

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM344408

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Release of Trademark Security Agreement (Reel: 3191/ Frame: 0210)		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
General Electric Capital Corporation		06/10/2015	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Tops Markets, LLC		
<b>Street Address:</b>	6363 Main Street		
<b>City:</b>	Williamsville		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	14221		
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: NEW YORK		
<b>PROPERTY NUMBERS Total: 23</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	2547294	BAKERY FRESH NOW THAT'S FRESH!	
<b>Registration Number:</b>	1693854	P&C	
<b>Registration Number:</b>	1529025	BIG BEAR PLUS	
<b>Registration Number:</b>	1523969	GIVE EM A BIG BEAR HUG	
<b>Registration Number:</b>	1518534	THAT'S MY BEAR	
<b>Registration Number:</b>	1217929	BIG BEAR	
<b>Registration Number:</b>	981376	BIG BEAR	
<b>Registration Number:</b>	2540369	GARDEN FRESH PRODUCE NOW THAT'S FRESH!	
<b>Registration Number:</b>	2588134	GLOUCESTER PIER	
<b>Registration Number:</b>	2522584	GOLD LABEL	
<b>Registration Number:</b>	739090	P & C	
<b>Registration Number:</b>	1577082	P&C	
<b>Registration Number:</b>	2021018	P&C FOODS	
<b>Registration Number:</b>	1283526	BETTY BROWN BAKERY	
<b>Registration Number:</b>	1282698	BETTY BROWN'S FINEST	
<b>Registration Number:</b>	820855	TOP CRISP	
<b>Registration Number:</b>	805341	B BUCKEYE STAMP 10	
<b>Registration Number:</b>	805340	BUCKEYE BIG TEN	
<b>Registration Number:</b>	842582	EXEL	
<b>TRADEMARK</b>			

OP \$590.00 2547294

Property Type	Number	Word Mark
Registration Number:	821802	EXEL
Registration Number:	1310512	THE PRICE CHAMPION
Serial Number:	76627013	PERFECT CHOICE
Serial Number:	78556566	PERFECT CHOICE

**CORRESPONDENCE DATA**

**Fax Number:**

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.*

**Email:** marina.kelly@thomsonreuters.com

**Correspondent Name:** Ken Tan, Legal Assistant

**Address Line 1:** 80 Pine Street

**Address Line 4:** New York, NEW YORK 10005

**NAME OF SUBMITTER:** Ken Tan, Legal Assistant

**SIGNATURE:** /Marina Kelly, Thomson Reuters/

**DATE SIGNED:** 06/12/2015

**Total Attachments: 50**

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### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies):**

General Electric Capital Corporation

- Individual(s)
- Partnership
- Corporation- State: Delaware
- Other \_\_\_\_\_
- Association
- Limited Partnership

Citizenship (see guidelines) USA

Additional names of conveying parties attached?  Yes  No

**3. Nature of conveyance/Execution Date(s) :**

Execution Date(s) June 10, 2015

- Assignment
- Security Agreement
- Other (Reel: 3191/ Frame: 0210)
- Merger
- Change of Name
- Release of Trademark Security Agreement

**2. Name and address of receiving party(ies)**

Additional names, addresses, or citizenship attached?  Yes  No

Name: Tops Markets, LLC

Street Address: 6363 Main Street

City: Williamsville

State: New York

Country: USA Zip: 14221

- Individual(s) Citizenship \_\_\_\_\_
- Association Citizenship \_\_\_\_\_
- Partnership Citizenship \_\_\_\_\_
- Limited Partnership Citizenship \_\_\_\_\_
- Corporation Citizenship \_\_\_\_\_
- Other Limited Liability Company Citizenship USA - New York

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)

**4. Application number(s) or registration number(s) and identification or description of the Trademark.**

A. Trademark Application No.(s) \_\_\_\_\_

See Schedule I

B. Trademark Registration No.(s) \_\_\_\_\_

See Schedule I

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

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

Name: Ken Tan, Legal Assistant

Internal Address: \_\_\_\_\_

Street Address: c/o Cahill Gordon & Reindel LLP  
80 Pine Street

City: New York

State: New York Zip: 10005

Phone Number: (212) 701-3804

Docket Number: 08061.0937

Email Address: KTan@cahill.com

**6. Total number of applications and registrations involved:**

23

**7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ \_\_\_\_\_**

- Authorized to be charged to deposit account
- Enclosed

**8. Payment Information:**

Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_

**9. Signature:**



Signature

Ken Tan

Name of Person Signing

6/11/2015

Date

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

50

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to: Mail Stop Assignment Recordation Branch, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

**NUNC PRO TUNC STATEMENT REGARDING RELEASE OF SECURITY INTEREST  
IN TRADEMARKS**

Reference is made to that certain order entered by the United States Bankruptcy Court for the District of Delaware (the "**Court**") on January 25, 2010 in the jointly administered bankruptcy case In re The Penn Traffic Company, et al (collectively, the "**Debtors**"), Case No. 09-14078 (the "**Order**"), a certified copy of which is attached hereto as Exhibit A, pursuant to which the Court, *inter alia*, approved the sale of certain of the Debtors' assets, including the trademarks set forth on Exhibit B hereto (the "**Trademarks**"), to Tops Markets, LLC (the "**Sale**").

Pursuant to Section 3 of the Order, as of the closing date of the Sale (the "**Closing Date**") all liens, claims, encumbrances and interests of any kind or nature whatsoever existing as to the Trademarks prior to the Closing Date were to have been released, discharged and terminated. To the extent they remained outstanding at the Closing Date (the "**Pre-Closing Interests**"), the Pre-Closing Interests includes security interests in and liens on the Trademarks granted to General Electric Capital Corporation on April 13, 2005 and recorded with Trademark Division of the United States Patent and Trademark Office on June 17, 2005 at Reel 3191 and Frame 0210, (the "**Specified Interests**".)

This statement is hereby being submitted to the United States Patent and Trademark Office as notice of the occurrence of the Closing Date and, thereupon, the release, discharge and termination of the Specified Interests. The undersigned authorizes and requests that the Commissioner for Trademarks and any other applicable government officer record this statement at the United States Patent and Trademark Office with respect to each of the Trademarks.

Dated: June 10, 2015

Dated: June 10, 2015

Tops Market, LLC


By:   
Name: FRANK CURCI  
Title: CHAIRMAN, PRESIDENT and CEO

EXHIBIT A

Order

See Attached.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re:**

**THE PENN TRAFFIC COMPANY, ET AL.<sup>1</sup>**

**Debtors.**

§ **Chapter 11**  
§  
§ **Case No. 09-14078 (PJW)**  
§  
§ **Jointly Administered**  
§  
§ **Re: D.I. 301**  
§

**ORDER APPROVING AGENCY AGREEMENT APPOINTING AGENT TO  
(A) SELL ALL OF THE DEBTORS' MERCHANDISE AND (B) CONDUCT  
GOING OUT OF BUSINESS SALES AT THE DEBTORS' STORES**

Upon the Motion<sup>2</sup> of the above-captioned debtors (the "Debtors") requesting entry of an order pursuant to section 105(a) and 363 of the Bankruptcy Code authorizing the Debtors to enter in an Agency Agreement Appointing Agent to (A) Sell All of the Debtors' Merchandise, and (B) Conduct Going Out of Business Sales at the Debtors' Stores, as more fully set forth in the Motion; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before the Court; and

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: The Penn Traffic Company (6800), Sunrise Properties, Inc. (4868), Pennway Express, Inc. (0863), Penny Curtiss Baking Company, Inc. (6750), Big M Supermarkets, Inc. (8022), Commander Foods Inc. (8023), P and C Food Markets Inc. of Vermont (5531), P.T. Development, LLC (8594), and P.T. Fayetteville/Utica, LLC (8582). The mailing address for all Debtors is: P.O. Box 4737, Syracuse, NY 13221-4737.

<sup>2</sup> All capitalized terms used and not defined herein have the meanings ascribed to them in the Motion or the Agency Agreement, as applicable.



the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FURTHER FOUND AND DETERMINED, AS FOLLOWS:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The notice provided of the Motion and of the hearing in connection thereto was adequate and sufficient under the circumstances, and any otherwise applicable requirement for notice is hereby waived and dispensed with.

D. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Agency Agreement between the Debtors and Tops Market, LLC or its designee (collectively, "Tops" or "Agent") in the form attached hereto as Exhibit 1 and incorporated herein (the "Agency Agreement").

E. Tops is acting in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of sections 363(m) and (n) and 364(e) of the Bankruptcy Code with respect to all of the assets and in connection with all of the transactions contemplated by the Agency Agreement.. The Agency Agreement was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or

fraud. Neither the Debtors nor Tops have engaged in any conduct that would prevent the application of sections 363(m) or 364(e) of the Bankruptcy Code or cause the application of or implicate section 363(n) of the Bankruptcy Code to the Agency Agreement or to the consummation of the transactions contemplated thereby. Tops is entitled to all the protections and immunities of sections 363(m) and 364(e) of the Bankruptcy Code.

F. The Store Closing Sales are in the best interest of the Debtors' estates and their creditors. Conduct of the Store Closing Sales at the closing Stores will provide an efficient means for the Debtors to dispose of the Merchandise at the closing Stores in accordance with the terms of the Agency Agreement.

G. The consideration provided by Tops pursuant to the Agency Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and under the laws of the United States, any state or territory, possession or the District of Columbia.

H. The Debtors have demonstrated good cause for the relief requested in the Motion and the entry of this Order on an expedited basis.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is GRANTED. All objections not expressly addressed herein are otherwise overruled.

2. The Debtors are authorized, pursuant to sections 105 and 363 of the Bankruptcy Code, to enter into the Agency Agreement by and between the Debtors and Tops, a copy of which is attached as Exhibit 1 to this Order.

3. Subject to the remainder of this Order, the Debtors are authorized, pursuant to sections 105 and 363 of the Bankruptcy Code, to conduct the Store Closing Sales at all of the

Debtors' Stores, pursuant to the terms of the Agency Agreement and the Sale Guidelines, which Sale Guidelines are hereby approved in the form and attached to the Agency Agreement as Exhibit 8.1, and this Order as Exhibit 2. The Debtors are further authorized, pursuant to the terms of the Agency Agreement, to make any and all payments required by the Agency Agreement as and when due thereunder without further order of this Court, and to sell the Merchandise, free and clear of any and all mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, liens, judgments, encumbrances or claims of any kind or nature (including, without limitation, any and all "claims" as defined in section 101(5) of the Bankruptcy Code), including, without limitation, labor, employment, collective bargaining agreements pension obligations, and liens and security interests of the Lenders, whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which the Chapter 11 Cases were commenced (collectively, the "Liens"), with such Liens, if any, to attach to the Proceeds and all other amounts payable to the Debtors under Agency Agreement, with the same validity, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

4. Subject to applicable state and local public health and safety laws ("Safety Laws"), and applicable tax, labor, employment, criminal, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, "General Laws"), the Debtors and Tops be, and they hereby are, authorized to take such actions necessary and appropriate to implement the Agency Agreement and to conduct the Store Closing Sales in accordance with the terms of the Agency Agreement without the necessity of a further order of this Court, including, but not limited to, advertising the Store Closing Sales through the posting of signs, including the use of exterior banners, use of sign walkers and street

signage, in accordance with the Agency Agreement and as otherwise provided in the Sale Guidelines.

