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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., debtor and debtor-in-possession in the above-captioned chapter 11 case, on behalf of itself and its bankruptcy estate (“**Sigel’s**” or the “**Debtor**”), 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 to enter an order ("**Proposed Sale Order**") substantially in the form attached hereto as **Exhibit A**.¹ In support of such relief, Debtor 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), 107(b), 363(b), 363(f), 363(m), 363(n), 365, 503 and 507 of the Bankruptcy Code, and rules 2002, 6004, 6006 and 9014 of the Bankruptcy Rules.

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.

¹ Unless otherwise defined herein, all capitalized terms shall have the meaning assigned to such terms in the APA (as herein defined).

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 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 Store 9 held by United Legacy Ltd. *See* Orders Granting Motion to Assume Unexpired Non-Residential Real Property Leases (together, the "**Lease Assumption Orders**") [Docket No. 174 & NONE] *See also* Agreed Orders Extending Deadline to Assume or Reject Leases [Docket Nos. 176, 236, 278 & 329]

B. Marketing process and 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. As the Court recalls, after months of negotiations, Debtor reached an agreement

in principle with one potential purchaser, but negotiations were terminated without the parties signing a definitive agreement.

8. Beginning in October 2017, Sigel's re-engaged discussions and negotiations with representatives of Twin Liquors, LP concerning a sale of Sigel's operating assets. Those negotiations have resulted in a substantially complete Asset Purchase Agreement (the "APA") between Sigel's as Seller and Twin Liquors, LP as purchaser (the "Purchaser"), a true and correct copy of which is attached hereto as **Exhibit B** without the supporting exhibits or schedules, which are being withheld by Debtor for proprietary and/or confidentiality reasons.² The APA attached to this motion is substantially complete, and the parties expect to finalize the agreement in the coming days, at which time the Debtor will file the final agreement for the Court's consideration at the sale hearing.

9. The Debtor does not believe that any further or additional marketing is necessary or reasonably likely to lead to an offer that is more favorable to the Debtors, its creditors and estate than what is being offered by the Purchaser pursuant to the APA.

10. Subject to the terms and conditions of the APA, the APA provides for the purchase, at Closing, of substantially all of Sigel's assets, including its accounts receivable, real property assets, inventory, business personal property, intellectual property, and goodwill, free and clear of all Liens, Claims and interests (as defined in the Proposed Sale Order), pursuant to Bankruptcy Code Section 363(f) sale. Subject to the terms and conditions of the APA, Purchaser will also assume certain Contracts and Real Property Leases (collectively, the "Assumed Contracts"). If a contract or lease is not assumed and assigned to Purchaser under the terms of the APA at Closing, such contract or

² The Debtor will make copies of the supporting exhibits and schedules available at the hearing on the Sale Motion.

lease will be subject to further proceedings before this Court and will likely be rejected under a chapter 11 plan of reorganization

11. All liens and interests in the Purchased Assets will attach to the proceeds of sale, in the same relative priority, and will be subject to a further order of the Court or confirmation of a chapter 11 plan.

IV. THE ASSET PURCHASE AGREEMENT

12. Under the APA, the Purchaser shall assume and be liable for only the Assumed Liabilities expressly assumed pursuant to the Asset Purchase Agreement. Pursuant to sections 105(a), 363(b), 363(f), and 365(b) of the Bankruptcy Code, upon the Closing, the Purchased Assets shall be transferred to the Buyer free and clear of all Liens, Claims, and interests of any kind or nature whatsoever (with the sole exception of the Permitted Liens and the Assumed Liabilities). The Purchased Assets are set forth in the APA and this Motion does not seek to limit the Purchased Assets, but generally speaking, the assets to be sold include:

- (a) All accounts receivable;
- (b) All Owned Real Property (including Debtor's headquarters location at 2960 Anode Lane);
- (c) All inventory;
- (d) All tangible personal property, including business personal property;
- (e) The Purchased Contracts and Purchased Real Property Leases;
- (f) All Permits;
- (g) Books and records related to the business or Sigel's Assets;
- (h) All intellectual property, including rights and interest in and to the Sigel's name;

- (i) All refunds, credits, and rebates of taxes for any period or portion thereof prior to the closing date;
- (j) All goodwill and other intangible assets related to the Sigel's assets or business;
- (k) 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; and
- (l) All wine futures and *En Primeur* owned or held by Sigel's.

13. The Sigel's Assets do not include certain Excluded Assets, which are set forth specifically in the APA, but are generally described as follows:

- (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) All rights, claims, causes of action, and credit to the extent relating to any excluded asset or retained liability;
- (d) Sigel's rights, claims, or causes of action set forth in Sections 544 - 551, 553, and 538 of the Bankruptcy Code;
- (e) Sigel's corporate seal, minute books, charter documents, stock ledgers and other such books and records relating to Sigel's corporate organization;
- (f) Right, title, and interest in any identified excluded contracts or excluded leases, including any contracts or leases that are not Purchased Contracts or Purchased Real Property Leases; and
- (g) Sigel's rights under the APA.

14. The Purchaser reserves the right and requests Court authority to transfer any of the Purchased Contracts or Purchased Real Property Leases to its affiliated entities as it may deem necessary.

15. Section 3.3 of the APA provides for the escrow of a portion of the Aggregate Purchase Price for certain taxes and in connection with a purchase price adjustment mechanism for inventory. Section 3.5 and section 6.14 of the APA provide that Purchaser will be entitled to a Section 364(c)(1) super-priority administrative expense claim with priority over all administrative expenses of the kind specified in Sections 503(b) and 507(a) of the Bankruptcy Code, if the inventory escrow is ultimately under-funded to Purchaser's detriment, and in respect of certain potential tax obligations of Debtor.

16. Additionally, Section 9.3 of the APA provides that, in the event that the APA is terminated under the circumstances specifically described therein, Purchaser shall be entitled to reimbursement for all reasonable out-of-pocket costs, fees, and expenses, including the costs and fees of Purchaser's professionals, that the Purchaser may actually incur up to the aggregate amount of \$485,000. In the event that Purchaser is entitled to such a reimbursement claim, Section 9.3(b) of the APA provides that such claim shall be an administrative expense claim of Sigel's estate under Sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

V. ARGUMENT AND AUTHORITY

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

17. 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.").

18. 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).

19. 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.

20. 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).

21. 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 and cash on hand is an amount well in excess of the aggregate value of all liens against the Sigel’s Assets. Debtor also request that any party asserting a lien, claim or encumbrance, together with each contract counterparty, that fails to timely object to this Motion is deemed to have consented to the sale, free and clear, under (f)(2), and consented to the assignment to Purchaser of their Assumed Contract (and Debtor’s proposed Cure Amounts).

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

22. 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)

23. The sale proposed herein is in good faith, and the Purchaser is proceeding in good faith. Therefore, Sigel 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 Assumed Contracts Pursuant to Section 365.

24. Subject to Purchaser's rights under the APA, Purchaser may assume certain of the Debtor's contracts and unexpired leases at Closing. 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).

25. 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).

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 Buyer is a highly successful company with a long track-record of success. If necessary, the Buyer will demonstrate that it has the financial wherewithal to perform under any executory contract or lease assumed pursuant to this Motion and the APA.

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 11 of 13

27. Attached as **Exhibit C** is a list of all of the Debtor's contracts and unexpired leases that, subject to Purchaser's rights under the APA, may be assumed or assigned to Purchaser under the APA at Closing. **Exhibit C** includes the Debtor's proposed Cure Amount under each such contract or lease. The Debtor will file and serve on each counterparty to a contract or unexpired lease a *Notice of Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Sale of Certain of the Debtor's Purchased Assets and the Proposed Cure Costs* (each a "**Notice of Assumption and Assignment**"), identifying, among other things, the Cure Costs, the deadline to object to the proposed Cure Costs and the potential assumption and assignment of their contract or unexpired lease to Purchaser in accordance with the terms and conditions of the APA at Closing, and the consequences for failing to timely object. If no timely objection is filed to the Notice of Assumption and Assignment, the Debtor requests that the Cure Amounts and proposed assumption or assignment be binding on the counter-party and such counter-party will be deemed to consent to same and be forever barred from challenging the Debtor's proposed Cure Amounts or the assumption and assignment of their contract or lease to Purchaser, in each case subject to the terms and conditions under the APA, at Closing, each as more fully described in the Proposed Sale Order.

VI. WAIVER OF 14-DAY STAY

28. 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: February 15, 2018.

Respectfully submitted,

/s/ Melanie P. Goolsby

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State Bar No. 16351640

Melanie P. Goolsby

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**COUNSEL FOR DEBTOR
AND DEBTOR IN POSSESSION**

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on February 15, 2018, I caused to be served the foregoing pleading via ECF email upon all parties accepting such service. The Debtor will file one or more additional Affidavit(s) of Service in a separate pleading.

/s/ Melanie P. Goolsby

Melanie P. Goolsby

BB DRAFT: 2/15/2018

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

**SIGEL'S BEVERAGES, L.P.,
AS SELLER,**

**TWIN LIQUORS LP,
AS PURCHASER,**

AND FOR THE LIMITED PURPOSES SET FORTH HEREIN,

**ANTHONY J. BANDIERA, JR.,
AS STOCKHOLDER**

Dated as of February ____, 2018

EXHIBIT

B

exhibitsticker.com

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of February __, 2018 (the “Execution Date”), by and between Sigel’s Beverages, L.P., a Texas limited partnership, on behalf of itself and its bankruptcy estate (“Seller”), Twin Liquors LP, a Texas limited partnership (“Purchaser”), and solely for the purposes of **Section 6.15**, Anthony J. Bandiera, Jr., an individual resident of the State of Texas, in his capacity as the sole holder, directly or indirectly, of all of the general partner and limited partner interests in Seller (the “Stockholder”).

WHEREAS, Seller is engaged in the business of selling wine and spirits at 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, Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the Purchased Assets, all in accordance with Sections 363 and 365 of the Bankruptcy Code, free and clear of all Claims and Liens (other than Permitted Liens).

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 **DEFINITIONS**

Section 1.1 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below or in the Sections referred to below:

“Additional Contract” has the meaning set forth in **Section 6.10(b)**.

“Aggregate Purchase Price” has the meaning set forth in **Section 3.1**.

“Agreement” has the meaning set forth in the Preamble.

“Alternative Transaction” has the meaning set forth in **Section 6.3(b)(ii)**.

“Ancillary Agreements” has the meaning set forth in **Section 4.2**.

“Assumed Liabilities” has the meaning set forth in **Section 2.4**.

“Assumed Plans” has the meaning set forth **Section 6.13(g)**.

“Balance Sheet” has the meaning set forth in **Section 4.10**.

“Balance Sheet Date” has the meaning set forth in **Section 4.10**.

“Bankruptcy Avoidance Action” has the meaning set forth in **Section 2.3(f)**.

“Bankruptcy Case” has the meaning set forth in the Recitals.

“Bankruptcy Code” has the meaning set forth in the Recitals.

“Bankruptcy Court” has the meaning set forth in the Recitals.

“Bankruptcy Expenses” has the meaning set forth in **Section 2.5(h)**.

“Business” has the meaning set forth in the Recitals.

“Business Day” has the meaning set forth in **Section 10.4(b)**.

