

06-28-2002



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Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Sumter Petroleum Co.

06/25/02

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State **South Carolina**
- Other _____

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: **The Pantry, Inc.**

Internal Address: _____

Address: _____

Street Address: **1801 Douglas Drive**

City: **Sanford** State: **NC** Zip: **27330**

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State **Delaware**
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other **Asset Purchase Agreement**

Execution Date: **03/28/2000**

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1199163

ME MARKET EXPRESS (stylized)

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: **Michael E. Weddington, Esq.**

Internal Address: _____

Smith, Anderson Blount, Dorsett,

Mitchell & Jernigan, L.L.P.

Street Address: **2500 First Union Capitol**

Center

City: **Raleigh** State: **NC** Zip: **27601**

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$ **40.00**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: _____

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Michael E. Weddington

Name of Person Signing

Michael E. Weddington
Signature

14 June 2002
Date

51

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

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RECORDATION FORM COVER SHEET

Continuation page

1. Name of conveying party(ies):

Market Express of Liberty Street, Inc.

A South Carolina corporation

Market Express of Liberty Street, Inc. is a conveying party pursuant to the Asset Purchase Agreement being recorded herewith and is being listed herein for that reason. Market Express of Liberty Street, Inc. is not the owner of the mark to which this document recordation pertains. Sumter Petroleum Co. is the registered owner of the mark.

ASSET PURCHASE AGREEMENT

among

MARKET EXPRESS OF LIBERTY STREET, INC.,

SUMTER PETROLEUM COMPANY

and

THE PANTRY, INC.

Dated as of March 28, 2000

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement"), dated as of the 28th day of March, 2000, by and among MARKET EXPRESS OF LIBERTY STREET, INC., a South Carolina corporation, and SUMTER PETROLEUM COMPANY, a South Carolina corporation (collectively, the "Seller"), and THE PANTRY, INC., a Delaware corporation (the "Purchaser").

WITNESSETH:

WHEREAS, the Seller operates three (3) convenience stores in Sumter, South Carolina; and

WHEREAS, the Seller desires to transfer, sell, convey, assign and deliver (collectively, "Transfer") to the Purchaser, and the Purchaser desires to acquire and accept from the Seller, certain assets of Seller relating to Seller's convenience store business, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, mutual covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Defined Terms. The following terms, as used in this Agreement, shall have the following meanings:

"Action" shall mean any action, claim, proceeding, suit or investigation, or any appeal therefrom.

"Accrued Vacation Pay" shall mean all accrued vacation pay as of the Closing Date of each of Seller's employees as provided in Seller's related Employee Benefit Plan.

"Affiliate" shall mean, with respect to any Person, any Person which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. Without limiting the foregoing definition, the term "Affiliate," with respect to Seller, shall include the following persons: Scott Rumph.

"Affiliate Leases" shall mean leases for each parcel of Affiliate Real Property, including a ground lease for Store No. 101.

"Affiliate Real Property" shall mean the real property owned by Affiliates and more particularly described on Schedule 5.11(a) hereto.

"Agreement" shall mean this Asset Purchase Agreement and shall include all of the Schedules and Exhibits attached hereto.

"Approval" shall mean any approval, authorization, consent, franchise, or order of or by, or filing with, any Governmental Authority or other Person.

"Assumed Liabilities" shall have the meaning ascribed to such term in Section 2.3 hereof.

"Audit" shall mean a physical audit or count of all of the Inventory to be conducted jointly by Seller and Purchaser at each Store commencing at 7:00 a.m. on the Closing Date.

"Business" shall mean the business of Seller's three (3) convenience stores in Sumter, South Carolina, identified on Schedule 1.1, but shall not include the Seller's other business activities, including, without limitation, the Wholesale Business.

"Business Day" or "business day" shall mean any day that is not a Saturday, Sunday, or legal or banking holiday in **North Carolina**.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended, including any rules and regulations promulgated thereunder or in connection therewith.

"Change Fund" shall mean the normal change fund of \$500 for each of the Stores.

"Closing" shall mean the consummation of the transactions contemplated by this Agreement, effective as of 7:00 a.m. on Thursday, April 27, 2000.

"Closing Date" shall mean April 27, 2000 or as soon thereafter as the conditions to Closing described in Articles IX and X hereof shall have been fully satisfied or waived by the appropriate party or parties hereto, but not later than May 4, 2000.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and shall include all of the rules and regulations promulgated thereunder.

"Condition" shall mean, collectively, the business, properties, assets, operations, results of operations and condition (financial or otherwise).

"Contracts" shall mean the contracts and agreements of the Seller relating to the Business and which will be assigned to and assumed by the Purchaser, as identified on Schedule 2.1(f).

"Cost" shall mean Seller's laid-in cost of Petroleum Inventory as of the day prior to Closing, Seller's cost of products used for food services, 80.7% of retail for beer, 72.2% of retail for cigarettes, and 59.9% of retail for all other Merchandise Inventory, all as determined from Seller's books and records and the Audit, subject to confirmation by the parties upon completion of Purchaser's review.

"Damages" shall mean any fine, penalty, claim, loss, deficiency, Liability, cost or expense (including, without limitation, reasonable attorneys' and accountants' fees, costs and expenses) or environmental assessment, monitoring or remediation expense, diminution in property value, or damage of any kind or nature whatsoever.

"DHEC" shall mean the South Carolina Department of Health and Environmental Control.

"Employee Benefit Plan" shall mean any employee benefit plan, arrangement, policy or commitment (including an employee benefit plan within the meaning ascribed to such term in Section 3(3) or ERISA) including, without limitation, any employment, consulting or deferred compensation agreement, executive compensation, bonus, incentive, pension, profit-sharing, savings, retirement, stock option, stock purchase or severance pay plan, any life, health, disability, accident or insurance plan or any holiday, vacation or other employee practice, policy or benefit.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated in connection therewith.

"Excluded Assets" shall have the meaning ascribed to such term in Section 2.2 hereof.

"Excluded Liabilities" shall have the meaning ascribed to such term in Section 2.4 hereof.

"Financial Statements" shall have the meaning ascribed to such term in Section 5.7 hereof.

"GAAP" shall mean generally accepted accounting principles in the United States, consistently applied.

"Governmental Authority" shall mean any foreign, federal, state, local or other governmental, administrative or regulatory authority, body, agency, court, tribunal or similar entity.

"Hazardous Substance" shall have the meaning ascribed to such term in Section 5.16(a) hereof.

"Indemnified Party" shall mean any party entitled to indemnification pursuant to Article XII hereof and shall include such party's Affiliates, successors and assigns and the Representatives of each of them.

"Indemnifying Party" shall mean any party liable for indemnification pursuant to Article XII hereof and shall include such party's successors and assigns.

"Inventory" or "Inventories" shall mean collectively the Merchandise Inventory and the Petroleum Inventory.

"IRS" shall mean the Internal Revenue Service.

"Knowledge" shall mean (i) the actual knowledge, after due inquiry and investigation, of any of Seller's officers or directors and (ii) the existence of facts, events, occurrences or matters with respect to which any of the persons referred to above should reasonably be expected to have knowledge in the ordinary conduct of his duties.

"Law" shall mean any Federal, state, local or foreign law, statute, rule, regulation, ordinance, standard, policy, requirement, administrative ruling, order or process (including, without limitation, any zoning or land use law or ordinance, building code or environmental law, any securities, blue sky, civil rights or occupational health and safety law or regulation, and any law or regulation relating to the distribution or sale of food products, beer, wine, cigarettes, gasoline or other motor fuel) and any court or arbitrator's order or process.

"Lease" and "Leases" shall mean the Affiliate Leases.

"Liability" shall mean any debt, liability, commitment or obligation of any kind, character or nature whatsoever, whether known or unknown, secured or unsecured, accrued, fixed, absolute, contingent or otherwise, and whether due or to become due.

"License" shall mean any permit or license issued by a Governmental Authority and necessary or required for the operation of the Business.

"Lien" shall mean any lien, statutory lien (including, without limitation, any lien, restriction or right arising under the South Carolina Uniform Commercial Code - Bulk Transfers), pledge, mortgage, security interest, charge, encumbrance, easement, right of way, assessment (pending or confirmed), covenant, claim, restriction, right, option, conditional sale or other title retention agreement, warrant or equity of any kind or nature.

"Merchandise Inventory" shall mean all foodstuffs, beverages, tobacco products, magazines, books, household products, automotive products or accessories, and any other products of the Business of whatever nature (other than Petroleum Inventory) held for retail sale out of the Stores.

"OSHA" shall mean the Occupational Safety and Health Act of 1970, as amended.

"Permitted Liens" shall mean (i) laws, ordinances and governmental regulations regulating the use or occupancy of the Real Property or the character, dimensions or locations of the improvements thereon; and (ii) lease conditions, easements, rights of way, restrictions, and other exceptions discovered by an inspection or survey or title examination or other imperfections of title that do not make title unmarketable; provided, however, that none of the same is or would be violated by the continued use of any portion of the Real Property for the purposes for which it has been customarily used by or in the Business and, provided further, that a Permitted Lien shall not include any such encumbrance or restriction which is so substantial as to impair the value of or materially interfere with the continued or contemplated use of any Store or any material portion of the Real Property or Transferred Assets for the purposes for which they have been used by or in the Business.

"Person" shall mean any individual, partnership, corporation, limited liability company, association, business trust, joint venture, governmental entity, business entity or other entity of any kind or nature.

"Petroleum Equipment" shall mean all petroleum marketing equipment, including, but not limited to, pumps, gasoline dispensers, gas console, gasoline canopy, canopy structure, lights, registered and properly upgraded underground storage tanks and lines, environmental monitoring or upgrade equipment, and any related equipment or apparatus located on the Real Property.

"Petroleum Inventory" shall mean all gasoline, diesel and kerosene products of the Business measured in gallons.

"Petroleum Products" shall mean gasoline and other petroleum products, by-products, and constituents.

"Purchase Price" shall have the meaning ascribed to such term in Section 2.5 hereof.

"Purchaser" shall mean The Pantry, Inc., a Delaware corporation.

"Purchaser Group" shall have the meaning ascribed to such term in Section 7.6 hereof.

"Real Property" shall mean the Affiliate Real Property.

"Representative" shall mean any employee, officer, director, stockholder, partner, accountant, attorney, investment banker, broker, finder, investor, subcontractor, consultant or other authorized agent or representative of a Person.

"Seller" shall mean, collectively, Market Express of Liberty Street, Inc., a South Carolina corporation, and Sumter Petroleum Company, a South Carolina corporation.

"Store Equipment" shall mean all convenience store fixtures, machinery, and equipment, including, but not limited to, walk-in coolers, store fixtures, counters, shelving, refrigeration equipment, cash registers, safes, fountain dispensing equipment, QSR and food service equipment, coffee equipment, ice machines, tables and any other fixtures or equipment necessary for running a convenience store that may be at any of the Stores, regardless of whether such items are permanently attached to the Real Property, pole lights, pole signs or other personal property attached, appurtenant to or located in or around the buildings or improvements located at the Real Property.

"Store Supplies" shall mean cups, napkins, ice bags, paper towels, toilet paper, janitorial supplies and similar non-inventory items which are used in the operation or maintenance of the Stores.

"Stores" shall mean the three (3) convenience stores operated by the Seller and identified on Schedule 1.1, each being a "Store."

"Tanks" shall have the meaning ascribed to such term in Section 5.16(g) hereof.

"Tax" shall mean any foreign, federal, state or local income, gross receipts, license, severance, occupation, premium, environmental (including taxes under Code Section 59A), customs, duties, profits, disability, registration, alternative or add-on minimum, estimated, withholding, payroll, employment, unemployment insurance, social security (or similar), excise, sales, use, value-added, occupancy, franchise, real property, personal property, gas, petroleum marketing, business and occupation, mercantile, windfall profits, capital stock, stamp, transfer, workmen's compensation or other tax, fee or imposition of any kind whatsoever, including any interest, penalties, addition, assessments or deferred liability with respect thereto, whether disputed or not.

