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Hearing Date: October 19, 2016
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

MACELLERIA RESTAURANT, INC.,

Chapter 11
Case No. 16-12110 (MKV)

Debtor.

-----X

**NOTICE OF HEARING ON DEBTOR'S MOTION FOR ORDER
(I) APPROVING A PRIVATE SALE OF THE DEBTOR'S
RESTAURANT AND RELATED ASSETS FREE AND CLEAR OF
ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II)
AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF
THE DEBTOR'S NONRESIDENTIAL REAL PROPERTY LEASE
WITH WEST VILLAGE LLC IN CONNECTION THEREWITH,
AND (III) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE, that upon the motion dated September 26, 2016 (the "Motion") of Macelleria Restaurant, Inc., the above captioned debtor and debtor-in-possession (the "Debtor"), by its attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, the undersigned will move this Court, before the Honorable Mary Kay Vyskocil, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, Manhattan Division, One Bowling Green, Courtroom 501, New York, New York 10004, on the 19th day of October, 2016 at 10:00 a.m., or as soon thereafter as counsel may be heard for entry of an Order pursuant to §§105, 363, and 365 of 11 U.S.C. §101, et seq. (the "Bankruptcy Code")

and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure and Rules 6004-1 and 6006-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (i) authorizing the private sale of substantially all of the Debtor's assets related to its restaurant business to The Meatpackers, Inc. ("Purchaser") pursuant to the Asset Purchase Agreement dated September 26, 2016 (the "APA"), free and clear of any and all claims, liens, encumbrances and other interests; (i) authorizing the assumption and assignment to Purchaser of the Debtor's Lease (defined herein below,) including fixing applicable cure costs related thereto; and (iii) granting Purchaser good faith protection, together with such other and further relief as is just, proper and equitable under the circumstances.

PLEASE TAKE FURTHER NOTICE, that responsive papers, if any, must be filed with Court on the Court's website, www.nysb.uscourts.gov (Login and Password required), with a copy delivered directly to Chambers and served upon the undersigned so as to be filed and served no later than seven (7) days prior to the return date of the Motion.

Dated: White Plains, New York
September 26, 2016

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By: /s/ Jonathan S. Pasternak
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**DEBTOR’S MOTION FOR ORDER (I) APPROVING A PRIVATE SALE
OF THE DEBTOR’S RESTAURANT AND RELATED ASSETS FREE
AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES, (II) AUTHORIZING THE ASSUMPTION AND
ASSIGNMENT OF THE DEBTOR’S NONRESIDENTIAL REAL
PROPERTY LEASE WITH WEST VILLAGE LLC IN CONNECTION
THEREWITH, AND (III) GRANTING RELATED RELIEF**

**TO: THE HONORABLE MARY KAY VYSKOCIL,
UNITED STATES BANKRUPTCY JUDGE:**

Macelleria Restaurant, Inc., the debtor and debtor-in-possession herein (the “Debtor”), by its attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP , files this motion (the “Motion”) seeking entry of an order pursuant to §§105, 363, and 365 of 11 U.S.C. §101, et seq. (the “Bankruptcy Code”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure and Rules 6004-1 and 6006-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (i) authorizing the private sale of substantially all of the Debtor’s assets related to its restaurant business to The Meatpackers, Inc. (“Purchaser”) pursuant to the Asset Purchase Agreement dated September 26, 2016 (the “APA”), free and clear of any

and all claims, liens, encumbrances and other interests; (i) authorizing the assumption and assignment to Purchaser of the Debtor's Lease (defined herein below,) including fixing applicable cure costs related thereto; and (iii) granting Purchaser good faith protection. In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(A).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This proceeding has been initiated pursuant to Bankruptcy Code §§ 105(a), and 363.

BACKGROUND

4. On July 25, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"). The Debtor is operating its business as debtor-in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in this Chapter 11 Case.

5. The Debtor formerly owned and operated an Italian steakhouse known as *Macelleria* in the heart of New York City's Meatpacking District (the "Restaurant"). When the Restaurant opened in 2000, it was located near Gansevoort Plaza at 48 Gansevoort Street, between Greenwich Street and Washington Street, New York, New York. At that location, the Restaurant was constructed from a former downtown meat locker, with two-story exposed brick walls, hinged doors, antique butcher blocks, vintage cases, and original 17th century Dutch stone in the wine cellar, embracing the history of the era and presenting a unique space for dining, private parties, and events.

6. The Debtor's lease with its landlord, Gansevoort Street Ventures, LLC, whose principal is the same principal as the Debtor's current landlord, West Village, LLC, ("Landlord"), expired in 2008 and was renewed for two (2) years, on two (2) occasions, with periods in excess of five (5) months, both before and after, where the Debtor was on a month-to-month lease, making it difficult to engage in long term business planning.

7. In 2014, Landlord refused and ignored repeated requests to extend the Debtor's lease. As a result, in 2015, the Debtor began exploring alternative locations, and ultimately took an assignment of lease (the "Lease") for the restaurant space across the street, at 1-3 Little West 12th Street on Gansevoort Square, which was also owned by the Landlord. The Lease has nineteen (19) years remaining, and expires on November 15, 2035.

8. The Debtor's new premises consists of a 4,500 square foot of restaurant space seating 170 people, with 2 bars, 40 foot of frontage, two party rooms, exhibit kitchen, sidewalk café on the first floor, and on the lower level, one of the bars, prep kitchen, and 5 bathrooms. The premises has been partially built out and the Debtor has obtained and maintained current all permits.

9. Given the Debtor's past difficulties with the Landlord, the Debtor explored the option of selling and assigning the Lease. After consulting with an attorney, the Debtor was informed that it could assign the Lease to a qualified assignee.

10. To that end, the Debtor began marketing the sale of the Restaurant. These efforts procured one serious party, which invested hundreds of thousands of dollars into acquiring the Restaurant, including hiring engineers, designers, and architects. This buyer was backed by a large private equity group and was more than financially qualified. However, after nearly one (1) year of working on the assignment of the Lease, these efforts fell through when the Landlord

unreasonably withheld its consent to the assignment of the Lease in May, 2016, leaving the Debtor with mounting debt in excess of \$1,600,000.00. Additionally, in desperation and in an effort to obtain consent from the Landlord for the assignment of the Lease, as early as March 2016 and again in May 2016, the Debtor offered to pay the Landlord a portion of the sales price, which offer was ultimately rejected by the Landlord after additional delays and unreasonable monetary demands by the Landlord. Upon information and belief, this buyer has since moved onto another project and has entered into two (2) other leases in New York City with other landlords this past year.

11. Subsequently, the Debtor retained Great American Brokerage, Inc. (the “Broker”)¹ to market and sell the New Lease, and the Debtor’s assets located at the Restaurant. Broker’s efforts initially proved successful and the Debtor received an offer from The Resette Hospitality Group in the amount of \$1.2 million. The Purchaser agreed to be a “stalking horse” so that its offer would be subject to higher and better offers at an auction. However, disappointingly, The Resette Hospitality Group informed the Debtor that after completing its due diligence, and prior to executing a contract of sale, they decided not to proceed with the acquisition of the Debtor’s assets.

12. Although the initial terms of the agreement with Broker expired, Broker has continued its efforts to scour the market and pursue leads to procur another purchaser. In addition, the Debtor’s principals began reaching out to their industry contacts, as well as their personal contacts, to procur another purchaser.

13. On or about September 15, 2016, the Debtor received an offer from the Purchaser. After several rounds of negotiations, the parties agreed to a purchase price of \$1.1 Million, all

¹ The Debtor’s engagement with Great American Brokerage, Inc. was approved by this Court by Order dated August 22, 2016 [Docket No. 25].

cash, no contingencies, and an immediate closing.