5. All of the transactions contemplated by the Agency Agreement shall be protected by section 363(m) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal.

6. The provisions of this Order shall be self-executing notwithstanding any restrictions in the Agency Agreement on Tops' ability to conduct the Store Closing Sales in compliance with applicable laws or Closing Store leases. Unless otherwise ordered by the Court, all newspapers and other advertising media in which the Store Closing Sales may be advertised, and all landlords are directed to accept this Order as binding authority so as to authorize the Debtors and Tops to consummate the Agency Agreement and to conduct the Store Closing Sales at the closing Stores, including, without limitation, conducting and advertising of the Store Closing Sales in accordance with the Agency Agreement, the Sale Guidelines and this Order.

7. All utilities, landlords, creditors and all persons acting for or on their behalf (but not including Governmental Units as defined in Section 101(27) of the Bankruptcy Code) shall not interfere with or otherwise impede the conduct of the Store Closing Sales, institute any action against Debtors, Tops, or landlords in any court (other than in the Bankruptcy Court) or before any administrative body which in any way directly or indirectly interferes with or obstructs or otherwise impedes the conduct of the Store Closing Sales. This Court shall retain exclusive jurisdiction to resolve such disputes, and such parties or persons shall take no action against the Debtors, Tops, the landlords or the Store Closing Sales until this Court has resolved such disputes. This Court shall hear the request of such persons or parties with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

8. Notwithstanding any provision in any of the Debtors' Leases to the contrary, Tops and the Debtors are hereafter permitted to conduct the Store Closing Sales in accordance with the Agency Agreement and this Order, and to take all actions reasonably related thereto or arising in connection therewith, including, without limitation, advertising such sales as "store closing sales" or "everything must go" or similar theme in media advertisements, and on interior and exterior banners, sign walkers and other signage that Tops deems appropriate, without complying with any such restrictive Lease provision. The Debtors' lessors are hereafter enjoined from in any way interfering with or otherwise restricting the Debtors from conducting the Store Closing Sales and from seeking to recover damages for breach of any such restrictive provisions; provided, however, that the Debtors shall comply with all Safety Laws and General Laws in conducting the Store Closing Sales; provided, further, that nothing in this Order shall impact any objection that any of the Debtors' landlords may have to assumption, assignment or rejection of their respective lease or to any proposed cure amount or rejection damages claim in association with such assumption, assignment or rejection.

9. Except as may otherwise be specifically set forth in the Agency Agreement, the Debtors and/or Tops (as the case may be), are authorized and empowered to transfer the Merchandise among the closing Stores and supplement the Merchandise at the closing Stores with merchandise of like kind and quality.

10. Notwithstanding anything to the contrary in this Order or the Agency Agreement, the following provisions shall govern the sale of the Debtors' inventory of private label, trademarked Merchandise obtained from or through or under the authority of Topco Associates, LLC and/or under the authority of the Topco Holdings, Inc. (and, together with Topco Associates, LLC, "Topco") bylaws and related policies (i.e., Food Club, Top Crest, Top Care,

Paws Premium, Paws Professional, World Classics Trading Company, Dining In, Full Circle, ValuTime, Clear Value, and X-Brands (the "Private Labels") (the "Private Label Merchandise");

(i) The Agent shall not sell any Private Label Merchandise outside the Stores; provided, however, the Agent may sell any Private Label Merchandise at any retail store of a Topco member;

(ii) The Agent shall not use or attach Private Labels on any Additional Goods that are not Private Label Merchandise sold in the Stores or otherwise alter or modify the use or appearance of the Private Labels; and

(iii) The Private Label Merchandise shall be sold only at retail to consumers, and not in bulk to any reseller; provided, however, (x) the Agent may sell the Private Label Merchandise to any retail store of a Topco member and (y) the Agent may in the ordinary course of business transfer the Private Label Merchandise to C&S Wholesale Grocers, Inc. as part of any return/reclaim process.

11. Nothing in this Order shall be deemed to bar any Governmental Units from enforcing Safety Laws and General Laws in the applicable non-bankruptcy forum, subject to the Debtors' or Tops' right to assert that any such laws are not in fact Safety Laws or General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order or otherwise, provided that, the Governmental Unit shall provide the Debtors and Tops and any affected landlord with reasonable notice and opportunity to cure any such alleged violation absent extenuating circumstances and/or to oppose the relief sought by such Governmental Unit. The Debtors and/or Tops and any affected landlord do not waive the right to argue that the conduct was in compliance with this Order and/or any applicable law, or preempted by applicable law.

12. To the extent that the Store Closing Sales are subject to any federal, state or local statute or ordinance, or licensing requirement solely directed at regulating "store closing," "going out of business," liquidation, auction or similar sales ("Store Closing Sales"), including laws restricting safe, professional and non-deceptive, customary advertising, such as signs, banners, posting of signage, and use of sign walkers solely in connection with Store Closing Sales and

including ordinances establishing licensing or permitting requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply solely to Store Closing Sales (collectively, "GOB Laws"), the following provisions shall apply:

a) Provided that (i) the Store Closing Sales are conducted in accordance with the terms of this Order, the Sale Guidelines, and the Agency Agreement; and (ii) in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors and Tops shall be presumed not to be in violation of such GOB Laws and, subject to the remainder of this Order, are authorized to conduct the Store Closing Sales in accordance with the terms of this Order, the Sales Guidelines, and the Agency Agreement without further showing of compliance with such GOB Laws.

b) The Debtors shall serve copies of this Order within three (3) business days of entry of this Order via e-mail, facsimile or regular mail, on: (i) the State Attorney General's offices (upon (a) Chief or Director of the Consumer Protection Division or Bureau; and (b) Chief or Director of the Bankruptcy Division or Bureau) and State Consumer Protection Agency for each State where a closed Store is located; (ii) the local mayor or similar representative of each village or city official and the county or parish where a closed Store or distribution center is located, addressed to the attention of the municipal, city or county attorney (and, where appropriate to the consumer protection division of such office); (iii) the Office of the United States Trustee; (iv) the Internal Revenue Service; (v) counsel to the agent for Samsonite's prepetition secured credit facility; (vi) all parties known to be asserting a lien in the Assets; (vii) the Debtors'

landlords for the closed Stores; (viii) each of the utilities for the closed Stores; (ix) the Attorney General's offices and applicable taxing authorities for each state in which the Debtors' stores are located; and (x) the Rule 2002 service list.

c. If there is a dispute as to whether the authorization to conduct the Store Closing Sales in accordance with this Order, the Agency Agreement and the Sales Guidelines would violate a GOB Law (i.e., that the presumption in subparagraph (a) is not correct) (such dispute to be referred to herein as a "Reserved Dispute"), resolution of that Reserved Dispute will take place before this Court, as provided in this paragraph. Any time before the twentieth (20th) day following the service of this Order as provided for in subparagraph (b), any Governmental Unit may assert a Reserved Dispute by sending a notice explaining the nature of the dispute to counsel for the Debtors and Tops. If the Debtors, Tops and the Governmental Unit are unable to resolve the Reserved Dispute within ten (10) days of receipt of the notice, either party may file a motion with the Court requesting resolution of the dispute ("Dispute Resolution Motion"). Any such Dispute Resolution Motion shall also be served upon any affected landlord(s). Any issues relating to a Reserved Dispute shall not affect the finality of this Order or limit or interfere with the conduct of the Sale, prior to any ruling by this Court on said Reserved Dispute.

d. If such a Dispute Resolution Motion is timely filed, either party shall be able to assert any jurisdictional, procedural, or substantive



arguments it wishes with respect to whether the provisions of this Order and/or the conduct of the Store Closing Sales violate the GOB Law, or, if they do, whether such GOB Law is subject to preemption by the Bankruptcy Code. Nothing in this Order, including the initial presumption stated in subparagraph (a), shall constitute a ruling with respect to any issues to be raised in the Dispute Resolution Motion nor shall the presence of absence of any objection to this Order be taken as a waiver by any party of its rights to argue any issue related to the Reserved Dispute. Nothing in this Order shall be deemed to have made any rulings on any such issues and any determination with regard to such issues shall be made *de novo* without reliance on the presumption in this subparagraph.

13. If at any time a dispute arises between the Debtors or Tops and a Governmental Unit as to whether a particular law the Governmental Unit is enforcing is a Safety or General Law versus a GOB Law, then the Debtors or Tops may utilize the Reserved Dispute provisions of subparagraphs (c) and (d) by sending a notice to the Governmental Unit and proceeding in accordance with those paragraphs. Any determination with respect to whether a particular law is a GOB Law shall be made *de novo* in accordance with the definitions in this Order. Assertion of such a dispute does not stay the ability of the Governmental Unit to enforce its Safety and General Laws in accordance with the provisions of the Bankruptcy Code prior to entry of a further order by this Court. The time limits for asserting a Reserved Dispute, set out in paragraph 11(c), do not apply to an action brought by the Debtors or Tops under this paragraph.

14. Notwithstanding any other provision in this Order, to the extent that the Store Closing Sales are subject to any federal, state or local statute, ordinance, regulation, or

requirement specifically regulating the use of outdoor signs, banner advertising, and/or "sign walkers," if the Debtors or Tops are unable to resolve any disputes concerning the application of such laws to the Store Closing Sales consensually with the relevant Governmental Unit, any party may, at any time, request an immediate telephonic hearing with the Court to raise any issues with respect to the enforceability of the law. Such hearing will, to the extent practicable, be scheduled initially within two (2) business days of the request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or argument as necessary. In considering any issues asserted with respect to such law, the provisions of paragraph 11(d) shall be applied.

15. Other than as set forth herein, this Court shall retain exclusive jurisdiction with regard to all issues or disputes in connection with the Order and the relief provided for herein, the Agency Agreement, the Sale Guidelines, any side letter entered into by and between Tops and any landlord, all amendments or modifications to any of the foregoing, including, without limitation, to protect the Debtors, the landlords and/or Tops from interference with the Store Closing Sales, and to resolve any disputes related to the Store Closing Sales or arising under the Agency Agreement or the implementation thereof.

