UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

In re:	)	Chapter 11
EATERIES, INC., *et al*.[1]	)	Case No. 17-11444-SAH
Debtors.	)	Jointly Administered

DEBTORS' MOTION FOR AN ORDER (A) APPROVING THE SALE OF THE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS TO THE WINNING BIDDER; AND (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTOR AND NOTICE OF OPPORTUNITY FOR HEARING

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 **no later than 21 days from the date of the filing of the motion.** You should also serve a file-stamped copy of your response or objection to the undersigned movant/movant's attorney [and others who a required to be served] and file a certificate of service with the Court. A hearing on the motion has been set for **September 13, 2017 at 9:30 a.m** before the Honorable Sarah A. Hall, in the ninth floor courtroom of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102. If no response or objection is timely filed, the Court may grant the motion without further notice.

[1] The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case No. 17-11445-SAH. Although there are multiple Debtors in this case, for ease of reference the term "Debtor" used in this pleading shall refer to all of the affiliated Debtor entities.

NOTICE OF HEARING
(TO BE HELD IF A RESPONSE IS FILED)

Notice is hereby given that if a response to the Debtor's Motion is filed, the hearing on the matter will be held on September 13, 2017, at 9:30 a.m. in the 9th floor courtroom of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102. If no response is timely filed and the court grants the requested relief prior to the above-referenced hearing date, the hearing will be stricken from the docket of the Court.

Eateries, Inc. ("Eateries") and GRP of Zanesville, LLC ("Zanesville"), debtors and debtors-in-possession in the above-captioned cases (collectively, "Debtor"), files this motion (the "Sale Motion") for entry of an order (the "Sale Order") (a) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests to the Winning Bidder; and (b) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases of the Debtor[2].

Debtor has filed, in conjunction with the Sale Motion, a Motion for an Order Establishing Bidding Procedures in Connection With the Sale of Substantially All of the Debtor's Assets, (B) Approving the Form and Manner of Notices, (C) Scheduling Dates for An Auction and Sale Hearing, (D) Authorizing and Approving the Form of a Stalking Horse Asset Purchase Agreement; and (E) Approving Procedures to Determine Cure Amounts Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the "Bid Procedures Motion"). The Bid Procedures Motion specifies the manner and means of conducting the sale of the Purchased Assets and seeks this Court's approval of said bid procedures and the form of the Stalking Horse APA.

In support of the Sale Motion, the Debtor respectfully represents as follows:

[2] Capitalized terms used herein and not otherwise defined have the meaning set forth in the Stalking Horse APA or the Bidding Procedures, as applicable.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory bases for the relief requested herein are sections 105, 363, 364, and 365 of Title 11, United States Code (the "Bankruptcy Code"), and Rules 2002, 4001, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

3. On April 18, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Oklahoma (the "Bankruptcy Court"). The Debtor continues to operate and manage its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, an official committee of unsecured creditors (the "Creditors Committee") has not yet been appointed in the Case. No request has been made for the appointment of a trustee or examiner.

4. A description of the Debtor's businesses, the reasons for filing these Chapter 11 Cases and the relief sought from the Bankruptcy Court to allow for a smooth transition into operations under Chapter 11 of the Bankruptcy Code is set forth in the First Day Affidavit of William C. Liedtke, III [Dkt. No. 10] (the "First Day Affidavit"). The Debtor hereby adopts and incorporates the First Day Affidavit as if fully set forth herein.

5. Immediately prior to the filing of this bankruptcy, Eateries (directly or through its various subsidiaries, including Zanesville) operated a chain of 15 restaurants located in 9 states, and employed more than 450 people. These restaurants are located in various shopping malls whose business is directly related to the volume of shoppers visiting the anchor tenants in such

malls. The continued increase in online shopping has left brick-and-mortar shopping centers to fight over a smaller group of consumers. As a result, over the last year certain segments of the retail shopping industry have experienced a significant downturn resulting in announcements by Macy's, Sears, and, most recently, JCPenney that they have or will close hundreds of these anchor stores. This downturn has had a direct impact on this business of those restaurants located in shopping malls experiencing decreased business.

6. As a result of the decreased business, Eateries has been attempting to renegotiate its lease terms with several of its landlords without success. Indeed, the downturn has resulted in the closure of four of Eateries' restaurant locations in advance of the filing of this bankruptcy, leaving 11 locations in operation in six states, employing approximately 375 people, at the time of the filing of this case.

7. Debtor has been unable to raise sufficient capital to continue operating and developing its assets because of the Debtor's current capital structure and the decline in the shopping mall based restaurant business. As a result, the Debtor has reached an agreement to sell the Purchased Assets, subject to higher and better offers, to Fresh Capital LLC, Fiesta Holdings, Inc., and Practical Investors LLC or their nominee (collectively, the "Purchaser").

8. SpiritBank, an Oklahoma Banking Corporation ("DIP Lender") provided debtor-in-possession financing (the "DIP Facility") in an amount not to exceed $500,000.00 to the Debtor pursuant to this Court's Order entered May 15, 2017 [Doc. 122] (the "DIP Order").

9. Accordingly, the Debtor proposes to sell, subject to the terms of the Stalking Horse APA between the Debtor and the Purchaser[3] (the Purchaser being referred to herein as the "Stalking Horse Bidder"), the Purchased Assets, which constitute substantially all of the

[3] Collectively, the Purchaser and the Debtor shall be referred to herein as the "Parties."

Debtor's assets and are defined in the Stalking Horse APA, excluding the Excluded Assets (as defined in the Stalking Horse APA) in accordance with sections 363 and 365 of the Bankruptcy Code and pursuant to the entry of the Sale Order, in exchange for an offer in the amount of $1,100,000.00 by the Stalking Horse Bidder (the "Sale"). Such Sale will be free and clear of all liens, claims, encumbrances, and interests to the fullest extent permitted by section 363 of the Bankruptcy Code. A copy of the Stalking Horse APA will be filed with the Court at least 7 days in advance of the hearing on the Bid Procedures Motion.

RELIEF REQUESTED

10. By this Sale Motion, the Debtor respectfully requests, upon the conclusion of the Sale Hearing, entry of the Sale Order (a) approving the Sale of the Purchased Assets free and clear of all liens, claims, encumbrances, and interests of any kind to the Winning Bidder and (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases of the Debtor that are to be assumed and assigned to the Winning Bidder in connection with the Sale.

TERMS OF THE PROPOSED SALE

11. The Debtor believes that it is in the best interests of the Debtor's estate and creditors to pursue a sale of the Purchased Assets under sections 105, 363 and 365 of the Bankruptcy Code. The Debtor believes that marketing for higher and better offers and conducting the Auction, if overbids are received, will enable the Debtor to maximize value for all creditors.

12. Significant terms of the Sale are set forth in the Letter of Intent[4] summarized the are as follows:[5]

[4] The signed Letter of Intent is attached as Exhibit "A" and referred to hereinafter as the "LOI."