"Tax Return" shall mean any return, report, notice, declaration, claim for refund, estimate, election or information statement or return relating to any Tax, including any schedules or attachments thereto and any amendments thereof.

"Transaction Documents" shall mean, collectively, this Agreement, the Affiliate Leases and all agreements, instruments, certificates and other documents executed and/or delivered in connection herewith or therewith.

"Transfer" shall mean any sale, transfer, conveyance, assignment, delivery or other disposition.

"Transferred Assets" shall have the meaning ascribed to such term in Section 2.1 hereof.

"Trust Fund" shall have the meaning ascribed to such term in Section 2.1(h) hereof.

"Wholesale Business" shall mean Seller's or any of its Affiliates' wholesale petroleum business in South Carolina, wherein they sell, consign or otherwise deliver petroleum to convenience stores, gas stations and other similar retailers and end users as wholesale supplier and not as retailer or operator of such retailers, and the assets used therefor.

1.2 Additional Definitions. In addition to the foregoing defined terms, other capitalized terms appearing in this Agreement shall have the respective meanings ascribed to such terms where they first appear in the text of this Agreement.

ARTICLE II

PURCHASE AND SALE OF ASSETS AND ASSUMPTION OF LIABILITIES; PURCHASE PRICE

2.1 Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement, at the Closing the Seller shall Transfer to the Purchaser, and the Purchaser shall acquire and accept from the Seller, all of the Seller's right, title and interest in, to and under all of the furniture, fixtures, equipment, inventory and other assets, used or located at the Stores and relating to the Business, less and except the Excluded Assets (after giving effect to the

exclusion of the Excluded Assets, such assets, together with tenant's rights and interest in the Leases, being hereinafter collectively referred to as the "Transferred Assets"), free and clear of any and all Liens except Permitted Liens, such Transferred Assets to include, without limitation:

- (a) the Store Equipment;
- (b) the Petroleum Equipment;
- (c) the Inventory;
- (d) the Change Fund in the aggregate amount of \$1,500;
- (e) the Store Supplies;
- (f) all right and interest of the Seller in, to or under the Contracts identified on Schedule 2.1(f);
- (g) all computer hardware and computer software documentation (subject to applicable license agreements) utilized in the Stores, including source code and systems documentation and telephone switches related to point-of-sale and petroleum dispensing equipment;
- (h) with respect to the Stores and the Real Property, all rights, interests and claims under the South Carolina SUPERB Account and SUPERB Financial Responsibility Fund ("Trust Fund"), or any other fund, program, or insurance policy relating to payment or reimbursement of costs, expenses or damages related to releases from underground storage tanks;
- (i) all claims, rights, choses-in-action of the Seller with respect to or against any third-party who is or may be liable in whole or in part for any damages arising out of petroleum product or hazardous substances contamination occurring prior to closing, for which Purchaser may be legally or contractually liable or which in any way may result in or cause or contribute to a claim for damages against Purchaser;
- (j) the name "Market Express," all variations thereof, related trademark and trade name registrations, and the goodwill associated therewith and with the Business;
- (k) the building and improvements at Store #101;
- (l) to the extent assignable, Seller's plans, licenses and permits for the rebuild of Store #101;
- (m) all books and records described in Section 9.7(b);
- (n) all transferable Licenses; and
- (o) the aboveground tanks listed on Schedule 2.1(o).

2.2 Excluded Assets. Notwithstanding anything in Section 2.1 to the contrary, the Seller shall retain all of its right, title and interest in, to and under all, and shall not Transfer to the Purchaser any, of the following assets, rights or properties (the "Excluded Assets"):

- (a) all cash and cash equivalents, except the Change Fund;
- (b) all accounts and notes receivable of the Business (including miscellaneous receivables) arising from products sold or services rendered by the Seller prior to the Closing Date;
- (c) all Federal, state, local and foreign income tax deposits (to the extent not refunded) paid by the Seller in connection with the income or operations of the Business with respect to any period ending on or prior to the Closing Date;
- (d) all assets of Seller located at its corporate offices;
- (e) any assets not relating to the Business, including, without limitation, Seller's store #704 in Columbia, South Carolina;
- (f) all minute books and stock books of the Seller;
- (g) any assets relating to any Employee Benefit Plan;
- (h) all underground storage tanks that are not properly registered with DHEC (except for the underground propane storage tank owned by a third party at Store No. 104 listed on Schedule 5.18(b)), heating oil tanks and all aboveground storage tanks (except those listed on Schedule 2.1(o)), unless Purchaser specifically elects in writing to acquire any of such tanks;
- (i) all Hazardous Substances, hazardous wastes, PCBs and PCB containing materials, asbestos containing materials, and waste oil;
- (j) Licenses which are not assignable or transferable;
- (k) all motor vehicles or leases thereof;
- (l) the Wholesale Business; and
- (m) any condemnation proceeds from the Seller's property adjacent to Store #104.

2.3 Assumption of Liabilities. Subject to the terms and conditions of this Agreement, at the Closing the Purchaser shall assume and agree to pay, perform and discharge when due only the Liabilities incurred after the Closing Date under the Contracts and any Liabilities for repayment of unamortized oil company awards, allowances, loans and rebates, as more particularly described on Schedule 2.3, resulting from Purchaser's debranding (collectively, the "Assumed Liabilities").

2.4 Excluded Liabilities. Except for the Assumed Liabilities specified in Section 2.3 hereof, the Purchaser shall neither assume nor have any liability for any, and the Seller shall remain fully liable for, and shall pay, perform and discharge, all Liabilities of the Seller or the Business arising out of any act or omission occurring or state of facts existing prior to and, to the extent not related to the Business, at or after the Closing (collectively, the "Excluded Liabilities").

2.5 Purchase Price. The aggregate purchase price (the "Purchase Price") to be paid by the Purchaser to the Seller for the Transferred Assets and the non-competition agreement described in Section 11.2 hereof shall be One Million Nine Hundred Thousand Dollars (\$1,900,000), plus Inventory at Cost and the amount of the Change Fund in excess of \$1,500.

2.6 Payment of Purchase Price. At Closing, the Purchaser shall pay to Seller \$1,900,000 of the Purchase Price, an amount equal to ninety-eight percent (98%) of Seller's book cost of the current inventory ("Inventory Estimate") and an amount equal to the amount of the Change Fund in excess of \$1,500 at Closing. Such payments shall be made by wire transfer of immediately available funds to an account designated in writing by Seller. Upon completion of the Audit and the determination of the Cost of the Inventories, if Cost exceeds the Inventory Estimate, Purchaser shall pay the difference to Seller, and if Cost is less than the Inventory Estimate, Seller shall pay the difference to Purchaser, in either case by wire transfer of immediately available funds to an account designated in writing by the party entitled to such payment.

2.7 Allocation of Purchase Price. The Purchase Price shall be allocated as set forth on Schedule 2.7. The allocation of the Purchase Price is intended to comply with the requirements of Section 1060 of the Code. Purchaser and Seller shall file Form 8594, Asset Acquisition Statement Under Section 1060 of the Code, with their respective income tax returns for the taxable year that includes the Closing Date, in a manner consistent with the allocation of the Purchase Price set forth herein. Purchaser and Seller agree to satisfy all of the reporting requirements of Section 1060 of the Code. If either Purchaser or Seller, in a subsequent taxable year, make any allocation of an increase or decrease in the Purchase Price for any asset, Purchaser or Seller, as applicable, agrees to file a supplemental Form 8594 as required.

2.8 Prorations. All (a) real estate, property and ad valorem taxes, (b) payments due or arising under the Contracts, (c) tank registration fees, (d) highway signs, and (e) other customarily-proratable items relating to the Transferred Assets payable on or after the Closing Date and relating to a period of time both prior to and on or after the Closing Date shall be prorated as of the Closing Date between Purchaser and Seller. If the actual amount of any such item is not known as of the Closing Date, the aforesaid proration shall be based on the previous year's (or other applicable period's) assessment of such item and the parties agree to adjust said proration and pay any underpayment or reimburse for any overpayment within thirty (30) days after the actual amount becomes known.

2.9 Employees. If the Closing occurs, the Purchaser shall be free to hire such persons, whether or not employees of the Seller or the Business, on such terms and conditions of employment as the Purchaser shall determine in the exercise of its sole discretion, and nothing in this Agreement shall establish any enforceable rights, legal or equitable, in any Person other than the parties hereto, including, without limitation, any employee of the Seller or

the Business or any beneficiary of such employee. Any claim, including any claim for benefits, asserted by or on behalf of any Person with respect to such Person's employment by the Purchaser shall be governed solely by applicable employment policies and employee benefit plans, if any, which the Purchaser may adopt after the Closing, as construed in accordance with applicable Federal and state law. The Seller has delivered to the Purchaser a true and complete list (including names, titles, job descriptions, compensation, date of hire, and full vs. part-time status) of all employees of the Business. At least ten (10) days prior to the Closing Date, the Purchaser shall notify Seller in writing which of such employees (if any) the Purchaser does not intend to hire after the Closing. The Seller shall be fully liable for the employment (or termination or severance thereof) of any persons listed in such Purchaser's notice. In addition, the Seller shall be liable for, and shall pay, all wages, salaries, payroll taxes and employee benefits, including without limitation, Accrued Vacation Pay, due, owing or accrued for all employees of the Business through the Closing Date. In particular, Seller shall provide and continue to provide all continuation coverage under its group health plans required by ERISA, the Code and applicable Law for (i) Seller's employees who terminate employment with Seller before the Closing Date and (ii) Seller's employees who terminate employment with Seller as of the Closing Date and whom Purchaser does not immediately employ. All claims incurred or liabilities asserted under Seller's Employee Benefit Plans shall be the responsibility of Seller, and Purchaser shall not have any liability with respect to such claims or liabilities.

ARTICLE III

THE CLOSING

3.1 Time and Place of Closing. The Closing shall take place at 10:00 a.m. on the Closing Date at the offices of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., 2500 First Union Capitol Center, Raleigh, North Carolina, or at such other time or place as may be mutually agreed upon by the parties hereto.

3.2 Instruments of Transfer. At the Closing, the Seller shall deliver to the Purchaser such bills of sale, assignments, limited powers of attorney and other good and sufficient instruments of Transfer, in form and substance reasonably satisfactory to the Purchaser and its counsel, as shall be effective to vest in the Purchaser all of the Seller's right, title and interest in, to and under the Transferred Assets. In addition, the appropriate Affiliate and the Purchaser shall execute and deliver an Affiliate Lease with respect to each parcel of the Affiliate Real Property. The Affiliate Leases shall be substantially in the form of Exhibits A or B (as applicable) hereto upon the terms identified in Schedule 3.2 hereto, with initial aggregate annual rent obligations not to exceed \$180,000.

3.3 Further Assurances. In addition to the actions, documents and instruments specifically required to be taken or delivered by this Agreement, at the Closing or from time to time thereafter, and without further consideration, the parties hereto shall take such other actions, and execute and deliver such other documents and instruments, as the other party or parties hereto or their respective counsel may reasonably request in order to effectuate and perfect the transactions contemplated by this Agreement.

3.4 Transfer Taxes. Except for all transfer taxes and fees, if any, which shall be borne and paid solely by the Seller, each party hereto shall pay any and all taxes incurred by such party in connection with the transactions contemplated by this Agreement.

ARTICLE IV

TERMINATION

4.1 Termination. This Agreement may be terminated at any time prior to the Closing:

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

(b) by the Seller or the Purchaser, upon written notice, if there shall have been a material breach by the other party or parties of any of the terms or provisions of this Agreement or any of the Transaction Documents, and such breach shall not have been cured within five (5) business days after such breaching party or parties shall have received notice of the non-breaching party's or parties' intent to terminate this Agreement pursuant to this subsection (b);

(c) by the Seller or the Purchaser if any court of competent jurisdiction or other Governmental Authority shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transaction contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and non-appealable; or

(d) by the Seller or the Purchaser after April 30, 2000, if Closing shall not have occurred by such date, unless the Closing is delayed as a result of default, negligence or dilatory actions on the part of the party seeking to terminate this Agreement.