“Claims” has the meaning ascribed by Section 101(5) of the Bankruptcy Code and includes, without limitation, all rights, claims (including any cross-claim or counterclaim), causes of action, charges, assessments, suits, investigations, litigation, third party actions, arbitral proceedings or proceedings by or before any Governmental Body or any other person, defenses, debts, demands, damages, judgments, sanctions, penalties, costs, expenses (including reasonable, actual, out-of-pocket legal fees and expenses), losses, liabilities, offset rights, setoff rights, recoupment rights, obligations, and liabilities of any kind or nature under contract, at Law or in equity, whatsoever, whether or not reduced to judgment, whether known or unknown, secured, unsecured, fixed, contingent, matured, unmatured, disputed, undisputed, liquidated or unliquidated, whether arising prior to or subsequent to the commencement of the Bankruptcy Case, whether under any theory of successor or transfer liability and whether imposed by agreement, understanding, law or otherwise, and all rights and remedies with respect thereto.

“Closing” has the meaning set forth in **Section 8.1**.

“Closing Date” has the meaning set forth in **Section 8.1**.

“Code” has the meaning set forth in **Section 4.12**.

“Contracts” means all purchase orders, sales agreements, supply agreements, distribution agreements, employee or consulting agreements, leases, subleases, licenses (including, for the avoidance of doubt, third-party software licenses), product warranty or service agreements and other binding commitments, agreements, contracts, arrangements, obligations and undertakings of any nature (whether written or oral, and whether express or implied).

“Cure Amounts” means all Liabilities that must be paid and obligations that otherwise must be satisfied, whether under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code or otherwise, in connection with the assumption by Seller or assignment to Purchaser of any Purchased Contract, Purchased Real Property Lease or Permit, including any assignment or transfer charges, fees or costs, including as provided in **Section 1.6(c)**.

“Deposit” has the meaning set forth in **Section 3.2**.

“Due Diligence Review” has the meaning set forth in **Section 7.3(k)**.

“Effective Time” has the meaning set forth in **Section 8.1**.

“Employee” has the meaning set forth in **Section 6.13(j)**.

“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 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; provided, that, for the avoidance of doubt, in no event shall “Employee Benefit Plans” be deemed to include any ordinary compensation payable to any Employees of Seller.

“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.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means a corporation which is or was at any time a member of a controlled group of corporations with Seller within the meaning of Section 414(b) of the Code, or a trade or business which is under common control with Seller within the meaning of Section 414(c) of the Code.

“Escrow Agent” has the meaning set forth in **Section 3.2**.

“Estimated Closing Statement” has the meaning set forth in **Section 3.4**.

“Estimated Cure Amount” has the meaning set forth in **Section 6.10(a)**.

“Excluded Assets” has the meaning set forth in **Section 2.3**.

“Excluded Contracts” has the meaning set forth in **Section 2.3(b)**.

“Excluded Insurance Policies” has the meaning set forth in **Section 2.3(g)**.

“Execution Date” has the meaning set forth in the preamble.

“Executory Contract” means an executory Contract or unexpired lease of real or personal property.

“Final Closing Statement” has the meaning set forth in **Section 3.5(a)**.

“Final Inventory” has the meaning set forth in **Section 3.2**.

“Final A/R” has the meaning set forth in **Section 3.2**.

“Financial Statements” has the meaning set forth in **Section 4.10**.

“GAAP” has the meaning set forth in **Section 4.10**.

“Governmental Body” has the meaning set forth in **Section 2.2(h)**.

“Hazardous Material” means (A) any petroleum, waste oil, crude oil, asbestos, urea formaldehyde or polychlorinated biphenyl, (B) any waste, gas or other substance or material that is explosive or radioactive, (C) any “hazardous substance,” “pollutant,” “contaminant,” “hazardous waste,” “regulated substance,” “hazardous chemical” or “toxic chemical” as designated, listed or defined (whether expressly or by reference) in any statute, regulation or other Law (including the Comprehensive Environmental Response, Compensation and Liability Act and any other so-called “superfund” or “superlien” law and the respective regulations promulgated thereunder), (D) any other substance or material (regardless of physical form) or form of energy that is subject to any Law which regulates or establishes standards of conduct in connection with, or which otherwise relates to, the protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property from the presence in the environment of any solid, liquid, gas, odor, noise or form of energy and (E) any compound, mixture, solution, product or other substance or material that contains any substance or material referred to in clause “(A)”, “(B)”, “(C)”, or “(D)” above.

“Inactive Employees” has the meaning set forth in **Section 6.13(j)**.

“Initial Cure Notice” has the meaning set forth in **Section 6.10(b)**.

“Inventory” has the meaning set forth in **Section 2.2(d)**.

“Inventory Escrow Amount” has the meaning set forth in **Section 3.3(a)**.

“Law” has the meaning set forth in **Section 4.3**.

“Leased Real Property” has the meaning set forth in **Section 2.2(c)**.

“Legal Proceeding” has the meaning set forth in **Section 4.5**.

“Liabilities” means any and all debts, indebtedness, Claims, Liens, losses, damages, assessments, commitments, deficiencies, fines, fees, guaranties, adverse claims, liabilities (including civil fines), causes of action, penalties, sanctions of every kind and character (including reasonable fees and expenses of attorneys, technical experts and expert witnesses), judgments, proceedings, duties, responsibilities and obligations of any nature whatsoever, whether accrued or unaccrued, fixed, vested, absolute or contingent, known or unknown, disputed or undisputed, liquidated or unliquidated, direct or indirect, asserted or unasserted, matured or unmatured, due or to become due, or determined or determinable or otherwise, and whenever and however arising, including those arising under any Law, including any Environmental Law, equity, contract, tort, strict liability or voluntary settlement or otherwise and including all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation). For the avoidance of doubt, the definition of Liabilities includes all obligations arising under or in connection with that certain Revolving Credit, Term Loan and Security Agreement with PNC Bank, as agent for the lenders, as amended, supplemented or modified from time to time, or any debtor-in-possession financing facility and related debtor-in-possession financing loan documents.

“Liens” means all liens, whether consensual or statutory (including mechanic’s, materialman’s, carrier’s, repairer’s, contractor’s and other similar liens arising under applicable law), replacement liens, adequate protection liens or other liens granted under Sections 361, 363 or 364 of the Bankruptcy Code, claims, mortgages, deeds of trust, hypothecations, pledges, security interests, charges, leases, options, rights of setoff, netting or deduction, restrictions, and encumbrances of any nature, including without limitation, rights of first refusal or first offer, licenses, defect or objection liens, conditional and installment sales agreements, voting trusts or agreements, transfer restrictions, easements, encroachments, servitudes, or restrictions of any kind and other title or interest retention arrangements, reservations, or limitations of any nature whatsoever, and including without limitation those charges or interests in property within the meaning of “lien” under Bankruptcy Code § 101(37) or any other limitation, restriction or interest that constitutes an “interest” for the purposes of Bankruptcy Code § 363(f). For the avoidance of doubt, the definition of Lien includes all Liens arising under or in connection with that certain Revolving Credit, Term Loan and Security Agreement with PNC Bank, as agent for the lenders, as amended, supplemented or modified from time to time.

“Material Contracts” has the meaning set forth in **Section 4.15**.

“Necessary Consent” has the meaning set forth in **Section 2.6**.

“Non-Assignable Asset” has the meaning set forth in **Section 2.6**.

“Non-Competition Period” has the meaning set forth in **Section 6.15(a)**.

“Notice of Intent to Reject” has the meaning set forth in **Section 6.10(b)**.

“Offered Employees” has the meaning set forth in **Section 6.13(b)**.

“Option Period” has the meaning set forth in **Section 6.10(b)**.

“Order” has the meaning set forth in **Section 4.3**.

“Owned Real Property” has the meaning set forth in **Section 2.2(b)**.

“Periodic Non-Income Taxes” has the meaning set forth in **Section 6.14(b)(ii)**.

“Permits” has the meaning set forth in **Section 2.2(h)**.

“Permitted Liens” means Liens for Taxes that are not due and payable so long as all such Liens for Taxes arising prior to Closing shall have been extinguished through payment by Seller on or prior to Closing or the Seller’s funding of the Tax Escrow with cash sufficient to extinguish through payment all such Liens for Taxes in accordance with **Section 3.3(b)**.

“Personal Property” has the meaning set forth in **Section 2.2(e)**.

“Petition Date” has the meaning set forth in the preamble.

“Post-Closing Straddle Period” has the meaning set forth in **Section 6.14(b)(iii)**.

“PNC Bank” means PNC Bank, National Association.

“Pre-Closing Straddle Period” has the meaning set forth in **Section 6.14(b)(iii)**.

“Prepaid Items” has the meaning set forth in **Section 2.2(k)**.

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

“Purchased Contracts” has the meaning set forth in **Section 2.2(g)**.

“Purchased Intellectual Property” has the meaning set forth in **Section 2.2(f)**.

“Purchased Real Property Leases” has the meaning set forth in **Section 2.2(c)**.

“Purchased Real Property Purchase Price” means the lesser of (i) \$1,850,000, so long as such price is supported by an appraisal conducted by a third-party appraiser of Purchaser’s choosing after the date hereof and prior to the Closing Date and (ii) if the appraised value of the Purchased Real Property as determined by a third-party appraiser of Purchaser’s choosing is less than \$1,850,000, such appraised value; provided, however, that in no event shall the Purchased Real Property Purchase Price be less than \$1,750,000.

“Purchaser” has the meaning set forth in the preamble.

“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.

“Real Property Leases” means all leases, subleases and licenses of real property or interests in real property by Seller listed on Section 1.1(a) of Seller’s Disclosure Schedule.

“Receivables” has the meaning set forth in **Section 2.2(a)**.

“Reimbursable Expenses” has the meaning set forth in **Section 9.3(a)**.

“Retained Liabilities” has the meaning set forth in **Section 2.5**.

“Retained Records” has the meaning set forth in **Section 2.3(d)**.

“Sale Motion” has the meaning set forth in **Section 6.1(a)**.

“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 105, 363 and 365 of the Bankruptcy Code; (C) the sale of the Purchased Assets to Purchaser on the terms and conditions set forth in this Agreement shall be free and clear of all Claims, 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 Retained Liabilities, save and excepting only those Liabilities expressly assumed by Purchaser in writing under this Agreement and Permitted Liens; (D) Purchaser has acted in “good faith” within the meaning of and is entitled to the protections of Section 363(m) of the Bankruptcy Code; (E) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm’s length bargaining positions; (F) authorization of the assumption and/or assignment of all of the Purchased Contracts and Purchased Real Property Leases, whether pursuant to Sections 363 and 365 of the Bankruptcy Code or otherwise, and Seller’s payment of all Cure Amounts; (G) reasonable and customary exculpation and release language for the benefit of Purchaser; (H) 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; (I) the transactions contemplated hereby are not subject to avoidance pursuant to Section 363(n) of the Bankruptcy Code; and (J) containing findings and conclusions that (i) notice of the hearing concerning approval of this Agreement and of the transactions contemplated hereby was given in accordance with the Bankruptcy Code, and constitutes such notice as is appropriate under the particular circumstances, (ii) the marketing process undertaken by Seller and its professionals, agents and other representatives with respect to the Purchased Assets has been adequate, appropriate and

reasonably calculated to maximize value for the benefit of all stakeholders; (iii) this Agreement constitutes the best and highest offer for the Purchased Assets and the transactions contemplated hereby are in the best interests of Seller, its estates and stakeholders; (iv) the Purchase Price constitutes full and adequate consideration, is fair and reasonable and constitutes reasonably equivalent value, fair consideration, and fair value for the Purchased Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, and under the laws of the United States, any state, territory, possession, or the District of Columbia; (v) this Agreement and the transactions contemplated hereby are not subject to rejection or avoidance by Sellers, any chapter 7 or chapter 11 trustee or Sellers' bankruptcy estate or any other person or entity or impairment or discharge under any chapter 11 plan or any subsequent order of the Bankruptcy Court entered in the Bankruptcy Cases; and (vi) the Reimbursable Expenses (as herein defined) are reasonable, benefit the estate and are approved in all respects.

