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**COUNSEL FOR DEBTOR
AND DEBTOR IN POSSESSION**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: §
§ **CASE NO. 16-34118-11**
SIGEL’S BEVERAGES, L.P. §
§ **CHAPTER 11**
Debtor. §
§

**DEBTOR’S MOTION TO (I) APPROVE ASSET PURCHASE AGREEMENT,
(II) AUTHORIZE THE SALE OF THE DEBTOR’S ASSETS FREE AND CLEAR
OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (III) AUTHORIZE
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANT FURTHER RELIEF**

TO THE HONORABLE BARBARA J. HOUSER,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Sigel’s Beverages, L.P. (“**Sigel’s**” or the “**Debtor**”), debtor and debtor-in-possession in the above-captioned chapter 11 case, hereby file this Motion to (I) Approve Asset Purchase Agreement, (II) Authorize the Sale of the Debtor’s Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (III) Authorize the Assumption and Assignment of Certain

Executory Contracts and Unexpired Leases, and (IV) Grant Further Relief (the “**Motion**”), and respectfully represents as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). This matter is a core proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory authorities for the relief requested herein are Sections 105(a) and 363(b) of the Bankruptcy Code.¹

II. BACKGROUND

A. The Debtor.

3. On October 20, 2016 (the “**Petition Date**”), the Debtor filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed.

4. The Debtor is a 111-year-old distributor and wholesaler of fine wines and spirits. As of the Petition Date, the Debtor is one of the largest local distributors of alcohol in the Dallas Fort Worth Metroplex. In addition to its Wholesale Division, the Debtor also operates ten (10) retail store locations in the Metroplex.

5. Due in part to the outcomes of local elections where municipalities elected to become wet or damp, the Debtor has seen once profitable locations strategically located near wet-dry

¹ 11 U.S.C. §§ 101 *et. seq.*

boundaries become unprofitable. The increased competition that came with the results of the municipal elections have also had an effect on the Debtor's cash flow and profitability.

6. During the pendency of its bankruptcy case, the Debtor has taken steps to enhance the profitability of its retail operations. Along with its other first day motions, the Debtor filed its Motion to Reject Leases (the "**Motion to Reject**") [Docket No. 19], and on December 23, 2016, the Court entered an agreed order granting the Motion to Reject and setting the effective date of rejection for the leases addressed in the Motion to Reject (the "**Rejection Order**") [Docket No. 79]. The Debtor has assumed the leases on its remaining stores save and except for the leases related to Stores 9, 11, and 12 held by United Legacy Ltd., The Florida Company, and Mobile City Limited Partnership, respectively. *See* Order Granting Motion to Assume Unexpired Non-Residential Real Property Leases (the "**Lease Assumption Order**") [Docket No. 174]. *See also* Agreed Orders Extending Deadline to Assume or Reject Leases [Docket Nos. 176, 182, 183 & 199].

B. The Proposed Sale.

7. Sigel's has marketed its assets and operations for sale throughout its case with the assistance of its counsel and its financial advisor. During the course of its case, Sigel's has executed non-disclosure agreements and has engaged in substantive discussions and negotiations regarding a potential sale with at least two strategic purchasers. Additionally, Sigel's executed non-disclosure agreements and engaged in discussions and negotiations regarding a potential sale with a number of financial purchasers.

8. Beginning in mid-April 2017, Sigel's has engaged in discussions and negotiations with representatives of Retail Plazas, Inc. concerning a sale of Sigel's operating assets. Those

negotiations have resulted in the Asset Purchase Agreement (the “APA”) between Sigel’s as Seller and Sigel’s Acquisition, LLC as purchaser (the “Purchaser”), a true and correct copy of which is attached hereto as **Exhibit A** without the supporting exhibits or schedules, which are being withheld for proprietary and/or confidentiality reasons.²

9. The APA provides for the purchase of substantially all of Sigel’s assets, including its real property assets, business personal property, inventory, intellectual property, cash and cash equivalents and goodwill, pursuant to a section 363 sale for the purchase price of \$13.1 Million. Purchaser will assume the unexpired real property leases, equipment leases, and executory contracts identified below and will continue Sigel’s retail and wholesale operations under the Sigel’s brand name. Purchaser will also acquire Sigel’s interests in any and all Chapter 5 causes of action.

10. The APA contemplates that lienholders secured in property to be sold will be paid at closing from sale proceeds and/or Debtor’s cash collateral, including the payment of all Dallas County ad valorem tax claims secured by the Debtor’s real property, the mortgage lien in favor of PNC Bank National Association secured by the Debtor’s headquarters and warehouse located at 2960 Anode Lane, and the UCC lien in favor of PNC Bank National Association secured by the Debtor’s inventory, accounts receivable, and furniture.

11. Additionally, the APA contemplates that the trade vendors identified in the attached **Exhibit B**, representing holders of Section 503(b)(9) administrative expense claims, will be paid at closing pursuant to agreed stipulations to be presented to the Court, along with all other allowed

² The Debtor will make copies of the supporting exhibits and schedules available at the hearing on the Sale Motion. The substance of the supporting exhibits and schedules that identifies the assets of the estate that are being sold to the Purchaser as well as the executory contracts and unexpired leases that the Purchaser is assuming pursuant to the APA is described in this Sale Motion.

administrative expense claims and the agreed settlement amount between the Debtor and the Thompson entities, which is being presented separately to this Court in a motion pursuant to Bankruptcy Rule 9019. The Debtor seeks authority to pay all other claims of the estate, which are nominal after satisfaction of other claims addressed by the APA, as allowed and approved by the Court. The Debtor will reserve the remainder of the net sale proceeds in the estate for payment of administrative claims that may be allowed after closing pursuant to further orders of this Court.

IV. ASSETS TO BE SOLD

12. As more fully described in the APA, Sigel's seeks authority to sell the following assets, collectively referred to herein as the "Sigel's Assets", free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against in accordance with section 363 of the Bankruptcy Code:

- (a) All accounts receivable and prepaid expenses;
- (b) All assigned contracts and assigned personal property leases, as more fully identified in **Exhibit C**;
- (c) All real property interests, including its headquarters location at 2960 Anode Lane;
- (d) All leasehold interests and improvements in the assigned unexpired real property leases, as more fully identified in **Exhibit C**;
- (e) All tangible personal property, including business personal property and wine, beer, and spirits inventory;
- (f) All intellectual property rights;
- (g) All rights and incidents in and to all licenses, permits, franchises, authorizations, orders, registrations, certificates, variances, approvals, and similar rights issued by any domestic or foreign government or regulatory body;
- (h) Books and records related to the business or Sigel's Assets;

- (i) All rights and interest in and to the Sigel's name;
- (j) All claims, causes of action, and other similar rights and credits relating to the business or Sigel's Assets, including any and all Chapter 5 causes of action;
- (k) All refunds, credits, and rebates of taxes for any period or portion thereof prior to the closing date;
- (l) All goodwill and other intangible assets related to the Sigel's assets or business;
- (m) All rights of Seller under non-disclosure, confidentiality, or other similar agreements entered into with third persons in connection with the sale of the business or any part of the business;
- (n) All post-petition adequate assurance deposits provided to utilities and all deposits provided to suppliers or service providers to Sigel's on a pre-petition basis;
- (o) Employee benefit plans, pension, or profit sharing plans and trusts and the assets thereof;
- (p) All cash and cash equivalents of the business; and
- (q) All wine futures and *En Primeur* owned or held by Sigel's.

13. The Sigel's Assets do not include:

- (a) Inventory that has been sold, transferred, consumed, or otherwise disposed by Sigel's prior to closing in the ordinary course of business;
- (b) Contracts that have terminated or expired prior to closing in the ordinary course of business;
- (c) Sigel's corporate seal, minute books, charter documents, stock ledgers and other such books and records relating to Sigel's corporate organization;
- (d) Right, title, and interest in any identified excluded contracts or excluded leases; and
- (e) Sigel's rights under the APA.

14. The Purchaser will assume liability to pay any cure amounts required for the assumption and/or assignment of the purchased real property leases, personal property leases, and executory contracts. The Purchaser reserves the right and requests Court authority to transfer any of the purchased contracts or leases to its affiliated entities as it may deem necessary.

V. ARGUMENT AND AUTHORITY

A. Sale of the Sigel's Assets Pursuant to Sections 105(a) and 363 of the Bankruptcy Code is Warranted.

15. Section 363 provides that, after notice and a hearing, the debtor in possession “may use, sell, lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1); *see also* Fed. R. Bankr. P. 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”).

16. Further, Section 105(a) of the Bankruptcy Code, which provides bankruptcy courts with broad powers, states: “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” *See* 11 U.S.C. § 105(a); *see, e.g. Davis v. Davis (In re Davis)*, 170 F.3d 475, 492 (5th Cir. 1999) (using Section 105(a) to allow a federal court to enforce a final judgment rendered by a bankruptcy court); *In re CoServ, L.L.C.*, 273 B.R. 487, 494 n.9 (Bankr. N.D. Tex. 2002) (using Section 105(a) to approve payment of prepetition claims if necessary to performance of the debtor’s fiduciary duty); *Southmark Corp. v. Southmark Personal Storage, Inc.*, 113 B.R. 280, 281 (Bankr. N.D. Tex. 1990) (using Section 105(a) to allow court-appointed examiner to employ professionals to assist in investigation).

17. In order to sell assets outside of the ordinary course of business, a debtor must demonstrate that it is sound business judgment. *See e.g. In re Cont'l Air Lines, Inc.*, 762 F.2d 1303, 1311 (5th Cir. 1985); *In re Property Co. of Am. Joint Venture*, 110 B.R. 244, 247 (Bankr. N.D.

Tex. 1990); *In re Quality Beverage Co.*, 181 B.R. 887, 895 (Bankr. S.D. Tex. 1995). In this case, the proposed sale of the Sigel's Assets represents the highest and best use of the assets of the estate in order to provide the highest return to unsecured creditors.

B. The Sale Should be Approved Free and Clear of Liens, Claims, Interests and Encumbrances.

18. Section 363(f) of the Bankruptcy Code clearly provides for the sale of property free and clear of any interest in such property. Specifically, Section 363(f) provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if:

- (1) Applicable nonbankruptcy law permits sale of such property free and clear of such interests;
- (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); *see also In re Collins*, 180 BR. 447, 449-50 (Bankr. E.D. Va. 1995)(“Section 363(f) is phrased in the disjunctive, such that only one of the enumerated conditions must be met in order for the court to approve the proposed sale.”); *In re P.K.R. Convalescent Ctrs., Inc.*, 189 B.R. 90, 93-94 (Bankr. E.D. Va. 1995); *In re Gen. Bearing Corp.*, 136 B.R. 361, 366 (Bankr. S.D.N.Y. 1992)(listing requirements).

19. The proposed sale satisfies the conditions set forth in section 363(f)(3) with respect to any party asserting a lien, claim, or encumbrance against the Sigel's Assets since the sale price is an amount well in excess of the aggregate value of all liens against the Sigel's Assets.

C. Purchaser Should be Afforded All Protections Under Section 363(m) as a Good Faith Purchaser.

20. Section 363(m) of the Bankruptcy Code protects the sale of a debtor's property to a good faith purchaser. More specifically, Section 363(m) states:

The reversal or modification of appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m)

21. The sale proposed herein is in good faith, and the Purchaser is proceeding in good faith. Therefore, Sigel's requests a finding that the Purchaser is a good-faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code.

D. The Assumption and Assignment of Executory Contracts and Leases is Justified Pursuant to Section 365.

22. Section 365 of the Bankruptcy Code allows a debtor to assume or reject executory contracts or unexpired leases of the debtor. *See* 11 U.S.C. § 365(a). Although the Bankruptcy Code does not expressly state the standards for courts to apply in determining whether to approve a debtor's decision to assume or reject an executory contract or unexpired lease, it is well-established that the decision is generally a matter within the debtor's "business judgment." *See In re Taylor*, 913 F.2d 102, 107 (3d Cir. 1990); *Sharon Steel Corn v. Nat'l Fuel Gas Distrib. Corn.*, 872 F.2d 36, 39 (3d Cir. 1989). Thus, a court should approve an assumption or rejection of an executory

contract where the assumption or rejection would benefit the estate. *See Sharon Steel*, 872 F.2d at 40. Courts in this district have previously discussed the deference given to debtors under the business judgment test:

The court is expected to defer to management's views in applying the business judgment test. *See Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1046 (4th Cir.1985); *Polin v. Conductron Corp.*, 552 F.2d 797, 809 (8th Cir.1977). Only if a proposed transaction—here disposition of a contract—does not serve business purposes may the court substitute its judgment for that of management. *In re Richmond Metal Finishers, Inc.*, 756 F.2d at 1047 (“[C]ourts should defer to—should not interfere with—decisions of corporate directors upon matters entrusted to their business judgment except upon a finding of bad faith or gross abuse of their ‘business discretion.’ ”); *Computer Sales Int’l, Inc. v. Fed. Mogul Global, Inc. (In re Fed. Mogul Global, Inc.)*, 293 B.R. 124, 126 (D.Del.2003) (“As [the business judgment test is] applied in the Third Circuit, a court should approve a debtor's use of assets outside the ordinary course of business if the debtor can demonstrate a sound business justification for the proposed transaction.”) (citing *In re Martin*, 91 F.3d 389, 396 (3d Cir.1996) (in turn citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir.1991))).

In re Mirant Corp., 348 B.R. 725, 744 (Bankr. N.D. Tex. 2006).

23. Section 365 of the Bankruptcy Code also provides:

The trustee may assign an executory contract or unexpired lease of the debtor only if –

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 .S.C. § 365(f)(2).

24. The Purchaser intends to assume Debtor’s unexpired real property leases, personal property leases, and executory contracts identified in the attached **Exhibit C**. Specifically, the Debtor requests authority to assume and assign the following unexpired real property leases: (i)

DEBTOR’S MOTION TO (I) APPROVE ASSET PURCHASE AGREEMENT, (II) AUTHORIZE THE SALE OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (III) AUTHORIZE THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANT FURTHER RELIEF - Page 10 of 13

Store #9 lease with United Legacy Ltd., (ii) Store #11 lease with The Florida Company, and (iii) Store #12 lease with Mobile City Limited Partnership. Additionally, the Debtor intends to assign its rights and interests in the leases assumed pursuant to the Lease Assumption Order to the Purchaser, with the exception of the lease for Store #13. Finally, the Debtor intends to assume and assign its rights and interests in the unexpired personal property leases and executory contracts identified in **Exhibit C** attached hereto.

25. The Debtor does not anticipate there to be any cure costs associated with the proposed assumption and assignment. To the extent necessary, however, the APA provides that the Purchaser will assume liability to pay any cure amounts required to be satisfied for the assumption and assignment of the contracts and leases identified in **Exhibit C**. The Purchaser reserves the right and requests Court authority to transfer any of the purchased contracts or leases to its affiliated entities as it may deem necessary.

