

**EXHIBIT A**

**Proposed Sale Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

CAFE HOLDINGS CORP.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-05837 (hb)

Jointly Administered

Ref. Dkt. No. 106

**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING  
THE SALE OF ASSETS OF THE DEBTORS OUTSIDE THE ORDINARY COURSE OF  
BUSINESS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND  
INTERESTS, (B) AUTHORIZING THE ASSUMPTION AND SALE AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND  
(C) GRANTING RELATED RELIEF**

Upon consideration of the *Debtors' Expedited Motion, Pursuant to Bankruptcy Code Sections 105(A), 363, And 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of Orders (I) Approving Sale, Bidding, Notice, and Auction Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors; (II) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (III) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (IV) Granting Related Relief* [Docket No. 106] (the "**Motion**")<sup>2</sup> of the above captioned debtors and debtors in possession (collectively, the "**Debtors**" or "**Sellers**") for the entry of an order pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") (a) approving the sale of the Debtors' assets to

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Cafe Holdings Corp. (7910); Cafe Enterprises, Inc. (4946); CE Sportz LLC (2009); and CES Gastonia LLC (0863). The location of the Debtors' corporate headquarters is 4324 Wade Hampton Blvd., Suite B, Taylors, South Carolina 29687.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

be purchased (the “**Acquired Assets**”) free and clear of liens, claims, encumbrances and interests pursuant to the terms and conditions of the Asset Purchase Agreement attached to this Order as **Exhibit 1** (collectively with all exhibits thereto, the “**Agreement**”) by and between the Debtors as sellers and ACM FATZ VII LLC as buyer (“**Purchaser**”) and (b) approving the assumption and assignment of certain executory contracts and unexpired leases; and this Court having entered the *Order Regarding Bid and Auction Procedures, Establishing Deadlines and Scheduling Sale Hearing* [Docket No. 335] (the “**Bidding Procedures Order**”); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and in consideration of the Motion, the relief requested therein, and the responses thereto being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections to the Motion having been duly noted in the record of the hearing on the Motion (the “**Sale Hearing**”); and upon the record of the Sale Hearing, and all other pleadings and proceedings in these chapter 11 cases, including the Motion, the various affidavits of service regarding the Motion [Docket Nos. 134, 135, 217, 245, 274, 366, 367, 370, and 371], and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their stakeholders and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

**IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:**<sup>3</sup>

**Jurisdiction, Final Order, and Statutory Predicates**

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<sup>3</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Motion are incorporated herein to the extent not inconsistent herewith.

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over this matter and over the property of the Debtors' estates, including the Acquired Assets to be sold, transferred, or conveyed pursuant to the Agreement, pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

D. The statutory bases for the relief requested in the Motion and for the approvals and authorizations herein are (i) sections 102, 105, 363 and 365 of the Bankruptcy Code, and (ii) Bankruptcy Rules 2002, 6004, 6006, and 9014.

#### **Notice of Sale and Cure Amounts**

E. On November 15, 2018 (the "**Petition Date**"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession and management of their businesses and properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

F. As evidenced by the affidavits of service filed with the Court [Docket Nos. 134, 135, 217, 245, 274, 366, 367, 370, and 371], proper, timely, adequate, and sufficient notice of the Motion and the Sale Hearing have been provided in accordance with sections 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007, 9008, and 9014, the local rules of the Court, the procedural due process requirements of the United States Constitution, and in compliance with the Bidding Procedures Order. The Debtors also provided due and proper notice of the potential assumption, sale, and assignment of each contract or lease listed on the Assumption and Assignment Notice (as defined in the Motion) filed on January 15, 2019 [Docket No. 355] to Contract Counterparties (as defined in the Motion) and served notification of the final list of Transferred Contracts on the relevant Contract Counterparties on February [ ], 2019 [Docket No. \_\_\_\_]. Such notice was good and sufficient and appropriate under the particular circumstances. No other or further notice of the Motion, the Sale Hearing, the assumption and assignment of the Transferred Contracts (as defined in the Motion), or of the entry of this Order is necessary or shall be required.

G. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested Persons (as defined in Bankruptcy Code § 101(41)) and entities, including, without limitation, (i) the parties on the Core Service List established in these cases, which is comprised of (a) the Office of the United States Trustee for the District of South Carolina; (b) the official committee of unsecured creditors (the “**Committee**”) and their counsel, (c) the United States Attorney’s Office for the relevant Districts within South Carolina, North Carolina, Georgia, Virginia, and Tennessee, (d) the Attorney General for each of the States of South Carolina, North Carolina, Georgia, Virginia, and Tennessee, (e) the Internal Revenue Service, (f) the First Lien Secured Party, (g) Holland & Knight LLP, as counsel to the First Lien

Secured Party, (h) Benefit Street Partners, (i) Milestone Partners, (j) Old Mill Stream, LLC, (k) Triangle Mezzanine Fund LLLP, (l) Shrayne Capital, LLC; (m) Sysco; (n) the holders of the thirty largest unsecured claims against the Debtors on a consolidated basis, (o) all parties who, as of the filing of this motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002, (p) all other applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules, (q) all parties known to the Debtors who hold any liens or security interest in the Debtors' assets who have filed UCC-1 financing statements against the Debtors, or who, to the Debtors' knowledge, have asserted any liens on any of the Debtors' assets, (r) Contract Counterparties, (s) the Debtors' utility providers, (t) the Debtors' insurance providers, (u) all counterparties to litigation proceedings with the Debtors as of the Petition Date; (v) all entities (including governmental entities) known to the Debtors that may have the right to file a fine, penalty or lien against the Acquired Assets or the Debtors, (w) all potential buyers that the Debtors (or their advisors) previously contacted in connection with their pre-petition marketing efforts, and (x) all persons and entities listed in the Debtors' Mailing Matrix.

H. Pursuant to the Bidding Procedures Order, the deadline for parties in interest to object to the sale of the Acquired Assets was 4:00 p.m. Eastern Time on February 1, 2019 (the "**Objection Deadline**"). Six objections to the proposed sale of the Acquired Assets were filed prior to the Objection Deadline: (i) *Objection of United States Trustee to Debtors' Motion, Pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of Orders (I) Approving Sale, Bidding, Notice, and Auction Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors; (II) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (III)*

*Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (IV) Granting Related Relief [Docket No. 216] (the "**First UST Sale Objection**")*; (ii) *Limited Objection and Reservation of Rights by FreshPoint North Carolina, Inc. to Debtors' Expedited Motion, Pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of Orders (I) Approving Sale, Bidding, Notice, and Auction Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors; (II) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (III) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (IV) Granting Related Relief [Docket No. 230] (the "**FreshPoint Sale Objection**")*; (iii) *Objection of Old Mill Stream, LLC; MRB, LLC; and M&R Investors, LLC to Debtors' Expedited Motion, Pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of Orders (I) Approving Sale, Bidding, Notice, and Auction Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors; (II) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (III) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (IV) Granting Related Relief [Docket No. 242] (the "**Old Mill Stream Sale Objection**")*; (iv) *Official Committee of Unsecured Creditors' Objection to the Debtors' Expedited Motion, Pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of Orders (I) Approving Sale, Bidding, Notice, and Auction Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors; (II) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (III) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests,*

and (IV) *Granting Related Relief* [Docket No. 243] (the “**Committee Sale Objection**”); (v) *Greenwood County’s Limited Objection to Debtors’ Notice of Proposed Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances and Other Interest, the Action [sic], and the Sale Hearing* [Docket No. 398] (the “**Greenwood County Sale Objection**”); and (vi) *Objection of United States Trustee to (i) Notice of Proposed Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests, the Auction, and the Sale Hearing and (II) Notice of Cure Amounts and Proposed Assumption and Assignment of Executory Contracts and Leases* [Docket No. 400] (the “**Second UST Sale Objection**,” and collectively with the First UST Sale Objection, the FreshPoint Sale Objection, the Old Mill Stream Sale Objection, the Committee Sale Objection, and the Greenwood County Sale Objection, the “**Sale Objections**”).

I. Pursuant to the Assigned Contract Objection Procedures in the Bidding Procedures Order, the deadline for Contract Counterparties to dispute the proposed Cure Amounts or the provision of adequate assurance of future performance under any Lease or Contract pursuant to Bankruptcy Code § 365 was 4:00 p.m. Eastern Time on February 1, 2019 (the “**Cure Objection Deadline**”). Eight objections to the proposed Cure Amounts or the proposed assumption of Contracts or Leases were filed prior to the Cure Objection Deadline: (i) *Objection of Sysco Columbia LLC and Sysco Charlotte LLC to Proposed Cure Amount on Executory Contract* [Docket No. 374] (the “**Sysco Cure Objection**”); (ii) *Objection to Notice of Cure Amounts and Proposed Assumption and Assignment of Executory Contracts and Leases* [Docket No. 376] (the “**Vandelay Cure Objection**”); (iii) *Objection of Riverview Office Park, LLC to Proposed Cure Amount of Executory Contract* [Docket No. 379] (the “**Riverview Cure Objection**”); (iv) *Objection of Gary Smith and Margaret Smith to Proposed Cure Amount of*



