

**MIDDLEBROOKS SHAPIRO, P.C.**

841 Mountain Avenue, First Floor  
Springfield, New Jersey 07081  
(973) 218-6877  
Melinda D. Middlebrooks, Esq.  
*middlebrooks@middlebrooksshapiro.com*  
Attorneys for the Chapter 11 Debtors and  
Debtors-in-Possession, Frank and Teresa  
Helmka

In re:

**FRANK AND TERESA HELMKA,**

Chapter 11 Debtors and  
Debtors-in-Possession.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

Honorable Christine M. Gravelle

Chapter 11

Case No. 18-32272-CMG

Hearing Date: March 5, 2019 at 10:00 a.m.  
Oral Argument: Waived, Unless Timely  
Objection Filed

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**NOTICE OF MOTION FOR ORDER AUTHORIZING SALE OF ASSETS  
LOCATED AT TINTON FALLS PLAZA, SHREWSBURY AVENUE & ROUTE 35,  
TINTON FALLS, NEW JERSEY 07724 AND LIQUOR LICENSE TO BETHELLEN  
FRIEDMAN WITH LIENS TO ATTACH TO PROCEEDS PURSUANT TO  
11 U.S.C. §§ 363(b), 363(f), 365, FED. R. BANKR. P. 4001(d), AND D.N.J. LBR 6004-1;  
FOR ALLOWANCES OF ADMINISTRATIVE EXPENSES PURSUANT  
TO 11 U.S.C. §§ 506(c) and 503(b); AND FOR RELATED RELIEF**

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**TO: HONORABLE CHRISTINE M. GRAVELLE**

United States Bankruptcy Court  
District of New Jersey  
402 East State Street  
Trenton, New Jersey 08608

Maggie McGee, Esq.  
United States Department of Justice  
Office of the United States Trustee  
One Newark Center, Suite 2100  
Newark, New Jersey 07102  
*Via CM/ECF and First Class Mail*

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75 Eisenhower Parkway  
Roseland, New Jersey 07068  
Attorneys for Proposed Purchaser, Bethellen Friedman

Lawrence P. Maher, Esq.  
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99 Wood Avenue South  
Iselin, New Jersey 08830  
Attorneys for Treasure Island Plaza  
***Via First Class Mail***

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Stone Mandia, LLC  
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Neptune, New Jersey 07753  
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Mt. Laurel, New Jersey 08054  
Attorneys for HSBC Bank USA,  
***Via CM/ECF and First Class Mail***

All Creditors on the Service List  
Annexed Hereto as Exhibit A

**PLEASE TAKE NOTICE**, on March 5, 2019 at 10:00 a.m. in the forenoon, or at such time as scheduled by the Court, Frank and Teresa Helmka, the above-captioned Chapter 11 Debtors and Debtors-in-Possession (the “Debtors”), by and through their attorneys, Middlebrooks Shapiro, P.C., shall move before the Honorable Christine M. Gravelle, United States Bankruptcy Court, District of New Jersey, 402 East State Street, Trenton, New Jersey 08608, on the Debtors’ Motion for Order Authorizing Sale of Assets Located at Tinton Falls Plaza, Shrewsbury Avenue & Route 35, Tinton Falls, New Jersey 07724 and Liquor License to Bethellen Friedman With Liens to Attach to Proceeds Pursuant to 11 U.S.C. §§363(b), 363(f), and 365, Fed. R. Bankr. P. 4001(d), D.N.J. LBR 6004-1; For Allowances of Administrative Expenses Pursuant to 11 U.S.C. §§ 506(c) and 503(b), and For Related Relief (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that in support of the within Motion, the Debtors will rely upon the Verified Application, Certification and proposed form of Order submitted herewith as well as oral arguments of counsel (if necessary). Pursuant to D.N.J. LBR 9013-1(a)(3), the Debtors state that no brief or memorandum of law is necessary because of the absence of novel questions of law.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to Rule 9013-2(a) of the Local Rules of this Court, objections, if any, to the Application, Certification, and proposed Order must be in writing, must conform to the requirements of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the District of New Jersey, set forth the name of the objector, the basis for the objection and the specific grounds therefor, and must be filed with the Clerk of the Court at least seven (7) days prior to the hearing date indicated herein with copies filed

simultaneously served upon:

**MIDDLEBROOKS SHAPIRO, P.C.**  
841 Mountain Avenue, First Floor  
Springfield, New Jersey 07081

**PLEASE TAKE FURTHER NOTICE**, that pursuant to Rule 9013-3(d) of Local Rules of this Court, failure of any person or entity receiving notice of the Application to file objections thereto on a timely basis shall be a bar to the assertion of an objection to the entry by the Court of the proposed Order, as same may be modified, and the within Motion shall be deemed uncontested.

Respectfully submitted,

**MIDDLEBROOKS SHAPIRO, P.C.**  
841 Mountain Avenue, First Floor  
Springfield, New Jersey 07081  
(973) 218-6877  
*middlebrooks@middlebrooksshapiro.com*  
Attorneys for the Chapter 11 Debtors and  
Debtors-in-Possession, Frank and Teresa Helmka

/s/ Melinda Middlebrooks  
By: Melinda D. Middlebrooks, Esq.

Dated: January 31, 2019

**MIDDLEBROOKS SHAPIRO, P.C.**

841 Mountain Avenue, First Floor  
Springfield, New Jersey 07081  
(973) 218-6877  
Melinda D. Middlebrooks, Esq.  
*middlebrooks@middlebrooksshapiro.com*  
Attorneys for the Chapter 11 Debtors and  
Debtors-in-Possession, Frank and Teresa  
Helmka

In re:

**FRANK AND TERESA HELMKA,**

Chapter 11 Debtors and  
Debtors-in-Possession.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

Honorable Christine M. Gravelle

Chapter 11

Case No. 18-32272-CMG

Hearing Date: March 5, 2019 at 10:00 a.m.  
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**VERIFIED APPLICATION IN SUPPORT OF MOTION FOR ORDER  
AUTHORIZING SALE OF ASSETS LOCATED AT TINTON FALLS PLAZA,  
SHREWSBURY AVENUE & ROUTE 35, TINTON FALLS, NEW JERSEY 07724  
AND LIQUOR LICENSE TO BETHELLEN FRIEDMAN WITH LIENS TO  
ATTACH TO PROCEEDS PURSUANT TO 11 U.S.C. §§ 363(b), 363(f), 365  
AND FED. R. BANKR. P. 4001(d), AND D.N.J. LBR 6004-1; FOR  
ALLOWANCES OF ADMINISTRATIVE EXPENSES PURSUANT  
TO 11 U.S.C. §§ 506 (c) AND 503(b); AND FOR RELATED RELIEF**

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**THIS VERIFIED APPLICATION**, submitted on behalf of Frank and Teresa Helmka, the above-captioned Chapter 11 Debtors and Debtors-in-Possession (the “Debtors”), by and through their counsel, Middlebrooks Shapiro, P.C., in support of the Debtors’ Motion for Order Authorizing Sale of Assets Located at Tinton Falls Plaza, Shrewsbury Avenue & Route 35, Tinton Falls, New Jersey 07724 and Liquor License to Bethellen Friedman With Liens to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b), 363(f), 365, and 1303, Fed. R. Bankr. P. 4001(d), and

D.N.J. LBR 6004-1; For Allowances of Administrative Expenses Pursuant to 11 U.S.C. §§ 506(c) and 503(b); and For Related Relief (the “Motion”) and respectfully represents as follows:

**PROCEDURAL BACKGROUND**

1. F&T Spirits Enterprises, Inc. (“F&T” or the “Business”) is a company owned one hundred percent (100%) by Teresa Helmka, Joint Debtor. *See*, Certification of Teresa Helmka.

2. Wine Utopia LLC (“Wine Utopia”) is a company owned one hundred percent (100%) by Frank Helmka, Joint Debtor. *See*, *Id.*

3. In 2017, a Landlord Tenant Civil Action was commenced captioned Treasure Island Plaza, LLC v. F&T Spirits Enterprises, Inc., Docket No. MON-LT-004954-17 (the “Landlord Tenant Action”).

4. On November 9, 2018, the Debtors, by and through MSPC, filed their voluntary “bare bones” petition under Chapter 11. *See*, Docket #1.

5. The balance of the Debtors’ Chapter 11 Plan and Schedules was filed on December 3, 2018. *See*, Docket #16.

6. F&T is listed on the Debtors’ schedules as a business owned from 1994-Present. *See*, Docket #16 at Part 11 of Statement of Financial Affairs.

7. Wine Utopia is listed on the Debtors’ schedules as a business owned from 2000-Present. *See, Id.*

8. On January 18, 2019, a Motion for Order Extending the Automatic Stay Provisions of 11 U.S.C. §362 to F&T Spirits Enterprises, Inc. and Wine Utopia LLC was filed on shortened time on behalf of the Debtor. *See*, Docket #40.

9. Your Honor granted the Debtors' Application to Impose the Automatic Stay through and including February 5, 2019. By separate Application, the Debtors will seek extension of the automatic stay to allow for consummation of the proposed sale, if approved.

10. The Debtors seek approval of the sale of a package store business located at the Tinton Falls Plaza, Shrewsbury Avenue & Route 35, Tinton Falls, New Jersey, a Plenary Retail Distribution Liquor License number #1336-44-004-013 and furniture, fixtures and equipment to Bethellen Freidman in the amount of \$850,000.00. A true and correct copy of the Agreement for Sale of Assets between F&T and Friedman dated August 2, 2018 (the "Agreement") is annexed as Exhibit A to the Certification of Teresa Helmka dated January 30, 2019 (the "Helmka Certification") filed simultaneously herewith.

11. The Debtors seek to effectuate this sale because there is an SBA loan (through Northeast Bank) which holds a secured claim against F&T<sup>1</sup> and which lien is, upon information and belief<sup>2</sup>, cross-collateralized on the Debtors' home. There are also sales tax and ABC fines for which the Debtors may be personally liable which would be satisfied through this sale, if approved. These payments would benefit the Debtors' estate and assist the Debtors in their reorganization efforts.

#### **REQUESTED RELIEF AND REASONS THEREFOR**

12. The Debtors verify that the Proposed Purchaser is not and "insider" as defined in 11 U.S.C. §101(31); the Proposed Purchaser is not related to the Debtors; and the Sales Agreement

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<sup>1</sup> As set forth above, the shares of which are 100% owned by Chapter 11 joint debtor Teresa Helmka.

<sup>2</sup> No Proof of Claim has been filed by either Northeast Bank nor by the SBA although the claims as listed on the Debtors' Schedules as disputed, contingent and unliquidated. *See*, Docket #16, p.5 at #15.

was entered into as an “arms length” transaction with the Debtors having been represented by counsel.

13. The Debtors respectfully submit that the purchase price for the business in the amount of \$850,000.00 offered by the Proposed Purchaser is reasonable and within market rate. The sale would be made subject to higher and better offers which would further assist the Court in determining the fair market value for the assets.

14. As set forth above, the Proposed Purchaser is a “good faith purchaser”<sup>3</sup> within the meaning of 11 U.S.C. § 363(m), and the Debtors will request that the Court make such a finding as to allow the parties to consummate the sale, if the Proposed Purchaser’s offer for the Business is the highest and best offer.

