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JUDGE:       Timothy W. Dore  
DATE:        August 11, 2017  
TIME:        9:30 a.m.  
CHAPTER:     11  
LOCATION:     Seattle  
RESPONSE DATE: August 4, 2017

6                               UNITED STATES BANKRUPTCY COURT  
7                               WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

8   In re:	)	No. 16-15814-TWD
	)	(Lead Case)
9   LODGE HOLDINGS COMPANY,	)	No. 16-15849-TWD
	)	No. 16-15850-TWD
10   Mukilteo Lodge, LLC,	)	No. 16-15851-TWD
11   Kirkland Lodge, LLC,	)	No. 16-15852-TWD
12   Stadium Lodge, LLC,	)	No. 16-15853-TWD
13   Downtown Lodge, LLC,	)	No. 16-15854-TWD
14   Mill Creek Lodge, LLC,	)	(Substantively Consolidated Cases)
15   Greenwood Lodge, LLC	)	
	)	<b>MOTION FOR ORDER</b>
	)	<b>APPROVING SALE OF ASSETS</b>
	)	<b>FREE AND CLEAR OF LIENS,</b>
	)	<b>ASSUMPTION OF UNEXPIRED</b>
16                               Debtors.	)	<b>LEASES, ASSOCIATED</b>
	)	<b>PROCEDURES AND GRANTING</b>
17   _____	)	<b>RELATED RELIEF</b>

18               Sheena R. Aebig, the duly-appointed Chapter 11 Trustee [“Trustee”] for the debtors whose  
19       cases are consolidated [“Consolidated Debtors”] under *In re Lodge Holdings Company*, No. 16-  
20       15814, has entered into an Asset Purchase Agreement [“APA”] with CBC Partners I, LLC or assigns  
21       [collectively “CBC”], pursuant to which CBC would purchase all assets (excluding cash,  
22       receivables, and avoidance actions) of the estates of the Consolidated Debtors.   Accordingly, the  
23       Trustee moves for entry of orders (a) approving sale of the debtors’ assets free and clear of liens and  
24       of Assets Free and Clear of Liens, Etc. - 1

26  
27       Motion for Order Approving Sale  
28       of Assets Free and Clear of Liens, Etc. - 1

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1 assumption/assignment of unexpired leases and executory contracts to CBC or other approved  
2 purchaser, together with related relief including procedures to determine issues relating to cure and  
3 adequate assurance of future performance in connection with the proposed assumption and  
4 assignment of the debtors' unexpired leases and executory contracts, and/or (b) only in the event of  
5 timely response indicating potentially qualifying competing offer interest, approving procedures for  
6 an auction, determination of the best offer, and approval of the best offer by the Court, together with  
7 related relief. The Trustee asserts that the United States Bankruptcy Court, Western District of  
8 Washington at Seattle ["Court"] has jurisdiction over this proceeding under 28 U.S.C. § 1334, this  
9 proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(N) and other  
10 applicable law, and the Court has authority to enter final orders granting the requested relief under  
11 11 U.S.C. §§ 363, 365, 506(c), 105, and other applicable law.  
12  
13

14 **A. BACKGROUND**

15 The parent company debtor, Lodge Holdings Company, filed a voluntary Chapter 11 petition  
16 on November 18, 2016. The other Consolidated Debtors (Mukilteo Lodge, Kirkland Lodge,  
17 Stadium Lodge, Downtown Lodge, Mill Creek Lodge, and Greenwood Lodge) filed voluntary  
18 Chapter 11 petitions on November 21, 2016. Debtor West Seattle Lodge, LLC filed a separate, later  
19 voluntary Chapter 11 petition on February 27, 2017. The estates of the Consolidated Debtors have  
20 been substantively consolidated by order of the Bankruptcy Court; the West Seattle estate remains  
21 separate at this time. Each of the debtors other than the parent holding company, Lodge Holdings  
22 [the "Subsidiary Debtors"], continues to operate a restaurant in a location in the state of Washington,  
23 and is the tenant under a premises lease. None of the premises leases has been assumed or rejected  
24  
25  
26

1 as of the filing of this Motion. The leases of the Consolidated Debtors may be summarized:

2 1. Lease executed on or about November 12 and 13, 2012, between IC USA # 8  
3 Property Limited Partnership as Landlord and debtor Stadium Lodge LLC as Tenant, as the same  
4 may be amended, for certain premises located at 401 Second Avenue South, Seattle, WA 98104;

5 2. Lease dated as of August 28, 2009, between Mukilteo Ridgewood, LLC as Landlord  
6 and debtor Mukilteo Lodge LLC as Tenant, as the same may be amended, for certain premises  
7 located at 7928 Mukilteo Speedway, Suite 101, Mukilteo, WA 98275;