*Executory Contract* [Docket No. 380] (the “**Smith Cure Objection**”); (v) *Objection of East Forest Plaza III, LLC to Debtors’ Notice of Cure Amounts and Assignment and Assumption of Executory Contracts and Leases* [Docket No. 391] (the “**East Forest Cure Objection**”); (vi) *Objection to Cure Notice* [Docket No. 395] (the “**CGD Cure Objection**”); (vii) *Objection of Old Mill Stream, LLC; MRB, LLC; and M&R Investors, LLC to Cure Amounts* [Docket No. 396] (the “**Old Mill Stream Cure Objection**”); and (viii) *Objection of Store Master Funding V, LLC to Debtors’ Notice of Cure Amounts and Proposed Assumption and Assignment of Executory Contracts and Leases* [Docket No. 403] (the “**STORE Cure Objection**” and collectively with the Sysco Cure Objection, the Vandelay Cure Objection, the Riverview Cure Objection, the Smith Cure Objection, the East Forest Cure Objection, the CGD Cure Objection, and the Old Mill Stream Cure Objection, the “**Cure Objections**”).

J. [The Debtors have resolved each of the Cure Objections pursuant to the provisions of this Order below.] [Additionally, the Debtors received informal cure objections from various Contract Counterparties. The Debtors have resolved the informal cure objections pursuant to the provisions of this Order.]

#### **Debtors’ Business Judgment**

K. The Debtors have demonstrated a sufficient basis and the existence of reasonable and appropriate circumstances requiring them to enter into the Agreement, sell the Acquired Assets, and assume and assign the Transferred Contracts under sections 363 and 365 of the Bankruptcy Code, and such actions are appropriate exercises of the Debtors’ business judgment and in the best interests of the Debtors, their estates and their stakeholders.

L. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing,

thorough marketing efforts and a competitive sale process were conducted, the Debtors (a) afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase all of the Debtors' assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets, and (c) did not receive bids on or before the deadline to submit bids as set forth in the Bidding Procedures Order.

**Highest and Best Offer**

M. No Qualified Bidders (as defined in the Motion), other than Purchaser, submitted a qualifying bid for the Acquired Assets in accordance with the Bidding Procedures Order. The Purchaser submitted the highest or otherwise best offer, and the Purchaser is the bidder that submitted the Prevailing Bid for the Acquired Assets in accordance with the Bidding Procedures Order. The sale process and Bidding Procedures approved pursuant to the Bidding Procedures Order resulted in the highest value for the Acquired Assets for the Debtors and their estates.

N. The offer of the Purchaser, upon the terms and conditions set forth in the Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Agreement, (i) is the highest or best offer received by the Debtors, (ii) is fair and reasonable, (iii) is in the best interests of the Debtors' stakeholders and estates, (iv) constitutes full and fair consideration and reasonably equivalent value for the Acquired Assets, (v) was not furnished or entered into for the purpose of hindering, delaying or defrauding creditors of the Debtors, and (vi) will provide a greater recovery for the Debtors' creditors, shareholders and other interested parties than would be provided by any other practically available alternative.

**Good Faith of Purchaser**

O. The Purchaser is not an “insider” or “affiliate” of the Debtors as those terms are defined in the Bankruptcy Code and the decisions thereunder, and no common identity of incorporators, directors, or equity holders existed or exists between the Purchaser and the Debtors. The Purchaser is a purchaser in “good faith,” as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of section 363(m) and (n) of the Bankruptcy Code with respect to all of the Acquired Assets. The Agreement was negotiated and entered into without collusion and in good faith, based upon arm’s length bargaining. The Purchaser is purchasing the Acquired Assets (including the Transferred Contracts) in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and is, therefore, entitled to the protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets, (ii) the Purchaser complied with the provisions in the Bidding Procedures Order, (iii) all consideration to be paid by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the sale have been disclosed, (iv) the Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction, and (v) the negotiation and execution of the Agreement and any other agreements or instruments related thereto was in good faith.