4.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 4.1(a), (c) or (d) hereof, such termination shall be the sole remedy, this Agreement shall forthwith become void (except for Sections 7.8 and 8.3 (Confidentiality) and 13.1 (Fees and Expenses)) and there shall be no liability on the part of any of the parties hereto, any of their respective Affiliates or any of the Representatives of any of them. If such termination shall result from any other reason, including the breach by a party hereto of its obligations under this Agreement, or if Closing does not occur because of the breach by a party hereto of its obligations under this Agreement, such party shall be fully liable for any and all Damages sustained or incurred by the other party or parties as a result of such breach, including, without limitation, fees, expenses and costs incurred by such other party in connection with the origin, preparation, negotiation, execution and delivery of this Agreement, the other Transaction Documents, and the transactions contemplated hereby or thereby, including without limitation, any fees, expenses, or commissions of its attorneys, accountants or other representatives, and such other party or parties shall be entitled to pursue any remedies available at law or in equity.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller hereby represents and warrants to the Purchaser as follows:

5.1 Organization and Good Standing. The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina and has all requisite power and authority, corporate and otherwise, to own, operate and lease its properties and assets and to conduct the Business.

5.2 Power and Authority. The Seller has all requisite power and authority to enter into and deliver this Agreement and the other Transaction Documents, perform its obligations hereunder and consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other Transaction Documents, the performance by it of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby have been duly and validly authorized by all corporate, stockholder, and other actions on its part required by applicable Law, its Articles of Incorporation, its By-Laws or otherwise. This Agreement and the other Transaction Documents constitute the legal, valid and binding obligation of the Seller, enforceable against Seller in accordance with their terms, except as the same may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally and (b) general equitable principles.

5.3 No Violation. Neither the execution and delivery by the Seller of this Agreement and the other Transaction Documents, the performance by it of its obligations hereunder and thereunder, nor the consummation of the transactions contemplated hereby and thereby, will (a) contravene any provision of Seller's Articles of Incorporation; (b) violate any material agreement or instrument to which the Seller is a party or by which it or any of its assets or properties may be bound; or (c) violate any material Law or any judgment, decree or order of any court or other Governmental Authority or any arbitration award to which it is subject or by which any of its assets or properties may be bound.

5.4 No Actions. There is no Action pending or, to the knowledge of Seller, threatened, against it, any Affiliate or any of their respective assets, properties or rights (including, without limitation, any relating to any of the Transferred Assets or the Real Property) before any court or other Governmental Authority which (a) questions or challenges the validity of this Agreement or the other Transaction Documents or any action taken or proposed to be taken by the Seller or any Affiliate pursuant hereto or in connection with the transactions contemplated hereby or (b) could, if adversely determined, have a material adverse effect on any of the Transferred Assets, the Real Property, the Condition of the Business or the transactions contemplated hereby and thereby. Schedule 5.4 hereto sets forth a true and complete list and description of all Actions pending or, to the knowledge of Seller, threatened, against the Seller or any Affiliate, with respect to the Business, before any court or other Governmental Authority.

5.5 Approvals; Licenses. Except as set forth in this Agreement and Schedule 5.5, neither any declaration, filing or registration with, notice to, nor Approval of, any Governmental Authority or other Person is required to be made, obtained or given by or with respect to any Affiliate or the Seller or the Business in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby. The Seller has all Licenses required for the lawful operation of the Business and the use and ownership or leasing of its properties and assets as it is currently operated, except as noted on Schedule 5.5. All such Licenses are (i) listed on Schedule 5.5, and (ii) valid, in full force and effect and in good standing, except as noted on Schedule 5.5. There is no proceeding pending or, to the Knowledge of Seller, threatened that disputes the validity of any such License or that may result in the revocation, cancellation or suspension, or any adverse modification of, any such License. The Seller will make available to the Purchaser true and complete copies of all such Licenses.

5.6 Compliance with Laws and Orders. Except as described in detail on Schedule 5.6, (a) the Seller has complied in all material respects with all Laws applicable to it, to its ownership and/or use of the Real Property, and to the operation of the Business, (b) the Seller has not been charged with or, to the Seller's Knowledge, threatened with any charge concerning or under any investigation with respect to any violation of any provision of any Law applicable to or affecting Seller, the Business or the Real Property, and (c) to the Seller's Knowledge, the Seller is not in violation of or in default under, and no event has occurred which, with the lapse of time or the giving of notice or both, could result in the violation of or default under, the terms of any judgment, decree, order, injunction or writ of any court or other Governmental Authority applicable to Seller, any of its assets, properties or Stores, or the Business.

5.7 Financial Statements. Purchaser has been provided access to Seller's unaudited financial statements for (a) in the case of Market Express of Liberty Street, Inc., the twelve (12) months ended September 30, 1998 and 1999 and unaudited interim financial statements for the four (4) months ended January 31, 2000 and (b) in the case of Sumter Petroleum Company, the twelve (12) months ended December 31, 1998 and 1999 and unaudited interim financial statements for the one (1) month ended January 31, 2000 (collectively, the "Financial Statements"). Seller has delivered to Purchaser unaudited profit and loss statements for (i) in the case of Market Express of Liberty Street, Inc., the twelve (12) months ended September 30, 1998 and 1999 and unaudited interim profit and loss statements for the four (4) months ended January 31, 2000 and (ii) in the case of Sumter Petroleum Company, the twelve (12) months ended December 31, 1998 and 1999 and unaudited interim profit and loss statements for the one (1) month ended January 31, 2000, copies of which are attached hereto as Schedule 5.7 (collectively, the "Profit and Loss Statements," and, together with the Financial Statements, the "Statements"). The Statements are true and correct in all material respects and fairly present the financial condition of Seller for the periods indicated and the results of the operations of Seller for said periods, in conformity with generally accepted accounting principles applied on a basis consistent with prior periods.

5.8 Absence of Certain Changes or Events. Except as described in detail on Schedule 5.8 hereto, since September 30, 1999 the Seller has conducted the Business in the ordinary course and consistent with past practice and:

(a) to the Seller's Knowledge, there has not occurred (i) any material adverse change in the Condition of the Business or any of the Stores or (ii) any event, circumstance or combination thereof, whether arising prior to or after September 30, 1999, which might reasonably be expected to result in any material adverse change in the Condition of the Business or any of the Stores before, on or after the Closing Date; and

(b) the Seller has not (i) suffered any damage, destruction or loss, whether covered by insurance or not, materially and adversely affecting the Condition of the Business or any Store, (ii) entered into any material commitment or transaction (including, without limitation, any borrowing or capital expenditure) affecting or relating to the Business not in the ordinary course of business in accordance with past practice, (iii) Transferred any of the assets of the Business except in the ordinary course of business in accordance with past practice, (iv) granted or agreed to grant any increase in the compensation of any employee of the Business (including any such increase pursuant to any bonus, pension, profit-sharing or other plan or commitment) or any increase in the compensation payable or to become payable to any employee of the Business, except for those granted in the ordinary course of business in accordance with past practice, or (v) entered into or agreed (whether in writing or otherwise) to enter into any agreement or other arrangement to take any action referred to in this Section 5.8, including, without limitation, any agreement or arrangement granting any preferential right to purchase any of the assets of the Business (including, without limitation, the Transferred Assets) or requiring the consent of any party to the Transfer of any such assets.

5.9 Title to Transferred Assets.

(a) Except as set forth on Schedule 5.9 and except for Permitted Liens, (i) the Seller has good legal title to all of the Transferred Assets, free and clear of any pledge, mortgage or security interest of any kind whatsoever and (ii) each Affiliate identified on Schedule 5.11(a) has good legal title to the Affiliate Real Property identified as owned by such Affiliate, free and clear of any pledge, mortgage or security interest of any kind whatsoever.

(b) Except as set forth on Scheduled 5.18(b) or described in Section 2.2, all material properties and assets (real, personal, mixed, tangible or intangible) used in the operation of the Business are included in the Transferred Assets.

(c) Upon the delivery of the instruments of Transfer described in Section 3.2 hereof to the Purchaser at the Closing, the Transferred Assets shall have been Transferred to the Purchaser, free and clear of any Liens of any kind whatsoever, except for Permitted Liens.

5.10 Inventory. The Inventories are in good and merchantable condition and constitute a customary and normal supply and product mix, consistent with Seller's past practice, of saleable Merchandise Inventory and Petroleum Inventory currently sold at normal prices in the ordinary course of business of the Business. The Seller agrees that the parties shall conduct an Audit of all Inventories on the day of the Closing. The cost of the Audit shall be borne equally by Seller and Purchaser.

5.11 Real Property.

(a) Schedule 5.11(a) hereto contains a true and complete list and description of all of the Affiliate Real Property.

(b) The Real Property includes all land, easements, rights of way, access to public streets or roads, buildings, structures and other improvements used by the Seller in the conduct of the related Stores and the Business as it is currently being conducted. To the Seller's Knowledge, all components of all buildings, structures and other improvements included within the Real Property are currently in good working order and repair and adequate for the Seller to operate the Business.

(c) Except as set forth on Schedule 5.11(c), neither the Seller nor any Affiliate owns, holds or is obligated under or a party to any option, right of first refusal or other contractual right to acquire or sell any of the Real Property or any interest therein.

(d) No portion of the Real Property encroaches in any material respect upon any property belonging to any other Person, and, to the Seller's Knowledge, no portion of any other Person's property encroaches in any material respect upon any of the Real Property.

(e) Except as set forth on Schedule 5.8, with respect to the Real Property, there have not occurred (i) any pending or, to the Seller's Knowledge, threatened condemnation proceedings, (ii) any pending or, to the Seller's Knowledge, threatened Actions or (iii) to the Seller's Knowledge, any other matter materially and adversely affecting the value thereof.

(f) To the Seller's Knowledge, all maps and surveys heretofore delivered by the Seller to the Purchaser are true and complete copies of such documents.

(g) Except as set forth on Schedule 5.11(g), no parcel of the Real Property is located in a special flood hazard area designated by a Governmental Authority.

(h) The appropriate Affiliate has paid, and will continue to pay through Closing, all taxes, assessments, charges, fees, levies and impositions owing with respect to the Real Property. Except as set forth on Schedule 5.11(h), each of the parcels of Real Property is assessed for real estate tax purposes as a wholly independent tax lot. Except as set forth on Schedule 5.11(h), there is no actual or, to Seller's Knowledge, pending imposition of any assessments or public betterments, and, to the Seller's Knowledge, no improvements have been constructed or planned which would be paid for by means of assessments upon the Real Property.

5.12 [Intentionally Omitted.]

5.13 Insurance. The Seller currently has in effect policies of fire, liability, and worker's compensation insurance which provide coverage for the Stores and the Business as summarized on Schedule 5.13 (collectively, the "Insurance Policies"). The Insurance Policies are, and will remain, in full force and effect through the Closing Date. There is no notice of or basis for any modification, suspension, termination or cancellation of any Insurance Policy or of any claim thereunder.

5.14 Contracts. Each of the Contracts specified on Schedule 2.1(f) is valid and in full force and effect and has been entered into in the ordinary course of business, Seller is current in its obligations thereunder, and, to the Knowledge of the Seller, none of them is in default in any material respect. The Seller has delivered to the Purchaser true and complete copies of each of the Contracts. Except as set forth on Schedule 5.14 hereto, each Contract that is being assigned by the Seller to the Purchaser hereunder may be so assigned without notice to, or the Approval of, any Person.

5.15 Employment Law Matters.

(a) With respect to the Business, to Seller's Knowledge (i) the Seller is in compliance with all applicable Laws respecting employment, employment practices, terms and conditions of employment, wages and hours and the employment of aliens or similar immigration matters except where such non-compliance would not have a material adverse effect on the Business or the transactions contemplated by this Agreement or the other Transaction Documents; and (ii) the Seller is not engaged in any unfair labor practice.

