASA,[4] and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession, or the District of Columbia), whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity, or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors' interests in the Acquired Assets, the operation of the Debtors' business before the effective time of the Closing pursuant to the Purchase Agreement, or the transfer of the Debtors' interests in the Acquired Assets to the Buyer, and all Excluded Liabilities (collectively, excluding any Assumed Liabilities, the "**Claims**"), because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code have been satisfied; provided that nothing herein shall be deemed, or construed as, a ruling or determination by this Court that the Assumed Liabilities encumber the Acquired Assets. Without limiting the generality of the foregoing, "Claims" shall include any and all liabilities or obligations whatsoever arising under or out of, in connection with, or in any way relating to: (i) any of the employee benefit plans, including any Claims related to unpaid contributions or current or potential withdrawal or termination liability; (ii) any of the Debtors' collective bargaining agreements; (iii) the Worker Adjustment and Retraining Notification Act of 1988; or (iv) any of the Debtors' current and former employees. Those holders of Claims who did not object (or who ultimately withdrew their objections, if any) to the Sale Transaction or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims who did object that have an interest in the Acquired

[3] "PACA" means the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §§ 499a, *et seq.*) or any similar state laws.

[4] "PASA" means the Packers and Stockyards Act (7 U.S.C. §§ 181 *et seq.*) or any similar state laws.

Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Claim pursuant to section 363(f)(5) of the Bankruptcy Code or fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, therefore, are adequately protected by having their Claims that constitute interests in the Acquired Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors.

P. **Buyer's Reliance on Free and Clear Sale**. The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Acquired Assets was not free and clear of all Interests and Claims, or if the Buyer would, or in the future could, be liable for any such Interests or Claims, including, as applicable, certain liabilities related to the business that will not be assumed by the Buyer, as described in the Purchase Agreement. A sale of the Acquired Assets other than one free and clear of all Interests and Claims would adversely impact the Debtors, their estates, and their creditors, and would yield substantially less value for the Debtors' estates, with less certainty than provided under the Sale Transaction.

Q. The total consideration to be provided under the Purchase Agreement reflects the Buyer's reliance on this Sale Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Acquired Assets free and clear of all Interests and Claims (including, without limitation, any potential derivative, vicarious, transferee, or successor liability Interests or Claims).

R. **Assumption and Assignment of Douglaston Lease**. The assumption and assignment of the Douglaston Lease is integral to the Purchase Agreement, is in the best interests

of the Debtors and their estates, and represent the valid and reasonable exercise of the Debtors' sound business judgment. Specifically, the assumption and assignment of the Douglaston Lease (i) is necessary to sell the Acquired Assets to the Buyer, (ii) allows the Debtors to sell the Douglaston Store to the Buyer, (iii) limits the losses suffered by counterparties to the Douglaston Lease, and (iv) maximizes the recoveries to other creditors of the Debtors by avoiding claims against the Debtors' estates that would arise from the Debtors' rejection of the Douglaston Lease. Any Counterparty to the Douglaston Lease that has not actually filed with the Court an objection to such assumption or to such assignment as of the date specified in the Bidding Procedures Order (as such date may have been modified or extended in accordance with the terms of the Bidding Procedures Order) is deemed to have consented to such assumption and assignment.

S. **Adequate Assurance of Future Performance**. Counterparties to the Douglaston Lease were provided with notice and adequate assurance of future performance for the Buyer and were required to file any objections to Buyer's ability to provide adequate assurance of future performance as contemplated under sections 365(b)(l)(C) and 365(f)(1) of the Bankruptcy Code ("**Adequate Assurance Objections**"), by established deadlines. Counterparties to the Douglaston Lease that failed to timely file an Adequate Assurance Objection are forever barred from objecting to the assumption and assignment of the Douglaston Lease. Based on evidence adduced at the hearing and based on the record in these chapter 11 cases, to the extent necessary, the Debtors have satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(l)(A), 365(b)(l)(B), 365(b)(l)(C), and 365(f) of the Bankruptcy Code, in connection with the sale and assumption and assignment of the Douglaston Lease to the extent provided under the Purchase Agreement and this Sale Order, and (i) Buyer will pay the Cure Costs, in accordance with the terms set forth in this Sale Order and the Purchase Agreement, associated with any default existing prior

to the Closing Date, including administrative expenses, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; (ii) Buyer will provide compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under the Douglaston Lease, within the meaning of section 365(b)(l)(B) of the Bankruptcy Code; and (iii) Buyer has provided adequate assurance of future performance of and under the Douglaston Lease, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code based on the Buyer declaration, if any, and the other evidence adduced at the Sale Hearing. The Debtors have met (or have caused to be met) all applicable requirements of section 365(b) of the Bankruptcy Code with respect to the Douglaston Lease. Accordingly, the Douglaston Lease may be assumed by the Debtors and assigned to the Buyer as provided under the Purchase Agreement and this Sale Order. The assumption and assignment of the Douglaston Lease is approved notwithstanding any provision in such lease or other restrictions prohibiting its assignment or transfer to the Buyer in connection with the Sale Transaction. No condition, event, or circumstance existing prior to Closing shall constitute a default under the Douglaston Lease as of the time such lease is assigned to Buyer.

T. **Rejection of the Red Hook Lease**. The Debtors' rejection of the Red Hook Lease is integral to the Purchase Agreement, is in the best interests of the Debtors and their estates, and represent the valid and reasonable exercise of the Debtors' sound business judgment. Specifically, the rejection of the Red Hook Lease is necessary to allow the Buyer to negotiate and enter into a new lease for the Red Hook Store with the applicable Counterparties, sell the assets related to the Red Hook Store to the Buyer. Any Counterparty to the Red Hook Lease that has not actually filed with the Court an objection to such rejection as of the date specified in the Sale Motion is deemed to have consented to such rejection.

U. **No Breach of Union Obligations**. The unions affected by the sale of the Acquired Assets have consented to such sale and have waived their rights to assert against any of the Buyer, the Debtors, the Debtors' estates, or any other party any claims or other rights arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale.

V. **Validity of Transfer**. As of the Closing and payment of the Purchase Price, the transfer of the Acquired Assets to the Buyer will be a legal, valid, and effective transfer of the Acquired Assets, and will vest the Buyer with all right, title, and interest of the Debtors in and to the Acquired Assets, free and clear of all Claims. The consummation of the Sale Transaction is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code and all of the applicable requirements of such sections have been complied with in respect of the Sale Transaction.

W. The Debtors (i) have full corporate or limited liability company (as applicable) power and authority to execute the Purchase Agreement, the Related Agreements, all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtors, (ii) have all of the corporate or limited liability company (as applicable) power and authority necessary to consummate the transactions contemplated by the Purchase Agreement and the Related Agreements; and (iii) upon entry of this Sale Order, other than any consents identified in the Purchase Agreement, need no consent or approval from any other person to consummate the Sale Transaction.

X. **Acquired Assets are Property of the Estates**. The Acquired Assets constitute property of, and good title is vested in, the Debtors' estates within the meaning of section 541(a)

of the Bankruptcy Code. The Debtors are the sole and rightful owners of the Acquired Assets with all right, title, and interest to transfer and convey the Acquired Assets to the Buyer, and no other person has any ownership right, title, or interests therein.

Y. **Valid and Binding Contract**. The Purchase Agreement is a valid and binding contract between the Debtors and the Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement, the Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and any chapter 7 or chapter 11 trustee appointed in these cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other person.

