

Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (A) approving the asset purchase agreement (as amended, the "APA", by and among the Selling Debtors, C&S Acquisition LLC, as Purchaser (including any affiliated assignee or designee of such company, the "Purchaser") and C&S Wholesale Grocers, Inc. ("C&S"), and such other agreements to be entered into among the parties thereto as contemplated therein, (B) authorizing (i) the sale (the "Sale") of substantially all of the Selling Debtors' assets and business operations relating to their Wholesale Distribution Business and certain other assets designated in the APA (the "Acquired Assets") free and clear of all Liens, claims, Encumbrances, Offset Rights, and Interests (except the Permitted Encumbrances and Assumed Liabilities under the APA), pursuant to and as described in the APA to Purchaser or any Third Party Purchaser (as defined therein), as the case may be, and (ii) the assumption and assignment to Purchaser or any Third Party Purchaser, as the case may be, of executory contracts and unexpired leases under Sections 365(a) and (f) of the Bankruptcy Code both as of the Initial Closing Date and during the Option Period, and (C) granting related relief; and upon the Order of this Court dated July 18, 2003, approving the bidding procedures in connection with the Sale and notice of the hearing with respect to the Sale (the "Bidding Procedures Order"); and upon the record made at hearings held before this Court with respect to the relief sought in the Sale Motion on August 4, 2003, August 7, 2003 and August 14, 2003 (collectively the "Sale Hearing"), including the relevant pleadings, the evidence proffered or adduced and arguments of counsel; and upon the Order of this Court dated August 15, 2003 approving the APA and the Sale (the "Sale Order"); and all parties in interest having been heard, or having had

Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

the opportunity to be heard, regarding the assumption and assignment of the executory contracts and unexpired leases to be assumed and assigned as of the next Subsequent Closing Date to AWG Acquisition (the "AWG Acquired Contracts"); and it appearing from the affidavits of service filed with the Court that due and sufficient notice of the Sale Motion, the Initial Assignment List (as defined in the Bidding Procedures Order), the Supplemental AWG Lists and the relief granted by this Order have been provided to all parties affected thereby; and it further appearing that no other or further notice hereof is required; and upon the Court record of these cases; and it appearing that the relief requested in the Sale Motion regarding the assumption and assignment of the AWG Acquired Contracts is in the best interests of the Selling Debtors, their estates, creditors, and other parties-in-interest; and after due deliberation and good and sufficient cause appearing therefor, this Court hereby makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

IT IS HEREBY FOUND AND DETERMINED THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. The Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested therein, pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rule 6006(d), the parties may consummate the

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052. Any statements of the Court from the bench at the Sale Hearing shall constitute

assumption and assignment of the AWG Acquired Contracts immediately upon entry of this Order. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

C. The statutory predicates for the relief sought herein are Sections 105(a) and 365 of the Bankruptcy Code, as complemented by Rules 2002, 6006(a) and (c) and 9014 of the Bankruptcy Rules.

Retention of Jurisdiction

D. It is necessary and appropriate for the Court to retain jurisdiction to, among others things, interpret, implement, and enforce the terms and provisions of this Order and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the assumption and assignment of the AWG Acquired Contracts.

Notice of the Assumption and Assignment

E. As evidenced by the affidavits of service previously filed with this Court, (i) proper, timely, adequate, and sufficient notice of the Sale Motion and the assumption and assignment of the AWG Acquired Contracts has been provided in accordance with Sections 102(1) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6006, and 9014 and in substantial compliance with the Bidding Procedures Order.

F. Actual written notice of the August 14, 2003 hearing, the Sale Motion and any adjournments or continuances thereof, and the assumption and assignment of the AWG Acquired Contracts and a reasonable opportunity to object or be heard with respect to the Sale Motion and

additional findings of fact and conclusions of law as appropriate and are expressly incorporated by reference into this Order to the

the assumption and assignment of the AWG Acquired Contracts has been afforded to all interested persons and entities, including, but not limited to: (i) counsel to the Official Committee of Unsecured Creditors (the "Committee"); (ii) counsel to the Agents for the Debtors' pre-petition lenders and post-petition lenders; (iii); counsel to Purchaser; (iv) all non-debtor counterparties to the AWG Acquired Contracts; (v) counsel to the United States Trustee; (vi) any entity that has filed a notice of appearance and demand for service of papers in these bankruptcy cases pursuant to Bankruptcy Rule 2002; and (vii) all parties holding Liens against the Selling Debtors' estates.