26. Courts have found that “adequate assurance of future performance” in the context of an assumption of an executory contract or lease requires an analysis of the facts and circumstances of each case, and should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrar (In re Carlisle Homes, Inc.)*, 103 BR. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985)(finding that adequate assurance of future performance does not mean absolute assurance of future performance); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). The Potential Buyer is a highly successful company with a long track-record of success. If necessary, the Potential Buyer or Successful Bidder will demonstrate that it has the financial wherewithal to perform under any executory contract or lease assumed pursuant to this Motion.

VI. WAIVER OF 14-DAY STAY

27. The parties intend to close the sale as soon as practicable after the entry of the final order approving this Motion. The purpose of the 14-day stay period is to provide sufficient time for an objection party to appeal before the order is implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). The Debtor does not anticipate an objection to the sale, and thus requests that the Court waive the 14-day stay periods under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d).

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: June 23, 2017.

Respectfully submitted,

/s/ Gerrit M. Pronske

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**COUNSEL FOR DEBTOR
AND DEBTOR IN POSSESSION**

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 23, 2017, I caused to be served the foregoing pleading upon the parties on the Master Service List attached hereto via electronic and/or United States mail, first class delivery, and also via ECF email upon all parties accepting such service.

/s/ Melanie P. Goolsby
Melanie P. Goolsby

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

SIGEL'S BEVERAGES, L.P.,

AS SELLER

AND

SIGEL'S ACQUISITION, LLC,

AS PURCHASER

Dated as of June [●], 2017

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of June [●], 2017 (the "Execution Date"), by and between Sigel's Beverages, L.P., a Texas limited partnership ("Seller"), and Sigel's Acquisition, LLC, a Texas limited liability company ("Purchaser").

WHEREAS, Seller is engaged in the business of selling wines and spirits and the retail and wholesale level (the "Business");

WHEREAS, on October 20, 2016 (the "Petition Date"), Seller filed a voluntary petition for relief, Case No. 16-34118-BJH-11 (the "Bankruptcy Case"), under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§101, *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"); and

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, (i) Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the Purchased Assets and (ii) Purchaser desires to assume, and Seller desires to sell and transfer to Purchaser, the Assumed Liabilities, all in accordance with Sections 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual representations, warranties and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

Purchase of Assets; Assumption of Liabilities

1.1 Purchased Assets. On the terms and subject to the conditions hereof, at the Closing, Purchaser shall purchase, acquire and accept from Seller, and Seller shall sell, assign, transfer, convey, and deliver to Purchaser, all of Seller's right, title and interest in, to and under all assets, properties, rights and interests of every kind and description, tangible and intangible, of Seller used or held for use in the conduct of the Business, free and clear of all Liens, other than Permitted Liens and all Excluded Liabilities (collectively, the "Purchased Assets"), including:

(a) Accounts Receivable. All accounts or notes receivable of, and any other amounts due to, Seller arising out of the operation of the Business;

(b) Purchased Contracts. All contracts, agreements, commitments or undertakings, whether written or oral (collectively, "Contracts"), relating to the Business to which Seller is a party that are listed on Schedule 1.1(b)(i) (as such Schedule 1.1(b)(i) may be updated by Purchaser from time to time after the Execution Date, including pursuant to Section 1.6) (the "Purchased Contracts"). For the avoidance of doubt, any Contract not so designated as a "Purchased Contract" on Schedule 1.1(b)(i) shall be deemed an "Excluded Contract" for all purposes of this Agreement and shall be listed on Schedule 1.1(b)(ii) (as such Schedule 1.1(b)(ii) may be updated by Purchaser from time to time after the Execution Date, including pursuant to Section 1.6) (the "Excluded Contracts");

(c) Inventories. All inventory, raw materials, components, packaging materials, stores and supplies, and samples that are used or held for use in the conduct of the Business, wherever located;

(d) Real Property. (i) The real property owned in fee by Seller and listed on Schedule 1.1(d)(i), together with all appurtenant easements thereunto and all structures, fixtures, and improvements located thereon (the "Owned Real Property"), and (ii) the rights and incidents of interests of Seller as lessee in and to the real property leases ("Leases") listed on Schedule 1.1(d)(ii) (as such Schedule 1.1(d)(ii) may be updated by Purchaser from time to time after the Execution Date, including pursuant to Section 1.6) ("Purchased Real Property Leases"), and all of Seller's rights as of the Closing in all of the structures, fixtures, and improvements located thereon (the "Purchased Leased Real Property" and, together with the Owned Real Property, the "Purchased Real Property"). For the avoidance of doubt, any Lease not so designated as a Purchased Real Property Lease on Schedule 1.1(d)(ii) shall be deemed an "Excluded Lease" for all purposes of this Agreement and shall be listed on Schedule 1.1(d)(iii) (as such Schedule 1.1(d)(iii) may be updated from time to time after the Execution Date, including pursuant to Section 1.6) (the "Excluded Leases");

(e) Tangible Personal Property. All furniture, fixtures, furnishings, vehicles, machinery, equipment, tools, spare and maintenance parts, leasehold improvements and all other tangible personal property that are used or held for use in the conduct of the Business, wherever located, including the tangible personal property listed on Schedule 1.1(e) (collectively, the "Tangible Personal Property");

(f) Intellectual Property. All right, title, and interest in and to all domestic and foreign letters patent, patents, patent applications, patent licenses, software licenses, know-how licenses, trade names, trademarks, registered copyrights, service marks, trademark registrations and applications, service mark registrations and applications, and copyright registrations and applications, that are used or held for use in the operation of the Business by Seller, including those listed on Schedule 1.1(f), and all trade secrets, technical knowledge, know-how, and other confidential proprietary information and related ownership, use, and other rights of Seller (collectively, the "Purchased Intellectual Property");

(g) Licenses and Permits. All rights and incidents of interest of Seller in and to all licenses, permits, franchises, authorizations, orders, registrations, certificates, variances, approvals, and similar rights (collectively, "Permits") issued by any domestic or foreign government, governmental or regulatory body thereof, political subdivision thereof, any agency, authority, board, bureau or department thereof or any court or arbitrator thereof ("Governmental Body") that are used or held for use in the conduct of the Business, including those listed on Schedule 1.1(g);

(h) Books and Records. All books and records of Seller relating to the Business or the Purchased Assets (but excluding the Retained Records), including all books, records, files, data, correspondence and other information relating to employees, purchase or sale information, advertising, marketing, inventory, sales, customers, suppliers, vendors, and financial, accounting and operations;

(i) Seller's Name. All of Seller's rights in and to the name Sigel's and all derivatives thereof;

(j) Pre-Paid Items. All prepaid expenses, prepaid rents, prepaid insurance, utility deposits, advance payments and deposits on obligations made in connection with the Business, including the items listed on Schedule 1.1(j) (collectively, "Prepaid Items");

(k) Warranties. All warranties, guarantees and similar rights related to the Purchased Assets, including warranties and guarantees made by suppliers, manufacturers and contractors under the Purchased Assets and claims against third parties in connection with Purchased Contracts;

(l) Causes of Action. All claims, causes of action and other similar rights and credits of Seller relating to any Purchased Asset or Assumed Liability;

(m) Tax Refunds. All refunds, credits and rebates of Taxes for any period or portion thereof prior to the Closing Date;

(n) Goodwill and Other Intangible Assets. All goodwill and other intangible assets related to the Purchased Assets or the Business;

(o) Confidentiality Agreements. All rights of Seller under non-disclosure, confidentiality or other similar agreements entered into with third persons in connection with the sale of the Business or any part of the Business;

(p) Cash and Cash Equivalents. All cash and cash equivalents of the Business immediately prior to the Effective Time;

(q) Chapter 11 Deposits. All post-petition adequate assurance deposits provided to utilities and all deposits provided to suppliers or service providers to Seller on a pre-petition basis; and

(r) Wine Futures. All wine futures and *En Primeur* owned or held by Seller, including those listed on **Schedule 1.1(r)**.

1.2 Excluded Assets. Notwithstanding any other provision of this Agreement to the contrary, at the Closing, Seller shall retain, Purchaser shall not acquire, and the Purchased Assets shall not include, any right, title or interest in the following assets, properties and interests of Seller (collectively, "Excluded Assets"):

(a) Ordinary Course of Business Dispositions. All inventory that has been sold, transferred, consumed or otherwise disposed of by Seller prior to the Closing, in each case in the ordinary course of the business consistent with past practice and Section 6.2;

(b) Contracts Terminated in the Ordinary Course of Business. All Contracts that have terminated or expired prior to the Closing in the ordinary course of the business consistent with past practice and Section 6.2;

(c) Corporate Records. Seller's corporate seal, minute books, charter documents, stock ledgers, and such other books and records as pertain to the organization, existence, or share capitalization of Seller (collectively, "Retained Records") and duplicate copies of such records included in the Purchased Assets as are necessary to enable Seller to file its Tax Returns and reports, and any other records or materials relating to Seller generally and not involving or relating to the Purchased Assets or the Business;

(d) Excluded Contracts and Excluded Leases. All right, title and interest in and to the Excluded Contracts and the Excluded Leases;

(e) Excluded Assets and Excluded Liabilities. All rights, claims, causes of action and credits to the extent relating to any Excluded Asset or Excluded Liability, including any such item to the extent arising under any warranty, guarantee, indemnity or similar right in favor of Seller in respect of an Excluded Asset or Excluded Liability;

(f) Seller's Rights under this Agreement. Seller's rights arising out of or relating to this Agreement or the transactions contemplated hereby; and

(g) Other Excluded Assets. Any other asset or property of Seller listed on **Schedule 1.2(g).**

1.3 Assumed Liabilities. On the terms and subject to the conditions hereof, at the Closing, Purchaser shall assume, effective as of the Closing, the following liabilities of Seller existing as of the Closing Date (collectively, the "Assumed Liabilities"):

(a) any amounts that must be paid and obligations that otherwise must be satisfied under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption by Seller or assignment to Purchaser of any Purchased Contract as provided in Section 1.6(c) ("Cure Costs").

1.4 Excluded Liabilities. Notwithstanding any provision of this Agreement to the contrary, Purchaser shall not assume, and Seller shall remain liable, in respect of, any and all liabilities, debts, losses, damages, adverse claims and obligations (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), including all costs and expenses relating thereto (collectively, "Liabilities"), of Seller arising out of or otherwise relating to the Business or the Purchased Assets prior to Closing, and all other Liabilities of Seller, other than the Assumed Liabilities (collectively, the "Excluded Liabilities"). Without limiting the preceding sentence, for the avoidance of doubt, except to the extent that any of the following constitute an Assumed Liability, Seller shall remain responsible for, and Purchaser shall not assume and hereby disclaims all of the Excluded Liabilities, including all of the following Liabilities of Seller (each of which shall constitute an Excluded Liability):

(a) all Liabilities arising out of or related to the Excluded Assets;

(b) (i) all Liabilities for Taxes of Seller that are attributable to any period, or portion thereof, before or after the Closing Date or the transfer of the Purchased Assets from Seller to Purchaser and (ii) all Liabilities for Taxes in respect of the Purchased Assets that are attributable to any period, or portion thereof, before the Closing Date;

(c) all Liabilities arising under or related to Environmental Laws that are based on facts, occurrences or conditions first arising or existing on or prior to the Closing Date;

(d) all Liabilities for any indebtedness incurred in respect of the Business prior to the Closing;

(e) all Liabilities to any equity holder of Seller;

(f) all Liabilities arising as a result of any Legal Proceeding, whether initiated before or after the Closing, to the extent related to the Business or the Purchased Assets on or prior to the Closing Date, including any Legal Proceeding based on breach of contract, tort or product liability;

(g) all Liabilities in respect of any costs, fees and expenses (including all legal, accounting, financial advisory, valuation, investment banking and other third-party advisory or consulting fees and expenses) incurred by or on behalf of Seller in connection with or arising from the Bankruptcy Case or the transactions contemplated by this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby and thereby (the "Bankruptcy Expenses");

(h) all Liabilities (i) existing prior to the filing of the Bankruptcy Case that are subject to compromise under the Bankruptcy Case, other than Cure Costs in respect of Purchased Contracts and (ii) to the extent not otherwise expressly assumed pursuant to Section 1.3, incurred subsequent to the filing of the Bankruptcy Case and prior to the Closing;

(i) all Liabilities relating to any theories of law or equity involving successors or transferees;

(j) all Liabilities of Seller under this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby and thereby or any Contract entered into in connection herewith or therewith;

(k) all Liabilities, warranty and similar claims for damages, illness or injury to person or property and all other Liabilities, regardless of when made or asserted, to the extent arising out of or incurred in connection with the conduct of the Business or the ownership or operation of the Purchased Assets on or before the Closing Date; and

(l) except as otherwise expressly provided in Section 6.12, all Liabilities arising out of, relating to or in respect of (i) the employment or performance for services, or termination of employment or services by Seller or any of its affiliates of any individual on or before the Closing Date, (ii) workers' compensation claims against Seller that relate to the period on or before the Closing Date, irrespective of whether such claims are made prior to or after the Closing or (iii) any Employee Benefit Plan.

1.5 Non-Assignable Assets. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign, sell or transfer and shall not effect the assignment, sale or transfer of any Purchased Asset ("Non-Assignable Asset") if (i) an attempted assignment, sale or transfer thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any Governmental Body or other third person (each such action, a "Necessary Consent"), would constitute a breach, default or violation thereof or of any Law or Order or in any way adversely affect the rights of Purchaser thereunder and (ii) the Bankruptcy Court has not entered an Order providing that such Necessary Consent is not required. In such event such assignment, sale or transfer is subject to such Necessary Consent being obtained, then Seller shall use its best efforts to obtain the Necessary Consent in respect of any such Non-Assignable Asset or any claim or right or any benefit arising thereunder for the assignment, sale or transfer thereto to Purchaser as Purchaser may reasonably request. For the avoidance of doubt, any asset that would be a Purchased Asset but is not assigned in accordance with this Section 1.5 shall not be considered a "Purchased Asset" for purposes hereof unless and until such asset is assigned to Purchaser after the Closing Date upon receipt of any Necessary Consent and the approval of the Bankruptcy Court. If such Necessary Consent is not obtained, or if an attempted assignment, sale or transfer thereof would be ineffective or would adversely affect the rights of Purchaser to such Non-Assignable Asset after the Closing, then Seller shall cooperate with Purchaser in any reasonable arrangement to allow Purchaser to obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including subcontracting, sub-licensing or subleasing to Purchaser, or under which Seller would enforce for the benefit of Purchaser all of its rights thereunder.

