

## TRADEMARK ASSIGNMENT

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 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	NUNC PRO TUNC ASSIGNMENT		
EFFECTIVE DATE:	12/03/2012		
CONVEYING PARTY DATA			
	Name	Formerly	Execution Date
	Timothy S Porter		12/03/2012
	Erika S Porter		12/03/2012
RECEIVING PARTY DATA			
Name:	Allen-Bros. Wholesale Distributors, Inc.		
Street Address:	1301 Crown Vetch Drive		
City:	Landisville		
State/Country:	PENNSYLVANIA		
Postal Code:	17538		
Entity Type:	CORPORATION: PENNSYLVANIA		
PROPERTY NUMBERS Total: 1			
	Property Type	Number	Word Mark
	Registration Number:	2811322	DIAMOND STATION
CORRESPONDENCE DATA			
Fax Number:	2159970266		
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	215-997-0248		
Email:	fmazzeo@ryderlu.com		
Correspondent Name:	Frank Mazzeo		
Address Line 1:	808 Bethlehem Pike		
Address Line 2:	Suite 200		
Address Line 4:	Colmar, PENNSYLVANIA 18915		
ATTORNEY DOCKET NUMBER:	ABW-TM001		
NAME OF SUBMITTER:	Frank A. Mazzeo		

OP \$40.00 2811322

Signature:	/FrankAMazzeo/
Date:	08/02/2013
<b>Total Attachments: 13</b> source=Asset Purchase Agt REDACTED FILED#page1.tif source=Asset Purchase Agt REDACTED FILED#page2.tif source=Asset Purchase Agt REDACTED FILED#page3.tif source=Asset Purchase Agt REDACTED FILED#page4.tif source=Asset Purchase Agt REDACTED FILED#page5.tif source=Asset Purchase Agt REDACTED FILED#page6.tif source=Asset Purchase Agt REDACTED FILED#page7.tif source=Asset Purchase Agt REDACTED FILED#page8.tif source=Asset Purchase Agt REDACTED FILED#page9.tif source=Asset Purchase Agt REDACTED FILED#page10.tif source=Asset Purchase Agt REDACTED FILED#page11.tif source=Asset Purchase Agt REDACTED FILED#page12.tif source=Asset Purchase Agt REDACTED FILED#page13.tif	

REDACTED

## **ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (hereinafter "Agreement"), by and among ALLEN BROS. WHOLESALE DISTRIBUTORS, INC., a Pennsylvania corporation (herein "Buyer"), and TIMOTHY S. PORTER and ERIKA S. PORTER (herein, collectively, "Seller"). Buyer and Seller are sometimes referred to herein individually as a "party" and together as the "Parties."

### **BACKGROUND**

WHEREAS, Seller is the owner and operator, of among other things, a coffee wholesale, distribution, and service/repair business (herein "Business") with its principal place of business located at 1301 Crown Vetch Drive Landisville, PA 17538, and warehoused at 1330 Loop Road Lancaster, PA 17601.

WHEREAS, subject to the provisions of this Agreement, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, Acquired Assets (as defined in Section 1.2); and

WHEREAS, simultaneously with the execution of this Agreement, TIMOTHY S. PORTER (herein, individually, "Porter") has entered into an Independent Contractor Agreement with Buyer (herein "Independent Contractor Agreement") to perform certain sales and consultation services for the Buyer in exchange for the compensation described therein upon the closing of this Agreement;

NOW THEREFORE, in consideration of the promises and covenants herein contained, intending to be legally bound, the Parties agree as follows:

### **ARTICLE I SALE OF ASSETS**

Section 1.1. Sale and Purchase of Acquired Assets. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, convey, transfer and deliver to Buyer and Buyer shall purchase and acquire from Seller the Acquired Assets in exchange for the consideration described in Section 1.5, free and clear of any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership (herein "Encumbrance").

Section 1.2. Acquired Assets. The assets of the Business being purchased pursuant to this Agreement shall include the following assets (herein, collectively, "Acquired Assets").

- (a) **Customer Lists, Business Information, and Records.** A complete customer list, including all contract and billing information related to active customers (herein "Customer List"), and all data (whether on paper, computer storage media or any other form) used primarily in or related primarily to the operation of the Business, including customer records, customer prospects, sales plans, referral sources, creative materials, advertising materials, marketing and promotional materials and other similar documents and copies of all personnel records.
- (b) **Intangible Property.** All of the intangible rights and property of Seller used primarily in or related primarily to the operation of the Business, including all rights to the registered trademark and/or copyright, the name, and any variations or derivatives thereof, of "MIDNIGHT MOUNTAIN COFFEE COMPANY" and/or "DIAMOND STATION" and the right to conduct the Business under such name or any variations or derivatives thereof.
- (c) **Inventory.** All saleable inventory that is sold and inventoried in the normal course of the Business by Buyer and any additional inventory not ordinarily sold by Buyer, which Buyer

agrees to purchase upon inspection (herein "Inventory") at Seller's cost.