16. All state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms "as is" or "final sales". Tops shall accept return of any goods that contains a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund, provided that the consumer must return the merchandise within the time period proscribed by the Debtors' return policy that was in effect when the merchandise was purchased (except with respect to items purchased during the Store Closing Sales, in which case such items

must be returned prior to the termination of the sale, the consumer must provide a receipt, and the asserted defect must in fact be a "latent" defect).

17. The Debtors agree that all gift certificates issued by the Debtors prior to the Sale Commencement Date shall be honored (including, but not limited to, acceptance of gift certificates, granting of refunds for items purchased prior to the commencement of the Store Closing Sales all in accordance with the Agency Agreement).

18. The Debtors, Tops and each of their respective officers, employees and agents be, and they hereby are, authorized to execute such documents and to do such acts as are necessary or desirable to carry out the Store Closing Sales and effectuate the Agency Agreement and the related actions set forth therein.

19. Notwithstanding anything to the contrary in the Agency Agreement, this Order or any other document, Tops may assign the Agency Agreement and its rights under this Order to a sub-agent, and such sub-agent shall have all of the protections and rights of Tops under the Agency Agreement and this Order.

20. Upon the Payment Date (as defined in the Agency Agreement), Tops shall have a valid and perfected first priority interest in and lien upon (i) the Merchandise; (ii) Tops' commission regarding the sale or other disposition of Merchant Consignment goods; and (ii) the Proceeds, which lien shall secure all of the Debtors' obligations under the Agency Agreement; provided, however, the security interest granted to Tops hereunder shall remain junior to (a) an amount equal to the unpaid portion of the Purchase Price; (b) any amount owed by Tops to the Debtors for Expenses; and (c) the Recovery Amount. Upon entry of this Order, the security interest granted hereby shall be properly perfected without the need for further filings or further documentation. Without in any way diminishing the foregoing, the Debtors shall execute all

such documents and take all such other actions as are reasonably required to perfect and maintain such security interest as a valid and perfected first priority security interest under sections 363(b) and 364(d) of the Bankruptcy Code. The liens, claims and security interest and other protections granted to Tops hereunder shall continue (including in any successor cases) and shall maintain their priority as provided in this Order until all of the Debtors' obligations to Tops shall have been indefeasibly paid in full.

21. The granting of the security interests under this Order shall constitute a transfer of estates assets and shall be afforded all the protections of sections 363(n) and 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the transactions contemplated by the Agency Agreement pursuant to this Order shall not affect the validity of such transactions, unless such authorization and consummation are properly stayed pending appeal.

22. The provisions of this Order and the Agency Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of the Debtors, or which may be entered converting the Debtors' cases from chapter 11 to chapter 7, and the terms and provisions of the Agency Agreement as well as the rights and interests granted pursuant to this Order and the Agency Agreement shall continue in this or any superseding case and shall be binding upon the Debtors, Tops and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in these cases shall be and hereby is authorized, but not obligated, to continue to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Order and the Agency Agreement

and Tops and the trustee shall be and hereby are authorized, but not obligated, to perform under the Agency Agreement upon the appointment of a trustee without the need for further order of this Court for a period of ten (10) days, subject to further Court approval. In the event a chapter 7 trustee appointed in these cases moves for an order of this Court in connection with the continued operation of the business, such motion shall be heard on an expedited basis.

23. To the extent, if any, anything contained in this Order conflicts with a provision in the Agency Agreement or the Sale Guidelines, this Order shall govern and control. Other than as set forth herein, the Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the implementation of this Order; provided, however, that any side letter entered into by and between Tops and any landlord shall control with respect to the conduct of the Store Closing Sales as to those parties.

24. Tops is a party-in-interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Agency Agreement and the conduct of the Store Closing Sales.

25. Notwithstanding Bankruptcy Rules 6003, 6004(h) and 6006(d), sufficient cause, including a showing of immediate and irreparable harm to the Debtors, exists such that this Order shall be effective and enforceable immediately upon its entry. In the absence of any person or entity obtaining a stay of this Order pending appeal, the Debtors and Tops may perform under the Agency Agreement at any time, subject to the terms of the Agency Agreement, and Tops shall be afforded the protections of section 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the Agency Agreement if the Order or any authorization contained herein is reversed or modified on appeal.

26. The Court retains jurisdiction with respect to all matters arising from or related to

the implementation of this Order.

Dated: Jan. 25, 2010  
Wilmington, Delaware



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THE HONORABLE PETER J. WALSH  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

## AGENCY AGREEMENT

This Agency Agreement (the "Agreement") is made as of this \_\_\_ day of January, 2010, by and between Tops Markets, LLC, a New York limited liability company and/or its designee(s) (collectively "Tops" or the "Agent") and The Penn Traffic Company and its affiliated debtors and debtors in possession (collectively referred to as the "Debtors" or "Merchant").

### RECITALS

WHEREAS, on November 18, 2009 (the "Petition Date"), Merchant filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, Merchant is managing its affairs as a debtor and debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code in chapter 11 cases jointly administered under Case No. 09-14078 (collectively, the "Chapter 11 Case");

WHEREAS, Merchant desires that Agent act as Merchant's exclusive agent for the limited purpose of: selling, by conducting a "store closing" or similar themed sale (the "Sale"), all of the Merchandise (as hereinafter defined) located or to be located in those Merchant retail store locations identified in Exhibit 1A annexed hereto (each location is sometimes referred to herein as a "Store", and collectively all such locations are referred to as the "Stores"), subject to the terms and conditions set forth herein;

WHEREAS, Agent is willing to serve as Merchant's exclusive agent to conduct the Sale in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent and Merchant hereby agree as follows:

#### Section 1. Definitions and Exhibits

1.1 Defined Terms. Unless otherwise stated herein, all capitalized terms used herein shall have the meanings ascribed to them in this Agreement and in the Asset Purchase Agreement dated January 7, 2010 by and between Tops and the Debtors (the "APA"). The APA is expressly incorporated herein and if there is any inconsistency between this Agreement and the APA, the APA shall control, but in no event shall the APA expand the rights hereunder.

1.2 Currency. Unless otherwise specified, all references to monetary amounts refer to United States dollars.



Section 2. Appointment of Agent.

2.1 Merchant hereby appoints Agent, and Agent hereby agrees to serve, as Merchant's exclusive agent for the limited purpose of conducting the Sale in accordance with the terms and conditions of this Agreement. Merchant's and Agent's obligations hereunder are subject to the approval of the Bankruptcy Court and shall be of no force and effect in the event that the Approval Order (as defined in Section 2.4 below) is not entered.

2.2 Agent shall have no authority to enter into any contract, agreement or other arrangement or take any other action, by or on behalf of Merchant with respect to the Stores that would have the effect of creating any obligation or liability, present or contingent, on behalf of or for the account of Merchant without Merchant's prior written consent. During the Sale Term (as defined below), Agent shall be liable for all matters relating to the employees and operational matters at the Stores, except that Merchant shall remain liable for any matters relating to the employees and operational matters at the Stores that either (i) arose prior to the Sale Term or (ii) arise during the Sale Term that result from Merchant's and/or Merchant's employees gross negligence or willful misconduct or as set forth in Section 4.1(p) below.

2.3 Subject to Section 9.1 below, during the Sale Term, Agent shall have the right, at its discretion, to direct and manage the workforce of the Stores, however, if Agent decides it no longer wants the services of a particular employee or group of employees working at a Store, it shall be Merchant's decision whether to terminate the employment of such employees or transfer such employees to work on matters outside of this Agreement (and the cost of such employees will no longer be an Expense (as defined below) to Agent under this Agreement).

2.4 In the event that Tops subsequently wishes to conduct a Sale of Merchandise located at a store not identified on Exhibit 1A after the date of the Bankruptcy Court Sale Order (the "Additional Store Closing Locations"), Exhibit 1A shall be amended at such time to include the Additional Store Closing Locations, such Additional Store Closing Locations shall thereafter be considered "Stores" hereunder and Agent shall sell the Merchandise and, at Tops' election, owned FF&E located at the Additional Store Closing Locations pursuant to the terms of this Agreement and any other agreements agreed by Merchant and Agent.

2.5 Merchant shall file an expedited motion with the Bankruptcy Court for entry of an order approving this Agreement and authorizing Merchant and Agent to conduct the Sale in accordance with the terms hereof (the "Approval Order"). The Approval Order shall provide, in a form reasonably satisfactory to the Merchant and Agent among other things, that:

(a) the terms of this Agreement (and each of the transactions contemplated hereby) are approved;

(b) Merchant and Agent shall be authorized to continue to take any and all actions as may be necessary or desirable to implement this Agreement and each of the transactions contemplated hereby;

(c) Agent shall be entitled to sell all Merchandise hereunder free and clear of all liens, claims and encumbrances thereon (collectively, "Liens"), with any presently existing Liens encumbering all or any portion of the Merchandise or the Proceeds attaching only to the amounts to be received by Merchant under this Agreement;

(d) Agent shall have the right to use the Stores and all related store services, furniture, fixtures, equipment and other assets of Merchant as designated hereunder for the purpose of conducting the Sale, free of any interference from any entity or person;

(e) Agent, as agent for Merchant, is authorized to conduct, advertise, post signs and otherwise promote the Sale as a "store closing", "sale on everything", "everything must go", or similar themed sale (including, without limitation, by means of media advertising, A-frame, interior and exterior banners and similar signage and use of sign walkers), without further consent of any person (other than Merchant as provided for herein), in accordance with the terms and conditions of this Agreement and the Sale Guidelines (as the same may be modified and approved by the Bankruptcy Court), and without further compliance with applicable federal, state or local laws governing, *inter alia*, the conduct of store closing sales (the "GOB Laws"), other than those designed to protect public health and safety;

(f) Agent shall be granted a limited license and otherwise have the right to use until the Termination Date all intellectual property and intellectual property licenses of the Debtors, including the trade names and logos relating to and used in connection with the operation of the Stores, solely for the purpose of the Sale in accordance with the terms of the Agreement and shall have access to Merchant's current newspaper (ROP) rates and third party media placement services, if any;

(g) each and every federal, state, or local agency, department, or governmental authority with regulatory authority over the Sale and all newspapers and other advertising media in which the Sale is advertised shall be directed to accept the Approval Order as binding and to allow Merchant and Agent to consummate the transactions provided for in this Agreement, including (without limitation) the conducting and advertising of the Sale in the manner contemplated by this Agreement, and no further approval, license, or permit of any governmental authority shall be required;

(h) all utilities, landlords, creditors and all persons acting for or on their behalf shall not interfere with or otherwise impede the conduct of the Sale, institute any action in any court (other than in the Bankruptcy Court) or before any administrative body which in any way directly or indirectly interferes with or obstructs or impedes the conduct of the Sale;

(i) in the Sale, Agent shall be permitted to include the Additional Goods in accordance with the terms and provisions of this Agreement;

(j) the Bankruptcy Court shall retain jurisdiction over the parties to enforce this Agreement;

(k) Agent shall not be liable for any claims against the Merchant other than as expressly provided for in this Agreement, and Agent shall have no successorship liabilities whatsoever; and

(l) Any amounts owed by Merchant to Agent under this Agreement shall be granted the status of superpriority claims in Merchant's Chapter 11 Case pursuant to Bankruptcy Code section 364(a) and Agent shall have a valid, duly perfected first priority lien and security interest in the Merchandise and Proceeds.