8 3. Lease with reference date of December 15, 2011, between RH Lake Associates, LLC  
9 as Landlord and debtor Kirkland Lodge LLC as Tenant, as the same may be amended, for certain  
10 premises located at 107 Lake Street, Kirkland WA 98033;

11 4. Lease dated November 21, 2014, between Limantzakis Properties No. 1, LLC as  
12 Landlord and debtor Greenwood Lodge LLC as Tenant, as the same may be amended, for certain  
13 premises located at 8501 Greenwood Ave. N., Seattle, WA 98103;

14 5. Lease dated April 18, 2014, between Executive Hotel Seattle, LLC as Landlord and  
15 debtor Downtown Lodge LLC as Tenant, as the same may be amended, for certain premises located  
16 at 400 Spring Street, Seattle, WA;

17 6. Lease dated April 14, 2014, between Octagon Capital Group, LLC as Landlord and  
18 debtor Mill Creek Lodge LLC as Tenant, as the same may be amended, for certain premises located  
19 at Creekside Village, 15129 Main Street, Mill Creek, WA 98012.

20 The deadline for assumption or rejection of the unexpired leases was June 19, 2017 for the  
21 IC USA # 8 (Stadium Lodge) and Executive Hotel (Downtown Lodge) leases (the Trustee has filed a  
22 motion to assume those leases effective and conditioned upon closing of a sale transaction as  
23 proposed in this Motion), and is September 30, 2017 for the remaining leases as extended and  
24 according to terms provided in a prior motion and order extending time for assumption or rejection  
25 of those remaining leases.

26 On January 11, 2017, the Court appointed the Trustee in the now consolidated cases

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1 (excluding West Seattle Lodge),<sup>1</sup> for cause. The Trustee devoted substantial time and resources to  
2 attempting to obtain reasonable accounting and financial data by which to determine the profitability  
3 of the “Lodge Sports Grill” restaurants operated by the Subsidiary Debtors. Her initial assessment is  
4 summarized in the Chapter 11 Trustee’s Interim Report of Investigation and Recommendations filed  
5 March 23, 2017 in the Lodge Holdings case. Although the Consolidated Debtors have recently filed  
6 a plan of reorganization whereby their owners, Shawn Roten and Elizabeth Stewart, would retain  
7 ownership of the debtors’ assets, the Trustee is and has been deeply skeptical that any such plan  
8 would be feasible absent a massive infusion of capital, any source of which is unknown to the  
9 Trustee.  
10

11         Among other things, amended proofs of claim filed by the IRS in the cases of the  
12 Consolidated Debtors show prepetition debt (most if not all of which is secured and/or priority debt)  
13 of nearly \$2.2 million.<sup>2</sup> Amended proofs of claim filed by the State of Washington show prepetition  
14 debt (most if not all of which is at least priority debt) in excess of another half million dollars. CBC  
15 asserts a perfected security interest in all assets of the debtors to secure debt in excess of \$920,000.<sup>3</sup>  
16  
17         Administrative expenses of the Trustee, her professionals, and other postpetition creditors may  
18 fluctuate drastically depending on the timing of closing of a sale transaction in relation to payment  
19

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20         <sup>1</sup> Hearings upon motion to convert or dismiss the West Seattle Lodge case, and for appointment of a trustee  
21 therein, have been continued to July 14, 2017.

22         <sup>2</sup> Based upon a preliminary review, the Trustee believes approximately \$770,000 of this amount may be prior to  
the security interests of CBC (i.e., in “first position”).

23         <sup>3</sup> American Express has filed a secured proof of claim for approximately \$7,500, appearing to be secured in  
assets of Mukilteo Lodge, which if allowed, would be paid from sale proceeds. Executive Hotel Seattle asserts a claim  
24 secured by assets of Downtown Lodge, related to financing of improvements at that location. The Trustee expects the  
secured claim of Downtown Lodge to be assumed by CBC or any purchaser of the Downtown Lodge assets. Certain  
25 documentation, for example, promissory notes, suggests that private lenders to one or more Lodge entities or entities who  
are not precisely identified as one of the debtors, may have expected to be secured in certain furniture, fixtures and  
equipment at certain Lodge locations, but the Trustee has no evidence of the perfection of any such security interests.  
26

1 cycles for taxes, rent and the like. The Trustee has seen no evidence that the debtors can generate  
2 sufficient cash and periodic net cash flow, to pay secured and priority claims according to the  
3 requirements of 11 U.S.C. § 1129.