15. The Proposed Purchaser deposited a good faith deposit in the sum of \$85,000.00 with the law firm of Stone Mandia, LLC (“Stone Mandia”), counsel for F&T pursuant to the Agreement<sup>4</sup>. During the pre-petition period, the Proposed Purchaser had authorized release of \$50,000.00 of the \$85,000.00 to F&T. The sum of \$35,000.00 remains in trust with the law firm of Stone Mandia. Therefore, the Proposed Purchaser paid a good faith deposit in the sum of \$85,000.00 has been paid by the Proposed Purchaser, further evidencing the Proposed Purchaser’s “good faith” of the proposed purchase of the Business.

16. The Debtors seek entry of an Order pursuant to 11 U.S.C. § 363(b) and Federal Rule of Bankruptcy Procedure 4001(d) authorizing the Debtors to sell their interest in the Business as more specifically defined below.

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<sup>3</sup> “Unfortunately, neither the Bankruptcy Code nor the Bankruptcy Rules attempts to define ‘good faith’”. In re Abbotts Dairies, 788 F.2d at 147.

<sup>4</sup> *See*, Helmka Certification, Exhibit A, Agreement, p.5 at Article 2.



17. The Debtors seeks to convey their interest in the Business to the Proposed Purchaser, free and clear of all liens, claims and encumbrances, with valid liens, claims and encumbrances to attach to the proceeds of sale.

18. Section 363(b) of the Bankruptcy Code authorizes a debtor-in-possession, subject to Court approval, and after notice and a hearing, to sell the debtor's interest in property of the estate, other than in the ordinary course of business, free and clear of any liens, claims and encumbrances, with said liens, claims and encumbrances to attach to proceeds of sale. 11 U.S.C. § 363(b). The Debtors seek entry of an Order substantially in the form attached hereto (the "Proposed Order"), inter alia:

(a) authorizing and approving the sale of the Debtors' interest in the Business to the Proposed Purchaser for the purchase price of \$850,000.00 (the "Purchase Price"), said conveyance to be free and clear of all liens, claims and encumbrances, with any liens, claims or encumbrances to attach to the proceeds of sale;

(b) finding that (i) all of the requirements of 11 U.S.C. § 363(b) of the Bankruptcy Code, with respect to the conveyance of the Debtor's interest in the Property, and 11 U.S.C. § 363(m) with respect to the good faith status of the Proposed Purchasers has been satisfied and (ii) that sufficient circumstances and good business reasons exist to justify the sale and conveyance of the Business by the Debtors upon the terms set forth in the Application; and

(c) granting such other and further relief as this Court may deem just and proper.

19. Section 363(f) of the Bankruptcy Code sets forth five (5) conditions under which a trustee (debtor-in-possession) may sell property "free and clear of any interest in such property of an entity other than the estate." 11 U.S.C. § 363(f). This Section is written in the disjunctive, therefore, sale is permissible if any one of the five (5) conditions set forth are met. *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988). *See, e.g., In re Wolverine Radio Co.*, 930 F.2d 1132 (6th Cir.1991);

*In re Kellstrom Industries, Inc.*, 282 B.R. 787, 793 (Bankr.D.Del.2002). Applicable here is subparagraph (f)(3) of Section 363:

(3) such interest is a lien and the price at which property is to be sold is greater than the aggregate value of all liens on such property ...

11 U.S.C. § 363(f)(3). In order for a sale free and clear of liens to be authorized, it must be demonstrated that “such a sale has promise of realizing excess value over the balances due on the existing liens which can go into the bankruptcy estate.” *See, In re Rouse*, 53 B.R. 156, 158 (Bkrcty. W.D. Mo. 1985) (Order Directing Plaintiffs to Show Cause Why Complaint Should Not be Dismissed entered); *In re Rouse*, 54 B.R. 31 (Bkrcty. W. D. Mo. 1985) (Final Judgment Dismissing Complaint entered).

20. In *In re Pursuit Capital Mgt., LLC*, the Third Circuit stated, “[a]s to value, we have said that, ‘[g]enerally speaking, an auction may be sufficient to establish that one has paid ‘value’ for the assets of a bankrupt.” *In re Pursuit Capital Mgt., LLC*, 874 F.3d 124, 136 (3d Cir. 2017) (quoting *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149 (3d Cir. 1986)). “In fact, we have said that ‘a public auction, as opposed to appraisals and other evidence, is the best possible determinant of the value of ... assets[.]’” *Id.*

21. The Debtors respectfully submit that the relief sought by way of the instant Application, specifically, the sale and conveyance of the Business to the Proposed Purchasers is the result of arms’ length negotiations and that the terms and conditions thereof have been negotiated in good faith and are in the best interests of the Debtors’ estate.

**Payment of Debtor's Administrative Expenses**

22. Your Applicant respectfully requests entry of an Order granting Debtors' bankruptcy counsel and Debtor's proposed special counsel administrative claims in this proceeding pursuant to 11 U.S.C. §§ 506(c) and 503(b) for services performed on the Debtors' behalf that conferred actual, necessary and direct benefits upon the Debtors' estate and upon secured creditor Northeast Bank.

23. Section 506(c) of the Bankruptcy Code provides that a debtor-in-possession "...may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property. 11 U.S.C. §506(c).

24. By way of summary, the following services performed and to be performed by the undersigned and services to be performed by proposed special counsel<sup>5</sup> conferred or will confer actual, necessary and direct benefits to Northeast Bank, including, but not limited to, preparing the application for retention of professionals; preparing the within Verified Application for the proposed 363 Sale; and closing on the Property, subject to Court approval.

25. Section 503(b) of the Bankruptcy Code, "Allowance of Administrative Expenses", states in pertinent part that:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including-

(3) the actual, necessary expense, other than, compensation and reimbursement . . . incurred by-

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<sup>5</sup> An Application seeking to retain Jason Michael Ross, Esq. as Special Counsel to the Debtors to address issues regarding transfer of the liquor license and issues relating to compliance with the ABC is filed simultaneously herewith.

(D) a creditor . . . in making a substantial contribution to a case under chapter 9 or 11 of this title . . .

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant.

11 U.S.C. § 503(b).

26. The burden of proof is on the applicant to demonstrate by a preponderance of the evidence that it has made a substantial contribution in the bankruptcy case. *See, In re Geriatrics Nursing Home, Inc.*, 195 B.R. 34, 36-37 (Bankr.D.N.J. 1996). The Debtors submit that their professionals have made a substantial contribution to this bankruptcy case by prosecuting a proposed sale which will benefit their bankruptcy estate.

27. The legislative history of 11 U.S.C. § 503(b) provides that “paragraph (4) permits reasonable compensation for professional services rendered by an attorney or an accountant of an equity whose expenses is compensable under the previous paragraph.” House Report (Reform Act of 1978), S. REP. 95-989, 67, 1978 U.S.C.C.A.N. 5787, 5853.

28. Any and all fees and reimbursement of expenses sought by Debtors’ bankruptcy and special counsel would be made on notice and appropriate applications to this Court. The relief sought by way of this Verified Application is not for an allowance, but rather authorization to file certifications upon completion of the legal services pursuant to 11 U.S.C. §503(b) in support of the claims.

**METHOD OF NOTICE**

29. The Debtors intend to serve (i) a copy of the proposed Order, this Verified Application, the Helmka Certification filed simultaneously herewith together with all Exhibits, by First Class Mail, postage prepaid upon (a) Bethellen Friedman, Proposed Purchaser; (b) Counsel for Bethellen Friedman; (c) Northeast Bank; and (d) Office of the United States Trustee, One Newark Center, Newark, New Jersey 07102.

30. Additionally, the Debtors intend to serve the Verified Application, and all relating papers, by regular first-class mail, postage pre-paid, upon all known creditors and parties-in-interest and all persons who have filed a Notice of Appearance and Request for Service in these proceedings, except for those creditors or persons who accept service via electronic filing.

31. It is respectfully submitted that the proposed notice is appropriate and adequate under the circumstances pursuant to 11 U.S.C. §102(1) of the Bankruptcy Code and Fed. R. Bankr. P. 2002(a)(2) and should be deemed good and sufficient service and notice hereof and will sufficiently test the market and assure the Court and creditors that the Debtor's estate will be obtaining the highest and best possible price for the Property.

32. No previous application for the relief sought herein has been made to this or any other Court.

**WHEREFORE**, the Debtors respectfully request this Court enter the proposed form Order Authorizing Sale of Assets Located at Tinton Falls Plaza, Shrewsbury Avenue & Route 35, Tinton Falls, New Jersey 07724 and Liquor License to Bethellen Friedman with Liens to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b), 363(f), 365 and Fed. R. Bankr. P. 4001(d), and D.N.J. LBR 6004-1; for Allowances of Administrative Expenses Pursuant to 11 U.S.C. §§ 506 (c) and

503(b); and For Related Relief or as such Order may be amended by the Court; and granting to the Debtors such other and further relief as the Court deems necessary and just.

Respectfully submitted,

**MIDDLEBROOKS SHAPIRO, P.C.**  
841 Mountain Avenue, First Floor  
Springfield, New Jersey 07081  
Attorneys for Chapter 11 Debtors,  
Frank and Teresa Helmka

/s/ Melinda D. Middlebrooks

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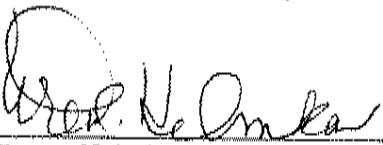
By: Melinda D. Middlebrooks

Dated: January 30, 2019

**VERIFICATION**

I, Teresa Helmka., of legal age, do hereby verify as follows:

1. I am one of the Debtors and Debtors-in-Possession in the above-captioned Chapter 11 case.
2. I have reviewed the foregoing Verified Application, and the factual matters and representations set forth are true to the best of my knowledge, information and belief.
3. The foregoing statements made by me are true. I understand that if any of the foregoing statements are willfully false, I may be subject to punishment by this Court.

  
\_\_\_\_\_  
Teresa Helmka

Dated: January 31, 2019

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-3\*d+  
**MIDDLEBROOKS SHAPIRO, P.C.**

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Melinda D. Middlebrooks, Esq.  
*middlebrooks@middlebrooksshapiro.com*  
Attorneys for Frank and Teresa Helmka, Chapter 11  
Debtors and Debtors-in-Possession

In Re:

**FRANK and TERESA HELMKA,**

Chapter 11 Debtors and Debtors-in Possession.

Case No.: 18-32272(CMG)

Adv. No.: \_\_\_\_\_

Hearing Date: March 5, 2019

Judge: Christine M. Gravelle

**ATTORNEY CERTIFICATION  
RE: FACSIMILE SIGNATURE**

I, Melinda D. Middlebrooks, Esq., attorney for Frank and Teresa Helmka,  
having electronically filed a Certification, or other pleading required to be signed under oath or  
penalty of perjury, containing the facsimile signature of Teresa Helmka in the  
above captioned matter, hereby certify in accordance with the Court's *General Order  
Establishing Procedure for Electronic Submission of Documents Containing Facsimile  
Signatures*, dated November 19<sup>th</sup> 2004:

1. The Affiant has acknowledged the genuineness of the original signature.
2. The original document was executed in completed form prior to facsimile transmission.
3. The document or a copy with an original signature affixed to it will be obtained by me within seven (7) business days after the date the document or pleading with the facsimile signature was electronically filed with the Court.