Section 3. Payments to Agent. Subject to entry of the Approval Order, as its compensation for services rendered to Merchant, Agent shall be entitled to all Proceeds of the Sale after payment of the Expenses of the Sale and all other amounts payable to Merchant from Proceeds thereof or otherwise payable to Merchant hereunder.

Section 4. Expenses of the Sale

4.1 Expenses. Agent shall be responsible for all Expenses incurred in conducting the Sale during the Sale Term, which Expenses shall be paid by Agent in accordance with Section 4.2 below. As used herein, "Expenses" shall mean all Store-level operating expenses of the Sale which arise during the Sale Term and are set forth in the Budget (as defined below in Section 4.3) and including the following:

- (a) All Expenses for the Sale Term so that Merchant shall be responsible for and pay all Expenses prior to the Sale Term and Agent shall be responsible for and pay all Expenses during the Term and incurred or committed to during the Term;
- (b) payroll and commissions, if applicable, for all Store-level Store Employees used in conducting the Sale as well as payroll for any of Merchant's former employees or temporary labor retained by Agent for the Sale as independent contractors;
- (c) any amounts payable by Merchant for benefits for Store Employees (including FICA, unemployment taxes, workers' compensation and health care insurance benefits, but excluding Excluded Benefits);
- (d) Retention Bonuses for Store Employees, if any, as provided for in Section 9.4 below;
- (e) on-site supervision of the Stores, including base fees and bonuses of Agent's field personnel, actual costs of temporary employees retained by Agent through third-party agencies during the Sale Term, travel to and from the Stores and incidental out-of-pocket and commercially reasonable travel expenses relating thereto (including reasonable and documented corporate travel to monitor and manage the Sale, including fees and

expenses incurred for corporate personnel to prepare for the start of the Sale from one week prior to the Sale Commencement Date to the Sale Commencement Date);

- (f) advertising, including mail and email to Merchant's customer list, and signage expenses, including costs of interior and exterior banners, and signwalkers;
- (g) the costs and expenses of obtaining additional supplies as may be required and requested by Agent in the conduct of the Sale;
- (h) postage/overnight delivery/courier charges;
- (i) credit card and bank card fees, Telecheck, chargebacks and discounts, bad debt expense, and any other bank charges relating to Stores;
- (j) costs of moving, transferring, or consolidating Merchandise between the Stores;
- (k) armored car service, security personnel and monthly alarm services;
- (l) Cost of Agent's insurance required hereunder;
- (m) trash removal, salting, snow removal and ordinary course third party cleanings;
- (n) cost of acquiring the Additional Goods;
- (o) store cash theft and other store cash shortfalls in the registers; and
- (p) With respect to all Merchant employees providing services under this Agreement, Merchant shall comply with the requirements of the Worker Adjustment and Retraining Notification Act (the "WARN Act"), the New York State Worker Adjustment and Retraining Notification Act (the "NY WARN Act") and comparable laws of each other applicable jurisdiction (collectively with the WARN Act and the NY WARN Act, "Applicable WARN Acts") and Merchant shall be responsible for any liabilities or obligations to employees of Merchant and its affiliates thereunder. Notwithstanding the foregoing, Agent shall indemnify and hold Merchant harmless against all liabilities and obligations under Applicable WARN Acts to the extent arising from actions taken (or failures to act) during the Sale Term after the Closing; *provided*, that any such action (or failure to act) by Merchant was based on instructions from Agent; and *provided, further*, that Agent shall have no responsibility for any such liabilities or obligations to the extent arising from or related to any employment loss

prior to the Closing, any actions taken by Merchant prior to Closing, or any failure by Merchant to provide required notices or take any other required action prior to Closing.

“Expenses” for this Agreement shall not include: (i) Central Service Expenses (but, for the avoidance of doubt, certain of such Central Service Expenses may be provided for pursuant to the Transition Services Agreement dated as of the date hereof between the Debtors and Tops (the “TSA”)); (ii) Excluded Benefits; (iii) any Occupancy Expenses in excess of the amounts set forth in the Budget (but subject to reconciliation pursuant to Section 8.7 hereof); and (iv) any costs, expenses or liabilities arising from any distribution center (but, for the avoidance of doubt, may be provided for pursuant to the TSA).

As used herein, the following terms have the following respective meanings:

“Central Services Expenses” means costs and expenses for Merchant’s central administrative services necessary for the Sale, including, but not limited to, MIS services, payroll processing, cash reconciliation, inventory processing and handling, data processing and reporting.

“Excluded Benefits” means all wages and benefits arising, accruing or otherwise attributable to the period prior to the Sale Term, including, without limitation, contributions to defined benefit and defined contribution plans (subject to Section 2.1 and 5.5 of the APA), as well as payments made at separation of employment for accrued, but unused vacation days or vacation pay, sick days or sick leave or any other form of paid time off, except to the extent that such pay is for additional unused paid time off that accrued during the Sale Term (which amount shall constitute Expenses). Excluded Benefits shall also not include pay for any vacation, sick or other paid time off taken during the Sale Term (which amount shall also constitute Expenses). Excluded Benefits also includes termination or severance pay, except to the extent additional pay is accrued during the Term.

“Occupancy Expenses” means rent, CAM, real estate and use taxes, HVAC, utilities, base telephone charges and all other categories of expenses at the Stores as set forth in the Budget.

“Third party” means, with reference to any Expenses to be paid to a “third party”, a party that is not affiliated with or related to Merchant.

4.2 Payment of Expenses. Effective from and after entry of the Approval Order, on the Sale Commencement Date, Agent shall create a operating bank account accessible by Merchant or pay Merchant, to allow Merchant to pay expenses in the ordinary course of business, and such account to be funded with a minimum of 2 weeks of Expenses pursuant to the Budget (as defined below). In addition, such account should be replenished such that Merchant has sufficient funds available to make disbursements in ordinary course of business. Agent shall be responsible for the payment of all Expenses whether or not there are sufficient Proceeds collected to pay such Expenses. All Expenses incurred during each week of the Sale (i.e.,

Sunday through Saturday) shall be paid by Agent to or on behalf of Merchant, or paid by Merchant and thereafter reimbursed by Agent as provided for herein, immediately following the weekly Sale reconciliation by Merchant and Agent pursuant to Section 4.5, provided, however, in the event that the actual amount of an Expense is unavailable on the date of the reconciliation (such as payroll), Merchant and Agent shall agree to an estimate of such amount, which amount will be reconciled once the actual amount of such Expense becomes available. Agent and/or Merchant may review or audit the Expenses at any time.

4.3 Budget. Attached as Schedule 4.3 is a budget (the "Initial Budget") with respect to Expenses to be provided during the first 30 days of the Sale Term. Subject to the terms of this Section 4.3, the Expenses shall be paid during such 30-day period in accordance with the budgeted costs set forth in the Initial Budget. For periods following the first 30-day Initial Budget period during the Term, budgets (each, a "Bi-weekly Budget" and, together with the Initial Budget, each, a "Budget") shall be prepared for two-week periods (the "Bi-weekly Budget Period") as follows: Not later than one week prior to the beginning of a Bi-weekly Budget Period, Merchant will provide the Agent with a proposed Bi-weekly Budget which shall set forth the Expenses reasonably anticipated to be incurred in connection with this Agreement to be performed during the applicable Bi-weekly Budget Period as so described by Merchant. Not later than three days following Tops' receipt of such proposed Bi-weekly Budget, the Agent shall provide Merchant with any comments on such proposed Bi-weekly Budget and the parties will cooperate in good faith to agree on a definitive Bi-weekly Budget; if the parties cannot agree on a definitive Bi-weekly Budget prior to the beginning of the applicable Bi-weekly Budget Period, the proposed Bi-weekly Budget including the Agent's comments thereon shall control. The amounts set forth in such agreed-upon or otherwise controlling Budget is referred to herein as the "Budgeted Amount." Each Bi-weekly Budget shall be prepared consistent with the Initial Budget and substantially in the form thereof, including the general ledger items set forth therein. Merchant shall not incur any out of the ordinary course of business costs in excess of the Budgeted Amount ("Extraordinary Costs") during the period covered by the applicable Budget (the "Budget Period") without the prior written consent of the Agent; however, Merchant may incur costs in excess of the Budgeted Amount to the extent such costs relates to a general ledger item set forth in the applicable Budget and are incurred in the ordinary course of business ("Ordinary Costs"). With the consent of Merchant, which consent shall not be unreasonably withheld or delayed, Agent may modify any Budget to the extent necessary to reflect any anticipated increase or decrease in the Expenses during the applicable Budget Period, taking into account changes in the Expenses, the employees of Merchant and other appropriate matters.

4.4 Payments by Agent. The Agent shall pay to Merchant, on or prior to the first day of the applicable Budget Period, the Budgeted Amount related to such Budget Period. Within 10 days from the end of each monthly fiscal period of Merchant during the Sale Term, Merchant will provide an accounting (an "Accounting") to Tops with respect to the monthly fiscal period then ended, which Accounting shall include a summary description of the Expenses and the actual amount of the costs incurred by Merchant in connection with the Expenses incurred during the applicable Budget Period (the "Actual Costs"); provided, that "Actual Costs" shall include only (i) the Budgeted Amount, to the extent actually incurred by Merchant during the applicable Budget Period in connection with the Expenses during such Budget Period, (ii) Extraordinary

Costs, but only to the extent incurred with the prior written consent of the Company and (iii) Ordinary Costs. Within one week of the Merchant's receipt of such Accounting, (x) if the aggregate amount of Actual Costs exceeds the aggregate amount of the Budgeted Amount, the Agent shall pay to Merchant the amount of such excess, and (y) if the aggregate amount of the Budgeted Amount exceeds the aggregate amount of Actual Costs, Merchant shall pay to the Agent the amount of such excess (or, at the Agent's option, the Agent may deduct the amount of such excess from the amount of any subsequent amount owed by the Agent hereunder). If there is a dispute between the Agent and Merchant regarding the amount of any costs incurred hereunder in connection with the Expenses hereunder, Merchant shall promptly furnish to the Agent reasonable documentation to substantiate the costs incurred including, but not limited to, listings of the dates, times and amounts of the Expenses in question. Upon delivery of such documentation, the Agent and Merchant shall cooperate and use their best efforts to resolve such dispute or seek resolution from the Bankruptcy Court.

