

LICENSE NO: [XXXX]
 [BIN _____]

PURCHASE AND SALE AGREEMENT (LIQUOR LICENSE)

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made as of [●], 2016 by and between (a) [●] [**Note: insert name of holder of the Licenses**] [A&P Real Property, LLC, a Delaware limited liability company] (“**Seller**”), (b) [Buyer], a [●] (“**Buyer**”), and (c) solely for the purposes of Sections 28 through 48 and Section 51, [Guarantor], a [●] (“**Guarantor**”)]¹. Seller, Buyer [and Guarantor] are sometimes herein referred to collectively as the “**Parties**” and individually as a “**Party**.”

WITNESSETH:

WHEREAS, Seller and certain of its affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) on July 19, 2015 in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”);

WHEREAS, pursuant to the *Amended Final Order Pursuant to 11 U.S.C. §§ 105, 363, 365 and 554 Approving (I) Global Procedures for (A) Stores Closings, (B) the Expedited Sale, Transfer, or Abandonment of De Minimis Assets and (C) Rejecting Unexpired Nonresidential Real Property Leases, and (II) Entry Into a Liquidation Consulting Agreement* (ECF No. 546) (the “**De Minimis Sale Order**”), Seller desires to sell, assign, convey and transfer all of its rights, title and interests under those certain licenses held in safekeeping with certain New Jersey municipalities as more particularly described on Exhibit C attached hereto (each a “**License**” and, collectively, the “**Licenses**”); and

WHEREAS, Buyer desires to purchase and accept such assignment of the Licenses and assume all obligations of Seller thereunder, subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby reciprocally acknowledged, Seller and Buyer agree as follows:

1. Procedures. This Agreement is made subject to, and in accordance with, the De Minimis Sale Order. Capitalized terms used but not otherwise defined herein (including on Schedule I attached hereto) shall have the meanings ascribed to them in the De Minimis Sale Order.

2. Consideration. The consideration for the assignment of the Licenses shall be equal to an aggregate Dollar amount equal to [_____] Dollars (\$_____) (the “**Purchase Price**”).

Buyer’s submission of an executed copy of this Agreement along with the Deposit shall be deemed a binding and irrevocable offer subject only to the rights of termination provided herein.

¹ Note: Include in agreements where creditworthy guarantor is required.

3. Payment of Purchase Price. The Purchase Price shall be paid to Seller by Buyer as follows:

(a) Deposit. Concurrently herewith, Buyer shall deposit with Titlevest Services, LLC (“Escrowee”) by a bank wire transfer of immediately available federal funds to an account designated by Escrowee the sum of [_____] Dollars (\$_____)² (together with all interest thereon, the “Deposit”), which Deposit shall be held by Escrowee pursuant to the escrow agreement (the “Escrow Agreement”) attached hereto as Exhibit A and hereby made a part hereof. Notwithstanding anything to the contrary set forth in this Agreement or in the Escrow Agreement, (i)(i) all charges of Escrowee, if any, attendant to holding and/or disbursing the Deposit shall be paid by Buyer and (ii) all interest accrued in connection with the Deposit hereunder shall accrue for the sole benefit of the Party to whom the Deposit is paid. The Parties agree that any payments made pursuant to this Section 3(a) in respect of accrued interest shall be deemed to be an adjustment to the Purchase Price for Tax purposes to the extent permitted by applicable Law.

(b) Closing Payment. On the Closing Date, as defined below, the Purchase Price, as adjusted by the application of the Deposit, shall be paid by Buyer by a bank wire transfer of immediately available federal funds to the account designated on Exhibit B hereto or as otherwise designated in writing by Seller. For the avoidance of doubt, no portion of the Purchase Price shall be withheld by Buyer for any reason.