4. I will maintain the document containing the original signature in paper form for a period not less than seven years from the date of closure of the case or proceeding in which the document is filed.

I hereby certify that the above is true.

Dcv: January 31, 2019

~~/Melinda Middlebrooks~~

Attorney for Frank and Teresa Helmka

**MIDDLEBROOKS SHAPIRO, P.C.**

841 Mountain Avenue, First Floor  
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Debtors-in-Possession, Frank and Teresa  
Helmka

In re:

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Chapter 11 Debtors and  
Debtors-in-Possession.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

Honorable Christine M. Gravelle

Chapter 11

Case No. 18-32272-CMG

Hearing Date: March 5, 2019 at 10:00 a.m.  
Oral Argument: Waived, Unless Timely  
Objection Filed

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**CERTIFICATION OF TERESA HELMKA IN SUPPORT OF MOTION FOR  
ORDER AUTHORIZING SALE OF ASSETS LOCATED AT TINTON FALLS  
PLAZA, SHREWSBURY AVENUE & ROUTE 35, TINTON FALLS,  
NEW JERSEY 07724 AND LIQUOR LICENSE TO BETHELLEN FRIEDMAN  
WITH LIENS TO ATTACH TO PROCEEDS PURSUANT TO 11 U.S.C. §§ 363(b),  
363(f), 365, FED. R. BANKR. P. 4001(d), AND D.N.J. LBR 6004-1; FOR  
ALLOWANCES OF ADMINISTRATIVE EXPENSES PURSUANT TO  
11 U.S.C. §§ 506(c) and 503(b); AND FOR RELATED RELIEF**

---

**TERESA HELMKA** of legal age, hereby certifies as follows:

1. I am one of the above-captioned Chapter 11 Debtors and, as such, I have personal knowledge of the facts stated herein.

2. I make this Certification in support of the Motion for Order Authorizing Sale of Assets Located at Tinton Falls Plaza, Shrewsbury Avenue & Route 35, Tinton Falls, New Jersey 07724 and Liquor License to Bethellen Friedman With Liens to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b), 363(f), 365, Fed. R. Bankr. P. 4001(d), and D.N.J. LBR 6004-1; For Allowances

of Administrative Expenses Pursuant to 11 U.S.C. §§ 506(c) and 503(b); and For Related Relief (the "Motion").

3. I am 100% owner and President of F&T Spirits Enterprises, Inc. ("F&T").

4. On August 2, 2018, an Agreement for Sale of Assets ("Sale Agreement") was entered into between me as President and Bethellen Friedman, potential buyer ("Friedman") for the amount of \$850,000.00. A true and correct copy of the Sale Agreement annexed hereto as Exhibit A.

5. The Sale Agreement is for the purchase of a package store business located at the Tinton Falls Plaza, Shrewsbury Avenue & Route 35, Tinton Falls, New Jersey, a Plenary Retail Distribution Liquor License number #1336-44-004-013 and the furniture, fixtures and equipment used in the business (hereinafter collectively referred to as the "Assets"). See, Exhibit A.

6. In conjunction with the Sale Agreement, an Assignment of Shares and Hypothecation Agreement (the "Assignment Agreement") was entered into between me as President and Friedman. A true and correct copy of the Assignment Agreement annexed hereto as Exhibit B.

7. In the Assignment Agreement, Friedman agreed to the release of a \$50,000.00 deposit (the "Deposit") pursuant to the Sale Agreement. In exchange, Friedman was given a security interest in and to all of the issued and outstanding shares of the business, an undated resignation, Consent to Transfer and undated Assignment of Stock. See, Exhibit B.

8. In conjunction with the Sale Agreement, an Assignment of Membership Interest and Hypothecation Agreement (the "Assignment of Membership Interest") was entered into between co-Debtor Frank Helmka, owner of Wine Utopia, LLC, and Friedman. A true and correct copy of the Assignment of Membership Interest annexed hereto as Exhibit C.


9. In the Assignment of Membership Interest, Friedman agreed to the release of the \$50,000.00 deposit (the "Deposit") pursuant to the Sale Agreement. In exchange, Friedman was given a security interest in and to all of the issued and outstanding membership interest in Wine Utopia, LLC, an undated resignation, Consent to Transfer and undated Assignment of Membership Interest. *See, Exhibit C.*

10. Neither my husband, joint Chapter 11 Debtor, Frank Helmka, nor I am related to the Proposed Purchaser.

11. The Sale Agreement was entered into as an "arms length" transaction.

12. Should the Court not approve the Sale, our reorganization efforts will be jeopardized as failure to consummate the sale may result in forfeiture of all three (3) of our liquor licenses due to the Sale documents.

The foregoing statements made by me are true. I understand that if any of the foregoing statements are willfully false, I may be subject to punishment by this Court.



Teresa Helmka

Dated: January \_\_\_\_\_, 2019

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-3\*d+  
**MIDDLEBROOKS SHAPIRO, P.C.**

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Attorneys for Frank and Teresa Helmka, Chapter 11  
Debtors and Debtors-in-Possession

In Re:

**FRANK and TERESA HELMKA,**

Chapter 11 Debtors and Debtors-in Possession.

Case No.: 18-32272(CMG)

Adv. No.: \_\_\_\_\_

Hearing Date: March 5, 2019

Judge: Christine M. Gravelle

**ATTORNEY CERTIFICATION  
RE: FACSIMILE SIGNATURE**

I, Melinda D. Middlebrooks, Esq., attorney for Frank and Teresa Helmka, having electronically filed a Certification, or other pleading required to be signed under oath or penalty of perjury, containing the facsimile signature of Teresa Helmka in the above captioned matter, hereby certify in accordance with the Court's *General Order Establishing Procedure for Electronic Submission of Documents Containing Facsimile Signatures*, dated November 19<sup>th</sup> 2004:

1. The Affiant has acknowledged the genuineness of the original signature.
2. The original document was executed in completed form prior to facsimile transmission.
3. The document or a copy with an original signature affixed to it will be obtained by me within seven (7) business days after the date the document or pleading with the facsimile signature was electronically filed with the Court.

4. I will maintain the document containing the original signature in paper form for a period not less than seven years from the date of closure of the case or proceeding in which the document is filed.

I hereby certify that the above is true.

Dcv: January 31, 2019

~~/Melinda Middlebrooks~~

Attorney for Frank and Teresa Helmka

AGREEMENT FOR SALE OF ASSETS

BETWEEN

F&T SPIRITS ENTERPRISES, INC

(SELLER)

AND

BETHELLEN FRIEDMAN on behalf of an entity to be formed

(PURCHASER)

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# Exhibit

"A"

AGREEMENT FOR SALE OF ASSETS

Agreement made this 2nd day of August 2018 between F&T SPIRITS ENTERPRISES, INC, a New Jersey Corporation with an address at 2165 Allenwood Road, Wall, New Jersey 07719 (hereinafter collectively referred to as "Seller") and, BETHELLEN FRIEDMAN, residing at \_\_\_\_\_ on behalf of an entity to be formed, (hereinafter collectively referred to as "Purchaser").

WITNESSETH:

WHEREAS, the Seller is presently the owner and operator of a package store business located at the Tinton Falls Plaza, Shrewsbury Avenue & Route 35, Tinton Falls, County of Monmouth, State of New Jersey, known as "F&T Spirits" (hereinafter referred to as the "Business"), Plenary Retail Distribution Liquor License number #1336-44-004-013 (hereinafter collectively referred to as the "License"), and the furniture, fixtures and equipment, used in the Business, including without limitation, those items set forth on Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Equipment"); and

WHEREAS, the intention of the parties is that the Seller sell to the Purchaser and that the Purchaser acquire from the Seller certain assets of the Business, the License and the Equipment (hereinafter collectively referred to as the "Assets"); and

WHEREAS, the parties, by these presents, seek to memorialize their understanding and agreement with respect to the terms and conditions of the sale by the Seller and purchase by the Purchaser of the Assets;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, together with other good and valuable consideration, it is agreed as follows:

ARTICLE 1 - ASSETS

Seller agrees to sell and transfer and Purchaser agrees to purchase the Assets, free and clear of any and all of the debts and claims of Seller's creditors and free and clear of all liens of any nature, including but not limited to mortgages, security interest, tax liens or other claims and debts, irrespective of whether same may be liquidated or unliquidated, absolute or contingent, primary or secondary, secured or unsecured as follows:

A. Certain of the stock in trade, certain of the licenses, and all of the Equipment presently used in connection with the Business, as more particularly described on Exhibit "A" annexed hereto excluding, however, the good will and customer lists of the Business which shall remain with the Seller;

B. The License, as defined above, that has been issued to Seller by the governing body of the Borough of Tinton Falls;

C. Except as otherwise stated herein, Seller's interest in and to all other licenses, leases, and/or rights under any contract for vending machines, public telephones, or the rental or use of any Equipment at the premises, telephone numbers, recipes, warranties and all other property, personal or real, tangible or intangible of the Seller, located at or used in connection with the above mentioned Business;

D. Notwithstanding the foregoing, the items as set forth in Exhibit "B" are specifically excluded from this sale.

E. Except as otherwise provided herein, the Purchaser does not assume and is not responsible of any of the liabilities of Seller, whether known or unknown, whether asserted or unasserted, whether liquidated or unliquidated and whether due or to become due, and in particular

the Purchaser does not assume any tax obligation, trade payables or liabilities to any financial institution.

ARTICLE 2 - PURCHASE PRICE AND TERMS OF PAYMENT

A. In accordance with the terms and conditions of this Agreement reached by the parties, the total purchase price to be paid by the Purchaser to the Seller for the Assets, which are the subject of this Agreement, shall be the sum of EIGHT HUNDRED FIFTY THOUSAND (\$850,000.00) DOLLARS, to be paid by Purchaser as follows:

(i) Upon execution and delivery of this Agreement, to be delivered to Jason C. Mandia, Esquire the attorney for the Seller, the ("Escrowee") and held in accordance with the provisions of Sub-paragraph C of this Article the sum of.....\$85,000.00

(ii) At Closing by cash, bank or certified check or attorney's trust account check, or via wire transfer, the sum of .....\$765,000.00

TOTAL PURCHASE PRICE .....\$850,000.00

B. At the time of Closing, Purchaser agrees to purchase all unopened spirits inventory, free and clear of all liens and encumbrances. Inventory shall not include inventory which is non-marketable, deformed by discoloration, beyond expected time to consume and/or subject to leakage. The spirits inventory will be evaluated on the evening proceeding closing and shall be conducted by an independent company (cost to be shared equally by the parties) unless otherwise mutually agreed by the parties. The value of these spirits inventories shall be the wholesale price paid for them by the Seller. The wine and beer inventory shall not be purchased and Seller shall remove the beer and wine inventory from the Business property prior to the Closing.

