

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

In re:	)	Chapter 11
	)	
CLAIM JUMPER RESTAURANTS, LLC	)	Case No. 10-12819 ( KG)
<i>et al.</i> ,	)	
	)	(Jointly Administered)
Debtors. <sup>1</sup>	)	
	)	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING BID  
PROCEDURES RELATING TO THE SALE OF THE DEBTORS' ASSETS, (B)  
APPROVING BID PROCEDURES FOR STALKING HORSE PURCHASER,  
(C) SCHEDULING A HEARING TO CONSIDER THE SALE, (D) APPROVING THE  
FORM AND MANNER OF NOTICES OF SALE BY AUCTION, (E) ESTABLISHING  
PROCEDURES FOR NOTICING PROPOSED ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND DETERMINING CURE  
AMOUNTS, AND (F) GRANTING RELATED RELIEF**

Claim Jumper Restaurants, LLC ("CJR") and Claim Jumper Management, LLC ("CJM"), debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby move (the "Motion") this Court for the entry of an order: (a) approving bid procedures for the sale of substantially all of the Debtors' assets, (b) authorizing the Debtors to offer certain bid protections, (c) scheduling a final sale hearing (the "Sale Hearing") and approving the form and manner of notice thereof, (d) establishing procedures for noticing assumption and assignment of executory contracts and unexpired leases and determining cure amounts; and (e) granting related relief. In support of this Motion, the Debtors respectfully states as follows:

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<sup>1</sup> The Debtors in these cases along with the last four digits of each of the Debtors' federal tax identification numbers are: Claim Jumper Restaurants, LLC (1053) and Claim Jumper Management, LLC (6481). The Debtors' headquarters and mailing address is: 16721 Millikan Ave., Irvine, CA 92606.



### **Preliminary Statement**

1. As discussed in greater detail below, the Debtors are insolvent and believe that a prompt sale of their assets is necessary to maximize and preserve the value of the Debtors' business. The Debtors currently do not have sufficient cash resources or committed financing to operate their businesses and service their existing debt obligations in the long term. The Debtors also are in default under each of their principal prepetition credit facilities and do not have a forbearance agreement for the prepetition senior secured lenders. In addition, the Debtors are informed that their prepetition senior secured lenders, who have liens on substantially all of the Debtors' assets including the Debtors' cash, are severely undersecured and unwilling to fund the Debtors through a traditional plan of reorganization process. Furthermore, the Debtors believe that if a sale is not completed before the upcoming holiday season, and, consequently, a buyer cannot realize the increased revenues during that period, the sale price achieved will significantly decline. Accordingly, the Debtors are seeking to effectuate a sale of their assets within a 60 to 75 day timeframe.

### **Jurisdiction**

2. This Court has jurisdiction over this Motion under 28 U.S.C. sections 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. section 157(b)(2). Venue of these proceedings and this Motion in this district is proper under 28 U.S.C. sections 1408 and 1409.

3. The statutory basis for the relief requested herein are sections 105, 363 and 365 of the Bankruptcy Code, Bankruptcy Rule 6004 and Local Rule 6004-1.

### **Background**

4. On September 10, 2010, (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The

Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has yet been appointed in these Chapter 11 Cases.

5. The Debtors' principal business is the operation of a western-style restaurant chain. Originally formed in 1977, the Claim Jumper chain consists of 45 restaurants as of the Petition Date operating in the states of California, Arizona, Colorado, Illinois, Nevada, Oregon, Washington and Wisconsin.

6. The Debtors' corporate headquarters are located in Irvine, California.

#### **Events Leading to Filing**

7. In late 2006, following a stock buyout transaction and internal corporate restructuring, the Debtors continued to pursue their then existing strategy of expanding their business by opening new restaurant locations. Between 2006 and 2008, the Debtors opened 10 new locations, resulting in a total of 46 restaurants (one of which has now been closed), and spent \$62.9 million in construction costs associated with opening these locations. The primary funding source for the expansion and construction costs was \$59 million in borrowings under the Debtors' prepetition credit facilities.

8. Despite their efforts to expand and increase revenues, in 2007, the Debtors began to experience a prolonged downturn in their revenues and profits, coinciding with the broader economic downturn in the United States. In fact, the Debtors' financial performance worsened in each of fiscal years 2007, 2008, and 2009, with declines in annual revenues and, eventually, diminishing annual operating profits.

9. The Debtors attribute these declines to several factors. More than 75% of the Debtors' restaurants are located in California, Arizona and Nevada communities that have

seen significant increases in unemployment since 2007, and have been hit particularly hard by the home mortgage crisis. In addition, the Debtors believe the recent national recession has left much of the general public less prone to spending their disposable income, particularly on relative “luxuries” such as dining at restaurants of the caliber operated by the Debtors. As a result, the Debtors have experienced fewer dining guests in their restaurants and, consequently, sales at these restaurants have declined significantly.

10. By early 2009, the foregoing factors had contributed to the Debtors’ defaults under their prepetition credit facilities based on the Debtors’ failure to make scheduled interest payments and comply with various financial covenants under those facilities. Given these circumstances, the Debtors engaged Milbank, Tweed, Hadley & McCloy LLP as restructuring counsel and Piper Jaffray & Co. (“Piper Jaffray”) as investment banker and financial advisor. In conjunction with its advisors, the Debtors concluded that the company’s forecasted revenues were, and would continue to be, insufficient to adequately fund both the Debtors’ business operations and their debt service requirements. Thus, the Debtors concluded that a restructuring of their existing debt obligations was necessary.

11. After consultation with their advisors and their prepetition secured lenders, the Debtors determined that the most effective approach to maximize the value of the estates would be through a bankruptcy sale process. The Debtors made this decision based on the (i) the Debtors’ belief that the market value of their business was significantly less than the face amount of the debt owing to their prepetition secured lenders (approximately \$70 million as of the Petition Date), (ii) the Debtors’ increasing liquidity constraints—the Debtors had only approximately \$3.3 million in cash on hand as of the Petition Date and (iii) the lack of any extended forbearance agreement from the Debtors’ principal prepetition creditors and the risk

that those creditors might exercise their respective remedies imminently to the great detriment of the Debtors' business operations and their value.

12. Additional information regarding the Debtors' businesses, capital structure and the other facts and circumstances leading to the filing of these Chapter 11 Cases are contained in the concurrently filed Declaration of William Taves, which is incorporated herein by reference.

### **The Sale Process**

13. In mid-2009, the Debtors embarked on a marketing and negotiation process for the sale of their business that was led by the Debtors' management team and Piper Jaffray and extended over nearly one-and-a-half years. Initially, Piper Jaffray approached and received interest from 50 different prospective buyers and held meetings with 8 of these parties. The Debtors and Piper Jaffray then solicited from the interested parties bids to purchase the Debtors' assets as a going concern.

14. In October 2009, Piper Jaffray had follow-up discussions with the prospective buyers that had submitted the five highest "first round" bids. Pursuant to those discussions and further due diligence on the part of these prospective buyers, two bidders joined their bids together, resulting in four final round bids. After a thorough review and analysis of the second-round bids by the Debtors and its advisors, and upon consultation with its prepetition secured lenders, the Debtors determined that the bid submitted by the buying group composed of Black Canyon Capital, LLC ("Black Canyon"), an affiliate of the holder of the Debtors' senior subordinated notes, and Bruckmann, Rosser, Sherrill & Co., Inc. (collectively with Black Canyon, the "Black Canyon/BRS Group") represented the highest and best offer for the purchase of the Debtors' business and assets.

15. For the next approximately seven months, the Debtors, their prepetition secured lenders and the Black Canyon/BRS Group negotiated the terms of the sale transaction documents. Those talks, however, ultimately broke down after the prepetition secured lenders and the Black Canyon/BRS Group were unable to reach agreement over certain economics of the transaction and other terms of the transaction documents.

16. At that time, the Debtors quickly determined that they had few remaining restructuring options other than a prompt sale of their assets. The Debtors' prepetition secured lenders advised the Debtors that they were no longer willing to pursue a transaction with the Black Canyon/BRS Group or any other transaction that would involve the prepetition secured lenders rolling or taking back any new debt issued either by the Debtors or a purchaser of the Debtors' assets, and let a forbearance agreement with respect to the exercise of their remedies expire. In addition, the Debtors determined that a process involving a plan of reorganization in all likelihood would be non-consensual and extremely difficult to achieve, given the extremely undersecured position of the prepetition secured lenders and their reluctance to take back any debt issued by the Debtors. Moreover, the Debtors did not believe that any third party would be willing to sponsor a plan process against the objections of the prepetition secured lenders, particularly given the unlikelihood that such third party could prime the banks in the context of debtor-in-possession or exit financing.

17. Accordingly, after consultation with their advisors, the Debtors determined that the best course of action that would maximize the value of the estates would be to renew the marketing process, and solicit bids from potential buyers for a straight-cash purchase of the Debtors' assets. The timing of the marketing process was somewhat constrained by the upcoming holiday season and the Debtors' belief that completing a sale quickly would

provide a better purchase price given the additional revenues that a buyer could expect over the holidays (both from increased dining and gift card sales).

18. To that end, on or about July 14, 2010, the Debtors and Piper Jaffray reached out to no less than 20 prospective buyers (including both entities that had been contacted in the 2009 marketing effort and entities that only recently had expressed interest in purchasing the Debtors' business) and asked that such prospective buyers submit bids, without any financial or diligence conditions, for the purchase of the Debtors' assets by late August 2010. During this period, Piper Jaffray provided the prospective buyers access to a data room containing various financial and legal documents relating to the Debtors, and the Debtors held management presentations with several of the prospective buyers.

19. At the conclusion of the diligence period, the Debtors had received bids with little or no financing or diligence conditions from three separate entities. The Debtors and their advisors then negotiated with each of these bidders in order to further maximize the proposed aggregate consideration being provided by these parties and minimum closing risk and potential constraints on the post-filing marketing, auction and sale process. Following these additional negotiations, on September 6, 2010, the Debtors determined that Black Canyon had submitted the highest and best offer for the purchase of the Debtors' assets and had provided sufficient evidence that it was capable of consummating the sale transaction. The Debtors and their advisors then worked on negotiating the definitive terms and documentation for Black Canyon's purchase of the Debtors' assets.

20. On September 10, 2010 the Debtors entered into that certain Asset Purchase Agreement dated as of the same date (the "Agreement") with GRP Acquisition Corp. (the "Buyer"), an affiliate of Black Canyon, pursuant to which the Buyer will purchase

substantially all of the Debtors' assets and receive assignment of certain contracts and leases (collectively, the "Assets"). A copy of the Agreement, without schedules and exhibits, is attached as Exhibit 1 to the Debtors' concurrently filed motion for an order authorizing the sale of substantially all of its assets to the Buyer (the "Sale Motion"). The principal terms of the Buyer's stalking horse bid are as follows: (i) Cash Purchase Price of \$24.5 million; (ii) approximately \$5 million in cash to collateralize the Debtors' existing letters of credit; and (iii) the assumption of up to \$23.3 million in liabilities. A more detailed summary of the Agreement is provided in the Sale Motion.