#### 4.5 Reconciliation.

(a) Weekly Reconciliation. On each Wednesday during the Sale Term, commencing on the second Wednesday after the Sale Commencement Date, Agent and Merchant shall cooperate to reconcile Expenses and such other Sale-related items as either party shall reasonably request, in each case for the prior week or partial week (i.e. Sunday through Saturday), all pursuant to procedures agreed upon by Merchant and Agent (the "Weekly Sale Reconciliation").

(b) Final Reconciliation. (i) Within thirty (30) days after the Sale Termination Date, Agent and Merchant, Merchant's lenders (to the extent they are not paid in full by the 30<sup>th</sup> day after the Sale Termination Date), and the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case shall jointly prepare a final reconciliation of the Sale including, without limitation, a summary of Proceeds, taxes, Expenses, and any other accountings required hereunder (the "Final Reconciliation"). Within five (5) days of completion of the Final Reconciliation, any undisputed and unpaid Expenses shall be paid by Agent. In the absence of an order of the Bankruptcy Court, no such disputed amount(s) shall be paid until the dispute has been resolved by agreement of the parties or as determined by the Bankruptcy Court. During the Sale Term, and until all of Agent's obligations under this Agreement have been satisfied, Merchant and Agent shall have reasonable access to Merchant's and Agent's records with respect to Proceeds, taxes, Expenses and other Sale-related items to review and audit such records.

#### Section 5. Merchandise.

5.1 Merchandise Subject to this Agreement. For purposes of this Agreement, "Merchandise" shall mean all finished goods inventory that is owned by Merchant and located at the Stores as of the Sale Commencement Date, including Out of Season Merchandise. Notwithstanding the foregoing, "Merchandise" shall not include: (1) goods which belong to sublessees, licensees or concessionaires of Merchant; (2) goods held by Merchant on memo, on consignment, or as bailee; (3) Merchant Consignment Goods; (4) inventory that is designated by

Agent to be returned to the vendor and which is accepted by vendor; (5) Spoiled/Unsaleable Merchandise; and (6) Defective Merchandise.

As used herein, the following terms have the respective meanings set forth below:

(i) "Spoiled/Unsaleable Merchandise" means spoiled perishables and produce, inventory that would not be bought by a consumer in the ordinary course, such as opened bottles or cans, near dated or expired or out-of-date non-perishable goods, or out-of-date groceries, meat, eggs, milk, yogurt, bread, baked goods, deli, ready to serve foods, defrosted frozen goods and produce.

(ii) "Defective Merchandise" means any item of merchandise defective or otherwise not salable in the ordinary course because it is dented, worn, scratched, broken, faded, torn, mismatched or affected by other similar defects rendering it not first quality.

(iii) "Out of Season Merchandise" means Merchandise not usually sold for full value during the Sale Term or Merchandise that is intended to be used during, or that is designed for, any season and/or holiday that does not occur during the Sale Term, whether or not such Merchandise previously had been offered for sale.

5.2 Valuation. For purposes of this Agreement, "Cost Value" with respect to each item of Merchandise shall be equal to Merchant's cost for the Merchandise as demonstrated by the calculations by inventory department stated on Exhibit 5.2 hereto and based upon the results of Gross Rings, provided that, Out of Season Merchandise shall be valued at 50% of the Cost Value for such Merchandise, provided further, that the reduction of Cost Value for the Out of Season Merchandise shall not be taken into account for purposes of the Merchandise Threshold and Merchandise Ceiling. Exhibit 5.2 shall be prepared by Debtors and all such records and reports shall be made available to Agent and Merchant during regular business hours upon reasonable notice. Merchant makes no representations or warranties with respect to Cost Value, Gross Rings or Retail Price, and this Section 5.2 and Section 5.3 shall have no effect on the Purchase Price or give rise to any other cost to the Merchant.

5.3 Gross Rings. During the Sale Term, Agent and Merchant shall keep a strict count of gross register receipts and reports ("Gross Rings") to determine, among other things, the actual Cost Value of Merchandise sold. Register receipts shall show for each item sold the actual price at which Merchant's customer buys such item ("Retail Price") and the markdown or discount, if any, specifically granted by Agent in connection with such Sale. All such records and reports shall be made available to Agent and Merchant during regular business hours upon reasonable notice.

## Section 6. Sale Term.

6.1 Term. Subject to the Approval Order, the Sale shall commence at the Stores on the date of Closing (the "Sale Commencement Date"). The Agent shall complete the Sale, and



shall vacate each Store's premises 90 days from the date of Closing (the "Sale Termination Date"). The period from the Sale Commencement Date to the Sale Termination Date shall be referred to herein as the "Sale Term." The Sale Termination Date may be (a) extended by mutual written agreement of Agent and Merchant; or (b) accelerated by Agent, in which case Agent shall provide Merchant with not less than three (3) days' advance written notice of any such planned accelerated Sale Termination Date.

6.2 Vacating the Closing Stores. Subject to the terms of Section 6.1 hereof, Agent shall provide Merchant with not less than three (3) days' advance written notice of its intention to vacate any Store (as to each such Store, as applicable, the "Vacate Date"). On the Vacate Date, Agent shall vacate in favor of Merchant or its representatives or assignee, remove all Remaining Merchandise and leave the applicable Stores in "broom clean" condition (ordinary wear and tear excepted). Agent's obligations to pay all Expenses, including Occupancy Expenses, for each Store subject to Vacate Notice shall continue until the applicable Vacate Date for such Store. Agent shall be responsible for all Occupancy Expenses (irrespective of any per diem cap on Occupancy Expenses) for a Store for which Merchant is or becomes obligated resulting from Agent's occupancy of such Store or failure to vacate such Store in a timely manner.

#### Section 7. Sale Proceeds.

7.1 Proceeds. For purposes of this Agreement, "Proceeds" shall mean the aggregate of (a) the total amount (in dollars) received on all sales of Merchandise and Additional Goods made under this Agreement, exclusive of Sales Taxes; (b) all proceeds of Merchant's insurance for loss or damage to Merchandise and Additional Goods or loss of cash arising from events occurring during the Sale Term; (c) the proceeds from "Manufacturers' Coupons", which, for purposes hereof shall mean Manufacturers' coupons and rebates and vendor product allowances relating to the Merchandise and Additional Goods; and (d) proceeds of government subsidiary programs, WIC, food stamps and similar currencies relating to the Merchandise and Additional Goods.

#### 7.2 Control of Proceeds.

(i) Agent may establish its own accounts, dedicated solely for the deposit of the Proceeds and the disbursement of amounts payable to Agent hereunder (the "Agency Accounts") and Merchant shall promptly upon Agent's request execute and deliver all necessary documents to open and maintain the Agency Accounts. Agent shall exercise sole signatory authority and control with respect to the Agency Accounts; provided, however, upon request, Agent shall deliver to Merchant copies of all bank statements and other information relating to such accounts. Merchant shall not be responsible for and Agent shall pay as an Expense hereunder, all bank fee and charges, including wire transfer charges, related to the Agency Accounts, whether received during or after the Sale Term. Upon Agent's designation of the Agency Accounts, all Proceeds of the Sale (including credit card proceeds) shall be deposited into the Agency Accounts.

(ii) During the period between the Sale Commencement Date and the date Agent designates the Agency Accounts, if any ("Merchant Account Usage Period"), all Proceeds of the Sale (including credit card proceeds), shall be collected by Agent and deposited on a daily basis into depository accounts designated by Merchant for the Stores, which accounts shall be designated solely for the deposit of Proceeds of the Sale (including credit card proceeds), and the disbursement of amounts payable by Agent hereunder (the "Designated Deposit Accounts"). Commencing on the Sale Commencement Date, and on each business day thereafter, Merchant shall promptly pay to Agent by wire funds transfer all collected funds constituting Proceeds deposited into the Designated Deposit Accounts (but not any other funds, including, without limitation, any proceeds of Merchant's inventory sold prior to the Sale Commencement Date).

7.3 Credit Card Proceeds. Agent shall have the right to use Merchant's credit card facilities (including Merchant's credit card terminals and processor(s), credit card processor coding, Merchant identification number(s) and existing bank accounts) for credit card Proceeds relating solely to the Sale. In the event that Agent elects to use Merchant's credit card facilities, Merchant shall process credit card transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. Agent shall not accept Merchant's proprietary card, if any. Without limiting the foregoing, Merchant shall cooperate with Agent to down-load data from all credit card terminals each day during the Sale Term and to effect settlement with Merchant's credit card processor(s) and shall take such other actions necessary to process credit card transactions on behalf of Agent under Merchant's identification number(s). At Agent's request following the Sale Commencement Date, Merchant shall cooperate with Agent to establish Merchant identification numbers under Agent's name to enable Agent to process all such credit card Proceeds for Agent's account. Merchant shall not be responsible for and Agent shall pay as an Expense hereunder, all credit card fees, charges and chargebacks related to the Sale, whether received during or after the Sale Term.

## Section 8. Conduct of the Sale.

8.1 Rights of Agent. Subject to the Approval Order, Agent shall be permitted to conduct a "store closing," "sale on everything," "everything must go," or similar themed sale at the Stores throughout the Sale Term in a manner consistent with the Sale guidelines ("Sale Guidelines") annexed hereto as Exhibit 8.1 applicable to the Stores. In addition to any other rights granted to Agent hereunder in conducting the Sale, but subject to the Sale Guidelines and the Approval Order, the Agent, in the exercise of its reasonable discretion, shall have the right:

(a) to establish Sale prices and Store hours which are consistent with the terms of applicable leases and local laws or regulations, including without limitation Sunday closing laws;

(b) except as otherwise expressly included as an Expense, to use without charge during the Sale Term all furniture, fixtures and equipment in the Stores (the "FF&E"), Store-level customer email lists (provided, however, such access shall be provided solely through Merchant's outside advertisement email services, and the Agent shall not have direct access to any personally identifiable information contained therein), computer hardware and software,

existing supplies located at the Stores, intangible assets (including Merchant's name, logo and tax identification numbers), Store keys, case keys, security codes and safe and lock combinations required to gain access to and operate the Stores, and any other assets of Merchant located at the Stores (whether owned, leased, or licensed) consistent with the Approval Order;

(c) to use services to be rendered by Debtors pursuant to the TSA dated as of the date hereof and incorporated herein by reference;

(d) to establish and implement advertising, signage and promotion programs consistent with the "store closing" or similar theme (including, without limitation, by means of media advertising, sign-walkers, A-frame signs, and interior and exterior signs and banners) in a manner consistent with the Sale Guidelines and applicable law;

(e) to transfer Merchandise between and among the Stores;

(f) to supplement the Merchandise with Additional Goods; and

(g) upon entry of the Approval Order, Agent shall be authorized to conduct the Sale in accordance with the provisions of the Sale Guidelines and Approval Order.