14. On September 26, 2016, after arms-length negotiations, the Debtor and the Purchaser entered into the Asset Purchase Agreement (“APA”), a copy of which is annexed hereto as **Exhibit “A”**, and tender the \$110,000 downpayment, which is currently being held in escrow by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP. Subject to this Court’s approval of higher and/or better offers through an auction process, the Debtor seeks approval to sell the Assets (as defined in the APA) to the Purchaser on the following terms and conditions:

Seller	Macelleria Restaurant, Inc.
Purchaser	The Meatpackers, Inc.
Purchase Price	\$1,100,000 payable as follows: (i) \$110,000 downpayment currently held in escrow by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP (the “Downpayment”), and (ii) \$990,000 payable at closing (the “Closing Payment”).
Acquired Assets	At the closing (the "Closing") of the Acquisition, Purchaser would purchase from Debtor, and Debtor would sell to Purchaser, all of its right, title and interest, if any, in and to the following assets associated with the Business: (i) all of Debtor 's rights title and interest in and to that certain real property lease, as amended from time to time, (the "Lease") for the premises known as 1-3 Little West 12th Street, New York, NY 10014 (the "Premises"), together with all improvements made to the Premises, (ii) all security deposits and other deposits, applications, licenses and permits, and (iii) all of the Debtor’s rights, title and interest in and to any and all Permits, licenses, approvals and authorizations by a federal, state, local or foreign governmental or non-governmental board, bureau, agency or regulatory body, to the extent transferable or assignable (collectively, the "Acquired Assets"). The Acquired Assets will be transferred at Closing on an "as is where is" basis free and clear of all liens, claims, security interests and encumbrances and shall be subject to court approval and an order approved by the United States Bankruptcy Court, Southern District of New York (the "Bankruptcy Court").
Excluded Property	(i) All claims against Purchaser arising under or in connection with this Agreement; (ii) cash; (iii) accounts receivable generated prior to the Closing Date; (iv) All contracts, leases or other agreements, other than the Lease, (v) All raw materials, work-in-process, finished goods and merchandise, packaging materials and other supplies related thereto

which are owned or used by the Debtor; (vi) All rights of the Debtor under insurance policies; (vii) all rights with respect to the Debtor's bank accounts; (viii) all right, title and interest in all intellectual property rights owned by Seller, including, without limitation, customer and supplier lists and records, recipes, domain names, websites, URLs, telephone numbers, trademarks, service marks, trade names, copyrights, patents, and all registrations thereof and applications therefor, and all common law rights thereto, together with all goodwill associated therewith, and all designs, sketches, drawings, and architectural plans (the "Intellectual Property"); (ix) "Estate Causes of Action" as defined in Chapter 5 of Title 11, United States Code; and (x) the Purchase Price.

**Representations and
Warranties;
Covenants**

The representations and warranties and covenants are customary for a transaction of this type, including, without limitation, representations and warranties regarding the authority to enter into the sale transaction and the agreement to abide by all laws with respect to the sale, litigation, material contracts, permits, environmental matter, ownership of Property, taxes and condition of the Property, the best efforts of the parties, notices and consents, access to information and the risk of loss.

Closing Date

The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, no later than ten (10) days after entry of the Sale Approval Order.

RELIEF REQUESTED AND BASIS FOR RELIEF

15. By this Motion, the Debtor seeks approval of a private sale of the Restaurant and related assets, including the assumption and assignment of the Lease to the Purchaser as a private sale transaction.

16. Pursuant to the APA, Purchaser shall acquire, and the Debtor shall convey by private sale, all of the right, title and interest that Debtor possesses as of the Closing in and to the Purchased Assets, as such term is defined in Section 2.1 of the APA, free and clear of all liens, claims, interests, obligations and encumbrances whatsoever under Section 363 of the Bankruptcy Code and any other applicable sections of the Bankruptcy Code (the "Liabilities"). In

consideration of the sale of the Purchased Assets covered by the APA, the purchaser will pay the Purchase Price of \$1.1 million at Closing.

A. Debtor's Sale Pursuant to Bankruptcy Code §363(b) and (f) is Appropriate

17. Section 363(b) of the Bankruptcy Code provides, in pertinent part, that the Debtor “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate”. 11 U.S.C. §363(b)(1). Inasmuch as the Purchased Assets constitute the Debtor’s on-going business and are substantially all of the Debtor’s business assets, the proposed sale is out of the ordinary course of the Debtor’s business.

18. Section 363 does not set forth an express standard for determining whether a sale of property under §363(b) should be approved; however, courts that have interpreted this section consistently apply an “articulated business judgment” standard. *See, Stephen Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *In re Walter*, 83 B.R. 14, 17 (Bankr. 9th Cir. 1988); *In re Channel One Communications, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989); *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

19. The Court of Appeals for the Second Circuit first enunciated this standard by stating: “The rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him at the hearing *a good business reason* to grant such application.” *Lionel*, 722 F.2d at 1070-71 (emphasis added).

20. Section 363(b) does not require that the Court substitute its business judgment for that of the Debtor, *See, e.g., Ionosphere Clubs*, 100 B.R. at 676 (court will not substitute a hostile

witness's business judgment for a debtor's, unless testimony "established that the [debtor] had failed to articulate a sound business justification for its chosen course"). Rather, the Court should ascertain whether a debtor has articulated a valid business justification for the proposed transaction. This is consistent with "the broad authority to operate the business of the Debtor . . . [which] indicates congressional intent to limit Court involvement in business decisions by a Trustee . . . [so that] a Court may not interfere with a reasonable business decision made in good faith by a Trustee". *In re Airlift Int'l, Inc.*, 18 B.R. 787, 789 (Bankr. S.D. Fla. 1982).

21. Other courts have approved the sale of a debtor's assets under §363(b)(1) of the Bankruptcy Code when (i) the sale is supported by the sound business judgment of the debtor's management; (ii) interested parties are provided with adequate and reasonable notice; (iii) the sale price is fair and reasonable; and (iv) the purchaser has acted in good faith. *See, e.g., In re Betty Owens Schools, Inc.*, WL 188127 at *4 (S.D.N.Y. 1997) (setting forth the foregoing four elements in connection with the 363(b)(1) inquiry and citing *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); *In re General Bearing Corp.*, 136 B.R. 361, 365-66 (Bankr. S.D.N.Y. 1992) (suggesting that the salient factors under *Lionel* are the foregoing elements). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Ames Dept. Stores, Inc.*, 136 BR 357, 359 (Bankr. S.D.N.Y. 1992); *In re Integrated Resources, Inc.*, 147 B.R. at 656-57 (S.D.N.Y. 1992) (a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate). The Debtor has determined that the maximization of the return to creditors can best be accomplished through the proposed asset sale upon the terms contained in

the APA and that the transaction is in the best interests of its estate and creditors and should be approved by the Court.

22. In determining whether a “sound business purpose” exists with respect to a sale of assets prior to confirmation of a plan, Courts have looked at such factors as: the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions, and most importantly perhaps, whether the asset is increasing or decreasing in value. *Lionel*, 722 F.2d at 1071.

23. In the Debtor’s business judgment, the relief sought will maximize the Debtor’s recovery on its assets and is therefore in the best interests of its estate and creditors. Specifically, the soundness of the Debtor’s decision is supported by the fact that the Debtor has not operated at all in this Chapter 11 Case to date and has continued to accrue administrative rent, professional fees and expenses as each day passes. The Debtor has sufficiently tested the market for interested parties and purchasers, and believes that the offer received by Purchaser is the highest and best offer that can be received within the constrained time frame. The Purchaser has indicated it was unwilling to enter into the APA unless the sale was private and not made subject to higher and better offers. Moreover, should the Debtor further “test” the market for other purchasers at an auction, the additional administrative expenses accrued in connection with the time delay (i.e., additional accrued rent expenses) and the costs of conducting an auction would likely diminish, and possibly completely erode any distribution to the general nonpriority

unsecured creditors, who are anticipated to receive a pro rata recovery from the contemplated sale transaction.

24. Following the consummation of the private sale to the Purchaser, the Debtor estimates the following distributions under a chapter 11 plan:

PURCHASE PRICE:	\$1,100,000.00
Professional Fees:	
Brokers	\$100,000.00 ²
Attorneys	\$75,000.00
Accountants	\$25,000.00
Landlord (through 10/31/2016)	\$480,000.00, less the Debtor's claims to be adjudicated
NYS Dept Tax & Finance	\$107,000.00
Secured Claim (Julie Darwent)	\$27,500.00
Other Secured Claims	\$45,000
City of New York	\$100,000.00
Estimated US Trustee Fees	\$6,825.00
Estimated Remaining for General Unsecured Creditors	\$88,675.00 (Approx. 8% Distribution)

25. The Purchaser is eager to close and the parties have discussed a closing on or before October 31, 2016. Should the Debtor "test" the market and conduct an auction, an additional month of rent and legal fees would accrue (\$48,612.48 per month), and thereby significantly diminishing the distribution to the general unsecured creditors in half.