C. The sum described in Subparagraph A(i) above (the "Deposit") shall be delivered to the Escrowee upon execution of this Agreement, to be held in escrow. The Escrowee is authorized to release \$50,000.00 of the Deposit to pay towards outstanding lease obligations of

Seller ("Released Funds"). Before those funds can be released, Seller, Teresa Helmka and Frank Helmka shall execute and deliver to Purchaser a personal guarantee, stock pledge agreements and UCC's to secure the return of the Released Funds to the Purchaser in the event this Contract of Sale is rightfully terminated. In the event the Released Funds are not timely returned to the Purchaser interest shall accrue from the date of default at the rate of eighteen (18%) percent per annum and the Seller (and guarantors) shall be responsible for the cost of collection. The personal guaranty, stock pledge agreements and UCC's are hereafter referred to as the Deposit Documents. The Deposit Documents shall be in customary form reasonably acceptable to both parties. Purchaser acknowledges that the foregoing will be subordinate to the current bank financing and security. At Closing, in accordance with the provisions of this Agreement, the Deposit (including the Released Funds) shall be credited to Purchaser and applied to the Purchase Price. In the event that there is no closing as a result of a breach of this Agreement by Purchaser, the (i) Escrowee shall immediately release any portion of the Deposit to the Seller not previously released and (ii) Deposit Documents shall be returned to the Seller without payment, charge or repayment of the Released Funds, all as liquidated damages and not as a penalty and the Seller shall have no further rights or claims against Purchaser. In the event of a breach of this Agreement by the Seller, (a) Purchaser may terminate this Agreement and (i) the Escrowee shall immediately return the Deposit to the Purchaser if not previously released and (ii) the Released Funds shall be due and payable to the Purchaser within thirty (30) days of termination of the Agreement (the "Released Funds Return Date"); or (b) Purchaser may seek specific performance.

ARTICLE 3 - ALLOCATION OF PURCHASE PRICE

The Purchase Price referred to in Article 2, above, will be agreed and allocated to the following components:

A. License .....	\$500,000
B. Equipment .....	\$350,000
 TOTAL PURCHASE PRICE .....	 \$850,000.00

ARTICLE 4 – CONTINGENCIES, OPERATIONS AND TERMINATION

(a) The parties hereto agree that the obligation of the parties to consummate the subject transaction is subject to the satisfaction of the contingencies set forth herein.

A. Liquor License Transfer. The obligations of the parties under this Agreement are contingent upon and subject to the unconditional approval of the person to person transfer to Purchaser, or its assign, of the License by the issuing authority of the Borough of Tinton Falls and such other authorities as may be involved in or have jurisdiction over said transfer. It is understood and agreed that the Purchaser, at its sole cost and expense, shall immediately, upon the execution of this Agreement, take all necessary steps before the appropriate governmental bodies with regard to the transfer of the License. In the event the governing body of the Borough of Tinton Falls and/or the State Alcoholic Beverage Commission, if required, and/or any other involved agency or authority does not approve the within change of ownership of the License, within one hundred twenty (120) days from the date of execution of this Agreement by all parties, then at any time thereafter, until such approvals are finalized, the Purchaser may terminate this Agreement and the Agreement shall be considered null and void (unless Purchaser waives such contingency). However, this contingency shall be automatically extended for one additional period of thirty (30) days provided all documentation has been submitted by Purchaser and same is being processed by the applicable authorities. In the event said Agreement is terminated, the portion of the Deposit

being held in escrow shall be immediately returned to Purchaser and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date and there shall be no further liability from either party to the other. The Seller does hereby agree that it will consent to the application and securing of the necessary certificate(s) from the Division of Taxation, Department of the Treasury, Beverage Tax Bureau, certifying that the Seller-Licensee is not delinquent in the payment of any tax or in the filing of any report required by the provisions of the Alcoholic Beverage Tax Act and to promptly make any and all payments and take any and all actions necessary to satisfy such delinquencies. It is further agreed that if at the closing, any legal action has been instituted to prevent the transfer to Purchaser of the License, the Purchaser shall have the right to terminate the within Agreement (unless the Purchaser waives such contingencies). In the event said Agreement is terminated, the portion of the Deposit being held in escrow shall be immediately returned to the Purchaser and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date and there shall be no further liability of either party to the other. Any and all costs associated with said application or appeal shall be borne by Purchaser.

In the event Purchaser terminates this Agreement, Purchaser shall immediately withdraw its application for transfer of the License in the manner prescribed, or if the transfer has already been approved, Purchaser shall immediately file an application with all applicable authorities to re-transfer the License to Seller.

The Seller may terminate this Agreement twelve (12) months following the date hereof if any of the contingencies set forth in this Section 4A have not been satisfied. In such a case, and provided the Purchaser has diligently pursued the transfer, the portion of the Deposit being held in escrow shall be immediately returned to the Purchaser and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date.

The parties hereto acknowledge that, in view of applicable New Jersey Case Law, the subject transaction is a Bulk Sale within the meaning of the Bulk Sales Act Provisions of Title 54 of the New Jersey Statutes. It is agreed that the Purchaser shall notify the State of New Jersey Bulk Sales Division of the pending sale in order to relieve Purchaser from any tax responsibility as to State taxes, which may be owed by Seller. Seller hereby agrees to cooperate with and provide Purchaser with such information necessary to obtain such certificate and acknowledges that the State of New Jersey may require that a portion of the purchase price be retained in escrow.

B. Due Diligence.

(i) Purchaser shall have the right, commencing on the date hereof and expiring ten (10) days from full execution of this Agreement (the "Due Diligence Period"), to conduct such due diligence as Purchaser shall require in respect to the Assets. Seller shall provide Purchaser with access to Seller's business offices, at mutually convenient reasonable times in order to allow Purchaser to inspect all documents in Seller's files related to the Assets including, without limitation, financial statements and tax returns. All expenses of any kind incurred by Purchaser relating to such due diligence will be solely Purchaser's expense. Seller shall cooperate with Purchaser in all reasonable respects at no cost to Seller. In conducting any due diligence hereunder, Purchaser will treat, and will require any representative of Purchaser to treat, all information obtained by Purchaser pursuant to the terms of this Agreement, as strictly confidential.

(ii) In the event Purchaser determines as a result of the foregoing due diligence that it does not desire to proceed with the purchase of the Assets, Purchaser may elect to terminate this Agreement by delivering to Seller written notice of such termination within the Due Diligence Period, whereupon the parties shall have no further rights or obligations hereunder, the portion of the Deposit being held in escrow shall be immediately returned to Purchaser and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date.



C. Lease. The obligation of the Purchaser and Seller to consummate the transaction contemplated by this Agreement is contingent upon the Purchaser and landlord of the business premises, within sixty (60) days of full execution of this Agreement, entering a new lease or an assignment of the current lease for the business premises (the "Lease") Purchaser shall request of landlord that such Lease or assignment shall release Seller from any and all continuing obligations under the current lease. If such release request is not honored, the Purchaser shall indemnify, defend and hold Seller harmless from its obligation under the lease which arise following the Closing.

D. Resolution of Pending Investigation. This Agreement is contingent upon a resolution with the Division of Alcoholic Beverage Control of a pending investigation of Seller and Wine Utopia, LLC. Seller shall have thirty (30) days from the date of execution of this Agreement in order to memorialize such resolution. If Seller fails to reach a resolution, the Purchaser shall have the right to grant Seller such additional time as Seller shall determine to reach a resolution or Purchaser may terminate this Contract of Sale. Upon such termination, the parties shall have no further rights or obligations hereunder, the portion of the Deposit being held in escrow shall be immediately returned to Purchaser and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date.

E. Discharge from Northeast Bank. Northeast Bank (Successor to Colonial American Bank) maintains first position liens upon the Assets being sold herein as cross-collateralization with other assets. This Agreement is contingent upon Seller reaching a discharge payment with Northeast Bank in an amount sufficient to allow clear title to the assets to transfer to Purchaser. Seller shall have thirty (30) days from the date of execution of this Agreement in order to reach an agreeable discharge amount with Northeast Bank. If Seller fails to reach a resolution with Northeast Bank either party may terminate this Agreement. Upon such termination, the parties

shall have no further rights or obligations hereunder, the portion of the Deposit being held in escrow shall be immediately returned to Purchaser and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date.

F. Obligations to be Assumed. The Seller has, prior to the date hereof, delivered to Purchaser copies of all leases, contracts, commitments and warranties (if any) referred to in Article 1C and all other agreements which cannot be terminated by Seller prior to the Closing and Purchaser after the Closing without cost or expense. If Purchaser objects to any of such leases, contracts or commitments, it shall so notify the Seller within ten (10) days following the date hereof of receiving same. Seller shall (i) use its best efforts to secure the termination of such agreement. If Seller is unsuccessful, Purchaser may elect to cancel this Agreement and receive the immediate return of the portion of the Deposit being held in escrow and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date, or (ii) Purchaser may agree to Close the transaction nevertheless. Those leases, contracts, and commitments Purchaser is to assume are set forth on the attached as Exhibit "C".

G. Representations. If the aforementioned contingencies to Purchaser's obligation to close are satisfied, such obligation is further contingent on all representations of the Seller being true and correct as of the closing. If the aforementioned contingencies to Seller's obligation to close are satisfied, such obligation is further contingent on all representations of the Purchaser being true and correct as of the closing. The non-breaching party may adjourn the closing for thirty (30) days in order to allow the breaching party to cure such breach. If the non-breaching party is the Purchaser, and the breach is not cured within said thirty (30) days period, the Purchaser may elect to terminate this Agreement and receive the immediate return of the portion of the Deposit being held in escrow and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date.

H. Waiver of Contingencies. Purchaser or Seller, as the case may be, shall have the right to waive any of the Contingencies specified in this Agreement, to proceed, at Purchaser's election, to fully perform this Agreement as though said Contingencies had been fully performed or satisfied.

(b) The Seller agrees as follows with respect to the period between execution of this Agreement and the Closing:

A. The Seller will not engage in any practice, take any action or enter into any transaction outside of the ordinary course of business including without limitation, (i) selling or assigning any of its material assets, (ii) entering into any material agreement, contract or lease that is not terminable at closing and has been promptly disclosed to Purchaser in writing, (iii) modifying, cancelling or terminating any material agreement, contract or lease that Purchaser is assuming and has been promptly disclosed to Purchaser in writing; (iv) creating, incurring, assuming or guarantying indebtedness for borrowed money or capitalized lease obligations, or (iv) entering into any employment agreements.

B. The Seller operate its business and property substantially in accordance with past practices.

C. The Seller will give prompt written notice to the Purchaser if any material adverse development causing a breach of any of its representations contained in this Agreement shall occur. No such disclosure, however, shall be deemed to amend, supplement or to cure any breach of representation or warranty.

D. The Seller will not solicit, initiate or encourage the submission of any proposal or offer from any person relating to the acquisition of any of the material assets of the Seller or participate in any discussions or negotiations regarding, furnish information with respect to, assist or otherwise participate in any manner with respect thereto.

(c) If a party terminates this Agreement as provided herein, all rights of the parties hereunder shall terminate without liability of any party to any other party except as otherwise provided herein and except for any liability of a party then in breach.