**Validity of Transfer**

P. The Acquired Assets are property of the Debtors’ estates and title thereto is vested in the Debtors’ estates.

Q. The Debtors have advanced sound business reasons for seeking to enter into the Agreement and to sell and/or assume and sell and assign the Acquired Assets, as more fully set forth in the Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors' business judgment to sell the Acquired Assets and to consummate the transactions contemplated by the Agreement. Neither the Debtors, nor the Purchaser, have entered into the Agreement or any other agreement contemplated thereby or are consummating the sale contemplated therein with the intent to defraud any of the Debtors' creditors. Notwithstanding any requirement for approval or consent by any Person, the transfer of the Acquired Assets to the Purchaser and the assumption and assignment of the Transferred Contracts is a legal, valid, and effective transfer of the Acquired Assets (including the Transferred Contracts).

R. The terms and conditions of the Agreement, including the consideration to be realized by the Debtors pursuant to the Agreement, are fair and reasonable, and the transactions contemplated by the Agreement are in the best interests of the Debtors' estates.

S. The transfer of the Acquired Assets to the Purchaser will be, as of the Closing Date (as defined in the Agreement, the "**Closing Date**"), a legal, valid, and effective transfer of the Acquired Assets, which transfer vests or will vest the Purchaser with all right, title, and interest of the Debtors to the Acquired Assets free and clear of (i) all liens relating to, accruing, or arising any time prior to the Closing Date, including, without limitation, any such liens (x) that purport to give to any party a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase, or repurchase right or option, or termination of, the Debtors' or the Purchaser's interests in the Acquired Assets, or any similar rights, or (y) in respect of taxes, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, without limitation, any restriction of use,

voting, transfer, receipt of income, or other exercise of any attributes of ownership) (collectively, the “**Liens**”) with the exception of Permitted Liens (as defined in the Agreement) and (ii) all debts arising under, relating to, or in connection with any act of any of the Debtors or claims (as that term is defined in Bankruptcy Code § 101(5)), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these Chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise relating to any other matters, accruing or arising any time prior to the Closing Date (collectively in this clause (ii), the “**Claims**” and, together with the Liens, the “**Claims and Interests**”), with the exception of any liabilities assumed pursuant to the Agreement (the “**Assumed Liabilities**”).

**Section 363(f) is Satisfied**

T. Except as specifically provided in the Agreement or this Order, the Purchaser shall not assume or become liable for any Claims and Interests (other than the Permitted Liens and Assumed Liabilities) relating to the Acquired Assets being sold by the Debtors.

U. The transfer of the Acquired Assets to the Purchaser free and clear of all Claims and Interests (other than the Permitted Liens and Assumed Liabilities) will not result in any undue burden or prejudice to any holders of any Liens. All Persons having Claims and Interests of any kind or nature whatsoever against or in any of the Debtors or the Acquired Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Claims and Interests (other than the Permitted Liens or Assumed Liabilities) against the Purchaser, any of its assets, property, successors or assigns, or the Acquired Assets.

V. The Debtors may sell the Acquired Assets free and clear of all Claims and Interests of any kind or nature whatsoever (other than the Permitted Liens and Assumed

Liabilities) because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Claims and Interests and (ii) Contract Counterparties to the Transferred Contracts, who did not object, or who withdrew their objections, to the sale of the Acquired Assets and the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All objections to the Motion have been overruled or resolved, and those holders of Claims and Interests who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code. Given that Permitted Liens, as defined in the Agreement, include liens of governmental units arising from ad valorem taxes, to the extent that Greenwood County's tax liens are not fully paid as of the closing of the sale (as defined in the Agreement, the "**Closing**"), Greenwood County's tax liens shall survive the sale and continue to be enforceable to the extent provided under applicable South Carolina law.

W. Not selling the Acquired Assets free and clear of all Claims and Interests (other than the Permitted Liens and Assumed Liabilities) would adversely impact the Debtors' estates, and the sale of Acquired Assets other than one free and clear of all Claims and Interests (other than the Permitted Liens and Assumed Liabilities) would be of substantially less value to the Debtors' estates. If the Debtors do not sell the Acquired Assets free and clear of all Claims and Interests (other than the Permitted Liens and Assumed Liabilities), the Purchaser would not have agreed to enter into the Agreement or consummate the sale transaction contemplated therein.

**Assumption and Assignment of the Transferred Contracts**

X. The Debtors and the Purchaser have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including subsections 365(b)(1)(A), (B) and 365(f), in connection with the sale and the assumption and assignment of the Transferred

Contracts. The Purchaser has demonstrated adequate assurance of future performance with respect to the Transferred Contracts pursuant to section 365(b)(1)(C) of the Bankruptcy Code. The assumption and assignment of the Transferred Contracts pursuant to the terms of this Order is integral to the Agreement and is in the best interests of the Debtors, their estates, their stakeholders and other parties in interest, and represents the exercise of sound and prudent business judgment by the Debtors.