26. An immediate sale of The Debtor's assets is the only viable option that will allow for any recovery to creditors. Any additional delay will leave the estate with diminishing returns. Time is therefore of the essence with respect to approval of the proposed sale.

B. Justification for Private Sale

27. Time is of the essence and critical in closing on a sale of the Debtor's assets, as the administrative expenses of this Chapter 11 Case continue to accrue and erode the distribution to the Debtor's creditors.

² Includes any co-brokers to be paid at closing, subject to allowance by this Court.

28. While many section 363 sales are conducted under competitive bidding procedures, there is no requirement in section 363 of the Bankruptcy Code to do so. In fact, Bankruptcy Rule 6004(f) specifically contemplates private sales with the statement that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction". Courts have noted that private sales are appropriate under section 363 in circumstances similar to the instant case. *See In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) ("Unlike judicial sales under the Bankruptcy Act, the sale of estate property under the Bankruptcy Code is conducted by a trustee, who has ample discretion to conduct public or private sales of estate property."); *Penn Mut. Life Ins. Co. v. Woodscape Ltd. P'ship (In re Woodscape Ltd. P'ship)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (noting that, with respect sales of estate property pursuant to section 363 of the Bankruptcy Code, "[t]here is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction").

29. Accordingly, courts in this District have approved private sales of assets when they think the general standards for approval under section 363 of the Bankruptcy Code are satisfied. See, e.g., *In re Wellman, Inc.*, Case No. 08-10595 (SMB) (Bankr. S.D.N.Y. Oct. 6, 2009) (order approving the sales of one of the debtors' facilities' by private sale, not subject to higher and better offers); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Nov. 29, 2005) (order authorizing the sale of certain aircraft by private sale and stating that "no auction was necessary with respect to sale of the [a]ircraft"); *In re Angelo & Maxie's, LLC*, Case No. 11-11112 (SCC)(private sale of famous NYC restaurant approved despite not yielding 100% recovery to creditors).

30. Given (a) the substantial marketing of the Debtor's assets both pre- and post-petition, (b) the lack of any other offer to date, (c) the significant cash purchase price being

offered by the Purchaser, (d) the continued deterioration of the Debtor's estate to the detriment of the unsecured creditors, and (e) the Purchaser's desire to immediately close, the Debtor believes that the private sale is justified and the best way to maximize value and save jobs. It is extremely unlikely that an overbid process will generate higher and better offers for the Debtor's assets. Moreover, because of the substantial accruing administrative claims, conducting even an expedited overbid process would impose significant carrying costs on the Debtor's estate which the Debtor will have no ability to pay.

31. It is submitted that the Debtor and the Purchaser are proceeding in good faith and at arm's length. The Purchaser is not an insider of the Debtor and the transaction was negotiated in good faith, through separate counsel, and only entered into after protracted negotiations.

32. For all of these reasons, the private sale of the Debtor's assets as requested herein should therefore be approved.

C. The Debtor Has Exercised Sound Business Judgment

33. The Debtor believes that the sale to the Purchaser represents a prudent and proper exercise of its business judgment and is supported by articulated business reasons because, absent such a sale, the Debtor would likely be forced to liquidate, resulting in no distribution to unsecured creditors, the loss of jobs of the Debtor's employees (over 100) and the loss of going concern value discussed above. With the sale to Purchaser, the Debtor is maximizing the value of its assets, preserving jobs and generating proceeds for distribution to its creditor constituents. *See, NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984) (the "fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources"); *In re Chateaugay Corp.*, 201 B.R. 48, 72 (Bankr. S.D.N.Y. 1996), *aff'd in part*, 213 B.R. 633 (S.D.N.Y. 1997) ("public policy, as evidenced by

Chapter 11 of the Bankruptcy Code, strongly favors the reorganization and rehabilitation of troubled companies and concomitant preservation of jobs and going concern values”). Without the sale, the Debtor has no exit scenario other than liquidation, leaving creditors with far less, likely no distribution from the proposed sale of the Assets.

D. The Sale Price is Fair and Reasonable

34. The sale to Purchaser represents the highest and best price for the Purchased Assets secured by the Debtor to date. The Debtor had previously received an offer from another interested party in the amount of \$1.2 million (only \$800,000 in cash at closing with the balance over 3 years), however, after completing due diligence, the interested party declined to proceed. Further, early in 2016, as discussed above, the Debtor had received an offer from another party, Burger & Lobster, in the amount of \$1.0 million. However, after several months of attempting to obtain approval from the landlord for the assignment of the Lease, which consent was unreasonably withheld, this party decided not to proceed, and instead the Debtor incurred significant carrying costs attributable to the landlord’s tactics.

35. Consequently, in the Debtor’s view, the Purchase Price represents substantial value to the Debtor’s estate and provides favorable terms for disposition of the assets as a going concern in exchange for fair and reasonable consideration. *See, Mellon Bank N.A. v. Metro Communications, Inc.*, 945 F.2d 635 (3d Cir. 1992); *See, also, Mellon Bank N.A. v. Official Comm. Of Unsecured Creditors*, 92 F.3d 139 (3d Cir. 1996). Moreover, the Debtor’s arm’s length negotiations with the Purchaser ensured that the ultimate purchase price secured for the Purchased Assets is fair and reasonable under the circumstances.

E. The Sale Terms Were Negotiated In Good Faith

36. As set forth above, the APA is the product of good faith, arm's length negotiations between unrelated parties. Consequently, the Debtor requests that this Court find that these negotiations were in good faith and that the Purchaser is a "good faith purchaser" under §363(m) of the Bankruptcy Code.

F. Asset Sale Free and Clear of Encumbrances

37. In addition to seeking approval of a private sale outside of the ordinary course of business, the Debtor seeks approval to sell its assets as a going concern, free and clear of any and all liens, claims or encumbrances in accordance with §363(f) of the Bankruptcy Code.

38. A debtor-in-possession may sell property to §§363(b) and 363(f) "free and clear of any interest in such property of an entity other than the estate" if one of the following conditions are satisfied:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f).

39. The Purchase Price will result in sufficient proceeds to, *inter alia*, satisfy all secured claims, to the extent allowed, in full. Thus, the Purchased Assets can be sold free and clear of the secured claims and/or liens.

G. Assumption and Assignment of the Debtor's Nonresidential Real Property Lease

40. By Assignment and Assumption of Lease dated as of May 11, 2015 (the "Lease Assignment"), Macelleria Restaurant, Inc., the Debtor herein, assumed the lease (as amended by

the Lease Assignment, the “Lease”) for the ground floor and basement of the building located at 1-3 Little West 12th Street, New York, New York (the “Premises”). In connection with, and ancillary to, the Debtor’s request for approval of the Purchase Agreement, the Debtor seeks authority to assume and assign its interest in the Lease. The Landlord shall receive, from the Purchase Price, its cure amount, in such amount to be allowed by this Court, or otherwise agreed upon between the Debtor and the Landlord, and the Lease shall be deemed in full force and effect and free of any defaults or purported termination thereunder.

41. Pursuant to §365(a) of the Bankruptcy Code, a debtor may assume or reject any executory contract, subject to the approval of the Bankruptcy Court. 11 U.S.C. §365(a). Once a contract is assumed, the debtor may assign such contract to a third party. 11 U.S.C. §365(f).

42. Although §365(a) of the Bankruptcy Code does not provide a standard for determining when it is appropriate for a court to approve a debtor’s assumption or rejection of an executory contract or an unexpired lease, courts have uniformly deferred to the business judgment of the debtor. *In re Orion Pictures Corp.*, 4 F.3d 1095, 1099 (2d Cir. 1993) (“A bankruptcy court reviewing a trustee’s or debtor-in-possession’s decision to assume or reject an executory contract should examine a contract and the surrounding circumstances and apply its “business judgment” to determine whether it would be beneficial or burdensome to the estate to assume it.”); *see, also, In re Minges*, 602 F.2d 38, 43 (2d Cir. 1979); *In re G. Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994), *aff’d*, 187 B.R. 111 (S.D.N.Y. 1995) (“Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor’s business judgment [to assume or reject an executory contract] will not be altered.”).