ARTICLE 5 – RESERVED

ARTICLE 6 – CLOSING

The closing of this transaction shall take place at the office of Purchaser's attorney on the morning of the transfer of the License to the Purchaser or its designee but prior in time to the municipal meeting at which the governing body of the Borough of Tinton Falls will act on the application for the person-to-person transfer. At that time, all papers will be signed, including a Bill of Sale for the License to be signed by Seller, and all requisite monies will be deposited with the Escrow Agent, who will hold same in escrow pending the successful transfer of the liquor license. Immediately after such transfer, the monies will be disbursed and all papers will be delivered. If the application for transfer is denied, this Agreement will become null and void and the escrow Agent shall return all monies to Purchaser and all papers to the party executing them.

ARTICLE 7 - BROKERAGE

The parties hereto represent and agree that they have had no dealing with any person with respect to the transaction contemplated by this Agreement and further represent that no person may claim a commission relating to said transaction. The Seller and the Purchaser each agree to indemnify the other and hold the other harmless from all claims, demands, actions, cause of action, suits, proceedings, damages, liabilities, costs and expenses of every nature whatsoever relating to the commission, or relating to any claim of commission made by any other person or entity, arising from the conduct of the Seller or the Purchaser respectively.

ARTICLE 8 - REPRESENTATIONS OF SELLER

In order to induce the Purchaser to enter into this Agreement and to keep, observe and perform the terms, provisions and conditions hereof, the Seller and Teresa Helmka, jointly and severally do hereby represent and covenant to Purchaser as follows:

A. Seller is on non-delivery status with the Alcoholic Beverage Control Commission and such outstanding amounts shall be paid at closing from the proceeds of the sale. Currently the outstanding amount is approximately \$325,000.00;

B. Seller will cooperate with the Purchaser with regard to processing the application for the transfer of the License and will execute all necessary affidavits and/or consents;

C. Other than the disclosed pending ABC investigation and outstanding sales tax owed, the Seller has fully complied with all rules and regulations related to or governing Seller's License by any of the Borough of Tinton Falls, the Alcoholic Beverage Control Commission or any other governmental authority having jurisdiction over the License;

D. Said License has never been suspended nor revoked and is presently in good standing, and will be at Closing;

E. Seller shall, within forty-eight (48) hours after actual receipt or official notification thereof, notify Purchaser of any restrictions or violations occurring with regard to or impacting on the License in any manner whatsoever subsequent to the signing of this Agreement by Purchaser and occurring prior to the transfer of ownership of the License to Purchaser. If Seller cannot cure same to Purchaser's satisfaction within such time as Purchaser shall determine, Purchaser may cancel the Agreement, and receive the immediate refund of the portion of the Deposit being held in escrow and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date.

F. Seller is a New Jersey Corporation, duly organized, validly existing, in good standing, under the laws of New Jersey. Seller is delinquent in the payment of state sales tax and

federal and state withholding, such as FICA and FUTA taxes and will pay the same at closing. All tax returns required to be filed by Seller have been timely filed and all such returns are true and correct.

G. The execution and delivery of this Agreement to Purchaser and the sale contemplated herein do not violate any agreement to which Seller is a party or may law, regulation or order, and has been duly authorized by Seller's stockholders. Seller has the full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

H. Seller has, and will convey, good and marketable title to all of the Assets free and clear of all liens and encumbrances, which are the subject of this Agreement. All equipment and other tangible personal property will be in substantially the same condition at closing as it was at the conclusion of the diligence period, normal wear and tear excepted.

I. Seller will not induce any of the employees of the Business to leave its employ;

J. All required permits necessary to operate the premises have been validly issued, are in good standing, and will be assigned, if assignable, to Purchaser at the Closing;

K. There are no collective bargaining agreements or union contracts now in existence with respect to persons employed on the premises, or any part thereof, and no demand has been made upon Seller for recognition of a union or collective bargaining agent, and there are no other contracts of the premises except in the ordinary course of business. There are no written employment contracts. All employees are "at will". The Seller shall terminate the employment of all its employees upon the closing and will keep Purchaser fully informed of such termination process.

L. To the best of Seller's knowledge and subject to any landlord obligations under the Lease, the premises in full compliance with all federal, state and local laws;

M. Seller shall satisfy and pay all judgments of record at Closing;

N. Seller represents that, other than the pending ABC investigation and the action filed by the Landlord based on non-payment of rent, it has no knowledge of any pending or threatened litigation with regard to any of the business interests forming the basis of this Agreement.

O. The sole stockholder of Seller is Teresa Helmka. Seller has never owned a subsidiary.

P. All liabilities and assessments of Seller whether asserted or unasserted, whether liquidated or unliquidated and whether due or undue have been disclosed to Purchaser in writing prior to the date hereof. Purchaser is aware that Seller is in arrears of the lease and landlord has obtained a judgement for possession for the business premises.

Q. All insurance coverage of Seller has been disclosed to Purchaser in writing.

R. The Seller does not now or in the past maintained any employee benefit plan, including without limitation, retirement plans and medical expense coverage.

S. Except as disclosed to the Purchaser in writing, the Seller has no business relationship or arrangement with the stockholder of Seller or any affiliate of or party related to such stockholder, including without limitation, any business engaged in the retail sale of alcoholic beverages owned or managed by said affiliate or related party.

#### ARTICLE 9 - REPRESENTATIONS OF PURCHASER

In order to induce the Seller to enter into this Agreement and to keep, observe and perform the terms, provisions and conditions hereof the Purchaser represents to Seller as follows:

A. Purchaser is financially capable of entering into and consummating the within contemplated transaction; and

B. Purchaser has never been arrested, indicted or convicted of a crime, which would disqualify them as an applicant for a liquor license or for any other license with regard to the

operation of the business. No liquor license ever issued them or to any corporation of which they have been officers, directors or stockholders has ever been suspended or revoked.

C. Purchaser has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The Purchaser, or its assignee, has taken all action required by law and by its governing documents to authorize the execution and delivery of this Agreement and the transactions contemplated hereby. The execution, delivery, and performance of this Agreement constitute the valid and binding Agreement of Purchaser and/or its assignee and the Agreement is enforceable in accordance with its terms.

D. Purchaser hereby declares and agrees that Purchaser is purchasing the Assets on Purchaser's own judgment and not upon any representations made by Seller or anyone acting in Seller's behalf (except such representations as are expressly set forth in this Agreement). The Purchaser has relied on its own judgment, due diligence and business expertise in entering into this transaction and not on any representations of Seller, except as specifically set forth herein.

ARTICLE 10 - INDEMNIFICATION BY SELLER AND HELMKA

A. Seller, Teresa Helmka, and Frank Helmka, jointly and severally, each hereof agree to indemnify, defend and hold harmless the Purchaser from the claims of Seller's creditors, or any other person or entity making a claim against Seller, Purchaser or the Assets, which arose prior to the closing date, disclosed or undisclosed, and which relate to the Seller or the Assets, said indemnity to include the reasonable cost of Purchaser's legal fees incurred in the event of the assertion of any claim against Purchaser. In the event of the refusal or inability of Seller to promptly defend and/or satisfy such claims asserted against Purchaser within ten (10) days of the assertion of claim, the Purchaser may undertake the defense of such claim at the cost and expense of the aforesaid indemnitors.



B. Purchaser shall notify Seller of any claim made against Purchaser within thirty (30) days of Purchaser becoming aware of same;

C. Purchaser shall not permit or suffer the entry of any default or default judgment against Purchaser unless Seller is afforded ten (10) days advance notice thereof;

D. Purchaser shall make no payment of claim, shall not compromise or agree to compromise any claim, and shall not admit liability for any claim or pay thereof, except on ten (10) days advance notice to the Seller. If Seller notifies Purchaser within the ten (10) day period of Seller's decision to dispute or defend the claim, Purchaser shall not pay same without Seller's written consent, provided Seller undertakes to dispute, defend and/or pay said claim. The indemnification contained in this Paragraph shall survive Closing and shall continue in full force and effect thereafter. If Seller undertakes said claim and does not pursue to conclusion, then Seller shall be liable for all damages caused to Purchaser as a result of same.

#### ARTICLE 11 - BUILDING AND ZONING LAWS

The Purchaser intends to use the premises as a Package Goods Store. The Seller states that this use does not violate any applicable zoning ordinance, building code or other law that Seller is aware of. Seller shall apply for and obtain, at its sole cost and expense, any and all inspections required by law including, but not limited to, the Certificate of Occupancy required for the continued operation of a packaged goods store at the business location. The foregoing shall not include any application required for purchaser to conduct business in the municipality or State such as a zoning permit or mercantile license. If the costs to obtain a certificate of occupancy, if required, exceeds \$2,500.00 and the parties cannot reach an agreement on the payment of the excess than either party may terminate this Agreement.

#### ARTICLE 12 - RISK OF LOSS

The Seller assumes all risks of destruction, loss or damage due to fire or other casualty up to the date of closing. If the destruction, loss or damage exceeds \$85,000 the Purchaser shall have the right to terminate this Agreement, in which event all obligations shall terminate and the portion of the Deposit being held in escrow shall be immediately returned to Purchaser and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date and there shall be no further liability from either party to the other. Unless this Agreement is so terminated by written notice within thirty (30) days after such destruction, it shall remain in full force and effect and at Purchaser's election Seller shall either repair or restore, at Seller's cost, the premises, or, provided all conditions precedent to Closing are satisfied or waived, close title and pay to Purchaser the proceeds of any insurance policy then in effect to the extent of Purchaser's cost of repairs.

#### ARTICLE 13 - EMINENT DOMAIN

In the event that prior to Closing, all or any portion of the premises is taken as a result of the exercise of the power of Eminent Domain, or if notice of such a taking is received by Seller, then Purchaser may, by written notice to the Seller within fifteen (15) days of notice of such an event by Seller, elect to terminate this Agreement. In the event that Purchaser shall so elect, the Escrowee shall immediately reimburse the Purchaser the portion of the Deposit being held in escrow and the Released Funds shall be due and payable to the Purchaser on the Released Funds Return Date and this Agreement shall be null and void and of no further force and effect, and there shall be no further liability on the part of either party to the other. If the Purchaser does not elect to terminate this Agreement, this Agreement shall not be effected by such taking and Seller shall, at Closing, assign, transfer and set over unto Purchaser all of Seller's right, title and interest in and to any awards made or to be made on account of said taking, and pay all moneys already paid in connection with such taking, over to Purchaser. The Seller agrees to cooperate fully with the

Purchaser with respect to the direction of any eminent domain action in the event that the Agreement is not terminated by the Purchaser.

ARTICLE 14 - ASSESSMENTS

If, at the time of the execution of this Agreement, the Premises, or any part thereof, shall be or shall have been affected by an assessment or assessments which are or may become payable by Seller in annual installments of which the first installment is then due or has been paid, then, for the purposes of this Agreement, all the unpaid installments of any such assessment including those which are to become due and payable after the execution of this Agreement, shall be deemed to be due and payable and shall be paid and discharged by Seller, at the closing. Unconfirmed improvements or assessments, if any, shall be paid or allowed by Seller on account of the purchase price, if the improvement or work has been completed on or before the Closing date.