- (d) **Equipment.** All functioning and operational equipment used primarily in or related primarily to the operation of the Business (e.g., cappuccino machines, air pots, grinders, bins, coffee equipment, burners, hot pots, as well as plates for the labeling, packaging, and/or production of "Diamond Station," "Redners," and "New England" brands of coffee.
- (e) **Automobiles.** A 2008 Ford E250 Van, Vehicle Identification No.ftne24lx8da10983 (herein "Automobile Asset").
- (f) **Insurance Benefits.** All insurance benefits, including rights and proceeds, arising from or relating to the Acquired Assets prior to the Closing Date.
- (g) **Claims Against Third Parties.** All claims of Seller against any third party relating to the Acquired Assets, whether choate or inchoate, known or unknown, contingent or non-contingent.

**Section 1.3. No Assumed Liabilities.** Except for the liabilities specifically listed on Schedule 1.3 (herein "Assumed Liabilities"), the transfer of the Acquired Assets pursuant to this Agreement shall not include the assumption of any liability or obligation of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executor, determined, determinable or otherwise (herein "Liability") related to the Acquired Assets or otherwise.

**Section 1.4. Excluded Assets.** Notwithstanding anything to the contrary contained in Section 1.2 or elsewhere in this Agreement, the following assets of Seller (herein, collectively, "Excluded Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Acquired Assets and shall remain the property of Seller after Closing:

- (a) All cash and cash equivalents on hand in banks, certificates of deposit, money market certificates;
- (b) All accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment, and any claim, remedy or other rights related to any of the foregoing (herein "Accounts Receivable").
- (c) All claims for refund of taxes and other governmental charges of whatever nature relating to a tax period or event occurring prior to the Closing Date (as defined herein);
- (d) Any real property of Seller, and any improvements thereon; and
- (e) All damaged and unsaleable goods.

**Section 1.5. Purchase Price.** The consideration for the Acquired Assets shall be one or more Inventory Payment(s), the Automobile Payment, the Goodwill Payment, the Equipment Payment, and the Confidentiality/Non-solicitation/Non-competition/Non-Disparagement Payment (each as defined below and collectively referred herein as the "Purchase Price").

**Section 1.6. Inventory Payments.** Buyer shall pay to Seller an amount equal to the cost of the Inventory delivered to Buyer (herein "Inventory Payment").

- (a) **Cost of Inventory.** The cost of each item included in Inventory shall be determined according to the costs paid for such items by Seller (which is the cost after cash discounts and at the volume at which Seller regularly purchases these goods (e.g., truckload, etc.)); provided however, that, if the item of Inventory is not sold by Seller in the ordinary course of business, the cost of such item of Inventory shall be determined

according to the "first in/first out" costs recorded on the books of Seller, which is the cost after cash discounts and at the volume at which Seller regularly purchases these goods (e.g., truckload, etc.)).

- (b) **Delivery of Inventory.** The Inventory may be delivered in one or more lots. Inventory lots will be transferred at a time that is mutually agreed to by both Parties. At least one Business Day prior to the date of delivery (and at least twenty-four (24) hours prior to such delivery) of an Inventory lot, Seller shall provide Buyer with notice of the proposed delivery and a detailed invoice of all Inventory included in such a lot on forms supplied by Buyer which are the forms used by Buyer in the ordinary course of Buyer's business. Seller shall identify each item of Inventory using the inventory methods utilized by Buyer and consistent with this Section 1.6. Such invoice shall contain sufficient details to permit Buyer to identify all items such Inventory lot in accordance with this Section 1.6. Buyer shall make each Inventory Payment due hereunder to Seller within thirty (30) days from the date of delivery of such Inventory lot.
- (c) **Inspection of Inventory.** Buyer shall be entitled to conduct a physical inspection of the Inventory to determine if it is undamaged and saleable. In the event Buyer finds missing, damaged, or unsaleable inventory in any Inventory lot, Buyer will notify Seller within ten (10) business days of discovery that an item of Inventory is damaged or unsaleable. For each Inventory Lot, if no claim is made within the ten (10) business day period of discovery that an item of inventory is damaged or unsaleable, the sale of such Inventory lot shall be final and Seller shall have no obligation to accept return of any item from such Inventory lot.
- (d) **Damaged or Missing Inventory.** Any damaged and unsaleable goods included in an Inventory lot will be returned to Seller in exchange for a prompt refund of the amounts paid for such item by Buyer. Seller shall promptly refund the amount paid for any missing items to Buyer. Seller will make arrangements for picking up any damaged or unsaleable goods. In the event that Seller shall fail to promptly refund amounts paid by Buyer for damaged and unsaleable goods or missing items, Buyer shall be entitled to setoff such amount pursuant to Section 7.5 against any payments due to Porter under the Independent Contractor Agreement.