43. A debtor's decision to assume or reject an executory contract or unexpired lease must only satisfy the "business judgment rule" and will not be subject to review unless such

decision is clearly an unreasonable exercise of such judgment. *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523 (1943) (applying Bankr. Act section 77 subsection (b), the predecessor to Bankruptcy Code section 365) (rejecting the test of whether the executory contract was burdensome in favor of whether rejection is within the debtor's business judgment); *Lubrizol Enter., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046-47 (4th Cir. 1985).

44. Section 365(b)(1) of the Bankruptcy Code authorizes a debtor-in-possession to assume, assume and assign, or reject executory contracts and unexpired leases subject to the approval of the Bankruptcy Court, on the condition, *inter alia*, that the Debtor cures any default under the executory contract or unexpired lease and provides adequate assurance of future performance under such contract or lease.

45. In the Landlord's Motion for Relief from Stay (Docket No. 31), the total pre-petition arrears due to Landlord total \$323,837.62, and \$108,412.50 post-petition through September 30, 2016. *See*, ¶12-16. Including the monthly rent for October, 2016 (\$48,612.48), the total cure amount due to Landlord through the anticipated closing date of October 31, 2016 is \$480,862.60.

46. The Debtor has significant monetary claims against the Landlord for, *inter alia*, tortious interference of contact related to the Landlord's obstruction of the sale to Burger & Lobster (for accrued rent and legal fees), and for failure to properly segregate the Debtor's security deposit (9% interest from the date of the escrow, approximately \$35,000). Accordingly, the Debtor proposes to escrow the entire cure amount of \$480,862.60 from the sale proceeds until the Debtor's setoff claims against the Landlord are fully adjudicated or otherwise resolved.

47. With respect to the "adequate assurance of future performance" of the Purchaser, Court held that it is a subjective test, and depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr.D.N.1. 1989). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *In re Bygaph, Inc.*, 56 B.R. 596, 605-6 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance present when the prospective assignee of a lease from the debtors has the financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding; "chief determinant of adequate assurance of future performance is whether rent will be paid").

48. The principal of the Purchaser is Christophe Perrin, a well-known celebrity chef. Chef Perrin was born and raised in Switzerland. With 25 years of experience, Chef Perrin has a solid background and knowledge in gastronomy. His experiences and travel all around the world in Russia, South East Asia, China, India, and the Caribbean have strongly influence his cuisine.

49. Chef Perrin founded and owns Gaia Gourmet, which started as a sea-facing restaurant in Goa where produce and authentic international food were the main focus. After moving to Mumbai, Gaia Gourmet morphed into a professional service that caters to event and wedding planners, individual clients, consulates, and corporate brands that are looking to push the envelope with unique food-centric events. Chef Perrin currently manages two (2) hotels with a kitchen staff of over 100 employees each. Additionally, Chef Perrin is the executive chef of La Mangeoire, a French County style restaurant located in mid-town Manhattan, New York. Chef Perrin works closely with the New York State Wine & Food Festival, and located the Debtor's Restaurant as an ideal location for this endeavors with the Wine & Food Festival.

50. The Curriculum Vital of Chef Perrin will be provided to Landlord as part of the due diligence package related to assignment of the Lease.

51. Upon information and belief, Chef Perrin is well funded and backed by an investor that is a well-known property owner in New York City who can demonstrate, if required, over twenty-five million dollars (\$25 million) in liquid assets. The Purchaser will provide such proof of financial wherewithal and adequate assurance to the Debtor and Landlord well in advance of the hearing on this Motion.

52. Accordingly, the Debtor submits that it has established adequate assurance of future performance pursuant to §365 of the Bankruptcy Code with respect to prospective assignment of the Lease.

53. Any assumption and assignment of the Lease will be subject to all of the provisions of the Lease, to the extent required by applicable law, and will be subject to all of the applicable provisions of the Bankruptcy Code.

H. Protections as a Good Faith Purchaser

54. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under Section 363(b) is later reversed or modified on appeal. *See Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) ("Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification of an unstayed order, whether or not the transferee knew of the pendency of the appeal").

55. The procurement and subsequent negotiations with the Purchaser was the product of an arm's-length, good-faith negotiation. The Debtor, nor its principals, have any prior relationships with the Purchaser, and neither have any arrangements or intentions to conduct business in the future related to the Purchased Assets. Therefore, the Debtor will request a

finding that the Purchaser is a good-faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code.

NOTICE

56. Notice of this Motion has been provided to (i) the Office of the U.S. Trustee; (ii) the Debtor's secured creditors; (iii) all taxing authorities; (iv) counsel to the Purchaser, (v) all counterparties to each of the Debtor's executory contracts and/or leases; (vi) all creditors; and (vii) all parties having filed a notice of appearance. The Debtor submits that said notice is adequate and proper.

CONCLUSION

57. The Debtor submits that a private sale of the Purchased Assets pursuant to the APA is a sound and prudent exercise of its business judgment. The sale to Purchaser will maximize the value of the Debtor and result in a distribution to all creditors.

58. Accordingly, the Debtor respectfully requests that (i) the APA be approved, (ii) the sale of the Purchased Assets to Purchaser free and clear of all claims, liens, interests and encumbrances be authorized, (iii) the assumption and assignment of the Lease in connection with the Purchase Agreement be approved; and (iv) the Purchase is granted the good-faith buyer protections afforded in §363(m) of the Bankruptcy Code.

WHEREFORE, the Debtor respectfully requests that the Court grant all of the relief requested herein, together with such other and further relief as is just and proper under the circumstances.

Dated: White Plains, New York
September 26, 2016

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for the Debtor
One North Lexington Avenue

White Plains, New York 10601
(914) 681-0200

By: /s/ Jonathan S. Pasternak

Jonathan S. Pasternak

Julie Cvek Curley

Exhibit “A”

ASSET PURCHASE AGREEMENT

dated as of

September 26, 2016

by and among

MACELLERIA RESTAURANT, INC.

And

THE MEATPACKERS INC.

(and/or its designees)

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of September 26, 2016, is made by and among and Macelleria Restaurant, Inc. (“**Seller**” or “**Debtor**”), a debtor in the Chapter 11 case (the “**Bankruptcy Case**”) styled *In re Macelleria Restaurant, Inc.*, case number 16-12110(MKV), pending in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) and The Meatpackers Inc. or its designee (“**Purchaser**”).

WHEREAS, the Seller is in the business of owning an uncompleted and non-operating restaurant located at 1-3 Little West 12th Street, New York, New York 10014 with the trade name “Macelleria”;

WHEREAS, on July 25, 2016 (the “**Filing Date**”), Seller filed a voluntary petition with the Bankruptcy Court under Chapter 11 of Title 11 of the United States Code, Section 101, et seq. (the “**Bankruptcy Code**”); and

WHEREAS, Seller desires to sell certain of the Seller’s assets to Purchaser, and Purchaser desires to purchase certain of the assets of the Seller upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, OF THE REPRESENTATIONS, WARRANTIES, COVENANTS AND MUTUAL AGREEMENTS HEREINAFTER CONTAINED, AND OF OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I **DEFINITIONS**

The terms defined in this **Article I**, whenever used herein (including without limitation the Exhibits and Schedules hereto), shall have the following meanings for all purposes of this Agreement:

“**Agreement**” means this agreement among the parties set forth on the first page hereof, including, without limitation, all Exhibits and Schedules hereto, as the same may be amended from time to time.

“**Bankruptcy Case**” has the meaning given to it in the recitals hereto.

“**Bankruptcy Code**” has the meaning given to it in the recitals hereto.

“**Bankruptcy Court**” has the meaning given to it in the recitals hereto.

““**Business**” has the meaning given to it in the recitals hereto.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are required or authorized by law to be closed.

“**Closing**” means the closing of the transactions contemplated by this Agreement.