21. In order to maximize the value of the Assets for the benefit of all of its creditors, the Agreement contemplates that the Debtors would commence these Chapter 11 Cases and subject the proposed sale of the Assets to a court-approved auction (the "Auction") and sale process to elicit higher and better offers. The Debtors intend to use their existing cash on hand and contemplated debtor-in-possession ("DIP") financing to be provided by one or more of its prepetition secured lenders to fund the bankruptcy and sale process. The Debtors are informed that the Prepetition Agent has the requisite consent from the Prepetition Secured Parties to use their cash collateral for this sale process pursuant to the terms of the Budget and proposed order approving cash collateral usage. In addition, the Prepetition Agent has provided a DIP financing commitment to the Debtors and the parties currently are working on the terms of a definitive DIP financing agreement (which DIP financing agreement the Debtors anticipate they will present to the Court for its approval in the near term).

22. Pursuant to the terms of the Agreement, the Buyer will acquire the Assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code, provided that such liens, claims, interests and encumbrances will attach to the

proceeds of the Sale with the same validity, force and effect, as existed prepetition, and subject to any rights, claims and defenses the Debtors or their estate, as applicable, may possess with respect thereto.

23. The Agreement also provides that the Buyer will be entitled to a break-up fee in the amount of \$1,000,000 and a reimbursement of its reasonable out-of-pocket expenses up to \$500,000, as applicable (collectively, the “Bid Protection Amount”) (as more fully described in paragraph 26C below).

24. Based on the foregoing, the Debtors believe that the consummation of the Sale to the Buyer or to a successful overbidder will provide their creditors and other stakeholders with the best opportunity possible for maximizing value by realizing upon the Assets through a sale as a going concern.

#### **Relief Requested**

25. By this Motion, the Debtors seek entry of an order:

(a) approving the Buyer’s (defined below) status as the stalking horse purchaser and approving (i) the requested break-up fee in the amount of \$1,000,000 (the “Break-Up Fee”) pursuant to the terms of the Agreement (defined below), and (ii) the requested expense reimbursement of up to \$500,000 (the “Expense Reimbursement”; together with the Break-Up Fee, the “Bid Protection Amount”) pursuant to the terms of the Agreement;

(b) approving the proposed bid procedures (the “Bid Procedures”), including the overbid provisions, attached to the Bid Procedures Order as Exhibit A;

(c) approving the procedures set forth herein for the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale (the “Cure Procedures”);

(d) establishing a date for holding the Auction and approving certain procedures in connection therewith;

(e) scheduling the hearing to approve any sale transaction(s) to Buyer or to such other party proposing the highest and best offer for the Assets (the “Successful Bidder”) and establishing deadlines for objections and responses to the relief requested in the Sale Motion; and

(f) approving the form and manner of notice to be served upon certain parties, including: (i) the form of notice, substantially in the form attached to the Bid Procedures Order as Exhibit B (the “Sale Notice”), to be served on the Sale and Bid Procedures Notice Parties (defined below), including all known creditors of the Debtor; (ii) the publication of a notice of the Auction and Sale Hearing in one weekday edition of the *Wall Street Journal, National Edition* (the “Publication Notice”); and (iii) the form of notice to parties holding Assigned Contracts (as defined below) in conjunction with the proposed Sale, in substantially the form attached to the Bid Procedures Order as Exhibit C.

### **Proposed Bid Procedures**<sup>2</sup>

26. The Bid Procedures are attached as Exhibit A to the proposed Bid Procedures Order. The Bid Procedures are summarized as follows:

- A. Assets to be Sold. The Debtors seek to sell their Assets as a going concern.
- B. Confidentiality Agreements and Access to Data Room. Any person or entity wishing to bid on all or substantially all of the Assets (each a “Potential Bidder”) must deliver (unless previously delivered) to the Debtors, to the extent not already executed, a confidentiality agreement in such form acceptable to the Debtors (such form is available upon request to Debtors).

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<sup>2</sup> This summary of the Bid Procedures is set forth herein for the convenience of the parties receiving the Bid Procedures Motion. In the event that there is any inconsistency between the provisions of this summary and the Bid Procedures, the text of the Bid Procedures controls.

The Debtors will afford any Potential Bidder who satisfy the requirement set forth in the Bidding Procedures such reasonable due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Debtors, in their business judgment, determine to be reasonable and appropriate. The Debtors and its advisors will coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Notwithstanding anything contained in the Bidding Procedures to the contrary, the Debtors in their business judgment will decide what, if any, diligence information to make available to a particular Potential Bidder, after consultation with the official committee of unsecured creditors (the "Committee") and, to the extent they have advised the Debtors that they will not participate as a bidder for the Assets, the Prepetition Secured Parties (defined below; together with the Committee, the "Consultation Parties").<sup>3</sup> Subject to such consultation requirements, neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever to any party

The Debtors propose that a "Qualified Bidder" be a Potential Bidder (i) that delivers the required confidentiality agreement, (ii) whose financial information and credit-quality support or enhancement demonstrate, in the Debtors' discretion, the financial capability of the Potential Bidder to consummate the proposed transaction for the desired Assets, (iii) that the Debtors determine, in their discretion, is reasonably likely to submit a bona fide offer for the Assets and will be able to consummate such transaction if selected as the Successful Bidder within a time frame acceptable to the Debtors, and (iv) who submits a Qualified Bid. Potential Bidders seeking information about the qualification process are directed to contact the Debtors' proposed financial advisor, Piper Jaffray.

- C. Proposed Bid Protections for the Buyer. The Debtors propose that, subject to the terms of the Agreement, to provide the Buyer with the following bid protections: the Break Up Fee and the Expense Reimbursement. Subject to and in accordance with the express terms of the Agreement, in the event that the Buyer terminates the Agreement for any reason other than as a result of a breach by the Buyer, the Debtors will be obligated to pay the Expense Reimbursement; and in the event that (i) the Debtors receive one or more Qualified Bids (other than the Buyer's stalking horse bid) and conduct the Auction, and (ii) a Successful Bidder that is not the Buyer is selected at the Auction, then the Debtors will be obligated to pay the Buyer the Bid Protection Amount; provided, however, that, in the event that the Buyer closes on the Sale of Assets, the Buyer shall not be entitled to payment of the Bid Protection Amount.

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<sup>3</sup> To the extent that the Committee has advised the Debtors, or becomes aware, that any member of the Committee is a Potential Bidder, the Committee shall (i) exclude such member from any and all discussions within the Committee relating to the auction and sale of the Assets and (ii) restrict, limit and prohibit the dissemination to such member of any confidential information relating to the auction and sale of the Assets.

- D. Requirements for a Qualified Bid. In order to participate in the Auction, if any, a Qualified Bidder must deliver to the Debtors a written offer (each, a “Written Offer”), which in order to be deemed a “Qualified Bid” must meet the specific requirements are set forth in the Bid Procedures. The Written Offers must, among other things, :
- i. Include the net purchase price for the Assets in an amount at least equal to (i) the value of the Buyer’s bid (\$24.5 million of cash paid to the Debtors, \$5 million of cash used to collateralize the Debtors’ obligations under certain letters of credit, and assumption of up to \$23.3 million of liabilities), plus (ii) the Bid Protection Amount plus the initial bid increment of \$100,000 (the “Initial Overbid Amount”), for an overall net purchase price of \$52.9 million;
  - ii. Include a list of any executory contracts or unexpired leases that are to be assumed and/or assigned under such Written Offer;
  - iii. State that the bidder is willing to consummate and fund the proposed transaction by no later than November 30, 2010, with an outside termination date no later than January 14, 2011(the “Closing Deadline”);
  - iv. To the extent not previously provided, state that the Qualified Bidder is financially capable of consummating the transactions contemplated by the Modified Agreement and any related transaction documents (the “Sale”), and include written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the Sale, that will allow the debtors to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the Sale;
  - v. State that the Written Offer is irrevocable until the closing of the transaction, if such Qualified Bidder is designated as a Successful Bidder or a Backup Bidder (each as defined below);
  - vi. Not contain any material due diligence or financing contingencies as determined by the Debtors in their reasonable discretion; and
  - vii. Include a good faith deposit (the “Good Faith Deposit”) in the form of a certified check, wire transfer or such other form as is acceptable to the Debtors payable to the order of Claim Jumper Restaurants, LLC (or such other party as the Debtors may determine) in an amount equal to at least \$1,000,000.

In addition, the Debtors intend to retain Hilco Real Estate ("HRE") to negotiate lease concessions. HRE is to be compensated based upon a percentage of the lease concessions it secures. To the extent that HRE's retention is approved by the Bankruptcy Court, all Qualified Bidders must assume the obligation to pay HRE according to the terms of HRE's court approved compensation agreement.

- E. Credit Bidding by Prepetition Secured Parties. Unless the Court orders otherwise prior to the Bid Deadline (defined below), the Prepetition Secured Parties may submit a Written Offer that includes a "credit bid" component for the purchase of any Assets upon which the Prepetition Secured Parties have a valid, perfected lien; provided, however, that such Written Offer also must include (i) a cash component for the purchase of any Assets that are not subject to the Prepetition Secured Parties' liens and security interests, including, without limitation, the Leases, (ii) cash sufficient to pay the Carve-Out (as defined in the Cash Collateral Order), (iii) a cash component equal to the amount of the Bid Protection Amount, and (iv) cash sufficient to pay any Cure Amounts and otherwise to consummate the Sale.
- F. Bid Deadline. All Qualified Bids must be received prior to 4:00 p.m. (Pacific Time) on October [26], 2010 (the "Bid Deadline"), by each of the parties listed below.
- G. Determination of Qualified Bid. As promptly as practicable after a Potential Bidder delivers the documents and items required by paragraphs 8 and 15 above, and after consultation with the Consultation Parties, but in any event no later than one (1) Business Day prior to the Auction, the Debtors shall determine in their business judgment, and shall notify the Potential Bidder and the Buyer in writing, whether (i) the Potential Bidder is a Qualified Bidder and (ii) a Written Offer is a Qualified Bid. Each Qualified Bidder will be given access to all Qualified Bids at such time
- H. "As Is, Where Is". Except as otherwise provided in the applicable agreement, the sale of any or all of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtors, their agents or their estates except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court. Except as otherwise provided in the applicable agreement, all of the Debtors' right, title and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the "Interests") in accordance with sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Assets prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and/or inspection

of any documents and/or the Assets in making its Qualified Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder(s), the terms of the transaction(s) as set forth in the applicable agreement.

- I. Auction. In the event that two or more Qualified Bids are received, the Debtors shall conduct an Auction of the Assets. The Auction shall be held on October [28], 2010 at [\_\_\_\_\_] a.m.] (Pacific Time) at the offices of Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30<sup>th</sup> Floor, Los Angeles, CA 90017, and continue thereafter until completed. Subject to the Agreement, the Debtors may adjourn the Auction at any time, continue the Auction from time to time and re-open the Auction at any time prior to the commencement of the Sale Hearing, as is appropriate in the Debtors' reasonable business judgment. The Debtors may not cancel the Auction except in the circumstances described below.