1.6 Contract Designation; Cure Costs.

(a) As of the Execution Date, **Schedule 1.6** sets forth each Executory Contract and Seller's good faith estimate of the amount of Cure Costs (the "Estimated Cure Costs") payable in respect of each such Executory Contract (and if Seller believes in good faith that no Cure Cost is estimated to be payable in respect of any particular Executory Contract, the amount of such Cure Cost designated for such Contract shall be "\$0.00"). Seller represents and warrants to Purchaser that the Estimated Cure Costs in respect of each Executory Contract reflects, if applicable, the amount of Cure Costs that may have been agreed to between Seller and a counterparty in connection with an Initial Cure Notice as well as any Cure Costs that may have been asserted by the non-debtor parties in response to an Initial Cure Notice, but that have not been resolved prior to the Execution Date. On the date that is no later than 10 days after the Execution Date, Purchaser, in its sole discretion by written notice to Seller, may (i) exclude from being assigned to Purchaser any Executory Contract or (ii) designate any Executory Contract as a Purchased Contract or Purchased Real Property Lease, as applicable. Thereafter, to the extent that Seller has not previously provided a notice (an "Initial Cure Notice"), Seller shall deliver a notice reasonably acceptable to Purchaser to all non-debtor counterparties to an Executory Contract designated by Purchaser as a Purchased Contract or Purchased Real Property Lease, as applicable, which notice shall state, among other things: (i) the proposed Cure Cost for such Executory Contract and (ii) an objection deadline for such non-debtor party to object to the proposed Cure Cost. To the extent that any objections are received from such non-debtor parties in response to such notice, Seller shall use its commercially reasonable efforts to resolve such disputes with the applicable non-debtor party. Notwithstanding any other provision of this Agreement to the contrary, at any time prior to the Closing, Purchaser shall be entitled, in its sole discretion, to: (i) remove any Executory Contract previously designated as a Purchased Contract from the schedule of Purchased Contracts on **Schedule 1.1(b)(i)** or as a Purchased Real Property Lease from the schedule of Purchased Real Property Leases on **Schedule 1.1(d)(ii)** and add such Executory Contract to the schedule of Excluded Contracts on **Schedule 1.1(b)(ii)** or to the schedule of Excluded Leases on **Schedule 1.1(d)(iii)** by providing written notice thereof to Seller, and any Executory Contract so added shall be deemed to be an "Excluded Contract" or "Excluded Lease" and shall not be deemed to be a "Purchased Contract" or "Purchased Real Property Lease" for all purposes hereunder without further action by the parties hereto, and (ii) designate any Executory Contract previously designated as an Excluded Contract or Excluded Lease, as applicable, to be a Purchased Contract or Purchased Real Property Lease, as applicable, by adding such Executory Contract to the schedule of Purchased Contracts on **Schedule 1.1(b)(i)** or to the schedule of Purchased Real Property Leases on **Schedule 1.1(d)(ii)** and remove such Executory Contract from the schedule of Excluded Contracts or Excluded Leases, as applicable, and any Executory Contract so designated shall be deemed to be a "Purchased Contract" or "Purchased Real Property Lease," as applicable, for all purposes hereunder without further action by the parties hereto. As used herein, the term "Executory Contract" means an executory Contract related to the Business to which Seller is a party (including those set forth on **Schedule 1.6**).

(b) Seller shall give written notice to Purchaser prior to the submission by Seller of any motion in the Bankruptcy Case to assume or reject any Contract related to the Business together with a copy of the proposed order related thereto, provided, however, that in no event shall Seller seek to reject, or reject, any Contract related to the Business prior to the Closing Date unless prior written approval has been obtained from Purchaser.

(c) To the extent that any Executory Contract that is a Purchased Contract or Purchased Real Property Lease requires the payment of Cure Costs in order to be assigned to Purchaser and assumed pursuant to Sections 363 and 365 of the Bankruptcy Code, the Cure Costs

related to such Executory Contract shall be paid by Purchaser. Purchaser shall not be required to make any payment of Cure Costs for, or otherwise have any Liabilities in respect of, any Contract that is not a Purchased Contract or Purchased Real Property Lease. Purchaser will cooperate with Seller in demonstrating Purchaser's ability to provide adequate assurance of future performance on its behalf and on behalf of its designees as required under the Bankruptcy Code, including Section 365(f)(2)(B) thereof; provided, however, that Purchaser will not be required to provide any security, guarantees, credit support or other financial accommodations in connection with any Purchased Contract or Purchased Real Property Lease.

(d) Notwithstanding any other provision of this Agreement to the contrary, Purchaser may from time to time prior to the Closing in its sole discretion designate any Purchased Contract as an Excluded Contract by providing written notice thereof to Seller. Such Contract (i) shall be removed from the schedule of Purchased Contracts on **Schedule 1.1(b)(i)** and to the extent applicable, removed from the schedule of Executory Contracts on **Schedule 1.6**, and (ii) shall be added to the schedule of Excluded Contracts on **Schedule 1.1(b)(ii)** and shall not be deemed a Purchased Contract or an Executory Contract for all purposes hereunder, in each case, without any further action of the parties hereto.

ARTICLE II Purchase Price

2.1 Purchase Price. On the terms and subject to the conditions set forth herein, at the Closing, Purchaser will, in addition to assuming the Assumed Liabilities, pay an aggregate amount equal to \$[**13,100,000.00**] (the "Unadjusted Purchase Price") for the Purchased Assets and the covenants of Seller set forth herein, subject to adjustment as provided in Section 2.2 (as may be adjusted, the "Purchase Price"). The Unadjusted Purchase Price shall be paid by wire transfer of immediately available funds to the account of Seller designated on **Exhibit A**.

2.2 Purchase Price Adjustment.

(a) As promptly as practicable, but no later than 60 days after the Closing Date, Purchaser shall cause to be prepared and delivered to Seller the Closing Statement and a certificate based on such Closing Statement setting forth Purchaser's calculation of Closing Working Capital. The closing statement (the "Closing Statement") shall present the Net Working Capital as of the end of business on the Closing Date ("Closing Working Capital"). As used herein, "Net Working Capital" means the current assets of the Business, reduced by the current liabilities of the Business, in each case as determined in accordance with the accounting principles set forth on **Schedule 2.2(a)** (the "Agreed Principles"). The preparation of the Closing Statement shall be for the sole purpose of determining changes in Net Working Capital from [●], 2017 (the "Reference Date") to the Closing Date. Attached hereto as **Schedule 2.2(a)(i)** is a schedule showing Net Working Capital as of the Reference Date after giving effect to the pro forma adjustments required in the Agreed Principles ("Reference Statement"). Seller represents and warrants to Purchaser that the Reference Statement was prepared in accordance with GAAP consistent with past practice, subject to the Agreed Principles.

(b) If Seller disagrees with Purchaser's calculation of Closing Working Capital delivered pursuant to Section 2.2(a), then Seller may, within 15 days after delivery of the Closing Statement, deliver a notice to Purchaser disagreeing with such calculation and setting forth Seller's calculation of such amount. Any such notice of disagreement shall specify those items or amounts as to which Seller disagrees, and Seller shall be deemed to have agreed with all other items and

amounts contained in the Closing Statement and the calculation of Closing Working Capital delivered pursuant to Section 2.2(a).

(c) If a notice of disagreement shall be duly delivered pursuant to Section 2.2(b), then Purchaser and Seller shall, during the 15 days after such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of Closing Working Capital, which amount shall not be less than the amount thereof shown in Purchaser's calculation delivered pursuant to Section 2.2(a) nor more than the amount thereof shown in Seller's calculation delivered pursuant to Section 2.2(b). If during such period, Purchaser and Seller are unable to reach such agreement, then they shall promptly thereafter cause [**name of Accounting Referee**] (or if unable or unwilling to accept its mandate, an independent accountant to be mutually agreed upon by Purchaser and Seller) (**[name of Accounting Referee]** or such other independent accountant, as the case may be, the "Accounting Referee") to review this Agreement and the disputed items or amounts for the purpose of calculating Closing Working Capital (it being understood that in making such calculation, the Accounting Referee shall be functioning as an expert and not as an arbitrator). In making such calculation, the Accounting Referee shall consider only those items or amounts in the Closing Statement and Seller's calculation of Closing Working Capital as to which Seller has disagreed. The Accounting Referee shall deliver to Purchaser and Seller, as promptly as practicable (but in any case no later than 30 days after the date of engagement of the Accounting Referee), a report setting forth such calculation. Such report shall be final and binding upon Purchaser and Seller. The cost of such review and report shall be borne equally by Purchaser and Seller.

(d) Purchaser and Seller shall, and shall cause their respective representatives to, cooperate and assist in the preparation of the Closing Statement and the calculation of Closing Working Capital and in the conduct of the review referred to in this Section 2.2, including, the making available to the extent necessary of books, records, work papers and personnel.

(e) If Net Working Capital as of the Reference Date exceeds Final Working Capital, then Seller shall pay to Purchaser, in the manner and with interest as provided in Section 2.2(f), the amount of such excess as an adjustment to the Purchase Price. As used herein, the term "Final Working Capital" means Closing Working Capital (i) as shown in Purchaser's calculation delivered pursuant to Section 2.2(a) if no notice of disagreement in respect thereof is duly delivered pursuant to Section 2.2(b); or (ii) if such a notice of disagreement is delivered, (A) as agreed by Purchaser and Seller pursuant to Section 2.2(c) or (B) in the absence of such agreement, as shown in the Accounting Referee's calculation delivered pursuant to Section 2.2(c); provided, however, that in no event shall Final Working Capital be more than Seller's calculation of Closing Working Capital delivered pursuant to Section 2.2(b) or less than Purchaser's calculation of Closing Working Capital delivered pursuant to Section 2.2(a).

(f) Any payment pursuant to Section 2.2(e) shall be made at a mutually convenient time and place within three business days after Final Working Capital has been determined by wire transfer by Purchaser or Seller, as the case may be, of immediately available funds to the account of such other party as may be designated in writing by such other party. The amount of any payment to be made pursuant to this Section 2.2 shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest published by *The Wall Street Journal* from time to time as the "prime rate" at the large U.S. money center banks during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of 365 days and the actual number of days elapsed.

2.3 Purchase Price Allocation. Not later than 60 days after the Closing Date, Purchaser shall prepare and deliver to Seller copies of Form 8594 and any required exhibits thereto (the "Asset Acquisition Statement") allocating the Purchase Price among the Purchased Assets and the Assumed Liabilities. Purchaser shall prepare and deliver to Seller from time to time revised copies of the Asset Acquisition Statement (the "Revised Statements") so as to report any matters on the Asset Acquisition Statement that need updating (including adjustments to the Unadjusted Purchase Price, if any). The Purchase Price paid by Purchaser for the Purchased Assets shall be allocated in accordance with the Asset Acquisition Statement or, if applicable, the last Revised Statements, provided by Purchaser to Seller, and all income Tax Returns and reports filed by Purchaser and Seller shall be prepared consistently with such allocation.

ARTICLE III
Representations and Warranties of Seller

Seller hereby represents and warrants to Purchaser that:

3.1 Organization and Power. Seller is a limited partnership duly organized, validly existing, and in good standing under the Laws of its jurisdiction of organization. Subject to the limitations imposed on Seller as a result of having filed a petition for relief under the Bankruptcy Code, Seller has the requisite partnership power and authority to own, lease, or otherwise hold the assets and properties owned, leased or otherwise held by it and to carry on its business as currently conducted and as proposed to be conducted. Seller is duly qualified and authorized to conduct business as a foreign limited partnership under the Laws of each jurisdiction in which the conduct of its business or the ownership or lease of its assets or properties requires such qualification or authorization.

3.2 Authorization and Enforceability. Subject to the entry of the Sale Order and such other authorization as is required by the Bankruptcy Court, Seller has the requisite partnership power to execute and deliver this Agreement, any Bill of Sale, any Assignment and Assumption Agreement and such other agreements, documents or instruments contemplated hereby or thereby (collectively, the "Ancillary Agreements") to which Seller is a party and to perform the obligations to be performed by it hereunder and thereunder. The execution and delivery by Seller of this Agreement and each Ancillary Agreement to which Seller is a party and the performance by it of the obligations to be performed by it hereunder and thereunder have been (or, in the case of any such Ancillary Agreement, at the Closing, will be) duly authorized by all necessary partnership action on the part of Seller. This Agreement has been, and the Ancillary Agreements to which Seller is a party will at the Closing be, duly executed and delivered by Seller and, assuming the due execution and delivery of this Agreement and the Ancillary Agreements by the other parties hereto and thereto, constitute valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

3.3 No Conflicts. Except as set forth on **Schedule 3.3**, the execution and delivery by Seller of this Agreement and each Ancillary Agreement to which Seller is a party, the performance by Seller of the obligations to be performed by it hereunder and thereunder, and the consummation of the transactions contemplated hereby and thereby, will not, (i) conflict with the certificate of formation or limited partnership agreement of Seller, (ii) subject to entry of the Sale Order, conflict with, or result in any violation of, or constitute a default (with or without notice, lapse of time, or both) under, or give rise to a right of termination, cancellation, or acceleration of any obligation or to loss of a benefit under, any material Contract or Permit to which Seller is a party or by which any of its assets or properties are bound, or (iii) subject to entry of the Sale Order, violate any order, judgment, decree, ruling, award or writ of any Governmental Body ("Order") applicable to Seller or violate any law, statute, rule, or regulation ("Law") applicable to Seller.

3.4 Consents and Approvals. Except as set forth on Schedule 3.4 and except to the extent not required if the Sale Order is entered, no consent, approval, waiver, Order, Permit or authorization of, or registration, declaration or filing with, any Governmental Body or other person is required to be obtained or made on the part of Seller in connection with the execution and delivery of this Agreement or any Ancillary Agreement to which Seller is a party by Seller, the performance by Seller of the obligations to be performed by it hereunder or thereunder, or the consummation of the transactions contemplated hereby or thereby, other than the entry of the Sale Order.

3.5 Legal Proceedings. Except for the general pendency of the Bankruptcy Case or as listed on Schedule 3.5, there is no Legal Proceeding pending or threatened that affects any of the Purchased Assets or the Business or that could reasonably be expected to give rise to any material Liability of Purchaser or adversely affect Purchaser's ability to conduct the Business after the Closing or the ownership or use of the Purchased Assets in the operation of the Business after the Closing. Neither the Business nor any of the Purchased Assets is subject to any Order. As used herein, the term "Legal Proceeding" means any claim, demand, litigation, cause of action, audit, dispute, review, hearing, charge, indictment, complaint, petition, suit or other judicial or administrative proceeding, at law or in equity, by or before any Governmental Body or arbitration or similar dispute resolution proceeding.

3.6 Brokers' Fees. Neither Seller nor any person acting on its behalf has agreed to pay a fee, commission or similar payment in connection with this Agreement, any Ancillary Agreement or any of the transactions contemplated hereby or thereby to any person for which Purchaser will be liable.