4. [Intentionally Omitted]

5. [Intentionally Omitted]

6. [Intentionally Omitted]

7. Licenses.

(a) Buyer shall make application, within five (5) Business Days of the execution of this Agreement, to obtain all permanent alcoholic beverage licenses and/or permits to sell alcoholic beverage products to consumers. Buyer shall diligently pursue approval for all necessary Licenses (including, but not limited to, satisfying any applicable publication requirements). Seller shall reasonably cooperate with Buyer to obtain said Licenses; provided Seller shall not be required to incur any expense in connection with the same. Buyer’s application for the Licenses shall include application for a person-to-person transfer of the License. If Buyer fails to obtain all permanent Licenses within one-hundred and twenty (120) days of the filing of the application for a person-to-person transfer, the application for such Licenses shall be deemed rejected and all rights related to the License shall revert to Seller (unless Seller elects otherwise in writing); provided, however, that Seller shall have the sole discretion to extend the deadline by which Buyer must have obtained such permanent Licenses until the Outside Date.

8. Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth

² Note: Amount to be equal to 10% of the Purchase Price.

Avenue, New York, New York or such other location as shall be mutually agreed upon by Seller and Buyer, commencing at 10:00 a.m. local time on a date (the “**Closing Date**”) that is no later than ten (10) Business Days following the date Buyer receives all applicable Licenses as to New Jersey (the “**License Approval Date**”), or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto; provided, that all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in Section 20 (other than conditions that by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and be effective at 12:01 a.m., New York City time, on the Closing Date.

9. Assignment. As of the Closing Date, pursuant to Section 363 of the Bankruptcy Code and in accordance with the De Minimis Sale Order, Seller shall grant, transfer and assign to Buyer, without representation or warranty of any kind, all of its right, title, and interest in and to the Licenses.

10. Assumption. On and after the Closing Date, Buyer shall assume all of the covenants, agreements, and obligations of Seller under the Licenses. As of the Closing Date, Seller shall have no further liabilities or obligations with respect to the Licenses, and Seller shall be released from all such obligations and Buyer shall fully indemnify and hold harmless Seller with respect thereto. No Person other than Buyer shall be deemed a beneficiary of the provisions of this Section 10.

11. [Intentionally Omitted]

12. Free and Clear of All Liens. Pursuant to the De Minimis Sale Order, Seller shall convey its rights and interests under the Licenses to Buyer free and clear of all liens, claims, interests, or encumbrances (collectively, “**Liens**”), if any, with any such Liens attaching to the proceeds paid to Seller.

13. Closing Deliverables. On the Closing Date:

(a) Seller shall deliver to Buyer a duly executed copy of: (i) if applicable, Transfer Tax forms or certifications provided by Buyer as more specifically described in subsection (b) below; (ii) a duly executed certificate from an officer of Seller to the effect that each of the conditions specified in Section 20(a)(i) and Section 20(a)(ii) are satisfied; (iii) all original Licenses for Buyer to have endorsed by the applicable municipality(ies); and (iv) an order entered by the Bankruptcy Court approving the transactions contemplated by this Agreement.

(b) Buyer shall deliver to Seller: (i) an executed, completed copy of all Transfer Tax forms or certifications (except for Seller’s signature) as may be required by each state, county or municipality to effectuate the transactions contemplated herein, prepared in accordance with Section 14; (ii) a fully executed copy of the Form C-9600 (including thereon or as an attachment thereto, a notification indicating that (w) Seller is in bankruptcy, (x) that such Form is being filed in connection with the transfer of the Licenses pursuant to court order, (y)

any action to collect any Tax remains subject to the provisions of the Bankruptcy Code and (z) a denial of the Tax clearance / transfer of the Licenses in the event of a non-payment of pre-petition Taxes would violate the anti-discrimination protections of Bankruptcy Code Section 525), along with a copy of the confirmation of receipt of such Form by the New Jersey Division of Taxation; (iii) a duly executed certificate from an officer of Buyer to the effect that each of the conditions specified in Section 20(b)(i) and Section 20(b)(ii) are satisfied; (iv) a copy of the municipal resolution approving the person-to-person transfer of the Licenses issued by the New Jersey Division of Alcoholic Beverage Control; and (v) such other documents as may be reasonably required to complete the transactions provided for in this Agreement. All documents executed and delivered by Buyer pursuant to this Section 13 shall be in form and substance reasonably satisfactory to Seller.