Except as otherwise permitted in the Debtors' discretion, only the Debtors, the Consultation Parties, the U.S. Trustee, and Qualified Bidders and their respective professionals shall be entitled to attend the Auction. Only a Qualified Bidder that submitted a Qualified Bid is eligible to participate in the Auction.

The Bid Procedures also set forth more detailed procedures to be followed at the Auction, including the setting of the minimum bid increment amount of \$100,000 and the determination of the Successful Bidder and the Backup Bidder,

- J. Sole Qualified Bid. If the Agreement with the Buyer is the only Qualified Bid submitted by the Bid Deadline, the Debtors will not hold the Auction and instead will request at the Sale Hearing that the Court approve the Agreement with the Buyer.
- K. Sale Hearing. The Sale Hearing will be held before the Honorable Kevin Gross on November [2], 2010 at [\_\_ : \_\_\_\_ .m.] (Eastern Time) at the United States Bankruptcy Court for the District of Delaware, located in 824 Market Street, [Room \_\_\_\_] Wilmington, DE 19801. After consultation with the Consultation Parties, but subject to the terms of the Agreement, the Debtors may adjourn or continue the Sale Hearing from time to time without further notice to the Consultation Parties or parties in interest other than by announcement of the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date. At the Sale Hearing, the Debtors shall present the results of the Auction to the Bankruptcy Court and seek approval for the Successful Bid and the Backup Bid(s). Subject to the express terms and conditions of the Agreement, the Debtors

shall pay to Buyer the applicable Bid Protection Amount without further court order.

Following the Sale Hearing approving the transaction with respect to the Assets to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for any reason, the appropriate Backup Bidder(s) shall be designated the Successful Bidder and the Debtors shall be authorized to effect such transaction without further order of the Court. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

L. Consummation of the Purchase.

(i) Closing Deadline. The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the "Purchase") on or before the Closing Deadline. Subject to the terms of the Agreement or Modified Agreement, the Debtors may extend the Closing Deadline from time to time in its business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Deadline, such Successful Bidder's Good Faith Deposit shall be applied to the purchase price in such transaction.

If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Agreement or Modified Agreement, or otherwise fails to perform, the Debtors may, in their business judgment and without further order of the Bankruptcy Court, deem the Successful Bidder to be a "Defaulting Buyer," at which time the Successful Bid shall be deemed rejected.

Subject to Buyer's right, if any, to recover from the Debtors the Bid Protection Amount, the Debtors shall be entitled to (i) retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer's failure to perform.

(ii) Backup Purchase. Upon a determination by the Debtors, after consultation with the Consultation Parties, that the Successful Bidder is a Defaulting Buyer, the Debtors will be authorized, but not required, to consummate a sale transaction with the Backup Bidder on the terms and conditions of the Backup Bid (the "Backup Purchase") without further order of the Bankruptcy Court.

If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price in such transaction. On an as-needed basis, the Debtors, in the exercise of their business judgment and after consultation with the Consultation Parties, shall determine an alternative Closing Deadline for the Backup Purchase. In the

event that the Debtors seek to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches the Agreement or Modified Agreement or otherwise fails to perform, the Debtors may, in their business judgment and after consultation with the Consultation Parties, and without further order of the Bankruptcy Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as set forth in paragraph 32 of the Bid Procedures.

- M. Return of Good Faith Deposits. Good Faith Deposits of all Qualified Bidders shall be held in an escrow account. Except for the Successful Bidder and the Backup Bidder(s), the Debtors shall return the Good Faith Deposits of all Qualified Bidders that submit Written Offers no later than three (3) Business Days after the conclusion of the Auction.

### **Notice of Sale Hearing**

27. The Debtors request that the Court approve the manner of notice of the Sale Motion, the Bid Procedures, the Auction, and the Sale Hearing, substantially in the form of the Sale Notice, attached to the proposed Bid Procedures Order as Exhibit B. The Debtors will serve the Sale Notice on the following parties:

- (a) the U.S. Trustee;
- (b) counsel to any official committee of unsecured creditors appointed in this case;
- (c) the agent for the Debtors' prepetition secured lenders and its counsel;
- (d) the Buyer and its counsel;
- (e) all entities known to have expressed an interest in acquiring any of the Assets;
- (f) all parties known to be asserting a lien on any of the Debtors' Assets;

- (g) all known vendors, suppliers, lenders, contract, license and lease counterparties;
- (h) the United States Attorney's office;
- (i) all state attorney generals in states in which the Debtors do business;
- (j) various federal and state agencies and authorities asserting jurisdiction over the Assets, including the Internal Revenue Service;
- (k) all federal, state and local taxing authorities with jurisdiction over the Debtors' business;
- (l) all regulatory authorities that have a reasonably known interest in the relief requested in the Sale Motion;
- (m) all known creditors of the Debtors; and
- (n) all other parties that have filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 9010(b) as of the date of entry of the Bid Procedures Order (collectively, the "Sale Notice Parties").<sup>4</sup>

28. The Debtors propose to serve the Sale Notice within three (3) business days from the date of entry of an order granting the Bid Procedures Motion (the "Bid Procedures Order"), by first-class mail. The Sale Notice will provide that any party that has not received a copy of the Sale Motion or the Bid Procedures Order that wishes to obtain a copy of such documents may make such a request, in writing, to Milbank, Tweed, Hadley & McCloy LLP,

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<sup>4</sup> In order to reduce the burden on the Debtors' estates, for the Sale Notice Parties listed in paragraphs (g) through (n), the Debtors do intend to include a copy of the Bid Procedures with the Sale Notice. The Debtors will provide a copy of the Bid Procedures to any party making such a request in accordance with paragraph 28.

601 South Figueroa Street, 30th Floor, Los Angeles, CA 90017, Attn: Robert Jay Moore / Haig Maghakian, Fax: (213) 629-5063, Email: rmoore@milbank.com and hmaghakian@milbank.com.

29. In addition, within seven (7) business days from the entry of the Bid Procedures Order, the Debtors propose to publish the a notice of the Auction and the Sale Hearing in one weekday edition of the *Wall Street Journal, National Edition*.

#### **Auction and Sale Hearing**

30. Pursuant to the proposed Bid Procedures, and as contemplated by the Agreement, the Debtors intend to subject the Sale to an auction and overbid process. At the Sale Hearing, the Debtors will seek Bankruptcy Court approval of the Sale of the Assets to the Buyer, or if an Auction is held, the Successful Bidder at the conclusion of such Auction, free and clear of all liens, claims and encumbrances pursuant to Bankruptcy Code sections 363(b) and (f), with all liens, claims and encumbrances to attach to the proceeds of the Sale with the same validity and in the same order of priority as they attached to the Assets prior to the Sale, including the assumption by the Debtors and assignment to the Successful Bidder of the Assigned Contracts pursuant to Bankruptcy Code section 365. The Debtors will present additional evidence, as necessary, at the Sale Hearing and submit that the Sale is fair, reasonable and in the best interest of its estate.

31. Given the limited funding available to the Debtors and the deadlines set forth in the Agreement, the Debtors are under significant pressure to consummate the sale of the Assets as quickly as possible. Nevertheless, the Debtors are mindful of their fiduciary duties and want to ensure that they are able to maximize value by providing sufficient notice of the Auction and Sale process. Accordingly, the Debtors request that the Court schedule the Auction for no later than October 28, 2010 and the Sale Hearing for no later than November 2, 2010. The Debtors believe that this scheduling will provide ample notice of the Auction and sufficient time

for any potential bidders to conduct diligence regarding the Assets and, if interested in participating at the auction, to submit a Qualified Bid.

### **Closing**

32. The closing on the Sale (the “Closing”) shall take place in accordance with terms of the Agreement, or in accordance with the terms of such other agreement approved by the Bankruptcy Court at the Sale Hearing.

### **Procedures for the Assumption and Assignment of Assumed Agreements**

33. At Closing, the Debtors intend to assume and assign to the Successful Bidder certain executory contracts and unexpired leases identified on certain schedules to the Agreement (i.e. the Assigned Contracts). The Debtors shall file a list of the currently contemplated Assigned Contracts, and the final cure costs associated therewith (the “Assigned Contract List”) with the Bankruptcy Court no less than five (5) business days after entry of the Bid Procedures Order.<sup>5</sup> The Debtors also propose to serve a notice (the “Assigned Contracts and Cure Notice”), upon each party that is included on the Assigned Contract List in substantially the form attached to the Bid Procedures Order as Exhibit C, along with Assigned Contract List, no later than five (5) business days after entry of the Bid Procedure Order by way of overnight mail or express mail. The Assigned Contract and Cure Notice will state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of the Assigned Contracts or any proposed Cure Amount (defined below) must be filed and served (which date shall be approximately 14 days prior to the Sale Hearing). The Assigned Contract List will identify the amounts, if any, that the Debtors believe are owed to each counterparty to

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<sup>5</sup> The inclusion of any agreement in the list of Assigned Contracts does not constitute an admission by the Debtor that such agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and the Debtor expressly reserves the right to challenge the status of any agreement included in the list of Assigned Contract up until the time of the Sale Hearing.

the Assigned Contracts in order to cure any defaults that exist under such contract (the “Cure Amounts”).

34. If a contract or lease is assumed and assigned pursuant to the Bankruptcy Court’s order approving the same, then, unless the affected counterparty properly files and serves an objection to the Cure Amounts contained in the Assigned Contract List, the counterparty will receive at the time of the Closing (or as soon as reasonably practicable thereafter), the Cure Amounts as set forth in the Assigned Contract List, with payment made pursuant to the terms of the Agreement, or the agreement of the Successful Bidder. If an objection is filed by a counterparty to any proposed Cured Amount, the Debtors propose that such objection must set forth a specific default in any executory contract or unexpired lease and claim a specific monetary amount that differs from the amount (if any) specified by the Debtors in the Assigned Contract List or, alternatively, state why the counterparty believes any Cure Amount is owing.

35. The Debtors propose that the Court make its determinations concerning adequate assurance of future performance under the Assigned Contracts pursuant to Bankruptcy Code section 365(b) at the Sale Hearing or in the case of any Assigned Contracts not assumed and assigned to the Successful Bidder at the Sale Hearing, and to the extent necessary, at such other hearing to approve assumption and assignment of such Assigned Contracts. The Debtors further proposes that Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing or, to the extent necessary, at such other hearing to approve assumption and assignment of the relevant contract.

36. Except to the extent otherwise provided in the Agreement or the agreement entered into with the Successful Bidder, the assignee of an Assigned Contract will not be subject to any liability to the assigned contract counterparty that accrued or arose before the

closing date of the sale of the Assets and the Debtors shall be relieved of all liability accruing or arising thereafter pursuant to Bankruptcy Code section 365(k). The Debtors shall be responsible for the payment of all Cure Amounts, provided, however, that subject to the Agreement, the Buyer shall be responsible for, and shall pay, up to \$800,000 in the aggregate of one half of the Cure Amounts due in connection with the assumption and assignment of the Debtors' Real Estate Leases.