- **Purchase Price**: The Purchaser for the Purchase Price of $1,100,000.00, to be allocated among the Purchased Assets as set forth in the Stalking Horse APA (such amount may adjusted pursuant to the Stalking Horse APA) (the "Stalking Horse Bid"). The Purchase Price shall be payable as follows:

  - Payment in cash in an amount sufficient to pay off the DIP Facility;

  - Stalking Horse Bidder's assumption of Debtor's Post-Petition trade payables incurred in connection with the operation of the Purchased Assets;

  - Stalking Horse Bidder's assumption of all allowed administrative claims in this Case; and

  - Payment of the remaining balance of the Purchase Price as a credit against the secured indebtedness owing by the Debtor to the Stalking Horse Bidder.

- **Closing Conditions**: Primary conditions necessary to close this transaction require the execution of the Stalking Horse APA, approval by relevant state agencies of the transfer of various liquor licenses and entry of an order from the Bankruptcy Court approving the Sale that has not been stayed, modified or reversed (the "Closing Contingencies"). The details of the Closing Contingencies are in Sections 7 and 8 of the LOI.

- **Two-Step Sale Process**: The closing shall occur in two phases. The First Closing will occur as soon as possible after the satisfaction of the Closing Contingencies in Section 9 of the LOI and the Second Closing will occur within two business days after the satisfaction of the Closing Contingencies in Section 10 of the LOI (collectively the "Closing Date"), or such other time and date as the Parties may agree to in writing.

- **Higher and Better Offers**: The sale of the Purchased Assets shall be subject to higher and better offers through a marketing and auction process conducted by the Debtor and the Debtor's professionals. The details of the auction process are in Sections 13 and 14 of the LOI.

[5] To the extent this summary of significant terms differs from the terms in the Stalking Horse APA, the Stalking Horse APA controls.

13. The Debtor believes the parties claiming valid and perfected liens, claims or encumbrances to the Purchased Assets are the DIP Lender in an amount not exceeding $500,000.00 pursuant to the DIP Order and collectively Fresh Capital, LLC, Fiesta Holdings, Inc. and Practical Investors, LLC (collectively, the "Secured Creditor[6]") pursuant to certain documents executed and delivered pre-petition to Secured Creditor by the Debtors (the DIP Lender and the Secured Creditor are collectively the "Lien Holders"). The Lien Holders have consented to the Sale on the terms stated herein and in the Stalking Horse APA. The Debtor is not aware of any legal or factual basis to dispute the nature, extent or validity of the liens, claims and encumbrances of the Secured Creditor.

14. To the best of Debtor's knowledge, information and belief after due inquiry, that the Stalking Horse Bidder is a known insider and secured creditor of Debtor.

15. Stalking Horse Bidder has demonstrated to Debtor it is purchasing the Purchased Assets in good faith and for fair value.

16. The Stalking Horse APA is the product of substantial, extensive, and good faith negotiations conducted at arm's length, without collusion and with all parties being represented by independent counsel.

17. Stalking Horse Bidder has demonstrated to Debtor that it has the financial ability to consummate the Sale and is a ready, willing, and able buyer for the Purchased Assets. The Stalking Horse Bidder shall be allowed to credit bid up to the full amount of their claims which total $1,331,845.00.

18. Stalking Horse Bidder understands that it is purchasing the Assets in the context of a distressed seller and a bankruptcy. Details of such representations and warranties are set

[6] The Stalking Horse Bidder and the Secured Creditor are one and the same parties.

forth in detail herein and in the Stalking Horse APA and are limited thereby. Except as provided herein and in the Stalking Horse APA, none of the representations, warranties, covenants, and agreements contained therein or herein shall survive the closing of the sale of the Purchased Assets.

19. In the exercise of its business judgment, Debtor believes the Sale is in the best interest of all parties and represents the highest and best price received prior to the filing of this Sale Motion.

ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

20. Under the terms of the Stalking Horse APA, executory contracts and unexpired leases that are to be assumed and assigned by Stalking Horse Bidder as set forth on schedules to the Stalking Horse APA (the "Assumed Executory Contracts"). Except as set forth in the APA, the Stalking Horse Bidder will not assume any liabilities or debts of the Debtor and the Purchased Assets shall be transferred to the Stalking Horse Bidder free and clear of all liens, claims, encumbrances, and interests pursuant to section 363(f) of the Bankruptcy Code.

21. Further, the Stalking Horse Bidder may from time to time, in its sole discretion, add or remove any Assumed Executory Contract from the schedule of Assumed Executory Contracts. At the Sale Hearing, the Debtor shall seek to assume and assign to the Stalking Horse Bidder the Assumed Executory Contracts. Accordingly, as part of this Sale Motion, respectfully requests this Court approve Debtor's assumption and assignment to Stalking Horse Bidder of said Assumed Executory Contracts. Additional details about the Assumed Executory Contracts are found in Section 3 of the LOI.

I. THE DEBTOR-IN-POSSESSION'S SALE OF THE PURCHASED ASSETS TO THE BUYER SHOULD BE APPROVED PURSUANT TO SECTION 363(B)(1) OF THE BANKRUPTCY CODE.

22. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate". 11 U.S.C. § 363(b)(1). Courts have uniformly held that approval of a proposed sale of property pursuant to § 363(b) of the Bankruptcy Code is appropriate if a Court finds that the transaction represents a reasonable business judgment on the part of the debtor or trustee. *See Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (applying reasonable business judgment standard to sale of assets under section 363(b) of the Bankruptcy Code); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Donohue*, 410 B.R. 311, 315 (Bankr. D. Kan. 2009) (requiring "sound business reason" for authorization of sale under section 363(b) of the Bankruptcy Code); *In re Buerge*, 479 B.R. 101, 106 (Bankr. D. Kan. 2012) (requiring "sound business reason"); *In re Med. Software Solutions*, 286 B.R. 431, 439–40 (Bankr. D. Utah 2002) (requiring "sound business reason").

23. Courts have made clear that a Chapter 11 Debtor-in-Possession's business judgment is entitled to substantial deference with respect to the bid procedures to be used in selling assets of the estate. *See, e.g., Official Committee of Subordinated Bondholders v. Integrated Resources. Inc.* (*In re Integrated Resources, Inc.*), 147 B.R. 650, 656-57 (Bankr. S.D.N.Y. 1992) (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"). Here, the Debtor's proposed sale is reasonable, appropriate, and within Debtor's sound business judgment because it will serve to maximize the value of the Debtor's estate.

24. In addition to a sound business purpose, courts require that there be adequate and reasonable notice of the sale and a fair and reasonable price and good faith negotiations with the Buyer. *See In re Abbotts Dairies*, 788 F.2d at 147; *Buerge*, 479 B.R. at 106; *In re JL Bldg., LLC*, 452 B.R. 854, 859 (Bankr. D. Utah 2011); *Med. Software Solutions*, 286 B.R. at 439-40; *In re Tempo Tech Corp.*, 202 B.R. 363, 367 (D. Del. 1996).