14. Transfer Tax Forms. Buyer shall be responsible for the preparation, delivery and recordation or filing of any and all Transfer Tax forms or certifications required by any Governmental Authority (unless Seller notifies Buyer that they will do so), with Buyer being responsible for any payment required therewith. The Parties shall cooperate in making, in a timely manner, all such Tax returns, filings, reports, forms and other documentation as are necessary or appropriate to comply with all applicable Laws in connection with the payment of Transfer Taxes and shall cooperate in good faith to minimize, to the fullest extent possible under such Laws, the amount of any such Transfer Taxes. At Seller's request, all Transfer Tax forms and certifications, along with payment therefor, shall be delivered by Buyer to Seller for recordation and payment with the appropriate Governmental Authority. To the extent required by applicable Law, Seller shall execute any Transfer Tax forms or certifications.

15. Tax Adjustments. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Licenses (including personal property Taxes and similar Taxes) for the Tax period in which the Closing occurs (the "**Proration Period**") will be apportioned and prorated between Seller and Buyer as of the Closing Date with Buyer bearing the expense of Buyer's proportionate share of such Taxes which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (ii) the number of days in the Proration Period following the Closing Date, and Seller shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by Buyer and Seller, and Buyer or Seller, as the case may be, shall promptly (but not later than ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment or refund so that the correct prorated amount is paid by each of Buyer and Seller.

16. [Intentionally Omitted]

17. [Intentionally Omitted]

18. Seller Representations and Warranties. Seller represents and warrants to Buyer that the statements contained in this Section 18 are true and correct as of the date of this Agreement, except as disclosed in any forms, statements, or other documents filed with the Bankruptcy Court.

(a) Organization of Seller; Good Standing. Each Seller is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the laws of the state of its formation. Each Seller has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or other organizational power and authority to own, lease and operate its assets and to carry on its business as now being conducted, except where the failure to be so organized, existing, or in good standing or have such power and authority would not reasonably be expected to have a Material Adverse Effect.

(b) Authorization of Transaction. Subject to compliance with the De Minimis Sale Order, each Seller has full power and authority (including full corporate or other organizational power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which each Seller is a party have been duly authorized by such Seller. Upon due execution hereof by each Seller, this Agreement (assuming due authorization and delivery by Buyer) shall constitute, subject to compliance with the De Minimis Sale Order, the valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

(c) Noncontravention; Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) conflict with or result in a breach of the organizational documents of any Seller, (ii) subject to compliance with the De Minimis Sale Order, materially violate any Law or Decree to which any Seller is subject in respect of the Licenses, or (iii) subject to compliance with the De Minimis Sale Order, result in a material breach of, constitute a material default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any material contract to which any Seller is a party or to which any of the Licenses is subject, except, in the case of either clause (ii) or (iii), for such conflicts, violations, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Other than (x) any application related to the Licenses contemplated hereby and (y) as required by or pursuant to the Bankruptcy Code and the De Minimis Sale Order, no Seller is required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

19. Buyer Representations and Warranties. Buyer represents and warrants to Seller that the statements contained in this Section 19 are true and correct as of the date of this Agreement.

(a) Organization of Buyer; Good Standing. Buyer is a [●] duly organized, validly existing, and in good standing under the laws of the State of [●] and has all requisite corporate or similar power and authority to own, lease, and operate its assets and to carry on its business as now being conducted.

(b) Authorization of Transaction. Buyer has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Buyer is a party have been duly authorized by Buyer. This Agreement (assuming due authorization and delivery by Sellers) constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

(c) Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will (i) conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Buyer, (ii) violate any Law or Decree to which Buyer is, or its assets or properties are, subject or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any contract to which Buyer is a party or by which it is bound, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, have a material adverse effect on Buyer or prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis. Other than (x) any application related to the Licenses contemplated hereby and (y) as required or pursuant to the Bankruptcy Code, Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, prevent or materially impair or delay Buyer's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

(d) Criminal History; Alcoholic Beverage Law Violations. Buyer has no adverse criminal history or alcoholic beverage Law violations that would prevent Buyer from obtaining the required Licenses in the timeframe outlined by this Agreement.

(e) No Interest. Buyer has no interest in any license in another tier of the alcoholic beverage industry such that it would be prevented from holding the Licenses by the three tier Laws.

(f) License Limitations. Buyer does not currently have interests in other retail licenses to the extent that Buyer would exceed the license limitations set forth in New Jersey, or Buyer has an approved plan from the Acting Director of the New Jersey Division of Alcohol Beverage Control such that Buyer could acquire licenses in excess of the license limit, place them in pocket with the appropriate Township clerks and eventually sell the Licenses.