“Seller” has the meaning set forth in the preamble.

“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.

“Seller Permits” has the meaning set forth in **Section 4.16**.

“Seller Policies” has the meaning set forth in **Section 6.13(a)**.

“Service Provider” has the meaning set forth in **Section 6.13(j)**.

“Stockholder” has the meaning set forth in the preamble.

“Straddle Period” has the meaning set forth in **Section 6.14(b)(iii)**.

“Subsidiary” means, with respect to any person, any corporation, partnership, limited liability company, trust, unincorporated organization, association or other entity of which such person, directly or indirectly, owns equity interests that (i) represent more than 50% of the total number of outstanding common or other residual equity interests (however denominated) of such person, (ii) represent more than 50% of the total voting power of all outstanding equity interests of such person which are entitled to vote in the election of directors, managers or other persons performing similar functions for and on behalf of such Person, (iii) are entitled to more than 50% of the dividends paid and other distributions made by such person prior to liquidation or (iv) are entitled to more than 50% of the assets of such person or proceeds from the sale thereof upon liquidation.

“TABC” has the meaning set forth in **Section 4.4**.

“Tax Escrow” has the meaning set forth in **Section 3.3(b)**.

“Tax Escrow Amount” has the meaning set forth in **Section 3.3(b)**.

“Tax Return” 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.

“Tax Statement” has the meaning set forth in **Section 8.3(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.

“Termination Date” has the meaning set forth in **Section 9.1(b)**.

“Transfer Taxes” has the meaning set forth in **Section 6.14(a)**.

“Transferred Employees” has the meaning set forth in **Section 6.13(b)**.

“Transferred Real Property” has the meaning set forth in **Section 2.2(c)**.

“Valuation Date” has the meaning set forth in **Section 3.4**.

“WARN Act” has the meaning set forth in **Section 6.13(a)**.

Section 1.2 Other Interpretive Provisions. 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.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions hereof, at the Closing, Purchaser shall (a) purchase, acquire and accept from Seller, and Seller shall sell, assign, transfer, convey, and deliver to Purchaser, free and clear of all Claims, Liens (other than Permitted Liens) and any other interests, the Purchased Assets.

Section 2.2 Purchased Assets. The "Purchased Assets" shall consist of 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, including:

(a) all accounts and notes receivable and other such Claims for money due to Seller, including the full benefit of all security for such accounts, notes and Claims, however arising, including arising from the rendering of services or the sale of goods or materials, together with any unpaid interest accrued thereon from the respective obligors and any security or collateral therefor (collectively the "Receivables");

(b) subject to **Section 3.8**, all real property owned in fee by Seller on the Closing Date, and listed on Section 2.2(b) of Seller's Disclosure Schedule, together with all appurtenant easements thereunto and all buildings, structures, fixtures, and improvements located thereon (the "Owned Real Property");

(c) subject to **Section 2.6**, the leases, subleases and licenses of real property or interests in real property by Seller listed on Section 2.2(c) of Seller's Disclosure Schedule (the "Purchased Real Property Leases") (as such Section 2.2(c) of Seller's Disclosure Schedule may be updated by Purchaser in its discretion to add or remove Purchased Real Property Leases from time to time after the Execution Date), and all of Seller's right, title and interest in and to the buildings, structures, fixtures and improvements located on the real property subject to such Purchased Real Property Leases (the "Leased Real Property" and, together with the Owned Real Property, the "Transferred Real Property");

(d) all inventories of goods, raw materials, components, packaging materials, stores and supplies, and samples related thereto that are used or held for use in the conduct of the Business (collectively, "Inventory"), wherever located, including any of

the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit or that is classified as returned goods;

(e) all machinery, equipment (including test equipment and material handling equipment), hardware, spare parts, tools, dies, jigs, molds, patterns, gauges, fixtures (including production fixtures), business machines, computer hardware, other information technology assets, furniture, furnishings, supplies, vehicles, spare parts in respect of any of the foregoing and other tangible personal property (including any of the foregoing in the possession of manufacturers, suppliers, customers, dealers or others and any of the foregoing in transit) that does not constitute Inventory (collectively, "Personal Property");

(f) 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 in Section 2.2(f) of Seller's Disclosure Schedule, 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) subject to **Section 2.6**, all Contracts relating to the Business to which Seller is a party (other than Purchased Real Property Leases, which are addressed in Section 2.2(c) above) that are listed in Section 2.2(g) of Seller's Disclosure Schedule (collectively, the "Purchased Contracts"), which Section 2.2(g) of Seller's Disclosure Schedule may be updated from time to time after the Effective Date, including pursuant to **Section 6.10(c)**;

(h) subject to **Section 2.6**, 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 in Section 2.2(h) of Seller's Disclosure Schedule;

(i) 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;

(j) all of Seller's rights in and to the name Sigel's and all derivatives thereof;

(k) 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 in Section 2.2(k) of Seller's Disclosure Schedule (collectively, "Prepaid Items");

(l) all warranties, indemnities, guarantees, rights to reimbursement or contribution, and similar rights related to the Purchased Assets, including warranties, indemnities and guarantees made by suppliers, manufacturers and contractors under the Purchased Assets and Claims against third parties in connection with the Purchased Real Property Leases and Purchased Contracts, including, for the avoidance of doubt, Executory Contracts;

(m) all known and unknown Claims (including Tax refunds), causes of action and other similar rights, rebates and credits owned by or in favor of Seller relating to any Purchased Assets, including the Claims identified on Section 2.2(m) of Seller's Disclosure Schedule;

(n) all goodwill and other intangible assets related to the Purchased Assets or the Business;

(o) 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) 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, including those listed on Section 2.2(p) of Seller's Disclosure Schedule;

(q) all insurance policies and the rights to proceeds thereof, other than Excluded Insurance Policies;

(r) all wine futures and *En Primeur* owned or held by Seller, including those listed on Section 2.2(r) of Seller's Disclosure Schedule; and

(s) all Assumed Plans, to the extent expressly assumed pursuant to **Section 6.13(g)**.

Section 2.3 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) 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 6.3**;

(b) (A) all Contracts not identified on Section 2.2(c) and Section 2.2(g) of Seller's Disclosure Schedule as in effect immediately prior to the Closing (collectively, the "Excluded Contracts");

(c) all Contracts that have terminated or expired prior to the Closing in the ordinary course of the business consistent with past practice and **Section 6.3**;

(d) 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;

(e) all rights, claims, causes of action and credits to the extent relating to any Excluded Asset or Retained Liabilities, 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 Retained Liabilities;

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

(g) Seller's rights, claims or causes of action set forth in Sections 544 through 551 (inclusive), 553, and 558 of the Bankruptcy Code, including any and all proceeds of the foregoing (the "Bankruptcy Avoidance Actions"), but in all cases, excluding all rights and Claims identified on Section 2.3(g) of Seller's Disclosure Schedule;

(h) all insurance policies identified on Section 2.3(h) of Seller's Disclosure Schedule and the rights to proceeds thereof (collectively, the "Excluded Insurance Policies"), other than any rights to proceeds to the extent such proceeds related to any Purchased Asset or Assumed Liability;

(i) all Employee Benefit Plans of Seller other than the Assumed Plans;

(j) all cash and cash equivalents of the Business; and

(k) any other asset or property of Seller listed on Section 2.3(k) of Seller's Disclosure Schedule.

Section 2.4 Assumed Liabilities. Notwithstanding any other provision of this Agreement to the contrary, Purchaser shall not assume any Liabilities of Seller, including, without any limitation, any Liabilities arising out of or otherwise relating to the Business or the Purchased Assets prior to the Closing, except for the following (collectively, "Assumed Liabilities"):

(a) all Liabilities arising after the Closing Date with respect to any Assumed Plans to the extent expressly assumed by Purchaser pursuant to **Section 6.13(g)**;

(b) all Liabilities arising under the terms of each Purchased Contract, solely to the extent arising after the Closing Date, but excluding any Liabilities arising out of or related to any breach or default thereof occurring at or prior to the Closing or arising out

of any event or circumstance occurring at or prior to the Closing which, with the delivery of notice, lapse of time or both, would constitute a breach or default thereof; and

(c) all Liabilities for Taxes to be borne by Purchaser to the extent expressly set out in **Section 6.14(b)**.

Section 2.5 Retained Liabilities. Notwithstanding anything in this Agreement to the contrary, Seller shall retain and remain liable in respect of, and neither Purchaser nor any of its affiliates shall assume, pay, succeed to, be liable for, be subject to, be obligated for or become responsible for, nor shall the Purchased Assets be subject to, any Claim, Lien (other than Permitted Liens) or Liability, including without limitation, any Claim or Liability of, or action against, Seller, any of its affiliates or any other Person, arising out of or otherwise relating to the Business or the Purchased Assets prior to Closing, and all other Liabilities of Seller (collectively, the “Retained Liabilities”). Without limiting the preceding sentence, for the avoidance of doubt, Seller shall remain responsible for, and Purchaser shall not assume and hereby disclaims all of the Retained Liabilities, including all of the following Liabilities of Seller (each of which shall constitute a Retained Liability):

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

(b) 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;

(c) all Liabilities for Taxes in respect of the Purchased Assets that are attributable to any period, or portion thereof, before the Closing Date;

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

(e) all Liabilities, including for any indebtedness, incurred in respect of or attributable to the Business or ownership or operation of the Purchased Assets prior to the Closing, (in each case, regardless of when any such Liabilities mature or are asserted) or Liabilities from which the Purchased Assets and Purchaser are discharged, released or otherwise cleared as of the Closing in accordance with the Sale Order;

(f) all Liabilities of Seller;

(g) 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;

(h) 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”);

(i) all Liabilities (i) existing prior to the filing of the Bankruptcy Case that are subject to compromise under the Bankruptcy Case or (ii) incurred subsequent to the filing of the Bankruptcy Case and prior to the Closing;

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

(k) 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;

(l) 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;

(m) all Liabilities to the extent arising out of or related to (i) the breach, performance, or non-performance by Seller prior to the Closing (in each case, regardless of when any claims arising therefrom or relating thereto mature or are asserted) under any Contract, including for the avoidance of doubt, any Purchased Real Property Lease or Permit and (ii) the rejection by Purchaser of any Contract or Purchased Real Property Lease;

(n) all Cure Amounts; and

(o) except as otherwise expressly provided in **Section 6.13**, 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, and (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.