25. The paramount goal of any proposed sale of property of a debtor is to maximize the value received by the estate and courts uniformly agree that competitive bidding maximizes value and is appropriate in the bankruptcy context. *See, e.g., Four B. Corp. v. Food Barn Stores. Inc.* (*In re Food Barn Stores, Inc.*), 107 F.3d 558, 564-65 (8th Cir. 1997) (with reference to bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand."); *In re Buerge*, 479 B.R. at 106 ("The trustee's duty is to maximize the value obtained from a sale."); *In re C.W. Min. Co.*, 08-20105 JAB, 2010 WL 841395 (Bankr. D. Utah Mar. 2, 2010) (courts "must always scrutinize whether a trustee has fulfilled his duty to maximize the value obtained from a sale"); *In re Psychrometric Sys., Inc.*, 367 B.R. 670, 674, 76 (Bankr. D. Colo. 2007) (recognizing the "strong policy favoring competitive bidding" for sales in bankruptcy proceedings); *Integrated Resources*, 147 BR. at 659 ("It is a well-established principle of bankruptcy law that the Debtor's duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *Cello Bag Co. v. Champion Int'l Corp.* (*In re Atlanta Packaging Prods., Inc.*), 99 B.R. 124, 131 (Bankr. ND. Ga. 1988)).

26. The Debtor submits that the proposed sale of the Purchased Assets is a reasonable business decision in light of the circumstances and is in the best interest of the estate and its creditors. Further, the Debtor submits that the proposed sale presents the best opportunity to

realize the maximum value of the estate's assets for distribution to creditors and is necessary to preserve the value of the estate's assets for the estate and its creditors. Additionally, such process will be conducted in good faith and at arm's length, be subject to proper notice, and will yield the highest and best offer for the Purchased Assets. Accordingly, the Debtor submits that the sale of the Purchase Assets is an appropriate exercise of the Debtor's business judgment.

27. Debtor requests authority to pay customary closing costs and cure claims as provided in the APA and herein, and then to pay in full the DIP Facility without the need for any further authorization from this Court. This Court has approved the DIP Facility loan by interim order and as a part of such loan, granted to DIP Lender a lien upon the Purchased Assets. There is no doubt the post-petition liens of DIP Lender upon the Purchased Assets are valid and existing liens. Payment of the DIP Facility is in compliance with the post-petition loan agreements approved and authorized by this Court. Therefore, the payments as requested should be authorized as a part of the Sale Order. The balance of the sale proceeds will be held in escrow by the Debtor pending further order of this Court.

II. DEBTOR'S SALE OF THE PURCHASED ASSETS SHOULD BE APPROVED PURSUANT TO SECTION 363(F) OF THE BANKRUPTCY CODE

28. At the Sale Hearing, the Debtor will seek entry of the Sale Order authorizing and approving the sale of the Purchased Assets to the Winning Bidder. Except as expressly provided in the Stalking Horse APA or the Sale Order, the Purchased Assets are to be sold to the Winning Bidder, free and clear of all liens, claims, encumbrances, and interests pursuant to section 363 (f) of the Bankruptcy Code.

29. Pursuant to Section 363(f) of the Bankruptcy Code, a debtor may sell property under Section 363(b) of the Bankruptcy Code "free and clear of any interest in such property" if one of the following conditions is satisfied:

> (1) applicable non-bankruptcy law permits the sale of such property free and clear of such interest;
> (2) such entity consents;
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
> (4) such interest is in bona fide dispute; or
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (holding that section 363(f) is written in disjunctive; court may approve sale "free and clear" provided at least one of the requirements is met).

30. The Debtor submits that one or more of the conditions set forth in section 363(f) of the Bankruptcy Code will be satisfied with respect to the Sale of the Purchased Assets. In particular, the Debtor believes that section 363(f)(2) of the Bankruptcy Code will be satisfied because each of the parties holding liens on the Purchased Assets, if any, will consent, or absent any objection to this Sale Motion, will be deemed to have consented to the sale and transfer of the Purchased Assets. In addition, in the event the Winning Bidder pays cash for the Purchased Assets, any liens in such Purchased Assets will attach to the proceeds to the same extent, validity and priority as existed in the Purchased Assets, thus satisfying section 363(f).

31. Applicable case law provides that a sale of a debtor's assets free and clear of all liens, claims, encumbrances, and interests is permissible under section 363(f) as long as the liens, claims, encumbrances, and interests attach to the net proceeds of the sale. *Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 259 (3d Cir. 2000) ("The holdings of the courts suggest that any interest in property that can be reduced to a money satisfaction constitutes a claim for purposes of section 363(f) and, therefore, attaches to the proceeds of the sale."); *In re Elliot*, 94 B.R. 343, 345 (ED. Pa. 1988). Further, in the event the Stalking Horse Bidder is the Winning Bidder through a cash offer, the Stalking Horse APA provides for satisfaction of any

liens senior to the liens of the Purchaser via cash payment or by allowing such senior liens to continue on the property as a permitted lien, thus satisfying section 363(f) of the Bankruptcy Code.

32. Lastly, all junior liens will be satisfied by operation of section 363(f)(3) of the Bankruptcy Code as the sale process will set the value of the Purchased Assets. *See In re Beker Industries Corp.*, 63 B.R. 474, 475-76 (S.D.N.Y. 1986) (holding that sale price in a 363 sale need only exceed the value of the property, not the value of the debts secured by the property, to satisfy section 363(f)(3)); *In re Terrace Gardens Park Partnership*, 96 B.R. 707, 712-713 (Bankr. W.D. Tex. 1989) (analyzing two approaches to 363(f)(3) and adopting approach from *Beker Industries*); *In re Hartfield Homes, Inc.*, 30 B.R. 353, 355 (Bankr. E.D.Pa. 1983) (" . . . if the proposed sale price is the best price obtainable under the circumstances of a particular case, then the fact that junior lienholders may receive little or nothing from the proceeds of the sale would not, standing alone, constitute reason for disapproving the proposed sale.").

33. As such, Debtor respectfully requests this court approve the Sale of the Purchased Assets, free and clear of all liens, claims, encumbrances, and interests pursuant to section 363 (f) of the Bankruptcy Code.

III. THE WINNING BIDDER SHOULD BE FOUND TO BE A GOOD FAITH BUYER

34. Section 363(m) of the Bankruptcy Code states:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

35. While the Bankruptcy Code does not define "good faith", the Tenth Circuit has held that the standard for a good faith purchaser is one who buys (i) in "good faith," i.e., through a sale that does not involve fraud or collusions, and (ii) for value. *See* In *re Indep. Gas & Oil Producers, Inc.*, 80 Fed. Appx. 95, 99-100 (10th Cir. 2003) (citing *Tompkins v. Frey (In re Bel Air Associates, Ltd.)*, 706 F.2d 301 (10th Cir. 1983)); *Plotner v. AT&T*, 172 B.R. 337, 341 (W.D.Okl. 1994) ("A sale lacks good faith when it 'involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'")(citations omitted); *In re Abbotts Dairies*, 788 F.2d at 147 ("The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a buyers good faith status at a judicial sale involves fraud, collusion between the buyer or the trustee, or an attempt to take grossly unfair advantage of other bidders."); *see also In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting *In re Bel Air Assocs., Ltd.*, 706 F.2d 301, 305 (10th Cir. 1983)).