“**Closing Date**” means the date on which the conditions set forth in **Article VII** are satisfied or waived, or such other date as the parties may mutually agree, upon which the Closing takes place.

“**Consent**” means any consent, approval, authorization, license or order of, registration, declaration or filing with, or notice to, or waiver from, any federal, state, local, foreign or other Governmental Entity or any other Person, including, without limitation, any security holder or creditor which is necessary to be obtained, made or given in connection with the execution and delivery of this Agreement and/or any Operative Document, the performance by a Person of its obligations hereunder and/or thereunder and the consummation of the transactions contemplated hereby and/or thereby.

“**Deposit**” has the meaning set forth in **Section 2.5** hereof.

“**Encumbrances**” means collectively, any and all security interests, liens, pledges, claims, levies, charges, escrows, encumbrances, options, rights of first refusal, transfer restrictions, conditional sale contracts, title retention contracts, mortgages, hypothecations, indentures, security agreements or other agreements, arrangements, contracts, commitments, understandings or obligations of any kind whatsoever, whether written or oral.

“**Excluded Assets**” has the meaning set forth in **Section 2.2** hereof.

“**Filing Date**” has the meaning given to it in the recitals hereto.

“**Final Order**” has the meaning set forth in **Section 6.1(d)** hereof.

“**Governmental Entity**” means any federal, state, local or foreign government, political subdivision, legislature, court, agency, department, bureau, commission or other governmental regulatory authority, body or instrumentality, including any industry or other non-governmental self-regulatory organizations.

“**Instruments of Assignment**” has the meaning given to it in **Section 2.6** hereof.

“**Landlord**” means West Village, LLC, the Landlord for the Leased Premises.

“**Lease**” means that certain non-residential real property Lease, dated June 12, 2015 by and between West Village LLC, as landlord (“**Landlord**”) and Sugar Factory American Brasserie Meatpacking, LLC, which lease was assigned to the Debtor pursuant to an Assumption and Assignment of Lease, dated May 11, 2015 by and between Sugar Factory American Brasserie Meatpacking, LLC and the Debtor, for the Leased Premises.

“**Leased Premises**” means 1-3 Little West 12th Street, New York, New York 10014.

“**Permits**” means all licenses, certificates of authority, permits, orders, consents, approvals, registrations, local siting approvals, authorizations, qualifications and filings under any federal, state or local laws or with any Governmental Entities or other private Persons.

“**Person**” means an individual, corporation, partnership, limited liability company, firm, joint venture, association, joint stock company, trust, unincorporated organization or other entity, or any Governmental Entity or quasi-governmental body or regulatory authority.

“**Purchase Price**” has the meaning set forth in **Section 2.3** hereof.

“**Purchased Assets**” has the meaning set forth in **Section 2.1** hereof.

“**Sale Approval Order**” has the meaning set forth in **Section 5.4(d)** hereof.

“**Sale Hearing**” has the meaning set forth in **Section 5.4(c)** hereof.

“**Seller**” has the meaning given to it in the recitals hereto.

ARTICLE II

SALE AND PURCHASE OF ASSETS; CLOSING

2.1 **Asset Purchase.** Upon the terms and subject to the conditions hereof, and upon the basis of the agreements, representations and warranties contained in this Agreement, on the Closing Date, the Seller agrees to sell, transfer, assign, convey and deliver to Purchaser, and Purchaser shall purchase, acquire and accept from the Seller, all of the Debtor’s right, title and interest in and to the following assets, as and to the extent existing on the Closing Date (such assets, properties and rights are hereinafter collectively referred to as the “**Purchased Assets**”), free and clear of all Encumbrances. Subject to, but without limitation of the foregoing, the Purchased Assets include the following as and to the extent existing on the Closing Date: `

(a) L
ease. All of Seller’s
right, title and interest
in and to that certain
real property lease, as
amended from time to
time (the “**Lease**”), for
the premises known as
1-3 Little West 12th
Street, New York,
New York (the
“**Leased Premises**”),
together with all

improvements made to the Premises. The Lease shall be assumed by the Debtor and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code.

(b) Security Deposit. The security deposit in the approximate amount of \$171,000 held by the Landlord for the Leased Premises, subject to verification and written acknowledgement by the Landlord of the amount of the security deposit held on the Closing Date.

(c) Permits. All of the Debtor's rights, title and interest in and to any and all Permits, licenses, approvals and authorizations by a federal, state, local or foreign governmental or non-governmental board, bureau, agency or regulatory body, to the extent transferable or assignable;

2.2 Excluded Assets. Any provision of this Agreement to the contrary notwithstanding, Purchaser shall not acquire and there shall be excluded from the Purchased Assets the following (the "**Excluded Assets**"):

(a) Claims Under

Agreement. All claims against Purchaser arising under or in connection with this Agreement;

(b) C
ash. All cash and cash equivalents of the Debtor;

(c) R
eceivables. All of the Seller's trade accounts, notes and other receivables;

(d) C
ontracts. All contracts, leases or other agreements, other than the Lease;

(e) I
nventory. All raw materials, work-in-process, finished goods and merchandise, packaging materials and other supplies related thereto which are owned or used by the Debtor;

(f) I
nsurance. All rights of the Debtor under insurance policies;

(g) B
ank Accounts. All rights with respect to the Debtor's bank accounts; and

(h) B
ankruptcy Causes of
Action. All preference,
fraudulent transfer
and/or other avoidance
claims and actions of
any kind of the Seller,
including, without
limitation, any such
claims and actions
arising under Sections
544, 545, 547, 548
549, 550 and 551 of
the Bankruptcy Code;
and

(i) B
ooks and Records. All
of Seller's books and
records, computers,
files and data.

2.3 Consideration. The aggregate consideration for the Assets (the “**Purchase Price**”) shall be the amount of One Million One Hundred Thousand Dollars (\$1,100,000) payable at Closing, inclusive of the Deposit in paragraph 2.5, below. No consideration other than the Purchase Price shall be paid, it being the express understanding of the parties that all defaults under the Lease will be cured at Closing from the Purchase Price.

2.4 No Assumed Liabilities. Purchaser shall not assume or be responsible for, and shall in no event be liable for any debts, liabilities or obligations of the Seller, whether fixed or contingent, known or unknown, liquidated or unliquidated, suspected or unsuspected, material or immaterial, absolute or contingent, matured or unmatured, determinable or undeterminable, direct or indirect, secured or unsecured, or otherwise.

2.5 Deposit. As of the date hereof, Purchaser has delivered to Seller a deposit (together with any interest accrued thereon, the “**Deposit**”) in the amount of One Hundred Ten Thousand Dollars (\$110,000) to be held in accordance with the terms of this Agreement and applied to the Purchase Price at Closing. In the event of termination of this Agreement, the Deposit shall be disbursed as provided in **Section 7.2**.

2.6 Transfer of Assets. At the Closing, the Seller shall effect the sale, conveyance, assignment, transfer and delivery of the Purchased Assets to Purchaser by delivering to Purchaser or its designee documents of assignment and transfer as are reasonably necessary to vest in Purchaser good and valid title to the Purchased Assets, free and clear of all Encumbrances, in form and substance reasonably acceptable to the parties, collectively, the “**Instruments of Assignment**”.

2.7 Possession. Right to possession of the Purchased Assets shall transfer to Purchaser on the Closing Date. Seller shall transfer and deliver to Purchaser on the Closing Date such keys, lock and safe combinations and other similar items as Purchaser shall require to obtain immediate and full occupation and control of the Purchased Assets, including, without limitation, the Leased Premises, and shall also make available to Purchaser at the Leased Premises all documents in Seller’s possession that are required to be transferred to Purchaser by this Agreement.

2.8 Transfer Taxes. Purchaser shall be solely responsible for the payment of any and all such transfer, stamp or similar taxes which may be payable by reason of the transaction contemplated in this Agreement and any and all claims, charges, interest or penalties assessed, imposed or asserted in relation to any such taxes.

Non-Assignable Permits.