3.7 Title to Assets. Except as set forth on Schedule 3.7, Seller owns the Purchased Assets free and clear of all Liens (other than Permitted Liens) and, subject to the entry of the Sale Order, at the Closing, Purchaser will be vested with good, valid, and marketable title to the Purchased Assets free and clear of all Liens, other than (i) Liens for Taxes, assessments, and other governmental charges that are not due and payable or which may thereafter be paid without penalty, and (ii) the Assumed Liabilities (the items referred to in clauses (i) and (ii) are collectively referred to herein as "Permitted Liens"). The Purchased Assets constitute all of the assets, properties, and rights of every kind, character and description, wherever located and whether tangible or intangible, real or personal, or fixed or contingent, that are necessary to operate the Business as currently conducted by Seller, other than the Excluded Assets. As used herein, the term "Liens" means all liens, claims, mortgages, deeds of trust, pledges, security interests, charges, leases, options, restrictions, and encumbrances of any nature, including rights of first refusal, licenses, defect or objection liens, conditional and installment sales agreements, voting trusts or agreements, transfer restrictions, easements, encroachments, or restrictions of any kind and other title or interest retention arrangements, reservations, or limitations of any nature whatsoever.

3.8 Compliance with Laws. Except as otherwise specifically directed by the Bankruptcy Court or as listed on Schedule 3.8 and except where such conduct, failure to obtain, non-compliance or violations would not, individually or in the aggregate, be material: (i) Seller owns and operates the Purchased Assets and has conducted the Business in accordance with all Laws, Orders and Permits applicable to Seller and the Purchased Assets; and (ii) the Business is, and at all times has been, in compliance with all applicable Laws, Orders and Permits (including anti-bribery Laws) and has obtained all approvals necessary for owning and operating the Business and has made all necessary filings with all Governmental Entities having jurisdiction over Seller and the Purchased Assets.

3.9 Financial Statements. Seller has delivered to Purchaser copies of (i) the audited balance sheet of Seller as at December 31, 2015 and the related audited statements of operations, partners' equity and cash flows of Seller for the year then ended, (ii) the unaudited balance sheet of Seller as at December 31, 2016 and the related unaudited statements of income and cash flows of Seller for the year then ended and (iii) the unaudited balance sheet of Seller as at April 30, 2017 and the related unaudited statements of

income and cash flows of Seller for the four-month period then ended (such audited and unaudited statements, including the related notes and schedules thereto, are referred to herein as the "Financial Statements"). Each of the Financial Statements is complete and correct in all material respects, has been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") consistently applied without modification of the accounting principles used in the preparation thereof throughout the periods presented and presents fairly in all material respects the financial position, results of operations, partners' equity and cash flows of Seller as at the dates and for the periods indicated. For the purposes hereof, the unaudited balance sheet of Seller as at April 30, 2017 is referred to as the "Balance Sheet" and April 30, 2017 is referred to as the "Balance Sheet Date."

3.10 No Undisclosed Liabilities. Except as listed on **Schedule 3.10**, Seller has no indebtedness, obligations or Liabilities of any kind other than those (i) fully reflected in, reserved against or otherwise described in the Balance Sheet or the notes thereto or (ii) immaterial to Seller and incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date.

3.11 Taxes.

(a) Except as set forth on **Schedule 3.11**, (i) Seller has timely filed all Tax Returns required to be filed with the appropriate taxing authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Seller); and (ii) all Taxes shown to be payable on such Tax Returns have been paid. Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code").

(b) As used in this Agreement, the term: (i) "Taxes" means (A) any and all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including, all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, (B) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (A), and (C) any liability in respect of any items described in clause (A) or (B) payable by reason of contract, assumption, transferee liability, operation of law, Section 1.1502-6(a) of the United States Treasury regulations promulgated under the Code (or any predecessor or successor thereof or any analogous or similar provision under law) or otherwise; and (ii) "Tax Return" means any return, report or statement required to be filed in respect of any Tax (including any attachments thereto, and any amendment thereof) including, any information return, claim for refund, amended return or declaration of estimated Tax, and including, where permitted or required, combined, consolidated or unitary returns for any group of entities that includes Seller, any of its subsidiaries, or any of their respective affiliates.

3.12 Real Property.

(a) **Schedule 1.1(d)(i)** sets forth a complete list of all Owned Real Property and **Schedules 1.1(d)(ii)** and **1.1(d)(iii)** set forth a complete list of all leases of real property or interests in real property by Seller (collectively, the "Real Property Leases") as lessee or lessor. Seller has good and marketable title to all Owned Property, free and clear of all Liens, except (i) the Liens listed on **Schedule 3.12(a)** and (ii) Permitted Liens.

(b) Seller has a valid and enforceable leasehold interest under each of the Real Property Leases, subject to applicable bankruptcy, insolvency, reorganization, moratorium and

similar Laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Except as listed on **Schedule 3.12(b)**, (i) each of the Real Property Leases is in full force and effect; (ii) Seller has not received or given any notice of any default or event that with notice, lapse of time or both, would constitute a default by Seller under any of the Real Property Leases; and (iii) to the knowledge of Seller, no other party is in default thereof, and no party to any of the Real Property Leases has exercised any termination rights in respect thereof.

3.13 Tangible Personal Property.

(a) Seller has good and marketable title to all of the items of tangible personal property reflected on the Balance Sheet (except as sold or disposed of subsequent to the date hereof in the ordinary course of business consistent with past practice), free and clear of all Liens, other than Permitted Liens.

(b) **Schedule 3.13(b)** sets forth all leases of personal property by Seller ("Personal Property Leases") involving annual payments in excess of \$1,500.00. To the knowledge of Seller, Seller has not received any notice of any default or event that with notice, lapse of time or both would constitute a default by Seller under any of the Personal Property Leases.

3.14 Intellectual Property. The Purchased Intellectual Property includes all of the intellectual property rights owned or licensed by Seller and used in the conduct of the Business. Seller has good, marketable, and exclusive title to, and the valid and enforceable power and unqualified right to use, the Purchased Intellectual Property free and clear of all Liens (other than Permitted Liens) and to transfer (or, as applicable, license) the same to Purchaser, and (ii) no person other than Seller has any right or interest of any kind or nature in or in respect of the Purchased Intellectual Property or any portion thereof or any right to use, market, or exploit the Purchased Intellectual Property or any portion thereof. Good, marketable, and exclusive title in, to, and under the Purchased Intellectual Property will vest in Purchaser at the Closing, free and clear of all Liens (other than Permitted Liens). There are no pending, or to the knowledge of Seller, threatened actions of any nature affecting the Purchased Intellectual Property. There are no notices or claims currently pending that claim infringement of any domestic or foreign letter patent, patent, patent application, patent license, software license, know-how license, trademark, trademark registration, trade name, service mark, copyright, trade secret, technical knowledge, know-how, or other confidential proprietary information held or owned by another person. To the knowledge of Seller, there is no reasonable basis upon which any valid claim may be asserted against Seller for infringement or misappropriation of any domestic or foreign letter patent, patent, patent application, patent license, software license, know-how license, trademark, trademark registration, trade name, service mark, copyright, trade secret, technical knowledge, know-how, or other confidential proprietary information held or owned by another person.

3.15 Material Contracts. The Executory Contracts listed on **Schedule 1.6** constitute all of the Contracts to which Seller is a party or by which it is bound (collectively, the "Material Contracts"). Each of the Material Contracts is in full force and effect and is the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Seller is not in default under any Material Contract, nor, to the knowledge of Seller, is any other party to any Material Contract in default thereunder, and no event has occurred that with notice, lapse of time or both would constitute a default thereunder. No party to any of the Material Contracts has exercised any termination rights in respect thereof. Seller has, and, subject to Sections 1.5 and 1.6 will transfer to Purchaser at the Closing, good and valid title to the Material Contracts that are

Purchased Contracts, free and clear of all Liens other than Permitted Liens. Seller has delivered or otherwise made available to Purchaser true, correct and complete copies of all of the Material Contracts, together with all amendments, modifications or supplements thereto.

3.16 Permits. **Schedule 1.1(g)** contains a list of all Permits that are required for the operation of the Business as currently conducted and as proposed to be conducted. Seller currently has all Permits that are required for the operation of the Business as currently conducted. Seller is not in default or violation (and no event has occurred that, with notice, lapse of time or both, would constitute a default or violation) in any material respect of any term, condition or provision of any Permit to which Seller is a party and, to the knowledge of Seller, there are no facts or circumstances that could form the basis for any such default or violation.

3.17 Environmental Matters. Except as set forth on **Schedule 3.17**, Seller is now and at all times prior to the Execution Date has been in compliance with all applicable Environmental Laws. There is no suit, claim, action, proceeding or notice of investigation relating to or arising under Environmental Laws that is pending or, to the knowledge of Seller, threatened against Seller or any real property owned or operated by Seller. Seller has not received any written notice of or entered into any order, settlement, judgment, injunction or decree involving uncompleted, outstanding or unresolved obligations, liabilities or requirements relating to or arising under Environmental Laws. As used herein, "Environmental Laws" means all Laws relating to pollution or protection of human health, safety or the environment, including the Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), Safe Drinking Water Act (42 U.S.C. §3000(f) *et seq.*), Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*), Clean Air Act (42 U.S.C. §7401 *et seq.*), the United States Comprehensive Environmental Response, Compensation and Liability Act and other similar federal, state and local Laws.

3.18 Employee Plans. **Schedule 3.18** sets forth a true, correct and complete list of all Employee Benefit Plans of Seller, each of which is an Excluded Asset. There are no Liabilities under the Employee Benefit Plans that will accrue to Purchaser under this Agreement. As used herein, "Employee Benefit Plans" means each plan, fund, program, agreement, arrangement or scheme that is at any time sponsored or maintained by Seller or to which Seller makes or has an obligation to make, contributions providing benefits to the current or former employees, directors, managers, officers, consultants, independent contractors, contingent workers or leased employees of Seller or the dependents of any of them (whether written or oral), or in respect of which Seller has any liability or obligation, including (i) each deferred compensation, bonus, incentive compensation, pension, retirement, employee stock ownership, stock purchase, stock option, profit sharing or deferred profit sharing, stock appreciation, phantom stock plan and other equity compensation plan, "welfare" plan (within the meaning of Section 3(1) of the United States Employee Retirement Income Security Act of 1974, as amended ("ERISA"), determined without regard to whether such plan is subject to ERISA), (ii) each "pension" plan (within the meaning of Section 3(2) of ERISA, determined without regard to whether such plan is either subject to ERISA or is tax-qualified under the Code), (iii) each severance plan or agreement, and each other plan providing health, vacation, supplemental unemployment benefit, hospitalization insurance, medical, dental, disability, life insurance, death or survivor benefits, fringe benefits or legal benefits and (iv) each other employee benefit plan, fund, program, agreement or arrangement.

3.19 Labor Matters. Seller is not a party to any labor or collective bargaining agreement. There are no (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the knowledge of Seller, threatened against or involving Seller or (ii) unfair labor practice charges, grievances or complaints pending or, to the knowledge of Seller, threatened by or on behalf of any employee or group of employees of Seller.

3.20 Related-Party Transactions. Except as set forth on **Schedule 3.20**, none of Seller, any affiliate of Seller or any of their respective officers, directors, members, managers, partners or employees

(i) owns any direct or indirect interest of any kind in, or controls or is a director, officer, employee, member, manager, or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, any person that is (A) a competitor, supplier, customer, landlord, tenant, creditor or debtor of Seller, (B) engaged in a business related to the Business of Seller, or (C) a participant in any transaction to which Seller is a party or (ii) is a party to any Contract with Seller.

3.21 Accounts and Notes Receivable. All accounts and notes receivable of Seller have arisen from bona fide transactions in the ordinary course of business consistent with past practice and are payable on ordinary trade terms. All accounts and notes receivable of Seller reflected on the Balance Sheet are good and collectible at the aggregate recorded amounts thereof, net of any applicable reserve for returns or doubtful accounts reflected thereon, which reserves are adequate and were calculated in a manner consistent with past practice and in accordance with GAAP consistently applied. All accounts and notes receivable arising after the Balance Sheet Date are good and collectible at the aggregate recorded amounts thereof, net of any applicable reserve for returns or doubtful accounts, which reserves are adequate and were calculated in a manner consistent with past practice and in accordance with GAAP consistently applied. None of the accounts or the notes receivable of Seller (i) are subject to any setoffs or counterclaims or (ii) represent obligations for goods sold on consignment, on approval or on sale-or-return basis or subject to any other repurchase or return arrangement.

3.22 Inventory. The inventories of Seller are in good and marketable condition, and are saleable in the ordinary course of business consistent with past practice. The inventories of Seller set forth in the Balance Sheet were properly stated therein in accordance with GAAP consistently applied. Adequate reserves have been reflected in the Balance Sheet for obsolete, excess, damaged or otherwise unusable inventory, which reserves were calculated in a manner consistent with past practice and in accordance with GAAP consistently applied. The inventories of Seller constitute sufficient quantities for the normal operation of the Business in accordance with past practice.

3.23 Customers and Suppliers. **Schedule 3.23** lists the ten largest customers and the two largest suppliers of Seller, as measured by the dollar amount of purchases therefrom or thereby, during each of the fiscal years ended December 31, 2015 and December 31, 2016, showing the approximate total sales by Seller to each such customer and the approximate total purchases by Seller from each such supplier, during such period. Except as otherwise expressly described on **Schedule 3.23**, since the Balance Sheet Date, (i) no customer or supplier listed on **Schedule 3.23** has terminated its relationship with Seller or materially reduced or changed the pricing or other terms of its business with Seller or (ii) no customer or supplier listed on **Schedule 3.23** has notified Seller that it intends to terminate or materially reduce or change the pricing or other terms of its business with Seller.

3.24 Insurance. Seller has insurance policies in full force and effect for such amounts as are sufficient for all requirements of Law and all agreements to which Seller is a party or by which it is bound. **Schedule 3.24** lists all fire, liability and other forms of insurance and all fidelity, surety, performance or other similar bonds held by or applicable to Seller setting forth, in respect of each such policy, the policy name, policy number, carrier, term, type of coverage and annual premium. Excluding insurance policies that have expired and been replaced in the ordinary course of business consistent with past practice, no insurance policy has been cancelled within the last two years and, to the knowledge of Seller, no threat has been made to cancel any insurance policy of Seller during such period. Except as listed on **Schedule 3.24**, all such insurance will remain in full force and effect and all such insurance is assignable or transferable to Purchaser. No event has occurred, including, the failure by Seller to give any notice or information or Seller giving any inaccurate or erroneous notice or information, that limits or impairs the rights of Seller under any such insurance policies.