Section 1.7. Automobile Payment. At the time of the Closing, Buyer shall pay to Seller an amount equal to \$1.00 (one dollar) for the Automobile Asset.

Section 1.8. Goodwill Payment. At the time of the Closing, Buyer shall pay to Seller an amount equal to \$2,000.00 for the goodwill associated with the Acquired Assets.

Section 1.9. Confidentiality/Non-solicitation/Non-competition/Non-disparagement Payment. At the time of \_\_\_\_\_ Seller's agreement \_\_\_\_\_ on/Non-disparagement clauses of this Agreement and/or Porter's Independent Contractor Agreement, which is marked and attached hereto as Exhibit "B."

Section 1.10 Equipment Payment. Buyer shall pay to Seller for the equipment as follows: (1) the

**ARTICLE II  
CLOSING, ITEMS TO BE DELIVERED,  
FURTHER ASSURANCES AND CLOSING DATE**

Section 2.1. Closing. The consummation of the purchase and sale of the Acquired Assets (herein "Closing") shall take place following satisfaction or waiver of all the conditions to Closing set forth in Article VI, at such time, place, and date as Buyer and Seller mutually agree. The date upon which the Closing actually occurs is referred to as the "Closing Date."

Section 2.2. Conveyance and Delivery by Seller and Porter. On the Closing Date, Seller and Porter shall surrender and deliver possession of the Acquired Assets to Buyer (except for Inventory which may be delivered after the Closing Date) and take such steps as may be required to put Buyer in actual possession and operating control of the Acquired Assets, and in addition shall deliver to Buyer such bills of sale and assignments and other good and sufficient instruments and documents of conveyance, in form reasonable satisfactory to Buyer, as shall be necessary and effective to transfer and assign to, and vest in, Buyer all of Seller's right, title, and interest in and to the Acquired Assets free and clear of any Encumbrance or restriction of any kind. Without limiting the generality of the foregoing, at the Closing, Seller shall deliver to Buyer:

- (a) The Bill of Sale, substantially in the form of Exhibit "A" hereto, duly executed by Seller (herein "Bill of Sale");
- (b) The Independent Contractor Agreement, substantially in the form of Exhibit "B" hereto, duly executed by Porter;
- (c) A letter from Fulton Bank (herein "Bank") stating (i) the amount owed to Bank by Seller, (ii) that all amounts owed to Bank by Seller may be paid in full by Seller; (iii) that upon such payment, all outstanding indebtedness owed to Bank will be satisfied in full and that Bank will relinquish any liens or right to setoff against the Acquired Assets, and (iv) that on the Closing Date, Buyer is authorized to file UCC termination statements with respect to the Acquired Assets, if applicable (herein "Bank Pay-Off Letter"); and
- (d) Such other reasonably requested instruments of conveyance and transfer.

Section 2.3. Delivery by Buyer. On the Closing Date, Buyer shall deliver to Seller an amount equal to the Automobile Payment, the Goodwill Payment, Confidentiality/Non-solicitation/Non-competition/Non-disparagement Payment, and the Non-contingent Payment of the Equipment Payment, by check.

Section 2.4. Further Assurances. From time to time after Closing, as and when reasonably requested by any party, each Party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments shall take, or cause to be taken, all such further or other actions as such other Party may reasonably deem necessary or desirable to consummate the transactions contemplated in this Agreement.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows:

Section 3.1. Organization. Seller is a business enterprise duly organized, validity existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite corporate power and authority and all necessary governmental approvals to carry on the Business as now being conducted. Seller is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the conduct of the Business requires it to be so qualified, except where the failure to be

so qualified would not be expected to have a material adverse affect on the Business.

Section 3.2. Power and Enforceability. Seller has the power and authority to execute and deliver this Agreement and to perform all the transactions contemplated hereby and such actions have been fully authorized by Seller's board of directors. This Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms.

Section 3.3. No Conflict. The execution and delivery of this Agreement will not, directly or indirectly (with or without notice or lapse of time): (a) conflict with or result in a violation of or default under (i) any provision of the articles of incorporation or bylaws or other organizational document of Seller, (ii) any statute, order, decree, proceeding, rule, or regulation of any court of governmental agency or body, United States or foreign, applicable to the Business or the Assigned assets, (b) give any federal, state, municipal, foreign or other government; or quasi-governmental authority of any nature (herein "Governmental Body") or other individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body (herein "Person") the right to challenge any of the transactions contemplated herein or to exercise any remedy or obtain any relief under any federal, state, local, municipal, foreign, international, multination or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty (herein "Legal Requirement") or any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator (herein "Order") to which Seller, the Business or any of the Acquired Assets, may be subject; or (c) result in the imposition or creation of any Encumbrance upon or with respect to any of the Acquired Assets. Except as set forth herein, Seller is not required to give any notice to or obtain any consent from any Person in connection with execution and delivery of this Agreement.