Section 2.6 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 affect 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 the event any 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 2.6** 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 or 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.

ARTICLE III **PURCHASE PRICE**

Section 3.1 Purchase Price. On the terms and subject to the conditions set forth herein, in consideration of the sale, assignment, conveyance, and transfer by Seller of the Purchased Assets to Purchaser at the Closing, Purchaser will pay the Seller an amount (the “Aggregate Purchase Price”) equal to: (a) eighty percent (80%) of Seller’s purchase cost of the inventory of Seller on the Closing Date; plus (b) the face value of the trade accounts receivables of Seller outstanding on the Closing Date that are less than thirty (30) days old; plus (c) the Purchased Real Property Purchase Price attributable to the Purchased Real Property, in each case subject to adjustment pursuant to **Section 3.5** and **Section 3.8**.

Section 3.2 Earnest Money. Upon entry of the Sale Order, Purchaser shall pay an Earnest Money Deposit (the “Deposit”) in the sum of \$200,000 to an escrow agent of Purchaser’s choice (the “Escrow Agent”), which Deposit shall be deducted from the Aggregate Purchase Price paid by Purchaser at the Closing.

Section 3.3 Closing Payment. At the Closing, the Aggregate Purchase Price shall be paid to or on behalf of Seller in the following priority:

(a) Purchaser shall pay an amount equal to \$[●] (the “Inventory Escrow Amount”) to the Escrow Agent to satisfy any obligation of Seller to pay any amount due and owing by Seller pursuant to **Section 3.5(b)**, if any;

(b) Purchaser shall pay an amount equal to \$[●], representing the aggregate amount of all of Seller’s unpaid Texas state and local Tax Liabilities (the “Tax Escrow Amount”), which amount will be retained by the Escrow Agent (the “Tax Escrow”) until such time as Seller has provided to Purchaser evidence in form and substance reasonably satisfactory to Purchaser of payment of all unpaid state and local Tax Liabilities of Seller, at which time the balance of the Tax Escrow shall be distributed in accordance with **Section 3.7**. In respect of any Taxes imposed by the State of Texas and any sales, use and other similar Taxes, Seller shall, pursuant to **Section 8.3(h)**, provide to Purchaser the Tax Statement setting forth all outstanding Texas state and local Tax Liabilities. If Seller is unable to provide the Tax Statement at or before Closing, Seller shall provide Purchaser with official documentation establishing the amount of its unpaid state and local Tax Liabilities and shall authorize Purchaser to obtain such documentation directly from the applicable Governmental Bodies as required by **Section 6.14(c)**;

(c) Purchaser shall pay to Seller the remainder of the Aggregate Purchase Price, if any, after giving effect to the payments set forth in Sections 3.3 (a) and (b) and after deducting the Deposit;

provided, that, for the avoidance of doubt, nothing in this agreement shall be deemed to require or obligate Purchaser to make any payment to or on behalf of Seller in excess of the Aggregate Purchase Price, as adjusted pursuant to **Section 3.5** and **Section 3.8**.

Section 3.4 Process for Determining Value of Inventory and Accounts Receivable for Closing. No later than [ten] days prior to the Closing Date (or, if such date is not a business day, the next business day), Seller shall deliver to Purchaser a certificate, certificated by an officer of Seller, setting forth Seller's good faith estimate of the purchase cost of the inventory of Seller and the aggregate outstanding trade accounts receivable of Seller that are less than thirty (30) days old, in each case as of the Closing Date (the "Estimated Closing Statement"). Prior to the Closing Date, Seller and Purchaser shall cooperate in good faith to resolve any dispute about the estimated purchase cost of the inventory of Seller and the aggregate outstanding trade accounts receivable of Seller that are less than thirty (30) days old as set forth in the Estimated Closing Statement and Seller shall make available to Purchaser at Purchaser's request the books and records of Seller used to derive the estimates set forth in the Estimated Closing Statement. The Seller's estimate of the purchase cost of the inventory and the outstanding trade accounts receivable that are less than thirty (30) days old shall be used to determine the amount payable to the Seller in respect of the inventory of the Seller pursuant to **Section 3.1(a)** and the aggregate outstanding trade accounts receivable of the Seller pursuant to **Section 3.1(b)**, in each case subject to adjustment pursuant to **Section 3.5**.

Section 3.5 Post-Closing Adjustments of Inventory and Accounts Receivable.

(a) Immediately prior to or promptly following the Closing Date, as agreed upon by the parties, Seller and Purchaser shall perform a physical inventory count effective as of the Closing Date. No later than thirty (30) days following the Closing Date, Purchaser and Seller shall agree upon and execute a statement setting forth the purchase cost of the inventory of Seller and the aggregate outstanding trade accounts receivable of Seller that are less than thirty (30) days old, in each case as of the Closing Date (the "Final Closing Statement").

(b) Upon the execution of the Final Closing Statement, the aggregate purchase cost of Seller in respect of the inventory and the aggregate outstanding accounts receivable of Seller, in each case as set forth in the Estimated Closing Statement, shall be compared with the aggregate purchase cost of Seller in respect of the inventory and the aggregate outstanding accounts receivable of Seller, in each case as set forth in the Final Closing Statement. An adjustment to the Aggregate Purchase Price shall be made pursuant to this **Section 3.5(b)** to account for such difference, if any.

(i) If the aggregate purchase cost of Seller in respect of inventory and the aggregate outstanding accounts receivable of Seller, in each case as set forth in the Final Closing Statement, is less than the aggregate purchase cost of inventory and the aggregate outstanding accounts receivable set forth in the

Estimated Closing Statement, then the difference between (1) (A) 80% of the aggregate purchase cost of Seller in respect of the inventory as set forth in the Estimated Closing Statement, plus (B) the aggregate outstanding accounts receivable as set forth in the Estimated Closing Statement, and (2) (A) 80% of the aggregate purchase cost of Seller in respect of the inventory as set forth in the Final Closing Statement, plus (B) the aggregate outstanding accounts receivable as set forth in the Final Closing Statement, shall be paid by the Escrow Agent to Purchaser out of the Inventory Escrow Amount and the balance of the Inventory Escrow Amount, if any, shall be paid to Seller, in each case within five (5) days of the execution by the parties of the Final Closing Statement. In the event that the Inventory Escrow Amount is not sufficient to pay the difference referred to in the immediately preceding sentence, the difference between the amount payable pursuant to the first sentence of this **Section 3.5(b)(i)** and the Inventory Escrow Amount shall be paid by Seller to Purchaser within five (5) days of the execution by the parties of the Final Closing Statement. Any amounts which may become payable from Seller to Purchaser pursuant to this **Section 3.5(b)(i)** shall constitute a super priority administrative expense of Seller under Section 364(c)(1) of the Bankruptcy Code with priority over all administrative expenses of the kind specified in Sections 503(b) and 507(a) of the Bankruptcy Code.

(ii) If the aggregate purchase cost of Seller in respect of inventory and the aggregate outstanding accounts receivable of Seller, in each case as set forth in the Final Closing Statement, is greater than the purchase cost of Seller in respect of inventory and the aggregate outstanding accounts receivable of Seller, in each case as set forth in the Estimated Closing Statement, the Inventory Escrow Amount shall be paid to Seller and the remaining balance due resulting from the difference between (1) (A) 80% of the aggregate purchase cost of Seller in respect of the inventory as set forth in the Estimated Closing Statement, plus (B) the aggregate outstanding accounts receivable as of the Estimated Closing Statement, and (2) (A) 80% of the aggregate purchase cost of Seller in respect of the inventory as of the Final Closing Statement, plus (B) the aggregate outstanding accounts receivable as of the Final Closing Statement, shall be paid by Purchaser to Seller, in each case within five (5) days of the execution by the parties of the Final Closing Statement.

Section 3.6 Release of Earnest Money Deposit. In the event that the Closing occurs, the Deposit shall be applied toward the Aggregate Purchase Price at the Closing, and Seller and Purchaser shall jointly instruct the Escrow Agent to deliver the Deposit to Seller at the Closing. In the event that this Agreement is terminated prior to the Closing for any reason other than pursuant to **Section 9.1(d)**, then the Deposit shall be disbursed to Purchaser, free of any Claims by Sellers with respect thereto, and Purchaser shall have the right to unilaterally instruct the Escrow Agent to deliver the Deposit to Purchaser within five (5) days of such termination. If this Agreement is terminated prior to the Closing pursuant to **Section 9.1(d)**, Seller and Purchaser shall jointly instruct the Escrow Agent to deliver the Deposit to Seller within five (5) days of such termination.

Section 3.7 Release of Tax Escrow. From time to time following the Closing, all or any portion of the Tax Escrow Amount may be released to Purchaser in accordance with the terms and conditions set forth in **Section 6.14(b)** with respect to the reimbursement of Purchaser of any Tax Liabilities of Seller that are paid by Purchaser. Upon receipt of evidence in form and substance reasonably satisfactory to Purchaser of the payment of all outstanding Tax Liabilities of Seller following the Closing, Seller and Purchaser shall, within twenty-one (21) days thereafter, jointly instruct the Escrow Agent to distribute the remaining balance of the Tax Escrow to Seller. Notwithstanding the foregoing, in the event that any balance remains in the Tax Escrow on October 31, 2018, Purchaser shall have the right to unilaterally instruct the Escrow Agent to distribute an amount of such funds to Purchaser reasonably determined by Purchaser to be sufficient to satisfy any Tax Liabilities of Seller then-outstanding and the balance of funds remaining in the Tax Escrow following such distribution will be distributed to Seller.

Section 3.8 Adjustment to Purchase Price for Transferred Real Property. In the event that Purchaser identifies any physical, mechanical or other defects in the condition of the Transferred Real Property or any related improvements or fixtures, including the roof, foundation, structure, heating, ventilating, plumbing, electrical or any other mechanical apparatus or system, including, for the avoidance of doubt, any physical or mechanical defects identified on Section 4.13(d) of Seller's Disclosure Schedule, in each case that are not resolved prior to the Closing, then the Aggregate Purchase Price shall be reduced by an amount equal to the cost or expense required to conduct any maintenance or make any repairs necessary to cure such physical, mechanical or other defects. The amount of such reduction shall be determined pursuant to a written estimate for such cost or repair obtained prior to the Closing from a vendor mutually acceptable to Seller and Purchaser or, in the event that Seller and Purchaser cannot agree on a mutually acceptable vendor, any professionally licensed and bonded vendor designated by the Purchaser that specializes in such maintenance or repairs.

ARTICLE IV **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Purchaser that:

Section 4.1 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.

Section 4.2 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).

Section 4.3 No Conflicts. Except as set forth on Section 4.3 of Seller's Disclosure Schedule, 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.

Section 4.4 Consents and Approvals. Except as set forth on Section 4.4 of Seller's Disclosure Schedule (which includes the consent of the Texas Alcoholic Beverage Commission (the "TABC") to the transfer of the Permits required to operate the Business) 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.

Section 4.5 Legal Proceedings. Except for the general pendency of the Bankruptcy Case or as listed on Section 4.5 of Seller's Disclosure Schedule, 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 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.

Section 4.6 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.

Section 4.7 Title to Assets.