(a) To the extent that any Permit included among the Purchased Assets is not capable of being assigned to Purchaser at the Closing without the Consent of the issuer thereof, or if such assignment or attempted assignment would constitute a breach thereof, or a violation of any applicable federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree, administrative order or decree, administrative or judicial decision, and any other executive or legislative proclamation ("**Laws**"), neither this Agreement nor any Instrument of Assignment shall constitute an assignment thereof, or an attempted assignment, unless such Consent has been obtained.

2.9 The Closing. The Closing shall take place at 10:00 a.m., prevailing Eastern time, on the Closing Date, at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, 11th Floor, White Plains, New York 10601, no later than ten (10) days after entry of the Sale Approval Order, subject to the satisfaction or waiver of all of the conditions to Closing set forth in **Article VI** hereof. At the Closing, Purchaser and the Seller shall deliver or cause to be delivered the items necessary to convey, assign, transfer and deliver the Purchased Assets to Purchaser.

2.10 Deliveries by Seller. At the Closing, the Seller shall deliver, or cause to be delivered, to Purchaser each of the following, duly executed by or on behalf of Seller:

(a) the Instruments of Assignment referred to in **Section 2.6** hereof; and

(b) a copy of the Sale Approval Order referred to in **Section 5.4(d)** hereof.

2.11 Deliveries by Purchaser. At the Closing, Purchaser shall deliver or cause to be delivered to the Seller each of the following, duly executed by or on behalf of Purchaser:

(a) an amount equal to the Purchase Price by wire transfer to Seller's attorney's escrow account of immediately available funds to the account or accounts designated in writing by the Seller at least two (2) Business Days prior to the Closing Date;

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to Purchaser as follows:

3.1 Assets "As Is, Where Is." THE ASSETS BEING SOLD ARE BEING SOLD ON AN "AS-IS, WHERE-IS" BASIS AND WITH NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, STATEMENT OF CONDITION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THE LIKE.

3.2 Organization and Qualification. To the knowledge of the Seller, the Debtor is duly organized, validly existing and in good standing in the state of New York, with all necessary corporate power and authority to own, lease and operate the Purchased Assets and carry on its business as presently owned or conducted.

3.3 Powers; Consents; No Breach. The execution, delivery, and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby by Seller: (a) are within its corporate powers, are not in contravention of the terms of the certificate of incorporation or bylaws of Seller, and have been duly authorized by all appropriate corporate action; (b) do not and will not require any approval or consent of, or filing with, any governmental agency or authority; (c) do not and will not violate any statute, law, rule, or regulation to which Seller may be subject; (d) do not and will not conflict with, or result in a breach of or a default under (with or without notice or lapse of time, or both), any contract, agreement, indenture, mortgage, deed of trust, lease, or other instrument to which Seller is a party or by which Seller is bound or subject; and (e) do not and will not violate any judgment, order, or decree of any court or other governmental agency or authority to which Seller may be subject. This Agreement has been duly executed and delivered by Seller and constitutes a valid and binding obligation of Seller, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and similar laws affecting creditors' rights and remedies generally and general principles of equity.

3.4 Litigation or Proceedings. Other than the Bankruptcy Case, there is no litigation or other proceeding pending or, to the knowledge of Seller or its directors, managers, officers, employees, agents, or representatives, threatened against Purchaser that could reasonably be expected to affect adversely Purchaser's ability to consummate the transactions contemplated by this Agreement.

3.5 Brokers and Advisors. Purchaser represents and warrants to Seller that, other than as disclosed below, it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder (each a "Broker") in connection with this Agreement or the transactions contemplated hereby. Purchaser hereby agrees to indemnify, defend and hold Seller harmless from and against any and all claims, demands, causes of action, losses, costs and expenses (including reasonable attorneys' fees, court costs and disbursements) arising from any claim for commission, fees or other compensation or reimbursement for expenses made by Broker engaged by or claiming to have dealt with Purchaser in connection with this Agreement or the transactions contemplated hereby. Seller represents and warrants to Purchaser that it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, any Broker (other than Paul Fetscher of Great American Brokerage Inc. and Jean Bates of co-broker Capital Real Estate Advisors) in connection with this Agreement or the transactions contemplated hereby. Seller hereby agrees to indemnify, defend and hold Purchaser and its direct and indirect shareholders, officers, directors, partners, principals, members, employees, agents, contractors and any successors or assigns of the foregoing, harmless from and against any and all claims, demands, causes of action, losses, costs and expenses (including reasonable attorneys' fees, court costs and disbursements) arising from any claim for commission, fees or other compensation or reimbursement for expenses made

by any Broker, engaged by or claiming to have dealt with Seller in connection with this Agreement or the transactions contemplated hereby. The provisions of this Section 3.5 shall survive the termination of this Agreement or the Closing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Purchaser hereby represents and warrants to the Seller as follows:

4.1 Organization and Qualification. To the knowledge of the Purchaser, the Purchaser is duly organized, validly existing and in good standing in the state of New York, with all necessary corporate power and authority to own, lease and operate the Purchased Assets and carry on its business as presently owned or conducted.

4.2 Powers; Consents; No Breach. The execution, delivery, and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby by Purchaser: (a) are within its corporate powers, are not in contravention of the terms of the certificate of incorporation or bylaws of Purchaser, and have been duly authorized by all appropriate corporate action; (b) do not and will not require any approval or consent of, or filing with, any governmental agency or authority; (c) do not and will not violate any statute, law, rule, or regulation to which Purchaser may be subject; (d) do not and will not conflict with, or result in a breach of or a default under (with or without notice or lapse of time, or both), any contract, agreement, indenture, mortgage, deed of trust, lease, or other instrument to which Purchaser is a party or by which Purchaser is bound or subject; and (e) do not and will not violate any judgment, order, or decree of any court or other governmental agency or authority to which Purchaser may be subject. This Agreement has been duly executed and delivered by Purchaser and constitutes a valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and similar laws affecting creditors' rights and remedies generally and general principles of equity.

4.3 Litigation or Proceedings. There is no litigation or other proceeding pending or, to the knowledge of Purchaser or its directors, managers, officers, employees, agents, or representatives, threatened against Purchaser that could reasonably be expected to affect adversely Purchaser's ability to consummate the transactions contemplated by this Agreement.

4.4 Financial Capability. Purchaser has cash, or the ability to obtain cash by means of credit facilities with financially responsible third parties, in an amount sufficient to enable it to perform all of its obligations hereunder, including, without limitation, payment of the Purchase Price and future performance under the Lease.

ARTICLE V
COVENANTS

5.1 Conduct of Business of the Debtor. From the date hereof and until the Closing Date, except as contemplated by this Agreement or expressly consented to by an instrument in writing signed by Purchaser, the Seller shall: (i) maintain and preserve the Purchased Assets in good repair, order and condition, including, without limitation, performing, in a manner and on a basis consistent with past practice, all periodic maintenance, (ii) preserve its business operations and organizations intact, (iii) keep available the services of its current officers, and (iv) preserve its current advantageous business relationships, including, without limitation, the goodwill of its customers and suppliers and others having business relationships with it.

5.2 Seller's Records. Prior to the Closing Date, Seller shall afford Purchaser, its attorneys, accountants and representatives, free and full access to the Seller's business, books, records and employees, and shall provide to Purchaser and its representatives such additional financial and operating data and other information as Purchaser shall from time to time reasonably request upon advance written notice.

5.3 Further Assurances. Simultaneous with the Closing, Seller shall take such steps as may be necessary to put Purchaser in actual possession and operating control of the Purchased Assets. At or after the Closing, Seller shall, at the reasonable request of Purchaser, without further consideration, promptly execute and deliver, or cause to be executed and delivered, to Purchaser such assignments, bills of sale, consents and other instruments in addition to those required by this Agreement, in form and substance reasonably satisfactory to Purchaser, and take all such other actions as Purchaser may reasonably deem necessary to implement any provision of this Agreement and to transfer to and vest in Purchaser title to, and to put Purchaser in possession of, all of the Purchased Assets, free and clear of any and all Encumbrances.

5.4 Bankruptcy Covenants.

(a) C
ure of Defaults. Seller shall at the Closing from the Initial Payment, cure any and all defaults and breaches and satisfy any liability or obligation arising from or relating to pre-Closing periods under the Lease, so that the Lease may be assigned by Seller to Purchaser

in accordance with the provisions of Section 365 of the Bankruptcy Code, the Sale Approval Order, any other orders of the Bankruptcy Court effectuating such assignments, and this Agreement.