8.2 Terms of Sales to Customers. Subject to Agent's compliance with applicable law, all sales of Merchandise will be "final sales" and "as is" and all advertisements and sales receipts will reflect the same. Agent shall not warrant the Merchandise in any manner, but will, to the extent legally permissible, pass on all manufacturers' warranties to customers. All sales will be made only for cash, government subsidiary programs, WIC, food stamps and similar currencies, nationally recognized bank credit cards, and, in Agent's discretion, personal checks, provided, however, if Agent determines to accept personal checks, Agent shall bear the risk of loss therefor. Agent shall honor Manufacturers' Coupons; provided, however, that the amount of such reimbursement shall be included in the calculation of Proceeds and Merchant shall reimburse Agent dollar for dollar for such amounts. Merchant and Agent shall continue Merchant's ordinary course practices with respect to appropriate documentation incident to submission of the Manufacturers' Coupons to the respective manufacturer and/or vendor, and Merchant shall retain all monies received from the manufacturers or vendors on account of such Manufacturers' Coupons. In addition, and in accordance with applicable law, Agent shall accept food stamps; provided, however, that as part of the Weekly Sale Reconciliation pursuant to Section 8.7 hereof, the amount of food stamps shall be included in the calculation of Proceeds.

### 8.3 Sales Taxes.

(a) During the Sale Term, all sales, excise, gross receipts and other taxes attributable to sales of Merchandise and Additional Goods, as indicated on Merchant's point of sale equipment (other than taxes on income) payable to any taxing authority having jurisdiction (collectively, "Sales Taxes") shall be added to the sales price of Merchandise and Additional Goods and collected by Agent, on Merchant's behalf, at the time of sale. All Sales Taxes shall be deposited into a segregated account designated by Merchant and Agent solely for the deposit

of such Sales Taxes (the "Sales Taxes Account"). To the extent provided for in the TSA, Merchant shall prepare and file all applicable reports and documents required by the applicable taxing authorities, and Merchant shall promptly pay all Sales Taxes from the Sales Taxes Account. Merchant will be given access to the computation of gross receipts for verification of all such tax collections. Provided that Agent performs its responsibilities in accordance with this Section 8.3, Merchant shall indemnify and hold harmless Agent from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which Agent sustains or incurs as a result or consequence of the failure by Merchant to promptly pay such taxes to the proper taxing authorities and/or the failure by Merchant to promptly file with such taxing authorities all reports and other documents required, by applicable law, to be filed with or delivered to such taxing authorities. If Agent fails to perform its responsibilities in accordance with this Section 8.3, and provided Merchant complies with its obligations hereunder, Agent shall indemnify and hold harmless Merchant from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which Merchant sustains or incurs as a result or consequence of the failure by Agent to collect Sales Taxes and/or the failure by Agent to promptly deliver any and all reports and other documents required to enable Merchant to file any requisite returns with such taxing authorities.

(b) Without limiting the generality of Section 8.3(a) hereof, it is hereby agreed that, as Agent is conducting the Sale solely as agent for Merchant, various payments that this Agreement contemplates that one party may make to the other party do not represent the sale of tangible personal property and, accordingly, are not subject to Sales Taxes.

8.4 Supplies. Agent shall have the right to use, without charge, all existing supplies located at the Stores, including, without limitation, boxes, bags, paper, twine and similar sales materials (collectively, "Supplies"). In the event that additional Supplies are required in any of the Stores during the Sale, Merchant agrees to promptly provide the same to Agent, if available, for which Agent shall reimburse Merchant at its cost therefor.

8.5 Returns of Merchandise. During the Sale Term the Agent shall accept returns of goods in the ordinary course of business and Merchant shall not have any liability related to returned merchandise.

8.6 Gift Certificates. During the Sale Term, Agent shall accept Merchant's gift certificates, gift cards and Store credits which have been issued by Merchant prior to the Sale Commencement Date (collectively, "Gift Cards"). Merchant shall reimburse Agent in cash for such amounts on a weekly basis during the weekly sale reconciliation. Agent shall not be required to accept any rain checks or other promotional items providing the customer with an additional discount on Merchandise. Agent shall have no obligation to accept "Wild Cards." During the Sale Term, Agent shall not sell any Merchant Gift Cards or gift certificates. Merchant shall not have any liability related to Gift Card except for Gift Cards sold prior to the Sale Commencement Date.

8.7 [Intentionally Omitted]

8.8 Force Majeure. If any casualty, act of terrorism, act of God, or union prevents or substantially inhibits the conduct of business in the ordinary course at any Store, such Store and the Merchandise located at such Store shall, in Agent's discretion, be eliminated from the Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Merchant shall have no further rights or obligations hereunder with respect thereto; provided, however, that subject to the terms of Section 7.1 above, the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder.

8.9 Additional Goods. Agent may (but shall not be required to), as an Expense, supplement the Merchandise in the Stores with additional goods, of like kind and quality, as is customarily sold in the Stores (the "Additional Goods"). Merchant and Agent agree that the transactions relating to the Additional Goods are, and shall be construed as, a true consignment from Agent to Merchant in all respects and not a consignment for security purposes. Pursuant to Section 7.1 herein, the proceeds from the sale of Additional Goods shall be considered Proceeds.

#### Section 9. Employee Matters.

9.1 Merchant's Employees. Subject to the applicable provisions of the Approval Order and any other provisions in this Agreement relating to employees, the Stores will continue to be operated by Merchant's employees (each such employee, a "Store Employee," and collectively, "Store Employees"). Store Employees shall at all times remain employees of Merchant, and shall not be considered or deemed to be employees of Agent. Merchant and Agent agree that except to the extent that wages and benefits of Store Employees constitute Expenses hereunder and except as otherwise expressly provided in this Agreement, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by Agent of any of Merchant's obligations relating to any of Merchant's employees including, without limitation, Excluded Benefits, Worker Adjustment Retraining Notification Act ("WARN Act") claims and other termination type claims and obligations, or any other amounts required to be paid by statute or law (except to the extent such items are amounts for which Merchant is entitled to indemnification pursuant hereto); nor shall Agent become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such employees. Nothing in this Agreement shall affect the Merchant's obligations under any collective bargaining agreement. Merchant shall provide all notices to its employees in accordance with its agreements with employees, including any collective bargaining agreement, and Tops shall not require or otherwise direct Merchant to take any action in violation of any collective bargaining agreement. Merchant shall provide Tops with Schedule 9.1 that sets forth all Merchant's requirements with respect to notices to employees under any collective bargaining agreement. Merchant shall not, without Agent's prior written consent, raise the salary or wages or increase the benefits for, or pay any bonuses or make any other extraordinary payments to, any of the Store Employees, except as otherwise provided in this Agreement.

9.2 Payroll Matters. During the Sale Term, Merchant shall process and pay the base payroll and all related payroll taxes, worker's compensation, employment and unemployment insurance, and benefits for all Store Employees, including any independent contractors retained

by Agent, in accordance with its usual and customary procedures.

9.3 Employee Retention Bonuses. Agent may pay, as an Expense, retention bonuses (“Retention Bonuses”) (which bonuses shall be inclusive of payroll taxes, but as to which no benefits shall be payable), up to a maximum of ten percent (10%) over the Sale Term of base payroll for all Store Employees, to such Store Employees who do not voluntarily leave employment and are not terminated “for cause,” as it may determine in its discretion. The amount of such Retention Bonuses shall be in an amount to be determined by Agent, in its discretion, and shall be payable within thirty (30) days after the Sale Termination Date, and shall be processed through Merchant’s payroll system.

Section 10. Conditions Precedent.

The willingness of Agent and Merchant to enter into the transactions contemplated under this Agreement are directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by the applicable party:

(a) All representations and warranties of Merchant and Agent hereunder shall be true and correct in all material respects and no Event of Default shall have occurred at and as of the date hereof and as of the Sale Commencement Date.

(b) Merchant shall have obtained the Bankruptcy Court’s approval of the Approval Order on or before January 25, 2010.

(c) Merchant shall have obtained the consent of the Lender to enter into this Agreement.

Section 11. Representations, Warranties and Covenants.

11.1 Merchant’s Representations, Warranties and Covenants. Merchant hereby represents, warrants, and covenants in favor of Agent as follows:

(a) Merchant (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (ii) has all requisite power and authority to own, lease and operate its assets and properties and to carry on its business as presently conducted; and (iii) is and during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Stores are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Merchant to execute and deliver this Agreement and perform fully its obligations hereunder.

(b) Subject to the issuance and entry of the Approval Order, Merchant has the right, power and authority to execute and deliver this Agreement and each other document and

agreement contemplated hereby (collectively, together with this Agreement, the "Agency Documents") and to perform fully its obligations thereunder. Subject to the issuance and entry of the Approval Order, Merchant has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval on the part of Merchant is required for Merchant to enter into and deliver the Agency Documents, to perform its obligations thereunder, and to consummate the Sale. Subject to the issuance and entry of the Approval Order, each of the Agency Documents has been duly executed and delivered by Merchant and constitutes the legal, valid and binding obligation of Merchant enforceable in accordance with its terms. Subject to the issuance and entry of the Approval Order, no court order or decree of any federal, state, local, or provincial governmental authority or regulatory body is in effect that would prevent or materially impair, or is required for the Merchant's consummation of, the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor, other than as shall be obtained prior to the Sale Commencement Date, except for any such consent the failure of which to be obtained could not reasonably be expected to have a material adverse effect on the ability of Merchant to execute and deliver this Agreement and perform fully its obligations hereunder. Other than for any consent as shall be obtained prior to the Sale Commencement Date, and those contracts or agreements identified by Merchant to Agent on or prior to the Sale Commencement Date, if any, no contract or other agreement to which the Merchant is a party or by which the Merchant is otherwise bound will prevent or materially impair the consummation of the Sale and the other transactions contemplated by this Agreement.