36. The Debtor will present evidence at the Sale Hearing showing that the proposed agreement finalized with the Winning Bidder is the result of and due to the open and competitive nature of the Bidding Procedures, and will be the result of arm's length negotiations in good faith. Additionally, the proposed agreement with the Winning Bidder will necessarily be "for value" as it will be the result of an open marketing process which will set the value for the Purchased Assets. The Debtor thus requests that the Court make a finding at the Sale Hearing that the Winning Bidder has acted in good faith within the meaning of section 363(m) of the Bankruptcy Code.

IV. THE FOURTEEN (14) DAY STAY PROVIDED FOR IN BANKRUPTCY RULE 6004(H) SHOULD BE WAIVED

37. Due to the necessity to facilitate the orderly and more importantly, timely sale of the Purchased Assets, the Debtor requests that the Court lift the stay provided by Federal Rule of Bankruptcy Procedure 6004(h) which provides that an order authorizing the sale of property is stayed for fourteen (14) days after the entry of such order, unless the Court orders otherwise. Given the sufficiency of notice to all parties in interest, the Debtor requests that the Court relieve them of the stay provided by the rule**.**

V. THE DEBTOR SHOULD BE AUTHORIZED TO ASSUME AND ASSIGN EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO WINNING BIDDER

38. A court should approve the assumption or rejection of an unexpired lease or executory contract where a debtor's business judgment has been reasonably exercised. *See, e.g.*, *In re J. H. Land & Cattle Co., Inc.*, 8 B.R. 237, 238 (Bankr. W.D. Okla. 1981) ("The test for court approval of a debtor's (trustee's) proposed rejection of an executory contract or lease under s 365 is one of 'business judgment'") (internal citation omitted); *In re III Enterprises, Inc. V,* 163 B.R. 453, 469 (Bankr. E.D. Pa.) ("Generally, a court will give great deference to a debtor's decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment - a standard which we have concluded many times is not difficult to meet."), *aff'd sub nom., Pueblo Chem., Inc. v. III Enters, Inc.*, V, 169 B.R. 551 (E.D. Pa. 1994); *In re W. Wood Products, Inc.*, 11-12-10057 JS, 2013 WL 1386285 (Bankr. D.N.M. Apr. 4, 2013) ("Generally, the Court should not interfere with the debtor in possession's exercise of business judgment to reject a lease or executory contract unless the decision is 'so manifestly unreasonable that it could not be based on sound business judgment[.]') (citation omitted).

39. Further, Section 365(b)(1) of the Bankruptcy Code authorizes the proposed assumption and assignment of executory contracts if defaults under the executory contracts are cured and adequate assurance of future performance is given. *See In re Valley View Shopping Ctr., L.P.*, 260 B.R. 10, 24 (Bankr. D. Kan. 2001); *In re Health Science Prods., Inc.*, 191 B.R. 895, 909 (Bankr. N.D. Ala. 1995) (ability to make current payments on contract combined with projected future financial stability constituted "adequate assurance"); *In re Mako, Inc.*, 102 B.R. 818, 821 (Bankr. E.D. Okla. 1988) (willingness and ability to cure defaults and projected cash flows sufficient to meet obligations under the contract met the "adequate assurance" requirement).

40. The Debtor submits that assumption and assignment of the Assumed Executory Contracts is a sound exercise of the Debtor's business judgment. Assumption and assignment of the Assumed Executory Contracts is necessary for consummation of the Sale and the Debtor will no longer have use for the Assumed Executory Contracts following the closing of the sale. Furthermore, the assumption procedure provides for proper notice to those parties subject to Assumed Executory Contracts and provides the cure of any default under the Assumed Executory Contracts and for the provision of adequate assurance of future performance. Accordingly, assumption and assignment is appropriate and in the best interest of the estates.

VI. THIS COURT HAS THE AUTHORITY TO ISSUE AN INJUNCTION TO FACILITATE THIS SALE PURSUANT TO SECTION 363(F) & 105 OF THE BANKRUPTCY CODE

41. The Debtors request this Court include in the Sale Order detailed injunctive relief to protect the Buyer from any claims by any and all parties to the Debtors Bankruptcy Cases. This Court has the authority to issue such injunctions as a "corollary to the power to dispose of assets free and clear and to channel claims to the proceeds." *MacArthur Co. v. Johns-Manville*

Corp., 837 F.2d 89, 93 (2d Cir. 1988). In *MacArthur Co. v. Johns-Manville Corp.*, the Second Circuit went on to further opine:

> The Bankruptcy Court, having jurisdiction over the property of the Bankrupt, and having jurisdiction to order the sale of the Bankrupt's property and to determine the nature, extent and validity of liens asserted against the proceeds, had jurisdiction to enjoin a lien-holder from attempting to assert his lien against property in the hands of a purchaser who has acquired from the Bankruptcy Court a title free and clear of liens and encumbrances. *Whitehead & Kales Co. v. Dempster (In re Wiltse Bros. Corp.),* 361 F.2d 295, 299 (6th Cir.1966) (citing *Van Huffel v. Harkelrode,* [284 U.S. 225, 52 S.Ct. 115, 76 L.Ed. 256 (1931)]). Additional authority for the injunction is to be found in section 105(a) of the Bankruptcy Code, which permits the Bankruptcy Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a) (Supp. IV 1986). This provision has been construed liberally to enjoin suits that might impede the reorganization process. *See Manville Corp. v. Equity Security Holders Committee (In re Johns-Manville Corp.),* 801 F.2d 60, 64 (2d Cir.1986); *In re Davis,* [730 F.2d 176, 184 & n. 25 (5th Cir.1984)]. In this case, the Bankruptcy Court found as a fact that to permit actions against Manville's insurers arising from Manville's policies would adversely affect property of the estate and would interfere with reorganization. *Johns-Manville Corp. v. Asbestos Litigation Group,* [(*In re Johns-Manville Corp.*),26 B.R. 420 (Bankr.S.D.N.Y.1983), *aff'd,* 40 B.R. 219 (S.D.N.Y.1984)].