20. Conditions to Closing.

(a) Conditions to Buyer's Obligations. Buyer's obligation to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(i) the representations and warranties set forth in Section 18 shall have been true and correct on the date hereof and as of the Closing in all material respects;

(ii) Seller shall have performed and complied with all of its covenants and agreements hereunder through the Closing in all material respects;

(iii) the transactions contemplated by this Agreement shall have been authorized or deemed authorized pursuant to the De Minimis Sale Order;

(iv) no material Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement; and

(v) each delivery contemplated by Section 13(a) to be delivered to Buyer shall have been delivered.

(b) Conditions to Seller's Obligations. Seller's obligations to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(i) the representations and warranties set forth in Section 19 shall have been true and correct on the date hereof and as of the Closing in all material respects;

(ii) Buyer shall have performed and complied with all of its covenants and agreements hereunder through the Closing in all material respects, including application for receipt of the applicable Licenses;

(iii) the transactions contemplated by this Agreement shall have been authorized or deemed authorized pursuant to the De Minimis Sale Order;

(iv) no material Decree shall be in effect that prohibits consummation of any of the transactions contemplated by this Agreement;

(v) Buyer shall have received approval from the appropriate Governmental Authorities for transfer of the Licenses; and

(vi) each payment contemplated by Section 3 to be made to Seller shall have been made, and each delivery contemplated by Section 13(b) to be delivered to Seller shall have been delivered.

(c) No Frustration of Closing Conditions. Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 20(a) or Section 20(b), as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliate's failure to use its reasonable best efforts (or other required standard of efforts as specifically set forth herein) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach hereunder. The Parties agree that neither the failure to obtain a court order nor any action with respect to a Competing Bid (as defined below), to the extent permitted hereunder, shall be deemed to be a failure to use the efforts required to satisfy the conditions to consummation of the transactions contemplated hereunder nor a breach hereunder.

21. No Other Contingencies. Buyer expressly agrees and acknowledges that Buyer's obligations hereunder are not in any way conditioned upon or qualified by Buyer's ability to obtain financing of any type or nature whatsoever (i.e., whether by way of debt, financing or equity investment or otherwise) nor upon Buyer's ability to obtain title insurance.

22. Termination of Agreement.

(a) The Parties may terminate this Agreement at any time prior to the Closing as provided below:

- (i) by the mutual written consent of the Parties;
- (ii) by any Party by giving written notice to the other Party if:

(A) any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or Decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 22(a)(ii)(A) shall not be available to Buyer if the failure to consummate the Assignment because of such action by a Governmental Authority shall be due to the failure of Buyer to have fulfilled any of its obligations under this Agreement; or

(B) the Closing shall not have occurred prior to two-hundred and forty (240) days following the execution of this Agreement (the "**Outside Date**"); provided, however, that, upon written notice to Buyer, Seller may elect to extend the Outside Date for a period of up to thirty (30) days if Buyer has not obtained all permanent Licenses within the time frames set forth in Section 7; provided, further that if the Closing shall not have occurred on or before the Outside Date due to a material breach of this Agreement by Buyer or Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 22(a)(ii)(B).

- (iii) by Seller by giving written notice to Buyer if:

(A) Buyer has not obtained all permanent Licenses within the time frames set forth in Section 7 (subject to Seller's extension rights granted therein); provided that in the event this Agreement is so terminated, Buyer shall immediately withdraw any application for transfer of the License, or if the transfer has already been approved, Buyer shall immediately file an application with all applicable authorities to transfer the Licenses back to Seller;

(B) Buyer fails to satisfy any requirement set forth under Section 20(b)(vi), including delivery of the Deposit required hereunder. In such case, the Agreement shall be rendered null and void, Seller shall be entitled to retain any and all consideration already paid to Seller, including, but not limited to, the Deposit; or

(C) there has been a breach by Buyer of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Seller at Closing set forth in Section 20(b)(i) and Section 20(b)(ii), and such breach has not been waived by such Seller, or, if such breach is curable, cured by Buyer prior to the earlier to occur of (I) ten (10) days after receipt of such Seller's notice of intent to terminate and (II) the Outside Date.