(b) M
otions, Orders, etc. Seller shall promptly provide Purchaser with the proposed final drafts of all documents, motions, orders, or pleadings that Seller proposes to file with the Bankruptcy Court which relate to the approval of this Agreement, the Purchased Assets, or the consummation of the transactions contemplated hereby, or any provision therein or herein, and shall provide Purchaser and its counsel with a reasonable opportunity to review and comment on such documents, motions, orders, or pleadings.

(c) S
ale Approval Order. The sale approval order (the “**Sale Approval Order**”),

shall be reasonably acceptable in form and substance to Purchaser and shall include provisions, among other things (i) providing that Purchaser shall not incur any liability as a successor to the Debtor, (ii) approving the sale of the Purchased Assets to Purchaser on the terms and conditions set forth in this Agreement and authorizing Seller to proceed with this transaction, (iii) stating that any objections timely filed with respect to the sale of the Purchased Assets, which have not been withdrawn, are overruled or the interests of such objections have been otherwise satisfied or adequately provided for by the Bankruptcy Court, (iv) finding that the Purchase Price represents fair value for the Purchased Assets, (v) finding that the sale is in the best interests of Debtor's estate and creditors, (vi) finding that Purchaser is a good faith purchaser of the Assets under Section 363(m) of the Bankruptcy Code and

that the provisions of Section 363(n) of the Bankruptcy Code have not been violated, (vii) providing that the sale of the Purchased Assets to Purchaser shall be free and clear of all liens, claims, interests, obligations and encumbrances whatsoever under Section 363 of the Bankruptcy Code and any other applicable sections of the Bankruptcy Code, (viii) providing that the Bankruptcy Court shall retain jurisdiction for the purpose of enforcing the provisions of the Sale Approval Order including, without limitation, compelling delivery of the Purchased Assets to Purchaser and protecting Purchaser against any liens, claims, interests, obligations and encumbrances against Seller or the Purchased Assets, (ix) finding that there are no brokers other than the Debtor's broker, Great American Brokerage, Inc. and co-broker Capital Real Estate Advisors, and any commissions due Great American

Brokerage, Inc. and Capital Real Estate Advisors are solely the responsibility of the Debtor, (x) authorizing and directing Seller to execute, deliver, perform under, consummate and implement this Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the foregoing, and (xi) determining that Purchaser is not a successor to Seller or otherwise liable for any of the Excluded Liabilities or Excluded Assets and permanently enjoining each and every holder of any of the Excluded Liabilities or Excluded Assets from commencing, continuing or otherwise pursuing or enforcing any remedy, claim, cause of action or encumbrance against Purchaser or the Purchased Assets related thereto. Seller shall use its best efforts to obtain entry of the Sale Approval Order. Purchaser's obligations to consummate the

transactions
contemplated herein
shall be conditioned
upon the Bankruptcy
Court's entry of the
Sale Approval Order in
form and substance
satisfactory to
Purchaser. To the
extent that there is any
inconsistency between
this paragraph and the
Sale Approval Order,
the Sale Approval
Order shall govern.

(d) A
ssumption and
Assignment of Lease.
Seller shall obtain an
order or orders (which
may include the Sale
Approval Order) in a
form reasonably
satisfactory to
Purchaser, among
other things (i)
approving the
assumption and
assignment of the
Lease to Purchaser
pursuant to, and
subject to the
provisions of, Section
365 of the Bankruptcy
Code, (ii) providing
that all defaults of
Seller under the Lease
arising or accruing
prior to the date of the
Closing (without
giving effect to any
acceleration clauses or
any default provisions
in such contracts of a

kind specified in Section 365(b)(2) of the Bankruptcy Code) have been cured or will be cured at the Closing by Seller from the Initial Payment so that Purchaser shall have no liability or obligation with respect to any default or obligation arising or accruing prior to the Closing or in respect of any cure obligations, and (iii) providing that the Lease shall be transferred to, and remain in full force and effect for the benefit of, Purchaser, notwithstanding any provision in the Lease (including those described in Sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or limits in any way such assignment or transfer.

(e) Q
ther Bankruptcy
Covenants. Seller shall promptly make any filings, take all actions, and use his best efforts to obtain any and all other approvals and orders necessary or appropriate for consummation of the sale of the Purchased

Assets, subject to their obligations to comply with any order of the Bankruptcy Court. In the event an appeal is taken, or a stay pending appeal is requested, from any of the foregoing orders of the Bankruptcy Court, Seller shall immediately notify Purchaser of such appeal or stay request and, upon Purchaser's request, shall provide to Purchaser within two days after Seller's receipt thereof a copy of the related notice of appeal or order of stay. Seller shall also provide Purchaser with written notice of any motion, application, brief or other pleading filed in connection with any appeal from any of such orders.

(f) No Adverse Litigation. At the time of Closing, there shall be no pending litigation against the Seller which would adversely affect Seller's ability to deliver free and clear title to the Purchased Assets and Lease, respectively.

ARTICLE VI **CONDITIONS TO CLOSING**

6.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser under this Agreement to consummate the transactions contemplated by this Agreement on the Closing Date shall be subject to the satisfaction, at or prior to the Closing Date, of all of the following conditions, any one or more of which may be waived by Purchaser:

(a) R
epresentations and

Warranties Accurate.

The representations and warranties of the Seller contained in this Agreement shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date with the same force and effect as though made on and as of the Closing Date.

(b) P
erformance by the Seller. The Seller shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with by such Person hereunder on or prior to the Closing Date.

(c) N
o Legal Prohibition. No suit, action, investigation, inquiry or other proceeding by any Governmental Entity or other Person shall have been instituted or threatened which arises out of or relates to this Agreement, or the transactions contemplated hereby and no injunction, order, decree or judgment shall have

been issued and be in effect or threatened to be issued by any Governmental Entity of competent jurisdiction, and no statute, rule or regulation shall have been enacted or promulgated by any Governmental Entity and be in effect, which in each case restrains or prohibits the consummation of the transactions contemplated hereby.

(d) E
ntry of Order; Appeal.
The Bankruptcy Court shall have entered the), the Sale Approval Order in accordance with **Section 5.4(c)**, and any other order in accordance with **Section 6.5(e)** relating to the assignment of the Lease, all in form and substance reasonably acceptable to Purchaser, and the Sale Approval Order and any other order in accordance with **Section 5.5(e)** relating to the assignment of the Lease, shall not have been stayed, and shall have become a Final Order, unless the finality of the Sale Approval Order is waived by the

Bankruptcy Court or Purchaser. The term “**Final Order**” as used in this Agreement shall mean an order, judgment or other decree, the operation or effect of which has not been reversed, stayed, modified or amended.

6.2 Conditions Precedent to Obligations of the Seller. The obligations of the Seller under this Agreement to consummate the transactions contemplated by this Agreement on the Closing Date shall be subject to the satisfaction, at or prior to the Closing Date, of all of the following conditions, any one or more of which may be waived by the Seller:

(a) R
representations and Warranties Accurate.
The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date with the same force and effect as though made on and as of the Closing Date. In the event that any of Seller’s creditors assert claims arising out of Seller’s pre-Closing activities against Purchaser post-Closing, Seller shall take such action as necessary to enforce the Sale Approval Order against such creditors of the Seller.

(b) P
erformance by
Purchaser. Purchaser
shall have performed
and complied in all
material respects with
all covenants and
agreements required to
be performed or
complied with by them
hereunder on or prior
to the Closing Date.

(c) N
o Legal Prohibition.
No suit, action,
investigation, inquiry
or other proceeding by
any Governmental
Entity or other Person
shall have been
instituted or threatened
which arises out of or
relates to this
Agreement or the
transactions
contemplated hereby
and no injunction,
order, decree or
judgment shall have
been issued and be in
effect or threatened to
be issued by any
Governmental Entity
of competent
jurisdiction, and no
statute, rule or
regulation shall have
been enacted or
promulgated by any
Governmental Entity
and be in effect, which
in each case restrains
or prohibits the
consummation of the

transactions
contemplated hereby.