Z. Other than claims arising under the Purchase Agreement, the Debtors agree and acknowledge that they have no claims against the Buyer.

AA. **Waiver of Bankruptcy Rules 6004(h) and 6006(d)**. Based on the record at the Sale Hearing, and for the reasons stated on the record at the Sale Hearing, the sale of the Acquired Assets must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Therefore, the Debtors and the Buyer intend to close the Sale Transaction as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and good, sufficient, and sound business purposes and justifications for the immediate approval and consummation of the Sale Transaction as contemplated by the Purchase Agreement. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regards to the transactions contemplated by this Sale Order.

BB. **Single Integrated Transaction**. The Purchase Agreement and Sale Transaction must be approved and the Closing must occur to preserve the value of the Debtors' assets. Entry of this Sale Order approving the Purchase Agreement and all provisions thereof is a necessary

condition precedent to Buyer consummating the Sale Transaction. The transactions contemplated by the Purchase Agreement, including the sale and transfer of a Store or group of Stores, as applicable, on the Closing Date to the Buyer, are inextricably linked technically and economically and collectively constitute a single, integrated transaction.

CC. **Legal and Factual Bases**. The legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Sale Motion is Granted**. The Sale Motion and the relief requested therein is granted and approved as set forth herein.

2. **Objections Overruled**. All objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn with prejudice, waived, or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits with prejudice.

3. **Notice**. Notice of the Sale Motion, the Bidding Procedures, the Sale Hearing, the Sale Transaction, the sale of the Acquired Assets free and clear of any Interests or Claims, the assumption and assignment of the Douglaston Lease, the rejection of the Red Hook Lease, and the Proposed Sale Order was adequate, reasonable, appropriate, and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

4. **Fair Purchase Price**. The consideration provided by the Buyer pursuant to the Purchase Agreement (a) is fair and adequate; (b) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and similar laws); and (c) will provide an equal or greater

recovery for the Debtors' creditors than would be provided by any other reasonably practicable available alternative.

5. **Approval of Purchase Agreement**. The Purchase Agreement and all transactions contemplated therein (including, but not limited to, all Related Agreements contemplated thereby), and all of the terms and conditions thereof, are hereby approved as a valid exercise of the Debtors' business judgment. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform under and make all payments required by the Purchase Agreement and all Related Agreements as and when due thereunder without further order of the Court. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement (including, but not limited to, all Related Agreements contemplated thereby) be authorized and approved in its entirety. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

Sale and Transfer of Acquired Assets

6. Pursuant to sections 105(a), 363(b), and 365 of the Bankruptcy Code, the Debtors, acting by and through their existing agents, representatives and officers, are authorized and empowered, without further order of the Court, to take any and all actions necessary or appropriate to: (i) consummate and close the Sale Transaction pursuant to and in accordance with the terms and conditions of the Purchase Agreement; (ii) transfer and assign all right, title, and interest in and to all Acquired Assets, property, licenses, and rights to be conveyed in accordance with the terms and conditions of the Purchase Agreement; and (iii) execute and deliver, perform under, consummate, and implement the Purchase Agreement and all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale Transaction, including any Related Agreements, or as may be reasonably necessary

or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and such other ancillary documents. The Acquired Assets shall be sold, assigned, conveyed, and transferred to the Buyer, and upon the Closing, such transfer shall (a) be valid, legal, binding, and effective; and (b) vest the Buyer with all right, title, and interest of the Debtors in and to the Acquired Assets.

7. All persons that are currently in possession of any or all of the Acquired Assets are hereby directed to surrender possession of such Acquired Assets to the Buyer at Closing. To the extent required by the Purchase Agreement, the Debtors agree to exercise commercially reasonable efforts to assist the Buyer in assuring that all persons that are presently, or on the Closing Date may be, in possession of any or all of such Acquired Assets will surrender possession of the Acquired Assets to either (a) the Debtors before the Closing Date or (b) the Buyer on or after the Closing Date.

8. All persons are prohibited from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Acquired Assets to the Buyer in accordance with the Purchase Agreement and this Sale Order; provided that the foregoing restriction shall not prevent any party from appealing this Sale Order in accordance with applicable law or opposing any appeal of this Sale Order. No person may enforce any provision in the Douglaston Lease, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, or that terminates or modifies, or permits a party other than the Debtors to terminate or modify, such contract or lease or a right or obligation under such contract or lease, because of the assumption or assignment of the Douglaston Lease by the Sellers to Buyer in accordance with the Purchase Agreement and the Sale Transaction.

9. Each and every any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

10. To the maximum extent available under applicable law, and to the extent provided for under the Purchase Agreement, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration, application, and governmental authorization or approval of the Debtors with respect to the Acquired Assets for a reasonable period of time pending Buyer's obtaining of any licenses, permits, registrations, applications, and/or governmental authorizations or approvals in its own name. To the maximum extent available under applicable law, and to the extent provided for under the Purchase Agreement, all such licenses, permits, registrations, applications, and governmental authorizations and approvals are deemed to have been transferred to the Buyer as of the Closing Date and shall remain in place for the Buyer's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Acquired Assets sold, transferred, assigned, or conveyed to Buyer on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale Transaction.

11. On the Closing Date, this Sale Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Acquired Assets under the Purchase Agreement or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in and to all of the Acquired Assets to the Buyer.

Transfer of Assets Free and Clear

12. Pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, upon the Closing Date and except as otherwise set forth in the Purchase Agreement or this Sale Order, the Acquired Assets shall be transferred to Buyer free and clear of all encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), interests, and liens, including the Excluded Liabilities, mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, options, deeds of trust, security interests, possessory interests (including those under section 365(h) of the Bankruptcy Code), other interests, conditional sale or other title retention agreements, pledges, and other liens (including mechanics', materialman's, and other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, including any pension liabilities, retiree medical benefit liabilities, liabilities related to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), liabilities related to the Internal Revenue Code, or any other liability relating to Debtors' current and former employees, including any liabilities under any collective bargaining agreement or labor practice agreement, retiree healthcare or life insurance claims or claims for taxes of or against the Debtors (except as otherwise provided for in the Purchase Agreement), any claims under, or trusts or liens created by PACA or PASA, and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule, or regulation of the United States, any state, territory,

or possession thereof or the District of Columbia), whether arising prior to or subsequent to the Commencement Date, of the Debtors or any of the Debtors' predecessors or Affiliates, claims, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of these bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (other than Assumed Liabilities and Permitted Liens) (collectively, the "**Interests or Claims**"), with all such Interests or Claims to attach to the cash proceeds of the Sale Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Acquired Assets, subject to any claims and defenses the Debtors may possess with respect thereto. Without limiting the generality of the foregoing, "Interests or Claims" shall include any and all liabilities or obligations whatsoever arising under or out of, in connection with, or in any way relating to (in each case, other than Assumed Liabilities and Permitted Liens) (a) any labor agreements or any of the employee benefit plans, including any Interests or Claims related to unpaid contributions or current or potential withdrawal or termination liability; (b) any of the Debtors' collective bargaining agreements; (c) the Worker Adjustment and Retraining Notification Act of 1988, as amended, or other comparable state or local law; and (d) any of the Debtors' current and former employees.