4 The Trustee has made discreet, non-public inquiry with experienced restaurateurs and a  
5 potential broker for the restaurant assets of the debtors, and has provided nondisclosure agreements  
6 to a handful of potentially interested parties. However, the Trustee has not to date concluded a  
7 formal or sustained marketing program to be realistic. The operations of the debtors have continued,  
8 post-petition and subsequent to the Trustee's appointment, to rely heavily upon the continued  
9 involvement of Mr. Roten. Mr. Roten has insisted that an internal reorganization is possible and has  
10 been previously unwilling to agree to sale or shut down of any of the restaurants. Furthermore, the  
11 short time available for assumption or rejection of premises leases, which is limited by 11 U.S.C.  
12 § 365(d)(4), has limited available options. However, the Trustee has had no indication from her  
13 informal inquiries, of any realistic probability that sale of the restaurant assets could generate  
14 sufficient proceeds to pay all secured, priority and administrative debt in these cases. Additionally,  
15 the Trustee has to date considered it highly improbable that a third-party purchaser, not previously  
16 familiar or involved with the Lodge restaurants, would expend the time and resources necessary to  
17 complete all due diligence required to generate a binding, non-conditional offer while the debtors  
18 may be pursuing a plan of reorganization that, if confirmed, would render a purchase offer moot.

19 The Trustee believes that without insertion of new management and capital, despite the  
20 possibility the restaurants could generate some degree of operating profit, the restaurants will ulti-  
21 mately fail for inability to retire all secured and priority debt and effect cure and adequate assurance

1 of future performance with respect to premises leases, A failure of the restaurants would likely  
2 leave all creditors, including secured and priority creditors, substantially unpaid. In the unfortunate  
3 circumstances of these cases, the Trustee believes a sale of assets, even if insufficient to retire all  
4 secured and priority debt, is preferable to a probable forced liquidation with extremely limited  
5 recovery for creditors. The proposed sale of assets to CBC would generate \$1,005,000 cash  
6 available to apply toward the IRS first priority secured claim (discounted payoff at \$420,000),  
7 substantial lease cure amounts (estimated to be up to approximately \$300,000), and administrative  
8 expenses of the United States Trustee (fees to be paid in full) and, pro rata, unpaid postpetition taxes  
9 payable by Seller under the APA, if any, together with compensation to the Trustee and her  
10 professionals (subject to Court allowance and likely payable only at a significant discount based on  
11 currently accrued hourly charges).

12  
13  
14 **B. PROPOSED SALE**

15 A copy of the proposed APA is attached hereto as Exhibit 1. In the event of inconsistencies  
16 between the APA and the summary of major terms of sale provided in this Motion, the APA shall  
17 govern. In general, the APA and Trustee's proposed procedures provide:

18  
19 1. Acquired Assets. All assets of the Consolidated Debtors, including without  
20 limitation, inventory, intellectual property, leaseholds, FF&E (excluding the Greenwood Lodge  
FF&E), , and intangibles, free and clear of claims, interests and encumbrances.

21 2. Purchase Price. Cash of \$1,005,000 (One Million Five Thousand Dollars),  
22 purchaser's assumption of certain postpetition trade payables, payroll, and taxes, and purchaser's  
23 assumption of the CBC secured debt in estimated amount of \$920,556.69 calculated as of May 11,  
2017, with additional interest and charges accruing thereafter.

24 3. Assumption and assignment of leases and contracts. The above-described  
25 premises leases, unless specifically excluded by agreement of CBC and the Trustee, are to be  
assumed and assigned, at closing, to CBC. The additional contracts identified as "Acquired

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1 Contracts” under the APA, Schedule 1.1(c), are also to be assumed and assigned, and consist  
2 primarily of: lease obligations for dishwashers in the Stadium and Mill Creek Lodge locations..

3 4. Conditions. CBC has satisfied or waived due diligence and financing  
4 conditions. CBC’s obligation to close is conditioned without limitation upon (a) Court approval of  
5 the APA (specifically including a provision for reimbursement of up to \$50,000 of CBC’s expenses  
6 in connection with due diligence and the proposed purchase, as an administrative expense in the  
7 event a sale to CBC fails to close for any reason other than as the result of CBC’s actions, as to  
8 which Trustee seeks Court approval immediately and without regard to whether an auction is  
9 conducted and the results thereof), (b) entry of the Sale Order as described in the APA and in form  
10 submitted herewith, as the same may be amended with the consent of CBC, no later than 60 days  
11 following the execution date of the APA, which shall provide for the assumption and assignment of  
the premises leases and any identified executory contracts as described above; (c) entry into  
employment agreements with key employees of the debtors; (d) satisfactory evidence that all  
secured creditors who will not be paid in full through the sale transaction, consent to the transaction;  
(e) no material adverse change to the business, results of operations, prospects, condition or assets of  
the business; and (f) those other conditions provided in section 7.2 of the APA, and grounds for  
termination provided in Article 8 of the APA.

