

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NOON MEDITERRANEAN, INC.,¹

Debtor.

Chapter 11

Case No. 18-11814 (BLS)

**MOTION OF NOON MEDITERRANEAN, INC., DEBTOR AND DEBTOR IN
POSSESSION, (I) FOR AUTHORITY TO SELL THE DEBTOR’S PHILADELPHIA
LOCATION, FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES, SUBJECT TO HIGHER AND BETTER OFFERS, (II) TO
APPROVE THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE;
AND (III) FOR A WAIVER OF THE STAY APPLICABLE TO
SUCH AUTHORIZATION**

Noon Mediterranean, Inc., debtor and debtor in possession (the “Debtor”), by and through its counsel, hereby moves this Court (the “Motion”) (i) for authority to sell the Debtor’s Philadelphia location, free and clear of liens, claims, interests and encumbrances to NAYA Express V Philly, LLC (“Purchaser”), subject to higher and better offers, (ii) to approve the assumption and assignment of an unexpired lease; and (iii) for a waiver of the stay applicable to such authorization as more fully described below. In support of this Motion, the Debtor respectfully represents as follows:

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number are: Noon Mediterranean, Inc. (f/k/a Verts Mediterranean Grill, Inc.; f/k/a Verts Kebap, Inc.; f/k/a DMS Foods, Inc.) (-5849). At the time it filed its bankruptcy petition, the Debtor’s corporate headquarters was located at: Workville – Noon Mediterranean, 1412 Broadway, 21st Floor, New York, NY 10018.

Purchaser: NAYA Express V Philly, LLC

Premises: Debtor's Philadelphia location (1601 Market St.)

Assets: Lease for Philadelphia location to be assigned. All restaurant furniture, fixtures and equipment ("FF&E") and inventory and restaurant supplies remaining on the Premises on the Closing Date (collectively, the "Purchased Assets").

Consideration: \$50,000 cash plus November rent and rent through December 15, 2018

7. Referencing Local Bankruptcy Rule 6004-1(b)(i-iii), the Debtor makes the following disclosures/statements:

- (a) The proposed purchase agreement is attached hereto;
- (b) An initial version of the proposed sale order is attached; and
- (c) The Debtor (i) has not communicated to its customers a policy prohibiting the transfer of personally identifiable information about them to persons who are not affiliated with the debtor or, alternatively, (ii) is not selling personally identifiable information about its customers as part of the proposed sale. By extension, the Debtor is not requesting appointment of a consumer privacy ombudsman pursuant to Bankruptcy Code section 332.

8. Referencing Local Bankruptcy Rule 6004-1(b)(iv), the Debtor makes the following disclosures/statements:

- (a) The proposed sale is to a non-insider;
- (b) Purchaser has no agreement(s) with management;
- (c) The Debtor does not contemplate the inclusion of releases in the Agreement;
- (d) A private sale is contemplated, subject to higher and better offers;
- (e) The closing of the proposed sale has to occur by November 30, 2018;
- (f) Purchaser is not paying a good faith deposit in connection with the sale;
- (g) There are no interim arrangements with Purchaser;
- (h) There are no agreements regarding the use of sale proceeds;

- (i) The Debtor is not seeking to have the sale declared exempt from recording taxes, stamp taxes, use taxes and other, similar transfer taxes (to the extent applicable) in connection with the sale;
- (j) The Debtor is not selling its books and records as part of the sale;
- (k) The Debtor is not selling avoidance actions as part of the sale;
- (l) The Debtor is seeking a finding that Purchaser is not a successor to it;
- (m) The Debtor is seeking to assume/assign its Philadelphia location only (1601 Market St.) incident to the proposed sale;
- (n) The proposed sale does not involve credit bidding; and
- (o) The Debtor will be seeking relief pursuant to Federal Rule of Bankruptcy Procedure 6004(h).

RELIEF REQUESTED

Sale of Purchased Assets

9. Through this Motion, the Debtor respectfully requests approval of the sale of the Purchased Assets to Purchaser free and clear of all liens, claims, interests and encumbrances pursuant to the Agreement.

10. The Debtor has determined, in its business judgment, that the sale and assignment proposed herein is the most efficient and cost-effective way to liquidate the Purchased Assets, is fair and reasonable, and is in the best interests of the Debtor's estate.

11. Section 363 of the Bankruptcy Code provides that a trustee, "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). Moreover, section 105(a) of the Bankruptcy Code states that "the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a).