(iv) by Buyer by giving written notice to Seller if there has been a breach by any Seller of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Buyer at Closing set forth in Section 20(a)(i) and Section 20(a)(ii), and such breach has not been waived by Buyer, or, if such breach is curable, cured by such Seller prior to the earlier to occur of (A) ten (10) days after receipt of Buyer's notice of intent to terminate and (B) the Outside Date.

(b) This Agreement shall terminate if (i)(x) Seller enters into a definitive agreement with respect to a higher or better competing bid in respect of the Licenses ("**Competing Bid**"), (y) the Bankruptcy Court enters an order approving a Competing Bid or such bid is deemed approved in accordance with the De Minimis Sale Order, and (z) the Person making the Competing Bid consummates the Competing Bid or (ii) the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement.

(c) Effect of Termination. If any Party terminates this Agreement pursuant to Section 22(a) or (b), all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that this Section 22, Sections 28 through 47, and Schedule I shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 22(a)(iii) and Section 23) to the other Party hereunder (except as may be provided in Section 22(a)(iii)); provided, however, that nothing in this Section 22 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, grossly negligent, or fraudulent) set forth in this Agreement; provided, further, that other than in the case of fraud or willful misconduct, (i) the maximum Liability of Seller under this Agreement shall not exceed the reasonable and documented out-of-pocket expenses incurred by Buyer up to an aggregate amount of 5% of the Purchase Price and (ii) the maximum Liability of Buyer under this Agreement shall not exceed the Deposit.

(d) Withdrawal of Application. Upon termination of this Agreement pursuant to this Section 22, Buyer shall immediately withdraw any pending application for transfer of any Licenses and related forms.

23. Bankruptcy Court Matters.

(a) Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court in accordance with the De Minimis Sale Order, and the consideration by Seller of a Competing Bid pursuant to the bidding procedures (“**Bidding Procedures**”) set forth in the *Notice of Auction of Liquor Stores* filed by the Debtors with the Bankruptcy Court on July [], 2016 (the “**Notice**”).

(b) From the date hereof and until the transactions contemplated hereby are consummated, Seller is permitted to, and is permitted to cause its Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by or from any Person (in addition to Buyer and its Affiliates and Representatives) in connection with a Competing Bid, and Seller shall be permitted and shall have the authority to (and to cause its Representatives and Affiliates to) respond to any inquiries or offers to purchase all or any part of the Licenses, including supplying information relating to the assets of Seller to prospective buyers. Without limiting the foregoing, Seller shall be permitted to perform all of the foregoing activities with respect to all or any part of the Licenses and perform any and all other acts related thereto which are required under the Bankruptcy Code, the De Minimis Sale Order or other applicable Law. The De Minimis Sale Order and the Bidding Procedures are deemed to be incorporated herein and the Buyer agrees to comply with and abide by its obligations set forth therein.

(c) Bankruptcy Court Filings.

(i) If the Buyer is the successful bidder (to the extent an auction is conducted), as soon as reasonably practicable following the execution of this Agreement by the Debtors, Seller shall comply with the De Minimis Sale Order. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the transactions contemplated by this Agreement, if necessary, including necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Licenses hereunder. In the event the approval of the transactions contemplated by this Agreement shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

24. [Intentionally Omitted]

25. Delivery; “AS IS” Transaction.

(a) BUYER HEREBY ACKNOWLEDGES AND AGREES THAT SELLER MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO: ANY MATTER RELATED TO THE LICENSES. BUYER ACKNOWLEDGES THAT BUYER HAS NOT RELIED, AND IS NOT

RELYING, UPON ANY INFORMATION, DOCUMENT, SALES BROCHURES OR OTHER LITERATURE, MAPS OR SKETCHES, PROJECTIONS, PRO FORMAS, STATEMENTS, REPRESENTATIONS, GUARANTEES OR WARRANTIES (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OR MATERIAL OR IMMATERIAL) THAT MAY HAVE BEEN GIVEN BY OR MADE BY OR ON BEHALF OF SELLER.

26. Release; Indemnity. On and after the Closing Date, Buyer agrees to defend and indemnify Seller against, and hold Seller harmless from, any and all claims, actions, proceedings, suits, costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees and disbursements), whether foreseen or unforeseen, in connection with the Licenses; provided such release and indemnity shall not apply to matters arising prior to the Closing Date.