(c) Merchant shall ticket or mark all items of inventory received at the Stores prior to the Sale Commencement Date in a manner consistent with similar Merchandise located at the Stores and in accordance with Merchant's past practices and policies relative to pricing and marking inventory.

(d) To the best of Merchant's knowledge, all Merchandise is in material compliance with all applicable federal, state or local product safety laws, rules and standards. Merchant shall provide Agent with its historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date.

(e) Subject to the terms of this Agreement, throughout the Sale Term, Agent shall have the right to the unencumbered use and occupancy of, and peaceful and quiet possession of, each of the Stores, the assets currently located at the Stores to the extent Merchant is entitled to use the same, and the services provided at the Stores to the extent Merchant is entitled to such services. Except any amounts owing as a result of the commencement of any Chapter 11 Case, and absent a bona fide dispute, throughout the Sale Term, Merchant shall remain current on all expenses and payables necessary for the conduct of the Sale (other than those relating to any period prior to the commencement of any Chapter 11 Case), subject to any restrictions that may be imposed under the Bankruptcy Code.

(f) Supplies have not been, since December 20, 2009, and shall not be, prior to the Sale Commencement Date, transferred by Merchant to or from the Stores so as to alter the mix or quantity of supplies at the Stores from that existing on such date, other than in the ordinary

course of business.

(g) Merchant covenants to continue to operate the Stores in all material respects in the ordinary course of business from the date of this Agreement to the Sale Commencement Date by: (i) selling inventory during such period at customary prices consistent with the ordinary course of business; (ii) not promoting or advertising any sales or in-store promotions (including POS promotions) to the public (except for Merchant's pending advertisements as of the date of this Agreement and/or Merchant's promotions for the period through the Sale Commencement Date; (iii) except as may occur in the ordinary course of business, not returning inventory to vendors and not transferring inventory or supplies between or among Stores; and (iv) except as may occur in the ordinary course of business, not making any management personnel moves or changes at the Stores without prior written notice to and consultation with Agent.

(h) As of the Sale Commencement Date, all ordinary course permanent markdowns on inventory located at the Stores will have been taken on a basis consistent with Merchant's historical practices and policies.

(i) Merchant has not, and shall not, up to the Sale Commencement Date, marked up or raised the price of any items of Merchandise, or removed or altered any tickets or any indicia of clearance merchandise, except in the ordinary course of business.

(j) Merchant has not and, unless directed otherwise by Agent, shall not purchase or transfer to or from the Stores any merchandise or goods outside the ordinary course in anticipation of the Sale.

(k) Unless directed otherwise by Agent, the mix/assortment of all Merchandise included in the Sale will not be materially inconsistent with the mix/assortment of Merchandise as reflected in the due diligence materials provided to Agent.

(l) No action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against the Merchant, or has been settled or resolved, or to Merchant's knowledge, is threatened against or affects Merchant, relative to Merchant's business or properties, which questions the validity of this Agreement, or that if adversely determined, would adversely affect the conduct of the Sale.

(m) Merchant has not intentionally taken, and shall not throughout the Sale Term intentionally take, any actions with the intent of increasing the Expenses, including, without limitation, increasing salaries or other amounts payable to employees.

(n) There are currently no strikes, work stoppages or other labor disturbances or threats thereof affecting the Stores or Merchant's central office facilities.

(o) The representations, warranties and covenants of Seller in the APA shall apply and be incorporated by reference into this Agreement.



11.2 Agent's Representations, Warranties and Covenants. Agent hereby represents, warrants and covenants in favor of Merchant as follows:

(a) Agent: (i) is a corporation, partnership, or limited liability company, as the case may be, duly and validly existing and in good standing under the laws of the State of its organization; (ii) has all requisite power and authority to carry on its business as presently conducted and to consummate the transactions contemplated hereby; and (iii) is and during the Sale Term will continue to be duly authorized and qualified as a foreign company to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification.

(b) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform fully its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery, and performance of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents, to perform its obligations thereunder, and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the Agent and, constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms. No court order or decree of any federal, provincial, state or local governmental authority or regulatory body is in effect that would prevent or impair or is required for Agent's consummation of the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.

(c) No action, arbitration, suit, notice, or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved, or to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement, or which if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.

(d) The representations, warranties and Covenants of Buyer in the APA shall apply, and be incorporated by reference into this Agreement.

## Section 12. Insurance.

12.1 Merchant's Liability Insurance. As an Expense with respect to the Stores, during the Sale Term, Merchant shall continue until the Sale Termination Date, in such amounts as it currently has in effect, all of its liability insurance policies including, but not limited to, products liability, comprehensive public liability, auto liability and umbrella liability insurance, covering injuries to persons and property in, or in connection with Merchant's operation of the Stores, and shall cause Agent to be named an additional named insured with respect to all such policies and payments on such policies shall constitute Proceeds. Prior to the Sale Commencement Date, Merchant shall deliver to Agent certificates evidencing such insurance setting forth the duration

thereof and naming Agent as an additional named insured, in form reasonably satisfactory to Agent. All such policies shall require at least thirty (30) days prior notice to Agent of cancellation, non-renewal or material change. In the event of a claim under any such policies Merchant shall be responsible for the payment of all deductibles, retentions or self-insured amounts to the extent said claim arises from or relates to the alleged acts or omissions of Merchant or its employees, agents (other than Agent's employees), or independent contractors (other than Agent and independent contractors hired by Agent in conjunction with the Sale) operating the Stores on an interim basis), in which case Merchant shall be responsible.

12.2 Merchant's Casualty Insurance. As an Expense with respect to the Stores, during the Sale Term, Merchant shall continue until the Sale Termination Date, in such amounts as it currently has in effect, fire, flood, theft and extended coverage casualty insurance covering the Merchandise and Additional Goods in a total amount equal to no less than the cost value thereof, which coverage shall be reduced from time to time to take into account the sale of Merchandise and Additional Goods. In the event of a loss to the Merchandise or Additional Goods on or after the date of this Agreement, the proceeds of such insurance attributable to the Merchandise and/or Additional Goods (net of any deductible) shall constitute Proceeds. Prior to the Sale Commencement Date, Merchant shall deliver to Agent certificates evidencing such insurance setting forth the duration thereof, in form and substance reasonably satisfactory to Agent. All such policies shall require at least thirty (30) days prior notice to Agent of cancellation, non-renewal or material change. Merchant shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date, without Agent's prior written consent.

12.3 Worker's Compensation Insurance. As an Expense with respect to the Stores, during the Term, Merchant shall continue until the Sale Termination Date, in such amounts as it currently has in effect, worker's compensation insurance (including employer liability insurance) covering all Store Employees in compliance with all statutory requirements. Prior to the Sale Commencement Date, Merchant shall deliver to Agent a certificate of its insurance broker or carrier evidencing such insurance. To the extent any claim arises during the Sale Term, Agent shall be responsible for and obligated for any and all deductibles, retentions, self-insurance amounts and costs associated with any workers compensation insurance policy.

12.4 Agent's Insurance. Agent shall maintain as an Expense under the TSA throughout the Sale Term, in such amounts as it currently has in effect, comprehensive public liability and automobile liability insurance policies covering injuries to persons and property in or in connection with Agent's agency at the Stores to be named an additional insured with respect to such policies. Prior to the Sale Commencement Date, Agent shall deliver to Merchant certificates evidencing such insurance policies, setting forth the duration thereof and naming Merchant as an additional insured, in form and substance reasonable satisfactory to Merchant. In the event of a claim under such policies Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, to the extent said claim arises from or relates to the alleged acts or omissions of Merchant.

12.5 Risk of Loss. Merchant and Agent agree that, subject to the terms of this

Agreement, Merchant shall bear all responsibility for liability claims of customers, employees and other persons accruing, arising or otherwise attributable to events occurring at the Stores prior to the Sale Term and thereafter to the extent arising from actions of Merchant due to the gross negligence (including omissions) or willful misconduct of Merchant.

Section 13. Indemnification.

13.1 Merchant Indemnification. Until either the (y) confirmation of a plan pursuant to chapter 11 of the Bankruptcy Code, or (z) dismissal or conversion of the Debtors' Chapter 11 Case, Merchant shall indemnify and hold Agent and its officers, directors and employees harmless, from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to: (i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Document including this Agreement or (ii) the gross negligence (including omissions) or willful misconduct of Merchant, or its officers, directors, employees, agents or representatives.

13.2 Agent Indemnification. Until either the (y) confirmation of a plan pursuant to chapter 11 of the Bankruptcy Code, or (z) dismissal or conversion of the Debtors' Chapter 11 Case, Agent shall indemnify and hold Merchant and its officers, directors and employees harmless, from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to: (i) Agent's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Document including this Agreement or (ii) the gross negligence (including omissions) or willful misconduct of Agent, or its officers, directors and employees.

Section 14. Defaults. The following shall constitute "Events of Default" hereunder:

(a) The Merchant or Agent shall fail to perform any material obligation hereunder if such failure remains uncured three (3) business days after receipt of written notice thereof; or

(b) Any representation or warranty made by Merchant or Agent proves untrue in any material respect as of the date made and, to the extent curable, continues uncured three (3) business days after written notice to the defaulting party; or

(c) The Sale is terminated or materially interrupted or impaired for any reason other than (x) an Event of Default by Agent, or (y) any other material breach or action by Agent not authorized hereunder.

In the event of an Event of Default, (x) the non-defaulting party, in the case of Section 14(b)(i) or Section 14(b)(ii), or (y) the Agent, in the case of Section 14(b)(iii) and (iv), may, in its discretion, elect to terminate this Agreement upon written notice to the other party; and any party's damages or entitlement to equitable relief on account of an Event of Default shall be determined by the Bankruptcy Court.

Section 15. Relationship of the Parties.

(a) Notwithstanding any other agreement the parties have entered into (or have contemporaneously entered into with this Agreement), the parties' relationship to each other with respect to any and all matters addressed or covered by this Agreement, including without limitation the Sale, shall for all purposes be one of Agent as agent and Merchant as principal only. Nothing in this Agreement or any other agreement between the parties shall be interpreted as making either party the partner, joint venturor or employee of the other with respect to any and all matters addressed or covered by this Agreement. It is agreed and understood that the parties have no special relationship to each other (either fiduciary, confidential (except as expressly set forth herein) or other) under this Agreement, and neither party shall have any special duty or obligation to the other except as expressly set forth in this Agreement. Moreover, except as set forth in this Agreement, neither party shall have the authority to assume or create any liability or obligation, express or implied, on behalf of, or bind in any manner, the other party.