Y. The Transferred Contracts are assignable notwithstanding any provisions contained therein to the contrary. The Cure Amounts related to the Transferred Contracts shall be paid contemporaneously with the Closing or satisfied in such other manner as may be agreed to by the Contract Counterparty and Purchaser. The notice and opportunity to object provided to the contract counterparties to such contracts and to other parties in interest, as set forth in the Bidding Procedures Order, fairly and reasonably protect any rights that such contract counterparties and other parties in interest may have with respect to such contracts.

**Compelling Circumstances for an Immediate Sale**

Z. The Purchaser will be acting in good faith, pursuant to section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the Agreement at any time on or after the entry of this Order and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

AA. The transactions contemplated under the Agreement do not amount to a consolidation, merger, or *de facto* merger of the Purchaser and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Purchaser and the Debtors, the Purchaser is not a mere continuation of the Debtors or their estates, and the Purchaser does not constitute a successor to the Debtors or their estates.

BB. The total consideration, including the purchase price and assumed liabilities, provided by the Purchaser for the Acquired Assets (the “**Consideration**”) was the highest or best offer received by the Debtors, and the Consideration constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the Acquired Assets.

CC. Time is of the essence in consummating the sale. In order to maximize the value of the Acquired Assets, it is essential that the sale of the Acquired Assets occur within the time constraints set forth in the Agreement. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

DD. At and effective as of the Closing Date, the Purchaser shall assume sole responsibility for paying and satisfying the Assumed Liabilities. Nothing in this Order (including, without limitation, any provisions in this Order regarding the sale, transfer or conveyance of the Acquired Assets free and clear of Claims and Interests) nor in the Agreement shall be construed to mean that the Purchaser is not assuming from the Debtors and thereafter becoming solely responsible for the payment, performance and discharge of the Assumed Liabilities. After the Closing Date, the Debtors shall have no liability whatsoever with respect to the Assumed Liabilities.



**NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

**General Provisions**

1. The relief requested in the Motion is granted in its entirety and the Agreement is approved, subject to the terms and conditions contained herein.

2. All objections, responses, reservations of rights, and requests for continuance concerning the Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response, reservation of rights, or request for continuance was not otherwise withdrawn, waived, or settled, it is overruled and denied on the merits.

3. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy Rules 2002, 6004, and 6006.

**Approval of the Agreement**

4. The sale of the Acquired Assets, the terms and conditions of the Agreement (including all schedules and exhibits affixed thereto), and the transactions contemplated thereby shall be, and hereby are, authorized and approved in all respects.

5. The sale of the Acquired Assets and the Consideration provided by the Purchaser under the Agreement are fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

6. The Purchaser is hereby granted and is entitled to all of the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code, including with respect to

the transfer of the Transferred Contracts as part of the sale of the Acquired Assets pursuant to section 365 of the Bankruptcy Code and this Order.

7. The Debtors (and their respective directors, officers, managers, employees, members, agents, representatives, and attorneys) shall be, and hereby are, authorized and directed to fully assume, perform under, consummate, and implement the terms of the Agreement together with any and all additional instruments and documents that may be necessary or desirable in connection with implementing and effectuating the terms of the Agreement, this Order, and/or the sale of the Acquired Assets including, without limitation, guaranties, intercreditor agreements, certificates, deeds, assignments, and other instruments of transfer, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser, or reducing to possession, any or all of the Acquired Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Agreement, without any further corporate action or orders of this Court.

**Transfer of the Acquired Assets**

8. To the fullest extent permitted by law, effective as of the Closing Date, (a) the sale of the Acquired Assets by the Debtors to the Purchaser shall constitute a legal, valid, and effective transfer of the Acquired Assets notwithstanding any requirement for approval or consent by any Person and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the Acquired Assets, free and clear of all Claims and Interests of any kind (other than the Permitted Liens and Assumed Liabilities) pursuant to section 363(f) of the Bankruptcy Code, and (b) the assumption of the Assumed Liabilities by the Purchaser shall constitute a legal, valid

and effective delegation and assignment of all Assumed Liabilities to the Purchaser and shall divest the Debtors of all liability with respect to any Assumed Liabilities.