(d) E
ntry of Order; Appeal.
The Sale Approval
Order shall have been
entered by the
Bankruptcy Court and
shall not have been
stayed. If an appeal of
the Sale Approval
Order is filed and
Purchaser elects in its
sole discretion to
waive the condition to
Closing that the Sale
Approval Order shall
be a Final Order, then
Seller shall be
obligated to proceed
with the Closing
notwithstanding the
pendency of any such
appeal, unless the Sale
Approval Order is
stayed.

ARTICLE VII

MISCELLANEOUS

7.1 Termination. This Agreement may be terminated, and the transactions contemplated herein may be abandoned:

(a) a
ny time before the
Closing, by mutual
written agreement of
the Seller and
Purchaser;

(b) a
ny time before the
Closing, by the Seller,
on the one hand, or

Purchaser, on the other hand, (i) in the event of a material breach hereof by any non-terminating party if such non-terminating party fails to cure such breach within five (5) Business Days following notification thereof by the terminating party or (ii) upon notification to the non-terminating party by the terminating party that the satisfaction of any condition to the terminating party's obligations under this Agreement becomes impossible or impracticable with the use of commercially reasonable efforts if the failure of such condition to be satisfied is not caused by a breach hereof by the terminating party;

(c) b
y Purchaser, upon five (5) Business Days' prior written notice to the Seller, if the Closing has not taken place by the 30th day following the date that the Sale Approval Order becomes a Final Order, other than by reason of a material breach of this

Agreement by
Purchaser; or

The time periods for termination of this Agreement set forth in **Sections 7.1(b)** and **7.1(c)** may be extended by mutual written agreement of the Seller and Purchaser without further order of the Bankruptcy Court.

7.2 Effect of Termination.

(a) If this Agreement is validly terminated pursuant to **Section 7.1**, this Agreement will forthwith become null and void, and there will be no liability or obligation on the part of any party (or any of their respective officers, directors, employees, partners, agents or other representatives or Affiliates), except as provided in the next succeeding sentence and except that the provisions in **Sections 7.3** will continue to apply following any such termination. Notwithstanding any other provision in this Agreement to the contrary, upon termination of this Agreement pursuant to **Sections 7.1(b)** or **(c)**, the Seller will remain liable to Purchaser for any breach of this Agreement by the Seller existing at the time of such

termination, and Purchaser will remain liable to the Seller for any breach of this Agreement by Purchaser existing at the time of such termination. Failure of any party to satisfy any of the conditions set forth in **Sections 6.1** or **6.2** of this Agreement shall not be deemed a breach of this Agreement by such party except to the extent that such failure also constitutes a breach of a representation, warranty or covenant.

(b) Notwithstanding the provisions of **Section 7.2(a)**, above:

- (i) if Purchaser or the Seller terminate this Agreement pursuant to **Section 7.1(a)** or **Section 7.1(b)(ii)**, Purchaser shall receive the prompt return of the Deposit;
- (ii) if Purchaser terminates this Agreement pursuant to **Section 7.1(b)(i)** or **Section 7.1(c)**, Purchaser shall receive the prompt return of the Deposit;
- (iii) if the Seller terminates this Agreement pursuant to **Section 7.1(b)(i)**, the Seller shall receive, as its sole and exclusive remedy available under any Law, including the Bankruptcy Code, the Deposit; and
- (iv) if the Seller terminates this Agreement pursuant to **Section 7.1(c)**, Purchaser shall receive the prompt return of the Deposit.

7.3 Expenses. Except as otherwise set forth herein, each party hereto shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

7.4 Amendment. This Agreement may not be modified, amended, altered or supplemented except by a written agreement executed by Purchaser and the Seller.

7.5 Entire Agreement. This Agreement, together with the Exhibits and Schedules hereto and the instruments and other documents delivered pursuant to this Agreement, contain the entire agreement of the parties relating to the subject matter hereof, and supersede all prior agreements, understandings, representations, warranties and covenants of any kind between the parties. All others are specifically waived.

7.6 Waivers. Waiver by any party of any breach of or failure to comply with any provision of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement. No waiver of any such breach or failure or of any term or condition of this Agreement shall be effective unless in a written notice signed by the waiving party and delivered, in the manner required for notices generally, to each affected party.

7.7 Notices. All notices and other communications hereunder shall be validly given or made if in writing, (i) when delivered personally (by courier service or otherwise), (ii) when sent by telecopy, or (iii) when actually received if mailed by first-class certified or registered United States mail or recognized overnight courier service, postage-prepaid and return receipt requested, and all legal process with regard hereto shall be validly served when served in accordance with applicable law, in each case to the address of the party to receive such notice or other communication set forth below, or at such other address as any party hereto may from time to time advise the other parties pursuant to this Subsection:

If to the Seller:

Macelleria Restaurant, Inc.
P.O. Box 309
New York, New York 10150-0309
Telephone: []
Telecopier: []
Attention: Violetta Bitici, President

with a copy to (which shall not constitute service):

DelBello Donnellan Weingarten
Wise & Wiederkehr LLP
One North Lexington Avenue, 11th Floor
White Plains, New York 10601
Telephone: (914) 681-0200
Telecopier: (914) 684-0288
Attention: Jonathan S. Pasternak, Esq.
jsp@ddw-law.com

If to The Purchaser:

The Meatpackers Inc.
c/o BANYM, Inc.
1270 Broadway, Suite 806
New York, NY 10001
Telephone: []
Telecopier: []

with a copy to (which shall not constitute service):

Nathaniel Muller, Esq.
1270 Broadway, Suite 806
New York, New York 10001
Telephone: (646) 256-6003
Telecopier: (212) 244-4232
nm@legalmuller.com

7.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document. Facsimile or electronic signatures shall have the same effect as original signatures.

7.9 Governing Law. All disputes arising out of or related to this Agreement, including, without limitation, any dispute relating to the interpretation, meaning or effect of any provision hereof, will be resolved in the Bankruptcy Court and the parties hereto will each submit to the exclusive jurisdiction of the Bankruptcy Court for the purposes of adjudicating any such dispute, to the extent the jurisdiction of the Bankruptcy Court is applicable. If the jurisdiction of the Bankruptcy Court is not applicable, any legal action, suit or proceeding arising

out of or relating to this Agreement, each and every agreement and instrument contemplated hereby or the transactions contemplated hereby and thereby shall be instituted in any Federal court of the Southern District of New York. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (*i.e.*, without regard to its conflicts of law rules).

7.10 Binding Effect; Third Party Beneficiaries; Assignment. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective legal representatives, successors and permitted assigns. Except as expressly set forth herein, nothing expressed or referred to in this Agreement is intended or shall by construed to give any Person other than the parties to this Agreement, or their respective legal representatives, successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. Neither party may assign this Agreement nor any of its rights hereunder, other than any right to payment of a liquidated sum, nor delegate any of its obligations hereunder, without the prior written consent of the other, except that Purchaser may assign its rights under this Agreement.

7.11 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction, and any such provision, to the extent invalid or unenforceable, shall be replaced by a valid and enforceable provision which comes closest to the intention of the parties underlying such invalid or unenforceable provision.

7.12 Headings. The headings contained in this Agreement are for reference purposes only and shall not modify define, limit, expand or otherwise affect in any way the meaning or interpretation of this Agreement.

7.13 No Agency. No party hereto shall be deemed hereunder to be an agent of, or partner or joint venturer with, any other party hereto.

7.14 Public and Private Announcements. Prior to Closing, neither Purchaser nor Seller will issue or cause the publication of any press release or otherwise make any public and/or private statement with respect to the transactions contemplated hereby without the prior consent of the parties hereto, provided, that any party hereto may make a public and/or private announcement to the extent required by law, judicial process or the rules, or regulations.

7.15 Interpretation. In this Agreement, unless a contrary intention appears, (i) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision, and to any certificates delivered pursuant hereto; and (ii) reference to any Article or Section means such Article or Section hereof.

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

SELLER:

MACELLERIA RESTAURANT, INC.

By: /s/ Violetta Bitici, President

PURCHASER:

THE MEATPACKERS INC.

By: /s/ Georges Vila, President