837 F.2d at 93, 94.

42. The jurisdiction and authority of Bankruptcy Courts to approve sales free and clear under § 363(f) includes the corollary authority to issue injunctive relief necessary to effectuate such sales as discussed in the case of *In re Motors Liquidation Co.*, 428 B.R. 43 (S.D.N.Y. 2010), at page 56:

> It is well-settled that bankruptcy courts have core jurisdiction to approve section 363 sales, *see* 28 U.S.C. § 157(b)(2)(N) ("[C]ore proceedings include ... orders approving the sale of property."), and corollary jurisdiction to interpret and enforce their own orders carrying out the provisions of the Bankruptcy Code. *See* 11 U.S.C.

> § 105(a); *cf. also* 28 U.S.C. § 1651 ("All Writs Act"). Moreover, courts have characterized the injunctive authority of bankruptcy courts as "core" when the rights sought to be enforced by injunction are based on provisions of the Bankruptcy Code, such as the "free and clear" authority of section 363(f). *See* [*Jamaica Shipping Co. v. Orient Shipping Rotterdam, B.V.* (*In re Millenium Seacarriers, Inc.*), 458 F.3d 92, 95 (2d Cir.2006)] (holding that an adversary action which turned on the terms of a sale order was a core proceeding); *Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1144–45 (6th Cir.1991) (affirming bankruptcy court's core jurisdiction to issue an order because, inter alia, debtor-appellant and its successor-purchaser asserted "free and clear" rights under section 363(f)); *see also* [*In re Trans World Airlines, Inc.*, 322 F.3d 283, 286–87 (3d Cir.2003)] (successor liability claims against purchaser were properly extinguished under section 363(f)); *Smart World Techs. LLC v. Juno Online Servs., Inc. (In re Smart World Techs., LLC)*, 423 F.3d 166, 169 n. 3 (2d Cir.2005) ("Section 363 permits sales of assets free and clear of claims and interests. It thus allows purchasers ... to acquire assets without *any* accompanying liabilities.") (emphasis added); *cf. MacArthur Co. v. Johns–Manville Corp.*, 837 F.2d 89, 93 (2d Cir.1988) ("The injunctive orders issued by the Bankruptcy Court were necessary to effectuate the Court's ... authority to make sure that claims to [the debtor's] insurance proceeds were ... channeled to the settlement fund and could not be asserted directly against the insurers. The authority to issue the injunction is thus a corollary to the power to dispose of assets free and clear and to channel claims to the proceeds."); *id.* at 94 (citing section 363(f) cases as support for injunctive authority). The injunctive provisions in the Sale Order enjoining successor liability would thus be within the Bankruptcy Court's core jurisdiction to authorize and effectuate the 363 Transaction "free and clear" of Appellants' claims under section 363(f).

43. This Court may issue an injunction in the context of a § 363(f) sale to provide explicit protection to the Buyer to give meaning to the terms "free and clear" by channeling all claims against the Property to the proceeds from the Sale as discussed in detail in the recent case of *In re Sunland, Inc.*, No. 13-13301-TR7, 2014 WL 7011747, at *5–6 (Bankr. D.N.M. Dec. 11, 2014) as follows:

> "Courts have long recognized that inherent within the authority to sell estate property free and clear of liens is the power to enjoin

creditors from pursuing the purchaser of such property." *In re Dow Corning Corp.*, 198 B.R.[214] at 245[(Bankr. E.D. Mich. 1996)] Notwithstanding this authority, courts have often found it necessary to provide "more explicit protection" when an "actual injunction barring creditors from suing a purchaser of estate assets is ... necessary and appropriate to give the 'free and clear' aspect of § 363(f) meaning." *Id.* In such cases, a court may issue an injunction pursuant to §§ 363 and 105(a). *See Id.* (enjoining tort claimants from asserting claims against debtor's insurer after approval of policy buyback agreement).

Such "channeling," "supplemental," or "clarifying" injunctions are relatively common with § 363(f) sale orders. *See In re Johns–Manville*, 837 F.2d at 93–94 (upholding the bankruptcy court's authority to restrict tort claimants' recovery to insurance proceeds); *Campbell v. Motors Liquidation Co.* (*In re Motors Liquidation Co.*), 428 B.R. 43, 56 (S.D.N.Y.2010), *affirmed*, 430 B.R. 65 (S.D.N.Y.2010) (upholding injunction preventing parties from asserting claims against purchaser of property of the estate and citing cases involving injunctions issued in support of § 363(f) sales); [*Intertek USA, Inc. v. Caribbean Petroleum Corp., et al.* (*In re Caribbean Petroleum Corp*)., Adv. No. 12-51001, 2013 WL 950361 at *3 (Bankr. D. Del. Mar. 11, 2013)] (quoting with approval a channeling injunction previously entered in connection with an insurance buyback order); *In re Dow Corning Corp.*, 198 B.R. at 245 (approving a settlement that included a channeling injunction to carry out a § 363(f) sale of insurance policies); *In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 683 (Bankr.W.D.Tex.2011) (discussing in some detail the court's earlier channeling injunction issued in connection with a § 363(f) sale order); *In re Peanut Corp. of America*, 2009 WL 8757732, at *3 (Bankr.W.D.Va. Oct. 2, 2009) (granting a channeling injunction under §§ 363(f) and 105(a) in an order approving settlement and buyback procedures of a Chapter 7 debtor's insurance policies); [*WBQ P'ship v. Commonwealth of Va. Dep't of Med. Assistance Servs.* (*In re WBQ P'ship*), 189 B.R. 97, 106 (Bankr.E.D.Va.1995)] (granting debtor's request for a channeling injunction to accompany a § 363(f) sale order); *P.K.R. Convalescent Ctrs., Inc. v. Commonwealth of Va., Dep't of Med. Assistance Serv.* (*In re P.K.R. Convalescent Centers, Inc.*), 189 B.R. 90, 96 (Bankr.E.D.Va.1995) (same).

> A channeling injunction is permissible because it compliments and carries out, rather than contradicts, an explicit provision of the Bankruptcy Code. *Cf. Law v. Siegel,* 134 S.Ct. 1188 (2014) (bankruptcy court may not use its § 105(a) "equitable" powers to take away rights, such as a debtor's § 522 exemption rights, granted by specific federal law).

44. The Debtor submits the above cited cases along with the reasoned discussion and multiple cases cited therein provide ample authority for this Court to issue the injunctive relief requested herein. Similar relief to that requested herein has been granted in this district. *In re Boom Drilling, Inc.*, Case No. 08-13941-RLB (Bankr. W.D. Okla., February 4, 2009) [Dkt. No. 245]. Likewise, courts in other jurisdictions have granted similar relief in other chapter 11 cases. *In re Physicians Total Care, Inc.* Case No. 12-12502 (Bankr. N.D. Okla., October 31, 2012) [Dkt. No. 120]; *In re Texoma Peanut Co.*, Case No. 14-81334 (Bankr. E.D. Okla., December 19, 20140 [Dkt. No. 230]; *In re Residential Capital, LLC*, Case No 12-12020 (Bankr. S.D.N.Y., November 21, 2012)[Dkt. No. 2246].