3.25 Seller as Debtor in Possession; No Trustee. From the Petition Date through the Execution Date, Seller has been at all times in its Bankruptcy Case debtors-in-possession pursuant to Section 1107 of the Bankruptcy Code, no trustee or examiner has been appointed in the Bankruptcy Case and no motion has been filed requesting the appointment of a trustee or examiner.

3.26 Required Notices. Seller has complied with all notice provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and any applicable local rules and chamber rules of the Bankruptcy Court. Without limiting the generality of the preceding sentence, Seller has delivered adequate notice of the sale of the Purchased Assets free and clear of all Liens (other than Permitted Liens) and Excluded Liabilities to (i) each person who is the beneficiary of or a holder of any Lien in and to any of the Purchased Assets, and (ii) each counterparty to each of the Purchased Contracts and each of the Excluded Contracts.

3.27 No Interest in Other Entities. No shares of any corporation or any ownership or other investment interest, either of record, beneficially, or equitably, in any person are included in the Purchased Assets.

ARTICLE IV
Representations and Warranties of Purchaser

Purchaser hereby represents and warrants to Seller that:

4.1 Organization. Purchaser is a limited liability company duly organized, validly existing, and in good standing under the Laws of the state of its organization.

4.2 Authorization and Enforceability. Purchaser has the requisite limited liability company power to execute and deliver this Agreement, the Ancillary Agreements to which Purchaser is a party and to perform the obligations to be performed by it hereunder and thereunder. The execution and delivery by Purchaser of this Agreement and each Ancillary Agreement to which Purchaser is a party and the performance by it of the obligations to be performed by it hereunder and thereunder have been (or, in the case of any such Ancillary Agreement, at the Closing, will be) duly authorized by all necessary limited liability company action on the part of Purchaser. This Agreement has been, and the Ancillary Agreements to which Purchaser is a party will at the Closing be, duly executed and delivered by Purchaser and, assuming the due execution and delivery of this Agreement and the Ancillary Agreements by the other parties hereto and thereto, constitute valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

4.3 No Conflicts. The execution and delivery by Purchaser of this Agreement and each Ancillary Agreement to which Purchaser is a party, the performance by Purchaser of the obligations to be performed by it hereunder and thereunder, and the consummation of the transactions contemplated hereby and thereby, will not, (i) conflict with the certificate of formation or limited liability company agreement of Purchaser, (ii) conflict with, or result in any violation of, or constitute a default (with or without notice, lapse of time, or both) under, or give rise to a right of termination, cancellation, or acceleration of any obligation or to loss of a benefit under, any material Contract or Permit to which Purchaser is a party or by which any of its assets or properties are bound, or (iii) violate any Order applicable to Purchaser or violate any Law applicable to Purchaser, other than such conflicts, violations, defaults, terminations, cancellations or accelerations or loss of a benefits that would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. As used herein, "Purchaser Material Adverse Effect"

means any effect, event, change, condition, state of facts, occurrence or circumstance (regardless of whether such effect, event, change, condition, state of facts, occurrence or circumstance constitutes a breach of any representation, warranty or covenant of Purchaser hereunder) that has had or would reasonably be expected to have, individually or when considered together with any other effect, event, change, condition, state of facts, occurrence or circumstance, a material and adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party or to perform its obligations hereunder or thereunder.

4.4 Consents and Approvals. No consent, approval, waiver, Order, Permit or authorization of, or registration, declaration or filing with, any Governmental Body or other person is required to be obtained or made on the part of Purchaser in connection with the execution and delivery of this Agreement or any Ancillary Agreement to which Purchaser is a party by Purchaser, the performance by Purchaser of the obligations to be performed by it hereunder or thereunder, or the consummation of the transactions contemplated hereby or thereby, other than (i) the entry of the Sale Order and (ii) such consents, approvals, waivers, Orders, Permits, authorizations, registrations, declarations or filings, that would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect

4.5 Legal Proceedings. There is no Legal Proceeding pending or, to the knowledge of Purchaser, threatened against Purchaser or to which Purchaser is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. Purchaser is not subject to any Order, except to the extent the same would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

4.6 Brokers' Fees. Neither Purchaser nor any person acting on its behalf has agreed to pay a fee, commission or similar payment in connection with this Agreement, any Ancillary Agreement or any of the transactions contemplated hereby or thereby to any person for which Seller will be liable.

4.7 No Other Representations and Warranties. Purchaser acknowledges that Seller is not making any representation or warranty whatsoever, express or implied, beyond those made by Seller in this Agreement and in the Ancillary Agreements.

ARTICLE V Bankruptcy Court Matters

5.1 Sale Order. As used herein, the term "Sale Order" means an Order entered by the Bankruptcy Court that: (i) was on appropriate notice to all parties entitled to notice of the motion to approve the sale of the Purchased Assets, this Agreement and the transactions contemplated hereby; (ii) is not subject to a stay pending appeal; (iii) is in form and substance acceptable to Purchaser; and (iv) provides, at least, the following: (A) approval of this Agreement; (B) authorization of the sale of the Purchased Assets to Purchaser pursuant to this Agreement and Sections 363 and 365 of the Bankruptcy Code free and clear of all Liens and all Liabilities of any kind or nature whatsoever, whether at law or in equity, including, free and clear of any rights or claims based on theories of transferee or successor liability under any applicable Law, whether arising before or after the filing of the petition for relief under Chapter 11 of the Bankruptcy Code on the Petition Date, and any rights or claims based on Excluded Contracts or representing Excluded Liabilities, save and excepting only those Liabilities expressly assumed by Purchaser in writing under this Agreement and Permitted Liens; (C) Purchaser has acted in "good faith" within the meaning of and is entitled to the protections of Section 363(m) of the Bankruptcy Code; (D) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm's length bargaining positions; (E) authorization of the assumption and assignment of all of the Purchased Contracts pursuant to Sections 363 and 365 of the Bankruptcy Code; (F) reasonable and customary exculpation and release

language for the benefit of Purchaser; and (G) this Agreement and the transactions contemplated hereby may, subject to the terms set forth herein, be enforced specifically against and binding upon, and not subject to rejection or avoidance by Seller or its estate or any Chapter 7 or Chapter 11 trustee of Seller or its estate.

ARTICLE VI
Covenants

6.1 Access to Information. From the Execution Date through the Closing Date, Purchaser shall be entitled, through its officers, employees and representatives (including, its legal counsel, accountants and other advisors), to make such investigation of the assets, properties, operations, businesses and affairs of Seller and such examination of the books, records and financial condition of Seller, the Business, the Purchased Assets and the Assumed Liabilities as it reasonably requests and to make extracts and copies of such books and records. From the Execution Date through the Closing Date, Seller shall provide Purchaser with access during normal business hours to all of the Purchased Assets and all of the books and records of Seller related to the Business and shall use its commercially reasonable efforts to provide Purchaser with access to all vendors, suppliers and material customers of Seller. Seller shall cooperate, and shall cause its officers, employees, consultants, agents, accountants, attorneys and other representatives to cooperate, with Purchaser and its representatives in connection with such access, investigation and examination. No investigation by Purchaser or its representatives prior to or after the Execution Date shall affect or be deemed to modify any of the representations, warranties, covenants or agreements of Seller contained in this Agreement or the Ancillary Agreements. From the Execution Date through the Closing Date, Seller shall promptly deliver or make available to Purchaser all material pleadings, motions, notices, statements, schedules, applications, reports or other documents filed in the Bankruptcy Case or in any other judicial or administrative action, suit or proceeding related to the Business, the Purchased Assets or the transactions contemplated hereby.

6.2 Conduct of the Business Pending Closing.

(a) Except as required by applicable Law or by the Bankruptcy Court, as otherwise expressly provided by this Agreement or with the prior written consent of Purchaser, during the period from the Execution Date to and through the Closing Date, Seller shall:

(i) conduct the Business (A) in substantially the same manner as conducted on the Execution Date in the ordinary course of business and (B) as a reasonable prudent operator, in a good and workmanlike manner, in accordance with good industry practice and in compliance with all applicable Law;

(ii) use its commercially reasonable efforts to (A) maintain and preserve the current business operations, organization (including, management and the sales force) and goodwill of Seller; (B) keep available the services of all employees of Seller and (C) preserve the current relationships with persons having business dealings with Seller (including, employees, creditors, customers and suppliers);

(iii) maintain (A) all of the Purchased Assets in good repair, working order and good condition (ordinary wear and tear excepted) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements or improvements thereto in the ordinary course of business; (B) all books and records of Seller in accordance with good industry practice; and (C) insurance upon all of the assets and properties of Seller in such amounts and of such kinds comparable to that in effect on the Execution Date;

(iv) (A) continue to collect accounts receivable and pay all undisputed accounts payable consistent with past practice or as otherwise ordered by the Bankruptcy Court, (B) defend and protect the Purchased Assets from infringement and deterioration; and (C) comply with all contractual and other obligations applicable to the operations of Seller;

(v) file all material Tax Returns and pay or deposit all material Taxes on a timely basis in the ordinary course of business during the pendency of the Bankruptcy Case; and

(vi) comply in all material respects with all applicable Laws.

(b) Except as required by applicable Law or by the Bankruptcy Court, as otherwise expressly provided by this Agreement or with the prior written consent of Purchaser, during the period from the Execution Date to and through the Closing Date, Seller shall not:

(i) permit, offer, agree or commit (in writing or otherwise) to permit, any of the Purchased Assets to become subject, directly or indirectly, to any Lien or Legal Proceeding, except for any Permitted Liens;

(ii) enter into any Contract for the direct or indirect sale (whether by merger, sale of assets or stock, or otherwise), transfer, financing, assignment, conveyance, lease recapitalization or other disposition of the Business as a whole or any Purchased Asset or that otherwise affects any Purchased Asset or the ability of Purchaser to determine the number of Employees (if any) it will be hiring, their qualifications and their terms and conditions of employment; provided, however, that this Section 6.2(b)(ii) shall not be deemed to prohibit Seller from entering into Contracts in the ordinary course of business; provided, further, that each such Contract is terminable by Seller without penalty upon 60 days' notice or less;

(iii) other than in the ordinary course of business (A) enter into any Contract that would constitute a Material Contract, if in effect on the Execution Date, or (B) assume, amend, modify or terminate any Material Contract to which Seller is a party or by which Seller is bound and that is used in or related to the Business or the Purchased Assets (including any Purchased Contract), or fail to exercise any renewal right in respect of any Material Contract (including any Real Property Lease) that by its terms would otherwise expire;

(iv) move any equipment, machinery or other Purchased Assets from the facilities of the Business;

(v) make or change any Tax election, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement, settle or compromise any Tax claim or assessment relating to the Business, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Business, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax;

(vi) increase the compensation or benefits (including granting any bonuses, whether monetary or otherwise) of any current or former Employee or Service Provider;

(vii) grant or increase any severance, retention, change-of-control or similar payments to any current or former Employee or Service Provider other than as provided for in any Employee Benefit Plan or written Contract made available to Purchaser prior to the Execution Date;

(viii) enter into any collective bargaining agreement or similar Contract;

(ix) compromise any indebtedness or claim or waive or release any right of Seller that constitutes a Purchased Asset;

(x) assign, sublet, pledge, encumber, terminate, amend or modify in any matter any Owned Real Property or any Real Property Lease;

(xi) permit the lapse of any right relating to the Purchased Intellectual Property or any other intangible Purchased Asset;

(xii) use any Purchased Asset to pay for any cost or expense arising out of or relating to the transactions contemplated hereby;

(xiii) enter into any Contract to license any Purchased Intellectual Property or renew, extend, expand or otherwise amend the terms of any existing Purchased Intellectual Property license;

(xiv) merge or consolidate Seller with any other person or acquire any business or equity interests of any other person;

(xv) maintain insurance in a manner inconsistent with the insurance policies set forth on **Schedule 3.24**;

(xvi) commence, settle or compromise any Legal Proceeding that affects any of the Purchased Assets or the Business or that could reasonably be expected to adversely affect Purchaser's ability to conduct the Business after the Closing or the ownership or use by Purchaser of the Purchased Assets in the operation of the Business after the Closing; or

(xvii) take, or agree, commit or offer (in writing or otherwise) to take, (A) any actions in violation of this Section 6.2(b) or (B) any actions outside of the ordinary course of Seller's business as of the Execution Date.

6.3 **Consents and Permits**. Seller shall use its best efforts, and Purchaser shall cooperate with Seller, to obtain at the earliest practicable date all consents and approvals contemplated hereby, including, the consents and approvals referred to in Section 3.4 and the Necessary Consents. Purchaser and Seller, shall use their commercially reasonable efforts to obtain the issuance, or transfer of, all Permits required to be issued, transferred or reissued to Purchaser in connection with the acquisition of the Purchased Assets and the operation of the Business by Purchaser after the Closing Date. Seller shall use its best efforts, and Purchaser shall use its commercially reasonable efforts to give and make all notices and reports that Seller or Purchaser is required to make to the appropriate Governmental Body and other persons in respect of the Permits that may be necessary for the sale of the Purchased Assets to Purchaser at the Closing.

6.4 **Further Assurances**.

(a) Seller and Purchaser shall use their commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the transactions contemplated hereby; (ii) provide the other party with reasonable cooperation and take such actions as such other party may reasonably request in connection with the consummation of the transactions contemplated hereby; (iii) at or after the Closing (to the extent applicable), execute and deliver such additional instruments, assignments, conveyances, assurances, affidavits, certificates and other documents as may be required to transfer the Purchased Assets to Purchaser or for purposes of issuing title insurances policies to Purchaser and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby and (iv) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated hereby. Without limiting the preceding sentence, Purchaser and Seller shall use their commercially reasonable efforts to defend any Legal Proceeding that would prevent the condition to Closing set forth in Section 7.1(a) from being satisfied, including seeking to have any stay or temporary restraining Order entered by any court or other Governmental Body in respect thereof reversed or vacated and shall cooperate with each other in connection with the foregoing.

(b) If after the Closing, (i) Purchaser holds any Excluded Assets or Excluded Liabilities or (ii) Seller holds any Purchased Assets or Assumed Liabilities (including any proceeds, income, revenues, monies and other items attributable to the Purchased Assets), then Purchaser or Seller, as the case may be, shall promptly transfer (or cause to be transferred) such assets or assume (or cause to be assumed) such Liabilities to or from the other party. Prior to any such transfer, the party receiving or possessing any such asset shall hold it in trust for such other party. Seller hereby grants Purchaser an irrevocable power of attorney to endorse such checks, drafts and other instruments, and any check, draft or other instrument arising from and after the Closing that constitutes Purchased Assets issued in the name of Seller.