(b) There is no strike, labor dispute, slowdown or work stoppage pending or, to the Knowledge of the Seller, threatened, against or affecting the Business.

(c) None of the current employees of the Business is represented by a labor union, and, to the Seller's Knowledge, no petition has been filed or proceedings instituted by any employee or group of employees of the Business with any labor relations board seeking recognition of a bargaining representative at any time. There are no controversies or disputes (including any union grievances or arbitration proceedings) pending or, to the Knowledge of the Seller, threatened, between the Seller and any of the employees of the Business (or any union or other representative of such employees), except for such controversies and disputes which do not and will not, individually or in the aggregate, have a material adverse effect on the Condition of the Business.

5.16 Environmental Matters.

(a) For purposes of this Section 5.16, "Hazardous Substance" means any of the following: (i) a "hazardous substance" as defined in 42 U.S.C. Section 9601(14), as amended from time to time, and all rules, regulations and orders promulgated thereunder as in effect from time to time, (ii) a "hazardous waste," as defined in 42 U.S.C. Section 6903(5), as amended from time to time, and all rules, regulations and orders promulgated thereunder as in effect from time to time, (iii) if not included in (i) or (ii) above, "hazardous waste constituents" as defined in 40 C.F.R. Section 260.10, including, without limitation, those listed in Appendix VII and VIII of Subpart D of 40

C.F.R. Section 261, as amended from time to time, and all rules, regulations and orders promulgated thereunder as in effect from time to time, (iv) "source," "special nuclear" or "by-product material," as defined in 42 U.S.C. Sections 3011, *et seq.*, as amended from time to time, and all rules, regulations and orders promulgated thereunder as in effect from time to time, and (v) any other waste, substance or material, the generation, transportation, treatment, storage, release, or disposal of which is regulated under or by applicable Laws, but the definition "Hazardous Substance" specifically excludes Petroleum Products, other than waste oil.

(b) Except as set forth in Schedule 5.16(b), the Seller, the Affiliates and the Real Property are in compliance, and since the appropriate Affiliate's acquisition of an interest in the Real Property have been in compliance, in all material respects and, to the Knowledge of the Seller, prior to such acquisition were in compliance, with all applicable Laws relating to Hazardous Substances in respect of the Business. Without limiting the foregoing, except as set forth in Schedule 5.16(b) hereto (i) the operations of the Business do not violate, and since commencement of operations of each Store by the Seller have not violated, any Law relating to the generation, storage, processing, utilization, labeling, transportation, treatment, disposal, release, discharge, emission or other disposition of Hazardous Substances, and (ii) the Seller or, to the Knowledge of the Seller, any current or former owner, occupant or operator of any property at any time owned, leased or operated by the Seller, insofar as the same relates to any of the Stores, the Business, the Real Property or any portion thereof, has not ever utilized any such property or any portion thereof in violation of any Law relating to the generation, storage, processing, utilization, labeling, transportation, disposal, treatment, emission, release, discharge, or other disposition of Hazardous Substances. With respect to the Business, Schedule 5.16(b) hereto contains a true list and description of the status of any assessment, removal, remediation, closure or other action undertaken by or on behalf of Seller or its Affiliates under applicable Laws relating to Hazardous Substances, Petroleum Products, leaking underground storage tanks or tank systems or leaking aboveground storage tanks on any of the Real Property, including, with respect to any such assessment, removal, remediation, closure or other type of such operation, the date of commencement; the date of completion or closure or anticipated date of completion or closure; the estimated cost of any such operation (if known); whether Trust Fund or assessment insurance coverage for such operation exists or has been denied or excluded; and whether any Trust Fund or insurance deductible has been met.

(c) With respect to the Business, the Seller does not utilize, store, dispose of, treat, generate, process, transport, release or own any Hazardous Substance in violation of any environmental Law.

(d) With respect to the Business, except as set forth on Schedule 5.16(d) hereto, the Seller has, in a timely manner, obtained all Licenses and Approvals and filed all reports required to be filed under or pursuant to any applicable environmental Law related to any Hazardous Substance or Petroleum Products.

(e) With respect to the Business, except as set forth on Schedule 5.16(b), the Seller has not received any notice of any writ, injunction, decree, order or judgment outstanding or of any Action instituted or threatened under or pursuant to, or of any violation of, any environmental Law relating to any Hazardous Substances or Petroleum Products applicable to any of the Real Property, including, without limitation, any notice

from any Governmental Authority or other Person advising the Seller that it is or is potentially responsible for response costs under CERCLA or any other Law with respect to a release or threatened release of any Hazardous Substances or Petroleum Products.

(f) Except as set forth on Schedule 5.16(b), the Seller has not received any notice of any violation of any environmental, zoning, worker safety or land use Law relating to the operation of the Business, including, without limitation, under CERCLA, the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, *et seq.*) (together with the regulations promulgated thereunder, "RCRA"), the Oil Pollution Act of 1990 (33 U.S.C. Section 2701, *et seq.*) (together with the regulations promulgated thereunder, "OPA"), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11001, *et seq.*) (together with the regulations promulgated thereunder, "Title III"), the Clean Water Act, as amended (33 U.S.C. Section 3121, *et seq.*) (together with the regulations promulgated thereunder, "CWA"), the Clean Air Act, as amended (42 U.S.C. Section 7401, *et seq.*) (together with the regulations promulgated thereunder, "CAA"), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, *et seq.*) (together with the regulations promulgated thereunder, "TSCA"), and any state or local similar laws and regulations and any so-called local, state or Federal "superfund" or "superlien" law.

(g) Schedule 5.16(g) hereto contains a true and complete list and description of every underground storage tank system, including pumps and lines, on the Real Property (each, a "Tank") for the storage of Petroleum Products. Except as set forth on Schedule 5.16(g), each Tank is registered with DHEC and Seller has satisfied all applicable requirements for coverage under the Trust Fund for each of the Tanks. Seller has not taken or allowed any action, or failed to take any action, which could result in revocation of any such coverage under the Trust Fund. Each of the Tanks and related equipment and apparatus has been upgraded to meet all applicable legal and regulatory requirements. None of such tanks has been or is being used for the storage of waste oil.

(h) Except as set forth on Schedule 5.16(b), there has been no release or, to Seller's Knowledge, threat of release of Hazardous Materials or Petroleum Products at or from the Tanks, Petroleum Equipment, Stores or Real Property, in amounts or in a manner that, individually or in the aggregate, could reasonably be expected to require investigation, notification, or remediation under any environmental Law during Seller's operation of the Business at the applicable Store or, to Seller's Knowledge, prior to such operation by Seller.

(i) Except as set forth on Schedule 5.16(g), there are no unregistered underground storage tanks, including pumps and lines. Except as set forth on Schedule 2.1(o), there are no aboveground storage tanks on the Real Property.

5.17 Property of Others. To the Seller's Knowledge no shortage exists in (a) any inventory or finished goods owned by suppliers of the Business and stored upon its premises or otherwise or (b) any other item of personal property owned by another for which the Business is accountable to another. Without limiting the foregoing, all items of personal property for which the Business is accountable under any consignment contract, or otherwise are fully accounted for with no shortages or missing or lost items, are in workable, usable and saleable condition

and have suffered no damage or deterioration, normal wear and tear excepted. Should shortages exist at Closing, the Seller shall be responsible for any required compensation or replenishment.

5.18 Equipment, Etc.

(a) Schedule 5.18(a) hereto contains a true and complete list of all computer equipment, Petroleum Equipment, Store Equipment, furniture and other tangible personal property and assets owned by the Seller and included in the definition of Transferred Assets.

(b) Schedule 5.18(b) contains a true and complete list of all computer equipment, Petroleum Equipment, Store Equipment, furniture and other tangible personal property and assets owned by third parties and used in the Business.

5.19 Condition of Tangible Assets. To Seller's Knowledge, the facilities, computer equipment, Store Equipment, Petroleum Equipment, furniture, fixtures, buildings and other tangible assets which are included in the Transferred Assets or are a part of the Real Property are in good operating condition and repair and are adequate for the uses to which they have been put by the Seller in the ordinary course of the business of the Business, except for ordinary wear and tear and parts or repairs of an immaterial nature in the aggregate. The Seller has not received any notice of any violation of any Law in respect of the Transferred Assets that has not been cured. To the Seller's Knowledge, all of the equipment necessary for the sustained uninterrupted operation of the Business complies, and during Seller's operation of the Business such equipment has complied, in all material respects, with all applicable Laws.

5.20 Sufficiency of Assets. Except for the Excluded Assets, or as set forth on Schedule 5.18(b), the Transferred Assets constitute all of the property, assets and contractual rights (a) adequate for the conduct of the Business as presently conducted and (b) presently used by the Seller with respect to the Business. The Business has, and on the Closing Date will have, a normal operating supply (consistent with past practices) of Inventories and Store Supplies.

5.21 Tax Matters.

(a) Seller has filed or, in case of Tax Returns not yet due, will timely file all Tax Returns that are required to be filed on or before the Closing Date. All such Tax Returns are and will be true, correct and complete in all respects. Seller has paid or shall pay or make adequate provision for all taxes due with respect to such Tax Returns. There is no pending or, to the Seller's Knowledge, threatened action, audit, proceeding or investigation for the assessment or collection of any taxes.

(b) Purchaser shall not have any liability for payment or otherwise with respect to any Taxes arising out of the Transfer contemplated by this Agreement, or attributable to or affecting the Transferred Assets or the conduct of the Business through the Closing Date. There does not exist and will not exist any liability for Taxes that may be asserted by any taxing authority against the Transferred Assets arising out of the Transfer contemplated by this Agreement, or the conduct of the Business through the Closing Date for which Purchaser will have any liability for payment or otherwise.

and no Lien or other encumbrance for such Taxes has or will attach to the Transferred Assets.

5.22 Finders or Brokers. The Seller has not employed any investment banker, broker, finder or intermediary in connection with the transactions contemplated hereby who is entitled to any fee or commission in connection with the execution or delivery of this Agreement or any of the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

5.23 Disclosure of Material Facts. To the Knowledge of the Seller, no provision of this Agreement, any of the other Transaction Documents, or any document delivered to the Purchaser in connection with the transactions contemplated hereby or thereby contains or will contain at Closing any untrue statement of a material fact with respect to the Seller, the Business, the Stores or the Transferred Assets or omits or will omit at Closing to state a material fact with respect to the Seller, the Business, the Stores or the Transferred Assets necessary in order to make the statements herein or therein not misleading.

5.24 Certain Interests; Affiliate Transactions. Schedule 5.24 hereto sets forth a true and complete list and detailed description of all written and material unwritten agreements, commitments, obligations and understandings binding upon or relating to the Business which provide for or reflect the sale by Seller or the Business to, or the purchase by Seller or the Business from, any Affiliate thereof of any products, goods, supplies, equipment or services and indicates which of such agreements, if any, will survive the Closing. Except as described in detail on Schedule 5.24 hereto, the Termination of any such agreement, commitment or understanding would not have a material adverse effect on the Condition of the Business.

5.25 Employee Benefit Plans.

(a) Schedule 5.25 lists all Employee Benefit Plans participated in or maintained by Seller or with respect to which Seller has made contributions or has or in the future could have any liability. For purposes of this Section 5.25, Seller includes any other entity or business that is treated as a single employer with Seller pursuant to Section 414(b), (c), (m) or (o) of the Code. Seller has made available to Buyer summaries of all such written Employee Benefit Plans and descriptions of any such unwritten Employee Benefit Plans.

(b) With respect to each Employee Benefit Plan, to Seller's Knowledge, no event has occurred, and there exists no condition or set of circumstances in connection therewith, for which Seller could be subject to any liability under ERISA, the Code or any other applicable Law, except liability for benefit claims and funding obligations payable in the ordinary course. Each Employee Benefit Plan is in compliance with, and has been administered in all respect consistent with, its terms, ERISA, the Code, and other applicable Law, including, but not limited to, all applicable reporting and disclosure requirements. No prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code, or breach of any fiduciary duty under Title I of ERISA, has occurred with respect to any Employee Benefit Plan and no civil or criminal action is pending or, to Seller's Knowledge, threatened against any Employee Benefit Plan. Seller has timely filed or caused to be timely filed with the Internal Revenue Service all

applicable annual reports for each Employee Benefit Plan for all years and periods for which such annual reports were required through the Closing Date.