37. The Agreement also provides that up until the Closing, the Buyer can change its decisions regarding what contracts are to be assigned to it by either dropping contracts from the Assigned Contract List or adding contracts to that list. If the Buyer adds a contract to the Assigned Contract List subsequent to the time that the Debtors serve the Assigned Contracts and Cure Notice, the Debtors will promptly serve notice on the counterparties to any such added contracts, together with the proposed Cure Amounts. No such added contract may be assumed or assigned unless the counterparty is provided at least ten (10) business day's notice of the proposed assignment and Cure Amount.

**Approval of the Break-Up Fee, Expense  
Reimbursement and Bid Procedures is Appropriate**

38. The Break-Up Fee, the Expense Reimbursement, and the Bid Procedures described herein are reasonably calculated to encourage a purchaser to submit a final bid within the range of reasonably anticipated values. The Buyer insisted on the protections afforded it by the Break-Up Fee, the Expense Reimbursement and the other Bid Procedures. The Agreement specifically provides "that it is a condition of Buyer for entering into this Agreement that Buyer be so entitled to the Expense Reimbursement and Break-Up Fee in accordance with this Agreement." Agreement, section 7.1(c). If the Court declines to approve the Break-Up Fee and the Expense Reimbursement, the Agreement provides that the Buyer may terminate the

Agreement. Agreement, sections 8.1(c)(6). Thus, these protections for the buyer were needed to “induce the first bid” and in order to “preserve that bid” for the auction. As the Third Circuit recently explained, that this the classic situation where the Court is well within its discretion to approve such stalking horse protections. *In re Reliant Energy*, 594 F.3d 200 (3d Cir. 2010). The Buyer will be the stalking horse for competitive bids, perhaps leading to further competition and the establishment of a baseline against which higher or otherwise better offers can be measured. And without the Court’s approval of such bid protections, the Debtors would face the untenable prospect of entering into a free-fall bankruptcy with no stalking horse.

39. As indicated above, the Debtors hereby requests that the Court approve the overbid payments and Bid Procedures, as are customary in similar circumstances, including (a) the Break-Up Fee; (b) the Expense Reimbursement; (c) the minimum overbid amount of \$1,600,000 plus the purchase price under the Agreement in respect of an offer for all or substantially all of the Assets; (d) bidding increments of \$100,000 for all or substantially all of the Assets after the minimum overbid amount; and (e) the other Bid Procedures. The Debtors submit that cause exists to approve such payments and procedures because they are fair and reasonable under the circumstances and will encourage competitive bidding and the highest and best price for the Assets.

40. The Debtors submit that the agreement to pay the Bid Protection Amount was and remains critical to the Sale process. Indeed, the payment of the Break-Up Fee and the Expense Reimbursement under the terms of the Agreement, and the establishment of the Bid Procedures, were reasonable and necessary to induce a purchaser to enter into the transactions encompassed by the Agreement and thus to enable the Debtors to obtain the highest and best price possible for the Assets. Each of the entities that submitted a stalking horse bid, including

Black Canyon, insisted on the inclusion of some form of bid protections in its proposed purchase agreement. Without the Bid Protection Amount or similar bid protections, the Debtors believe they would have been unable to convince any entity to serve as a stalking horse bidder.

41. Thus, the Bid Protection Amount was integral to the execution of the Agreement and putting the Debtors in a position to file these chapter 11 cases and pursue an auction process that would maximize the consideration received for the sale of the Assets. Furthermore, if the Bid Protection Amount is not approved, the Buyer will have the ability to walk away from the Agreement. The uncertainty that would be created in that scenario could have potentially disastrous consequences to the Debtors, their estates and their creditors.

42. In addition, the Bid Protection Amount also will compensate the Buyer for serving as the stalking horse bidder whose bid will be subject to higher or better offers, the Debtors seek approval of the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Agreement. In exchange for providing the benefits to the Debtors' estate of having a stalking horse bidder by virtue of the Agreement with the Buyer, the Bid Protections mitigate the risk to the Buyer that a third-party offer may ultimately be accepted.

43. Bidding incentives also encourage a potential purchaser to invest the requisite time, money and effort to negotiate with the Debtors and perform the necessary due diligence attendant to the acquisition of the Debtors' assets, despite the inherent risks and uncertainties of the chapter 11 process. Historically, bankruptcy courts have approved bidding incentives similar to the Break-Up Fee and the Expense Reimbursement, under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. See, e.g., In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may "be

legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”) (internal quotation marks and citation omitted).

44. The Third Circuit has established standards for determining the appropriateness of bidding incentives in the bankruptcy context. In re Calpine Corp. v. O’Brien Envtl. Energy, Inc., 181 F.3d 527 (3d Cir. 1999), the court held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of Bankruptcy Code § 503(b) govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some benefit to the debtor’s estate. See id. at 533.

45. The O’Brien court identified at least two instances in which bidding incentives may provide benefit to the estate. First, benefit may be found if “assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” Id. at 537. Second, where the availability of bidding incentives induces a bidder to research the value of the Debtors and submit a bid that serves as a minimum or floor bid on which other bidders can rely, “the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” Id.

46. Whether evaluated under the “business judgment rule” or the Third Circuit’s “administrative expense” standard, the Break-Up Fee and Expense Reimbursement pass muster. The Agreement and the Debtors’ agreement to pay the Break-Up Fee and Expense Reimbursement pursuant to the terms thereunder are the product of good faith, arm’s-length negotiations between the Debtors and the Buyer. And, as discussed above, the Break-Up Fee

and Expense Reimbursement are fair and reasonable in amount, and are reasonably intended to compensate for the risk to the Buyer of being used as a stalking horse bidder.

47. Further, the Break-Up Fee and Expense Reimbursement already have encouraged competitive bidding, in that the Buyer would not have entered into the Agreement without these provisions. The Break-Up Fee and Expense Reimbursement thus have “induc[ed] a bid that otherwise would not have been made and without which bidding would [be] limited.” O’Brien, 181 F.3d at 537. Similarly, the Buyer’s offer provides a minimum bid on which other bidders can rely, thereby “increasing the likelihood that the price at which the [Assets will be] sold will reflect [their] true worth.” Id.

48. Finally, the Bid Procedures are fair and reasonable procedures reasonably intended to encourage competitive bidding, and the Break-Up Fee and the Expense Reimbursement will permit the Debtors to insist that competing bids for the Assets made in accordance with the Bid Procedures be materially higher or otherwise better than the Agreement (or competing agreement), which is a clear benefit to the Debtors’ estate.

49. Furthermore, the Break-Up Fee is approximately 1.9% of the total consideration<sup>6</sup> and 3.3% of the potential cash component of the Purchase Price under the Agreement, prior to any adjustments thereto. This percentage is well within the spectrum of termination fees approved by bankruptcy courts in chapter 11 cases. See, e.g., In re Global Motorsport Group, Inc., et al., (Case No. 08-10192 (KJC) (Bankr. D. Del. February 14, 2008) (Court approved a break up fee of approximately 4%, or \$ 500,000 in connection with sale); In re Global Home Products, Case No. 06-10340 (KG) (Bankr. D. Del. July 14, 2006) (Court approved a break-up fee of 3.3%, or \$700,000, in connection with sale); In re Ameriserve, Case

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<sup>6</sup> Cash consideration of \$29.5 million (\$24.5 million in straight cash and \$5 million of cash collateralization of the Debtors’ existing letters of credit) plus assumption of up to \$23.3 million of liabilities.

No. 00-0358 (PJW) (Bankr. D. Del., September 27, 2000) (Court approved a break-up fee of 3.64%, or \$4,000,000, in connection with \$110,000,000 sale); In re Montgomery Ward Holding Corp., et al., Case No. 97-1409 (PJW) (Bankr. D. Del., June 15, 1998) (Court approved termination fee of 2.7%, or \$3,000,000, in connection with \$110,000,000 sale of real estate assets); In re Medlab, Inc., Case No. 97-1893 (PJW) (Bankr. D. Del. April 28, 1998) (Court approved termination fee of 3.12%, or \$250,000, in connection with \$8,000,000 sale transaction); In re Anchor Container Corp. et. al, Case Nos. 96-1434 and 96-1516 (PJW) (Bankr. D. Del. Dec. 20, 1996) (Court approved termination fee of 2.43%, or \$8,000,000, in connection with \$327,900,000 sale of substantially all of Debtors' assets); In re FoxMeyer Corp. et al., Case No. 96-1329 (HSB) through 96-1334 (HSB) (Bankr. D. Del., Oct. 9, 1996) (Court approved termination fee of 7.47%, or \$6,500,000, in connection with \$87,000,000 sale of substantially all of Debtors' assets); In re Edison Bros. Stores. Inc. et al, Case No. 95-1354 (PJW) (Bankr. D. Del., Dec. 29, 1995) (Court approved termination fee of 3.5%, or \$600,000, in connection with \$17,000,000 sale of Debtors' entertainment division).

50. For the reasons set forth above, the Debtors respectfully request approval of: (a) the proposed overbid protections including the Break-Up Fee and Expense Reimbursement; (b) the Bid Procedures for the conduct of overbidding, the Auction and selection of the Successful Bidder; (c) the Cure Procedures set forth herein for notice to counterparties under executory contracts and leases proposed to be assumed and assigned in connection with the proposed sale, and the determination and payment of Cure Costs to those counterparties; (d) the scheduling of the Sale Hearing and other matters for which scheduling is requested herein; and (e) the related relief sought hereby.

**No Prior Request**

51. No prior request for the relief sought in this Bid Procedures Motion has been made to this or any other court.

**Notice**

52. Notice of this Bid Procedures Motion either has been or will be given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee and (ii) the Debtors' prepetition secured lenders. Following the first day hearing in this case, this Bid Procedures Motion will be served on (a) creditors holding the twenty largest unsecured claims against the Debtors as identified in the Debtors' petitions, or their legal counsel (if known); and (b) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page left intentionally blank]*

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

In re:	)	Chapter 11
	)	
CLAIM JUMPER RESTAURANTS, LLC	)	Case No. 10-12819 (KG)
<i>et al.</i> ,	)	
	)	(Jointly Administered)
Debtors. <sup>1</sup>	)	
	)	

**ORDER (A) APPROVING BID PROCEDURES RELATING TO THE SALE  
OF THE DEBTORS' ASSETS, (B) APPROVING BID PROTECTIONS FOR STALKING  
HORSE BUYER, (C) SCHEDULING A HEARING TO CONSIDER THE SALE, (D)  
APPROVING THE FORM AND MANNER OF NOTICES OF SALE BY AUCTION, (E)  
ESTABLISHING PROCEDURES FOR NOTICING PROPOSED ASSUMPTION AND  
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND  
DETERMINING CURE AMOUNTS, AND (F) GRANTING RELATED RELIEF**

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (the "Debtors") for entry of an order (a) approving bid procedures for the sale of the Debtors' assets, (b) authorizing the Debtors to offer certain bid protections, (c) scheduling a final sale hearing and approving the form and manner of notice thereof, (d) establishing procedures for noticing assumption and assignment of executory contracts and unexpired leases and determining cure amounts, and (e) granting related relief [Docket No. \_\_\_\_];<sup>2</sup> and it appearing that the Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(a); the Court having considered the Motion; and it appearing that the relief requested in the Motion, is in the best interests of the Debtors' bankruptcy estate, its creditors and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor;

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<sup>1</sup> The Debtors in these cases along with the last four digits of each of the Debtors' federal tax identification numbers are: Claim Jumper Restaurants, LLC (1053) and Claim Jumper Management, LLC (6481). The Debtors' headquarters and mailing address is: 16721 Millikan Ave., Irvine, CA 92606.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Bid Procedures Motion or the Agreement (as defined below), as the case may be.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:

A. Notice of the Motion was adequate and sufficient under the circumstances of these chapter 11 cases, and such notice complied with all applicable requirements of 11 U.S.C. §§ 102 and 363, Rules 2002, 6004, 6006, and 9008 of the Federal Rules of Bankruptcy Procedure, and any other applicable provisions of title 11 of the United States Code (the “Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules.