(a) Except as set forth on Section 4.7 of Seller's Disclosure Schedule, Seller owns or has valid rights to use the Purchased Assets free and clear of all Claims and 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 Claims and Liens, other than Permitted Liens.

(b) Other than with respect to any Contracts, including Contracts related to the lease or sublease by Seller of any real property, that Purchaser elects not to include in the Purchased Assets in accordance with the terms and conditions of this Agreement, the Purchased Assets constitute, and as of the Closing will constitute, all of the assets, properties, goodwill 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 Excluded Assets, and as proposed to be conducted by Seller.

Section 4.8 Compliance with Laws. Except as otherwise specifically directed by the Bankruptcy Court or as listed on Section 4.8 of Seller's Disclosure Schedule, and except where such conduct, failure to obtain, non-compliance or violations would not, individually or in the aggregate, have a Seller Material Adverse Effect: (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.

Section 4.9 Absence of Changes. Since the Balance Sheet Date and except as set forth on Section 4.9 of Seller's Disclosure Schedule:

(a) no event has occurred that would reasonably be expected to have a Seller Material Adverse Effect on the Business;

(b) there has not been any loss, damage or destruction to, or any material interruption or use of, any of the Purchased Assets (whether or not covered by insurance);

(c) Seller has not sold or otherwise transferred, or leased or licensed, any portion of the assets used in the Business to any other person other than in the ordinary course of business;

(d) except as set forth in the Financial Statements, Seller has not written off as uncollectible, or established any extraordinary reserve with respect to, any accounts or notes receivable of Seller arising out of the operation of the Business;

(e) Seller has not purchased or otherwise acquired any asset from any other person, except as acquired by Seller in the ordinary course of business;

(f) Seller has not leased or licensed any asset from any other person, except in the ordinary course of business;

(g) Seller has not made any single capital expenditures in excess of \$25,000;

(h) Seller has not forgiven any debt or otherwise expressly released or waived any right or claim related to the Business;

(i) Seller has not changed any of its methods of accounting or accounting practices in any respect;

(j) Seller has not made any material change in cash management practices and policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts receivable, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits, except for any such changes reasonably required to comply with GAAP;

(k) Seller has not entered into any transaction or taken any other action, in each case related to the Business, outside the ordinary course of business; and

(l) except for the transactions contemplated hereby, Seller has not agreed, committed or offered (in writing or otherwise) to take any of the actions referred to in the foregoing clauses “(c)” through “(k)”.

Section 4.10 Financial Statements. Seller has delivered to Purchaser copies of (i) the unaudited balance sheet of Seller as at December 31, 2016 and the related unaudited statements of operations, partners’ equity and cash flows of Seller for the year then ended and (ii) the unaudited balance sheet of Seller as at December 31, 2017 and the related unaudited statements of income and cash flows of Seller for the twelve 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 true, complete and correct in all material respects, has been accurately derived from the books and records of Seller as of the dates and for the periods indicated therein, 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 December 31, 2017 is referred to as the “Balance Sheet” and December 31, 2017 is referred to as the “Balance Sheet Date.”

Section 4.11 No Undisclosed Liabilities. Except as listed in Section 4.11 of Seller's Disclosure Schedule, 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.

Section 4.12 Taxes.

(a) Except as set forth on Section 4.12 of Seller's Disclosure Schedule, (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 all such Tax returns are correct and accurate; and (ii) all Taxes due from Seller, regardless of whether 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) Except as set forth on Section 4.12(b) of the Seller's Disclosure Schedule, all deficiencies asserted or assessments made as a result of any examinations by any Governmental Authority with respect to any Taxes due from Seller have been paid in full to the extent that the underpayment or non-payment of such Taxes would result in a Lien on the Purchased Assets after the Closing Date or in liability to Purchaser as a transferee or successor of or to the Purchased Assets. No audit or other Claim by any Governmental Authority is pending or threatened in writing with respect to any Taxes due from Seller the underpayment or nonpayment of which would result in a Lien on the Purchased Assets after the Closing Date or in liability to Purchaser as a transferee or successor of or to the Purchased Assets.

(c) There are no Liens with respect to Taxes upon any of the Purchased Assets, except for Permitted Liens.

(d) All of the Purchased Assets have been properly reflected on the tax rolls of the Governmental Authority authorized to impose property or ad valorem Taxes on such property.

(e) The Purchased Assets comprise all of the operating assets of the Business within the meaning of 34 Texas Administrative Code 3.316(d).

Section 4.13 Real Property.

(a) Section 4.13(a) of Seller's Disclosure Schedule sets forth the address and legal description of all Owned Real Property. With respect to each parcel of Owned Real Property:

(i) Seller has good and marketable fee simple title to all Owned Real Property, free and clear of all Liens, except (i) the Liens listed on Section 4.13(a)(i) of Seller's Disclosure Schedule and (ii) Permitted Liens;

(ii) Seller has not conveyed, assigned, or encumbered its interest in the Owned Real Property or any portion thereof, except with respect to Permitted Liens;

(iii) Seller has not leased or otherwise granted to any person the right to occupy the Owned Real Property or any portion thereof that remain in effect;

(iv) There are no options, rights of first offer, or rights of first refusal to purchase the Owned Real Property or any portion thereof; and

(v) Seller has been in open, notorious, adverse and peaceful possession of the Owned Real Property, and, other than Permitted Liens, there are no adverse claims to title to the Owned Real Property.

(b) Section 4.13(b) of Seller's Disclosure Schedule sets forth a complete list of all Purchased Real Property Leases the Seller is a party to as lessee or lessor, sublessee or sublessor, licensee or licensor, or sublicensee or sublicensor, including all amendments, extensions and renewals with respect thereto. Seller has a valid, binding and enforceable leasehold interest under each of the Purchased 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 Section 4.13(b) of Seller's Disclosure Schedule:

(i) each of the Purchased Real Property Leases is in full force and effect;

(ii) Other than a breach or default arising from Seller either (i) having filed the Bankruptcy Case or (ii) failing to pay any rent due and payable prior to the Petition Date, Seller is not in breach or default under any of the Purchased Real Property Leases and no event has occurred or circumstance exists which, with the delivery of notice, lapse of time or both, would constitute a breach or default by Seller under any of the Purchased Real Property Leases;

(iii) to the knowledge of Seller, no other party is in default of any of any of the Purchased Real Property Leases, and no party to any of the Purchased Real Property Leases has exercised any termination rights in respect thereof;

(iv) Seller has paid all rent arising since the Petition Date currently due and payable under each of the Purchased Real Property Leases;

(v) Seller has not subleased, assigned or otherwise granted to any person the right to use or occupy any Purchased Leased Real Property or any portion thereof that remains in effect; and

(vi) Seller has not pledged, mortgaged or otherwise granted a Lien on its leasehold interest in any Purchased Leased Real Property that remains in effect, other than Permitted Liens.

(c) Seller has not received any written notice of (i) violations of building codes or zoning ordinances or other governmental or regulatory Laws affecting the Purchased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Purchased Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to adversely affect the ability to operate the Purchased Real Property as currently operated. Neither the whole nor any material portion of any Purchased Real Property has ever been damaged or destroyed by fire, flood or other casualty (whether or not covered by insurance).

(d) Except as set forth on Section 4.13(d) of Seller's Disclosure Schedule, Seller has complied in all material respects with all provisions of the Purchased Real Property Leases and any other Contract regarding the maintenance, repair and replacement of the Purchased Real Property and all improvements, buildings, plants and structures upon the Purchased Real Property have been constructed and maintained in a good and workmanlike manner and are of good quality materials and are fit for their intended use, there are no material, physical or mechanical defects in the condition of the Purchased Real Property or any related improvements, and the Purchased Real Property and all fixtures, including the roof, foundation, structure, heating, ventilating, plumbing, electrical and all other mechanical apparatus, will be in good working order, ordinary wear and tear excepted, at the Closing Date.

Section 4.14 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). Seller is not bound by, and no Purchased Intellectual Property is subject to, any Contract containing any covenant or other provision that in any way limits or restricts the ability of Purchaser to use, exploit, assert, or enforce any Purchased Intellectual Property anywhere in the world. 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.

Section 4.15 Material Contracts. The contracts listed on Section 4.15 of Seller's Disclosure Schedule constitute a true and complete list of 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 Seller 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 other than the Bankruptcy Case. No party to any of the Material Contracts has exercised any termination rights in respect thereof. Seller has, and, subject to **Sections 2.6** 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. The Material Contracts collectively constitute all of the Contracts necessary to enable Purchaser to conduct the Business in the manner in which such business is currently conducted and is proposed to be conducted.

Section 4.16 Permits. Section 4.16 of Seller's Disclosure Schedule contains a list of all Permits that are required for the operation of the Business as currently conducted or to the ownership, lease, operation or use of the Purchased Assets, including the names of the Permits and their respective dates of expiration (the "Seller Permits"). The Seller Permits constitute all of the Permits that are required for the operation of the Business as currently conducted and as proposed to be 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 or could reasonably be expected to result in the revocation, suspension, lapse, or limitation of any such Permit. All fees and charges with respect to any Seller Permits that are required to have been paid as of the date hereof have been paid in full. Seller has complied in all material respects with, and are now in compliance in all material respects with, all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

Section 4.17 Environmental Matters. Except as set forth on Section 4.17 of Seller's Disclosure Schedule, 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 or other communication with respect to 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. Seller has never permitted, and to Seller's knowledge no Person has at any time permitted, any Hazardous Material to be generated, manufactured, produced, used, treated, refined, processed, discharged, released or disposed of (whether lawfully or unlawfully) on or beneath the surface of any real property that is, or that has at any time been, owned by, leased to, controlled by or used by Seller in connection with the Business, in or into any surface water, groundwater, soil or air associated with or adjacent to any such real property or in or into any well, pit, pond, lagoon, impoundment, ditch, landfill, building, structure, facility, improvement, installation, equipment, pipe, pipeline, vehicle or storage container that is or was located on or beneath the surface of any such real property or that is or has at any time been owned by, leased to, controlled by or used by Seller.

Section 4.18 Employee Plans.

(a) Section 4.18 of Seller's Disclosure Schedule sets forth a true, correct and complete list of all Employee Benefit Plans of Seller, some of which may be deemed to be Purchased Assets and assumed by Purchaser pursuant to **Section 6.13(g)**.

(b) Neither Seller nor any of its ERISA Affiliates within the six-year period preceding the date of this Agreement has sponsored, maintained or contributed to (or has been obligated to contribute to) any "employee pension plan," as defined in Section 3(2) of ERISA, that is subject to Title IV of ERISA or Section 412, 430 or 436 of the Code or any "multiemployer plan," as defined in Section 3(37) of ERISA, in each case that is applicable to any Employees of Seller.

(c) Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination, advisory or opinion letter from the United States Internal Revenue Service regarding its qualification thereunder and, to the knowledge of Seller, nothing has occurred since the date of the most recent such determination, advisory or opinion letter that would adversely affect the qualified status of any of such Employee Benefit Plans.

(d) There is no proceeding pending or, to the knowledge of Seller, threatened in writing against Seller related to the Employee Benefit Plans (other than routine claims for benefits) that would reasonably be expected to result in any liability to Purchaser.

Section 4.19 Labor Matters.