Section 3.4. No Third Party Agreements. There are no existing agreements, options, commitments, or rights with, of, or to any Person to acquire the Business or any of the Acquired Assets or any interest therein.

Section 3.5. Title to Assets. Except for the security interest of the Bank that secures an obligation to be paid off and fully satisfied at the Closing, Seller has good and valid title to all of the assets being sold hereunder free and clear of any Encumbrance, restriction, or third-party interest of any kind whatsoever. All of the assets being sold hereunder are in the physical possession or under the control of Seller and shall be so until such assets are transferred to the actual possession of Buyer.

Section 3.6. Litigation. There is no action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator (herein "Proceeding") pending or, to the Knowledge of Seller, threatened against Seller, pertaining to the operation of the Business of any of the Acquired Assets and to the Knowledge of Seller no circumstances exist that could reasonably form a basis for such a Proceeding. No voluntary or involuntary petition in bankruptcy, receivership, insolvency, or reorganization with respect to Seller, or petition to appoint a receiver or trustee of Seller, has been filed by or against Seller, nor shall Seller file such petition for one hundred (100) days thereafter, and if such petition is filed by other, the same shall be promptly discharged. Seller has not made any assignment for the benefit of creditors or admitted in writing insolvency or that its property at fair valuation shall not be sufficient to pay its debt, nor shall Seller permit any judgment, execution, attachment, or levy against it or its properties to remain outstanding or unsatisfied for more than ten (10) days. Seller shall not become "insolvent," as defined in the Uniform Fraudulent Transfer Act (herein "UFTA"), as a result of consummating this Agreement, nor shall any of the transactions contemplated herein constitute a transfer fraudulent as to Seller's present or future creditors under the UFTA.

Section 3.7. Compliance with Applicable Law. The Business is in compliance with all laws and Order of any Governmental Authority applicable to the Business or the Acquired Assets, except where the failure to be in such compliance would not reasonably be expected to have a material adverse affect on the Business. Seller holds all permits, franchises, licenses, variances, exemptions, orders and approvals

of all third parties (including any Governmental Authority) necessary for the conduct of a Person's business (herein "Permits") and is in material compliance with the terms thereof, requisite in connection with the conduct of the Business, as conducted as of the date hereof.

Section 3.8. Taxes.

- (a) Filing of Returns. There have been properly completed and filed on a timely basis and in correct form all federal, state, local and foreign returns and reports relating to Taxes (as defined herein) required to be filed on or prior to the date hereof with respect to the Business (herein "Tax Returns").
- (b) Payment of Taxes. All federal, state, local and foreign income, profits, franchise, sales, use, payroll, premium, occupancy, property, severance, excise, withholding, customs, unemployment, transfer and other taxes, including interest, additions to tax and penalties (herein collectively "Taxes") imposed over with respect to the Business or for which Seller is or could be liable, whether to taxing authorities (as, for example, under law) or to other persons or entities (as, for example, under tax allocation agreements), with respect to all taxable periods (or portions thereof) ending on or before the Closing Date, all applicable tax laws and agreements have been fully complied with, and all such amounts required to be paid by Seller to taxing authorities or others on or before the date hereof have been paid.
- (c) Liens. There are no liens for Taxes (other than for current taxes not yet due and payable) upon the Acquired Assets.

Section 3.9. Customer List. The Customer List is a complete and accurate list of all current customers of Seller relating to the Business as of the Closing Date. Seller's relationship with the Business's customers, clients, and vendors are satisfactory, and Seller has no knowledge of any facts or circumstances, including a change of control in the ownership of the Business, that might materially alter, negate, impair, or in any way materially adversely affect the continuity of any such relationships and the Business.

Section 3.10. Labor Relations; Compliance. There is not presently pending or existing, and to Seller's Knowledge, there is not threatened against or affecting the Business: (a) any strike, slowdown, picketing, work stoppage, or employee grievance process; or (b) any legal Proceeding against or affecting the Business relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matter, including any charge or complaint filed by an employee or union with the National Labor Board, the Equal Employment Opportunity Commission, or any comparable Governmental Body, organizational activity, or other labor or employment dispute against or affecting the Business or its premises. Seller and the Business have complied with all Legal Requirements relating to employment, equal employment opportunity, nondiscrimination, Immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health, and office closing. Neither Seller nor the Business are liable for the payment of any compensation, damages, taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

Section 3.11. INTENTIONALLY OMITTED.