B. The bid procedures attached hereto as Exhibit A (the “Bid Procedures”) are reasonable and appropriate under the circumstances of this chapter 11 case. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.

C. All objections to the relief requested in the Motion that have not been withdrawn, waived or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled except as otherwise set forth herein.

D. The Breakup Fee and the Expense Reimbursement (together, the “Bid Protection Amount”) to be paid under the circumstances described herein and in the Asset Purchase Agreement (the “Agreement”) by and between the Debtor and GRP Acquisition Corp. (the “Buyer”) is (i) an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefit conferred upon the Debtors’ estates by the Buyer, (iii) reasonable and appropriate, in light of the size and nature of the proposed sale transaction and comparable transactions, the commitments that have been made and the efforts that have been and will be expended by the Buyer, and (iv) necessary to induce the Buyer to continue to pursue the sale transaction and to continue to be bound by the Agreement.

E. The Bid Protection Amount also induced the Buyer to submit a bid that will not only serve as a minimum floor bid on which the Debtors, their creditors and other bidders may rely, but also provides the Debtors with the opportunity to sell their business on a “going concern” basis for the benefit of all parties. The Buyer has provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible price will be received for the assets to be acquired by the Buyer under the Agreement (the “Assets”). Accordingly, the Bid Procedures and the Bid Protection Amount is reasonable and appropriate and represents the best method for maximizing value for the benefit of the Debtors’ estates.

F. The Sale Notice, substantially in the form attached hereto as Exhibit B hereto, the publication of notice of the Auction and the Sale Hearing in the *Wall Street Journal National Edition*, and the Assigned Contract and Cure Notice, substantially in the form of Exhibit C hereto, each provide adequate notice concerning the proposed sale of the Assets and the proposed assumption and assignment of the Assigned Contracts, as applicable, as contemplated in the Agreement, and are intended to provide due and adequate notice of the relief sought in the Sale Motion.

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED.
2. The Bid Procedures as set forth on the attached Exhibit A are approved in their entirety, and are incorporated herein by reference.
3. The proposed sale of the Assets, the proposed assumption and assignment of the Assigned Contracts, the Auction (as defined below) and the Sale Hearing shall be conducted in accordance with the provisions of this Order and the Bid Procedures.

4. Immediately upon entry of this Order, the Agreement shall be binding upon both parties thereto unless and until the Court approves an Alternative Transaction (as defined therein) in which case the Agreement shall immediately terminate (except as to those terms and provisions in the Agreement that survive termination); provided that nothing herein is intended to override or modify the parties rights to terminate the Agreement pursuant to its terms.

5. The Bid Protection Amount as set forth in the Agreement is hereby approved. If the Buyer becomes entitled to payment of the Bid Protection Amount, the Debtors are hereby authorized and directed to pay the Bid Protection Amount, subject and pursuant to the terms of the Agreement, without further action or order by the Court. The Bid Protection Amount, to the extent it becomes due and payable, shall be an administrative expense claim with priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code until paid.

6. Within three (3) business days following entry of this Order, the Debtors shall serve the Sale Notice by first class mail on:

- (a) the U.S. Trustee;
- (b) counsel to any official committee of unsecured creditors appointed in this case;
- (c) the agent for the Debtors' prepetition secured lenders and its counsel;
- (d) the Buyer and its counsel;
- (e) all entities known to have expressed an interest in acquiring any of the Assets;
- (f) all parties known to be asserting a lien on any of the Debtors' Assets;

- (g) all known vendors, suppliers, lenders, contract, license and lease counterparties;
- (h) the United States Attorney's office;
- (i) all state attorney generals in states in which the Debtors do business;
- (j) various federal and state agencies and authorities asserting jurisdiction over the Assets, including the Internal Revenue Service;
- (k) all federal, state and local taxing authorities with jurisdiction over the Debtors' business;
- (l) all regulatory authorities that have a reasonably known interest in the relief requested in the Sale Motion;
- (m) all known creditors of the Debtors; and
- (n) all other parties that have filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 9010(b) as of the date of entry of the Bid Procedures Order.

7. The Debtors shall not be required to serve the Bid Procedures on the parties listed in paragraphs 6(g) through (n) of this Order.

8. By no later than seven (7) business days from the entry of the Bid Procedures Order, the Debtors shall publish a notice of the Auction and the Sale in the *Wall Street Journal*, *National Edition*.

9. By no later than five (5) business days before the entry of this Order, the Debtors shall file the Assigned Contract List with the Bankruptcy Court.

10. By no later than five (5) business days following the entry of this Order, the Debtors shall serve, by overnight or express mail, the Assigned Contracts and Cure Notice and Assigned Contract List upon each party that is included on the Assigned Contract List.

11. Counterparties to the Assigned Contracts<sup>3</sup> (each a “Counterparty”, and together, the “Counterparties”) must file and serve any objection to the assumption and assignment of any Assigned Contract, including objections to any proposed Cure Amounts, by October [19], 2010 at 4:00 p.m. (Pacific Time). Any such objection shall set forth a specific alleged default in any executory contract or unexpired lease and claim a specific monetary amount that differs from the Cure Amount (if any) specified by the Debtors in the Assigned Contract List or, alternatively, state why the counterparty contends that any Cure Amount is owing.

12. Any Counterparty failing to timely file an objection to the Cure Amounts set forth in the Cure Notices shall be forever barred from objecting to such Cure Amounts and from asserting any additional cure or other amounts against the Debtors, their estates, and the Buyer with respect to its executory contract or unexpired lease and will be deemed to consent to the Sale and the proposed assumption and assignment of its executory contract or unexpired lease. Notwithstanding anything to the contrary, no executory contract or unexpired lease will be assumed unless and until the occurrence of the Closing Date and in accordance with the terms of the Agreement.

13. Any other objections to the relief requested at the Sale Hearing or to the proposed form of order (the “Sale Order”) shall be in writing, shall state the basis of such objection with specificity, and shall be filed with the Court on or before October [19], 2010 at 4:00 p.m. (Pacific

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<sup>3</sup> The inclusion of any agreement as an Assumed Executory Contract does not constitute an admission by the Debtor that such agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and the Debtor expressly reserves the right to challenge the status of any agreement included as an Assumed Executory Contract up until the time of the Sale Hearing

Time), and served, so as to be received on or before such time, on (a) counsel for the Debtor; (b) counsel for any official committee(s) appointed in the these Chapter 11 Cases; (c) counsel to the agent for the Debtors' prepetition secured lenders; (d) the United States Trustee; and (e) counsel for the Buyer, with a courtesy copy to Chambers.

14. Compliance with the foregoing notice provisions shall constitute sufficient notice of the Debtors' proposed sale of the Assets, the contemplated assumption and assignment of the Assigned Contracts and proposed final Cure Amounts, and no additional notice of such contemplated transactions need be given.

15. If the Debtors receive more than one Qualified Bid (as defined in the Bid Procedures), an auction (the "Auction") will be held on October [28] at [10:00 a.m.] (Pacific Time), at the offices of Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30<sup>th</sup> Floor, Los Angeles, CA 90017, or at any such other location as the Debtors may hereafter designate.

16. The Debtors and their advisors are authorized to hold and conduct the Auction in accordance with the Bid Procedures.

17. The hearing regarding the acceptance of the Successful Bid(s) and Backup Bid(s) shall be held on November [2], 2010, at \_\_: \_\_.m. (Eastern Time) (the "Sale Hearing") in the Courtroom of the Honorable \_\_\_\_\_, and, subject to the terms of the Agreement, may be adjourned from time to time without further notice other than an announcement in open court at the Sale Hearing.

18. Notwithstanding the possible applicability of Interim Bankruptcy Rule 6004(h) and 7062 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Order.

19. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2010

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The Honorable Kevin Gross  
United States Bankruptcy Judge

**EXHIBIT A**  
**CLAIM JUMPER RESTAURANTS**  
**BID PROCEDURES**

1. These bid procedures (the “Bid Procedures”) set forth the guidelines and process by which Claim Jumper Restaurants, LLC (“CJR”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) shall market their assets for sale to interested parties and conduct a sale of such assets through a court-approved auction (the “Auction”).

2. On September 10, 2010, the Debtors filed their Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of the Debtors’ Assets Outside the Ordinary Course of Business; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief (the “Sale Motion”) [Docket No. \_\_\_\_\_], to be heard by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on November [2], 2010 (the “Sale Hearing”). On September [\_\_\_], 2010, the Bankruptcy Court entered its Order (A) Approving Bid Procedures for the Debtors’ Assets, (B) Authorizing Debtors to Offer certain Bid Protections, and (C) Scheduling Final Sale Hearing and Form and Manner of Notice Thereof [Docket No. \_\_\_\_\_]], thereby approving these Bid Procedures.

3. The Debtors and GRP Acquisition Corp. (the “Buyer”), an affiliate of Black Canyon Capital, LLC, entered into an asset purchase agreement (the “Purchase Agreement”), dated September 10, 2010, and attached hereto as Exhibit 1, for the sale of

substantially all of the Debtors' assets (the "Assets"). Capitalized terms used in these Bid Procedures and not otherwise defined shall have the meanings ascribed to such terms in the Purchase Agreement.

4. Any party desiring to obtain a copy of the Purchase Agreement may do so by contacting the Debtors' counsel at:

Milbank, Tweed, Hadley & McCloy LLP  
601 S. Figueroa Street, 30<sup>th</sup> Floor  
Los Angeles, CA 90017  
Attn: Robert Jay Moore / Haig M. Maghakian  
Fax: (213) 892-4000  
E-mail: rmoore@milbank.com / hmaghakian@milbank.com

5. The Debtors provide these Bid Procedures for use by Potential Bidders (as defined below) and Qualified Bidders (as defined below) in submitting bids proposing a transaction to purchase or otherwise acquire substantially all, or a portion, of the Assets, and, as necessary, qualifying for and participating in the Auction. The Debtors seek to enter into one or more transactions with one or more Qualified Bidders (as defined below), so long as the individual bid for all of the assets of a Qualified Bidder or the bids for less than all of the Assets of two or more Qualified Bidders, in combination, maximize the consideration received for the Assets.