(c) Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Code so qualifies and its related trust is exempt from taxation under Section 501(a) of the Code. Seller has never maintained, sponsored, contributed to, participated in or had any liability with respect to (i) any Employee Benefit Plan subject to Title IV of ERISA or Section 412 of the Code, (ii) any multiemployer plan as defined under Sections 3(37) or 4001(a)(31) of ERISA or Section 414(f) of the Code, (iii) any Employee Benefit Plan that promises or provides retiree medical or other welfare benefits to any person, except as required by ERISA, the Code or other applicable Law, including, but not limited to, the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, (iv) any multiemployer plan within the meaning of Section 413(c) of the Code or Sections 4063, 4064 or 4066 of ERISA or (v) any multiemployer welfare arrangement as defined in Section 3(40) of ERISA.

The consummation of the transactions contemplated by this Agreement will not (i) entitle any current or former employee of Seller to severance pay, unemployment compensation, Accrued Vacation Pay, or any similar payment for which Purchaser could be liable, (ii) accelerate the time of payment or vesting or increase the amount of any compensation to or in respect of any current or former employee of Seller for which Purchaser could be liable or (iii) result in or satisfy any condition to the payment of compensation to any current or former employee of Seller for which Purchaser could be liable that would, in combination with any other payment, result in an "excess parachute payment" within the meaning of Section 280G of the Code.

5.26 Trademarks. Schedule 5.26 sets forth a complete list of all material trademarks, tradenames, product identifiers and/or trade dresses of any type whatsoever that are presently used in the Business, other than such items that identify products or services of third parties that are sold by Seller in the ordinary course of business (the "Trademarks"), and all licenses that it has with respect to any intellectual property of a third party used in the Business (other than shrink-wrap software licenses) and indicates each Trademark that is registered in the name of Seller on the Principal Register of the United States Patent and Trademark Office or in any State. To the Knowledge of the Seller, there is no infringement of the Trademarks by others. To the Knowledge of the Seller, the use of the Trademarks in the Business (as the Business is now being conducted) does not result in any infringement of the rights of others. The Seller is the sole and legal owner of the Trademarks and there is no claim pending or, to Seller's Knowledge, threatened by any other person that such other person is the legal owner of such Trademarks. The Seller has not granted any license or right to use any Trademark to any other person.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Seller as follows:

6.1 Organization and Good Standing. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and is authorized to transact business in the State of South Carolina.

6.2 Power and Authority. The Purchaser has all requisite power and authority to enter into and deliver this Agreement and the other Transaction Documents, perform its obligations hereunder and consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents by it, the performance by it of its obligations hereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all corporate actions on its part required by applicable Law, its Certificate of Incorporation and By-Laws.

This Agreement and the other Transaction Documents constitute the legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with their terms, except (i) as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general equitable principles.

6.3 No Violation. Neither the execution and delivery by the Purchaser of this Agreement or the other Transaction Documents, the performance by it of its obligations hereunder and thereunder, nor the consummation of the transactions contemplated hereby and thereby, will (i) contravene any provision of its Certificate of Incorporation or By-Laws; (ii) violate any material agreement or instrument to which it is a party or by which it or any of its assets or properties may be bound; (iii) violate any material Law or any judgment, decree or order of any court or other Governmental Authority or any arbitration award to which it is subject or by which it or any of its assets or properties may be bound; or (iv) have a material adverse effect on the Purchaser's business or operations.

6.4 No Actions. There is no Action pending or, to the knowledge of the Purchaser, threatened, against it or any of its assets, properties or rights before any court or other Governmental Authority which (i) questions or challenges the validity of this Agreement or any action taken or proposed to be taken by it pursuant hereto or in connection with the transactions contemplated hereby or (ii) could, if adversely determined, have a material adverse effect on the transactions contemplated hereby.

6.5 Approvals. To the knowledge of the Purchaser, neither any declaration, filing or registration with, nor any Approval of, any Governmental Authority is required to be made or obtained by or with respect to it in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby, except such filings as may be required by the Hart-Scott-Rodino Antitrust Improvements Act, as amended.

6.6 Disclosure of Material Facts. To the knowledge of the Purchaser, no provision of this Agreement or any of the other Transaction Documents contains or will contain at Closing any untrue statement of a material fact with respect to it or omits or will omit at Closing to state a material fact with respect to it necessary in order to make the statements herein or therein not misleading.

6.7 Finders or Brokers. The Purchaser has not employed any investment banker, broker, finder or intermediary in connection with the transactions contemplated hereby who is entitled to any fee or commission in connection with the execution or delivery of this Agreement or the consummation of the transactions contemplated hereby.

ARTICLE VII

CERTAIN OBLIGATIONS OF THE SELLER PRIOR TO THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT

The Seller hereby covenants that, except as otherwise consented to in writing by the Purchaser, from and after the date hereof until the Closing or the earlier termination of this Agreement:

7.1 Conduct of Business. The Seller shall carry on the business and operations of the Business only in the ordinary course and in the same manner as heretofore conducted, including, without limitation: (a) performing in all material respects all of its material obligations under all contracts and agreements to which it is a party or by which it or any of its assets or properties are bound and which relate to or affect the Business; (b) using its reasonable efforts to maintain and preserve (i) all of the properties, equipment, and other assets of the Business in good repair, working order and condition (except for ordinary wear and tear), (ii) using reasonable efforts to maintain the present workforce of the Business (including, without limitation, those key employees who have been and through the Closing Date will be responsible for operating, administering and managing the Business), (iii) all of the Licenses and Approvals relating to or affecting the Business in good standing and (iv) its present relationships with, and the good will of, the agents, suppliers, and customers of the Business and others with which it has business relations which relate to or affect the Business; and (c) keeping in full force and effect insurance with respect to the Business comparable in amount and scope of coverage to that currently maintained by it with respect to the Business. The Seller shall consult with the Purchaser from time to time, upon the reasonable request of the Purchaser, with respect to the conduct of the Business.

7.2 Restricted Activities and Transactions. Without the prior written consent of the Purchaser, the Seller shall not engage in any one or more of the following activities or transactions with respect to the Business: (a) directly or indirectly create, incur or assume any Lien (other than Permitted Liens) on or with respect to any property or asset (including any document or instrument in respect of goods) of the Business, whether now owned or hereafter acquired, or any income or profits therefrom; (b) Transfer, or agree to Transfer, any part of the Business's assets, properties or rights, other than in the ordinary course of the business of the Business in accordance with past practice; (c) enter or agree to enter, into any agreement or arrangement granting any preferential rights to purchase any of the Business's assets, properties or rights (including, without limitation, the Transferred Assets) or requiring the

consent of any party to the Transfer of any such assets, properties or rights; (d) make or permit to be made any amendment to or termination of any Contract, License or Approval relating to the Business other than in the ordinary course of business in accordance with past practice; (e) make any change in any profit-sharing, pension, retirement, long-term disability, hospitalization, insurance or other Employee Benefit Plan, payment or arrangement, except as required by Law; (f) enter into any collective bargaining agreement; (g) enter into any contract or agreement except in the ordinary course of business in accordance with past practice and in no event for a term in excess of one year; (h) enter into any compromise or settlement of any Action affecting or relating to the Business or any of its properties, assets or businesses; (i) do or permit to occur any of the things referred to in Section 5.8(b) hereof; or (j) otherwise take any other action or permit any other event to occur which would result in a breach of any of the representations or warranties set forth in Article V hereof.

7.3 Cooperation. The Seller shall use its best efforts to cause the transactions contemplated by this Agreement to be consummated. Without limiting the generality of the foregoing, the Seller shall (a) obtain all Approvals of, make all filings with and give all notices to, all such Governmental Authorities and other Persons as may be necessary or reasonably requested by the Purchaser in order to consummate the transactions contemplated by this Agreement (including, without limitation, all of the Approvals referred to on Schedules 5.5 (except non-transferable Licenses) and 5.14 hereof, which the Seller shall be responsible for obtaining) and (b) give prompt notice to the Purchaser of (i) any notice of, or other communication relating to, any default, or any event which, with the giving of notice or the lapse of time or both, would become a default, under, any material Contract to which the Seller is a party or by which it or its assets or properties are bound and which affects or relates to the Business and (ii) any notice or other communication from any third party alleging that the consent of such third party is or may be required in connection with the execution and delivery of this Agreement or the transactions contemplated hereby. In addition, Seller shall take such action as is reasonably requested by Purchaser to assist Purchaser in obtaining Licenses (including alcoholic beverage licenses) for the Stores as of the Closing Date.

With regard to clause (a) above, Seller shall request Approvals in a timely manner so that Approvals are received at least fifteen (15) days prior to the Closing Date and any required notices which specify a definitive notice period (e.g., thirty (30) days) shall be given by Seller so that such notice period expires at least fifteen (15) days prior to the Closing Date.

7.4 Employee Benefit Plans. The Seller shall take any and all actions necessary or desirable to cause all Employee Benefit Plans and any other plans or programs relating to employee benefits maintained by the Seller for the benefit of employees of the Business to be continued in full force and effect through the Closing Date, except as required pursuant to the terms and provisions of such plans or programs in the ordinary course of business in accordance with past practice.

7.5 No Negotiations. Until May 4, 2000 or earlier termination, neither the Seller, any of its Affiliates, nor any of the Representatives of any of them, shall, directly or indirectly, in any way contact, initiate, enter into or conduct any discussions or negotiations, or enter into any agreements, whether written or oral, with any Person with respect to the sale of the Business, any Store or any significant portion of the assets of the Business. The Seller shall, immediately upon receipt thereof by it or any of its respective Affiliates or Representatives, notify the Purchaser of any offer by any Person to make any such purchase or enter into any such agreement.

7.6 Access to the Business. The Seller hereby acknowledges that the Purchaser and its Representatives (collectively, the "Purchaser Group") may continue their due diligence investigation of the business, operations and affairs of the Business through and until the Closing. The Seller and its Affiliates and Representatives shall cooperate fully with such investigation and, upon reasonable prior notice, shall afford the Purchaser Group reasonable access, during normal business hours and at other reasonable times, to the sales records (for 1998, 1999 and 2000 year-to-date), current personnel records, and Stores and other facilities of the Business, in order that the Purchaser Group may have the opportunity to make such investigations thereof as it shall deem necessary or desirable. The Seller shall furnish the Purchaser Group with any applications or statements to be made to any Governmental Authority in connection with the transactions contemplated by this Agreement. Further, the Seller shall assist the Purchaser Group in contacting and communicating with their independent accountants, suppliers and other Persons having dealings relating to the Business. None of the information furnished hereunder or obtained by the Purchaser Group during its due diligence investigation of the Business shall in any way release the Seller from the representations and warranties made by it in this Agreement.

Commencing on the day following the date of this Agreement, Purchaser and its Representatives shall be allowed to make such environmental and other engineering investigations, including Phase I and Phase II analysis and testing, as Purchaser shall, in its sole discretion, deem appropriate. In the event Purchaser conducts Phase II testing at any Store location, Purchaser and Seller shall each pay one-half (1/2) the expense of such testing. Purchaser shall indemnify Seller from any damages to the property caused by such testing. The Seller will immediately deliver to the Purchaser copies of all environmental reports, copies of all environmental related claims, inquiries or requests for information by third parties, and copies of all correspondence with environmental regulatory agencies regarding each Store in its possession or control. The Purchaser's satisfaction, in its sole discretion, with the results of any and all such environmental analysis and testing, as well as its review of all such information provided by Seller, will be a condition precedent to Closing.