27. [Intentionally Omitted]

28. Brokers' Fees. Other than the fees and expenses payable to Hilco Real Estate Group LLC in connection with the transactions contemplated hereby, which shall be borne by Seller, neither Party has entered into any contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Buyer could become liable or obligated to pay. Buyer shall indemnify and hold Seller harmless from and against any and all claims, causes of action, losses, costs, expenses, damages or Liabilities, including reasonable attorneys' fees and disbursements, which Seller, or any of its Affiliates may sustain, incur or be exposed to, by reason of any claim or claims by any broker, finder or other person or entity for fees, commissions or other compensation arising out of the transactions contemplated herein if such claim or claims are based in whole or in part on dealings or agreements with the Buyer. Any broker retained by or providing services to Buyer in connection with the transaction evidenced by this Agreement shall be compensated solely by Buyer without contribution from Seller.

29. Survival. Except as specifically set forth herein, none of the representations, warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 13(a) or Section 13(b) shall survive, and each of the same shall terminate and be of no further force or effect as of the Closing.

30. Expenses. Except as otherwise expressly set forth herein, each Party will bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants. For the avoidance of doubt, Buyer shall pay all fees arising from the transfer of the Licenses.

31. Entire Agreement. This Agreement, any documents delivered at Closing pursuant hereto, and any confidentiality agreement entered into by Seller and Buyer in connection with this transaction, constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

32. Incorporation of Exhibits and Schedules. The Exhibits and Schedule(s) to this Agreement are incorporated herein by reference and made a part hereof.

33. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach. No conditions, course of dealing or performance, understanding, or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 33 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

34. Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of each other Party.

35. Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) on the day such communication was sent by e-mail (return receipt requested); or (d) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Seller:

The Great Atlantic & Pacific Tea Company, Inc.
48 Bi-State Plaza, PMB 282
Old Tappan, New Jersey 07675
Attention: Christopher W. McGarry
E-mail: mcgarryc@aptea.com

With a copy (which shall not constitute notice to Seller) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Ray C. Schrock, P.C.; Gavin Westerman; and
Beatriz Azcuy-Diaz

E-mail: ray.schrock@weil.com; gavin.westerman@weil.com;
beatriz.azcuy@weil.com

If to Buyer:

[Buyer]
[Street Address]
[City, State, Zip Code]
Attention: [Contact]
E-mail: [E-mail address]

With a copy (which shall not constitute notice to Buyer) to:

[Firm]
[Street Address]
[City, State, Zip Code]
Attention: [Contact]
E-mail: [E-mail address]

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 35.

36. Governing Law. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of New York (without giving effect to the principles of conflict of laws thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

37. Submission to Jurisdiction; Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 35; provided, however, that nothing in this Section 37 shall affect the right of any Party to serve legal process in any other manner permitted by Law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by Law or in equity. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby.

38. Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

39. Specific Performance. Buyer acknowledges and agrees that Seller and its estate would be damaged irreparably in the event Buyer does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that Seller may have under Law or equity, Seller shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

40. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

41. No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than Buyer, Seller, and their respective successors and permitted assigns, except as expressly set forth in this Agreement.

42. Non-Recourse. All claims or causes of action (whether in contract or in tort, at Law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto (the "**Contracting Parties**"). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or lender to, any of the foregoing ("**Non-Party Affiliates**"), shall have any Liability (whether in contract or in tort, at Law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at Law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the

performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 42.

43. Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

44. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

45. Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

46. Limitations Under Applicable Law. Notwithstanding anything to the contrary contained in this Agreement, Seller's obligations hereunder shall be subject to limitations under applicable Law, including, without limitation, Sections 1113 and 1114 of the Bankruptcy Code.

47. [Intentionally Omitted]

48. Prevailing Party. If any action is brought by either of the Parties against the other, then the prevailing Party shall be entitled to recover from the other Party court costs and reasonable attorneys' fees and costs actually incurred.