(a) Seller is, as of the date hereof, in compliance in all material respects with all applicable Laws respecting employment of its employees. There has been no "mass layoff" or "plant closing" within the meaning of the WARN Act, or any similar state or local "mass layoff" or "plant closing" Law with respect to Seller within the six months prior to the date hereof.

(b) Seller is not a party to or otherwise bound by any labor or collective bargaining agreement, Contract or other agreement or understanding with a labor union or labor organization in respect of the business conducted at the Designated Plants. The Seller is not subject to any written charge, demand, petition, or other proceeding seeking

to compel, require or demand it to bargain with any labor union or labor organization nor, as of the date of this Agreement or during the twelve months prior to the date of this Agreement, has there been any (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.

Section 4.20 Related-Party Transactions. Except as set forth on Section 4.20 of Seller's Disclosure Schedule, none of Seller, any affiliate of Seller or any of their respective officers, directors, members, managers, partners or employees (a) 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 (i) a competitor, supplier, customer, landlord, tenant, creditor or debtor of Seller, (ii) engaged in a business related to the Business of Seller, or (iii) a participant in any transaction to which Seller is a party or (b) is a party to any Contract with Seller.

Section 4.21 Receivables. 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. To Seller's knowledge, 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. To Seller's knowledge, 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.

Section 4.22 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.

Section 4.23 Customers and Suppliers. Section 4.23 of Seller's Disclosure Schedule 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, 2016 and December 31, 2017, 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 Section 4.23 of Seller's Disclosure Schedule, since the Balance Sheet Date, (i) no customer or supplier listed on Section 4.23 of Seller's

Disclosure Schedule 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 Section 4.23 of Seller's Disclosure Schedule has notified Seller that it intends to terminate or materially reduce or change the pricing or other terms of its business with Seller.

Section 4.24 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. Section 4.24 of Seller's Disclosure Schedule 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 Section 4.24 of Seller's Disclosure Schedule, 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.

Section 4.25 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 a debtor-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.

Section 4.26 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 Retained 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.

Section 4.27 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.

Section 4.28 No Interest in Other Entities. Section 4.28 of Seller's Disclosure Schedule is a true and complete list of all Liabilities of Seller as of December 31, 2017.

Section 4.29 No Other Representations or Warranties of Seller. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS **ARTICLE IV**, NEITHER SELLER NOR ANY PERSON ACTING ON BEHALF OF SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLER, ANY AFFILIATE OF SELLER, THE BUSINESS, THE PURCHASED ASSETS, OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER OR

ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN THE REPRESENTATIONS AND WARRANTIES OF SELLER CONTAINED IN THIS **ARTICLE IV** AND SELLER'S DISCLOSURE SCHEDULE, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO (A) MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT OF THE PURCHASED ASSETS, (B) ANY INFORMATION WRITTEN OR ORAL AND IN ANY FORM PROVIDED OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, ON THE ONE HAND, AND SELLER, ITS AFFILIATES, OR ANY OF ITS REPRESENTATIVES, ON THE OTHER HAND, OR ON THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, OR ANY PROJECTIONS, ESTIMATES, BUSINESS PLANS OR BUDGETED DELIVERED TO OR MADE AVAILABLE TO PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OR (C) FUTURE REVENUES, EXPENSES OR EXPENDITURES, FUTURE RESULTS OF OPERATIONS (OR ANY COMPONENT THEREOF), FUTURE CASH FLOWS OR FUTURE FINANCIAL CONDITION (OR ANY COMPONENT THEREOF) OF SELLER'S BUSINESS OR THE PURCHASED ASSETS.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller that:

Section 5.1 Organization. Purchaser is a limited partnership duly organized, validly existing, and in good standing under the Laws of the state of its organization.

Section 5.2 Authorization and Enforceability. Purchaser has the requisite limited partnership 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 partnership 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).

Section 5.3 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.

Section 5.4 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.

Section 5.5 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.

Section 5.6 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.

Section 5.7 No Other Representations and Warranties of Purchaser. 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 VI **COVENANTS**

Section 6.1 Certain Bankruptcy Undertakings. Seller and Purchaser each agree to use commercially reasonable efforts to do such further acts and things as may reasonably be required to obtain the Bankruptcy Court's approval of the Sale Order, the sale of the Purchased Assets to Purchaser in accordance with this Agreement, the assumption and/or assignment or transfer of the Purchased Real Property Leases, Purchased Contracts and Permits, or any other agreement contemplated hereby and the consummation of the transactions contemplated hereby. In furtherance of the foregoing, the Parties hereby agree as follows:

(a) Within one Business (1) day after the Execution Date, Seller shall, at its sole cost and expense, file with the Bankruptcy Court a motion (the “Sale Motion”), in form and substance acceptable to Purchaser, seeking approval of the sale of the Purchased Assets to Purchaser in accordance with this Agreement and entry of the Sale Order.

(b) Seller shall use commercially reasonable efforts to obtain entry of the Sale Order as soon as reasonably practicable, and in no event later than twenty-five (25) days after the Execution Date, provided, that if the Bankruptcy Court is unavailable to consider entry of the Sale Order within such twenty-five (25) day period, Seller will seek a hearing on the first available hearing date thereafter to obtain entry of the Sale Order.

(c) Prior to any filing by Seller, and as early in advance as is practicable, Seller shall provide Purchaser and its counsel with a reasonable opportunity to review and comment on all proposed pleadings, motions, including the Sale Motion, notices, statements schedules, applications, reports and other material papers to be filed by the Seller in the Bankruptcy Court to the extent related to the consummation or approval of the transactions contemplated hereby or the Purchased Assets and shall include in any such filing thereof such revisions as may be reasonably requested by Purchaser. Seller shall provide Purchaser with a reasonable opportunity to review and the right to approve all notice and mailing lists to be used to notify known and potential creditors and parties-in-interest of the proposed free and clear sale of the Purchased Assets, and Sellers shall accept Purchaser’s reasonable comments.

(d) From and after the Execution Date and prior to the Closing or the termination of this Agreement in accordance with **Section 9.1**, Seller shall not take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to result in the reversal, voiding, modification or staying of the Sale Order or this Agreement.

(e) If entry of the Sale Order or any other orders of the Bankruptcy Court relating to the transactions contemplated by this Agreement shall be appealed or otherwise challenged by any person (including by petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or re-argument), then the Seller agrees to diligently oppose such appeal, challenge, petition or motion and to use commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion.

Section 6.2 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 and the Purchased Assets 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.

Section 6.3 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, including without limitation, the completion and payment in full of all repairs or other work in connection with the replacement or repair of the roof at the Transferred Real Property subject to the Real Property Leases identified on Section 6.3(a)(iii) of Seller's Disclosure Schedule; (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) maintain inventory levels consistent with the past practices of the Business;

(v) (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;

(vi) 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

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

(b) Except 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, and shall cause its Subsidiaries and affiliates to not, and shall use best efforts to cause its representative and agents to 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) solicit, initiate contact with, knowingly facilitate or knowingly encourage the submission of any proposals or offers or respond to any unsolicited proposals or offers from, supply confidential information to, any Person other than Purchaser, its agents and representatives, or enter into any Contract for, in each case in connection with, or that would reasonably be expected to lead to or result in, 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 (other than sales of inventory in the ordinary course of business consistent with past practice) in a transaction or series of transactions with one or more Persons other than Purchaser and/or its affiliates 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 (each, an "Alternative Transaction"); provided, however, that this **Section 6.3(b)(ii)** shall not be deemed to prohibit Seller from entering into Contracts in the ordinary course of business that do not involve or relate to an Alternative Transaction; provided, further, that each such Contract is terminable by Seller without penalty upon 60 days' notice or less. For the avoidance of doubt, an Alternative Transaction includes a chapter 11 plan that does not contemplate the sale of the Business and the Purchased Assets by the Seller to the Purchaser in accordance with the terms of this Agreement;

(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, (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 Purchased Real Property Lease), or (C) fail to exercise any renewal right in respect of any Material Contract or any Purchased 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) cause Seller to (a) delay its payment of any accounts payable, or (b) offer terms, dating or discounts to customers outside the ordinary course of business consistent with past practice;

(vi) 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;

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

(viii) 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;

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

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

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

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

(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 Section 4.24 of Seller's Disclosure Schedule.

(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.

Section 6.4 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 4.4** 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.

Section 6.5 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 Retained Liabilities or (ii) Seller holds any Purchased Assets (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.

Section 6.6 Publicity. Unless otherwise required by law, neither Purchaser nor Seller will make any public announcement regarding the proposed purchase without the consent of the other party, which consent will not be unreasonably withheld or delayed; provided, however, that Purchaser and Seller acknowledge and agree that the transactions contemplated by this Agreement require the approval of the Bankruptcy Court and in no event shall it be deemed to be a violation of the terms and conditions of this **Section 6.6** for Purchaser to file the appropriate pleadings in the Bankruptcy Case to approve the transactions contemplated by this Agreement and the attachment of this Agreement to such pleadings and the content of such pleadings shall not be deemed to be a violation of the terms and conditions of this **Section 6.6**. Purchaser and Seller further acknowledge and agree that the transactions contemplated by this Agreement may require certain filings with TABC and such filings shall not be deemed to be a violation of the terms and conditions of this **Section 6.6**.

Section 6.7 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 **Section 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 Seller's Disclosure Schedule 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 **Section 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.

Section 6.8 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) within five (5) days following the Closing Date, amend its charter or other organizational documents to remove such name or names.

Section 6.9 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, 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, 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 6.9**; 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 and shall cooperate with Purchaser to seek a protective order with respect thereto. Seller acknowledges and agrees that the remedies at law for any breach or threatened breach of this **Section 6.9** 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 6.9**, 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 **Section 6.9** shall survive the Closing indefinitely. Notwithstanding the foregoing, Purchaser acknowledges and understands that after the Closing, Seller may be required to report certain information related to its possession and use of the Purchased Assets prior to the Closing to the Bankruptcy Court in connection with the

Bankruptcy Case or as result of certain reporting requirements to the TABC imposed upon Seller, and that such reporting and disclosures shall not be deemed to be a violation of the terms and conditions set forth in this **Section 6.9**.

Section 6.10 Assumption and Assignment or Rejection of Contracts.

(a) As of the Execution Date, Section 2.2(c) and Section 2.2(g) of Seller's Disclosure Schedule sets forth all Contracts relating to the Business to which Seller is a party and Seller's good faith estimate of the amount of Cure Amount (the "Estimated Cure Amount") payable in respect of each such Contract, if any. If Seller believes in good faith that no Cure Amount is estimated to be payable in respect of any particular Contract, the amount of such Cure Amount designated for such Contract shall be "None". Seller represents and warrants to Purchaser that the Estimated Cure Amount in respect of each Contract reflects, if applicable, the Cure Amount that has been agreed to between Seller and a counterparty in connection with an Initial Cure Notice (as herein defined) as well as any Cure Amount that has been asserted by the non-debtor parties in response to an Initial Cure Notice, if any, but that have not been resolved prior to the Execution Date.