6.5 Publicity. The initial press release concerning this Agreement and the transactions contemplated hereby shall be in a form agreed to by the parties. Prior to the Closing, none of the parties hereto shall issue any press release concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval shall not be unreasonably conditioned, delayed or withheld, unless such disclosure is otherwise required by applicable Law or by the Bankruptcy Court in respect of filings to be made with the Bankruptcy Court in connection with this Agreement; provided, however, that the party intending to make such release uses its commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party in respect of the text thereof to the extent practicable. After the Closing, the parties hereto may issue public announcements regarding the transactions contemplated hereby so long as such announcements, in the case of announcements made by Seller, do not disclose the specific terms or conditions of this Agreement except where such terms and conditions have already been disclosed as required by applicable Law, applicable stock exchange regulation or in filings that Seller has made in the Bankruptcy Court; provided, however, that the issuing party shall use its commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party in respect of the text thereof to the extent practicable.

6.6 Notification of Certain Matters.

(a) From time to time prior to the Closing, Seller shall promptly deliver written notice to Purchaser of (i) any event, change, effect, condition, state of facts or occurrence that comes to the knowledge of Seller that (A) would reasonably be expected to (1) cause a breach of Seller's covenants or agreements contained herein, (2) render the satisfaction of the conditions in Section 7.1 or 7.3 reasonably unlikely to be fulfilled, or (3) prevent, prohibit or delay the Closing;

(B) would reasonably be expected to have a Seller Material Adverse Effect or material adverse effect on or a material adverse change in or to the wholesale or retail liquor industry or market generally; or (C) that, if occurring or arising or in existence before or on the Execution Date would have caused a representation or warranty of Seller to be inaccurate or deficient; (ii) any notice or other written communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the transactions contemplated hereby; and (iii) the commencement of any Legal Proceeding relating to the Business or the Purchased Assets. The delivery of any notice pursuant to this Section 6.6(a) shall not have any effect on the satisfaction of the condition to closing set forth in Section 7.3(a) or Purchaser's right to terminate the Agreement pursuant to Section 9.1(c), and shall not be deemed to amend or supplement the Disclosure Schedules or limit or otherwise affect any remedy available to Purchaser or prevent or cure any breach of any representation or warranty.

(b) From time to time prior to the Closing, Purchaser shall promptly deliver written notice to Seller of (i) any event, change, effect, condition, state of facts or occurrence that comes to the knowledge of Purchaser that (A) would reasonably be expected to (1) cause a breach Purchaser's covenants or agreements contained herein, (2) render the satisfaction of the conditions in Section 7.1 or 7.2 reasonably unlikely to be fulfilled, or (3) prevent, prohibit or delay the Closing; (B) would reasonably be expected to constitute a Purchaser Material Adverse Effect; or (C) that, if occurring or arising or in existence before or on the Execution Date would have caused a representation or warranty of Purchaser to be inaccurate or deficient; and (ii) any notice or other written communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the transactions contemplated hereby. The delivery of any notice pursuant to this Section 6.6(b) shall not have any effect on the satisfaction of the condition to closing set forth in Section 7.2(a) or Seller's right to terminate this Agreement pursuant to Section 9.1(d) and shall not be deemed to limit or otherwise affect any remedy available to Seller or prevent or cure any breach of any representations or warranty.

6.7 Use of Names. From and after the Closing Date, Seller will execute such consents and take such other action as Purchaser shall reasonably request in order to permit Purchaser to use the name Sigel's and variants thereof. After the Closing Date, Seller shall promptly (i) discontinue the use of the name Sigel's and any variants thereof, (ii) remove such name or names from any buildings, signs, vehicles or other assets or property included in the Excluded Assets and (iii) amend its charter or other organizational documents to remove such name or names.

6.8 Confidentiality. Purchaser acknowledges and understands that this Agreement may be publicly filed in the Bankruptcy Court and that, except as prohibited herein, such disclosure shall not be deemed to violate any confidentiality obligations owing to Purchaser, whether pursuant to this Agreement or otherwise. Seller acknowledges and agrees that from and after the Closing, all non-public information relating to the Business, including the Purchased Assets and the Assumed Liabilities, shall be valuable and proprietary to Purchaser and its affiliates. From and after the Closing, Seller shall not disclose to any person any information relating to Purchaser and its affiliates, or the Business, including the Purchased Assets and the Assumed Liabilities, except as required by applicable Law or as otherwise becomes available in the public domain other than through any action by Seller in violation of its obligations under this Section 6.8; provided, however, that Seller shall use its commercially reasonable efforts, consistent with the requirements of such applicable Law to consult with Purchaser in respect of the text thereof to the extent practicable. Seller acknowledges and agrees that the remedies at law for any breach or threatened breach of this Section 6.8 by Seller are inadequate to protect Purchaser and its affiliates and that the damages resulting from any such breach are not readily susceptible to being measured in monetary terms. Accordingly, without prejudice to any other rights or remedies otherwise available to Purchaser or its affiliates, upon any breach or threatened breach by Seller of the terms and conditions of this Section 6.8,

Purchaser and its affiliates, as applicable shall be entitled to immediate injunctive relief and to an order restraining any threatened or future breach from any court of competent jurisdiction without proof of actual damages or posting of any bond in connection with any such remedy. The provisions of this shall survive the Closing indefinitely.

6.9 Cooperation with Financing. From the Execution Date through and until the Closing Date, Seller shall and shall cause its officers, directors, employees and representatives to assist Purchaser and its affiliates in obtaining any financing necessary to fund the Business from and after the Closing, including by taking the following actions (i) making senior management, representatives and advisors of Seller available for meetings and due diligence sessions with prospective financing sources; (ii) cooperating with prospective lenders, underwriters, placement agents, initial purchasers and their respective advisors and representatives in performing their due diligence; and (iii) assist Purchaser in procuring credit agreements, hedging arrangements, notes, mortgages, pledge and security documents, landlord waivers, estoppels, consents and approvals and other definitive financing documents or other requested certificates or documents (including solvency certificates to the extent required).

6.10 Casualty Insurance.

(a) Seller shall maintain until the Closing all existing insurance policies relating to the Business or the Purchased Assets (the "Seller Policies"), at its sole cost and expense. If between the Execution Date and the Closing, any of the Purchased Assets shall be damaged or destroyed by fire, theft, vandalism or other casualty event, or become subject to any condemnation or eminent domain proceeding, then Seller shall promptly notify Purchaser in writing of such fact and Purchaser shall have the option to (i) acquire such Purchased Assets on an "as is" basis and take an assignment from Seller of any and all insurance proceeds payable to Seller, and any and all third-party claims of Seller, in respect of such event, (ii) elect to exclude such Purchased Asset from this Agreement, or (iii) if such event would have a Seller Material Adverse Effect, terminate this Agreement and abandon the transactions contemplated hereby.

(b) Seller shall add Purchaser (or cause Purchaser to be added) as an additional insured or loss payee, as applicable, on each Seller Policy for the duration of each Seller Policy as is in effect on the Execution Date, effective as of the Closing Date. For the avoidance of doubt, except for insurance policies that expire prior to the Closing Date (which Seller shall be required to maintain through the Closing Date in accordance with Section 6.2), Seller shall not be required to renew any Seller Policy beyond the duration that is in effect on the Execution Date. Purchaser shall be entitled to insurance proceeds paid under such Seller Policies in respect of any claim relating to a Purchased Asset or an Assumed Liability or the Business generally from and after the Closing Date.

6.11 Release of Liens. Prior to the Closing, subject to the limitations of the Bankruptcy Case and subject to any Order issued by the Bankruptcy Court, Seller shall use all commercially reasonable efforts to pay or cause the payment of or otherwise obtain releases of claims that any person may have for goods or services secured by a Lien on the Purchased Assets in respect of which such goods or services were furnished or rendered.

6.12 Employee Matters.

(a) Seller shall provide a list of all Employees on Schedule 6.12, which such schedule shall reflect any and all Employees as of the Execution Date, and such schedule shall be updated to provide any and all employment or service hirings or terminations occurring prior to the Closing Date, with the final such update to occur no later than five business days prior to the Closing Date

(it being understood that Seller will inform Purchaser in writing of the termination of employment or services of an Employee or Service Provider after the date hereof). In addition, Seller shall provide Purchaser no later than five business days after the Closing Date with a true, correct and complete list of any and all employment losses (within the meaning of the Worker Adjustment and Retraining Notification Act, as amended (the "WARN Act") incurred by Seller during the 90-day period prior to and including the Closing Date.

(b) Seller shall provide Purchaser, upon execution and delivery of this Agreement, with access to the Employees at times and in a manner reasonably acceptable to Seller, and with information reasonably requested by Purchaser in respect of compensation and benefits of the Employees. Purchaser or one of its affiliates may (but is not obligated to) offer employment to such Employees as it may determine in its sole discretion (the "Offered Employees"). Any Offered Employees who (i) accept the offer of employment from Purchaser or one of its affiliates and (ii) commence employment with Purchaser or one of its affiliates as of immediately after the Closing shall be referred to herein as the "Transferred Employees." Unless a written acceptance of an offer of employment is required by applicable Law, an Offered Employee who is actively at work with Purchaser or one of its affiliates as of the Closing Date and continues employment shall be deemed to have accepted the offer of employment from Purchaser or one of its affiliates, unless such Offered Employee specifically declines such offer of employment.

(c) The employment of any Transferred Employee with Purchaser or one of its affiliates shall commence immediately upon the Closing and shall be deemed, for all purposes, consistent with applicable Law and except as otherwise expressly provided herein, to have occurred with no interruption or break in service and no termination of employment; provided, however, that any Inactive Employee shall not be considered a Transferred Employee unless and until such Inactive Employee returns to active status pursuant to the following sentence, and notwithstanding any other provision of this Agreement to the contrary, Purchaser and its affiliates shall only be responsible for Liabilities relating to the Inactive Employee from and after the date such Inactive Employee becomes a Transferred Employee. The employment of any Inactive Employee with Purchaser or one of its affiliates, as applicable, shall be effective upon his or her return to active work; provided, however, that the Inactive Employee reports to work with Purchaser or one of its affiliates, as applicable, within 15 days after the end of any such approved leave and, to the extent permitted by applicable Law, in no event later than 120 days after the Closing Date, and, as of such date, such Inactive Employee shall be a Transferred Employee. Each Transferred Employee shall be hired on an "at will" basis unless otherwise agreed by Purchaser.

(d) Seller shall terminate, or shall cause to be terminated, the employment of all Transferred Employees effective as of the Closing or, in respect of any Inactive Employee who becomes a Transferred Employee after the Closing Date in accordance with Section 6.12(c), upon his or her return to active work with Purchaser or one of its Affiliates, as applicable. Subject to, and effective as of, the Closing, Seller shall offer to each of the Transferred Employees a waiver and release from any and all contractual, common law or other restrictions enforceable by Seller and its affiliates on the employment, activities or other conduct of such individuals after their termination of employment with Seller except in respect of obligations related to confidentiality and trade secrets which shall become effective upon such Transferred Employee's execution of a mutual release of liability between such Transferred Employee and Seller releasing any and all claims against each other, other than those that arise out of intentional misconduct, fraud, breaches of confidentiality or theft of trade secrets. Prior to the Closing Date, and to the extent necessary to implement this sentence, Seller shall cause to be taken all actions as may be reasonably required to amend any Employee Benefit Plan and take or cause to be taken all other action as may be reasonably required to provide that severance or separation payments shall not be payable to any

Transferred Employee on account of such employee's termination of employment with Seller and its affiliates.

(e) Pursuant to the "Standard Procedure" provided in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 320, (i) Purchaser and Seller shall report on a predecessor/successor basis as set forth therein, (ii) Seller will not be relieved from filing a Form W-2 in respect of any Transferred Employees for any tax period ending immediately prior to the Closing Date and the tax year including the Closing Date in respect of the portion of such year that such Transferred Employee was employed by Seller and its affiliates, and (iii) Purchaser will undertake to file (or cause to be filed) a Form W-2 for each such Transferred Employee in respect of the portion of the year during which such Transferred Employees are employed by Purchaser that includes the Closing Date, excluding the portion of such year that such Transferred Employees were employed by Seller and its affiliates.

(f) Purchaser shall be responsible for all workers' compensation claims relating to any Transferred Employees if the incident or alleged incident giving rise to the claim occurred after the Closing Date. Seller shall be responsible for all workers' compensation claims relating to any Transferred Employees if the incident or alleged incident giving rise to the claim occurred on or prior to the Closing Date.

(g) In respect of any accrued but unused vacation or paid time-off benefits ("Accrued PTO") to which any Transferred Employee is entitled pursuant to the vacation policy or other arrangement applicable to such Transferred Employee immediately prior to the Closing as reflected in Schedule 6.12, Purchaser shall, or shall cause its affiliates to, either (i) allow such Transferred Employee to use such Accrued PTO or (ii) to the extent permitted by applicable Law, pay or have Seller pay (at Seller's expense) any or all of the value of such Accrued PTO to such Transferred Employee in cash.

(h) Nothing herein, express or implied, shall confer upon any other persons (including any current or former employee of Seller, Purchaser or any of their respective affiliates) any rights or remedies hereunder, including any right to employment or continued employment for any specified period or continued participation in any Employee Benefit Plan or other benefit plan, or any nature or kind whatsoever under or by reason of this Agreement. Nothing herein restricts or precludes the right of Purchaser to terminate the employment of any Transferred Employee. The provisions contained herein are not intended to be for the benefit of or otherwise be enforceable by, any third party, including any current or former Employee or Service Provider. Nothing in this Section 6.12, express or implied, shall be (i) deemed an amendment of any Employee Benefit Plan providing benefits to any Employee or (ii) construed to prevent Purchaser or its affiliates from terminating or modifying to any extent or in any respect any employee benefit plan that Purchaser or its affiliates may establish or maintain.

(i) Notwithstanding any other provision of this Agreement to the contrary, if requested by Purchaser in writing, Seller shall provide Purchaser, upon execution and delivery of this Agreement, with access to such Employees as Purchaser elects, at times and in a manner reasonably acceptable to Seller, to allow Purchaser to negotiate and offer post-Closing consulting agreements with such Employees.

(j) As used in this Agreement, the following terms have the following meanings: (i) "Employee" means any employee of Seller; (ii) "Inactive Employees" means Offered Employees who are: (A) on a Seller-approved leave of absence on the Closing Date as a result of military service, pregnancy, parental leave, disability leave, medical leave, jury duty or any leave provided

under applicable Law; and (B) expected to return to work in the time permitted for such leave under applicable Law and, for any other leave, in accordance with the terms of such leave but not longer than 120 days after the Closing Date; and (iii) "Service Provider" means any consultant or independent contractor who is or has been providing services to Seller.

(k) The transactions contemplated hereby constitute an "asset sale" within the meaning of Section 54.4980B-9, A-1(c) of the Treasury Regulations and the provisions of Section 54.4980B-9, A-8(c) of the Treasury Regulations shall apply to the transactions contemplated hereby.