**A. Important Dates**

6. The Debtors shall, in their discretion:

- Assist Qualified Bidders (as defined below) in conducting their reasonable due diligence investigations;
- Negotiate, solicit and entertain offers for the sale of the Assets pursuant to the terms of these Bid Procedures;

- Accept Written Offers (as defined below) from Qualified Bidders (as defined below) until 4:00 p.m. (Pacific Time) on October 26, 2010;
- Select the Successful Bidder and Backup Bidder(s) (each as defined below) at the conclusion of the Auction to be held on October [28], 2010 at [\_\_\_\_\_] a.m.] (Pacific Time); and
- Seek authority to sell assets to such Successful Bidder(s) at the Sale Hearing, to be held before the Bankruptcy Court on November [2], 2010 at [\_\_\_\_]: [\_\_\_\_] \_\_.m.] (Eastern Time).

**B. Assets to be Sold**

7. The Debtors seek to sell their Assets as a going concern.

**C. Confidentiality Agreements and Access to Data Room**

8. Any person or entity wishing to bid on all or substantially all of the Assets (each a “Potential Bidder”) must deliver (unless previously delivered) to the Debtors, to the extent not already executed, a confidentiality agreement in such form acceptable to the Debtors (such form is available upon request to Debtors).

9. The Debtors will afford any Potential Bidder who satisfies the requirement set forth in paragraph 8 above such reasonable due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Debtors, in their business judgment, determine to be reasonable and appropriate. The Debtors and its advisors will coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. The Debtors shall not be obligated to furnish any due diligence information after the conclusion of the Auction. Neither the Debtors nor their advisors are responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with due diligence.

Notwithstanding anything contained herein to the contrary, the Debtors in their business judgment will decide what, if any, diligence information to make available to a particular Potential Bidder, after consultation with the official committee of unsecured creditors (the "Committee") and, to the extent they have advised the Debtors that they will not participate as a bidder for the Assets, the Prepetition Secured Parties (defined below; together with the Committee, the "Consultation Parties").<sup>1</sup> Subject to such consultation requirements, neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever to any party.

10. Potential Bidders seeking information about the qualification process, should contact the Debtors at:

Piper Jaffray & Co.  
1950 University Avenue, Suite 200  
East Palo Alto, CA 94303  
Attn: Damon Chandik  
John Twichell  
Teri Stratton  
Fax: (650) 838-1370  
E-mail: [damon.s.chandik@pjc.com](mailto:damon.s.chandik@pjc.com)  
[john.t.twichell@pjc.com](mailto:john.t.twichell@pjc.com)  
[teri.l.stratton@pjc.com](mailto:teri.l.stratton@pjc.com)

11. Notwithstanding anything herein to the contrary and so long as it is reasonably practicable, a Potential Bidder that desires at any time to contact (whether in person or telephonically) the Committee (or any member thereof), any of the Prepetition Secured Parties, or their respective advisors to discuss the terms of any bid made or to be

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<sup>1</sup> To the extent that the Committee has advised the Debtors, or becomes aware, that any member of the Committee is a Potential Bidder, the Committee shall (i) exclude such member from any and all discussions within the Committee relating to the auction and sale of the Assets and (ii) restrict, limit and prohibit the dissemination to such member of any confidential information relating to the auction and sale of the Assets.

made, such Potential Bidder shall coordinate such contact through the Debtors' advisors (who shall act promptly on such request to facilitate such contact).

12. A "Qualified Bidder" is a Potential Bidder (i) that delivers a confidentiality agreement as set forth in paragraph 8 above, (ii) whose financial information and credit-quality support or enhancement demonstrate, in the Debtors' discretion, the financial capability of the Potential Bidder to consummate the proposed transaction for the desired Assets, (iii) that the Debtors determine, in their discretion, is reasonably likely to submit a bona fide offer for the Assets and will be able to consummate such transaction if selected as the Successful Bidder (as defined below) within a time frame acceptable to the Debtors, and (iv) who submits a Qualified Bid as set forth in paragraph 15 below.

13. Qualified Bidders requesting information in connection with their due diligence should contact the Debtors' financial advisor, Piper Jaffray & Co. using the contact information provided above. Notwithstanding the foregoing or anything else in these Bid Procedures, the Buyer (or any designated Affiliate thereof) is hereby determined to be a Qualified Bidder for all purposes at the Auction.

**D. Bid Protections for the Buyer**

14. Recognizing the Buyer's expenditure of time, energy and resources, the Debtors have agreed to provide certain bidding protections to the Buyer. As a result, the Debtors have agreed, subject to the terms of the Purchase Agreement, to provide the Buyer with the following bid protections: (i) a break up fee in an amount of \$1,000,000 (the "Break Up Fee") and (ii) reimbursement of Buyer's reasonable, documented out-of-

pocket expenses in conducting due diligence and negotiating and documenting the transactions contemplated by the Purchase Agreement, which the Debtors acknowledge to be in the amount of \$500,000 (the “Reimbursement Amount,” and together with the Break Up Fee, the “Bid Protection Amount”). Subject to and in accordance with the express terms of the Purchase Agreement, in the event that the Buyer terminates the Agreement for any reason other than as a result of a breach by the Buyer, the Debtors will be obligated to pay the Expense Reimbursement; and in the event that (i) the Debtors receive one or more Qualified Bids (other than the Buyer’s stalking horse bid) and conduct the Auction, and (ii) a Successful Bidder that is not the Buyer is selected at the Auction, then the Debtors will be obligated to pay the Buyer the Bid Protection Amount; provided, however, that, in the event that the Buyer closes on the Sale of Assets, the Buyer shall not be entitled to payment of the Bid Protection Amount.

**E. Requirements for a Qualified Bid**

15. In order to participate in the Auction, if any, a Qualified Bidder must deliver to the Debtors a written offer (each, a “Written Offer”), which in order to be deemed a “Qualified Bid,” must meet each of the requirements listed below:

- i. State that the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the acquisition of the Assets on terms and conditions no less favorable to the Debtors than the terms and conditions contained in the Purchase Agreement (as determined by the Debtors in their reasonable business judgment after consultation with the Consultation Parties);
- ii. Be accompanied by a clean, duly executed and binding purchase agreement together with a blacklined copy marked to show all changes from form of the Purchase Agreement executed by the Buyer, in each case with such executed purchase agreement to be in a form acceptable to the Debtors, including the net purchase price for

the Assets in an amount at least equal to (i) the value of the Buyer's bid (\$24.5 million of cash paid to the Debtors, \$5 million of cash used to collateralize the Debtors' obligations under certain letters of credit, and assumption of up to \$23.3 million of liabilities), plus (ii) the Bid Protection Amount plus the initial bid increment of \$100,000 (the "Initial Overbid Amount"), for an overall net purchase price of \$52.9 million, together with all exhibits and schedules thereto, and, to the extent required by the terms and conditions of such bid, any ancillary agreements as described in the purchase agreement with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements) (collectively, a "Modified Agreement");

- iii. Be accompanied by a list of any executory contracts or unexpired leases that are to be assumed and/or assigned under such Written Offer.
- iv. State that the bidder is willing to consummate and fund the proposed transaction by no later than November 30, 2010, with an outside termination date no later than January 14, 2011 (the "Closing Deadline");
- v. To the extent not previously provided, state that the Qualified Bidder is financially capable of consummating the transactions contemplated by the Modified Agreement and any related transaction documents (the "Sale"), and include written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the Sale, that will allow the debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the Sale;
- vi. Include current audited financial statements and latest unaudited financial statements of the Qualified Bidder or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Assets, current audited financial statements and latest unaudited financial statements of the equity holders or sponsors of the Qualified Bidder who will guarantee the obligations of the Qualified Bidder, or such other form of financial disclosure and/or credit-quality support or enhancement, if any, that will allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the Sale;
- vii. Include an acknowledgement and representation that the Qualified Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever,

whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or the Auction; and (iii) is not entitled to any expense reimbursement, break-up fee or similar type of payment in connection with its bid;

- viii. Include evidence of the Qualified Bidder's ability to comply with Section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Qualified Bidder's ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the Qualified Bidder, in a form that will permit the immediate dissemination of such evidence to the counterparties to such contracts and leases;
- ix. To the Debtors' satisfaction, fully disclose (i) the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid, (ii) the terms of any such participation, and (iii) if an entity has been formed for the purpose of acquiring some, or all, of the Assets, the parties that will bear liability for any breach by such entity, and the financial capacity of such parties to satisfy such liability;
- x. State that the Written Offer is irrevocable until the closing of the transaction, if such Qualified Bidder is designated as a Successful Bidder or a Backup Bidder (each as defined below);
- xi. Is a higher and better offer than that contained in the Purchase Agreement with the Buyer, in the Debtors' business judgment and after consultation with the Consultation Parties;
- xii. Must contain provisions allowing the Debtors' reasonable access to the Debtors' books and records for the administration of their bankruptcy cases if any agreement provides for the purchase of the such books and records;
- xiii. Not contain any material due diligence or financing contingencies as determined by the Debtors in their reasonable discretion;
- xiv. In the Debtors' discretion, provide evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Modified Agreement to the Debtors' satisfaction;
- xv. Include a good faith deposit (the "Good Faith Deposit") in the form of a certified check, wire transfer or such other form as is acceptable to the Debtors payable to the order of Claim Jumper Restaurants,

LLC (or such other party as the Debtors may determine) in an amount equal to at least \$1,000,000; and

- xvi. All documentation submitted in support of the Written Offer must be submitted both in hard copy and electronically.

16. The Debtors have retained or intend to retain Hilco Real Estate ("HRE") to negotiate lease concessions. HRE is to be compensated based upon a percentage of the lease concessions it secures. To the extent that HRE's retention is approved by the Bankruptcy Court, all Qualified Bidders must assume the obligation to pay HRE according to the terms of HRE's court approved compensation agreement.

17. The Purchase Agreement with the Buyer constitutes a Qualified Bid. The Buyer also shall be deemed a party in interest in the Debtors' chapter 11 bankruptcy cases with respect to all matters concerning the auction and sale of the Assets and the conduct of, and determinations made at, the Auction. The Debtors will promptly deliver to the Buyer copies of any Qualified Bids.

18. Any Good Faith Deposit accompanying a Written Offer that the Debtors, after consultation with the Consultation Parties, determines not to be a Qualified Bid shall be returned promptly following such determination.

19. At its discretion, the Debtors may choose to either consider or disregard Written Offers for an insubstantial portion of the Assets. Between the Bid Deadline (as defined below) and the Auction, the Debtors may negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Each Qualified Bidder shall provide to the Debtors any information reasonably required by such parties in connection with the evaluation of a Written Offer or Qualified Bid within one business day after such request

is made. Without the consent of the Debtors, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable and binding.

**F. Credit Bidding by Prepetition Secured Parties**

20. As discussed in greater detail in the Declaration of William G. Taves filed in support of the Debtors' first-day motions (the "Taves Declaration"), the Debtors believe that the Prepetition Secured Parties (as defined in the Taves Declaration) have valid, perfected, first-priority liens on and security interests in substantially all of the Assets, but excluding the Debtors' real estate leasehold interests (the "Leases"). Accordingly, unless the Court orders otherwise prior to the Bid Deadline (defined below), the Prepetition Secured Parties may submit a Written Offer that includes a "credit bid" component for the purchase of any Assets upon which the Prepetition Secured Parties have a valid, perfected lien; provided, however, that such Written Offer also must include (i) a cash component for the purchase of any Assets that are not subject to the Prepetition Secured Parties' liens and security interests, including, without limitation, the Leases, (ii) cash sufficient to pay the Carve-Out (as defined in the Cash Collateral Order), (iii) a cash component equal to the amount of the Bid Protection Amount, and (iv) cash sufficient to pay any Cure Amounts and otherwise to consummate the Sale.