12. The sale of a debtor's assets pursuant to section 363 of the Bankruptcy Code is appropriate if a sound business purpose exists for doing so. *See Meyers v. Martin (In re Martin)*,

91 F.3d 389, 395 (3d Cir. 1996); *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

13. In addition to a sound business purpose, the Third Circuit requires that there be adequate and reasonable notice of the sale and a fair and reasonable price or good-faith negotiations with the buyer. See *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 147 (3d Cir. 1986); *In re Tempo Tech. Corp.*, 202 B.R. 363, 367 (D. Del. 1996); *In re Delaware & Hudson Rwy. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

14. The Debtor requests authorization to sell and assign the Purchased Assets to Purchaser free and clear of liens, claims, interests and encumbrances. Section 363(f) of the Bankruptcy Code authorizes a trustee to sell property under section 363(b) “free and clear of any interest in such property of an entity other than the estate” if one of the following conditions is satisfied:

- a. applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- b. such entity consents;
- c. 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;
- d. such interest is in *bona fide* dispute; or
- e. 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).

15. Applicable case law provides that a sale of a debtor’s assets free and clear of all liens, claims, interests and encumbrances is permissible under section 363(f) as long as the liens, claims, interests and encumbrances attach to the net proceeds of the sale. *Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 259 (3d Cir. 2000) (“The holdings of the courts

suggest that any interest in property that can be reduced to a money satisfaction constitutes a claim for purposes of section 363(f) and, therefore, attaches to the proceeds of the sale.”).

16. Pursuant to section 363(f), the Debtor submits that any liens, claims, interests and encumbrances on the Purchased Assets are capable of being satisfied by cash payment. Therefore, the Debtor may sell the Purchased Assets free and clear of all liens, claims, interests and encumbrances, with such liens, claims, encumbrances and interests, if any, attaching to the proceeds of the Sale.

Assumption of Unexpired Lease

17. In addition to those procedures set forth above, the Debtor is also seeking to assume and assign the lease associated with the Debtor’s Philadelphia location (the “Philadelphia Lease”). The Debtor believes that it does not owe PA-1601 Market Street Limited Partnership (“the Philadelphia landlord”) any monies in connection with the Philadelphia Lease and, accordingly, believes that the cure amount thereunder is \$0. The Debtor (through Purchaser) will provide counsel to the Philadelphia landlord with information related to Purchaser’s ability to perform under the lease within one (1) week of the filing of this Motion. The Debtor proposes that the Philadelphia landlord may subsequently file any response/objection to the Motion and/or the proposed “cure” amount/adequate assurance on or prior to the objection deadline with respect to the Motion. The hearing on the “cure” amount may be continued until after the Closing Date (as that term is defined in the APA).

18. The Debtor also requests authorization from this Court, upon the entry of an Order approving this Motion, for the Debtor to execute such documents necessary and appropriate to complete the sale and the assignment of the Purchased Assets to Purchaser.

Waiver of Rule 6004(h) Fourteen-Day Stay

19. Finally, the Debtor requests that the Court waive the fourteen-(14) day stay provided by Federal Rule of Bankruptcy Procedure 6004(h) (“Rule 6004(h)”). Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen (14) days after the entry of an order, unless the court orders otherwise.” The Debtor requests that this Court waive the fourteen-day stay under Bankruptcy Rule 6004(h) so that the Debtor may consummate the sale immediately. The Advisory Committee notes on Rule 6004(h) expressly state that “[t]he court may, in its discretion, order that Rule 6004(h) is not applicable so that the property may be used, sold or leased immediately. . . .” Advisory Committee Notes to Bankruptcy Rule 6004(h). In this instance, there is no benefit or need to stay the order authorizing the sale for fourteen days.

NOTICE

20. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of Delaware, (ii) the Debtor’s twenty (20) largest unsecured creditors, as listed in connection with its bankruptcy petition; (iii) Purchaser, (iv) the Philadelphia landlord, and (v) all other parties who have requested notice pursuant to Federal Rule of Bankruptcy Procedure 2002, in accordance with Del. Bankr. L.R. 2002-1(b). The Debtor submits that such notice is sufficient.

WHEREFORE, the Debtor requests that the Court enter an order, substantially in the form attached hereto, (i) authorizing the Debtor to enter into the Agreement with Purchaser, as well as any and all other documents necessary to effectuate the sale of the Purchased Assets to Purchaser, and (ii) granting such other relief as is just and proper.