Section 3.12. Insurance. The Acquired Assets are adequately insured against fire and casualty and will continue to be so insured until placed in the physical possession of Buyer, and valid policies therefore are and will be outstanding and duly in force and the premium due thereon will be paid by Seller until all of such assets are in the physical possession of Buyer. At such time as Buyer has taken physical possession of all of the Acquired Assets, Seller shall retain all such policies, shall be entitled to cancel same, and collect return of premium for its own account.

Section 3.13. INTENTIONALLY OMITTED.



Section 3.14. Disclosure. None of the representations and warranties of Seller set forth in this Agreement, notwithstanding any investigation thereof by Buyer, contains any untrue statement of a material fact, or omits the statement of any material fact necessary to render the statements made not misleading.

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

Section 4.1. Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all necessary corporate power to own all of its property and assets, to incur all of its liabilities and to carry on its business as presently conducted.

Section 4.2. Power and Enforceability. Buyer has the power and authority to execute and deliver this Agreement and to perform all the transactions contemplated hereby and such action has been duly authorized by all necessary action by Buyer's board of directors. This Agreement constitutes, and when duly executed at the Closing the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

Section 4.3. No Conflict. The execution and delivery of this Agreement will not, directly or indirectly (with or without notice or lapse of time): conflict with or result in a violation of or default under (a) any provision of the articles of certificate of incorporation or bylaws or other organizational documents of Buyer, (b) any statute, order, decree, proceeding, rule, or regulation of any Governmental Body, applicable to Buyer.

Section 4.4. Litigation. There are not any (a) outstanding judgments against Buyer, (b) Proceedings pending or, to the Knowledge of Buyer, threatened against Buyer or (c) investigations by any Governmental Body that are, to the Knowledge of Buyer, pending or threatened against Buyer that, in any case, individually or in the aggregate, have had or could reasonably be expected to prevent Buyer from performing the transactions contemplated by this Agreement.

Section 4.5. Availability of Funds. Buyer has (and will have) access to available cash that is sufficient to enable it to consummate the purchase of the Acquired assets and the other transactions contemplated by and in accordance with this Agreement and the Consulting Agreement.

Section 4.6. Brokers. No Person will have, as a result of the transaction contemplated by this Agreement, any valid right to, interest in or claim upon Buyer for any commission, fee or other compensation as a finder or broker because of any act or omission by Buyer.

Section 4.7. Disclosure. None of the representations and warranties of Buyer set forth in this Agreement, notwithstanding any investigation thereof by Seller, contains any untrue statement of a material fact, or omits the statement of any material fact necessary to render the statements made not misleading.

**ARTICLE V  
COVENANTS; ADDITIONAL AGREEMENTS**



Section 5.3. Non-Disparagement Covenant. After the Closing Date, each Party shall not disparage the other Party's or such other Party's shareholders, directors, officers, employees or agents.

Section 5.4. Remedy for Breach of Covenant. In the event of a breach (or threatened breach) of the provisions of Sections 5.1, 5.2, or 5.3, the Buyer shall be entitled to injunctive relief as well as any other applicable remedies at law or in equity. Should a court of competent jurisdiction declare any of the covenants set forth in Sections 5.1, 5.2 or 5.3 unenforceable due to an unreasonable restriction, duration, geographical area or otherwise, the Parties agree that such court shall be empowered and shall grant injunctive relief to the extent reasonably necessary to protect its interest. The Parties acknowledge that the covenants set forth in Sections 5.1, 5.2 or 5.3 represent an important element of the value of the Acquired Assets and were a material inducement for the Parties to enter into this Agreement. The Parties acknowledge and agree that the covenants contained herein are being entered into voluntarily and for consideration and that, given the nature and geographic scope of the Business and the business of Buyer, the Restricted Period and the Restricted Area are reasonable in time and space. Notwithstanding anything in this Agreement to the contrary, the covenants set forth in Sections 5.1, 5.2 and 5.3 above shall not be held invalid or unenforceable because of the scope of the territory or actions subject hereto or restricted hereby, or the period of time within which such covenants are operative; but the maximum territory, the actions subject to such covenants, and the period of time in which such covenants are enforceable, respectively, are subject to determination by a final judgment of any court which had jurisdiction over the Parties and subject matter.

Section 5.5. Applicability of Article V Covenants to Porter. To the extent that the provisions of the Independent Contractor Agreement, which is marked and attached hereto as Exhibit "B," between the Buyer and Porter contain a set of separate (and/or duplicative and/or inconsistent) covenants regarding confidentiality, non-solicitation, non-competition and non-disparagement, the Parties hereby agree that, with respect to Porter, the terms and covenants of the Independent Contractor Agreement shall supersede (and be deemed superior to) those of this Agreement.