VII. NOTICE

45. All creditors and parties in interest listed on the consolidated creditor matrix [Dkt. No. 100] will be served with actual notice of the relief sought herein. Debtor therefore requests that the Court find that all parties who receive actual notice of this Motion be bound by the Order granting the relief requested herein.

VIII. CONCLUSION

The Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as is just and proper.

Respectfully submitted this 13th day of July, 2017.

Respectfully submitted,

CROWE & DUNLEVY

/s/ Mark A. Craige

Mark A. Craige, OBA No. 1992
500 Kennedy Building
321 South Boston Avenue
Tulsa, Oklahoma 74103-3313
918.592.9800 Telephone Number
918.592.9801 Facsimile Number
mark.craige@crowedunlevy.com

-and-

Lysbeth George, OBA No. 30562
CROWE & DUNLEVY, P.C.
324 N. Robinson, Ste. 100
Oklahoma City, OK 73102
(405) 235-7700
(405) 239-6651 (Facsimile)
lysbeth.george@crowedunlevy.com

Counsel for Debtor

FRESH CAPITAL LLC, FIESTA HOLDINGS, INC.
& PRACTICAL INVESTORS LLC

July 7, 2017

Eateries, Inc.
14504 Hertz Quail Springs Parkway
Oklahoma City, Oklahoma 73134
Attn: William C. Liedtke III, Vice President

GRP of Zanesville, LLC
14504 Hertz Quail Springs Parkway
Oklahoma City, Oklahoma 73134
Attn: William C. Liedtke III, Vice President

Re: Proposed Acquisition

Gentlemen:

This letter is intended to summarize the principal terms and conditions of the proposed acquisition by Fresh Capital LLC, Fiesta Holdings, Inc. and Practical Investors LLC or its nominee (collectively, the "Buyer") of certain assets of Eateries, Inc. and GRP of Zanesville, LLC (collectively, the "Seller"), as Debtors and Debtors in Possession in Bankruptcy Case No. 17-11444-SAH and Case No. 17-11445-SAH (collectively, the "Case") pending under Chapter 11 of the United States Bankruptcy Code (the "Code") in the United States Bankruptcy Court for the Western District of Oklahoma (the "Bankruptcy Court"). The transaction contemplated by this letter of intent agreement (the "Transaction") is subject to Buyer's completion of due diligence, the negotiation of a definitive agreement which shall include lease assumptions with Seller's lessors, Seller's retention of certain business levels, Seller's satisfaction of certain Post-Petition operating expenses, the approval of the Bankruptcy Court and other matters, all as more specifically described herein. Buyer and Seller shall be bound to consummate the Transaction contemplated hereby only if the parties execute a definitive agreement relating to the matters addressed herein (the "Definitive Agreement") which is approved by the Bankruptcy Court after notice and a hearing.

1. Transaction. The Transaction would consist of the acquisition by Buyer of (a) all of the assets used by Seller in the operation of its restaurant businesses (collectively, the "Business") at each of the locations identified at Exhibit "A" attached hereto (each, a "Restaurant Location" and collectively, the "Restaurant Locations"); (b) Seller's trade names, logos, trademarks, patents, intellectual property, Seller's telephone numbers, fax numbers, websites and domain names, Seller's interest in computer equipment and software and software programs licensed to Seller (including customizations, if any, developed for Seller); and (c) a Pennsylvania liquor license owned by Seller previously used in connection with one of Seller's establishments (the "Butler Liquor License"), free and clear of all liens, claims and encumbrances except those specifically assumed by Buyer. Without limitation, the assets purchased by Buyer shall include Seller's equipment and inventory, furniture and equipment, fixtures, vendor and supplier lists, vendor and supplier agreements, vendor rebates, warranties, deposits and escrow amounts related to the Restaurants (collectively, the "Assets"), *subject, however*, to the right of Seller, its successors and the Unsecured Creditors' Committee, if any, appointed in the Case, to access to Seller's

EXHIBIT A

business records for purposes of the Case. Buyer shall not assume any indebtedness, trade payables or other liabilities of Seller whatsoever, contingent or otherwise, except as specifically stated herein and in the Definitive Agreement. The expenses and risks associated with the operation of the Business shall be allocated to Seller prior to midnight (the "Transfer Time") preceding the date (the "Closing Date") of the First Closing (defined herein) or the Second Closing (defined herein), as applicable and to the Buyer thereafter for all other operations relating solely to the Assets and the Business. Seller will deliver to the appropriate authorities such documents as are required to change its name to a different name immediately following each Closing (defined below).

2. Excluded Assets. The Assets purchased by Buyer will specifically exclude all of Seller's accounts receivable, all of the rights, claims, actions and causes of action of Seller or Seller's bankruptcy estate that arise under Chapter 5 of the Code, all tangible and intangible personal property relating to any of Seller's other restaurant business locations not listed at Exhibit "A" and business records relating to Seller's employees.

3. Assumption and Assignment of Leases. With respect to the leases covering each of the Restaurant Locations (the "Restaurant Location Leases"), Seller shall assign all of its rights, title and interest in and to the Restaurant Location Leases to the Buyer and Buyer will assume same. If Seller is unable or unwilling to execute an assignment and assumption agreement regarding any of such Restaurant Location Leases, then Buyer may in its discretion elect not to accept the Assets related to such Restaurant Location and the Purchase Price (defined below) will be reduced accordingly.

4. Purchase Price. The purchase price for the Assets will be the sum of $1,100,000.00 (the "Purchase Price"), subject to adjustment as provided in the Definitive Agreement. The Purchase Price shall be payable as follows:

4.1 Payment in cash at the First Closing in an amount sufficient to pay off all DIP obligations owing by Seller in the Case;

4.2 Buyer's assumption of Seller's Post-Petition trade payables incurred in connection with the operation of the Restaurant Locations;

4.3 Buyer's assumption of all allowed administrative claims in the Case; and

4.4 Payment of the remaining balance of the Purchase Price as a credit against the secured indebtedness owing by the Seller to the Buyer.

5. Liabilities. Buyer may offset against the Purchase Price for breaches by Seller of the representations and warranties under the Definitive Agreement.

6. Employment Agreements. Seller agrees that Buyer may, but shall have no obligation to, offer employment to any or all employees of Seller. Buyer shall have no liability whatsoever for any salary, benefits or other obligations to Seller's employees, including without limitation accrued vacation or sick pay (the "Employee Obligations") which are due and owing as of the Transfer Time. Buyer will be obligated for all Employee Obligations relating solely to the operation of the Business which begin accruing after the Transfer Time.