(l) At such time or times at or after the Closing as Purchaser may reasonably require, Seller shall take all necessary steps, including any required plan amendments and adoption of appropriate resolutions by Seller, to permit and facilitate Purchaser's adoption of Seller's 401(k) plan, so that such plan is not terminated, but rather Purchaser becomes the sponsor of such plan(s).

6.13 Certain Tax Matters.

(a) Transfer Taxes. All documentary, stamp, transfer, motor vehicle registration, sales, use, excise, and other similar non-income Taxes and all filing and recording fees (and any penalties and interest associated with such Taxes and fees) arising from or relating to the consummation of the transactions contemplated hereby that are not eliminated by application of Section 1146(a) of the Bankruptcy Code (collectively, "Transfer Taxes") shall be borne by Seller, regardless of the party on whom liability is imposed under the provisions of the Laws relating to such Transfer Taxes. Seller and Purchaser shall consult and cooperate in timely preparing and making all filings, Tax Returns, reports and forms as may be required to comply with the provisions of the Laws relating to such Transfer Taxes and shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for or exemptions from such Transfer Taxes, including preparing exemption certificates and other instruments as are applicable to claim available exemptions from the payment of Transfer Taxes under applicable Law and executing and delivering such affidavits and forms as are reasonably requested by the other party.

(b) Certain Periodic Non-Income Taxes.

(i) In respect of any real or personal property or other periodic Taxes not based on income or receipts ("Periodic Non-Income Taxes") that are assessed on, or in respect of, the Purchased Assets and attributable to any period that begins after the Closing Date, if Seller pays such Periodic Non-Income Taxes, as promptly as practicable after deliver to Purchaser of proof of such payment, and in any case within five business days, Purchaser shall pay to Seller the amount of such Periodic Non-Income Taxes paid by Seller. In respect of any Periodic Non-Income Taxes that are assessed on, or in respect of, the Purchased Assets and attributable to any period that ends on or prior to the Closing Date, if Purchaser pays such Periodic Non-Income Taxes, as promptly as practicable after deliver to Seller of proof of such payment, and in any case within five business days, Seller shall pay to Purchaser the amount of such Periodic Non-Income Taxes paid by Purchaser.

(ii) In respect of any Periodic Non-Income Taxes that are assessed on, or in respect of, the Purchased Assets and attributable to any period that includes but does not end on the Closing Date (a "Straddle Period") (i) if Seller pays such Periodic Non-Income Taxes, as promptly as practicable after delivery to Purchaser of proof of such payment, and in any case within five business days, Purchaser shall pay to Seller the amount of such Periodic Non-Income Taxes paid by Seller that are attributable to the portion of such Straddle Period beginning after the Closing Date (the "Post-Closing Straddle Period"), and

(ii) if Purchaser pays such Periodic Non-Income Taxes, as promptly as practicable after delivery to Seller of proof of such payment, and in any case within five business days, Seller shall pay to Purchaser the amount of such Periodic Non-Income Taxes paid by Purchaser that are attributable to the portion of such Straddle Period up to and including the Closing Date (the "Pre-Closing Straddle Period"). For purposes of this Section 6.13, the amount of Periodic Non-Income Taxes for a Straddle Period that are attributable to a Pre-Closing Straddle Period or a Post-Closing Straddle Period shall be determined as follows: (A) Periodic Non-Income Taxes that are based on or related to income or receipts or imposed on a transactional basis shall be allocated to the period in which the transaction giving rise to such Periodic Non-Income Taxes occurred and (B) Periodic Non-Income Taxes that are ad valorem, property or Periodic Non-Income Taxes imposed on a periodic basis pertaining to a Straddle Period shall be based on the ratio of the number of days in the Pre-Closing Straddle Period to the total number of days in the Straddle Period, and the amount of Periodic Non-Income Taxes attributable to a Post-Closing Straddle Period shall be based upon the ratio of the number of days in the Post-Closing Straddle Period to the total number of days in the Straddle Period.

(iii) The party that has the primary obligation to do so under applicable Law shall timely pay to the applicable taxing authority any Periodic Non-Income Taxes covered by this Section 6.13.

ARTICLE VII Conditions to Closing

7.1 Conditions Precedent to the Obligations of the Parties. The respective obligations of the parties hereto to consummate the transactions contemplated hereby are subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any or all of which may be waived by Seller or Purchaser, in whole or in part, to the extent permitted by applicable Law):

(a) there shall not be in effect any Order issued or entered into by any Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; and

(b) the Bankruptcy Court shall have entered the Sale Order, the Sale Order shall be in full force and effect and not stayed and shall not have been reversed or modified since the date of its entry.

7.2 Conditions Precedent to the Obligations of Seller. The obligation of Seller to consummate the transactions contemplated hereby is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any or all of which may be waived by Seller, in whole or in part, to the extent permitted by applicable Law):

(a) the representations and warranties of Purchaser contained herein that are not qualified by materiality or a similar qualification shall be true and complete in all material respects at and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and the representations and warranties of Purchaser contained herein that are qualified by materiality or a similar qualification shall be true and complete in all respects at and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date, and Seller shall have

received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to such effect;

(b) Purchaser shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date, and Seller shall have received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to such effect; and

(c) Purchaser shall have delivered, or caused to be delivered, to Seller all of the items required to be delivered to Seller in Section 8.4.

7.3 Conditions Precedent to the Obligations of Purchaser. The obligation of Purchaser to consummate the transactions contemplated hereby is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any or all of which may be waived by Purchaser, in whole or in part, to the extent permitted by applicable Law):

(a) the representations and warranties of Seller contained herein that are not qualified by materiality or a similar qualification shall be true and complete in all material respects at and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and the representations and warranties of Seller contained herein that are qualified by materiality or a similar qualification shall be true and complete in all respects at and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date, and Purchaser shall have received a certificate signed by the general partner of Seller, dated the Closing Date, to such effect;

(b) Seller shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date, and Purchaser shall have received a certificate signed by the general partner of Seller, dated the Closing Date, to such effect;

(c) Seller shall have delivered, or caused to be delivered, to Purchaser all of the items required to be delivered to Purchaser in Section 8.3;

(d) the Sale Order duly rendered by the Bankruptcy Court shall be in form and substance satisfactory to Purchaser in its sole discretion; and

(e) Purchaser shall have received assurances from the Texas Alcoholic Beverage Commission ("TABC") that the TABC will issue to Purchaser all Permits necessary or appropriate for Purchaser to conduct the Business as currently conducted and as proposed to be conducted by Purchaser, which assurances shall be in form and substance satisfactory to Purchaser in its sole discretion.

7.4 Frustration of Closing Conditions. No party hereto may rely on the failure of any condition set forth in Section 7.1, 7.2 or 7.3, as the case may be, if such failure was caused by such party's breach or failure to comply with any provision of this Agreement.

ARTICLE VIII
Closing

8.1 Closing. Subject to the satisfaction of the conditions set forth in Sections 7.1, 7.2 and 7.3 (or the waiver thereof by the party entitled to waive the applicable condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article I (the "Closing") shall take place at the offices of Miller, Egan, Molter & Nelson LLP, 2911 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219 at 10:00 A.M., Dallas, Texas time on the date that is three business days after the satisfaction or waiver in writing of all of the conditions to the obligations of the parties set forth in Article VII (other than the conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at Closing) or at such other time, date or place as may be mutually agreed to in writing by Purchaser and Seller. The date on which the Closing is held is referred to herein as the "Closing Date." The transfer of the Purchased Assets and the Assumed Liabilities shall be deemed to take place and be effective at 12:01 A.M. Dallas, Texas time (the "Effective Time") on the Closing Date.

8.2 Proceedings at Closing. At the Closing, (i) Seller shall take the actions and deliver the documents referred to in Section 8.3 and (ii) Purchaser shall take the actions and deliver the documents referred to in Section 8.4. All actions to be taken and all documents to be executed and delivered by Seller in connection with the consummation of the transactions contemplated at the Closing shall be reasonably satisfactory in form and substance to Purchaser and its counsel, and all actions to be taken and all documents to be executed and delivered by Purchaser in connection with the consummation of the transactions contemplated at the Closing shall be reasonably satisfactory in form and substance to Seller and its counsel. All actions to be taken and all documents to be executed and delivered by all parties hereto at the Closing shall be deemed to have been taken and executed and delivered simultaneously, and no action shall be deemed taken nor any document executed or delivered until all have been taken, executed, and delivered.

8.3 Deliveries by Seller. At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser (or such other person as may be indicated below):

- (a) a true and correct copy of the Sale Order duly rendered by the Bankruptcy Court;
- (b) one or more bills of sale duly executed by Seller in the form attached hereto as **Exhibit B** (except for dates and other relevant information needed to complete and effectuate such bills of sale) evidencing the transfer of the Purchased Assets to Purchaser;
- (c) one or more assignment and assumption agreements duly executed by Seller in the form attached hereto as **Exhibit C** (except for dates and other relevant information needed to complete and effectuate such assignment and assumption agreements) evidencing the transfer of the Purchased Assets to Purchaser;
- (d) one or more special warranty deeds duly executed by Seller in the form attached hereto as **Exhibit D** evidencing the transfer of the Owned Real Property to Purchaser;
- (e) the officer's certificates required to be delivered pursuant to Sections 7.3(a) and 7.3(b);
- (f) a certificate of non-foreign status duly executed by Seller in the form attached hereto as **Exhibit E** and that otherwise complies with Section 1445 of the Code;

(g) one or more pay-off letters duly executed by PNC Bank evidencing the retirement of all indebtedness owed by Seller to PNC Bank;

(h) evidence of the release and termination of all Liens associated with all indebtedness owed by Seller to PNC Bank;

(i) one or more pay-off letters duly executed by each of the vendors, suppliers, trade creditors or other persons listed on **Schedule 8.3(i)** evidencing the retirement of all indebtedness owed by Seller to each such person;

(j) three DVD copies of the "virtual data room" created for the purposes of the sale of the Purchased Assets, as such data room existed on the close of business on the third business day prior to the Closing Date;

(k) the interim management agreement (the "Interim Management Agreement") duly executed by Seller in the form attached hereto as **Exhibit F**;

(l) original certificates of title to all owned motor vehicles listed on **Schedule 1.1(e)**; and

(m) such other deeds, endorsements, assignments and instruments of conveyance, transfer and release, in form and substance reasonably acceptable to Purchaser, as Purchaser may reasonably request to assign and convey the Purchased Assets to Purchaser and vest title therein in Purchaser (in each case free and clear of all Liens other than Permitted Liens and Excluded Liabilities).

8.4 Deliveries by Purchaser. At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller (or such other person as may be indicated below):

(a) a wire transfer to Seller of immediately available funds in the amount of the Unadjusted Purchase Price as provided in Section 2.1;

(b) one or more assignment and assumption agreements duly executed by Purchaser in the form attached hereto as **Exhibit C** (except for dates and other relevant information needed to complete and effectuate such assignment and assumption agreements) evidencing the transfer of the Purchased Assets to Purchaser;

(c) the officer's certificates required to be delivered pursuant to Sections 7.2(a) and 7.2(b); and

(d) the Interim Management Agreement duly executed by Purchaser in the form attached hereto as **Exhibit F**.

ARTICLE IX Termination

9.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing as follows:

(a) by mutual written consent of Seller and Purchaser;

(b) by Purchaser, on the one hand, or Seller, on the other hand, upon prior written notice to the other party, if the Closing has not occurred by 5:00 P.M., Dallas, Texas time on August 31, 2017; provided, however, that Purchaser shall have the right to extend such date for up to 90 days (as such date may be so extended, the "Termination Date"); provided, further, that if the Closing has not occurred on or before the Termination Date due to a material breach of any representation, warranty, covenant or agreement contained in this Agreement by a party, then such party may not terminate this Agreement pursuant to this Section 9.1(b);

(c) by Purchaser, if Seller breaches any representation, warranty, covenant or agreement contained in this Agreement, and such breach (i) would result in a failure of a condition set forth in Section 7.1 or 7.3 and (ii)(A) cannot be cured by the Termination Date or (B) if capable of being cured, has not been cured by the earlier of (1) ten business days after the giving of written notice by Purchaser to Seller of such breach (which notice shall specify in reasonable detail the nature of such breach and Purchaser's intention to terminate this Agreement if such breach is not cured) and (2) one business day prior to the earlier of the Termination Date and the date on which this Agreement may otherwise be terminated by Purchaser in accordance with this Section 9.1; provided, however, that Purchaser is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement;

(d) by Seller, if Purchaser breaches any representation, warranty, covenant or agreement contained in this Agreement, and such breach (i) would result in a failure of a condition set forth in Section 7.1 or 7.2 and (ii)(A) cannot be cured by the Termination Date or (B) if capable of being cured, has not been cured by the earlier of (1) ten business days after the giving of written notice by Seller to Purchaser of such breach (which notice shall specify in reasonable detail the nature of such breach and Seller's intention to terminate this Agreement if such breach is not cured) and (2) one business day prior to the earlier of the Termination Date and the date on which this Agreement may otherwise be terminated by Seller in accordance with this Section 9.1; provided, however, that Seller is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement;

(e) by Seller or Purchaser if there is in effect a final, non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements, it being agreed that the parties hereto shall promptly appeal any adverse determination which is not non-appealable and pursue such appeal with reasonable diligence unless and until this Agreement is terminated pursuant to this Section 9.1;

(f) by Purchaser, under the circumstances described in Section 6.10(a)(iii);

(g) by Purchaser, if the Bankruptcy Court shall have stated, declared or determined that it will not enter the Sale Order; or

(h) by Purchaser, if, prior to the Closing, the Bankruptcy Case is converted into a case under Chapter 7 of the Bankruptcy Code or dismissed or if a trustee is appointed in the Bankruptcy Case.

9.2 Notice of Termination. If this Agreement is terminated pursuant to Section 9.1 (other than a termination under Section 9.1(a), which shall not require notice), then the terminating party shall forthwith give written notice of termination to the other party specifying the subsection of Section 9.1 pursuant to which such termination is made.

9.3 Effect of Termination.

(a) Except for this Section 9.3 and Article X which shall survive any termination of this Agreement, upon the valid termination of this Agreement pursuant to Section 9.1, this Agreement shall become null and void and of no further force and effect and all obligations of the parties hereto shall terminate and there shall be no liability or obligation of any party hereto; provided, however, nothing herein shall relieve Purchaser or Seller of any liability for any breach of this Agreement prior to the effective date of such termination; provided, further, that if this Agreement is terminated for any reason other than by Seller pursuant to Section 9.1(d), then Seller shall be liable for and shall pay to Purchaser all reasonable out-of-pocket costs, fees and expenses (including costs fees and expenses of all professionals, including financial advisors, legal counsel, accountants and other experts and consultants) incurred by Purchaser or its affiliates in connection with the transactions contemplated by this Agreement and the Ancillary Agreements, including the Bankruptcy Case and other judicial and regulatory proceedings related to such transactions up to an aggregate amount not to exceed \$550,000.00 (collectively, the "Reimbursable Expenses").