Section 5.6. Post-Closing Payment of Liabilities. Seller shall pay in a timely manner all Taxes owed by the Seller resulting from or payable in connection with the sale of the Acquired Assets pursuant to this Agreement. Seller shall pay, or make adequate provision for the payment, in the ordinary course of business all of the Liabilities of Seller. If any such Liabilities are not so paid or provided for, or if Buyer reasonably determines that failure to make any payments shall impair Buyer's use or enjoyment of the Acquired Assets, after Seller has been provided with at least 10 days notice of such Liability and an opportunity to terminate such Liability, Buyer may, at any time after the Closing Date, give Seller written notice of its intent to make all such payments directly (but shall have no obligation to do so) and set off and deduct the full amount of all such payments from any unpaid payments required to be paid to Porter under the Independent Contractor Agreement.

Section 5.7. Customer Relationships. After the Closing, Seller shall cooperate with Buyer to transition the customer relationships of seller existing prior to the Closing and relating to the Business to Buyer. Seller shall refer to Buyer all inquiries relating to the Business from existing or new customers. Seller shall not take any action that would tend to diminish the value of the Acquired Assets after the Closing.

Section 5.8. INTENTIONALLY OMITTED.

Section 5.9. INTENTIONALLY OMITTED.

Section 5.10. Allocation of Purchase Price for Tax Purposes.

- (a) Prior to the date or dates on which Buyer or Seller is required to file relevant information with the Internal Revenue Service, Buyer and Seller will agree upon the allocation among the Acquired Assets of the Purchase Price being paid by Buyer to Seller under this agreement which, to the extent applicable, will comply with Section 1060 of the Internal Revenue Code of 1986, as amended. On all Tax Returns reflecting the transactions which are the subject of this Agreement, Buyer and Seller will, to the extent permitted by law, allocate the Purchase Price to specific assets in accordance with the agreed upon allocations.
- (b) Notwithstanding Section 5.10(a), Buyer and Seller hereby agree to allocate  Purchase Price to the goodwill associated with the Acquired Assets.
- (c) Buyer and Seller will consult with one another in connection with the respective forms 8594 to be filed by them with the Internal Revenue Service in order that the information contained on such forms will be consistent.

Section 5.11. Employees. Seller shall remain responsible for all of Seller's Liabilities to the Business Employees arising prior to the Closing Date (including payment of any accrued commissions or incentives and accrued vacation or severance obligations).

Section 5.12. Risk of Loss. Seller assumes all risk of loss due to fire or other casualty until Closing, provided, that, with respect to any particular item of Inventory, Seller assumes all risk of loss due to fire or other casualty until such time as such Inventory is in the physical possession of Buyer.

Section 5.13. Release of Personal Guarantees of Seller. After the Closing Date, Buyer shall use commercially reasonable efforts to cause Seller to be released from any personal guarantees made by Seller in connection with the Assumed Liabilities.

**ARTICLE VI  
CONDITIONS TO CLOSING**

Section 6.1. Conditions to Obligations of Buyer. The obligation of Buyer to effect the transactions contemplated herein is subject to the satisfaction of the following conditions, unless waived by Buyer:

- (a) **Representations and Warranties.** The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects as of the Closing Date;
- (b) **Performance of Obligations by Seller.** Seller shall have performed all obligations required to be performed by them under this Agreement at or prior to the Closing Date;
- (c) **Bill of Sale.** Seller shall have executed and delivered the Bill of Sale to Buyer;
- (d) **Independent Contractor Agreement.** The Seller shall have delivered executed copies of the Independent Contractor Agreement; and
- (e) **Pay-off Letter.** The Seller shall have delivered the Bank Pay-Off Letter.

Section 6.2. Conditions to Obligation of Seller. The obligation of Seller to effect the transactions contemplated herein is subject to the satisfaction of the following conditions, unless waived by Seller:

- (a) **Representations and Warranties.** The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects as of the Closing Date;

- (b) Performance of Obligations by Buyer. Buyer shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

## ARTICLE VII INDEMNIFICATION

Section 7.1. Indemnification by Seller. Seller shall indemnify and hold Buyer and its shareholders, officers, directors and affiliates (herein "Buyer Indemnified Parties") harmless from and against any claims, assessments, losses, damages, liabilities, deficiencies, judgments, settlements, costs and expenses, including interest, penalties and reasonable attorneys' fees and expenses incurred in enforcing this indemnification or in any litigation between the Parties or with third parties (herein, collectively, "Damages") asserted against, resulting to, imposed upon, suffered or incurred by any Buyer Indemnified Party resulting from, arising out of, relating to, or caused by (a) the breach of Seller's or either Party's representations, warranties, obligations or covenants contained herein; (b) the operation of the Business or ownership of the Acquired Assets by Seller or its predecessors in interest on or prior to the Closing Date; and (c) any Liability or obligation of Seller (including any Liability to the Business Employees arising prior to the Closing Date), unless any such Damages shall be the result of the willful misconduct or gross negligence of the Buyer.