Dated: November 9, 2018
Wilmington, Delaware

CIARDI CIARDI & ASTIN

/s/ Joseph J. McMahon, Jr.
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-and-

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*Attorneys for the Debtor and
Debtor in Possession*

EXHIBIT A

ASSET PURCHASE AGREEMENT

This Agreement is made this ___ day of November 2018 (the “Effective Date”), by and between Noon Mediterranean, Inc. (the “Seller”) and NAYA Express V Philly, LLC (hereinafter the “Buyer”).

RECITALS

WHEREAS, Noon Mediterranean, Inc. filed a voluntary petition under Chapter 11, Title 11, United States Code, as amended (the “Bankruptcy Code”) on August 6, 2018 (the “Petition Date”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case Number 18-11814 (the “Bankruptcy Case”); and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, free and clear of all liens, claims and encumbrances, the Acquired Assets (as hereinafter defined), in accordance with Sections 105(a), 363 and other applicable provisions of the Bankruptcy Code and pursuant to authorization to be granted by the Bankruptcy Court (the “Sale”), as provided in a sale order (the “Sale Order”).

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual representations, warranties, covenants and promises contained herein, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Subject to the terms and conditions of this Agreement and the Sale Order, at the Closing (as defined herein) Buyer shall purchase and Seller shall sell all right, title and interest of the Seller in and to the Acquired Assets free and clear of all liens, encumbrances, claims, security interests and the like. “Acquired Assets” shall mean:

- (a) Lease for Debtor’s location at 1601 Market (Phila. Location);
- (b) All restaurant furniture, fixtures and equipment (“FF&E”) and inventory and restaurant supplies remaining in the Phila Location.

Provided all conditions contained in Section 6 hereof have been met, title to all of the Acquired Assets shall pass to Buyer upon the closing of the transaction (the “Closing”), which must occur on or before December 15, 2018 (the “Closing Date). As such, time is of the essence to the Closing on the transactions contemplated by this Agreement.

2. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT, THE ACQUIRED ASSETS ARE BEING SOLD AND TRANSFERRED TO BUYER “AS IS, WHERE IS”, AND SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATED TO THE ACQUIRED ASSETS. WITHOUT LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ACQUIRED ASSETS. BUYER FURTHER ACKNOWLEDGES THAT BUYER SHALL CONDUCT AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE ACQUIRED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND

WARRANTIES SET FORTH IN THIS AGREEMENT, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. NOTWITHSTANDING, SELLER REPRESENTS THAT ALL CHARGES UNDER THE LEASE HAVE BEEN PAID IN FULL THROUGH OCTOBER 31, 2018 AND THROUGH CLOSING AND THAT LANDLORD HOLDS SECURITY IN THE AMOUNT OF \$71,786.28 WHICH HAS NOT BEEN APPLIED AS OF OCTOBER 31, 2018.

3. Seller shall be liable for all undefined debts, liabilities and obligations relating to the Acquired Assets that arise before the Closing Date and Buyer shall be liable for all debts, liabilities and obligations relating to the Acquired Assets after the Closing Date. Buyer will not assume any debts, liabilities or obligations of Seller except as otherwise described herein.

4. Seller retain all Bankruptcy Code Chapter 5 causes of action.

5. Consideration for the purchase of the acquired assets shall be \$50,000 cash plus November rent and rent through December 15, 2018.

6. The asset purchase and sale contemplated by this Agreement is expressly subject to each of the following conditions:

- (a) The execution and delivery of a signed copy of this Agreement by Buyer and Seller.
- (b) Compliance with all terms and conditions contained herein and entry of the Sale Order by the Bankruptcy Court.
- (c) The Sale Order shall be final order ("Final Order"), meaning the time to appeal or to seek review or certiorari of the Sale Order has expired, and no appeal, review or rehearing is pending.
- (d) Delivery of all required documents set forth in Section 8.
- (e) No finders' fee, broker or other fee shall be payable by Buyer.
- (f) The security posted with Landlord shall be \$71,786.28 at closing.

7. In the event that Seller cannot transfer all of the Acquired Assets or a substantial portion thereof, or the benefit of all or a substantial portion of the Acquired Assets on the Closing Date, for any reason, this Agreement shall terminate ab initio, upon written notice from Buyer to Seller. Buyer has the option of agreeing to an extension of time to Close, said agreement to be conveyed to Seller in writing.