13. Those holders of Interests or Claims who did not object (or who ultimately withdrew their objections, if any) to the Sale Transaction are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests or Claims who did object

that have an interest in the Acquired Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest or Claim pursuant to section 363(f)(5) of the Bankruptcy Code or fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are therefore adequately protected by having their Interests or Claims that constitute interests in the Acquired Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors. Nothing herein shall be deemed or construed as a ruling or determination by this Court that the Assumed Liabilities encumber the Acquired Assets.

14. Except to the extent included in Assumed Liabilities or Permitted Liens, or to enforce the Purchase Agreement, all persons and entities (and their respective successors and assigns), including all lenders, debt security holders, equity security holders, governmental, tax, and regulatory authorities, governmental units, lenders, parties to executory contracts and unexpired leases, contract Counterparties, customers, licensors, litigation claimants, employees and former employees, dealers and sale representatives, pension plans, labor unions, trade creditors, and any other creditors holding Interests or Claims against the Debtors or the Acquired Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtors, the transfer of the Acquired Assets to Buyer, or the Acquired Assets or the Debtors' businesses prior to the Closing Date, hereby are forever barred, estopped, and

permanently enjoined from asserting any Interests or Claims relating to the Acquired Assets or the transfer of the Acquired Assets against Buyer or its successors, designees, assigns, or property, or the Acquired Assets transferred to Buyer, including, without limitation, taking any of the following actions with respect to or based on any Interest or Claim relating to the Acquired Assets or the transfer of the Acquired Assets to Buyer (other than Assumed Liabilities): (a) commencing or continuing in any manner any action or other proceeding against Buyer or its successors or assigns, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against Buyer or its successors or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Interest or Claims against Buyer, its successors or assigns, assets or properties; (d) asserting an Interest or Claims as a setoff, right of subrogation, or recoupment of any kind against any obligation due Buyer or its successors or assigns; (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Sale Order or the agreements or actions contemplated or taken in respect thereof; (f) interfering with, preventing, restricting, prohibiting, or otherwise enjoining the consummation of the Sale Transaction; or (g) enforcing any provision of the Douglaston Lease that prohibits, restricts or conditions, or which purports to terminate or modify, or permits a party other than the Debtors to terminate or modify, the Douglaston Lease, or any right or obligation under such lease, because of the assumption and assignment of such lease by the Sellers to the Buyer. No such persons or entities shall assert or pursue against Buyer or its successors or assigns any such Interest or Claim.

15. This Sale Order (a) shall be effective as a determination that, as of the Closing, all Interests or Claims have been unconditionally released, discharged, and terminated as to the Buyer and the Acquired Assets, and that the conveyances and transfers described herein have been

effected; and (b) is and shall be binding upon and govern the acts of all persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of federal, state, county, and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments that reflect that the Buyer is the assignee and owner of the Acquired Assets free and clear of all Interests or Claims, or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as "**Recording Officers**"). All Recording Officers are authorized and specifically directed to strike recorded encumbrances, claims, liens, and other interests against the Acquired Assets recorded prior to the date of this Sale Order. A certified copy of this Sale Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, claims, liens, and other interests against the Acquired Assets recorded prior to the date of this Sale Order. All Recording Officers are hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement and Related Agreements.

16. As of and after the Closing, (a) each of the Debtors' creditors is hereby authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests or Claims in the Acquired Assets (if any) as such Interests or Claims may have been recorded or may otherwise exist; and (b) any Acquired Asset that may be subject to a statutory or mechanic's lien shall be turned over and such liens shall attach to the proceeds of the Sale Transaction in the same priority they currently enjoy with respect to the Acquired Asset.

17. Following the Closing, no holder of any Interest or Claim shall interfere with the Buyer's title to or quiet use and enjoyment of the Acquired Assets based on or related to any such Interest or Claim or based on any actions the Debtors may take in these chapter 11 cases.

No Successor or Other Derivative Liability

18. Buyer and its successors and assigns, members, partners, principals, and shareholders (or equivalent) are not and shall not be deemed or considered to (a) be a legal successor, or otherwise be deemed a successor to any of the Debtors or their estates; (b) have, *de facto* or otherwise, merged with or into any of the Debtors or their estates; (c) have a common identity with the Debtors; (d) have a continuity of enterprise with the Debtors; or (e) be a continuation or substantial continuation, or be holding itself out as a mere continuation, of any of the Debtors or their respective estates, businesses, or operations, in each case, by any law or equity, and the Buyer has neither assumed nor is it in any way responsible for any liability or obligation of the Debtors or the Debtors' estates, except with respect to the Assumed Liabilities. Except as expressly set forth in the Purchase Agreement or this Sale Order, the Buyer and its respective successors and assigns, members, partners, principals and shareholders (or equivalent) shall have no (i) liability or responsibility for any Claim against the Debtors; (ii) liability or responsibility with respect to any Interests or Claims or Excluded Liability and shall not be required to satisfy the same in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly; or (iii) successor, transferee, or vicarious liability of any kind or character, including, without limitation, under any theory of foreign, federal, state, or local antitrust, environmental, successor, tax, ERISA, assignee or transferee liability, labor, product liability, employment, *de facto* merger, substantial continuity, or other law, rule, regulation, or doctrine, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated, with respect to the Debtors

or any obligations of the Debtors arising prior to the Closing Date, including, without limitation, liabilities on account of any taxes or other Governmental Authority fees, contributions, or surcharges, in each case, arising, accruing, or payable under, out of, in connection with, or in any way relating to, the operation of the Acquired Assets prior to the Closing Date or arising based on actions of the Debtors or their Affiliates taken after the Closing Date.

19. Without limiting the effect or scope of the foregoing, as of the Closing (except as expressly set forth in the Purchase Agreement or this Sale Order), the Buyer and its affiliates, members, successors, and permitted assigns shall have no liability for any Interest, Claim, or Excluded Liabilities, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature, or character whatsoever, by reason of any theory of law or equity, including, without limitation, Interests or Claims arising under (a) any employment or labor agreements, including without limitation, any Affected Labor Agreement or the termination thereof; (b) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of or related to any of the Debtors or any Debtor's affiliates or predecessors or any current or former employees of any of the foregoing, including, without limitation, the Employee Benefit Plans and any participation or other agreements related to the Employee Benefit Plans, or the termination of any of the foregoing; (c) the Debtors' business operations or the cessation thereof; (d) any litigation involving one or more of the Debtors; and (e) any employee, workers' compensation, occupational disease, or unemployment or temporary disability related law, including, without limitation, claims that might otherwise arise under or pursuant to (i) ERISA, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, as amended, (iv) the Federal Rehabilitation Act of 1973, (v) the

National Labor Relations Act, (vi) the Worker Adjustment and Retraining Notification Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, (x) the Multiemployer Pension Plan Amendments Act of 1980, (xi) state and local discrimination laws, (xii) state and local unemployment compensation laws or any other similar state and local laws, (xiii) state workers' compensation laws, (xiv) any other state, local, or federal employee benefit laws, regulations, or rules relating to, wages, benefits, employment, or termination of employment with any of the Debtors or their predecessors; (xv) any antitrust laws; (xvi) any product liability or similar laws, whether state, federal, or otherwise; (xvii) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes; (xviii) PACA or PASA; (xix) any bulk sales or similar laws; (xx) any federal, state, or local tax statutes, regulations, or ordinances, including, without limitation, the Internal Revenue Code; and (xxi) any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory, or any other theory of or related to successor liability, in each case whether known or unknown as of the Closing, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to, the operation of the Acquired Assets prior to the Closing Date or arising based on actions of the Debtors taken after the Closing Date.