(b) If following the Execution Date, but prior to the date that is fifteen (15) days prior to the effective date of any plan of reorganization confirmed in Seller's Bankruptcy Case, Purchaser or Seller determines that Seller is party to any Contract that was not previously designated in Section 2.2(g) of Seller's Disclosure Schedule as a Purchased Contract (each, an "Additional Contract"), Seller or Purchaser, as the case may be, shall promptly notify the other party of the existence of such Additional Contract and Seller shall deliver to Purchaser a true, correct and complete copy of such Additional Contract, together with information relating to such Additional Contract necessary to effect the sale, transfer, assignment and novation of such Additional Contract to Purchaser. On the date that is no later than 30 days after the notification by Seller or Purchaser of such Additional Contract pursuant to the immediately preceding sentence, Purchaser, in its sole discretion by written notice to Seller, may elect to assume such Additional Contract from Seller by providing written notice of such election to Seller. Thereafter, Seller shall seek entry of an order (reasonably acceptable to Purchaser) from the Bankruptcy Court authorizing and approving Seller's assumption and assignment, as applicable, of the Additional Contract to Purchaser and, 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 the applicable Additional Contract designated by Purchaser as a Purchased Contract, which notice shall state, among other things: (i) the proposed Cure Amount for such Contract and (ii) an objection deadline for such non-debtor party to object to the proposed Cure Amount. 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 prior to the Closing.

(c) 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 Contract previously designated as a Purchased Contract from the schedule

of Purchased Contracts on Section 2.2(g) of Seller's Disclosure Schedule or as a Purchased Real Property Lease from the schedule of Purchased Real Property Leases on Section 2.2(c) of Seller's Disclosure Schedule by providing written notice thereof to Seller, and (ii) designate any Additional Contract as a Purchased Contract or Purchased Real Property Lease, as applicable, by adding such Additional Contract to the schedule of Purchased Contracts on Section 2.2(g) of Seller's Disclosure or Schedule or to the schedule of Purchased Real Property Leases on Section 2.2(c) of Seller's Disclosure or Schedule.

(d) No designation of any Contract for assumption and assignment or rejection, as applicable, in accordance with this **Section 6.10** shall give rise to any right to any adjustment of the Purchase Price.

(e) Seller shall not seek to assume or reject any Contract related to the Business prior to the Closing Date unless prior written approval has been obtained from Purchaser.

(f) To the extent that any Contract that is a Purchased Contract or Purchased Real Property Lease requires the payment of any Cure Amount in order to be assigned to Purchaser (or assumed and assigned pursuant to Sections 363 and 365 of the Bankruptcy Code), the Cure Amount related to such Contract shall be paid by Seller and Seller shall provide evidence that all obligations with respect to all Cure Amounts due and owing for any period on or prior to the Closing shall have been or shall at Closing be satisfied in full. 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 to the extent 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.

Section 6.11 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 financing reasonably acceptable to Purchaser in Purchaser's sole discretion that is necessary to fund all or any portion of the Aggregate Purchase Price or 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).

Section 6.12 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 in Purchaser’s sole discretion 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) 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 6.3**), 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 the Business from and after the Closing Date.

Section 6.13 Employee Matters.

(a) Seller shall provide a list of all Employees on Section 6.13 of Seller’s Disclosure Schedule, 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 180-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 Employee who (i) accepts an offer of employment from Purchaser or one of its affiliates and (ii) commences 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 6.13(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) Upon written notice to Seller prior to the Closing Date, Purchaser may elect, in its sole discretion, to assume, or cause one of its affiliates to assume, the Employee Benefit Plans and Policies set forth on Section 6.11(g) of the Seller's Disclosure Schedule as modified thereon, and all assets, trusts, insurance policies and other Contracts relating thereto (the "Assumed Plans"), for the benefit of the Transferred Employees and Seller. Seller and Purchaser shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish Purchaser or one of its affiliates as the sponsor of any Assumed Plans, as applicable, including all assets, trusts, insurance policies and other contracts relating thereto.

(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 6.13**, 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.

Section 6.14 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) Any amounts which may become payable from Seller to Purchaser pursuant to this **Section 6.14** shall constitute a super-priority administrative expense of Seller under Section 364(c)(1) of the Bankruptcy Code with priority over all administrative expenses of the kind specified in Sections 503(b) and 507(a) of the Bankruptcy Code.

(ii) 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 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. 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 delivery to Seller of proof of such payment, Purchaser may unilaterally instruct the Escrow Agent to pay such amounts to Purchaser from the Tax Escrow and, if the Tax Escrow contains insufficient funds to pay the amount of such Periodic Non-

Income Taxes in full, Seller shall pay to Purchaser the difference between what Purchaser receives from the Tax Escrow and the amount of such Periodic Non-Income Taxes paid by Purchaser.

(iii) 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, Purchaser may unilaterally instruct the Escrow Agent to pay such amounts to Purchaser from the Tax Escrow and, if the Tax Escrow contains insufficient funds to pay the amount of such Periodic Non-Income Taxes in full, Seller shall pay to Purchaser the difference between what Purchaser receives from the Tax Escrow and 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 6.14**, 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.

(iv) 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**.

(c) Seller shall authorize the Texas Comptroller of Public Accounts and any other Governmental Body imposing Taxes on Seller or the Purchased Assets to release to Purchaser such confidential Tax account information of Seller as Purchaser, in its sole discretion, may deem reasonably necessary to determine the amount of the Aggregate Purchase Price to be deposited with the Escrow Agent pursuant to **Section 3.3(b)**.

Section 6.15 Non-Competition.

(a) In order for Purchaser to have and enjoy the full benefit of the Purchased Assets and the Business, and as a material and valuable inducement for Purchaser to enter into this Agreement (without which the Purchaser would not have entered into this Agreement), for a period of five (5) years from and after the Closing Date (the “Non-Competition Period”), Seller shall not, and the Stockholder shall not, (i) compete with Purchaser in the Business or (ii) have a material interest in any person that engages directly or indirectly in the Business in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant.

(b) Seller and the Stockholder agree, during the Non-Competition Period, neither Seller nor the Stockholder will hire or solicit any employees of Purchaser to work for Seller or for any other person and shall not solicit any customers of Purchaser on behalf of Seller or any other person in a manner that causes such customer to compete with Purchaser or otherwise materially and adversely alter such customer’s relationship with Purchaser and the Business.

(c) The parties hereto agree that the restrictions contained in this **Section 6.15** are reasonable in scope in view of the Business as it is presently conducted and anticipated to be conducted and are necessary to protect the goodwill acquired by each party under this Agreement. If any provision of this **Section 6.15** is held to be unreasonably broad, oppressive or unenforceable by a court or other Governmental Body, this **Section 6.15** shall nevertheless remain effective but shall be considered amended to the extent considered by such Governmental Body to be reasonable, and shall be fully enforceable by the parties as so amended.

Section 6.16 Purchase of Personal Property Subject to Executory Contracts. With respect to any Contract for the lease of Personal Property, if (a) such Contract is recharacterized by a Final Order of the Bankruptcy Court as a secured financing or (b) Purchaser, Seller and the counterparty to such Contract agree, then Purchaser shall have the option to purchase such Personal Property by paying to the applicable Seller for the benefit of the counterparty to such Contract an amount equal to the amount, as applicable (i) of such counterparty’s allowed secured Claim arising in connection with the recharacterization of such Contract as determined by such Order or (ii) agreed to by Purchaser, Seller and such counterparty.

Section 6.17 Access to Real Property. Seller covenants and agrees to maintain its rights under, and to not terminate, breach or seek to reject (pursuant to the Bankruptcy Code), any Real Property Lease that is not a Purchased Real Property Lease prior to the earlier of (a) the date that is forty-five (45) days following the Closing Date or (b) with respect to any such Real Property Lease, the date on which Seller receives written notice from Purchaser that all of the inventory included in the Purchased Assets and located at the real property subject to such Real Property Lease has been removed by Purchaser.

ARTICLE VII
CONDITIONS TO CLOSING

Section 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:

(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;

(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.

Section 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 correct 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**.

Section 7.3 Conditions Precedent to the Obligations of Purchaser. Notwithstanding any other provision of this Agreement to the contrary, 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 correct 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 the Sale Order is not subject to a timely appeal or request to void, vacate, reconsider, amend or modify the Sale Order;

(e) Purchaser shall have obtained approval from the TABC for issuance to Purchaser of all Permits necessary or appropriate for Purchaser to conduct the Business as currently conducted and as proposed to be conducted by Purchaser, which approval shall be in form and substance satisfactory to Purchaser in its sole discretion;

(f) Anthony J. Bandiera, Jr. shall have entered into an employment or other similar agreement in form and substance satisfactory to Purchaser;

(g) other key employees, at the discretion of the Purchaser, shall have entered into employment or other similar agreements in the form and substance satisfactory to the Purchaser and such employee;

(h) Purchaser shall have obtained bank financing in form and substance acceptable to Purchaser in its sole discretion;

(i) all real estate leases for the Leased Real Property, including all amendments or modifications thereto to be negotiated by Purchaser after the Execution Date, shall be in form and substance satisfactory to Purchaser in its sole discretion; provided, that, for the avoidance of doubt, any real estate leases that contain any provisions with respect to the determination of any payments due and owing to the lessor under any such lease by reference to a percentage of revenues, net income or any other measure of financial performance shall be deemed to be unsatisfactory;

(j) there shall not have been any material adverse changes affecting the Purchaser; and

(k) completion by the Purchaser and its representatives of a comprehensive due diligence review (“Due Diligence Review”) of the Seller and the Seller’s Assets that is satisfactory to the Purchaser in its sole discretion. During the Due Diligence Review,

the Seller will afford to the Purchaser and its representative full access to the properties and books and records relating to the Seller and the Seller's Assets, during normal business hours, in order to permit the Purchaser and its representatives to make such due diligence investigations as they may deem necessary and desirable. During the Due Diligence Review, the Seller shall also allow the Purchaser and its representative reasonable access to inspect the Seller Assets at such times and following such advance notice as may be reasonable under the circumstances. During or upon completion of such Due Diligence Review, if in the Purchaser's sole discretion, there is any item or situation that is not satisfactory to the Purchaser, this Agreement shall be null and void.

Section 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**

Section 8.1 Closing. The closing of the purchase and sale of the Purchased Assets provided for in **Article II** (the "Closing") shall take place at the offices of Pronske, Goolsby & Kathman, P.C., 901 Main St., Suite 610, Dallas, Texas 75202 at 10:00 A.M., Dallas, Texas time on July 2, 2018 or, if the conditions 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) are not satisfied or waived on or prior to such date, 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 shall be deemed to take place and be effective at 12:01 A.M. Dallas, Texas time (the "Effective Time") on the Closing Date.

Section 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.