7.7 Disclosure Regarding the Seller. The Seller shall, upon reasonable request, provide the Purchaser Group with such information and documentation concerning the Seller as may be reasonably necessary for the Purchaser Group to verify performance of and compliance with the representations, warranties, covenants and conditions of the Seller contained herein.

7.8 Confidentiality. The Seller shall, and shall cause its Affiliates and the Representatives to, keep confidential, and not disclose to others, any Proprietary Information used or usable by or relating to, and obtained from, the Purchaser, any of its Affiliates or any of the Representatives of any of them and specifically identified as confidential, to the extent that

such information is not or does not become readily available to the public or is not required to be disclosed by applicable Law or court order.

ARTICLE VIII

CERTAIN OBLIGATIONS OF THE PURCHASER PRIOR TO THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT

The Purchaser hereby covenants that, except as otherwise consented to in writing by the Seller, from and after the date hereof until the Closing or the earlier termination of this Agreement:

8.1 Cooperation. The Purchaser shall use its best efforts to cause the transactions contemplated by this Agreement to be consummated and, without limiting the generality of the foregoing, to obtain all Licenses and Approvals (except the Approvals referred to on Schedules 5.5 (other than non-transferable Licenses) and 5.14 hereto, which the Seller shall be responsible for obtaining) of, make all filings with and give all notices to, all such Governmental Authorities and other Persons as may be necessary or reasonably requested by the Seller in order to consummate the transactions contemplated by this Agreement.

8.2 Disclosure Regarding the Purchaser. The Purchaser shall, upon reasonable request, provide the Seller with such information and documentation concerning the Purchaser as may be reasonably necessary for the Seller to verify performance of and compliance with the representations, warranties, covenants and conditions of the Purchaser contained herein.

8.3 Confidentiality. The Purchaser shall, and shall cause each of its Affiliates and the Representatives of each of them to, keep confidential, and not disclose to others, any information used or usable by or relating to, and obtained from, the Seller, any of its Affiliates or any of the Representatives of any of them and specifically identified as confidential, to the extent that such Information is not or does not become readily available to the public or is not required to be disclosed by applicable Law or court order.

8.4 Restricted Activities. Without the prior written consent of the Seller, which consent will not be unreasonably withheld, the Purchaser will not take any action or permit any event to occur which would result in a breach of any of the representations or warranties set forth in Article VI hereof.

ARTICLE IX

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE PURCHASER

Each and every obligation of the Purchaser under this Agreement to be performed at or before the Closing shall be subject to the satisfaction, at the Closing, of each of the following conditions:

9.1 Representations and Warranties True. The representations and warranties of the Seller contained in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date with the same effect as if made on and as of the Closing Date.

9.2 Performance. The Seller shall have performed and complied in all material respects with all agreements, covenants, obligations and conditions required by this Agreement or any of the other Transaction Documents to be performed or complied with by it at or prior to the Closing.

9.3 No Adverse Changes.

(a) None of the Stores, or other assets or properties material to the operation or business of the Business, shall have been damaged, destroyed or taken by condemnation to such an extent that substantial operation of a Store or the Business cannot continue or under circumstances where the loss thereof will not be substantially reimbursed through the proceeds of insurance (including, without limitation, business interruption insurance) or condemnation awards, which proceeds or awards shall be the property of the Purchaser if this Agreement and the transactions contemplated hereby are consummated.

(b) No material adverse change shall have occurred in the Condition of the Business or any Store since the date of this Agreement.

9.4 Approvals. Except as Purchaser may have otherwise agreed, as set forth on Schedule 9.4, all filings, declarations and registrations with, and Licenses and Approvals from, all Governmental Authorities and other Persons required by applicable Law or otherwise required or desirable for the consummation of the transactions contemplated hereby or the conduct of the business of the Business as it is currently being conducted (including, without limitation, all of the Approvals referred to on Schedules 5.5 (except non-transferable Licenses) or 5.14 hereto, which the Seller shall be responsible for obtaining) shall have been made or obtained, and in the case of Approvals shall have been received, at least fifteen (15) days prior to Closing, and shall be in full force and effect, except to the extent that making any such filing, declaration or registration or obtaining any such License or Approval shall have been waived in writing by the Purchaser.

9.5 [Intentionally Omitted]

9.6 Subordination, Non-Disturbance and Attornment Agreements. The Seller shall have delivered to the Purchaser, at or prior to Closing, Subordination, Non-Disturbance and Attornment Agreements ("SNDAs") executed by each mortgagee holding a beneficial interest in any of the Real Property, each as more particularly described on Schedule 9.6, in form and substance reasonably acceptable to Purchaser and its counsel.

9.7 Deliveries. The Seller shall have also delivered to the Purchaser, at or prior to the Closing, the following:

- (a) the instruments of Transfer referred to in Section 3.2 hereof;

(b) all of the books and records (except corporate books) relating to the Business, including, without limitation, sales records (for 1998 and 1999 year-to-date), current personnel records, and all underground storage tank and environmental reports and records, including reports in the custody or control of environmental consulting firms and counsel engaged by the Seller;

(c) a certificate of good standing for the Seller, dated not earlier than twenty (20) days prior to the Closing Date, of each of (i) the Secretary of State of South Carolina and (ii) the South Carolina Department of Revenue;

(d) resolutions, certified as of the Closing Date by the Secretary or Assistant Secretary of the Seller, adopted by the Board of Directors and the shareholders of the Seller, respectively, and authorizing the execution and delivery by the Seller of this Agreement and the other Transaction Documents, the performance by it of its obligations hereunder and thereunder and the consummation by it of the transactions contemplated hereby and thereby;

(e) such certificates of the President of the Seller to evidence compliance with the conditions set forth in Sections 9.1 through 9.4, and 9.9 and 9.10 hereof, and any other certificates to evidence compliance with the conditions set forth in this Article IX as may be reasonably requested by the Purchaser or its counsel;

(f) the opinion of Womble Carlyle Sandridge & Rice, PLLC, counsel to the Seller and the Affiliates, dated the Closing Date and addressed to the Purchaser in form and substance reasonably satisfactory to the Purchaser and its counsel;

(g) executed Affiliate Leases;

(h) such memoranda of lease, assignments, or other documents required to show, upon the recording of the memoranda of lease for the Affiliate Leases, a complete leasehold chain of title evidencing of record Purchaser's leasehold interest in the Affiliate Leases; provided that Seller's obligation to deliver such items, and the related condition, with respect to non-Affiliate third parties, shall be limited to Seller's exercise of its best efforts;

(i) powers of attorney, assignment agreements, or other similar documents, in form and substance reasonably satisfactory to Purchaser and its counsel, assigning all rights, interests and claims referred to in Section 2.1(h);

(j) flood certificates with respect to the Stores identified on Schedule 5.11(g);

(k) an agreement concerning use of the Stores for Seller's and Sumter Investments, LLC's video poker (as currently permitted in South Carolina) or sweepstakes machines, of the type which Purchaser permits in any of its other store locations in South Carolina, (collectively, the "Gaming Machines") which is mutually acceptable to Seller and Purchaser and is consistent with the following terms:

- (i) With respect to the division of net revenues as between Seller and Purchaser, the following terms shall apply:
 - (A) With respect to Gaming Machines leased by Seller from Collins Entertainment, Purchaser shall receive sixty percent (60%) of the Seller's seventy-five percent (75%) share of net revenues from such Gaming Machines operated at the Stores;
 - (B) With respect to Gaming Machines owned by Sumter Investments, LLC, Purchaser shall receive sixty percent (60%) of Seller's fifty percent (50%) share of net revenues from such Gaming Machines operated at Store No. 102 and Market Express Stores No. 103 and 105 owned by a third party and being purchased separately by Purchaser; and
 - (C) With respect to any other Gaming Machines owned or leased by Seller, Purchaser shall be entitled to sixty percent (60%) of Seller's net revenues from such Gaming Machines operating at the Stores.
 - (ii) Seller and Sumter Investments, LLC shall have the exclusive right to operate and maintain Gaming Machines in the Stores until the end of the Noncompetition Period during any period that Gaming Machines are legal;
 - (iii) The agreement shall continue in effect until the end of the Noncompetition Period, regardless of whether Gaming Machines are for any interim period therein determined to be illegal;
 - (iv) Seller and Sumter Investments, LLC shall maintain the Gaming Machines, retrieve all amounts deposited therein, and make payments of net revenues to Purchaser as set forth above;
 - (v) Purchaser shall be responsible for giving all payouts from the Gaming Machines to the customers at the Stores; and
 - (vi) The agreement will provide that it cannot be assigned by either Seller or Sumter Investments, LLC without the prior written consent of Purchaser; and
- (l) such other documents or certificates as shall be reasonably requested by the Purchaser or its counsel.

9.8 Proceedings. All corporate and other proceedings in connection with the transaction contemplated by this Agreement and the other Transaction Documents shall be in form and substance reasonably satisfactory to the Purchaser and its counsel, and the Purchaser shall have received all such originals or certified or other copies of such documents as it shall have reasonably requested.

9.9 Absence of Litigation. There shall be no Action pending or threatened before any court or other Governmental Authority which seeks to (a) invalidate or set aside, in whole or in part, this Agreement or any of the other Transaction Documents, (b) restrain, prohibit, invalidate or set aside, in whole or in part, the consummation of the transactions contemplated hereby or thereby or (c) obtain substantial Damages in connection therewith.

9.10 Insurance. All policies and programs of insurance relating to the assets, properties, business, operations and employees of the Business, including the Insurance Policies, have been maintained by the Seller in full force and effect to and including the Closing Date.

9.11 Environmental Matters.

(a) The Purchaser shall, in its sole discretion, be satisfied with the results of any and all environmental analyses and of its review of information provided by Seller, referred to in Section 7.6 hereof. If the Seller receives written notice from the Purchaser that Purchaser is not satisfied with such environmental analyses or review, the Seller shall take such steps necessary to satisfy Purchaser or may terminate this Agreement by written notice to the Purchaser and the effect of such termination shall be the same as a termination pursuant to Section 4.1(a) hereof. Purchaser agrees to use its good faith best efforts to provide such written notice fifteen (15) days prior to the Closing Date (subject to updates pursuant to Section 9.11(b)) to provide Seller adequate time to satisfy Purchaser. The absence of any notice from Purchaser pursuant to this Section shall neither obviate, supersede nor waive any provisions of Sections 5.16 or 11.3 hereof.

(b) Seller shall have completed, or cause to be completed, to Purchaser's reasonable satisfaction, all of the items listed in Schedule 9.11(b) relating to environmental matters, which may be updated by Purchaser up to the date of Closing.

ARTICLE X

**CONDITIONS PRECEDENT TO
THE OBLIGATIONS OF THE SELLER**

Each and every obligation of the Seller under this Agreement to be performed at or before the Closing shall be subject to the satisfaction, at the Closing, of each of the following conditions:

10.1 Representations and Warranties True. The representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date with the same effect as if made on and as of the Closing Date.

10.2 Performance. The Purchaser shall have performed and complied in all material respects with all agreements, covenants, obligations and conditions required by this Agreement or any of the other Transaction Documents to be performed or complied with by it at or prior to the Closing.

10.3 Approvals. All filings, declarations and registrations with and Approvals from all Governmental Authorities and other Persons required by applicable Law or otherwise required or desirable for the consummation of the transactions contemplated hereby (except the Approvals referred to on Schedules 5.5 (other than non-transferable Licenses) and 5.14 hereto, which the Seller shall be responsible for obtaining) shall have been made or obtained and shall be in full force and effect, except to the extent that making any such filing, declaration or registration or obtaining any such Approval shall have been waived in writing by the Seller.