Assumption and Assignment of Douglaston Lease

20. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, Sellers' assumption and assignment to Buyer, and Buyer's assumption on the terms set forth in the Purchase Agreement of the Douglaston Lease is hereby approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

21. Subject to and conditioned upon the occurrence of the Closing Date, the Debtors are hereby authorized, in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code, to assume and assign the Douglaston Lease to the Buyer free and clear of all Interests and Claims other than the Assumed Liabilities, and to execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer the Douglaston Lease to the Buyer as provided in the Purchase Agreement.

22. Upon the Closing, the Buyer shall be fully and irrevocably vested with all right, title, and interest of the Debtors in and to the Douglaston Lease and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors, subject to the occurrence of the Closing, shall be relieved from any further liability with respect to the Douglaston Lease. The Buyer acknowledges and agrees that from and after the Closing, subject to and in accordance with the Purchase Agreement and this Sale Order, it shall comply with the terms of the Douglaston Lease in its entirety. The assumption by the Debtors and assignment to the Buyer of the Douglaston Lease shall not be, or result in, a default under any such lease or constitute a termination of such lease. No person may enforce against the Buyer any provision of the Douglaston Lease which purports to terminate or modify, or permits a party other than the Debtors to terminate or modify, such lease, or any right or obligation under such lease, because of the assumption and assignment of such lease by the Sellers to the Buyer under the Purchase Agreement.

23. Buyer has provided adequate assurance of future performance for the Douglaston Lease within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

24. All obligations to pay Cure Costs shall be assumed by the Buyer in accordance with the terms of the Purchase Agreement. Assumption of the Cure Costs by the Buyer shall (a) be in full satisfaction and cure of any and all defaults under the Douglaston Lease with respect to the Debtors, whether monetary or non-monetary, and (b) compensate the Counterparties for any actual pecuniary loss resulting from such defaults with respect to the Debtors. Each applicable Counterparty shall be forever barred, estopped, and permanently enjoined from asserting against the Debtors or the Buyer, their respective affiliates, successors, or assigns, or the property of any of them, any assignment fee, rent acceleration, rent increase on account of assignment, default, breach, claim, pecuniary loss, or condition to assignment arising under or related to the Douglaston Lease, existing as of the date that such lease is assumed or arising by reason of the Closing.

25. Counterparties are hereby enjoined from taking any action against the Debtors and the Debtors' estates (and any respective successor entity), or the Acquired Assets with respect to any Cure Costs.

26. Pursuant to sections 365(f)(1) and (3) of the Bankruptcy Code, the Douglaston Lease shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with its terms, including all obligations of the Buyer as the assignee of the Douglaston Lease, notwithstanding any provision in such lease or under applicable law (including, without limitation, those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer to the Buyer with respect to this Sale Transaction, or permits termination or modification of such lease, or rights or obligations under

such lease, by a party other than the Debtors, on account of assignment of such lease to the Buyer as contemplated under the Purchase Agreement.

27. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors and the Debtors' estates (and any respective successor entity) or the Buyer any defaults, cross-defaults, breach, claim, pecuniary loss, rent accelerations, escalations, rent increase, assignment fees, increases or any other fees charged to the Buyer or the Debtors existing as of the date of assumption of the Douglaston Lease or as a result of the assumption or assignment of the Douglaston Lease on the Closing Date.

28. Upon the Debtors' assumption and assignment of the Douglaston Lease to the Buyer under the provisions of this Sale Order, no default shall exist under such lease, and no Counterparty to the Douglaston Lease shall be permitted to declare a default by any Debtor or the Buyer or otherwise take action against the Buyer as a result of any Debtor's financial condition, bankruptcy, or failure to perform any of its obligations under such lease. Any provision in the Douglaston Lease, other document, or under applicable law that prohibits or conditions the assignment or sublease of such lease (including without limitation, the granting of a lien therein) or allows the relevant Counterparty to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force or effect in connection with the Sale Transaction. The failure of the Debtors or the Buyer to enforce at any time one or more terms or conditions of the Douglaston Lease shall not be a waiver of such terms or conditions, or of the Debtors' and the Buyer's rights to enforce every term and condition of the Douglaston Lease. Any party having the right to consent to the assumption or assignment of the

Douglaston Lease that failed to object to such assumption or assignment is deemed to have consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code.

Rejection of Red Hook Lease

29. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, the Debtors' rejection of the Red Hook Lease on the terms set forth in the Purchase Agreement is hereby approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied. Subject to and conditioned upon the occurrence of the Closing Date, the Debtors are hereby authorized to execute and deliver to the Buyer such documents or other instruments as may be necessary for the Buyer to enter into an amended lease for the Red Hook Store.

30. **Statutory Mootness**. The transactions contemplated by the Purchase Agreement and Related Agreements are undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Acquired Assets or the assignment of the Douglaston Lease to the Buyer, free and clear of Interests or Claims, unless such authorization is duly stayed before the Closing Date pending such appeal. The Buyer is a good faith purchaser of the Acquired Assets and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code. The Debtors and the Buyer will be acting in good faith if they proceed to consummate the Sale Transaction at any time after entry of this Sale Order.

31. **No Avoidance of Purchase Agreement**. Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Purchase Agreement or Related Agreements to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

Accordingly, the Purchase Agreement, Related Agreements, and the Sale Transaction shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Purchase Agreement, Related Agreements, or the Sale Transaction.

32. **No Breach of Union Obligations**. The unions affected by the sale of the Acquired Assets have consented to such sale and have waived their rights to assert against any of the Buyer, the Debtors, the Debtors' estates, or any other party any claims or other rights arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale, and no union shall have any such claims or other rights against such parties arising under the successorship provisions of any collective bargaining agreement or similar agreement in relation to such sale.

33. **Waiver of Bankruptcy Rules 6004(h), 6006(d), and 7062**. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d), 7062, or any applicable provisions of the Local Rules, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. The Debtors and the Buyer may close the Sale Transaction as soon as practicable. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal being foreclosed as moot.

34. **Binding Effect of Sale Order**. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon the Debtors, their estates, and their creditors, all holders of equity interests in the Debtors, all holders of any Interests or Claims (whether known or unknown) against any Debtor, any holders of Interests or Claims against, or on

all or any portion of, the Acquired Assets, all Counterparties (including to any collective bargaining agreement or labor agreement), Buyer and all successors and assigns of Buyer, leaseholders, governmental units, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in any of these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of these chapter 11 cases. The terms and provisions of the Purchase Agreement and this Sale Order shall inure to the benefit of the Debtors, their estates and their creditors, the Buyer, and its respective affiliates, successors, and permitted assigns.

35. **Conflicts; Precedence**. In the event that there is a direct conflict between the terms of this Sale Order, the Purchase Agreement, or any documents executed in connection therewith, the provisions contained in this Sale Order, the Purchase Agreement, or any documents executed in connection therewith shall govern, in that order.

36. **Modification of Purchase Agreement**. The Purchase Agreement, the Related Agreements, and any other related agreements, documents, or other instruments executed in connection therewith, may be modified, amended, or supplemented by the parties thereto, in a writing signed each party, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment, or supplement shall not materially change the terms of the Purchase Agreement, Related Agreements, or any documents or other instruments executed in connection therewith. The Debtors shall provide the Consultation Parties with prior notice of any such modification, amendment, or supplement of the Purchase Agreement, and shall consult with the Consultation Parties with respect thereto. For the avoidance of doubt, all material modifications, amendments, or supplements that have a material or an adverse effect on the Debtors' estates or their creditors shall require Court approval and the reasonable consent of

Requisite Consenting Creditors (as defined in the RSA) and the DIP Agent (acting at the direction of the Requisite DIP Lenders, each as defined in the DIP Motion).