7. Bankruptcy Procedures. Within five (5) business days after the Effective Date, Seller shall file in the Case (i) a Motion for Order Establishing Sale and Bidding Procedures acceptable to Buyer seeking approval of the Definitive Agreement and the sale and bidding procedures for the Seller's sale of the Assets (the "Procedures Order"); and (ii) a Motion for Order Approving the Sale in form acceptable to Buyer seeking authorization and approval of the sale, transfer, assumption, assignment and conveyance of the Assets to the Buyer pursuant to Sections 363 and 365 of the Bankruptcy Code, free and clear of any and all liabilities, claims, liens, encumbrances, and interests of all kinds (the "Sale Order"). As soon as possible thereafter, the Seller will seek entry by the Bankruptcy Court of the Procedures Order. Upon entry of the Procedures Order, Seller will conduct a public auction of the Assets seeking competing bids pursuant to and in accordance with the Procedures Order and the requirements set forth in Section 15 below (the "Auction"). Seller will request the Bankruptcy Court to set a hearing date to consider and approve the sale of the Assets as soon as possible following the Auction. Further details regarding the Auction and procedures related thereto will be set forth in the Procedures Order.

8. Contingencies.The closing of the transaction contemplated by this Agreement is contingent (the "Closing Contingencies") upon the execution of the Definitive Agreement by all parties, and receipt by Seller of a final Sale Order. The Sale Order shall be in form and substance acceptable to the Buyer and shall include, *inter alia*, the findings necessary to provide the Buyer with the protection of Bankruptcy Code § 363(m) and establish that the sale is not subject to avoidance under Bankruptcy Code § 363(n) and an order enjoining all parties in interest from enforcing or seeking to enforce debts, claims or remedies against the Debtor or the Assets arising prior to the sale or against the Buyer or the Assets following entry of the Sale Order. Further, unless waived by the Buyer, the Sale Order must no longer be subject to appeal as of the applicable Closing. Seller shall diligently pursue finalization of the Definitive Agreement and obtaining the Procedures Order and the Sale Order following the execution of this letter of intent by all parties. The Buyer shall likewise diligently pursue finalization of the Definitive Agreement and cooperate in the Seller's efforts to obtain the Procedures Order and the Sale Order.

9. First Closing Conditions. The parties agree that the following conditions must be satisfied prior to or at the closing of the Transaction related to the Restaurant Locations for which no consents or approvals from any governmental authority is required in connection therewith (the "First Closing"):

9.1 Seller's assignment to Buyer and Buyer's assumption of the applicable Restaurant Location Leases, pursuant to an assignment and assumption agreement in form and substance satisfactory to Buyer.

9.2 The entry of the Procedures Order within forty-five (45) days after the Effective Date.

9.3 The satisfaction of the Closing Contingencies described in Section 9 above.

9.4 The execution of a Definitive Agreement containing the terms set forth herein and representations, warranties and indemnities satisfactory to the parties.

9.5 The execution by key employees of Seller relating to the applicable Restaurant Locations of satisfactory employment agreements with Buyer.

10. Second Closing Conditions. The parties agree that within two (2) business days after the satisfaction of all of the following conditions the parties will complete the Transaction related to the remaining Restaurant Locations and the Butler Liquor License (the "Second Closing"):

10.1 The receipt of all necessary third party and regulatory consents and approvals to the Transaction related to the remaining Restaurant Locations and the Butler Liquor License including, but not limited to, approvals from the Pennsylvania Bureau of Licensing and the Pennsylvania Liquor Control Board.

10.2 Full and complete satisfaction of the conditions set forth in Section 9 above and the occurrence and completion of the First Closing;

10.3 Seller's assignment to Buyer and Buyer's assumption of the remaining Restaurant Location Leases and the Butler Liquor License, pursuant to an assignment and assumption agreement in form and substance satisfactory to Buyer.

10.4 The execution by key employees of Seller relating to the remaining Restaurant Locations of satisfactory employment agreements with Buyer

11. Operating Activities. Seller agrees that from the date hereof through the First Closing, the Business related to the Restaurant Locations shall be operated only in the ordinary course and all valid Post-Petition trade payables and other valid operating expenses of such Business will be paid within terms, including the payment of all amounts due employees, agents, vendors and suppliers. Seller further agrees that it will maintain appropriate staffing in order to continue to effectively manage and operate such Business until the First Closing. After the First Closing, the Seller will continue to own and operate the remaining Restaurant Locations in the ordinary course as required pursuant to this Section 11 until the Second Closing at which time Seller will

be bound to consummate the Transaction for the remaining Restaurant Locations, the Assets related thereto and the Butler Liquor License.

12. Due Diligence. Upon execution of this letter of intent agreement, Seller will provide Buyer and its representatives with full and complete access to the assets, properties, employees, accountants, attorneys, business records and contracts, and all other information reasonably requested by Buyer to complete its due diligence; provided that such access shall be at reasonable times and in a manner reasonably designed not to unduly disrupt the Business. In addition, at such time, Seller hereby authorizes Buyer to contact Seller's lenders, lessors, customers, vendors, suppliers, creditors, attorneys, accountants, and other Business partners as to matters relating to the business and operations of the Seller and the negotiation, execution and closing of the Definitive Agreement and the terms of any arrangements or continued business with such persons, and Seller authorizes such persons to provide information to and cooperate with Buyer in this process. Buyer and Seller agree that the Definitive Agreement shall include a due diligence contingency allowing for the foregoing for a period ending one (1) business day before the Auction.

13. Overbid Fee/Expenses. Seller shall seek, and Buyer shall cooperate to achieve, Bankruptcy Court approval of bidding and Auction procedures for the sale of the Assets which provide, *inter alia*, that:

13.1 If the Bankruptcy Court does not enter a Final Order approving the sale of the Assets to the Buyer due to the submission and acceptance and approval by the Bankruptcy Court, and subsequent closing, of a competing bid from a third party, then Seller shall pay to Buyer an overbid fee in a sum equal to 3% of the winning bid.

13.2 Each party shall be responsible for its own expenses; provided that Seller shall be responsible for Buyer's reasonable out-of-pocket expenses and third party costs incurred by Buyer with respect to Buyer's due diligence, bid analysis, negotiation, preparation of this letter and the Definitive Agreement and other related matters not to exceed $25,000.00 in the event (i) Seller fails to accept the Definitive Agreement on substantially the terms and conditions set forth herein, or (ii) Seller selects any other bidder as the winning bid at Auction or otherwise agrees to or consummates a transaction with a third party.

13.3 Qualifying bids must be for not less than the Assets described in paragraph 1 of this letter and on terms and conditions substantially similar to those contained in this letter and the Definitive Agreement.

14. Section 363 Sale. Seller and Buyer agree that:

14.1 Any competing bid must be submitted by a "Qualified Bidder" as defined on Exhibit "C" attached hereto.

14.2 Any competing bid must be in a single amount for all of the Assets and based on the same terms and conditions as are contained in the Definitive Agreement;

14.3 Any initial competing bid submitted to the Bankruptcy Court for acceptance must be in an amount of at least Twenty-Five Thousand Dollars ($25,000.00) greater than the Purchase Price and any subsequent bid amounts must be in same minimum increments. The Buyer shall not have to meet the incremental bid requirements, but need only meet a competing bid to be considered the successful bidder for the Assets.