10.4 Deliveries. The Purchaser shall have delivered to the Seller, at or prior to the Closing, the following:

- (a) an amount equal to the Purchase Price described in Section 2.6 hereof;
- (b) an instrument of assignment and assumption relating to the Contracts;
- (c) a good standing certificate, dated not earlier than twenty (20) days prior to the Closing Date, of the Secretary of State of Delaware, as to the good standing of the Purchaser in Delaware, and a certificate of authorization, dated not earlier than twenty (20) days prior to the Closing Date, of the Secretary of State of South Carolina, as to the Purchaser's authorization to transact business in South Carolina;
- (d) resolutions, certified as of the Closing Date by the Secretary or Assistant Secretary of the Purchaser, adopted by the Board of Directors of the Purchaser and authorizing the execution and delivery by the Purchaser of this Agreement and the other Transaction Documents, the performance by it of its obligations hereunder and thereunder and the consummation by it of the transactions contemplated hereby and thereby;
- (e) such certificates of the President or Vice President of the Purchaser to evidence compliance with the conditions set forth in Sections 10.1, 10.2, and 10.3 hereof and any other certificates to evidence compliance with the conditions set forth in this Article X as may be reasonably requested by the Seller or their counsel;
- (f) the opinion of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., counsel to the Purchaser, dated the Closing Date and addressed to the Seller, in form and substance reasonably satisfactory to the Seller and its counsel;
- (g) the executed Affiliate Leases;
- (h) the executed SNDAs;
- (i) a non-exclusive license for Seller to use the "Market Express" name at its store #704 in Columbia, South Carolina, for the period of Seller's operation of such store;

(j) an agreement concerning use of the Stores for Seller's and Sumter Investments, LLC's video poker (as currently permitted in South Carolina) or sweepstakes machines, of the type which Purchaser permits in any of its other store locations in South Carolina, (collectively, the "Gaming Machines") which is mutually acceptable to Seller and Purchaser and is consistent with the following terms:

- (i) With respect to the division of net revenues as between Seller and Purchaser, the following terms shall apply:
 - (A) With respect to Gaming Machines leased by Seller from Collins Entertainment, Purchaser shall receive sixty percent (60%) of the Seller's seventy-five percent (75%) share of net revenues from such Gaming Machines operated at the Stores;
 - (B) With respect to Gaming Machines owned by Sumter Investments, LLC, Purchaser shall receive sixty percent (60%) of Seller's fifty percent (50%) share of net revenues from such Gaming Machines operated at Store No. 102 and Market Express Stores No. 103 and 105 owned by a third party and being purchased separately by Purchaser; and
 - (C) With respect to any other Gaming Machines owned or leased by Seller, Purchaser shall be entitled to sixty percent (60%) of Seller's net revenues from such Gaming Machines operating at the Stores.
 - (ii) Seller and Sumter Investments, LLC shall have the exclusive right to operate and maintain Gaming Machines in the Stores until the end of the Noncompetition Period during any period that Gaming Machines are legal;
 - (iii) The agreement shall continue in effect until the end of the Noncompetition Period, regardless of whether Gaming Machines are for any interim period therein determined to be illegal;
 - (iv) Seller and Sumter Investments, LLC shall maintain the Gaming Machines, retrieve all amounts deposited therein, and make payments of net revenues to Purchaser as set forth above;
 - (v) Purchaser shall be responsible for giving all payouts from the Gaming Machines to the customers at the Stores; and
- (k) The agreement will provide that it cannot be assigned by either Seller or Sumter Investments, LLC without the prior written consent of Purchaser; and

(l) such other documents or certificates as shall be reasonably requested by the Seller or its counsel.

10.5 Proceedings. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and the other Transaction Documents shall be in form and substance reasonably satisfactory to the Seller and its counsel, and the Seller shall have received all such originals or certified or other copies of such documents as it shall have reasonably requested.

10.6 Absence of Litigation. There shall be no Action pending or threatened before any court or other Governmental Authority which seeks to (a) invalidate or set aside, in whole or in part, this Agreement or any of the other Transaction Documents, (b) restrain, prohibit, invalidate or set aside, in whole or in part, the consummation of the transactions contemplated hereby or thereby or (c) obtain substantial Damages in connection therewith.

ARTICLE XI

CERTAIN POST-CLOSING COVENANTS

11.1 Confidentiality.

(a) From and after the Closing, the Purchaser shall, and shall cause its Representatives to, hold in strict confidence and, except as required by applicable Law, not disclose to others (except its Representatives) or use for any reason whatsoever without the prior written consent of the Seller, any information (unless previously known to the Purchaser or any of its affiliates from sources other than the Seller or any of its Affiliates or ascertainable from public or published information or trade sources) received by the Purchaser or any of its affiliates from the Seller concerning the Seller and not relating to the Transferred Assets or the Business.

(b) From and after the Closing, the Seller shall, and shall cause its Representatives to, hold in strict confidence and, except as required by applicable Law, not disclose to others (except their Representatives) or use for any reason whatsoever without the prior written consent of the Purchaser, (i) any information (unless previously known to the Seller or any of its Affiliates from sources other than the Purchaser or any of its affiliates or ascertainable from public or published information or trade sources) received by the Seller or any of its Affiliates from the Purchaser or any of its affiliates concerning the Purchaser or its affiliates, or (ii) any information (unless ascertainable from public or published information or trade sources) concerning the Transferred Assets or the Business.

11.2 Noncompetition. For a period of three (3) years from and after the Closing (the "Noncompetition Period"), neither Seller nor any of its Affiliates (including, without limitation, Scott Rumph) will engage, directly or indirectly, in the operation of, or own or have any interest of any kind, in any convenience store or retail gas station business in the Restricted Area, as defined below. "Restricted Area" shall mean the area within a three (3) mile radius of any of the Stores.

Provided, however, that the foregoing shall not be deemed to restrict Seller or any of its Affiliates from conducting any of the businesses described on Schedule 11.2.

11.3 Responsibility for Environmental Matters.

(a) With regard to any assessment or remediation required by Law or third party claims as to any Tanks, tanks, or Store sites arising from or in any way relating to leaks, releases, spills or discharges of Petroleum Products which occurred prior to Closing at any of the Store sites and which are identified on Schedule 11.3(a), as between the parties, the Seller shall be and remain solely responsible for such assessment, remediation or claim. Seller's responsibility for any such assessment, remediation or claim (other than third party claims) may be satisfied by qualification for Trust Fund coverage and payment of any applicable deductibles at no cost or expense to Purchaser. The Seller also shall be responsible for registration and proper upgrading of all Tanks, paying or obtaining waivers of deductibles, and for taking all other necessary action to qualify all Tanks for maximum coverage by the Trust Fund. Schedule 11.3(a) may be revised by Purchaser up to the Closing Date.

(b) As between the parties and subject to the provisions of any Lease, (i) the Purchaser shall be solely responsible for maintaining registration of registered Tanks and Store sites subsequent to Closing, and (ii) the Purchaser shall be solely responsible for any assessment or remediation required by Law and any third-party claims arising solely from leaks, releases, spills or discharges of Petroleum Products which occur subsequent to Closing and during Purchaser's possession at any of the Store sites, or which were not identified on Schedule 11.3(a) before Closing.

(c) The Seller will remove all aboveground storage tanks, except those listed on Schedule 2.1(o), and any unregistered underground storage tanks (including pumps and lines) located at the Store sites, except for the underground propane storage tank referred to on Schedule 5.16(g), before the Closing and complete any assessment or remediation required by Law or a Governmental Authority, and defend, indemnify and hold harmless Purchaser from any and all costs (including reasonable attorneys' fees), expenses, damages or third-party claims in connection therewith. The Purchaser and Seller shall cooperate with each other post-closing to facilitate any assessment or remediation for which Seller is responsible, and, at the request of Purchaser, shall enter into an access agreement, in form satisfactory to Purchaser's counsel, containing usual and customary terms and conditions, including Seller's indemnification of Purchaser for loss or damage caused by its performance hereunder.

(d) The provisions of Section 11.3 shall neither supersede nor obviate the representations and warranties of the Seller contained in Section 5.16, the obligations of the Seller set forth in Section 9.11(b), or the rights and claims of Purchaser relating thereto.

11.4 Specific Performance; Injunctive Relief. Each of the parties hereto acknowledges and understands that any breach or threatened breach by it of Section 11.1 hereof or, with respect to the Seller and Scott Rumph, Section 11.2 hereof, will cause irreparable injury to the non-breaching party and its Affiliates and that money damages will not provide an adequate remedy therefor. Accordingly, in the event of any such breach or threatened breach, the non-breaching party shall have the right and remedy (in addition to any

others available at law or in equity) to have the provisions of Sections 11.1 and 11.2 hereof specifically enforced by, and to seek injunctive relief and other equitable remedies in, any court having competent jurisdiction.

11.5 Negative Gasoline Covenant/Right of First Refusal. Except for properties set forth on Schedule 11.2 and except for the Stores which are provided rights of first refusal in the Leases, Seller and its Affiliates (including, without limitation, Scott Rumph) agree that, with respect to any properties owned by them in the Restricted Area, the applicable Seller or Affiliate shall, in its sole discretion, upon receipt of an offer to sell or lease such properties in the Restricted Area which the applicable Seller or Affiliate determines, in its sole discretion, is acceptable to it, either (i) require in any agreement governing such sale or lease a negative covenant which prohibits the purchaser, lessee or any of their assigns or transferees from using such property for the sale or distribution of gasoline (the "Negative Covenant"), or (ii) grant Purchaser a right of first refusal to purchase such property (the "Right of First Refusal"). If the applicable Seller or Affiliate grants Purchaser a Right of First Refusal, it shall notify Purchaser in writing of the terms of such offer and Purchaser shall have twenty (20) days from the date of such notice to exercise its Right of First Refusal by written notice to the applicable Seller or Affiliate. The closing shall occur within sixty (60) days of exercise of Purchaser's Right of First Refusal, upon the same terms and conditions as in the original offer. If Purchaser elects not to exercise its Right of First Refusal, the applicable Seller or Affiliate may sell or lease such property pursuant to, and on the terms of, the pending offer without requiring the governing agreement to include a Negative Covenant. The Negative Covenant and Right of First Refusal rights of Purchaser herein granted shall expire, and neither Seller nor any Affiliate shall be obligated to require or grant a Negative Covenant or Right of First Refusal, upon the conclusion of the Noncompetition Period.

ARTICLE XII

SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

12.1 Survival of Representations and Warranties. Notwithstanding (a) the making of this Agreement, (b) any examination or investigation made by or on behalf of the parties hereto and (c) the Closing hereunder, (i) the representations and warranties of the parties hereto contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing for a period of eighteen (18) months from and after the date hereof, except for the representations and warranties contained in Sections 5.16 (Environmental Matters), 5.21 (Tax Matters) and 5.25 (Employee Benefit Plans), which shall survive until the expiration of the applicable statute of limitations for the underlying cause of action, and (ii) the covenants and agreements of the parties hereto contained in this Agreement shall survive until fully performed or fulfilled (unless non-compliance with such covenants or agreements is waived in writing by the party or parties hereto entitled to such performance). No claim for indemnification pursuant to Section 12.2 hereof may be brought with respect thereto after the applicable expiration date; provided, however, that if prior to such date a party hereto has notified the other party or parties hereto in writing of a claim for indemnification under this Article XII (whether or not formal legal action shall have been commenced based upon such claim), such claim shall continue to be subject to indemnification in accordance with this Article XII.

12.2 Indemnification. Subject to Sections 12.1, 12.4 and 12.5 hereof, from and after the Closing, each of the parties hereto and their respective successors and assigns (each being an "Indemnifying Party") shall indemnify and hold harmless the other party hereto, its Affiliates, successors and assigns, and the Representatives of each of them (each being an "Indemnified Party"), from and against any and all Damages incurred thereby or caused thereto arising out of or relating to (a) any breach or violation of, or failure to properly perform, any covenant or agreement made by such Indemnifying Party in this Agreement or any of the other Transaction Documents, unless waived in writing by the Indemnified Party; (b) any breach of any of the representations or warranties made by such Indemnifying Party in this Agreement or any of the other Transaction Documents and not waived in writing by the Indemnified Party; (c) with respect to the Seller, its: (i) failure to pay, perform or satisfy when due any of the Excluded Liabilities; (ii) failure to comply with applicable provisions of South Carolina Uniform Commercial Code - Bulk Transfers), as amended, and (iii) except as otherwise provided in this Agreement, ownership and operation of the Business prior to the Closing Date; and (d) with respect to the Purchaser, its failure to pay, perform or satisfy when due any of the Assumed Liabilities or, except as otherwise provided in this Agreement, its ownership and operation of the Business after the Closing Date. Except as otherwise expressly provided in Section 11.2 hereof, no Indemnified Party shall have any recourse of any kind or nature whatsoever against any of the Representatives of any Indemnifying Party.