37. **Bulk Sales; Taxes**. No bulk sales law, bulk transfer law, or similar law of any state or other jurisdiction (including those relating to taxes other than Transfer Taxes) shall apply in any way to the transactions contemplated by the Purchase Agreement, the Related Agreements, the Sale Motion, or this Sale Order. Except as otherwise expressly provided in the Purchase Agreement, all obligations of the Debtors relating to taxes, whether arising under any law, by the Purchase Agreement, or otherwise, shall be the obligation of and fulfilled and paid by the Debtors.

38. **Retention of Jurisdiction**. This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce, and implement the terms and provisions of this Sale Order and the Purchase Agreement, all amendments thereto, and any waivers and consents thereunder (and of each of the agreements executed in connection therewith) to adjudicate disputes related to this Sale Order or the Purchase Agreement (and such other related agreements, documents, or other instruments) and to enforce the injunctions set forth herein.

Dated: August 5, 2020
New York, New York

/s/ *James L. Garrity, Jr.*
THE HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Purchase Agreement

ASSET PURCHASE AGREEMENT

BY AND AMONG

FAIRWAY GROUP HOLDINGS CORP.,

FAIRWAY RED HOOK LLC,

FAIRWAY DOUGLASTON LLC,

AND

BOGOPA ENTERPRISES, INC.

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

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., a New York corporation ("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(41A), ("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 soley 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 (including 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 Buyer.

"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, Multiemployer 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.

(k) 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.

(l) 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) 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 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) one million seven hundred and eighty thousand dollars ($1,780,000) (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) $100,000 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) $5,000 to the furniture, fixtures and equipment at 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 one hundred and seventy eight thousand dollars ($178,000) 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.

(e) 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 corporation 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. 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) 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.

(h) 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.

(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) 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

(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) 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 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) 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:

Bogopa Enterprises, Inc.
650 Fountain Avenue
Brooklyn, New York 11208
Attention: Edward Suh, E.V.P.
Email: Edward.suh@bogopausa.com

With a copies to (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.
Email: Aperlstein@hkplaw.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.

[The remainder of this page is intentionally left blank.]

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

SELLERS:

FAIRWAY GROUP HOLDINGS CORP.

By: _____
Name: Nathalie Augustin
Title: Senior Vice President, General Counsel, & Secretary

FAIRWAY RED HOOK LLC

By: _____
Name: Nathalie Augustin
Title: Senior Vice President, General Counsel, & Secretary

FAIRWAY DOUGLASTON LLC

By: _____
Name: Nathalie Augustin
Title: Senior Vice President, General Counsel, & Secretary

BUYER:

BOGOPA ENTERPRISES, INC.

By:_____
Name: Spencer An
Title: President and Chairman of the Board

Exhibit A

Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made and entered into as of March 3, 2020, by and between Fairway Group Holdings Corp. a Delaware corporation (the "Company"), and Citibank, N.A., a national banking association, as escrow agent (the "Escrow Agent" and together with the Company, each a "Party" and, collectively, the "Parties").

RECITALS

WHEREAS, the Company, along with certain of its affiliates (collectively, the "Debtors" and individually, a "Debtor"), is a debtor and debtor in possession in bankruptcy cases (the "Bankruptcy Cases") pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, on February 21, 2020, the Bankruptcy Court entered an Order approving, among other things, bidding procedures (the "Bidding Procedures") in connection with an auction to be conducted for a sale of substantially all of the assets of the Debtors associated with the Debtors' grocery business (the "Auction");

WHEREAS, pursuant to the Bidding Procedures, a Qualified Bidder (as defined in the Bidding Procedures) is required, among other things, to submit a deposit with a Qualified Bid (as defined in the Bidding Procedures) in order to participate in the Auction; and

WHEREAS, the Company desires that Escrow Agent hold the deposits submitted by each of the Qualified Bidders in the Escrow Account (as defined herein) and Escrow Agent is willing to do so on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the Parties agree as follows:

1. Appointment. The Company hereby appoints the Escrow Agent as the escrow agent for the purposes set forth herein. The Escrow Agent hereby accepts such appointment and agrees to act as escrow agent in accordance with the terms and conditions set forth herein.

2. Escrow Funds. Each Qualified Bidder (each a "Depositor" and collectively, the "Depositors"), in order to participate in the Auction, shall deposit the amount required by the Bidding Procedures with respect to such Depositor's bid in immediately available funds into an escrow account established by the Escrow Agent for such purpose (the "Escrow Account"). The amounts deposited by each of the Depositors shall constitute the "Escrow Funds" and shall be set forth on attached Schedule 2. The Company may, at any time and from time to time, deliver to the Escrow Agent a revised Schedule 2 to reflect additional funds deposited to the Escrow Account by Depositors.

3. Investment of Escrow Funds.

(a) Unless otherwise instructed in writing and executed by an authorized representative of the Company as set forth on Exhibit A-1 (each a "Representative"), the Escrow Agent shall invest the Escrow Funds in a non-interest-bearing deposit obligation of Citibank

N.A., insured by the Federal Deposit Insurance Corporation ("FDIC") to the applicable limits. The Escrow Funds shall at all times remain available for distribution in accordance with Section 4 below.

(b) The Escrow Agent shall send an account statement to the Company on a monthly basis reflecting activity in the Escrow Account for the preceding month.

(c) The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment, or liquidation of the Escrow Funds, provided that the Escrow Agent has made such investment, reinvestment, or liquidation of the Escrow Funds in accordance with the terms, and subject to the conditions of this Agreement. The Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice.

4. Disposition and Termination of the Escrow Funds.

(a) Escrow Funds. The Company shall act in accordance with, and the Escrow Agent shall hold and release the Escrow Funds related to a Depositor as provided in, this Section 4(a) as follows:

(i) Upon receipt of written instructions from a Representative, that are delivered to both the respective Depositor and Escrow Agent, which asserts that either (1) such Depositor is designated as a Successful Bidder (as defined in the Bidding Procedures) at the Auction, such Successful Bidder fails to close on the purchase as set forth in such Bid (as defined in the Bidding Procedures) submitted by such Successful Bidder at the Auction, and the terms of the purchase agreement executed by the Company and such Successful Bidder permit the Company to retain any deposit made by such Successful Bidder as a result of such failure to close; or (2) such Depositor is designated as a Backup Bidder (as defined in the Bidding Procedures) at the Auction, the Successful Bidder fails to close on the purchase as set forth in the Successful Bidder's Bid, such Backup Bidder fails to close on the purchase as set forth in the Backup Bidder's Bid, and the terms of the asset purchase agreement executed by the Company and such Backup Bidder permit the Company to retain any deposit made by such Backup Bidder as a result of such failure to close; provided, however, that Escrow Agent shall not make any disbursement with respect to any request pursuant to the foregoing clause (1) or (2) until the expiration of five (5) Business Days after Escrow Agent's receipt of such written instructions. For the avoidance of doubt, the Escrow Agent shall have no duty to verify that a copy of the written instructions was furnished to any Depositor.