8. At Closing, Seller shall deliver to Buyer: (1) a Bill of Sale, (2) Assignments of Contracts and Leases, and (3) a Bankruptcy Court Order approving this Agreement.

9. Seller represents and warrants to Buyer as follows:

- (a) Subject to the entry of the Sale Order, Seller has full power and

authority to enter into and perform this Agreement.

- (b) Subject to the entry of the Sale Order, the execution and performance of this Agreement by Seller will not (i) result in a material breach of, or constitute a material default under, any order, judgment, or decree or any agreement or other instrument to which Seller is a party or by which Seller or any of the Acquired Assets may be bound or (ii) constitute a violation of any law or regulation the enforcement of which would have a material adverse effect on Seller's ability to perform its obligations under this Agreement. The execution and performance of this Agreement by Seller have been duly authorized by all necessary actions of Seller and this Agreement constitutes the valid and binding obligation of Seller enforceable against it in accordance with its terms.
 - (c) Except for the Bankruptcy Case and the claims asserted against Seller therein, there are no judicial or administrative actions, proceedings, or investigations pending or, to the knowledge of Seller, threatened that question the validity of this Agreement or any action taken or to be taken by Seller in connection with this Agreement that, if adversely determined, would have a material adverse effect on Seller's ability to perform its obligations under this Agreement. Seller is not a party to, and, to Seller's knowledge, is not threatened with, any legal action or other proceeding before any court or administrative agency against or by Seller or directly affecting or directly relating to its business or any of the Acquired Assets, that would reasonably be expected to have a material adverse effect on Seller's ability to perform its obligations under this Agreement.
 - (d) Seller has, or will have upon the Sale Order becoming a Final Order, the unrestricted power and right to sell, assign and deliver (subject to laws and regulations regarding the transfer of title in each jurisdiction where such property is located) marketable title to all Acquired Assets free and clear of all claims, liens, and encumbrances of whatever nature. Subject to the Sale Order, at the Closing, Buyer will obtain good and marketable title to the Acquired Assets free and clear of all claims, liens, and encumbrances of whatever nature. The property included in the Acquired Assets will be sold to the Buyer at the Closing in its "as is" "where is" condition. Subject to the Sale Order, each contract included in the Acquired Assets is transferable and assignable to Buyer pursuant to the transactions contemplated by this Agreement.
10. Buyer represents to Seller that:
- (a) Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Pennsylvania. Buyer has full power and authority to enter into and perform this Agreement.
 - (b) The execution and performance of this Agreement by Buyer will not (i) result in a material breach of, or constitute a material default under, any

order, judgment, or decree or any agreement or other instrument to which Buyer is a party or by which Buyer may be bound or (ii) constitute a violation of any law or regulation the enforcement of which would have a material adverse effect on Buyer's ability to perform its obligations under this Agreement. The execution and performance of this Agreement by Buyer has been duly authorized by all necessary corporate action of Buyer and this Agreement constitutes the valid and binding obligation of Buyer enforceable against in accordance with its terms.

- (c) No consent, approval or authorization of, or designation, declaration, or filing with, any governmental authority is required on the part of the Buyer in connection with the execution, delivery, and performance under this Agreement.
- (d) There are no judicial or administrative actions, proceedings, or investigations pending or threatened that question the validity of this Agreement or any action taken or to be taken by Buyer in connection with this Agreement that, if adversely determined, would have a material adverse effect on Buyer's ability to perform its obligations under this Agreement.
- (e) Buyer shall use its reasonable best efforts to participate in the Sale Hearing and provide a witness and financial records sufficient to demonstrate adequate assurance of future performance to the Court.

11. Bankruptcy

- (a) Seller shall use its reasonable best efforts to obtain entry by the Bankruptcy Court of a Sale Order prior to Closing
- (b) The Sale Order shall include provisions to (i) permit the sale of the Acquired Assets to Buyer free and clear of all liens, claims and encumbrances pursuant to the terms of this Agreement and Section 363(b) of the Bankruptcy Code; (ii) include a finding of Buyer's good faith and provide for finality of the Sale Order under Section 363(m) of the Bankruptcy Code and applicable law and a waiver of the stays set forth in Bankruptcy Rules 6004(g) and 6006(d); (iii) provide that Buyer shall not be subject to (A) any successor liability and shall have no liability or suffer any damages for any liens, claims and encumbrances existing prior to the Closing Date which may be asserted against Seller, the Acquired Assets, or Seller's bankruptcy estate or (B) any claims as successor to the Acquired Assets; (iv) provide for the retention of jurisdiction by the Bankruptcy Court to resolve any and all disputes that may arise under or relate to this Agreement or the Sale Order, whether between Seller and Buyer or involving a person in interest in the Bankruptcy Case; and (v) contain findings of fact and conclusions of law which include the following: (A) the transactions under this Agreement were negotiated and entered into in good faith and at arms-length; (B) the marketing and sale process conducted by Seller are bona fide and adequate; (C) Seller gave due and proper notice and an opportunity to be heard to all interested parties, of this Agreement and the transaction; (D)