ARTICLE 15 - ADJUSTMENTS

Adjustments shall be made at the time of closing for deposits with utility companies, if any, security deposits on any contracts assigned or assumed by the Purchaser, if any, fuel, rents, insurance premiums, liquor license fees, deposits, gift certificates, taxes of any nature and all other appropriate items. All amounts due to the Seller from or on account of Retail Incentive Programs (“RIP”) shall be paid by the wholesalers and distributors directly to the Seller. Upon the execution of this Agreement, the Seller shall be permitted to contact such wholesalers and distributors and instruct them to forward all payments owed to the Seller for RIPs directly to the Seller at an address designated by the Seller. Purchaser agrees that any RIPs received by Purchaser post-closing for orders paid for by Seller prior to closing will be promptly delivered to Seller. In the event payment is made to Purchaser, Purchaser will promptly deposit the check and issue a check to the Seller. If Seller receives RIPs for any time period in which Seller does not own the business, Seller will promptly forward payment to the Purchaser. The foregoing provisions shall survive closing.

ARTICLE 16 - ASSUMPTION OF CONTRACTS

Following Closing, Purchaser shall be bound by, and does hereby agree to assume all of the terms of all contracts and commitments as set forth on Exhibit "C" (Contracts/Leases to be Assumed) attached hereto and made a part hereof. Seller shall, until Closing, perform all contracts and commitments executed and made by Seller, insofar as such contracts are required by the terms to be performed by Seller before the Closing, and does hereby agree to indemnify and hold Purchaser harmless in connection with any liability or expense relating to or arising out of any breach thereof occurring before the Closing, and/or any goods delivered or services performed prior to the Closing. Purchaser shall indemnify Seller against and hold Seller harmless from any and all liability or expense arising out of or in connection with any assumed contracts (as specified on Exhibit "C") for the period subsequent to the Closing. This Article shall survive Closing of title.

ARTICLE 17 - ASSIGNMENT

The within Agreement may not be assigned by Purchaser, except that it may be assigned, in whole or in part, to any entity in which Purchaser is a majority interest holder; provided, however, that Purchaser shall remain liable for the performance of and all obligations and representations with respect to the Agreement.

ARTICLE 18 - INDEMNIFICATION AND HOLD HARMLESS OF ESCROWEE

The Purchaser and the Seller agree, jointly and severally, to indemnify and hold harmless the Escrowee from any and all costs and expenses incurred in connection with this Agreement and from any liability which may attach to him as a result of any act or omission in connection with the performance of his obligations under this Agreement, except to the extent that such liability may be occasioned by the Escrowee's willful misconduct and/or gross negligence. The parties hereto further acknowledge that the Escrowee is the Attorney for the Seller, and is acting as escrow

holder as an accommodation to the parties and that Escrowee shall not be disqualified from representing Seller by reason of acting as Escrow Agent, even if a dispute arises out of this Agreement or the transactions contemplated hereunder.

ARTICLE 19 – NOTICES

Any notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, by certified mail, return receipt requested, addressed to the parties or by facsimile provide a confirmation of transmittal is obtained or by electronic mail. Service upon counsel for a party by fax or email shall be effective service upon the respective party.

ARTICLE 20- MISCELLANEOUS

A. Survival of Terms of Agreement. The warranties, representations, covenants, and promises contained herein shall not merge in, but shall survive the Closing and shall continue in full force and effect thereafter.

B. Benefit and Burden. All terms and covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto and their legal representative, successors, heirs and assigns, respectively.

C. Gender and Number. In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

D. Entire Agreement. This Agreement contains the entire understanding of the parties and there are no representations, warranties, covenants, or undertakings other than those expressly set forth in this Agreement.

E. Changes and Modifications of Agreement. Any and all changes and/or modifications of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

F. Headings. The titles or headings in this Agreement are for the convenience of the parties and their attorneys and are not intended to constitute a substantive part of this Agreement and such titles and headings should not be relied upon to describe the contents of any section or paragraph.

G. Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey.

H. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. If, however, any provision of this Agreement is held invalid by a court of competent jurisdiction, then the Parties hereto shall in good faith amend this Agreement to include an alternative provision that accomplishes a result that is as substantially similar to the result originally intended as possible.

I. Waiver. Any Agreement on the part of a Party hereto to any extension or waiver shall be valid only if set forth in an instrument in writing signed by a duly authorized officer on behalf of such Party, but such waiver or failure to insist on strict compliance with such obligation, covenant, Agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

J. Counterparts. This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument. Signatures on this Agreement sent via fax or email shall be effective and binding as original signatures.

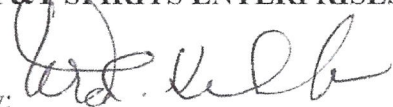
**END OF DOCUMENT**

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals or caused these presents to be signed by their proper officers and caused their proper corporate seal to be hereto affixed the day and year first above written.

Seller:

Attest:

F&T SPIRITS ENTERPRISES, INC

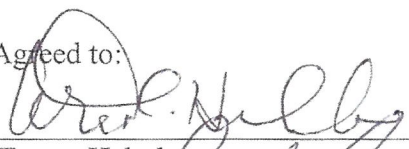
By:   
Teresa Helmka, President

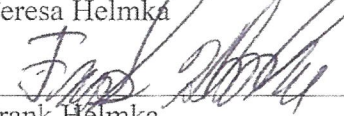
Witness:



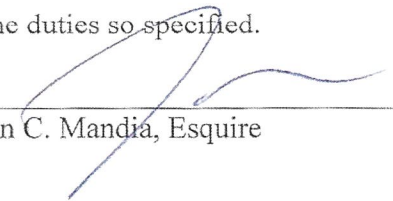
  
BETHELLEN FRIEDMAN

Agreed to:

  
Teresa Helmka

  
Frank Helmka

I consent to the above escrow provisions and agree to perform the duties so specified.

  
Jason C. Mandia, Esquire



**LIST OF EXHIBITS**

Exhibit "A" .....Inventory of Furniture, Fixtures & Equipment  
Exhibit "B" .....Excluded Assets  
Exhibit "C" .....Contracts/Leases to be Assumed

EXHIBIT "B"

EXCLUDED ASSETS

- (a) Spirits tradename
- (b) the bank accounts of the Seller (including all cash on deposit in such accounts and all uncleared deposits in such accounts), the petty cash of the Seller, all temporary cash investments of the Seller and instruments representing same (including without limitation marketable securities), and all other cash and cash equivalents of the Seller on hand, in transit, or in depositories;
- (c) all of the Seller's accounts receivable (the "Receivables");
- (d) prepaid expenses; and
- (e) all books, records, papers and instruments of the Seller which are not related to the Assets;

EXHIBIT "C"

CONTRACTS/LEASE TO BE ASSUMED

Business Premises Lease

## GUARANTY

**THIS GUARANTY** given by the undersigned ("Guarantor"), to induce BETHELLEN FRIEDMAN (hereinafter referred to in the aggregate as "OBLIGEE") to extend credit to F&T SPIRITS ENTERPRISES, INC. ("OBLIGOR").

In consideration of the foregoing, it is agreed as follows:

1. OBLIGATIONS. Guarantor guaranties to Obligee full satisfaction of repayment by Obligor of \$50,000.00 of a deposit released to Obligor pursuant to the terms of a certain Agreement for Sale of Assets executed by and between Obligee and Obligor; and any and all other obligations documents and agreements executed in furtherance thereof (hereinafter referred to collectively as the "OBLIGATION"). This Guaranty includes, without limitation, all attorneys' fees, costs and expenses of collection incurred by Obligee in connection with the Obligation encompassed or intended to be encompassed by this Guaranty.

2. TERM. The liability of Guarantor shall continue until payment and performance is made of the Obligation as herein defined. This Guaranty is a continuing absolute and unconditional Guaranty, and all liability to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance thereof.

3. CONSENT OF OBLIGEE'S ACTS. Guarantor agrees, without affecting Guarantor's liability to Obligee, that Obligee may, without notice to or consent of Guarantor, and upon such terms as Obligee may deem advisable:

(a) extend, in whole or in part, by renewal or otherwise, the time of payment of any indebtedness owing by Obligor to Obligee;

(b) release, surrender, exchange, modify, impair or extend the period of duration, or the time for performance or payment, of this Obligation; and

(c) settle or compromise any claim of Obligee against Obligor.

Guarantor ratify and affirm any such extension, renewal, release, surrender, exchange, modification, impairment, settlement, or compromise; and all such actions shall be binding upon Guarantor, who hereby waive all defenses, counterclaims, or offsets which Guarantor might have by reason thereof.

4. WAIVER. Guarantor waives:

(a) notice of acceptance of this Guaranty;

(b) notice of presentment or default, demand for payment, or protest of any of Obligor's obligations; and

(c) all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of Obligee against Obligor.

5. REPRESENTATIONS BY GUARANTOR. Guarantor represents that nothing exists to impair the effectiveness of the taking effect of this Guaranty as the sole agreement between Guarantor and Obligee with respect to guaranteeing this Obligation.

6. REMEDIES. Obligee may at its option proceed in the first instance against Guarantor to collect any obligation covered by this Guaranty, without first proceeding against Obligor, or any other person, firm or entity. No invalidity, irregularity or unenforceability of all or any part of the liabilities hereby guaranteed, or any security therefor, shall affect, impair or act as a defense to this Guaranty and this Guaranty is a primary obligation of Guarantor.

7. MODIFICATION. There is no verbal agreement and no understanding or custom affecting the terms hereof. This Guaranty can be modified only by a written instrument signed by the party to be charged therewith and so entitled.

8. JOINT AND SEVERAL LIABILITY. Guarantor acknowledges and agrees that the Obligation is joint and several, and independent of Obligor and all other Guarantors. As used herein, the word "Guarantor" shall separately and jointly refer to each person who signs this Guaranty. Obligee may enforce any of the provisions of this Guaranty against only one (1) or more persons who sign this Guaranty.

9. GOVERNING LAW: BINDING EFFECT. This Guaranty is delivered and made in, and shall be construed pursuant to the laws of the State of New Jersey, and is binding upon Guarantor and his successors and assigns, and shall inure to the benefit of Obligee and its heirs and assigns.


10. RIGHTS OF OBLIGEE. The rights, powers and remedies given to Obligee hereunder are cumulative and in addition to all rights, powers and remedies given to Obligee pursuant to any other agreement or by statute or by rule of law.

11. FURTHER DOCUMENTS. Guarantor agrees, at any time or from time to time, upon the written request of Obligee to execute and deliver any and all such further instruments and documents as Obligee may reasonably request in order to maintain the effectiveness of the terms of this Guaranty.

12. GENDER. As used herein, the masculine shall include the feminine; the singular shall include the plural; the neuter shall include the masculine and feminine; and visa versa.

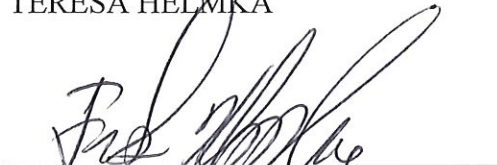
**IN WITNESS WHEREOF**, the undersigned have each signed this document on August 1<sup>st</sup>, 2018.

Witness:



TERESA HELMKA

Witness:



FRANK HELMKA

Exhibit

"B"



ASSIGNMENT OF SHARES AND HYPOTHECATION AGREEMENT

THIS ASSIGNMENT made this 1<sup>st</sup> day of August, 2018, by **TERESA HELMKA** (with an address of 2165 Allenwood Road, Wall, New Jersey 07719) (hereinafter referred to as "PLEDGOR"), to **BETHELLEN FRIEDMAN**, with an address at \_\_\_\_\_ (hereinafter collectively referred to as "LENDER").