(ii) Upon receipt of written instructions from a Representative, that are delivered to both the respective Depositor and Escrow Agent, the Escrow Agent shall promptly, but in any event within five (5) Business Days after receipt of such written instructions, disburse all or part of such Escrow Funds in accordance with such written instructions.

(iii) Upon receipt by the Escrow Agent of a copy of a Final Determination from the Company, the Escrow Agent shall on the fifth (5th) Business Day following receipt of such determination, disburse as directed, part or all, as the case may be, of the applicable Escrow Funds (but only to the extent of available Escrow Funds) in accordance with such Final Determination. The Escrow Agent will act on such Final Determination without further inquiry.

(iv) Upon receipt of written instructions from the Representative alone, if a Depositor is not a Successful Bidder or a Backup Bidder at the Auction, to the account of such Depositor as designated by the Company.

(v) By delivering the Escrow Funds into the Bankruptcy Court pursuant to the provisions of Section 6.

(vi) By delivering the Escrow Funds to a successor escrow agent pursuant to the provisions of Section 7.

For the avoidance of doubt, Escrow Agent will only act on written instructions signed by a Representative and Escrow Agent shall be entitled to rely upon any representation of the Company (x) as to the status of any Depositor as a Successful Bidder or Backup Bidder and (y) whether the terms of any agreement between the Depositor and the Company have been satisfied.

All payments of any part of the Escrow Funds shall be made by wire transfer of immediately available funds or check as set forth in the relevant instruction, as applicable.

Any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of any funds on deposit in the Escrow Account under the terms of this Agreement must be in writing, executed on behalf the Company by a Representative as set forth on Exhibit A-1 attached hereto and delivered to the Escrow Agent as an attachment to an e-mail received on a Business Day from the e-mail address of the applicable Representative set forth on Exhibit A-1(with receipt by the Escrow Agent confirmed). In the event any instruction is delivered to the Escrow Agent, the Escrow Agent is authorized to seek confirmation of such instruction by telephone call back to the person or persons designated on Exhibit A-1 annexed hereto (the "Call Back Authorized Individuals"), and the Escrow Agent may rely upon the confirmations of anyone purporting to be a Call Back Authorized Individual. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all such issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing, executed by a Representative, actually received and acknowledged by the Escrow Agent.

(b) Certain Definitions.

(i) "Business Day" means any day that is not a Saturday, a Sunday, or other day on which banks are not required or authorized by law to be closed in New York, New York.

(ii) "Final Determination" means a final non-appealable order of any court having jurisdiction pursuant to Section 14 together with (A) a certificate executed by a Representative to the effect that such order is final and non-appealable and (B) the written payment instructions executed by a Representative to effectuate such order.

(iii) "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 a governmental entity or any department, agency, or political subdivision thereof.

5. Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein, which shall be deemed purely ministerial in nature, and no duties, including but not limited to any fiduciary duties, shall be implied. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between the Parties, in connection herewith, if any, nor shall the Escrow Agent be required to determine if any Person has complied with any such agreements, nor shall any additional obligations of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement. Notwithstanding the terms of any other agreement between the Parties, the terms and conditions of this Agreement will control the actions of Escrow Agent. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written instruction furnished to it hereunder and believed by it to be genuine and to have been signed and presented by a Representative. Concurrent with the execution of this Agreement, the Company shall deliver to the Escrow Agent authorized representative's form in the form of Exhibit A-1 attached hereto. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction, or request. The Escrow Agent shall have no duty to solicit any payments that may be due to the Escrow Agent or the Escrow Funds. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims, or demands from the Company that, in Escrow Agent's opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise by the Company. The Escrow Agent may interplead all of the assets held hereunder into a court having jurisdiction pursuant to Section 14 or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets or any action or nonaction based on such declaratory judgment. The Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder. The Escrow Agent will not be liable for any action taken, suffered, or omitted to be taken by it in good faith except to the extent that the Escrow Agent's gross negligence or willful misconduct was the cause of any direct loss to either Party. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for any special, indirect, punitive, incidental, or consequential losses or damages of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such losses or damages and regardless of the form of action.

6. Dispute Procedures. In the event of a dispute between a Depositor and the Company as to the proper disposition of all or a portion of the Escrow Funds attributable to such Depositor, the Company shall promptly inform the Escrow Agent of such dispute and the Escrow Agent shall (i) deliver such Escrow Funds, within five (5) Business Days after receipt of such written instructions, in accordance with written instructions from a Representative that are delivered to both the applicable Depositor and the Escrow Agent (including, for this purpose, an instruction to Escrow Agent to retain the Escrow Funds), (ii) deliver such Escrow Funds as directed by a final order or judgment, from which no further appeal may be taken, of a court in each case

having jurisdiction pursuant to Section 14, to the extent provided in such order or judgment, or (iii) in the absence of the foregoing, deliver such Escrow Funds into the Bankruptcy Court, and upon giving notice to the Company of such action, shall thereupon be relieved of all further responsibility for such Escrow Funds.

7. Resignation and Removal of Escrow Agent. The Escrow Agent (a) may resign and be discharged from its duties or obligations hereunder by giving sixty (60) calendar days advance notice in writing of such resignation to the Company specifying a date when such resignation shall take effect or (b) may be removed, with or without cause, by the Company at any time by providing written notice to the Escrow Agent. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent's line of business may be transferred, shall be the Escrow Agent under this Agreement without further act. The Escrow Agent's sole responsibility after such sixty (60) day notice period expires or after receipt of written notice of removal shall be to hold and safeguard the Escrow Funds (without any obligation to reinvest the same) and to deliver the same (i) to a substitute or successor escrow agent pursuant to a written designation from the Company, (ii) as set forth in a written instruction from the Company or (iii) in accordance with the directions of a Final Determination, and, at the time of such delivery, the Escrow Agent's obligations hereunder shall cease and terminate. In the event the Escrow Agent resigns, if the Company has failed to appoint a successor escrow agent prior to the expiration of sixty (60) calendar days following receipt of the notice of resignation, the Escrow Agent may petition any court having jurisdiction pursuant to Section 14 for the appointment of such a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

8. Fees and Expenses. All fees and expenses of the Escrow Agent are described in Schedule 1 attached hereto and shall be paid by the Company. The fees agreed upon for the services to be rendered hereunder are intended as full compensation for the Escrow Agent services as contemplated by this Agreement and shall be paid upon funding of the escrow account.

9. Indemnity. The Company shall indemnify, defend, and hold harmless the Escrow Agent and its affiliates and their respective successors, assigns, directors, officers, agents, and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, actions, suits, proceedings, litigation, investigations, costs, or expenses, including the reasonable written and documented fees and expenses of one outside counsel and experts and their staffs and all expense of document location, duplication, and shipment (collectively "Escrow Agent Losses") arising out of or in connection with (a) the Escrow Agent's execution and performance of this Agreement, tax reporting or withholding, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission, or error of the Indemnitee, except to the extent that such Escrow Agent Losses, as adjudicated by a court of competent jurisdiction, have been caused by the fraud, gross negligence, or willful misconduct of such Indemnitee, or (b) its following any instructions or other directions from the Company. The Company acknowledges that the foregoing indemnities shall survive either or both the resignation or removal of the Escrow Agent and the termination of this Agreement.