9. The sale of the Acquired Assets is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

10. The Debtors shall be, and hereby are, authorized, empowered, and directed, pursuant to sections 105, 363(b), and 365 of the Bankruptcy Code, to sell the Acquired Assets, including the Transferred Contracts, to the Purchaser. The sale of the Acquired Assets shall vest the Purchaser with all right, title and interest of the Debtors to the Acquired Assets free and clear of any and all Claims and Interests (other than the Permitted Liens and Assumed Liabilities). Following the Closing Date, no holder of any Claims and Interests in the Acquired Assets (other than the Permitted Liens and Assumed Liabilities) shall interfere with the Purchaser's use and enjoyment of the Acquired Assets based on or related to such Claims and Interests, or any actions that the Debtors may take in their chapter 11 cases and no Person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the Agreement or this Order.

11. All Persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with, or which would be inconsistent with, the ability of the Debtors to transfer the Acquired Assets to Purchaser in accordance with the Agreement and this Order.

12. The provisions of this Order authorizing the sale of the Acquired Assets free and clear of Claims and Interests (other than the Permitted Liens and Assumed Liabilities) shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. However, the Debtors and

the Purchaser, and each of their respective officers, employees, and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Purchaser deem necessary, desirable or appropriate to implement and effectuate the terms of the Agreement and this Order.

13. Except as expressly provided in the Agreement, following the Closing Date, the Purchaser is hereby authorized (but not directed) to execute and file any termination statements, instruments of satisfaction, releases, and other documents with respect to any Liens (other than Permitted Liens) asserted by any of the Debtors' creditors against the Purchased Assets prior to the Closing Date, which the Purchaser deems necessary or desirable in order to evidence the release of such pre-Closing Date Liens.

14. All of the Debtors' interests in the Acquired Assets to be acquired by the Purchaser under the Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Purchaser. Upon the occurrence of the Closing, this Order shall be considered and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Acquired Assets acquired by the Purchaser under the Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Acquired Assets to the Purchaser.

15. Except as otherwise expressly provided in the Agreement, all Persons presently or on or after the Closing Date in possession of some or all of the Acquired Assets are directed to surrender possession of the Acquired Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

**Assumption and Assignment of the Transferred Contracts**

16. Subject to the terms of the Agreement and the occurrence of the Closing, the assumption by the Debtors of the Transferred Contracts and the sale and assignment of such agreements and unexpired leases to the Purchaser, as provided for or contemplated by the Agreement, shall be, and hereby is, authorized and approved pursuant to sections 363 and 365 of the Bankruptcy Code.

17. The Transferred Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtors and sold and assigned to the Purchaser as of the Closing Date, pursuant to sections 363 and 365 of the Bankruptcy Code, subject only to the payment of the Cure Costs.

18. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest in and to each Transferred Contract.

19. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, and except as otherwise provided in this Order, the Debtors or the Purchaser, as applicable pursuant to the Agreement, shall promptly pay at Closing or cause to be paid at Closing to the Contract Counterparties the requisite Cure Amounts, if any, set forth on the Assumption and Assignment Notice or satisfy any relevant Cure Amounts in such other manner as may be agreed to by the Contract Counterparty and Purchaser. The Cure Amounts are hereby fixed at the amounts set forth on the Assumption and Assignment Notice, or the amounts set forth on the record of the Sale Hearing, or in the provisions of this Order, as the case may be, and the Contract Counterparties are forever bound by such Cure Amounts.

20. The Debtors have resolved the Cure Objections by: (i) reaching an agreement on the Cure Amounts asserted in the respective Cure Objections, or (ii) otherwise addressing the respective Cure Objections, as follows:

- a. Sysco Cure Objection:
- b. Vandelay Cure Objection:
- c. Riverview Cure Objection:
- d. Smith Cure Objection:
- e. East Forest Cure Objection:
- f. CGD Cure Objection:
- g. Old Mill Stream Cure Objection:
- h. STORE Cure Objection:

Based on the resolutions described above, each of the Cure Objections is hereby overruled.

21. The Debtors have resolved the following informal cure objections as follows:

- a. [Hilltop Way, LLC:]
- b. [Beetle Enterprises, LLC]
- c. [Ligon Properties, LLC]
- d. [McDowell Square Associates, LLC]
- e. [Narguizian Family trust]
- f. [Ohlandy Properties, LLC]
- g. [Thrift Brothers, Inc.]
- h. [Tryon and Dolores Sisson:]

Based on the resolutions described above, the assumption and assignment of the Executory Contracts and Unexpired Leases identified in this paragraph is hereby approved.