WHEREAS, Lender has agreed to the release of the \$50,000.00 deposit (the "Deposit") pursuant to a certain Agreement for Sale of Assets (the "Sale Agreement") executed by and between Lender and Pledgor for assets of F&T SPIRITS ENTERPRISES, INC., A New Jersey Corporation (hereinafter referred to as "Corporation"); and

WHEREAS, PLEDGOR is the sole officer, shareholder and director of the CORPORATION.

WHEREAS, as a part of the consideration for the release of the Deposit and as Additional Collateral and Security for the repayment of the Deposit, LENDER has requested and PLEDGOR has agreed to provide a conditional assignment of all of the issued and outstanding shares of the CORPORATION; and

NOW THEREFORE:

1. In consideration of the release of the Deposit and as Additional Collateral and Security for the repayment of the Deposit, PLEDGOR hereby assigns, transfers and sets over unto LENDER, all of their right, title and interest in and to those certain shares set forth on Schedule "A" and undated Resignation as Employee, Officer and Director of the CORPORATION, Consent to Transfer and undated Assignments of Stock all of which are annexed hereto and made a part hereof.

2. The PLEDGOR hereby grants LENDER a security interest in and to all of the issued and outstanding shares of CORPORATION as collateral security for the repayment of the Deposit.



The collateral is to be held as security for repayment of the Deposit in accordance with the terms set forth in the Sale Agreement.

3. As further inducement for LENDER'S acceptance of this assignment, and the release of the Deposit which it secures, PLEDGOR hereby makes the following warranties and representations:

A. She is the owner of all of the issued and outstanding shares of said CORPORATION.

B. The Board of Directors of the PLEDGOR is as follows: Teresa Helmka

C. The Officers of the PLEDGOR are as follows: Teresa Helmka, President and Secretary.

D. Said shares are fully paid, nonassessable and not the subject of any lien, claim, encumbrance, prior pledge or assignment.

E. The PLEDGOR will abide by all terms and conditions of the Sale Agreement.

4. This Assignment is effective immediately. Notwithstanding the foregoing, PLEDGOR may continue to exercise all rights as Shareholder of the CORPORATION consistent with the provisions of this Agreement until notified by LENDER in writing that a default has occurred under the terms and conditions of the Sale Agreement.

5. In the event of any default in the Sale Agreement, the breach of any of the representations and warranties contained in paragraph 3 above and the PLEDGOR'S or CORPORATION'S failure to correct and cure same within thirty (30) days of written notice, LENDER may at their option, declare itself or themselves, as the case may be, to be the absolute owner(s) of all of the outstanding shares of the CORPORATION and/or is free to exercise all of the rights and privileges incident to such ownership and to deal with the assets of said CORPORATION accordingly, all without limitation or restriction except as may be imposed by law. Any excess funds above the Deposit and fees and costs of collection collected shall be paid over to the PLEDGOR.

6. SUBORDINATION. The obligations covered by this Assignment and/or any other instrument securing the repayment of the Deposit are made by the Pledgor and accepted by the Lender with the stipulation that this obligation and any security given for same are and shall be subject, subordinate and inferior to that certain loan (the Senior Loan) to Northeast Bank (Successor to Colonial American Bank) which maintains first position liens on the stock and assets of the Corporation. The note, mortgage, pledge, assignment, security interest and other liens in favor of the Senior Lender in and to the collateral given to secure this obligation shall have priority over any note, pledge, assignment, mortgage, security interest or other lien therein given or arising to secure this obligation. The priorities of the notes, pledges, assignments, mortgages, security interests established, altered, or specified herein as between this Lender and the Senior Lender shall be applicable, irrespective of the time or order of attachment, recording or perfection thereof, the method of perfection, or the time or order of filing of financing statements or taking of possession. Lender agrees not to contest the validity, perfection, priority or enforceability of any note, mortgage, security interest or other lien granted to the Senior Lender

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

WITNESS:



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TERESA HELMKA

SCHEDULE "A"

SHAREHOLDER	CERTIFICATE #	NUMBER OF SHARES
TERESA HELMKA	1	100

## RESIGNATION

The undersigned corporate officer of F&T SPIRITS ENTERPRISES, INC. hereby tenders her resignation as an employee of said corporation.

The undersigned further tenders her resignation as an officer of said corporation.

In addition, the undersigned tenders her resignation as a member of the Board of Directors.

Dated:



TERESA HELMKA

CONSENT TO TRANSFER


I, TERESA HELMKA, being the sole shareholders of F&T SPIRITS ENTERPRISES, INC., a New Jersey corporation, holder of Plenary Retail Distribution License #1336-44-004-013 issued by the Borough of Tinton Falls, County of Monmouth, State of New Jersey, hereby consents to the transfer of said license to BETHELLEN FRIEDMAN, or her successors, heirs or assigns.

WITNESS/ATTEST:

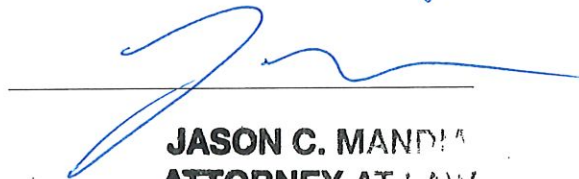
F&T SPIRITS ENTERPRISES, INC.



A handwritten signature in blue ink, appearing to be 'J', written over a horizontal line.

BY:   
\_\_\_\_\_

SWORN AND SUBSCRIBED TO BEFORE  
ME THIS 1<sup>st</sup> DAY OF August, 2018.



A handwritten signature in blue ink, appearing to be 'J. Mandia', written over a horizontal line.

**JASON C. MANDIA**  
**ATTORNEY AT LAW**  
**STATE OF NEW JERSEY**

ASSIGNMENT - Transfer of Stock (separate from certificate)

FOR VALUE RECEIVED,

TERESA HELMKA

hereby sells, assigns and transfers unto

BETHELLEN FRIEDMAN, or her assigns

100 shares of

F&T SPIRITS ENTERPRISES, INC.

which are all the shares she owns and are standing in her name on the books of said company represented by Certificate No. 1 and does hereby irrevocably constitute and appoint

\_\_\_\_\_, ESQ.

attorney to transfer the said units on the books of the within named company with full power of substitution in the premises.

Dated:



TERESA HELMKA

IN THE PRESENCE OF:



**JASON C. MANDIA  
ATTORNEY AT LAW  
STATE OF NEW JERSEY**

Exhibit

"C"



ASSIGNMENT OF MEMBERSHIP INTEREST AND HYPOTHECATION AGREEMENT

THIS ASSIGNMENT made this 17<sup>th</sup> day of August, 2018, by **FRANK HELMKA** (with an address of 2165 Allenwood Road, Wall, New Jersey 07719) (hereinafter referred to as "PLEDGOR"), to **BETHELLEN FRIEDMAN**, with an address at \_\_\_\_\_ (hereinafter collectively referred to as "LENDER").

WHEREAS, Lender has agreed to the release of \$50,000.00 of the deposit (the "Deposit") pursuant to a certain Agreement for Sale of Assets (the "Sale Agreement") executed by and between Lender and F&T SPIRITS ENTERPRISES, INC., A New Jersey Corporation (hereinafter referred to as "Corporation"); and

WHEREAS, PLEDGOR is the sole member and officer of Wine Utopia, LLC (the "COMPANY").

WHEREAS, as a part of the consideration for the release of the Deposit and as Additional Collateral and Security for the repayment of the Deposit, LENDER has requested and PLEDGOR has agreed to provide a conditional assignment of all of the issued and outstanding membership interest of the COMPANY; and

NOW THEREFORE:

1. In consideration of the release of the Deposit and as Additional Collateral and Security for the repayment of the Deposit, PLEDGOR hereby assigns, transfers and sets over unto LENDER, all of their right, title and interest in and to those certain membership interest set forth on Schedule "A" and undated Resignation as Employee, Officer and Director of the COMPANY, Consent to Transfer and undated Assignments of Membership Interest all of which are annexed hereto and made a part hereof.

2. The PLEDGOR hereby grants LENDER a security interest in and to all of the issued and outstanding membership interest of COMPANY as collateral security for the repayment of



the Deposit. The collateral is to be held as security for repayment of the Deposit in accordance with the terms set forth in the Sale Agreement.

3. As further inducement for LENDER'S acceptance of this assignment, and the release of the Deposit which it secures, PLEDGOR hereby makes the following warranties and representations:

A. He is the owner of all of the issued and outstanding membership interest of said COMPANY.

B. The members of the PLEDGOR are as follows: FRANK Helmka

C. The Officers of the PLEDGOR are as follows: FRANK Helmka, Managing Member.

D. Said membership interest are fully paid, nonassessable and not the subject of any lien, claim, encumbrance, prior pledge or assignment.

E. The PLEDGOR will abide by all terms and conditions of the Sale Agreement.

4. This Assignment is effective immediately. Notwithstanding the foregoing, PLEDGOR may continue to exercise all rights as Member of the COMPANY consistent with the provisions of this Agreement until notified by LENDER in writing that a default has occurred under the terms and conditions of the Sale Agreement.

5. In the event of any default in the Sale Agreement, the breach of any of the representations and warranties contained in paragraph 3 above and the PLEDGOR'S or COMPANY'S failure to correct and cure same within thirty (30) days of written notice, LENDER may at their option, declare itself or themselves, as the case may be, to be the absolute owner(s) of all of the outstanding membership interest of the COMPANY and/or is free to exercise all of the rights and privileges incident to such ownership and to deal with the assets of said COMPANY accordingly, all without limitation or restriction except as may be imposed by law. Any excess funds above the Deposit and fees and costs of collection collected shall be paid over to the PLEDGOR.

6. SUBORDINATION. The obligations covered by this Assignment and/or any other instrument securing the repayment of the Deposit are made by the Pledgor and accepted by the Lender with the stipulation that this obligation and any security given for same are and shall be subject, subordinate and inferior to that certain loan (the Senior Loan) to Northeast Bank (Successor to Colonial American Bank) which maintains first position liens on the stock and assets of the Company. The note, mortgage, pledge, assignment, security interest and other liens in favor of the Senior Lender in and to the collateral given to secure this obligation shall have priority over any note, pledge, assignment, mortgage, security interest or other lien therein given or arising to secure this obligation. The priorities of the notes, pledges, assignments, mortgages, security interests established, altered, or specified herein as between this Lender and the Senior Lender shall be applicable, irrespective of the time or order of attachment, recording or perfection thereof, the method of perfection, or the time or order of filing of financing statements or taking of possession. Lender agrees not to contest the validity, perfection, priority or enforceability of any note, mortgage, security interest or other lien granted to the Senior Lender

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

WITNESS:



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FRANK HELMKA

SCHEDULE "A"

MEMBER	CERTIFICATE #	PERCENTAGE OF MEMBERSHIP INTEREST
FRANK HELMKA	N/A	100

## RESIGNATION

The undersigned corporate officer of WINE UTOPIA, LLC hereby tenders his resignation as an employee of said Company.