10. Tax Matters.

(a) The Company shall be responsible for and the taxpayer on all taxes due on the interest or income earned, if any, on the Escrow Funds for the calendar year in which such interest or income is earned. The Escrow Agent shall report any interest or income earned on the Escrow Funds to the IRS or other taxing authority on IRS Form 1099. Prior to the date hereof, the Parties shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 as applicable and such other forms and documents that the Escrow Agent may request.

(b) The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the Escrow Funds. The Escrow Agent shall withhold any taxes required to be withheld by applicable law, including but not limited to required withholding in the absence of proper tax documentation, and shall remit such taxes to the appropriate authorities.

(c) The Escrow Agent, its affiliates, and its employees are not in the business of providing tax or legal advice to any taxpayer outside of Citigroup, Inc. and its affiliates. This Agreement and any amendments or attachments hereto are not intended or written to be used, and may not be used or relied upon, by any such taxpayer or for the purpose of avoiding tax penalties. Any such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

11. Covenant of Escrow Agent. The Escrow Agent hereby agrees and covenants with the Company that it shall perform all of its obligations under this Agreement and shall not deliver custody or possession of any of the Escrow Funds to anyone except pursuant to the express terms of this Agreement or as otherwise required by law.

12. Notices. All notices, requests, demands and other communications required under this Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered simultaneously to the Company and the Escrow Agent (i) personally, (ii) on the day of transmission if sent by electronic mail ("e-mail") with a PDF attachment executed by a Representative or an authorized signatory of the Escrow Agent, as applicable, to the e-mail address given below, and written confirmation by electronic mail of receipt is obtained promptly after completion of the transmission, (iii) by overnight delivery with a reputable national overnight delivery service, or (iv) by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five Business Days after the date such notice is deposited with the United States Postal Service. If notice is given to a Party, it shall be given at the address for such Party set forth below. It shall be the responsibility of the Parties to notify the other Party in writing of any name or address changes.

if to the Company, then to:

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:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10154
Attention: Ray C. Schrock, P.C.
Gavin Westerman
Sunny Singh
Email: ray.schrock@weil.com
gavin.westerman@weil.com
sunny.singh@weil.com

or, if to the Escrow Agent, then to:

Citibank, N.A.
Citi Private Bank
388 Greenwich Street, 29th Floor
New York, NY 10013
Attn:
Telephone No.: 212-783-
E-mail:

Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to the foregoing clause (i) through (iv) of this Section 12, such communications shall be deemed to have been given on the date received by the Escrow Agent. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate.

13. Termination. This Agreement shall terminate on the first to occur of (a) the distribution of all of the amounts in the Escrow Account in accordance with this Agreement and (b) subject to Section 7, delivery (i) to the Escrow Agent of a written notice of termination executed by the Company or (ii) the Escrow Agent's delivery of a notice of resignation to the Company, after which this Agreement shall be of no further force and effect except that the provisions of Section 9 hereof shall survive termination.

14. Miscellaneous. The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the Parties . Neither this

Agreement nor any right or interest hereunder may be assigned in whole or in part by any Party without the prior consent of the other Party. This Agreement shall be governed by and construed under the laws of the State of Delaware. Each Party irrevocably waives any objection on the grounds of venue, *forum non-conveniens*, or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the exclusive jurisdiction of the Bankruptcy Court or if, for any reason the Bankruptcy Court shall not have jurisdiction, any other court of competent jurisdiction located in the State of Delaware. The parties hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising from or relating to this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by electronic transmission in portable document format (.pdf), and such .pdf will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. Each Party represents, warrants, and covenants to the other Party that each document, notice, instruction, or request provided by such Party to such other Party shall comply with applicable laws and regulations. Except as expressly provided in Section 9 nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Parties any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or any funds escrowed hereunder.

15. Compliance with Court Orders. In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment, or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders, or decrees so entered or issued, that it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order, or decree the Escrow Agent shall not be liable to any of the Parties or to any other Person, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

16. Further Assurances. Following the date hereof, each party shall deliver to the other parties such further information and documents and shall execute and deliver to the other parties such further instruments and agreements as any other party shall reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other party the benefits hereof.

17. Assignment. No assignment of the interest of any of the Company shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be filed with and consented to by the Escrow Agent (such consent not to be unreasonably withheld). Any transfer or assignment of the rights, interests or obligations hereunder in violation of the terms hereof shall be void and of no force or effect.

18. Force Majeure. The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility), it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

19. Compliance with Federal Law. To help the U.S. Government fight the funding of terrorism and money laundering activities and to comply with federal law requiring financial institutions to obtain, verify and record information on the source of funds deposited to an account, the Company agrees to provide the Escrow Agent with the name, address, taxpayer identification number, and remitting bank for all Depositors depositing funds into the Escrow Account pursuant to the terms and conditions of this Agreement. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, an identification, and authorization documents from individuals claiming authority to represent any entity or other relevant documentation.

20. Use of Citibank Name. No publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material that mentions "Citibank" by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the Escrow Agent. By execution of this Agreement, the Escrow Agent consents to (i) the disclosure and distribution of this Agreement to any Depositor and (ii) any disclosure of the rights, powers, and duties of the Escrow Agent under this Agreement in connection with any filings made by the Company in the Bankruptcy Cases and in any notices required to be made in the Bankruptcy Cases.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

FAIRWAY GROUP HOLDINGS CORP.

By: Nathalie Aug
Name: Nathalie Augustin
Its: Senior Vice President, General Counsel, & Secretary

ESCROW AGENT:

CITIBANK, N.A.

By: William J. Lynch
Name: _____
Its: _____

William Lynch, Director
Citi Private Bank
388 Greenwich Street, 29th floor
New York, NY 10013
212-783-7108

Schedule 1

ESCROW AGENT FEE SCHEDULE
Citibank, N.A., Escrow Agent

Acceptance Fee
To cover the acceptance of the Escrow Agency appointment, the study of the Agreement, and supporting documents submitted in connection with the execution and delivery thereof, and communication with other members of the working group:

Fee: WAIVED

Administration Fee
The administration fee covers maintenance of the Escrow Account including safekeeping of assets in the escrow account, normal administrative functions of the Escrow Agent, including maintenance of the Escrow Agent's records, follow-up of the Agreement's provisions, and any other safekeeping duties required by the Escrow Agent under the terms of the Agreement. Fee is based on Escrow Amount being deposited in a non-interest bearing deposit account, FDIC insured to the applicable limits.

Fee: WAIVED

Tax Preparation Fee
To cover preparation and mailing of Forms 1099-INT, if applicable for the escrow parties for each calendar year:

Fee: WAIVED

Transaction Fees
To oversee all required disbursements or release of property from the escrow account to any escrow party, including cash disbursements made via check and/or wire transfer, fees associated with postage and overnight delivery charges incurred by the Escrow Agent as required under the terms and conditions of the Agreement:

Fee: WAIVED

Other Fees
Material amendments to the Agreement: additional fee(s), if any, to be discussed at time of amendment.

Schedule 2

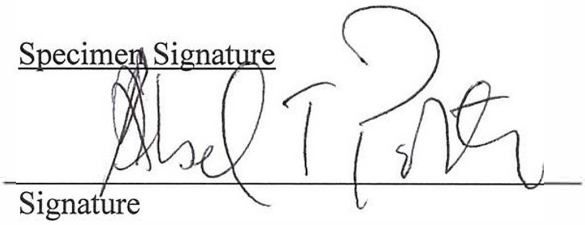
ESCROW FUNDS

Depositor	Amount
Bogopa Enterprises, Inc.	$178,000.00

EXHIBIT A-1

Certificate as to the Company's Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Company and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of the Company. The below listed persons (must list at least two individuals, if applicable) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s).