**G. Bid Deadline**

21. All Qualified Bids must be received prior to 4:00 p.m. (Pacific Time) on October [26], 2010 (the "Bid Deadline"), by each of the parties listed below.

Debtors: Claim Jumper Restaurants  
16721 Millikan Ave.  
Irvine, CA 92606  
Attn: William Taves  
Fax: (949) 756-9001  
E-mail: bill.taves@claimjumper.com

Debtors' Counsel: Milbank, Tweed, Hadley & McCloy LLP  
601 S. Figueroa Street, 30<sup>th</sup> Floor  
Los Angeles, CA 90017  
Attn: Robert Jay Moore / Haig M. Maghakian  
Fax: (213) 892-4000  
E-mail: rmoore@milbank.com /  
hmaghakian@milbank.com

Debtors'  
Financial Advisor: Piper Jaffray & Co.  
1950 University Avenue, Suite 200  
East Palo Alto, CA 94303  
Attn: Damon Chandik  
John Twichell  
Teri Stratton  
Fax: (650) 838-1370  
E-mail: damon.s.chandik@pjc.com  
john.t.twichell@pjc.com  
teri.l.stratton@pjc.com

Committee Counsel: [TBD]

#### **H. Determination of Qualified Bidder and Qualified Bids**

22. As promptly as practicable after a Potential Bidder delivers the documents and items required by paragraphs 8 and 15 above, and after consultation with the Consultation Parties, but in any event no later than one (1) Business Day prior to the Auction, the Debtors shall determine in their business judgment, and shall notify the Potential Bidder and the Buyer in writing, whether (i) the Potential Bidder is a Qualified Bidder and (ii) a Written Offer is a Qualified Bid. Each Qualified Bidder will be given access to all Qualified Bids at such time.

**I. “As Is, Where Is”**

23. Except as otherwise provided in the applicable agreement, the sale of any or all of the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Debtors, their agents or their estates except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court. Except as otherwise provided in the applicable agreement, all of the Debtors’ right, title and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the “Interests”) in accordance with sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Assets prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its Qualified Bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder(s), the terms of the transaction(s) as set forth in the applicable agreement.

**J. Auction**

24. In the event that two or more Qualified Bids are received, the Debtors shall conduct an Auction of the Assets. The Auction shall be held on October [28], 2010 at [\_\_\_\_\_] a.m.] (Pacific Time) at the offices of Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30<sup>th</sup> Floor, Los Angeles, CA 90017, and continue thereafter until completed. Subject to the Purchase Agreement, the Debtors may adjourn the Auction at any time, continue the Auction from time to time and re-open the Auction at any time prior to the commencement of the Sale Hearing, as is appropriate in the Debtors' reasonable business judgment. The Debtors may not cancel the Auction except in the circumstances described in paragraph 27 below.

25. Except as otherwise permitted in the Debtors' discretion, only the Debtors, the Consultation Parties, the U.S. Trustee, and Qualified Bidders and their respective professionals shall be entitled to attend the Auction. Only a Qualified Bidder that submitted a Qualified Bid is eligible to participate in the Auction.

26. The Auction shall be governed by the following procedures:

- i. Qualified Bidders shall appear at the Auction in person, or through a duly authorized representative.
- ii. Except with respect to subsections (v) and (vi) below, the Debtors, in their discretion, may conduct the Auction, in the manner that they determine, in their reasonable business judgment, will result in the Successful Bid(s) that will maximize the overall value of the Debtors' estates, and may adopt rules for the Auction at the Auction that, in the Debtors' reasonable business judgment, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order or the Purchase Agreement. All such rules will provide that: (i) the Auction procedures must be fair and open, and not intended to cause any

participating Qualified Bidder to be disadvantaged in any material way as compared to any other participating Qualified Bidder; and (ii) the Consultation Parties and all other participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each bidder (i.e., the principals submitting each bid) shall be fully disclosed to all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction. Each bid by a Qualified Bidder at the Auction, if not inconsistent with the provisions of these Bid Procedures, shall be deemed to constitute a Qualified Bid.

- iii. The Debtors will arrange for the actual bidding at the Auction to be transcribed.
- iv. Each Qualified Bidder participating in the Auction will be expected to confirm at the Auction that it has not engaged in any collusion regarding these Bid Procedures with any other Qualified Bidder, the Auction or any proposed transaction relating to the Assets or a portion thereof.
- v. At the Auction, the first bid for the Assets other than the offer of Buyer set forth in the Purchase Agreement shall be considered only if it exceeds the purchase price set forth in the Purchase Agreement by a minimum of (i) the amount that would be owed if the Debtors would be required to pay the Bid Protection Amount to the Buyer *plus* (ii) cash consideration in an amount not less than the Initial Overbid Amount. Subsequently, bidding will continue in minimum increments of at least \$100,000, with the specific increments for each round of bidding to be announced on the record at the Auction.
- vi. All Qualified Bidders shall have the right, at any time, to request that the Debtors announce, subject to any potential new bids, the then current highest or best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding the Debtors' announcement of the then current highest or best bid.
- vii. In the Debtors' discretion, all Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Agreement, as applicable, at the Auction: provided, however, that any such modifications to the Purchase Agreement or Modified Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors as determined by the Debtors.

- viii. Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall, as soon as practicable thereafter, and after consultation with the Consultation Parties, identify and determine in its business judgment the highest and best Qualified Bid for the Assets that would maximize the overall value of the Debtors' estate, taking into account, if applicable, the Buyer's entitlement to the Bid Protection Amount (each a "Successful Bid" and the entity or entities submitting such Successful Bid, each a "Successful Bidder"), and advise the Qualified Bidders of such determination, and require the Successful Bidder (other than Buyer) to deliver an executed Modified Agreement and deposit the sum of 10% of the Successful Bid (provided that such Successful Bidder's Good Faith Deposit shall be applied and credited towards such 10% deposit) within two (2) Business Days after conclusion of the Auction (unless the Closing Date occurs prior to such time), but in no event later than the commencement of the Sale Hearing.
- ix. In addition, the Debtors will determine, after consultation of the Consultation Parties, which Qualified Bid, if any, is the next highest and best Qualified Bid and designate such Qualified Bid as a "Backup Bid" in the event the Successful Bidder fails to consummate the contemplated transaction. A Qualified Bidder that submitted a Qualified Bid that is designated a Backup Bid is a "Backup Bidder". Notwithstanding anything to the contrary in the Bid Procedures, if the Buyer is selected as a Backup Bidder, the Buyer's Backup Bid shall be subject to all of the terms and conditions of the Purchase Agreement (as such agreement may be modified by the Buyer at the Auction); provided, however, that, subject to the terms of the Purchase Agreement permitting termination, each Backup Bid including, without limitation, any Backup Bid by the Buyer (but only if the Buyer makes a subsequent over-bid at the Auction pursuant to Paragraph 26(v) of the Bid Procedures), shall remain open and binding until the earlier of (i) two (2) Business Days after the closing of the transaction(s) by which all of the Assets that were subject to such Backup Bid have been transferred to one or more Qualified Bidders pursuant to these Bid Procedures and (ii) twenty-two (2) days after the conclusion of the Auction.
- x. Following the conclusion of the Auction, the Debtors may resume bidding on such procedures determined by the Debtors in their discretion for the sale of discrete assets not sold to the Successful Bidder.

**K. Sole Qualified Bid**

27. If the Purchase Agreement with the Buyer is the only Qualified Bid submitted by the Bid Deadline, the Debtors will not hold the Auction and instead will request at the Sale Hearing that the Court approve the Purchase Agreement with the Buyer.

**L. Sale Hearing**

28. The Sale Hearing will be held before the Honorable [ ] on November [2], 2010 at [\_\_:\_\_\_\_ \_\_.m.] (Eastern Time) at the United States Bankruptcy Court for the District of Delaware, located in 824 Market Street, [Room \_\_\_\_] Wilmington, DE 19801. After consultation with the Consultation Parties, but subject to the terms of the Purchase Agreement, the Debtors may adjourn or continue the Sale Hearing from time to time without further notice to the Consultation Parties or parties in interest other than by announcement of the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date. At the Sale Hearing, the Debtors shall present the results of the Auction to the Bankruptcy Court and seek approval for the Successful Bid and the Backup Bid(s). Subject to the express terms and conditions of the Purchase Agreement, the Debtors shall pay to Buyer the applicable Bid Protection Amount without further court order.

29. Following the Sale Hearing approving the transaction with respect to the Assets to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for any reason, the appropriate Backup Bidder(s) shall be designated the Successful Bidder and the Debtors shall be authorized to effect such

transaction without further order of the Court. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

**M. Consummation of the Purchase**

(i) Closing Deadline

30. The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the “Purchase”) on or before the Closing Deadline. Subject to the terms of the Purchase Agreement or Modified Agreement, the Debtors may extend the Closing Deadline from time to time in its business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Deadline, such Successful Bidder’s Good Faith Deposit shall be applied to the purchase price in such transaction.

31. If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Purchase Agreement or Modified Agreement, or otherwise fails to perform, the Debtors may, in their business judgment and without further order of the Bankruptcy Court, deem the Successful Bidder to be a “Defaulting Buyer,” at which time the Successful Bid shall be deemed rejected.

32. Subject to Buyer’s right, if any, to recover from the Debtors the Bid Protection Amount, the Debtors shall be entitled to (i) retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer’s failure to perform.

(ii) Backup Purchase

33. Upon a determination by the Debtors, after consultation with the Consultation Parties, that the Successful Bidder is a Defaulting Buyer, the Debtors will be authorized, but not required, to consummate a sale transaction with the Backup Bidder on the terms and conditions of the Backup Bid (the “Backup Purchase”) without further order of the Bankruptcy Court.

34. If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price in such transaction. On an as-needed basis, the Debtors, in the exercise of their business judgment and after consultation with the Consultation Parties, shall determine an alternative Closing Deadline for the Backup Purchase. In the event that the Debtors seek to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches the Purchase Agreement or Modified Agreement or otherwise fails to perform, the Debtors may, in their business judgment and after consultation with the Consultation Parties, and without further order of the Bankruptcy Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as set forth in paragraph 32 above.

**N. Return of Good Faith Deposits**

35. Good Faith Deposits of all Qualified Bidders shall be held in an escrow account. Except for the Successful Bidder and the Backup Bidder(s), the Debtors shall return the Good Faith Deposits of all Qualified Bidders that submit Written Offers no later than three (3) Business Days after the conclusion of the Auction.