Buyer is not holding itself out to the public as a continuation of Seller; (E) the consideration to be paid by Buyer under this Agreement constitutes reasonably equivalent value (as that term is defined in each of the Uniform Fraudulent Transfer Act and Section 548 of the Bankruptcy Code) and fair consideration for the Acquired Assets; (F) neither Buyer nor Seller is entering into the transactions contemplated by this Agreement fraudulently; (G) Seller has provided adequate assurances (as defined in Section 365 of the Bankruptcy Code) to all parties to the executory contracts which are to be assigned on the Closing Date; and (H) all defaults under the contracts which are to be assigned on the Closing Date are deemed cured.

- (c) Subject to the Sale Order, Seller and Buyer shall use reasonable best efforts to make any reasonable filings, take all reasonable actions, and to obtain any and all other approvals and orders necessary or appropriate for consummation of the transaction contemplated by this Agreement.
- (d) In the event an appeal is taken, or a stay pending appeal is requested or reconsideration is sought, from the Sale Order, Seller shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer within one (1) business day a copy of the related notice of appeal or order of stay or application for reconsideration. Seller shall also provide Buyer with written notice (and copies) of, any other or further notice of appeal, motion or application filed in connection with any appeal from or application for reconsideration of, either of such orders and any related briefs.
- (e) Seller shall promptly notify Buyer in writing and, as is required by the Bankruptcy Code, all parties entitled to notice pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and orders of the Bankruptcy Court of all motions, notices and orders required to consummate the transactions contemplated by this Agreement, including the Sale Order, as modified by orders in respect of notice which may be issued at any time and from time to time by the Bankruptcy Court or any other court.

12. All notices required or permitted to be given by any party shall be in writing and shall be deemed to have been properly given if sent by registered or certified mail, or by recognized overnight courier service (the "Courier Service"), postage prepaid, to the parties at the addresses set forth below or to such other address as any party may from time to time give notice pursuant to this section. All notices shall be deemed received when delivered but in no event later than five (5) business days after they are deposited with either the United States Postal Service or the Courier Service, whichever shall first occur. Notice shall be given at the following addresses:

To Buyer:

c/o Cox Padmore Skolnik & Shakarchy LLP
630 Third Avenue
New York, New York 10017

Attention: Jacob S. Shakarchy, Esq.
Email: Shakarchy@cpslaw.com

And

To Seller:

Noon Mediterranean, Inc.
Stefan Boyd, CEO
1412 Broadway, 21st Floor
New York, New York 10018
Email: Stefan.boyd@eatnoon.com

With a copy to:

Albert A. Ciardi, III
Ciardi Ciardi & Astin
One Commerce Square
2005 Market Street, Suite 3500
Philadelphia, PA 19103
Email: Aciardi@ciardilaw.com

13. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Signed copies of this Agreement delivered electronically (e.g., fax, email, PDF), shall have the same force and effect as original signatures.

14. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, if any, with respect to the matters covered hereby. This Agreement may not be changed, modified or amended except by writing signed by each party hereto. Except as to subsidiaries and successors of any party to this Agreement, this Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding upon and inure to the benefit of the successors, subsidiaries, affiliates and permitted assigns of the parties. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania and the Bankruptcy Court shall retain jurisdiction over this Agreement.

[SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first written above.

SELLER:
NOON MEDITERRANEAN, INC.

WITNESS/ATTEST:

By: _____ (SEAL)

WITNESS/ATTEST:

BUYER:
NAYA EXPRESS V PHILLY, LLC

By: _____ (SEAL)


Name: HADY KFOURY
Title: PRESIDENT

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first written above.

SELLER:
NOON MEDITERRANEAN, INC.