14.4 In the event that there shall be a competing bid from a third party upon or following the submission of this letter of intent to the Bankruptcy Court for an Approval Order, and the closing shall fail to occur in accordance with the terms hereof with the successful bidder, then Seller may accept another bid which is in compliance with the Procedures Order.

14.5 The Parties shall use their best efforts to implement the following time line but may vary from the same by mutual agreement:

a. Hearing on the motion for entry of the Procedures Order within 21 days after the same is filed.

b. The Auction to be conducted within 30 days after the entry of the Procedures Order.

c. Hearing on the motion for entry of the Sale Order within 7 days after the Auction.

15. Governing Law. This letter of intent agreement and the Definitive Agreement shall be governed by the laws of the State of Oklahoma, without giving effect to principles of conflicts of law thereunder.

16. Effect. This letter of intent agreement will expire if the Definitive Agreement has not been signed on or before thirty (30) days after Seller files the motions described in Section 8 above unless otherwise agreed by the parties, or such earlier date as may be ordered by the Bankruptcy Court.

[The remainder of this page is intentionally blank.]

If the foregoing terms and conditions are acceptable to you, please so indicate by signing the enclosed copy of this letter and returning it to the attention of the undersigned. This letter of intent agreement shall be effective the date accepted by you (the "Effective Date").

Sincerely,

FRESH CAPITAL LLC

By: _____
Name: Bradley L. Grow
Title: Manager

FIESTA HOLDINGS, INC.

By: _____
Name: Preston Stockton
Title: President

PRACTICAL INVESTORS LLC

By: _____
Name: Bradley L. Grow
Title: Manager

THE TERMS HEREIN ARE ACCEPTED AND AGREED TO THIS 7th DAY OF JULY, 2017.

EATERIES, INC.

By: _____
Name: William C. Liedtke III
Title: Vice President

GRP OF ZANESVILLE, LLC

By: _____
Name: William C. Liedtke III
Title: Manager

EXHIBIT "A"

Restaurant Locations

S&B's BURGER JOINT-UNIVERSITY MALL
1237 E. MAIN ST.-STE1030
CARBONDALE, IL 62901
Tenant: Eateries, Inc. dba S&B's Burger Joint
Landlord: University Mall Realty LLC, c/o Namdar Realty Group

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GARFIELD'S-WA CROWN CENTER
1500 W. CHESTNUT ST. STE 636
WASHINGTON, PA 15301
Tenant: Eateries, Inc. dba Garfield's
Landlord: Washington Crown Center Realty Holdings LLC

GARFIELD'S-NITTANY MALL
2901 E. COLLEGE AVE STE 624
STATE COLLEGE, PA 16801
Tenant: Eateries, Inc. dba Garfield's
Landlord: Nittany Centre Realty, LLC; Nittany Nassim LLC

GARFIELD'S-SUSQUEHANNA VALLEY
ONE SUSQUEHANNA VALLEY MALL DRIVE
SPACE 223
SELINSGROVE, PA 17870
Tenant: Eateries, Inc. dba Garfield's
Landlord: German American Capital Corporation

GARFIELD' S
300 HIGHWAY 78 E. STE 344
JASPER, AL 35501
Tenant: Eateries, Inc. dba Garfield's
Landlord: Jasper Mall Retail Group, LLC

GARFIELD'S- VILLAGE MALL
2917 N. VERMILION ST.
DANVILLE, IL 61832
Tenant: Eateries, Inc. dba Garfield's
Landlord: T Danville Mall, LLC

GARFIELD'S-GREENVILLE MALL
1651 HIGHWAY 1 SOUTH STE 21
GREENVILLE, MS 38701
Tenant: Eateries, Inc. dba Garfield's
Landlord: Five Properties Holding Company LLC

GARFIELD'S-COLONY SQ. MALL
3575 MAPLE AVE.
ZANESVILLE, OH 43701
Tenant: GRP of Zanesville LLC dba Garfield's (wholly owned sub of Eateries, Inc.)
Landlord: Colony Square TEI Investors LLC c/o Urab Retail Properties

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GARFIELD'S-OHIO VALLEY MALL
67800 MALL RD STE 695
SAINT CLAIRSVILLE, OH 43950
Tenant: Eateries, Inc. dba Garfield's
Landlord: Ohio Valley Mall Company

GARFIELD'S-MORGANTOWN MALL
9801 MALL RD
MORGANTOWN, WV 26501
Tenant: Eateries, Inc. dba Garfield's
Landlord: Morgantown Mall Associates Limited Partnership

GARFIELD'S-MEADOWBROOK MALL
2400 MEADOWNBROOK MALL
BRIDGEPORT, WV 26330
Tenant: Eateries, Inc. dba Garfield's
Landlord: Meadowbrook Mall Company (Cafaro)

EXHIBIT "B"

Qualified Bidder

A "Qualified Bidder" is a person who, among other things:

a. Does not condition its bid on obtaining financing or on the outcome of unperformed due diligence, unless otherwise consented to by the Seller.

b. Submits to the Seller an executed confidentiality agreement in form and substance acceptable to the Seller.

c. Fully discloses the identity of each entity, including all persons owning directly or indirectly 20% or more of such entity, that will be bidding for the assets or otherwise participating in connection with such bid and the complete terms of any such participation.

d. Submits a bid in the form of cash denominated in United States Dollars (a "Cash Bid").

e. Submits to the Seller an irrevocable offer in the form of an executed asset purchase agreement (A) without financing, regulatory or due diligence contingencies, unless otherwise consented to by the Seller, and without board (or comparable) approval or other contingencies, (B) containing a satisfactory Cash Bid, and (C) on the same terms as those terms contained in the Definitive Agreement, subject to certain necessary revisions to reflect the correct purchase price and buyer.

f. Makes a cash deposit in the form of a cashier's check or wire transfer into an interest-bearing escrow account (the "Escrow Account") pursuant to the terms of an Escrow Agreement in the form attached hereto as Exhibit "C", in an amount not less than 10% of the competing bid amount, which deposit shall immediately become non-refundable and credited toward the purchase price if and when the Qualified Bidder making such deposit is declared to be the winning bidder (the "Winning Bid" and "Winning Bidder"). In the event a Qualified Bidder is not the Winning Bidder, such Qualified Bidder's deposit shall be refunded as set forth in the Procedures Order.

g. Provides reasonably satisfactory written evidence, in the discretion of the Seller and its advisors, of its financial ability to (a) fully and timely perform and close the sale pursuant to the Definitive Agreement, subject to the necessary revisions described above, if it is declared to be the Winning Bidder, (b) repay all DIP obligations in full upon the closing of the sale, and (c) provide adequate assurance of future performance of all executory contracts and unexpired leases to be assigned to it.

h. Is not entitled to any overbid fee, break-up fee, expense reimbursement, termination fee or similar type of payment or bid protection.

EXHIBIT "C"

Escrow Agreement

[To Be Provided]