(b) All persons providing services on behalf of the Merchant to Agent shall be deemed solely employees or agents of Merchant, and they shall not be deemed employees or agents of Agent.

Section 16. Miscellaneous.

16.1 Notices. All notices and communications provided for pursuant to this Agreement shall be in writing, and sent by hand, by facsimile, or a recognized overnight delivery service, as follows:

If to Agent:

Tops Markets, LLC  
P.O. Box 1027  
Buffalo, NY 14240-1027  
Attention: Frank Curci, President, Chief Executive Officer  
Telecopy No. (716) 635-5102

With a copy to:

Winston & Strawn LLP  
200 Park Avenue  
New York, NY 10166-4193  
Attention: Dominick DeChiara, Esq. & David Neier, Esq  
Telecopy No. (212) 294-4700

If to the Merchant:

The Penn Traffic Company  
P.O. Box 4965  
Syracuse, NY 13209

Attention: Ronald F. Stengel, Chief Restructuring Officer  
Telecopy No.: (315) 461-2474

With a copy to:  
The Penn Traffic Company  
P. O. Box 4737  
Syracuse, NY 13221  
Attention: Daniel Mahoney, General Counsel  
Telecopy No.: (315) 461-2532

And with a copy to:  
Haynes and Boone, LLP  
1221 Avenue of the Americas  
26<sup>th</sup> Floor  
New York, New York 10020-1007  
Attention: Lenard Parkins, Esq. and Michael Foreman, Esq.  
Telecopy No.: 212.844.9545

Any party may change its address or facsimile number for the purpose of this Section 16.1 by giving the other parties written notice of its new address in the manner set forth above.

16.2 Governing Law; Consent to Jurisdiction. This Agreement shall be governed and construed in accordance with the law of the State of New York, without regard to conflicts of laws principles thereof. The parties hereto agree that the Bankruptcy Court shall retain exclusive jurisdiction to hear and finally determine any disputes arising from or under this Agreement, and by execution of this Agreement each party hereby irrevocably accepts and submits to the jurisdiction of such court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.

16.3 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto.

16.4 Amendments. This Agreement may not be modified except in a written instrument executed by each of the parties hereto.

16.5 No Waiver. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. Failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

16.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Agent and Merchant, including, but not limited to, any chapter 11 or chapter 7 trustee. Notwithstanding anything to the contrary in this Agreement, Agent shall be able to assign this Agreement to any other party.

16.7 Execution in Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one agreement. This Agreement may be executed by facsimile or other electronic transmission, and such facsimile or electronic signature shall be treated as an original signature hereunder.

16.8 Section Headings. The headings of sections of this Agreement are inserted for convenience only and shall not be considered for the purpose of determining the meaning or legal effect of any provisions hereof.

16.9 Survival. All representations, warranties, covenants and agreements made herein, by the parties hereto, shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURES FOLLOW]**

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agency Agreement as of the day and year first written above.

**TOPS MARKETS, LLC, on behalf of itself and its designee(s),  
As Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE PENN TRAFFIC COMPANY on behalf of itself and its affiliates,  
As Merchant**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit 2



**Exhibit 8.1**  
**Sale Guidelines**

The following procedures shall apply to the Sale<sup>1</sup> to be held at the Stores:

1. The Sale shall be conducted so that the Stores in which Sales are to occur remain open no longer than the normal hours of operation provided for in the respective leases or other occupancy agreements for the Stores.
2. The Sale shall be conducted in accordance with applicable state and local "Blue Laws," and thus, where applicable, no Sale shall be conducted on Sunday unless the Merchant had been operating such Stores on a Sunday.
3. All display and hanging signs used by the Merchant and the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Merchant and the Agent may advertise the Sale as a "going out of business," "sale on everything", "store closing", or similar theme sale at the Stores as provided by the Agreement. The Merchant and the Agent shall not use neon or day-glo signs. Nothing contained herein shall be construed to create or impose upon the Merchant and the Agent any additional restrictions not contained in the applicable lease or other occupancy agreement. The Merchant and the Agent shall be permitted to utilize exterior banners at the Stores; provided, however, that such banners shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store. In addition, the Merchant and the Agent shall be permitted to utilize sign walkers and street signage, notwithstanding any state, county or local law or ordinance; provided, however, the use of sign walkers and use of street signage shall be done in a safe manner and shall not be permitted on mall or shopping center property.
4. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and that customers with any questions or complaints subsequent to the conclusion of the Sale may contact a named representative of the Merchant or the Agent at a specified telephone number. Conspicuous signage shall be posted in the cash register area of each Store to the effect that the manufacturer's warranty, if any, may still exist and customers should consult the packaging materials to see what, if any, manufacturer's warranties are available.
5. Within a "Shopping Center", the Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores, unless permitted by the applicable lease or, if distribution is customary in the shopping center in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
6. Agent shall vacate the Stores in "broom clean" condition, and shall otherwise leave the Stores in the same condition as on the commencement of the Sale, ordinary wear and tear excepted; provided, however, that the Merchant and Agent hereby do not undertake any greater obligation than as set forth in an applicable lease with respect to a Store. The Merchant may abandon any materials not sold in the Sale at the Store premises at the conclusion of the Sale. Any materials left in a Store after a lease is rejected shall be deemed abandoned with the landlord having the

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Merchant.

7. The Agreement, the Agent shall have the right to sell FF&E located in the Stores. The Agent may advertise the sale of the FF&E consistent with the guidelines provided in paragraphs 4 and 6 hereof. For the avoidance of doubt, Agent may abandon, in place, and without further responsibility, any unsold FF&E located at the Stores.
8. The Agent shall not make any alterations to interior or exterior Store lighting. The hanging of exterior banners or other signage shall not constitute an alteration to a Store.
9. At the conclusion of the Sale at each Store, pending assumption or rejection of applicable leases, the landlords of the Stores shall have reasonable access to the Store premises as set forth in the applicable leases. The Merchant, the Agent and their agents and representatives shall continue to have exclusive and unfettered access to the Stores.
10. The rights of the landlords for any damages to the Stores shall be reserved in accordance with the applicable leases, and subject to the jurisdiction of the Bankruptcy Court.
11. To the extent that any Store landlord affected hereby contends that the Merchant is in breach or default under these Guidelines, such landlord shall provide at least five (5) days' written notice, served by facsimile and overnight delivery, on the Merchant, and the Agent and the Agent's counsel, at the following facsimile numbers and addresses:

If to the Merchant:

The Penn Traffic Company  
P.O. Box 4965  
Syracuse, NY 13209  
Attn. Barton Coleman  
Telecopy No.: (315) 461-2474

With a copy to:

The Penn Traffic Company  
P.O. Box 4737  
Syracuse, NY 13221  
Attn. Daniel Mahoney, General Counsel  
Telecopy No.: (315) 461-2532

With a copy to:

Haynes and Boone, LLP  
1221 Avenue of the Americas, 26<sup>th</sup> Floor  
New York, New York 10020-1007  
Attention: Lenard Parkins and Michael Foreman  
Telecopy No.: (212) 659-4900

If to the Agent:

Tops Markets, LLC  
P.O. Box 1027  
Buffalo, NY 14240-1027,  
Attn. Frank Curci, President, Chief Executive Officer  
Telecopy No.: (716) 635-5102

With a copy to:

Winston & Strawn LLP  
200 Park Avenue  
New York, NY 10166-4193  
Attn. Dominick DeChiara, Esq. & David Neier, Esq.  
Telecopy No.: (212) 294-4700

12. If the parties are unable to resolve the dispute between themselves, either the landlord or the Merchant shall have the right to schedule a "status hearing" before the Bankruptcy Court on no less than five (5) days notice to the other parties.

EXHIBIT B

Trademarks

<b>Mark</b>	<b>International Class</b>	<b>Registration No.</b>	<b>Registration Date</b>
BAKERY FRESH NOW THAT'S FRESH! and design	30, 35	2547294	03/12/2002
P&C (Stylized)	1, 29, 30, 34	1693854	06/16/1992
BIG BEAR PLUS	42	1529025	03/07/1989
GIVE EM A BIG BEAR HUG	42	1523969	02/07/1989
THAT'S MY BEAR	42	1518534	12/27/1988
BIG BEAR and design	42	1217929	11/23/1982
BIG BEAR (Stylized)	42	981,376	03/26/1974
GARDEN FRESH PRODUCE NOW THAT'S FRESH! and design	31, 35	2540369	02/19/2002
GLOUCESTER PIER	29	2,588,134	07/02/2002
GOLD LABEL	29, 35	2,522,584	12/25/2001
P&C	30	739,090	10/09/1962
P&C and design	42	1,577,082	01/09/1990
P&C FOODS and design	42	2,021,018	12/03/1996
GARDEN FRESH PRODUCE, NOW  THAT'S FRESH! (WEST VIRGINIA)	State Class: 31	N/A	06/29/2001
GIVE EM A BIG BEAR HUG! (WEST VIRGINIA)	State Class: 42	N/A	06/29/2001
THAT'S MY BEAR (WEST VIRGINIA)	State Class: 42	N/A	06/29/2001
BIG BEAR PLUS (WEST VIRGINIA)	State Class: 42	N/A	06/29/2001
WILDCARD SAVINGS CLUB (WEST	State Class: 42	N/A	06/29/2001

VIRGINIA)			
BIG BEAR (WEST VIRGINIA)	State Class: 42	N/A	01/15/1982
BIG BEAR (WEST VIRGINIA)	State Class: 35	213229	09/30/1954
P&C FOOD (NEW HAMPSHIRE)	42	N/A	02/11/1987
BETTY BROWN BAKERY and design	30	1,283,526	06/26/1984
BETTY BROWN'S FINEST and design	30	1,282,698	06/19/1984
TOP CRISP	30	820,855	12/20/1966
B BUCKEYE STAMP 10 and design	42	805,341	03/08/1966
BUCKEYE BIG TEN	42	805340	03/08/1966
EXEL and design	3	842582	01/16/1968
EXEL	3	821802	01/10/1967
THE PRICE CHAMPION	42	1310512	12/18/1984
OLD SMOKE HOUSE BRAND (WEST VIRGINIA)	29	22366	04/17/1958
DESIGN ONLY (OHIO)	42	SM63,749	09/22/1986
OLD SMOKE HOUSE (OHIO)	29	TM88	11/18/1954
OLD SMOKE HOUSE (OHIO)	29, 30	TM81	11/13/1954
PERFECT CHOICE (Stylized)	29	76627013	01/05/2005
PERFECT CHOICE	5, 29, 30, 31, 32	78556566	01/31/2005