12.3 Notice and Payment of Claims.

(a) Promptly after receipt by any Indemnified Party of notice of the commencement of any action, the assertion by any third party of any claim, or otherwise giving rise to indemnification as provided in this Article (collectively, a "Claim"), the Indemnified Party receiving such notice (the "Claim Notice") shall notify the Indemnifying Party in writing of the assertion of such Claim; *provided, however*, that failure to give such notice shall not affect the right to indemnification hereunder except to the extent of actual prejudice. The Indemnifying Party shall have the option, and shall notify the Indemnified Party in writing within ten (10) business days after the date of the Claim Notice of its election either (i) to participate (at its own expense) in the defense of such Claim (in which case the defense of such Claim shall be controlled by the Indemnified Party) or (ii) with the Indemnified Party's consent, to take charge of and control the defense of such Claim. The Indemnifying Party's failure to respond shall not relieve the Indemnifying Party of its indemnification obligations under this Section. If the Indemnifying Party assumes the defense, each Indemnified Party shall have the right to employ separate counsel and participate in the defense of such Claim, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless: (1) the employment of such counsel shall have been specifically authorized in writing by the Indemnifying Party or (2) the named parties in such Claim (including any impleaded parties) include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have been so advised by such counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to assume the defense of such Claim on behalf of the Indemnified Party, it being understood, however, that the Indemnified Party shall not, in connection with such Claim, be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) and that all such fees and expenses shall be reimbursed as they are incurred).

(b) If the Indemnifying Party elects (or is deemed to have elected) not to assume the defense of a Claim in accordance with the preceding Section, then the Indemnified Party may settle such Claim without the written consent of the Indemnifying Party and the Indemnifying Party agrees to indemnify and hold the Indemnified Party harmless from and against any such Claim settled without his or its written consent. As to any claim settled with the Indemnifying Party's written consent (which consent shall not be unreasonably withheld or delayed), the Indemnifying Party agrees to indemnify and hold the Indemnified Party harmless from and against any such Claim by reason of such settlement, according to the obligations of the Indemnifying Party hereunder.

(c) The Indemnified Party shall provide to the Indemnifying Party, as soon as practicable after the date of the Claim Notice, all information and documentation necessary to support and verify any Damages that the Indemnified Party shall have determined have given or could give rise to a Claim hereunder, and the Indemnifying Party shall be given access to all books and records in the possession or under the control of the Indemnified Party which the Indemnifying Party reasonably determines to be related to such Action.

(d) All Claims under this Article XII shall be paid by the Indemnifying Party on demand in immediately available funds in U.S. dollars after the liability for Damages thereunder have been finally determined. The liability for Damages under any such Claim shall be deemed to be "finally determined" for purposes of this Article XII when the parties to an Action have so determined by mutual agreement or, if disputed, when a final non-appealable order of a court having competent jurisdiction has been entered.

12.4 Limitation on Indemnity.

(a) Threshold. No Indemnified Party shall seek, or be entitled to, indemnification from any Indemnifying Party for Damages arising under Section 12.2(b) until the aggregate amount of such Damages incurred by such Indemnified Party (but for the operation of this Section 12.4(a)) exceeds \$10,000. If Damages incurred by any Indemnified Party in connection with Claims made pursuant to Section 12.2(b) exceed \$10,000, the Indemnified Party shall be entitled to payment from the Indemnifying Party of an amount equal to all of such Damages (including the first \$10,000). This Section 12.4(a) shall not apply to the representations and warranties of Seller in Section 5.16.

(b) Characterization of Payment. Any indemnity payment made pursuant to this Article shall be treated by Purchaser and Seller as an adjustment to the Purchase Price.

(c) Maximum Liability. The maximum aggregate amount of Damages for which Seller or Purchaser shall be liable pursuant to this Article XII shall be the amount equal to the Purchase Price.

12.5 Mitigation of Damages. If any event shall occur which would entitle a party hereto to indemnification hereunder, no Damages shall be deemed to have been sustained by it to the extent of (a) any tax savings realized by it with respect thereto or (b) any proceeds received by it from any insurance policy with respect thereto.

ARTICLE XIII

MISCELLANEOUS

13.1 Fees and Expenses. Except as otherwise expressly provided in this Agreement, each of the parties hereto shall bear and pay all fees, costs and expenses incurred by it in connection with the origin, preparation, negotiation, execution and delivery of this Agreement, the other Transaction Documents and the transactions contemplated hereby or thereby (whether or not such transactions are consummated), including, without limitation, any fees, expenses or commissions of its attorneys, accountants and other representatives.

13.2 Notices.

(a) All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including facsimile, telegraphic, telex or cable communication) and mailed, faxed, telegraphed, telexed, cabled or delivered:

(i) If to the Seller, to:

Market Express of Liberty Street, Inc.
170 S. Lafayette Boulevard
Sumter, South Carolina 29150
Facsimile No.: 801-740-5458

Attention: Scott Rumph

Sumter Petroleum Company
170 S. Lafayette Boulevard
Sumter, South Carolina 29150
Facsimile No.: 801-740-5458

Attention: Scott Rumph

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

Womble Carlyle Sandridge & Rice, PLLC
2505 Meridian Parkway, Suite 300
Durham, North Carolina 27713
Facsimile No.: 919-484-2340

Attention: Kenneth G. Carroll

(ii) If to Purchaser, to:

The Pantry, Inc.
1801 Douglas Drive
Sanford, North Carolina 27330
Facsimile No.: 919-774-3329

Attention: Chief Financial Officer

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

Smith, Anderson, Blount, Dorsett,
Mitchell & Jernigan, L.L.P.
2500 First Union Capitol Center
Post Office Box 2611
Raleigh, North Carolina 27602-2611
Facsimile No.: 919-821-6800

Attention: _____

(b) All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 13.2 (i) if delivered personally against proper receipt or by confirmed facsimile or telex, shall be effective upon delivery and (ii) if delivered (A) by certified or registered mail with postage prepaid, (B) by Federal Express or similar courier service with courier fees paid by the sender or (C) by telegraph or cable, shall be effective two (2) business days following the date when mailed, couriered, telegraphed or cabled, as the case may be. The parties hereto may from time to time change their respective addresses for the purpose of notices to that party by a similar notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the party sought to be charged with its contents.

13.3 Amendment; Waiver. Neither this Agreement, nor any of the terms or provisions hereof, may be amended, modified, supplemented or waived except by a written instrument signed by all of the parties hereto (or, in the case of a waiver, by the party or parties granting such waiver). No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. No failure of a party hereto to insist upon strict compliance by another party hereto with any obligation, covenant, agreement or condition contained in this Agreement shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of a party hereto, such consent shall be given in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 13.3.

13.4 Assignment. This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations of the parties hereunder may be assigned by any of the parties hereto without the prior written consent of the other parties; provided, however, that the Purchaser may assign this Agreement

and its rights and obligations hereunder to any of its Affiliates which has assumed such obligations without the prior written consent of the Seller but any such assignment shall not release Purchaser from its obligations hereunder. Any assignment which contravenes this Section 13.4 shall be void *ab initio*.

13.5 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of **North Carolina**, without giving effect to the conflicts of laws principles thereof, or of any other jurisdictions.

13.6 Severability. Each term and provision of this Agreement constitutes a separate and distinct undertaking, covenant, term and/or provision hereof. In the event that any term or provision hereof shall be determined to be unenforceable, invalid or illegal in any respect, such unenforceability, invalidity or illegality shall not affect any other term or provision hereof, but this Agreement shall be construed as if such unenforceable, invalid or illegal term or provision had never been contained herein. Moreover, if any term or provision hereof shall for any reason be held to be excessively broad as to time, duration, activity, scope or subject, it shall be construed, by limiting and reducing it, so as to be enforceable to the extent permitted under applicable Law as it shall then exist.

13.7 No Third Party Beneficiaries. Except as and to the extent provided in Article XII hereof, nothing in this Agreement is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any person or entity other than the parties hereto and their respective successors and permitted assigns.

13.8 Public Announcements. Except as required by applicable Law or judicial order, none of the parties hereto, nor any of their respective Affiliates, successors or assigns, shall issue any press release or make any public announcement or disclosure with respect to this Agreement or the transactions contemplated hereby without the prior consent of the other party or parties hereto, which consent shall not be unreasonably withheld.

13.9 Singular and Plural Forms. The use herein of the singular form shall also denote the plural form, and the use of the plural form shall denote the singular form, as in each case the context may require.

13.10 References. All references herein to Articles, Sections, Schedules and Exhibits shall be to Articles and Sections of and Schedules and Exhibits to this Agreement.

13.11 Headings. The headings contained in this Agreement are for convenience of reference only and shall not constitute a part hereof or define, limit or otherwise affect the meaning of any of the terms or provisions hereof.

13.12 Entire Agreement. This Agreement, together with the schedules and exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings, agreements and arrangements, both oral and written, between the parties with respect to the subject matter hereof.

13.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

Received: 28.Mar.00 04:36 PM From: 19197552150 To: 8017406458

Get faxes by email. Free. @eFax.com

Page 2 of 2


MAR-28-00 TUE 05:36 PM WOMBLE & CARLYLE

FAX NO. 19197552150


P. 02/02

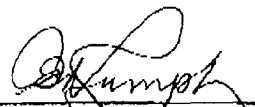
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and Scott Rumph has executed this Agreement for the limited purpose of acknowledging his obligations under Sections 11.2 and 11.4 hereof, as of the day and year first above written.

MARKET EXPRESS OF LIBERTY STREET, INC.

By: 
Name: Scott W. Rumph
Title: *Pres.*

SUMTER PETROLEUM COMPANY

By: 
Name: Scott W. Rumph
Title: *Pres.*


Scott Rumph, Individually

THE PANTRY, INC.

By: _____
Steve Ferreira
Vice President

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and Scott Rumph has executed this Agreement for the limited purpose of acknowledging his obligations under Sections 11.2 and 11.4 hereof, as of the day and year first above written.

MARKET EXPRESS OF LIBERTY STREET, INC.

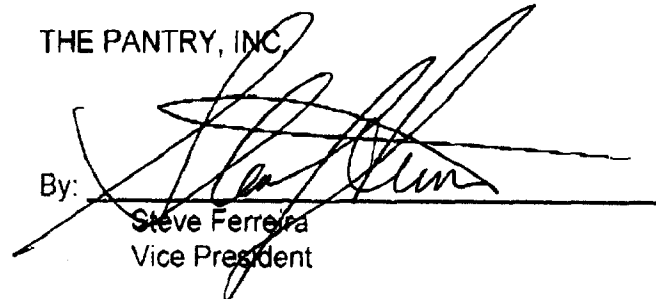
By: _____
Name:
Title:

SUMTER PETROLEUM COMPANY

By: _____
Name:
Title:

Scott Rumph, Individually

THE PANTRY, INC

By:  _____
Steve Ferreira
Vice President

SCHEDULE 5.26

Trademarks

1. Seller operates its Stores under the trade name Market Express. Also, Seller owns the following federal service mark registration which will be transferred to the Purchaser at Closing:

Mark	Owner	Int./Class	Goods/Services	Registration Number	Registration Date
Market Express	Sumter Petroleum Co.	42	Retail Grocery Store Services	1199163	6/22/82

2. Seller has certain licensing arrangements with Amoco Oil Company and Krispy Kreme Doughnut Corporation to use its intellectual property in the sale and marketing of its products in the ordinary course of the Business.