Section 7.2. Indemnification by Buyer. Buyer shall indemnify and hold Seller and its shareholders, officers, directors and affiliates (herein, collectively, "Seller Indemnified Parties") harmless from and against any Damages asserted against, resulting to, imposed upon, suffered or incurred by Seller Indemnified Parties resulting from arising out of, relating to, or caused by (a) the breach of any Buyer's obligations or covenants contained herein; or (b) the ownership of the Acquired Assets by Buyer after the Closing Date; unless any such Damages shall be the result of the willful misconduct or gross negligence of the Seller.

Section 7.3. Matters Involving Third Parties. Each indemnified party (herein "Indemnified Party") shall promptly notify the indemnifying party (herein "Indemnifying Party") of the assertion by any third party of any claim with respect to which the indemnification set forth in this Section 7.3 relates. The Indemnifying Party shall have the right, upon notice to the Indemnified Party within ten (10) business days after the receipt of any such notice, to undertake the defense of or, with the consent of the Indemnified Party (which consent shall not unreasonably be withheld), to settle or compromise such claim. The failure of the Indemnifying Party to give such notice and to undertake the defense of or to settle or compromise such a claim shall constitute a waiver of the Indemnifying Party's rights under this Section 7.3 and shall preclude the Indemnifying Party from disputing the manner in which the Indemnified Party may conduct the defense of such claim or the reasonableness of any amount paid by the Indemnified Party in satisfaction of such claim. The election by the Indemnifying Party, pursuant to this Section 7.3 to undertake the defense of a third-party claim shall not preclude the party against which such claim has been made also from participating or continuing to participate in such defense, so long as such party bears its own legal fees and expenses for so doing.

Section 7.4. Maximum Indemnification Obligation. Except in the event of fraud, willful misconduct, gross negligence or an intentional misrepresentation, the maximum indemnification obligation of any party hereunder shall be limited to the Purchase Price.

Section 7.5. Right to Set-off. Notwithstanding any provision hereof to the contrary, upon prompt notice to Seller and after Seller has had an opportunity to cure any deficiency, Buyer shall be entitled to set-off any amounts due to Buyer from Seller hereunder against any amount due from Buyer to Seller hereunder. Any set-off shall be applied against amounts payable to Seller, in chronological order, until the set-off is complete. Upon the occurrence of any event or existence of any condition which Buyer reasonably believes will result in a claim for indemnification under Article VII, Buyer may withhold from amounts otherwise due hereunder an amount equal to Buyer's reasonable estimate of the amount of such claim until such time as the actual amount of Buyer's indemnification claim, and right of set-off

hereunder, is determined.

## ARTICLE VIII MISCELLANEOUS

Section 8.1. Knowledge. "Knowledge" shall mean (a) an individual shall be deemed to have "Knowledge" of a particular fact or other matter if such individual is actually aware of such fact or other matter, or reasonable should be aware after conducting a reasonably comprehensive inquiry as to such fact or matter; and (b) a Person other than an individual shall be deemed to have "Knowledge" of a particular fact or other matter if any individual who is serving, who has at any time in the twelve (12) months prior to the Closing Date served, as an executive officer (or in any similar capacity) of such Person has, or at any time had Knowledge of such fact or other matter.

Section 8.2. Survival of Representations, Warranties, Indemnities and Covenants. The representations, warranties, indemnities, and covenants set forth in this Agreement shall survive this Agreement for a period of two years from the Closing. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, shall not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

Section 8.3. Notices. All notices, elections, requests, demands, and other communications required or permitted under this Agreement shall be in writing, and shall be deemed to have been delivered and received (a) when personally delivered, or (b) on the fifth (5th) business day after which sent by registered or certified mail, postage prepaid, return receipt requested, or (c) on the date on which transmitted by facsimile generating a receipt evidencing a successful transmission, or (d) on the next business day after the business day on which deposited with a regulated public carrier (e.g., Federal Express) for overnight delivery, freight prepaid, address to the party for whom intended at the address or facsimile number set forth below or such other address or facsimile number, notice of which is given in a manner permitted by this Section 8.3:

To Buyer:

Allen Bros. Wholesale Distribution, Inc.  
120 West Erie Avenue  
Philadelphia, PA 19140

With a copy to:

Eric Rayz, Esquire  
Kalikhman & Rayz, LLC  
1051 County Line Road, Suite "A"  
Huntingdon Valley, PA 19006

To Seller or Porter:

*TIM PORTER  
1301 CRAWFORD VILLAGE RD.  
LANCASTER, PA. 17538.*

With a copy to:

Section 8.4. Expenses. Each party hereto will bear its own costs and expenses (including fees and expenses of auditors, financial advisors, bankers, attorneys, brokers and other consultants and advisors) incurred in connection with this Agreement and the transactions contemplated hereby.