22. All defaults or other obligations under the Transferred Contracts arising prior to the Closing shall be deemed cured by payment of the Cure Amounts.

23. The Contract Counterparty to each of the Transferred Contracts shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, and the Purchaser shall enjoy all of the Debtors' rights and benefits under each such Transferred Contract as of the applicable date of assumption without the necessity of obtaining such Contract Counterparty's written consent to the assumption or assignment thereof.

24. The Purchaser's promise to perform the obligations under the Transferred Contracts arising after the Closing Date and the evidence adduced at the Sale Hearing shall constitute adequate assurance of its future performance under the Transferred Contracts. The Purchaser has satisfied all requirements under sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance under the Transferred Contracts.

25. The Debtors and their estates shall be relieved of any liability for any breach of any of the Transferred Contracts occurring from and after Closing, pursuant to and in accordance with section 365(k) of the Bankruptcy Code.

26. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all parties to the Transferred Contracts are forever barred and enjoined from raising or asserting against the Purchaser any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or related to the Transferred Contracts existing as of the Closing or arising by reason of the Closing, except for any amounts that are Assumed Liabilities being assumed by the Purchaser under the Agreement.

**Federal, State, and Local Government**

27. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement and this Order. This Order and the Agreement shall be binding upon and govern the acts of all such federal, state, and local governmental agencies and departments, including any filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other Persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Acquired Assets. Each such federal, state, and local governmental agency or department is hereby authorized and directed to accept a copy of this Order as conclusive evidence of (i) the release of pre-Closing Liens (other than Permitted Liens) against the Acquired Assets; and (ii) the authorization of the Purchaser to execute, on behalf of the lienholder, such Documents as the Debtors (prior to Closing) or the Purchaser (after Closing) deem necessary, appropriate, or desirable to document and effect the release of such Liens (other than Permitted Liens) against the Acquired Assets.

28. To the extent permitted by section 525 of the Bankruptcy Code, no Governmental Authority (as defined in Bankruptcy Code Section 101(27)) may revoke or suspend any permit or license relating to the operation of the Acquired Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the transactions contemplated by the Agreement.



**No Successor or Transferee Liability**

29. Except as expressly provided in the Agreement, the Purchaser is not assuming nor shall it or any affiliate of the Purchaser be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Acquired Assets, or any liabilities calculable by reference to the Debtors or their operations or the Acquired Assets, or any liabilities relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Agreement, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against the Purchaser or any affiliate of the Purchaser.

30. The Purchaser has not assumed or is otherwise not obligated for any of the Debtors' liabilities other than the Assumed Liabilities as set forth in the Agreement, and the Purchaser has not purchased any of the Debtors' assets expressly excluded from the Acquired Assets pursuant to the Agreement (the "**Excluded Assets**"). Consequently, all Persons, Governmental Units, and all holders of Claims and Interests based upon or arising out of liabilities retained by the Debtors are hereby enjoined from taking any action against the Purchaser or the Acquired Assets to recover any Claims and Interests or on account of any liabilities of the Debtors other than Assumed Liabilities pursuant to the Agreement. All Persons holding or asserting any Claims and Interests in the Excluded Assets are hereby enjoined from asserting or prosecuting such Claims and Interests or any cause of action against the Purchaser or the Acquired Assets for any liability associated with the Excluded Assets.

31. The Purchaser is not a "successor" to the Debtors or their estates by reason of any theory of law or equity, and the Purchaser shall not assume, nor be deemed to assume, or in any

way be responsible for any liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor liability, or similar liability except for the assumption of the Assumed Liabilities as expressly provided in the Agreement. Except to the extent the Purchaser assumes the Assumed Liabilities pursuant to the Agreement, neither the purchase of the Acquired Assets by the Purchaser, nor the fact that the Purchaser is using any of the Acquired Assets previously operated by the Debtors, will cause the Purchaser or any of its affiliates to be deemed a successor in any respect to the Debtors' business within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine.

32. Except to the extent expressly included in the Assumed Liabilities, pursuant to sections 105 and 363 of the Bankruptcy Code, all Persons including, but not limited to, the Debtors, the official committee of unsecured creditors, all debt holders, equity security holders, the Debtors' employees or former employees, Governmental Authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien or Claim of any kind or nature whatsoever against, in, or with respect to any of the Debtors or the Acquired Assets (other than the Permitted Liens and Assumed Liabilities), arising under or out of, in connection with, or in any way relating to the Debtors, the Acquired Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Acquired Assets to the Purchaser, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Lien or Claim, including assertion of any right of setoff, recoupment, or subrogation, and enforcement, attachment, or collection of any judgment, award,

decree, or order, against the Purchaser or any affiliate, successor or assign thereof and each of their respective current and former members, officers, directors, attorneys, employees, partners, affiliates, financial advisors, and representatives (each of the foregoing in its individual capacity), or the Acquired Assets.