G. In accordance with the provisions of the Bidding Procedures Order and the hearing held on July 17, 2003, the Debtors served the Assignment List (as defined in the Bidding Procedures Order) (Docket 2716) and supplemental assignment lists (the "Supplemental AWG Lists") (Docket 3563 and 3564) upon each non-debtor counterparty to an AWG Acquired Contract. The service of such Assignment List and Supplemental AWG Lists, in connection with service of the Original Cure Notice (as defined in the Sale Order), the Supplemental Cure Notice (as defined in the Sale Order) and notice of the Sale Motion and the hearing to consider the assumption and assignment of the AWG Acquired Contracts, was good and sufficient and appropriate under the circumstances and no further notice need be given in respect of the assumption and assignment of the AWG Acquired Contracts. Such non-debtor counterparties have had an opportunity to object to the assumption and assignment of their respective AWG Acquired Contracts, including without limitation the cure amounts due and adequate assurance of future performance in respect thereof.

extent not inconsistent herewith.

H. On August 4, 2003, Purchaser identified AWG Acquisition, LLC ("AWG Acquisition"), a wholly owned subsidiary of Associated Wholesale Grocers, Inc. ("AWG"), as a Third Party Purchaser pursuant to the APA. Pursuant to the Sale Order, AWG Acquisition was approved as a Third Party Purchaser of certain of the Debtors' assets. The Initial Assignment List (as defined in the Bidding Procedures Order and served in the manner set forth in paragraph G above) and the Supplemental AWG Lists specifically identified AWG Acquisition as the proposed assignee of the AWG Acquired Contracts.

I. Based on the findings set forth in paragraphs E through H above, such notice was good and sufficient, and appropriate under the circumstances, and no other or further notice of the Sale Motion, the August 14, 2003 hearing, the October 2, 2003 hearing, or any adjournment or continuances thereof, or the assumption and assignment of the AWG Acquired Contracts shall be necessary or required.

J. The August 14, 2003, hearing on the assumption and assignment of the AWG Acquired Contracts was called and continued from time to time to October 2, 2003, at 2:00 p.m. (Eastern).

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

1. The relief requested in the Sale Motion with respect to the assumption and assignment of the AWG Acquired Contracts is granted and approved to the extent provided herein, and the assumption and assignments contemplated thereby are hereby approved to the extent provided herein.

2. Attached hereto as Exhibit A is a schedule setting forth the AWG Acquired

Contracts that the Selling Debtors are authorized to assume and assign to AWG Acquisition (or its applicable affiliated designee as set forth on Exhibit A) as of the next Subsequent Closing Date. Subject to the terms of the APA, AWG Acquisition shall have the right to defer or revoke any AWG Acquired Contract from Exhibit A at any time prior to the next Subsequent Closing Date, and to the extent so deferred or revoked, such Acquired Contract shall no longer be deemed an AWG Acquired Contract. The Selling Debtors shall provide prompt notice to the non-debtor party to any Acquired Contract that is so revoked or deferred.

3. The Selling Debtors and AWG Acquisition have cured (or as of the next Date, will have cured), or have provided adequate assurance of a prompt cure of, all defaults arising under the AWG Acquired Contracts that are required to be cured by Section 365(b)(1)(A) of the Bankruptcy Code (after giving effect to Section 365(b)(2) of the Bankruptcy Code).

4. As to each AWG Acquired Contract noted thereon, Exhibit A also sets forth in the column headed "Cure Amount" the amount payable under Section 365(b)(1)(B) of the Bankruptcy Code (the "Cure Amount") for such AWG Acquired Contract. As to all specified Cure Amounts, AWG Acquisition shall pay, or cause to be paid from the Cure Escrow, the applicable Cure Amount within 10 business days following the next Subsequent Closing Date. The provisions of this paragraph 4 satisfy the requirements under Section 365(b)(1)(B) of the Bankruptcy Code that the Selling Debtors compensate or provide adequate assurance of prompt compensation for any defaults as to each of the AWG Acquired Contracts. The non-debtor parties to the AWG Acquired Contracts shall not be entitled to any further or additional compensation other than as provided in this paragraph 4 on account of defaults under its AWG Acquired Contract accruing, arising or otherwise relating to the period prior to the next

Subsequent Closing Date.

5. With respect to each AWG Acquired Contract, AWG Acquisition has provided adequate assurance of future performance under such AWG Acquired Contract pursuant to Section 365(b)(1)(C) of the Bankruptcy Code in that, among other things (x) AWG Acquisition's affiliate, AWG, has a long history of successful operations in the wholesale distribution business, (y) AWG has agreed to assist AWG Acquisition in fulfilling its obligations under the AWG Assigned Contracts and (z) AWG Acquisition has demonstrated sufficient initial capitalization and projected operating cash flow to meet its obligations under the AWG Acquired Contracts.

6. All objections to the assumption and assignment of the AWG Acquired Contracts listed on Exhibit A that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.