The undersigned further tenders his resignation as an officer of said Company.

In addition, the undersigned tenders his resignation as a member of the Board of Directors.

Dated:

  
FRANK HELMKA

CONSENT TO TRANSFER

I, FRANK HELMKA, being the sole members of WINE UTOPIA, LLC, a New Jersey Company, holder of Plenary Retail Distribution License #1345-44-004-011 issued by the Borough of Shrewsbury, County of Monmouth, State of New Jersey, hereby consents to the transfer of said license to BETHELLEN FRIEDMAN, or her successors, heirs or assigns.

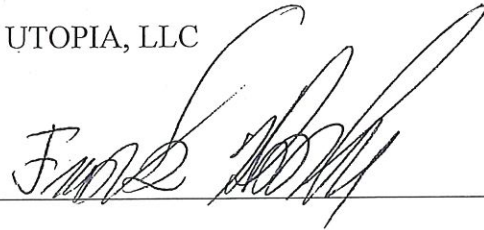
WITNESS/ATTEST:

WINE UTOPIA, LLC



A handwritten signature in blue ink, appearing to be 'JM', written over a horizontal line.

BY:



A handwritten signature in blue ink, appearing to be 'Frank Helmka', written over a horizontal line.

SWORN AND SUBSCRIBED TO BEFORE  
ME THIS 15<sup>th</sup> DAY OF August, 2018.



A handwritten signature in blue ink, appearing to be 'Jason C. Mandia', written over a horizontal line.

**JASON C. MANDIA  
ATTORNEY AT LAW  
STATE OF NEW JERSEY**

CONSENT TO TRANSFER

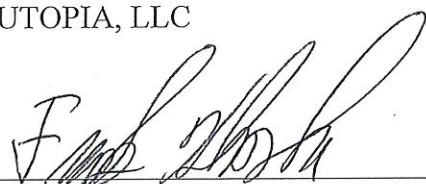
I, FRANK HELMKA, being the sole members of WINE UTOPIA, LLC, a New Jersey Company, holder of Plenary Retail Consumption License #1345-32-001-007 issued by the Borough of Shrewsbury, County of Monmouth, State of New Jersey, hereby consents to the transfer of said license to BETHELLEN FRIEDMAN, or her successors, heirs or assigns.

WITNESS/ATTEST:

WINE UTOPIA, LLC



A handwritten signature in blue ink, appearing to be 'J. Mandia', written over a horizontal line.

BY: 

A handwritten signature in blue ink, appearing to be 'Frank Helmka', written over a horizontal line.

SWORN AND SUBSCRIBED TO BEFORE  
ME THIS 1<sup>st</sup> DAY OF August, 2018.



A handwritten signature in blue ink, appearing to be 'Jason C. Mandia', written over a horizontal line.

**JASON C. MANDIA  
ATTORNEY AT LAW  
STATE OF NEW JERSEY**



ASSIGNMENT - Transfer of Membership Interest (separate from certificate)

FOR VALUE RECEIVED,

FRANK HELMKA

hereby sells, assigns and transfers unto

BETHELLEN FRIEDMAN, or her assigns

100 membership interest of

WINE UTOPIA, LLC

which are all the membership interest he owns and are standing in her name on the books of said company and does hereby irrevocably constitute and appoint

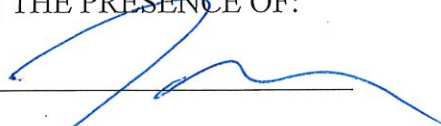
\_\_\_\_\_, ESQ.

attorney to transfer the said units on the books of the within named company with full power of substitution in the premises.

Dated:

  
\_\_\_\_\_  
FRANK HELMKA

IN THE PRESENCE OF:

  
\_\_\_\_\_

**JASON C. MANDIA  
ATTORNEY AT LAW  
STATE OF NEW JERSEY**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Chapter 11 Debtors and Debtors-in-Possession

In Re:  
**FRANK and TERESA HELMKA,**  
Chapter 11 Debtors and Debtors-in-Possession

Case No.: 18-32272 (CMG)  
Chapter: 11  
Hearing Date: March 5, 2019  
Judge: Christine M. Gravelle

**ORDER AUTHORIZING SALE OF ASSETS LOCATED AT TINTON FALLS PLAZA, SHREWSBURY AVENUE & ROUTE 35, TINTON FALLS, NEW JERSEY 07724 AND LIQUOR LICENSE TO BETHELLEN FRIEDMAN WITH LIENS TO ATTACH TO PROCEEDS PURSUANT TO 11 U.S.C. §§ 363(b), 363(f), 365, FED. R. BANKR. P. 4001(d), AND D.N.J. LBR 6004-1; FOR ALLOWANCES OF ADMINISTRATIVE EXPENSES PURSUANT TO 11 U.S.C. §§ 506(c) AND 503(b); AND FOR RELATED RELIEF**

The relief set forth on the following pages, numbered two (2) through four (4) is **ORDERED.**

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**In re:** Frank and Teresa Helmka

**Case No.** 18-32272(CMG)

**Caption of Order:** Order Authorizing Sale of Assets Located at Tinton Falls Plaza, Shrewsbury Avenue & Route 35, Tinton Falls, New Jersey 07724 and Liquor License to Bethellen Friedman With Liens to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b), 363(f), 365, Fed. R. Bankr. P. 4001(d), and D.N.J. LBR 6004-1; For Allowances of Administrative Expenses Pursuant To 11 U.S.C. §§ 506(c) And 503(b); and For Related Relief  
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**THIS MATTER** having come before the Court by way of Motion filed on behalf of Frank and Teresa Helmka, the above-captioned Chapter 11 Debtors and Debtors-in-Possession (the “Debtors”), by and through counsel, Middlebrooks Shapiro, P.C., seeking entry of an Order Authorizing Sale of Assets Located at Tinton Falls Plaza, Shrewsbury Avenue and Route 35, Tinton Falls, New Jersey 07724 and Liquor License to Bethellen Friedman with Liens to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b), 363(f), 365, Fed. R. Bankr. P. 4001(d), and D.N.J. LBR 6004-1; for Allowances of Administrative Expenses pursuant to 11 U.S.C. §§ 506(c) and 503(b); and For Related Relief (the “Motion”); and the Court having jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having considered the pleadings filed in support of the Motion and opposition (if any); and the Court having conducted a hearing, and objections (if any) having been considered by the Court and resolved or overruled; and the Court having deemed the notice afforded creditors and parties-in-interest sufficient and appropriate; and the Debtors having articulated sound business reasons for consummating the sale, and it is a reasonable exercise of the Debtors’ business judgment to consummate the sale at this time; and the Court having made a finding that Bethellen Friedman, Proposed Purchaser, is a “good faith” purchaser; and the Court having further found that the Agreement for Sale annexed to the Certification of Teresa Helmka as Exhibit A is an “arms length” transaction; and the sale having been conducted subject to higher and better offers; and the Court having further making a finding that the sale to the Proposed Purchaser is the highest and best offer; and the Court having made a finding that approval of the sale is in the best interest of the Debtors’ estate;

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**IT IS HEREBY ORDERED THAT:**

1. The Debtors' Motion for Order Authorizing Sale of Assets Located at Tinton Falls Plaza, Shrewsbury Avenue and Route 35, Tinton Falls, New Jersey 07724 and Liquor License to Bethellen Friedman with Liens to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b), 363(f), 365, Fed. R. Bankr. P. 4001(d), and D.N.J. LBR 6004-1; for Allowances of Administrative Expenses pursuant to 11 U.S.C. §§ 506(c) and 503(b); and For Related Relief shall be and is hereby granted.

2. The sale of the Debtor's property and interests to Bethellen Friedman (the "Purchaser") set forth in the pursuant to the Agreement for Sale of Assets (the "Agreement") annexed to the Certification of Teresa Helmka as Exhibit A shall be and is hereby sold free and clear of all liens, claims, interests and encumbrances in accordance with, and to the extent permitted by, 11 U.S.C. § 363(f).

3. The purchase price of \$8500,000 to be paid by the Purchaser pursuant to the Agreement is fair consideration and constitutes reasonably equivalent value for the sale of a package store business located at the Tinton Falls Plaza, Shrewsbury Avenue & Route 35, Tinton Falls, New Jersey, a Plenary Retail Distribution Liquor License number #1336-44-004-013 and furniture, fixtures and equipment (hereinafter referred to as "the Property").

4. Purchaser is a purchaser in good faith, as that term is used in 11 U.S.C. §363(m), of the Bankruptcy Codewith respect to the Sale. The Sale was negotiated, proposed and entered into by the parties in good faith, from arms'-length bargaining positions and without collusion, and therefore, Purchaser is entitled to the protections of Bankruptcy Code 11 U.S.C. § 363(m) with respect to the Sale. Neither the Debtors nor Purchaser has engaged in any conduct that would cause

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or permit the Sale to be voided, nor that would justify the imposition of costs or damages, under Bankruptcy Code 11 U.S.C. § 363(n).

5. The transfer of the Property by Debtors to Purchaser upon closing will be a valid, legal, and effective transfer of the Property notwithstanding any requirement for approval or consent by any entity (as defined in section 101(15) of the Bankruptcy Code).

6. Pursuant to 11 U.S.C. § 363(b), the Debtors are hereby authorized to sell and transfer the Property pursuant to and in accordance with the terms and conditions of the Agreement between the Debtors and Purchaser and to take all other actions as are necessary to effectuate all of the terms thereof and to consummate the transactions contemplated therein, including, but not limited to, such actions as are necessary to execute and deliver all documents referenced in and/or contemplated in connection with the Sale without any further authorization of the Court.

7. The Sale shall not subject Purchaser to any liability by reason of such transfers and assignments under the laws of the United States, any state, territory or possession thereof or the District of Columbia based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of successor or transferee liability, and all creditors and parties-in-interest are prohibited from asserting such claims against Purchaser.

8. The Sale constitutes legal, valid, and effective transfers and shall vest Purchaser with all right, title, and interest of the Debtor in and to the Property.

9. Andy and all objections to the Motion and the relief requested therein that have not been withdrawn, waived or settled, and all reservations of rights included in such objections, are hereby overruled on the merits and denied.

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10. This Court shall retain exclusive jurisdiction to enforce the provisions of this Order and to resolve any issue or dispute concerning the interpretation, implementation or enforcement of this Order or the rights and duties of the parties hereunder or thereunder, including, without limitation, any issue of dispute concerning the transfer of the Property free and clear of Liens and Claims.

11. The provisions of this Order shall be self-executing, and neither the Debtors, Purchaser nor any other party shall be required to execute or file releases, termination statements, assignments, cancellations, consents or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale; provided, however, that this paragraph shall not excuse such parties from performing any and all of their respective obligations under the Sale.

12. The consideration to be provided by Purchaser in exchange for the Property is hereby deemed to constitute reasonably equivalent value and fair consideration.

13. Attorneys for Debtors retain all rights to file an application or certification pursuant to 11 U.S.C. §§ 506(c) and/or 503(b) for compensation and reimbursement of administrative expenses related to prosecution of the Sale Motion.

14. A true copy of this Order shall be served on all parties who received notice of the Motion within five (5) days of entry of the Order.