Name / Title / Telephone	Specimen Signature
Abel Porter Name	 Signature
CEO Title	
646.616.8000 Phone	646.357.0033 Mobile Phone
Brad Schneider Name	 Signature
CFO Title	
646.616.8000 Phone	646.944.7959 Mobile Phone
Name	Signature
Title	
Telephone	Mobile Phone

NOTE: Actual signatures are required above. Electronic signatures, "Docusigned" signatures and/or signature fonts are not acceptable.

Exhibit B

Form of Bill of Sale

EXHIBIT B

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 hereto (together with the Company, the "Sellers") and Bogopa Enterprises, Inc., a New York Corporation ("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 July 8, 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 the Acquired Assets, 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 RED HOOK LLC

By:_____
Name:
Title:

FAIRWAY DOUGLASTON LLC

By:_____
Name:
Title:

BUYER:

BOGOPA ENTERPRISES, INC.

By:_____
Name:
Title:

Exhibit C

Form of Assignment and Assumption Agreement

EXHIBIT C

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 Bogopa Enterprises, Inc., a New York Corporation ("Buyer"). Sellers and Buyer are referred to collectively herein as the "Parties."

WHEREAS, the Parties are parties to that certain Asset Purchase Agreement, dated July 8, 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, including, without limitation, all of Sellers' right, title, and interest in and to the Transferred Contracts, 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. 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 Cure Costs.

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 RED HOOK LLC

By:_____
Name:
Title:

FAIRWAY DOUGLASTON LLC

By:_____
Name:
Title:

BUYER:

BOGOPA ENTERPRISES, INC.

By: _____
Name:
Title:

Exhibit D

Form of Lease Assignment and Assumption Agreement

EXHIBIT D

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 Douglaston LLC, a Delaware limited liability company and a direct or indirect wholly-owned Subsidiary of the Company (together with the Company, the "Sellers") and Bogopa Enterprises, Inc., a New York Corporation ("Buyer"). Sellers and Buyer are referred to collectively herein as the "Parties."

WHEREAS, the Parties are parties to that certain Asset Purchase Agreement, dated July 8, 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 and Assumption of Lease. Effective as of the Closing related to the Lease, 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 Assumed Liabilities. Effective as of the Closing related to the Lease, Sellers hereby assign and Buyer hereby (i) 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 related to the Lease, and (ii) unconditionally and irrevocably assumes, undertakes and agrees to pay, satisfy, perform and discharge in full, as and when due, and release and discharge Sellers and their successors and assigns completely and forever from, all of the Assumed Liabilities and all obligations and liabilities of any kind arising out of Buyer's assumption of the Assumed Liabilities. Notwithstanding anything to the contrary contained herein, the Excluded Liabilities are specifically excluded from the Assumed Liabilities assumed by Buyer hereby and such Excluded Liabilities are not assigned by Sellers or assumed by Buyer.

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 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, 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 except as expressly provided herein. 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 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.

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. 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:

[ADD NOTARY JURAT ACCEPTABLE IN EACH JURISDICTION]

FAIRWAY DOUGLASTON LLC

By: _____
Name:
Title:

[ADD NOTARY JURAT ACCEPTABLE IN EACH JURISDICTION]

BOGOPA ENTERPRISES, INC.

By: _____
Name:
Title:

[ADD NOTARY JURAT ACCEPTABLE IN EACH JURISDICTION]

SCHEDULE I

Leases

[List Lease in the following form:

Lease dated [●], by and between [●], a [●], as landlord, and [●], a [●], as tenant, recorded [●], at Book [●], page [●], in the records of [●] County, [●], [as amended by that certain [●] dated [●].]]

SCHEDULE II

Leased Premises

AMENDMENT AND WAIVER TO ASSET PURCHASE AGREEMENT

This Amendment (this "Amendment") dated as of July 27, 2020, amends that certain Asset Purchase Agreement (the "Agreement"), dated as of July 14, 2020 by and among Fairway Group Holdings Corp., a Delaware corporation (the "Company"), Fairway Red Hook LLC, a Delaware limited liability company Fairway Douglaston LLC, a Delaware limited liability company (together with the Company, "Sellers"), and Bogopa Enterprises, Inc., a New York corporation ("Buyer"). Each of Buyer and each Seller is referred to herein as a "Party" and, collectively, as the "Parties".

WITNESSETH

WHEREAS, the Parties desire to amend the Agreement pursuant to Section 9.5 thereof on the terms set forth below.

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. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.

ARTICLE II
AMENDMENTS

Section 2.1 Consideration; Deposit; Escrow Amount. Section 2.3(a) and Section 2.3(b) of the Agreement are hereby deleted and replaced in their entirety by the following:

(a) "(a) The consideration for the Acquired Assets shall be (i) an aggregate Dollar amount equal to the sum of (A) three million eight hundred and forty one thousand dollars ($3,841,000) (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) $1,149,000 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) $1,012,000 to the Red Hook Store;

(iv) $5,000 to the furniture, fixtures and equipment at the Red Hook Store; and

(v) $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 (v), 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) As of July 27, 2020, pursuant to the terms of the Escrow Agreement, Buyer has deposited with the Escrow Agent the sum of four hundred and thirty thousand dollars ($430,000), in the aggregate, 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."

ARTICLE III
WAIVER

Section 3.1 Waiver. Buyer hereby waives the closing condition set forth in Section 7.1(c) of the Agreement that 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 3.2 Sale Order. Sellers shall use commercially reasonably efforts to obtain the Sale Order and any Related Order (if any) by August 10, 2020.

ARTICLE IV
EXTENSION OF CLOSING

Section 4.1 Closing Extension. Pursuant to Section 2.4 of the Agreement, Buyer hereby extends the date on which Closing is to occur to a date mutually agreed upon by the Parties, but in any event, to a date that is after July 31, 2020 and a date that is prior to August 24, 2020; provided, however, that Buyer shall, prior to July 31, 2020, deposit the Inventory Escrow Amount with the Escrow Agent by wire transfer in immediately available funds in accordance with Section 2.4 of the Agreement.

ARTICLE V
MISCELLANEOUS

Section 5.1 The section headings contained in this Amendment are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Amendment.

Section 5.2 This Amendment 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 Amendment 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 5.3 This Amendment, together with any documents, instruments and certificates explicitly entered referred to herein 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 5.4 This Amendment 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.

Section 5.5 The Parties have participated jointly in the negotiation and drafting of this Amendment. In the event an ambiguity or question of intent or interpretation arises, this Amendment 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 Amendment.

[The remainder of this page is intentionally left blank.]

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

SELLERS:

FAIRWAY GROUP HOLDINGS CORP.

By: _____
Name: Nathalie Augustin
Title: Senior Vice President, General Counsel, & Secretary

FAIRWAY RED HOOK LLC

By: _____
Name: Nathalie Augustin
Title: Senior Vice President, General Counsel, & Secretary

FAIRWAY DOUGLASTON LLC

By: _____
Name: Nathalie Augustin
Title: Senior Vice President, General Counsel, & Secretary

BUYER:

BOGOPA ENTERPRISES, INC.

By:_____
Name: Spencer An
Title: President and Chairman of the Board

[Signature Page to Amendment and Waiver to Asset Purchase Agreement]