WITNESS/ATTEST:

By: _____ (SEAL)


Stefan Boyd, CEO

BUYER:
NAYA EXPRESS V PHILLY, LLC

WITNESS/ATTEST:

By: _____ (SEAL)

Name:
Title:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NOON MEDITERRANEAN, INC.,¹

Debtor.

Chapter 11

Case No. 18-11814 (BLS)

Re: D.I. _____

ORDER APPROVING MOTION OF NOON MEDITERRANEAN, INC., DEBTOR AND DEBTOR IN POSSESSION, (I) FOR AUTHORITY TO THE DEBTOR'S PHILADELPHIA LOCATION, FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, SUBJECT TO HIGHER AND BETTER OFFERS, (II) TO APPROVE THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE; AND (III) FOR A WAIVER OF THE STAY APPLICABLE TO SUCH AUTHORIZATION

Before the Court is the motion (the "Motion")² of Noon Mediterranean, Inc., debtor and debtor in possession (the "Debtor"), (i) for authority to sell the Debtor's Philadelphia location, free and clear of liens, claims and encumbrances to NAYA Express V Philly, LLC ("Purchaser"), subject to higher and better offers, (ii) to approve the assumption and assignment of an unexpired lease; and (iii) for a waiver of the stay applicable to such authorization; and the Court having found that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notice of the Motion was sufficient under the circumstances; and the Court further determining that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY FOUND, CONCLUDED AND DETERMINED THAT:

¹ The Debtor in this chapter 11 case and the last four digits of the Debtor's U.S. tax identification number are: Noon Mediterranean, Inc. (f/k/a Verts Mediterranean Grill, Inc.; f/k/a Verts Kebap, Inc.; f/k/a DMS Foods, Inc.) (-5849). At the time it filed its bankruptcy petition, the Debtor's corporate headquarters was located at: Workville – Noon Mediterranean, 1412 Broadway, 21st Floor, New York, NY 10018.

² Capitalized terms otherwise not defined herein are defined in the Motion.

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law. To the extent that any finding of fact shall later be determined to be a conclusion of law it shall be so deemed and vice versa.

B. This Court has jurisdiction to hear and determine the Motion and all related matters pursuant to 28 U.S.C. §§ 1334 and 157.

C. Venue of this proceeding in this district is proper pursuant to 28 U.S.C. § 1409.

D. The Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

E. Proper, timely, and sufficient notice of the Motion was provided pursuant to Bankruptcy Rules 2002, 6004 and 6006. No other or further notice of the Motion or the entry of this Order is necessary. A reasonable opportunity to object, respond, or to otherwise be heard regarding the relief requested in the Motion has been afforded to all interested parties.

F. The Debtor has determined in the exercise of its business judgment, to (i) sell all of its right, title, and interest in and to the Purchased Assets upon the terms and conditions set forth herein and in the Offer; and (ii) assume and assign the Philadelphia Lease to the Purchaser pursuant to section 365(a) of the Bankruptcy Code.

G. The terms and conditions of the Offer are fair and reasonable and a proper exercise of the Debtor's business judgment.

H. The consideration to be paid by the Purchaser constitutes adequate and fair consideration and the Offer was negotiated, proposed and entered into in good faith, and from arm's length bargaining positions, by the Debtor and the Purchaser.

I. There are no defaults under the Philadelphia Lease and, accordingly, there is no "cure" amount due to the Philadelphia landlord.

J. The Purchaser has provided adequate assurance of future performance under the Philadelphia Lease pursuant to section 365(f) of the Bankruptcy Code.

K. The Purchaser's proposed use of the Premises is not prohibited under the Lease.

L. The relief requested in the Motion is reasonable and in the best interests of the Debtor's estate and creditors.

M. The provisions of sections 363(b), 363(m), and 363(p) of the Bankruptcy Code have been complied with and are applicable as to the Purchased Assets.

N. Consummation of the sale of the Purchased Assets and the assumption and assignment of the Philadelphia Lease as contemplated herein and in the Offer is in the best interests of the Debtor, its estate, creditors, equity security holders, and other parties in interest.

O. The sale of the Purchased Assets is properly authorized under all applicable provisions of the Bankruptcy Code, including without limitation, sections 105 and 363 of the Bankruptcy Code.