**EXHIBIT B**

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

In re:	)	Chapter 11
	)	
CLAIM JUMPER RESTAURANTS, LLC	)	Case No. 10-12819 (KG)
<i>et al.</i> ,	)	
	)	(Jointly Administered)
Debtors. <sup>1</sup>	)	
	)	

**Deadline for Submitting Bids: October [26], 2010 at 4:00 p.m. Pacific Time**  
**Auction Date: October [28], 2010 at 10:00 a.m. Pacific Time**  
**Deadline for Objections to Approval of Sale: October [19], 2010 at 4:00 p.m. Pacific Time**  
**Hearing Date on Approval of Sale: November 2, 2010 at \_\_.m. Eastern Time**

**NOTICE OF BIDDING PROCEDURES, AUCTION AND SALE HEARING**

PLEASE BE ADVISED that on September 10, 2010, the above-captioned debtors and debtors in possession filed the *Debtors' Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of the Debtors' Assets Outside the Ordinary Course of Business; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (III) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* (the "Sale Motion") pursuant to which the Debtors have requested authority to sell substantially all of their assets (the "Assets") pursuant to and on the terms and conditions set forth in an asset purchase agreement dated September 10, 2010 (the "Agreement") by and between the Debtors and [ ] (the "Buyer"). The Assets will be sold free and clear of all liens, claims, rights, encumbrances and other interests in accordance with 11 U.S.C. §§ 363(b), (f) and 365(b).

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<sup>1</sup> The Debtors in these cases along with the last four digits of each of the Debtors' federal tax identification numbers are: Claim Jumper Restaurants, LLC (1053) and Claim Jumper Management, LLC (6481). The Debtors' headquarters and mailing address is: 16721 Millikan Ave., Irvine, CA 92606.

### **Bidding Procedures**

PLEASE BE ADVISED that, on September [ ], 2010, the Bankruptcy Court entered an Order (the "Bid Procedures Order") approving certain bid and auction procedures (the "Bid Procedures"), which procedures shall govern the bidding process and the auction (the "Auction") and sale of the (the "Sale") of the Assets. A copy of the Bidding Procedures are attached hereto as Exhibit 1. In the event of any inconsistency or conflict between this Notice and the Bid Procedures Order, the Bid Procedures Order shall control.

PLEASE BE FURTHER ADVISED that, other than the bid of the Buyer which has been and is deemed received, any and all bids must be in accordance with the Bid Procedures and must be **RECEIVED** by the following parties (the "Service Parties") **on or before October [26], 2010 at 4:00 p.m. Pacific Time:** (i) proposed counsel for the Debtors, Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30<sup>th</sup> Floor, Los Angeles, CA 90017, Attn: Robert Jay Moore / Haig M. Maghakian.; (ii) the Office of the United States Trustee, United States Trustee's Office, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: \_\_\_\_\_, Esq.; (iii) counsel for the agent to the Debtors' prepetition secured lenders, Orrick, Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, CA 94105-2669, Attn: Frederick Holden, Jr.; (iv) counsel for the Buyer, [ ]; and (v) proposed Counsel the Official Committee of Unsecured Creditors, \_\_\_\_\_.

### **Auction (if necessary) and Sale Hearing**

PLEASE BE FURTHER ADVISED that on **October [28], 2010 at 10:00 a.m. Pacific Time**, and to the extent required by the Bidding Procedures, the Debtor may hold the Auction for the Sale of the Assets at the offices of Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30<sup>th</sup> Floor, Los Angeles, CA 90017. The Auction will be governed by the

terms and conditions of the Bid Procedures, which have been authorized and approved by the Bankruptcy Court.

PLEASE BE FURTHER ADVISED that the Bankruptcy Court has scheduled a hearing for **November [2], 2010 at \_\_: \_\_ .m. Eastern Time** (the “Sale Hearing”) to consider the relief requested in the Sale Motion and to confirm the result of any Auction, The Sale Hearing may, however, be adjourned in open court from time to time, without further notice. The Sale Hearing will be held before the Honorable \_\_\_\_\_, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Sixth Floor, Courtroom No. \_\_\_\_\_, Wilmington, Delaware 19801.

#### **Objections to Sale Motion**

PLEASE BE FURTHER ADVISED that objections or responses to any relief requested by the Sale Motion (an “Objection”) shall set forth, in writing, with particularity, the grounds for such objections or other statements of position and be filed with the Bankruptcy Court and served in such a manner that it is actually **RECEIVED** by the Service Parties **on or before October [19], 2010 at 4:00 p.m. Pacific Time**. Objections that do not conform to the foregoing will not be considered by the Bankruptcy Court.

#### **Closing**

PLEASE BE FURTHER ADVISED that the closing on the Sale and the other transactions contemplated under the Purchase Agreement shall occur, in accordance with the terms and conditions of the Purchase Agreement.

PLEASE BE FURTHER ADVISED that, all requests for information concerning the Sale Motion, the Bid Procedures, the Bid Procedures Order, the Purchase Agreement, the Assets, the Auction or the Sale should be directed, in writing, to the undersigned counsel for the

Debtor, Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30<sup>th</sup> Floor, Los Angeles, CA 90017, Attn: Robert Jay Moore / Haig M. Maghakian or by email to [rmoore@milbank.com](mailto:rmoore@milbank.com) and [hmaghakian@milbank.com](mailto:hmaghakian@milbank.com).

Dated: September \_\_\_\_, 2010

MILBANK, TWEED, HADLEY & MCCLOY LLP  
Robert Jay Moore (CA Bar No. 77495)  
Haig M. Maghakian (CA Bar No. 221954)  
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[hmaghakian@milbank.com](mailto:hmaghakian@milbank.com)

and

PACHULSKI STANG ZIEHL & JONES LLP

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Laura Davis Jones (DE Bar No. 2436)  
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[chehn@pszjlaw.com](mailto:chehn@pszjlaw.com)

Proposed Counsel for Debtors  
and Debtors in Possession

**EXHIBIT C**

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

In re:	)	Chapter 11
	)	
CLAIM JUMPER RESTAURANTS, LLC	)	Case No. 10-12819 (KG)
<i>et al.</i> ,	)	
	)	(Jointly Administered)
Debtors. <sup>1</sup>	)	
	)	

**Deadline for Submitting Bids: October [26], 2010 at 4:00 p.m. Pacific Time**  
**Auction Date: October [28], 2010 at 10:00 a.m. Pacific Time**  
**Deadline for Objections to Approval of Sale: October [19], 2010 at 4:00 p.m. Pacific Time**  
**Hearing Date on Approval of Sale: November 2, 2010 at \_\_.m. Eastern Time**

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that on September 10, 2010 (the “Petition Date”), the above-captioned debtors and debtors in possession filed voluntary petitions for relief under title 11 of the United States Code (the “Bankruptcy Code”). On September [ ], 2010, the Debtors filed their *Motion for an Order: (I) Approving Asset Purchase Agreement and Authorizing the Sale of the Debtors’ Assets Outside the Ordinary Course of Business; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (III) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* (the “Sale Motion”)<sup>2</sup> in which they seek, among other things, the approval of the United States Bankruptcy Court of the sale of substantially all of the Debtors’ assets (the “Assets”), including the assumption and

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<sup>1</sup> The Debtors in these cases along with the last four digits of each of the Debtors’ federal tax identification numbers are: Claim Jumper Restaurants, LLC (1053) and Claim Jumper Management, LLC (6481). The Debtors’ headquarters and mailing address is: 16721 Millikan Ave., Irvine, CA 92606.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Sale Motion.

assignment of various executory contracts and unexpired leases (the "Assigned Contracts"), to either the proposed purchaser, [\_\_\_\_\_] (the "Buyer"), or to the successful purchaser of the Seller's assets at an auction (the "Auction"), free and clear of liens, claims, encumbrances and other interests.

PLEASE TAKE FURTHER NOTICE that the hearing on the Sale Motion has been set for **November [2], 2010 at \_\_\_\_:\_\_\_\_.m. Eastern Time** before the Honorable \_\_\_\_\_, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, Sixth Floor, Courtroom No. \_\_\_\_\_, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that the amounts shown on Exhibit A attached to this Notice as the "Cure Amounts" for the Assigned Contracts listed on Exhibit A are the amounts, based upon the Debtors' books and records, which the Debtors assert are owed to cure any defaults existing under the Assigned Contracts as of the Petition Date.<sup>3</sup>

PLEASE TAKE FURTHER NOTICE that the Buyer may include or exclude certain agreements from the list of Assigned Contracts by providing written notice to the Debtor and the affected counterparty prior to the closing on the Sale.

PLEASE TAKE FURTHER NOTICE that the Debtors will deliver a copy of the Sale Motion to you by facsimile, email or overnight delivery if you fax a written request for such delivery to Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30<sup>th</sup> Floor, Los Angeles, CA 90017, Facsimile Number: (213) 629-5063, Attn: Robert Jay Moore / Haig M. Maghakian, or request a copy by email to [rmoore@milbank.com](mailto:rmoore@milbank.com) and [hmaghakian@milbank.com](mailto:hmaghakian@milbank.com). Such request must specify how the information is to be transmitted.

<sup>3</sup> Your receipt of this notice does not constitute an admission by the Debtor that your agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and the Debtors expressly reserves the right to challenge the status of any agreement up until the time of the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that if you object to the assumption and assignment of your Assigned Contract or disagree with the Cure Amounts shown for the Assumed Executory Contract on Exhibit A, you must file an objection in writing with the United States Bankruptcy Court for the District of Delaware, Marine Midland Plaza, 824 Market Street, Wilmington, Delaware 19801, on or before **4:00 p.m. Eastern Time on October [19], 2010**. In addition, any objection with respect to the proposed Cure Amounts must set forth the specific default or defaults alleged and set forth any Cure Amounts as alleged by you.

PLEASE TAKE FURTHER NOTICE that any objection to the assumption of your Assigned Contract or proposed Cure Amounts so filed must be served so as to be **RECEIVED** by no later than **4:00 p.m. Eastern Time on October [19], 2010** upon the following parties: (i) proposed counsel for the Debtors, Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30<sup>th</sup> Floor, Los Angeles, CA 90017, Attn: Robert Jay Moore / Haig M. Maghakian.; (ii) the Office of the United States Trustee, United States Trustee's Office, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: \_\_\_\_\_, Esq.; (iii) counsel for the Debtors' prepetition secured lenders, Orrick, Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, CA 94105-2669, Attn: Frederick Holden, Jr.; (iv) counsel for the Buyer, [\_\_\_\_\_]; and (v) proposed Counsel the Official Committee of Unsecured Creditors, \_\_\_\_\_.

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE SALE MOTION WITH NO FURTHER NOTICE. ANY NON-DEBTOR PARTY TO ANY ASSIGNED CONTRACTS WHO DOES NOT FILE A TIMELY

OBJECTION TO THE CURE COSTS FOR SUCH ASSUMED EXECUTORY CONTRACT IS  
DEEMED TO HAVE CONSENTED TO SUCH CURE COSTS.

Dated: September \_\_\_\_, 2010

MILBANK, TWEED, HADLEY & MCCLOY LLP  
Robert Jay Moore (CA Bar No. 77495)  
Haig M. Maghakian (CA Bar No. 221954)  
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Proposed Counsel for Debtors  
and Debtors in Possession


WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form filed contemporaneously with this Motion, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: September 10, 2010

MILBANK, TWEED, HADLEY & MCCLOY LLP  
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Proposed Counsel for Debtors  
and Debtors in Possession