7. With respect to those AWG Acquired Contracts being assigned to AWG Acquisition on the next Subsequent Closing Date, none of C&S, Purchaser or any of their affiliates, successors or assigns, shall have any liability or obligations, and, subject to the terms of the Joinder Agreement, AWG Acquisition shall be the sole party responsible for the liabilities and obligations under such AWG Acquired Contract arising or relating to the period from and after the effective date of such assignment to AWG Acquisition. Similarly, none of AWG, AWG Acquisition or any of their affiliates, successors or assigns, shall have any liability or obligations, and, subject to terms of the APA, C&S, Purchaser, their affiliates or other Third Party Purchaser, as the case may be, shall be the sole party responsible for the liabilities and obligations under any Acquired Contract that is not an AWG Acquired Contracts arising or relating to the period from and after the effective date of such assignment of such other Acquired

Contract to either C&S, Purchaser, their affiliates or other Third Party Purchaser. With respect to those AWG Acquired Contracts being assigned to AWG Acquisition on the next Subsequent Closing Date, none of the Debtors or their respective successors shall be responsible for the liabilities or obligations under such AWG Acquired Contract arising or relating to the period of time from and after the effective date of such assignment to AWG Acquisition.

8. Any provision restricting the assignment of or the effectiveness of any AWG Acquired Contract shall be null, void and of no force and effect in connection with the assignment to Purchaser or any of its designees, including without limitation, the following provisions:

- (i) any provision of any AWG Acquired Contract or any agreement ancillary thereto that purports to prohibit, condition, or otherwise restrict the assignment by the Selling Debtors to AWG Acquisition;
- (ii) any provision of any AWG Acquired Contract or agreement ancillary thereto that permits the landlord at any time after closing to declare a default, terminate, modify, or cancel the lease, increase the payments or obligations thereunder (including without limitation, increasing the rent), exercise a right (whether based in law, equity, or otherwise) of recapture or termination, require the payment of any fee, impose any penalty, prevent the assignee from exercising any renewal options, seek damages, or seek other relief by reason of (a) the assignment of the lease to AWG Acquisition or its designee(s) or (b) a change of control of the Selling Debtors;
- (iii) any provision of any AWG Acquired Contract or agreement ancillary thereto that purports to terminate or modify the applicable agreement (including without

limitation, by increasing the rental obligations) if any of the Selling Debtors cease to be a party to such agreement; or

(iv) any provision that requires a payment to any entity, including without limitation, the non-debtor party, as a result of, as a condition to, or relating to the transfer or assignment of such agreement.

9. Pursuant to Section 365(k) of the Bankruptcy Code, the Debtors shall have no liability under any AWG Acquired Contract (that has not been deferred or revoked) following the next Subsequent Closing Date.

10. Subject to the payment of the Cure Amount identified in paragraph 4, each non-debtor party to an AWG Acquired Contract is hereby barred from asserting against AWG, AWG Acquisition, or any designee any default, claim or liability existing, accrued, arising or relating to a period prior to the next Subsequent Closing Date. AWG and AWG Acquisition have entered into certain settlement agreements with certain contract counter-parties identified on Exhibit "A" in consideration for their withdrawal of their respective objections to the assumption and assignment of their respective contracts to AWG Acquisition, and nothing in this paragraph is intended, nor shall it be deemed, to limit or extinguish the rights of AWG, AWG Acquisition or such counter-parties to enforce the terms of their respective settlement agreements.

11. The failure (if any) of the Selling Debtors or AWG, AWG Acquisition, or any designee to enforce at any time one or more terms or conditions of any AWG Acquired Contract shall not be a waiver of such terms or conditions, or of any of the rights of any such party to enforce each and every term and condition of such AWG Acquired Contract.

12. Except to the extent actually assumed and assigned to AWG Acquisition or any

designee none of AWG, AWG Acquisition or any of its designees shall have any liability under any Acquired Contract, including any AWG Acquired Contract.

13. This Court retains jurisdiction, even after the closing of these chapter 11 cases, to:
- (a) interpret, implement and enforce the terms and provisions of this Order;
 - (b) enter orders in aid or furtherance of the assumption and assignment of the AWG Acquired Contracts;
 - (c) compel delivery of all AWG Acquired Contracts to AWG Acquisition or the applicable designee noted on Exhibit A;
 - (d) adjudicate any and all remaining issues concerning the Selling Debtors' right and authority to assume and assign the AWG Acquired Contracts and the rights and obligations of AWG, AWG Acquisition, or any designee with respect to such assignment and the existence of any default under any such AWG Acquired Contract;
 - (e) adjudicate any and all issues and/or disputes relating to the Debtors' right, title or interest in the AWG Acquired Contracts and the proceeds thereof;
and
 - (f) re-open the Debtors' chapter 11 case to enforce the provisions of this Order.

14. This Order shall be effective immediately upon entry and Bankruptcy Rule 6006(d) shall not apply.

15. The provisions of this Order are non-severable and mutually dependent.

Dated: Wilmington, Delaware

Oct. 2, 2003


Mary T. Wolath
UNITED STATES BANKRUPTCY JUDGE