Section 8.5. Entire Agreement. This Agreement with the Consulting Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

Section 8.6. Arbitration. All disputes arising out of or relating to this Agreement which cannot be settled by the Parties shall be promptly, but not less than sixty (60) days after notice and failure to cure, submitted to binding arbitration in Pennsylvania in accordance with the rules and regulations of the American Arbitration Association. The arbitrators will be selected by the American Arbitration

Association. The decision of the arbitrators shall be final and binding upon Parties and judgment upon such decision may be entered in any court of competent jurisdiction. Discovery shall be allowed pursuant to the United States Federal Rules of Civil Procedure and as the arbitrators determine appropriate under the circumstances. Such arbitrators shall be required to apply the contractual provisions hereof in deciding any matter submitted to them and shall not have any authority, by reason of this Agreement or otherwise, to render a decision that is contrary to the mutual intent of the Parties as set forth in this Agreement. Each party will bear its own expenses with respect to such arbitration. The decision of the arbitration shall be final and binding upon the Parties and judgment upon such decision may be entered in any court of competent jurisdiction; provided that nothing herein shall preclude the Buyer from seeking, in any court of competent jurisdiction, damages, specific performance or other equitable remedies in the case of any breach or threatened breach by Seller of Article V hereof.

Section 8.7. Governing Law. This Agreement and any other agreements, instruments or other documents contemplated herein shall be interpreted, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, applied without giving effect to any conflicts of law principles.

Section 8.8. Jurisdiction; Service of Process. Each of the Parties hereto (a) consents to submit itself to the personal jurisdiction of any State court located in the Commonwealth of Pennsylvania in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a State court sitting in the Commonwealth of Pennsylvania.

Section 8.9. Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING RELATED TO OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT, NOTE OR INSTRUMENT CONTEMPLATED HEREIN.

Section 8.10. Assignment. Neither this Agreement nor any of the rights, interest, or obligations hereunder shall be assigned by any of the Parties hereto (whether by operation of law or otherwise) without the prior written consent of the other Parties, except in the event of the merger or acquisition of the entire business of a party. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and permitted assigns.

Section 8.11. Severability. In the event that any provision, covenant, section, subsection, paragraph, or any portion thereof, of this Agreement is held by any court of competent jurisdiction to be illegal, invalid or unenforceable, either in whole or in part, the legality, validity or enforceability of the remaining provisions, covenants, sections, subsections, paragraphs, or portions thereof shall not be affected thereby, and each such provision, covenant, section, subsection, paragraph, or any portion thereof shall remain valid and enforceable to the fullest extent permitted by applicable legal requirements.

Section 8.12. Amendment; Waiver. This Agreement may not be amended, or any provision waived, except by an instrument in writing signed on behalf of each of the Parties.

Section 8.13. Headings. All paragraphs headings herein are inserted for convenience of reference only and shall not modify or affect the construction or interpretation of any provision of this Agreement.

Section 8.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart.

Section 8.15. Interpretation. This Agreement shall be deemed as having been jointly drafted by the Parties and shall not be construed in favor or against either of the parties, but will be given its plain

meaning.

Section 8.16. Advice of Counsel. In entering into this Agreement, the parties represent that they relied on the legal advice of their respective counsel, who is a counsel of their own choice, and the terms of the Agreement have been read and explained to them by their attorneys.

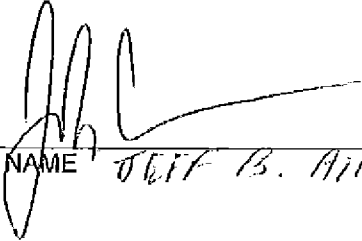
Section 8.17. Advice of Counsel. In entering into this Agreement, the parties represent that they relied on the legal advice of their respective counsel, who is a counsel of their own choice, and the terms of the Agreement have been read and explained to them by their attorneys.

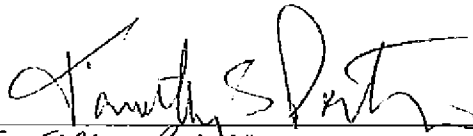
Section 8.18. Date of Execution. The Agreement shall be deemed executed and effective on the last date written below.

IN WITNESS WHEREOF, the Parties have signed or caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

For BUYER:

For SELLER:

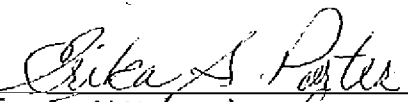
  
NAME JEFF B. ALLEN

  
NAME TIM PORTER

Date 12/3/12

Date 12/3/12

For SELLER:

  
NAME ERIKA S. PORTER

Date 12/3/12