(b) Purchaser shall provide to Seller reasonable supporting documentation in respect of all Reimbursable Expenses for which it desires reimbursement; provided, however, that Purchaser may provide one or more summary invoices that are redacted to preserve attorney-client privilege and attorney work product. Seller shall pay Purchaser an amount equal to the aggregate Reimbursable Expenses within five business days after its receipt of the supporting documentation in respect of such Reimbursable Expenses. Seller acknowledges and agrees that (i) payment of the Reimbursable Expenses is an integral part of the transactions contemplated hereby, (ii) in the absence of Seller's covenants to make such payment, Purchaser would not have entered into this Agreement, and (iii) the Reimbursable Expenses shall constitute an administrative expense of Seller's estate under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code.

ARTICLE X
Miscellaneous Provisions

10.1 Amendments. This Agreement may be amended, modified or supplemented only pursuant to a written instrument making specific reference to this Agreement and signed by each of the parties hereto.

10.2 Assignment. Neither this Agreement nor any right or obligation hereunder shall be assigned, delegated or otherwise transferred (whether voluntarily, by operation of law, by merger or otherwise), without the prior written consent of the other party hereto; provided, however, that Purchaser may, without obtaining the prior written consent of Seller, (i) assign, delegate, or otherwise transfer its rights and obligations hereunder to any affiliate or subsidiary of Purchaser and (ii) make a collateral assignment of its rights hereunder to any institutional lender to Purchaser; provided, further, that any such assignment, delegation, or other transfer shall not relieve Purchaser of its obligations hereunder. Seller shall execute such acknowledgements of such assignments and collateral assignments in such forms as Purchaser or any such institutional lender may from time to time reasonably request. Any attempted assignment, delegation or transfer in violation of this Section 10.2 shall be void and of no force or effect.

10.3 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective legal representatives, successors and permitted assigns.

10.4 Construction.

(a) General. The Article and Section headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any

provision hereof. Unless the context otherwise requires, (i) all references to Articles, Sections, Schedules or Exhibits contained in this Agreement are references to articles, sections, schedules and exhibits of or to this Agreement, (ii) words in the singular include the plural and *vice versa*, and (iii) words of any gender include each other gender. Any agreement, instrument or Law defined or referred to herein means such agreement, instrument or Law as from time to time amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of Laws) by succession of comparable successor Laws. References to a person or entity are also to its successors and permitted assigns. Each party hereto acknowledges that it participated in, or had a meaningful opportunity to participate in, the negotiations and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises in respect of this Agreement, then this Agreement shall be construed to be the product of meaningful individualized negotiations between the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any of the provisions of this Agreement.

(b) Certain Definitions. As used in this Agreement the following words or phrases have the following meanings: (i) "affiliate" means, in respect of any specified person, any other person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified person; (ii) "business day" means any day other than Saturday, Sunday or any day on which The Federal Reserve Bank of Dallas is closed for business; (iii) for purposes of the definition of "affiliate," "control" when used in respect of any person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise (and "controlling" and "controlled" have meanings correlative thereto); (iv) "day" means a calendar day; (v) "dollar" or "\$" means lawful currency of the United States; (vi) "hereby," "herein," "hereof," "hereto," "hereunder," "herewith" and words of similar import refer to this Agreement as a whole and not to any particular provision hereof; (vii) "include," "including" or derivatives thereof means "including without limitation"; (viii) "knowledge of Seller" means the actual knowledge of Tony J. Bandiera, Jr., John A. Rector, Lawrence Gordon Schmuck and Denise Fawks after due inquiry; (ix) "or" means "and/or"; (x) "person" means any individual, corporation, joint venture, partnership, limited partnership, limited liability company, trust, unincorporated association or other form of business or legal entity or Governmental Body; and (xi) "U.S." means the United States of America.

(c) Purchaser Material Adverse Effect. As used herein, the term "Purchaser Material Adverse Effect" means any effect, event, change, condition, state of facts, occurrence or circumstance (regardless of whether such effect, event, change, condition, state of facts, occurrence or circumstance constitutes a breach of any representation, warranty or covenant of Purchaser hereunder) that has had or would reasonably be expected to have, individually or when considered together with any other effect, event, change, condition, state of facts, occurrence or circumstance, a material and adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party or to perform its obligations hereunder or thereunder.

(d) Seller Material Adverse Effect. As used herein, the term "Seller Material Adverse Effect" means any effect, event, change, condition, state of facts, occurrence or circumstance (regardless of whether such effect, event, change, condition, state of facts, occurrence or circumstance constitutes a breach of any representation, warranty or covenant of Seller hereunder) that has had or would reasonably be expected to have, individually or when considered together with any other effect, event, change, condition, state of facts, occurrence or circumstance (i) a material adverse effect on or a material adverse change in or to the Business (including its results of operations or financial condition or prospects) or the Purchased Assets, taken as a whole; (ii) a

material adverse effect on or a material adverse change in or to the ability of Seller to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party or to perform its obligations hereunder or thereunder; or (iii) the effect of preventing or delaying the transactions contemplated hereby.

(e) Time Periods. If any time period set forth herein expires on a day that is not a business day, then such time period shall automatically be extended to the first business day immediately after the non-business day on which such time period would have otherwise expired.

10.5 Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument.

10.6 Entire Agreement. This Agreement (including the Exhibits and Schedules attached hereto), constitutes the entire agreement between the parties hereto in respect of the subject matter hereof and supersedes any prior agreement or understanding between them in respect of such subject matter.

10.7 Equitable Relief. Seller acknowledges and agrees that irreparable damage would occur if any of the obligations to be performed by Seller hereunder were not performed in accordance with their specific terms or were otherwise breached, and that damages at law may be an inadequate remedy for breach of any of Seller's agreements and covenants contained in this Agreement. Accordingly, Purchaser shall be entitled to injunctive relief to prevent any such breach, and to enforce specifically the terms of this Agreement, including specific performance of such agreements and covenants or an Order enjoining Seller from any threatened, or from continuation of any actual, breach of the agreements and covenants contained in this Agreement. The rights set forth in this Section 10.7 shall be in addition to any other rights that Purchaser may have at law or in equity pursuant to this Agreement.

10.8 Expenses. Except as otherwise expressly provided in this Agreement (including Section 9.3) and whether or not the transactions contemplated hereby are consummated (i) Seller shall bear all of its expenses and (ii) Purchaser shall bear all of its expenses, in each case incurred in connection with the negotiation, execution, delivery and performance of this Agreement, the other agreements and documents contemplated hereby and the consummation of the transactions contemplated hereby and thereby.

10.9 Governing Law. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS), EXCEPT TO THE EXTENT SUCH LAWS ARE SUPERSEDED BY THE BANKRUPTCY CODE OR OTHER APPLICABLE FEDERAL LAW.**

10.10 Jurisdiction; Venue. Without limiting any party's right to appeal any order of the Bankruptcy Court, the Bankruptcy Court shall retain sole jurisdiction over any claim, controversy or dispute relating to this Agreement or any of the transactions contemplated hereby; provided, however, if the Bankruptcy Court is unwilling or unable to hear any such claim, controversy or dispute, then the courts of the State of Texas in Dallas County and the United States District Court for the Northern District of Texas (Dallas Division) and the appellate courts having jurisdiction of appeals in such courts shall have sole jurisdiction over any such claim, controversy or dispute. Each of the parties hereto hereby irrevocably and unconditionally (i) submits and consents for itself and its property in any action, suit, proceeding or investigation relating to this Agreement or for recognition of and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of such courts and that all claims in respect of any such action, suit, proceeding or investigation shall be heard and determined only in such courts, (ii) waives any objection that it may now or hereafter have to the venue or jurisdiction of any such action, suit, proceeding or

investigation in such courts or that any such action, suit, proceeding or investigation was brought in an inconvenient forum (and agrees not to plead or claim the same), and (iii) agrees that service of process in any such action, suit, proceeding or investigation may be effected by mailing a copy of such process by certified mail, postage prepaid, to such party at its address set forth in Section 10.11.

10.11 Notices. All notices, requests, demands, or other communications required or permitted to be given hereunder by any party hereto to any other party shall be in writing and delivered (i) in person, (ii) by a nationally recognized overnight courier service requiring acknowledgment of receipt of delivery, (iii) by United States certified or registered mail, postage prepaid and return receipt requested, or (iv) by electronic mail, as follows:

If to Seller, to:

Sigel's Beverages, L.P.
2690 Anode Lane
Dallas, Texas 75220
Attention: Tony J. Bandiera, Jr.
E-Mail: ajbandiera@yahoo.com

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

Pronske Goolsby & Kathman, P.C.
901 Main Street, Suite 610
Dallas, Texas 75202
Attention: Gerrit M. Pronske
E-Mail: gpronske@pgkpc.com

If to Purchaser, to:

Sigel's Acquisition, LLC
2929 Carlisle Street, Suite 170
Dallas, Texas 75204
Attention: Jeffrey L. Olyan
E-Mail: jolyan@retailplazas.com

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

Miller, Egan, Molter & Nelson LLP
2911 Turtle Creek Blvd., Suite 1100
Dallas, Texas 75219
Attention: Shane M. Egan
E-Mail: shane.egan@MillerEgan.com

Notice shall be deemed given, received, and effective on: (i) if given by personal delivery or courier service, the date of actual receipt by the receiving party, or if delivery is refused on the date delivery was first attempted; (ii) if given by certified or registered mail, the third day after being so mailed if posted with the United States Postal Service; and (iii) if given by e-mail, the date on which the e-mail is electronically confirmed if confirmed by transmission report during the transmitter's normal business hours, or at the beginning of the next business day after transmission if confirmed at any time other than the transmitter's normal business hours. Any person entitled to notice may change any address or e-mail address to which notice is to be given to it by giving notice of such change of address or e-mail address as provided in this

Section 10.11. The inability to deliver notice because of changed address or e-mail address of which no notice was given shall be deemed to be receipt of the notice as of the date such attempt was first made.

10.12 No Recourse. Notwithstanding any other provision of this Agreement to the contrary, no past, present or future officer, director, partner, member, manager, equity holder, controlling person, employee, contractor, agent or representative of the parties hereto shall have any liability for any liability or obligation of Seller or Purchaser, as applicable, under this Agreement or any other agreement or document contemplated hereby for any claim based on, arising out of, or relating to the transactions contemplated hereby and thereby. Any claim or cause of action based upon, arising out of or relating to this Agreement or any agreement or document contemplated hereby may only be brought against persons that are expressly named as parties hereto or thereto, and then only in respect of the specific obligations set forth herein or therein. Other than the parties hereto, no other party shall have any liability or obligation for any of the liabilities or obligations of any party under this Agreement or any other agreement or document contemplated hereby or thereby or for any action, suit or proceeding based upon, arising out of or relating to the transactions contemplated hereby or thereby (including the breach, termination or failure to consummate such transactions)

10.13 Cumulative Remedies. The rights, powers and remedies provided hereunder are cumulative and are not exclusive of any rights, powers and remedies provided by applicable Law.

10.14 Severability. Each provision of this Agreement shall be deemed severable. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement or the application of such provision to other persons or circumstances or in other jurisdictions shall not be affected thereby.

10.15 Survival. The representations and warranties contained in this Agreement or in any document delivered in connection with the transactions contemplated hereby shall not survive the Closing and none of the parties shall have any liability to any other party after Closing for any breach thereof. The agreements and covenants contained in this Agreement or in any document delivered in connection with the transactions contemplated hereby that are to be performed at or after the Closing shall survive the Closing until the expiration of the applicable statute of limitations (or for such shorter period as may be explicitly specified herein or therein) and a party shall be liable to the other party after the Closing for any breach thereof.

10.16 No Third-Party Beneficiaries. This Agreement and the covenants made herein are made expressly and solely for the benefit of the parties hereto, and no other person shall be entitled or be deemed to be entitled to any benefits or rights hereunder, nor be authorized or entitled to enforce any rights, claims or remedies hereunder or by reason hereof.

10.17 Time Is of the Essence. Time is of the essence in the performance of this Agreement.

10.18 Waiver of Bulk Sales Laws. To the maximum extent not prohibited by applicable law, the parties hereto hereby waive compliance by Purchaser and Seller with the terms of any bulk sales or similar Laws in any applicable jurisdiction in respect of the transactions contemplated by this Agreement. The Sale Order shall exempt Purchaser and Seller from compliance with any such Laws.

10.19 Waiver of Trial by Jury. **TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, EACH PARTY HERETO, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT**

OF ANY ACTION, SUIT OR PROCEEDING, DIRECTLY OR INDIRECTLY, AT ANY TIME ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.

10.20 Waivers. No waiver of any provision hereof, or consent required hereunder, or any consent or departure from this Agreement, shall be valid or binding unless expressly and affirmatively made in writing and duly executed by the party to be charged with such waiver. No waiver shall constitute or be construed as a continuing waiver or a waiver in respect of any subsequent breach or default, either of similar or different nature, unless expressly so stated in such writing. No delay, forbearance or neglect by any party hereto, whether in one or more instances, in the exercise of any right, power, privilege or remedy hereunder or in the enforcement of any provision of this Agreement shall constitute or be construed as a waiver thereof. The single or partial exercise of any right, power, privilege or hereunder or under applicable Law shall not preclude any other or further exercise of any other right, power, privilege or remedy.

* * * * *

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the Execution Date.

SELLER:

SIGEL'S ACQUISITION, LLC

By: _____
Name: Jeffrey L. Olyan
Title: President

PURCHASER:

SIGEL'S BEVERAGES, L.P.

By: Milan General Investments, Inc.,
its General Partner

By: _____
Name: _____
Title: _____

Top Vendors 2015

GLAZER'S WHOLESALE DIST. Total	36,384,925
REPUBLIC NATIONAL DISTRIB Total	30,772,788
Andrews Distributing of N. TX - Dallas	4,061,037
Ben E. Keith Company	1,914,795
JAMES GUNTER LLC Total	1,423,585
MEXCOR INC. Total	649,603
PIONEER WINE COMPANY Total	646,811
LIBBEY GLASS INC Total	424,692
SMART DISTRIBUTORS LLC Total	374,813
FAVORITE BRANDS LLC Total	332,092
DOT FOODS INC. Total	314,437
THE CD HARTNETT COMPANY Total	237,293
BRANDS OF BRITAIN LLC Total	212,965
GLOBAL QUALITY IMPORT INC Total	210,763
AMBIENTE WINE IMPORTING C Total	198,634
COCA-COLA BOTTLING COMPAN Total	188,312

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pay off letters