49. [Intentionally Omitted]

50. Bulk Transfer Laws. For the avoidance of doubt, and except as necessary with respect to Form C-9600 as described in Section 13 above, Buyer acknowledges that Seller may not comply with the provisions of any bulk transfer, Tax clearance or similar Laws of any jurisdiction in connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

51. Guarantee. Guarantor hereby irrevocably and unconditionally guarantees the due and punctual performance of all obligations of Buyer under this Agreement, including, without limitation, each payment contemplated by Section 3; provided, however, that such guaranty shall terminate upon the occurrence of the Closing. This guaranty is a guarantee of payment and performance, and not of collection. Guarantor hereby waives all defenses available to a surety.

[SIGNATURE PAGE FOLLOWS]

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

[SELLER]

By: _____
Name:
Title:

[BUYER]

By: _____
Name:
Title:

LIST OF SCHEDULE AND EXHIBITS

<u>SCHEDULE</u>	<u>DESCRIPTION</u>
Schedule I	Definitions
<u>EXHIBIT</u>	<u>DESCRIPTION</u>
Exhibit A	Escrow Agreement
Exhibit B	Wire Instructions
Exhibit C	Copies of Seller's Licenses

Schedule I

Definitions

- (i) “Affiliate” means, with respect to 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, where “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.
- (ii) “Business Day” means any day, other than a Saturday, Sunday and any day which is a legal holiday under the Laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.
- (iii) “Code” means the Internal Revenue Code of 1986, as amended.
- (iv) “Damages” means any actual losses, claims, liabilities, debts, damages, fines, penalties, or costs (in each case, including reasonable out-of-pocket expenses (including reasonable fees and expenses of counsel)).
- (v) “Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.
- (vi) “Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity.
- (vii) “Law” means any constitution applicable to, and any law, statute, treaty, code, rule, regulation, ordinance, or requirement of any kind of, any Governmental Authority.
- (viii) “Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether directly incurred, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.
- (ix) “Litigation” means any action, cause of action, suit, claim, charge, investigation, audit, demand, hearing or proceeding, whether civil, criminal, administrative, or arbitral, whether at Law or in equity (including actions or proceedings seeking injunctive relief) and whether before any Governmental Authority.
- (x) “Material Adverse Effect” means any effect or change that has a material adverse effect on the condition of the Licenses, taken as a whole, other than any effects or changes arising from or related to: (a) general business or economic conditions in any of the geographical areas in which the Licenses can be used; (b) any condition or occurrence affecting retail liquor generally; (c) national or international political or social conditions, including the engagement by any

country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (d) financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or accounting rules; (g) the taking of any action contemplated by this Agreement or taken with the consent of the other Party; (h) any effects or changes as a result of the announcement or pendency of this Agreement; (i) any filing or motion made under sections 1113 or 1114 of the Bankruptcy Code; (j) the sale of any other assets or stores to any third parties by any Seller or any of its Affiliates; (k) any effects or changes arising from or related to the breach of the Agreement by Buyer; (l) the failure of Seller to obtain any consent, permit, authorization, waiver or approval required in connection with the transactions contemplated hereby; (m) any strike or labor dispute; (n) any effect resulting from any Bankruptcy Court filings with respect to the ; or (o) any matter of which Buyer is aware on the date hereof.

(xi) “Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or any other entity, including any Governmental Authority or any group of any of the foregoing.

(xii) “Representative” means, when used with respect to a Person, the Person’s controlled Affiliates (including subsidiaries) and such Person’s and any of the foregoing Persons’ respective officers, directors, managers, members, shareholders, partners, employees, agents, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants), and financing sources.

(xiii) “Tax” or “Taxes” means any United States federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, stamp, occupation, premium, windfall profits, environmental (including taxes under section 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether disputed or not.

(xiv) “Transfer Tax” means any stamp, documentary, filing, recording, registration, sales, use, transfer, added-value or similar non-income Taxes, fees or governmental charges imposed under applicable Law in connection with the transactions contemplated by this Agreement.

(xv) “Treasury Regulations” mean the Treasury regulations promulgated under the Code.

Exhibit A

Escrow Agreement

(Attached hereto)

Exhibit B

Wire Instructions

Exhibit C

Copies of Seller's Licenses

1. New Jersey Plenary Retail Distribution Liquor License Number [●] and/or New Jersey Limited Retail Distribution License Number [●]