Section 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 A** (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 B** (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) a license agreement duly executed by Seller in form and substance reasonably satisfactory to Seller and Purchaser providing for access by Purchaser to any real property subject to a Real Property Lease that is not a Purchased Real Property Lease for the purpose of granting a 14-day license to Purchaser to access such real property for the purpose of removing the inventory included in the Purchased Assets and located at such real property on the Closing Date, if applicable (the "**License Agreement**");

(e) one or more special warranty deeds duly executed by Seller in the form attached hereto as **Exhibit C** evidencing the transfer of the Owned Real Property to Purchaser;

(f) the officer's certificates required to be delivered pursuant to **Sections 7.3(a)** and **7.3(b)**;

(g) a certificate of non-foreign status duly executed by Seller in the form attached hereto as **Exhibit D** and that otherwise complies with Section 1445 of the Code;

(h) a statement issued by the Texas Comptroller of Public Accounts setting forth any Taxes due and payable as of and for any period ending on or prior to the Closing Date (the "**Tax Statement**");

(i) a properly executed Statement of Occasional Sale (Texas Comptroller Form 01-917);

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

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

(l) unless otherwise agreed in advance in writing between Seller and Purchaser, evidence in form and substance satisfactory to Purchaser, including confirmation by the applicable landlord, of completion and payment in full of all repairs or other work performed since the Petition Date on any Transferred Real Property, including, without limitation, (i) any repairs or other work for which non-payment could

give rise to a Lien and (ii) all repairs or work in connection with the replacement or repair of the roof at the Transferred Real Property subject to the Real Property Leases identified on Section 6.3(a)(iii) of Seller's Disclosure Schedules;

(m) 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;

(n) original certificates of title to all owned motor vehicles that are Purchased Assets;

(o) a fully completed and notarized TABC alcoholic beverage inventory form in the form attached hereto as **Exhibit E**; and

(p) 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 Claims and Liens other than Permitted Liens).

Section 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) The Aggregate Purchase Price (other than the Escrow Deposit) as set forth in **Section 3.3**;

(b) one or more bills of sale duly executed by Purchaser in the form attached hereto as **Exhibit A** (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 Purchaser in the form attached hereto as **Exhibit B** (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) the License Agreement duly executed by Purchaser, if applicable; and

(e) the officer's certificates required to be delivered pursuant to **Sections 7.2(a)** and **7.2(b)**.

ARTICLE IX

TERMINATION

Section 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 July 31, 2018; provided, however, that (i) Purchaser shall have the right to extend such date for up to 30 days for any reason or (ii) if all Permits that are necessary or appropriate for Purchaser to conduct the Business as currently conducted and as proposed to be conducted by Purchaser have not been issued by the TABC to Purchaser by such date, then Purchaser shall have the right to extend such date from time to time for one or more periods of 30 days until such time as all such Permits are obtained or Purchaser has determined that all such Permits are not likely to be obtained (as such date may be so extended pursuant to clause (i) or (ii) above, 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 beach (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 6.12(a)(iii)**;

(g) by Purchaser, if (i) if the Sale Order shall not have been entered within forty-five (45) days after the Execution Date, (ii) the Bankruptcy Court shall have stated, declared or determined that it will not enter the Sale Order, (iii) Seller shall have breached any of its obligations in **Section 6.3(b)(ii)** or **Section 10.20**; (iv) Seller enters into a definitive agreement with respect to an Alternative Transaction; (v) Seller withdraws the Sale Motion; or (vi) Seller withdraws, modifies or qualifies, in any manner adverse to Purchaser, its approval or declaration of advisability of this Agreement, including obtaining authorization from Seller's general partner, the board of directors, equity holders or other governing body of Seller to pursue or enter into a definitive agreement with respect to an Alternative Transaction;

(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; or

(i) by Purchaser, if, prior to the Closing, Purchaser reasonably believes that any condition contained in **Section 7.1** or **7.3** will not be satisfied in accordance with its terms

Section 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.

Section 9.3 Effect of Termination.

(a) Except for **Section 3.6**, this **Section 9.3** and **Article X**, each of 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 (i) if this Agreement is terminated by Purchaser pursuant to **Section 9.1(c)**, **(f)**, **(g)** or **(h)** and this Agreement would not otherwise have been terminable by Seller pursuant to **Section 9.1(d)**, or (ii) if this Agreement is terminated by Seller pursuant to **Section 9.1(b)** and any Person other than Purchaser shall have made a proposal for an Alternative Transaction and such proposal shall not have been irrevocably withdrawn or rejected by Seller prior to such termination, 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 \$485,000.00 (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

Section 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.

Section 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.

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

Section 10.4 Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument.

Section 10.5 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.

Section 10.6 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.

Section 10.7 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) 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.

Section 10.8 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.**

Section 10.9 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 10.9**.

Section 10.10 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:

Twin Liquors LP
5639 Airport Blvd.
Austin, Texas 78751
Attention: David Jabour
Email: djabour@twinliquors.com

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

Baker Botts L.L.P.

2001 Ross Ave., Suite 700
Dallas, Texas 75201
Attention: Jim Prince
Email: Jim.Prince@bakerbotts.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.

Section 10.11 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)

Section 10.12 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.

Section 10.13 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.

Section 10.14 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.

Section 10.15 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.

Section 10.16 Time Is of the Essence. Time is of the essence in the performance of this Agreement.

Section 10.17 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.

Section 10.18 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.**

Section 10.19 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.

Section 10.20 Exclusive Negotiations. The Purchaser will be expending significant time and incurring significant expenses in connection with the proposed acquisition. Accordingly, the Seller agrees to the following: (a) the Seller acknowledges that Purchaser has agreed to purchase the Seller's Assets as provided herein, and the Seller agrees to negotiate exclusively with the Purchaser and in good faith until the date scheduled for Closing, the Seller shall not negotiate simultaneously with any other interested parties for the purchase of the Seller's Assets during those respective periods as applicable; and (b) the Seller shall not, directly or indirectly (through agents or otherwise), encourage or solicit any inquiries or accept any proposals by, or engage in any discussions or negotiations with or furnish any information to any other person or entity

concerning a sale of a substantial portion of the Seller's Assets during those respective periods, as applicable. Additionally, the person signing below as the "Seller" warrants that he owns, in the aggregate, 100% of the Seller's Assets. The Seller shall be responsible for any breach of this paragraph by the Seller.

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

PURCHASER:

TWIN LIQUORS LP

By: _____
Name: _____
Title: _____

SELLER:

SIGEL'S BEVERAGES, L.P.

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

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned hereby joins in this Agreement for the sole and limited purpose of agreeing to his obligations under **Section 6.15** of this Agreement.

STOCKHOLDER:

ANTHONY J. BANDIERA, JR.

By: _____
Name: _____
Title: _____

IN RE SIGEL'S BEVERAGES, L.P.
CASE NO. 16-34118-bjh-11

Purchased Real Property Leases and Purchased Contracts

Row	Contract Type	Debtor Counterparty	Contract Counterparty/Notice Party	Contract Description	Cure Amount
1	Real Property Lease	Sigel's Beverages, L.P.	Texas Center Control PO Box 840790 Dallas, TX 75284-0790	Store #1 5757 Greenville	None
2	Real Property Lease	Sigel's Beverages, L.P.	PNYX Limited PO Box 191345 Dallas, TX 75219	Store #3 506 S. Riverfront [Industrial]	None
3	Real Property Lease	Sigel's Beverages, L.P.	Laws Street 2519 Thomas Avenue Dallas, TX 75201	Store #4 3209 Fitzhugh	None
4	Real Property Lease	Sigel's Beverages, L.P.	Ginana, Inc. 5704 Covehaven Drive Dallas, TX 75252	Store #7 801 Country Road	None
5	Real Property Lease	Sigel's Beverages, L.P.	United Legacy Ltd. PO Box 674368 Dallas, TX 75267-4368	Store #9 3020 Legacy	\$46,123.38
6	Real Property Lease	Sigel's Beverages, L.P.	The Florida Company 3322 Shorecrest Dr., Suite 235 Dallas, TX 75235	Store #11 538 Centennial	None
7	Real Property Lease	Sigel's Beverages, L.P.	Mobile City Limited Partnership 3322 Shorecrest Dr., Suite 235 Dallas, TX 75235	Store #12 2325 Interstate Hwy 30	None
8	Real Property Lease	Sigel's Beverages, L.P.	PNYX Limited PO Box 191345 Dallas, TX 75219	Store #13 1441 W. Mockingbird	None
9	Real Property Lease	Sigel's Beverages, L.P.	Clover Quadrangle 1801 W. Olympic Blvd. Pasadena, CA 91199-1267	Store #22 2800 Routh Street, Suite 180	None
10	Real Property Lease	Sigel's Beverages, L.P.	Dart Development 2000 McKinney Ave., Suite 100 Dallas, TX 75201	Warehouse Facility 2920-2940 Anode Lane	None
11	Consulting/Programming	Sigel's Beverages, L.P.	Al Miller 7710 Bantry Lane Dallas, TX 75248		None
12	Performance Goals	Sigel's Beverages, L.P.	Crystal of America, Inc. 95 Mayfield Ave. Edison, NJ 08837		None
13	Performance Goals	Sigel's Beverages, L.P.	Libbey Glass PO Box 730598 Dallas, TX 75373		None
14	Fujitsu Scanner Support	Sigel's Beverages, L.P.	Ricoh USA Inc. 2300 Parkdale Dr. NE Atlanta, GA 30345		None
15	Kofax Software Support	Sigel's Beverages, L.P.	Ricoh USA Inc. 2300 Parkdale Dr. NE Atlanta, GA 30345		None
16	Electricity Contract	Sigel's Beverages, L.P.	TXU Energy 6555 Sierra Drive, 3-S-24 Irving, TX 75039		\$27,166.71
17	Copier Maintenance	Sigel's Beverages, L.P.	Verity Group a Laser Works Company PO Box 940361 Plano, TX 75094		\$415.15
18	Credit Card Processing	Sigel's Beverages, L.P.	Worldpay 600 Morgan Falls Rd., Suite 260 Atlanta, GA 30350		None
19	Cable Service, Store #4	Sigel's Beverages, L.P.	Direct TV PO Box 105249 Atlanta, GA 30348		None
20	Cable Service, Store #1	Sigel's Beverages, L.P.	Direct TV PO Box 105249 Atlanta, GA 30348		None
21	Managed Internet Service	Sigel's Beverages, L.P.	AT&T Attn. Jacob White 675 W. Peachtree St. NW Atlanta, GA 30308		\$582.22
22	IP Flexible Reach (Landline Phone Service)	Sigel's Beverages, L.P.	AT&T Attn. Jacob White 675 W. Peachtree St. NW Atlanta, GA 30308		\$2,181.33
23	Wireless Service	Sigel's Beverages, L.P.	AT&T Mobility PO Box 6463 Carol Stream, IL 60197		None
24	Software Support	Sigel's Beverages, L.P.	Atlantic Systems, Inc. PO Box 2244 Farmingdale, NY 07727		None

EXHIBIT

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25	ERP Software Maintenance	Sigel's Beverages, L.P.	Friedman Corporation One Parkway North, Suite 400S Deerfield, IL 60015		None
26	Monthly Web Site Monitoring and Support	Sigel's Beverages, L.P.	Proclaim Interactive PO Box 15447 Wilmington, NC 28408		None
27	Media Services (Music for stores)	Sigel's Beverages, L.P.	Play Network 8727 148th Ave. NE Redmond, WA 98052-3483		None
28	Armored Car Service Agreement	Sigel's Beverages, L.P.	AT Systems Southwest Inc. A Garda Co. 301 N. Lake Ave., Suite 600 Pasadena, CA 91101		None
29	Document Management System	Sigel's Beverages, L.P.	DocuWare Corporation 4 Crotty Lane, Suite 200 New Windsor, NY 12553		None