P. There are no recorded liens against the Purchased Assets.

Q. The sale, conveyance, and assignment of the Purchased Assets shall be free and clear of all liens, claims, encumbrances (if any), with all such liens, claims and encumbrances to attach to the proceeds of sale of the Purchased Assets, and holders thereof shall be permanently enjoined from asserting such claims, liens and encumbrances against the Purchased Assets and shall look solely to the proceeds of sale.

R. The Purchaser is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code and entitled to the protections thereunder. Neither the Debtor nor the Purchaser have engaged in any conduct that would cause or permit the Agreement or any transfers,

assignments, or conveyances hereunder or thereunder to be avoided under section 363(n) of the Bankruptcy Code.

S. The sale of the Assets has been conducted in good faith and in accordance with the procedures and requirements of the Bankruptcy Code and the Bankruptcy Rules.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Motion be, and the same hereby is, granted.
2. The terms and conditions of the Agreement be, and they hereby are, approved, and the Debtor be, and it hereby is, authorized, without any further corporate authorization, to (a) execute and deliver any and all documents and to do any and all things necessary to effectuate the Agreement and the purposes of the Agreement, and (b) transfer the Purchased Assets to the Purchaser.
3. Pursuant to section 363(f) of the Bankruptcy Code, as of the closing of the transactions contemplated by the Offer (the "Closing"), the Purchased Assets will be deemed to be sold to the Purchaser free and clear of all liens, claims, and encumbrances, with all such liens, claims and encumbrances to attach to the proceeds of sale of the Assets, and holders thereof shall be permanently enjoined from asserting such claims, liens and encumbrances against the Assets and shall look solely to the proceeds of sale.
4. The Purchaser's proposed use of the Premises is not prohibited under the Lease.
5. The Debtor is hereby authorized and directed in accordance with section 365 of the Bankruptcy Code to (a) assume and assign to the Purchaser, effective upon the Closing, the Philadelphia Lease pursuant to the provisions of section 365 of the Bankruptcy Code, free and clear of all liens, claims and encumbrances, and (b) execute and deliver to the Purchaser such

documents or other instruments as may be necessary to assign and transfer the Philadelphia Lease to the Purchaser.

7. Except as otherwise agreed by the Purchaser in the Agreement, the Purchaser shall have no liability or obligation arising or accruing prior to the Closing under the Philadelphia Lease. The Philadelphia landlord shall be, and hereby is, barred, estopped and permanently enjoined from asserting against the Purchaser, its property or the Assets, any default under the Philadelphia Lease which arose or accrued prior to the Closing or seeking to enforce or collect any money on account of any default thereon which arose or accrued prior to the Closing, whether by way of affirmative claim, counterclaim, defense, setoff or otherwise.

8. The assumption and assignment to the Purchaser, of the Philadelphia Lease, as provided in the Offer, constitutes adequate assurance of future performance thereunder consistent with section 365 of the Bankruptcy Code.

9. The Philadelphia Lease shall, upon assignment to the Purchaser, be valid, binding and in full force and effect and enforceable by the Purchaser in accordance with its terms, notwithstanding any provision contained in the Philadelphia Lease (including those of the type described in section 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such transfer and, pursuant to section 365(k) of the Bankruptcy Code, (a) the Debtor shall be relieved from any further liability with respect to the Lease after such assignment, and (b) the Philadelphia landlord shall be, and hereby is, barred, estopped and permanently enjoined from asserting any prior default thereon against the Debtor.

10. The Purchaser is a purchaser of the Purchased Assets in good faith as determined in accordance with applicable law, including without limitation, section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

11. The Debtor and the Purchaser shall cooperate in good faith to negotiate and execute the documents and take other steps necessary to close the transactions contemplated hereby, including negotiating in good faith regarding all documents, deliveries or other items required as conditions to closing under the Agreement.

12. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

13. This Court shall retain jurisdiction (a) to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers, and consents thereunder, and each of the agreements executed in connection therewith, (b) to compel delivery of the Purchased Assets to the Purchaser, (c) to enforce the assumption and assignment of the Philadelphia Lease, (d) to resolve any disputes arising under or related to the Agreement and (e) to interpret, implement and enforce the provisions of this Agreement.

14. The stay imposed by Interim Bankruptcy Rule 6004(g) and Bankruptcy Rule 6006(d) shall not be operative or effective and this Order shall not be stayed for 10 days after entry and shall be effective and enforceable immediately upon entry.

Dated: November ____, 2018
Wilmington, Delaware

BY THE COURT:

The Honorable Brendan L. Shannon
United States Bankruptcy Judge