33. Without limiting the generality of the foregoing, except as otherwise specifically set forth in the Agreement, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any workers' compensation debts, obligations, and liabilities of the Debtors arising pursuant to state law or otherwise.

#### **Other Provisions**

34. Subject to the terms of the Agreement, the Agreement and any related agreements and/or instruments may be waived, modified, amended, or supplemented by agreement of the Debtors and the Purchaser, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not materially adverse to the Debtors and substantially conforms to, and effectuates, the Agreement and any related agreements and/or instruments and this Order.

35. The failure specifically to include any particular provisions of the Agreement or any related agreements or instruments in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court, the Debtors, and the Purchaser that the Agreement and any related agreements and instruments are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

36. Nothing contained in this Order shall affect or impair the claims, rights, and powers of the United States of America; provided, however, that, except as otherwise provided in

the Agreement, any such claims, rights or powers of the United States of America shall not be construed in any way as Assumed Liabilities under this Order or the Agreement.

37. To the extent there are any inconsistencies between the terms of this Order and the Agreement, the terms of the this Order shall control.

38. This Order and the Agreement shall be binding upon and govern the acts of all Persons including, without limitation, the Debtors and the Purchaser, their respective successors, and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtors' estates or any trustee appointed in a chapter 7 case if this case is converted from chapter 11, all creditors of any Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Acquired Assets.

39. Nothing contained in any plan of reorganization or liquidation confirmed in these chapter 11 cases, or in any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Agreement or the terms of this Order.

40. Notwithstanding Bankruptcy Rules 6004, 6006, and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any Person obtaining a stay pending appeal, the Debtors and the Purchaser are free to close under the Agreement at any time, subject to the terms of the Agreement. In the absence of any Person obtaining a stay pending appeal prior to the Closing, if the Debtors and the Purchaser close under the Agreement, the Purchaser shall be deemed to be acting in "good faith"

and shall be entitled to the protections of section 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

41. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Agreement and the provisions of this Order.

42. Notwithstanding anything to the contrary contained anywhere herein or in the Agreement, Interim DIP Orders, Final DIP Order, DIP Financing Documents, DIP Term Sheet, Pre-Petition Credit Agreement, Pre-Petition Loan Documents, the Debtors' Stipulations, Second Lien Credit Agreement or Second Lien Loan Documents, this Order shall not be construed to prime, diminish or impair the rights, if any, of FreshPoint North Carolina, Inc. or FreshPoint Nashville, Inc., to the extent such rights are validly preserved under the Perishable Agricultural Commodities Act, 7 U.S.C. 499e(c) ("**PACA**") and any unpaid claims asserted by FreshPoint North Carolina, Inc. or FreshPoint Nashville, Inc. that are entitled to protection under PACA and have been validly preserved thereunder ("**Protected PACA Claims**"). As a condition precedent to any closing of the Sale of the Acquired Assets, (a) sufficient funds must be set aside and reserved to satisfy all unpaid Protected PACA Claims asserted on or before the Sale Hearing, if any, or (b) the holders of Protected PACA Claims must otherwise be adequately protected, as determined by the Court in accordance with applicable law. The Debtors, Purchaser, DIP Agent, and Pre-Petition ACM Secured Parties each reserve all rights with respect to the alleged rights and claims of FreshPoint North Carolina, Inc. and FreshPoint Nashville, Inc.

43. Nothing in this Order or the Agreement releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability to a federal governmental unit that any entity

would be subject to as the post-sale owner or operator of property after the date of entry of this Order. Nothing in this Order or the Asset Purchase Agreement authorizes the transfer or assignment of any federal governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under federal police or regulatory law. Nothing in this Order divests any tribunal of any jurisdiction that it may have under federal police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

44. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Bidding Procedures Order, and the Agreement in all respects and to decide any disputes concerning this Order, the Bidding Procedures Order, the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Acquired Assets and any Transferred Contracts, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Acquired Assets free and clear of all Claims and Interests (except Permitted Liens and Assumed Liabilities).

**AND IT IS SO ORDERED.**