12 5. Higher and Better Offers; Backup Offer. CBC consents to the proposed  
13 procedure for consideration of competing offers, outlined as follows. The Trustee requests that the  
14 Court enter an order approving the proposed procedures, but only in the event that credible  
competing bid interest is timely received by the Trustee:

15 a. Responses. Any party interested in making a competing bid must  
16 submit a written response to this Motion, to be received by the Response Date (August 4, 2017),  
17 indicating that the party is prepared to offer \$2,193,656 (Two Million One Hundred Ninety-Three  
18 Thousand Six Hundred Fifty-Six Dollars)<sup>4</sup> or more, for the assets of some or all of the debtors (not  
19 exceeding those assets that are subject to the CBC APA); and must both provide the Trustee, to be  
20 received by the date of initial hearing upon this Motion (August 11, 2017), both evidence  
21 satisfactory to the Trustee in her sole discretion, of the interested party’s ability to close a qualifying  
22 transaction by August 31, 2017, and an executed nondisclosure agreement [“NDA”] in form  
23 acceptable to the Trustee. No party shall be a Qualified Bidder until the Trustee has confirmed  
24 timely receipt of such evidence and the executed NDA.

25 b. Unconditional, all-cash offers. A competing bidder shall have until  
26 August 21, 2017 to complete due diligence and satisfy all conditions to the competing bidder’s offer.  
27 A competing offer must be unconditional and for all cash, for the competing bidder to participate in  
28 the auction described below. Without limiting the foregoing, the cash must be sufficient to result in

25 4 This amount is \$250,000 more than the combined total of cash and estimated, assumed CBC debt offered  
26 under the CBC APA.

1 full payment of the CBC Loan as described in the APA, at closing.

2 c. Form of APA and certain disclosures. By August 21, 2017, a  
3 competing bidder must submit two copies of its proposed asset purchase agreement, redlined against  
4 the CBC APA, to the Trustee. Such proposed agreements should be as nearly identical to the CBC  
5 APA as possible given the lack of time and resources in the estates, for competing terms to be  
6 negotiated and implemented, provided that no reimbursement of expenses of due diligence, break-up  
7 fee, or similar consideration shall be provided by the debtors' estates to a competing bidder, whose  
8 due diligence and other expenses are to be borne solely by the competing bidder. The competing  
9 APA must identify the purchaser with specificity and be accompanied by a disclosure of any  
connections between the competing bidder and ultimate purchaser on one hand, and the debtors,  
their owners and management on the other, including without limitation, disclosure of agreements  
made or intended to be made involving the owners or management of any of the debtors. The  
Trustee in her sole discretion may determine whether any material alterations to the CBC APA are  
acceptable in the circumstances of these cases.

10 d. Potential Auction. By August 23, 2017, the Trustee shall notify  
11 interested parties of any acceptable competing offers. If one or more acceptable competing offers  
12 are received, then the Trustee will conduct an auction on August 25, 2017, at 10:00 a.m., at the  
13 offices of Trustee's counsel (address specified in the lower right corner of this pleading). In order to  
14 bid, any competing bidder must deliver, at or prior to the scheduled time for commencement of the  
15 auction, good funds by cashier's or certified check, in the amount of \$100,000, as an Initial Deposit  
16 toward closing of the competing bidder's purchase transaction. The competing bidder must also  
17 execute an acknowledgment in form satisfactory to the Trustee in her sole discretion, that the  
18 competing bidder (i) has relied solely upon its own review, investigation, inspection and due dili-  
gence, (ii) has not relied upon any representations by the Trustee or her professionals regarding the  
assets of the estates or any matter material to the competing bidder's offer, (iii) is solely responsible  
for and will indemnify the estates from any claim for a broker's, finder's or similar fee, and (iv)  
acknowledges that the submission of a bid shall bind the competing bidder to close according to the  
terms of the APA approved by the Trustee and subject to Court entry of an order approving its bid.

19 e. Qualified Bidders and Trustee's Discretion. Any parties satisfying all  
20 of the above conditions, and CBC, shall be considered Qualified Bidders. The Trustee will conduct  
21 an auction according to procedures acceptable to the Trustee in her sole discretion, among the  
22 Qualified Bidders and CBC, to be announced at or prior to commencement of the auction. For  
23 purposes of comparison with any competing bid, any bid by CBC shall be considered to include an  
24 additional \$50,000 constituting the maximum Expense Reimbursement to CBC in event CBC is not  
25 the successful bidder, under section 10.2(c) of the APA. Minimum bidding increments shall be  
26 \$25,000. For purposes of comparing bids, the Trustee in her sole discretion will determine the  
highest and best offer ["Winning Bid"] for presentation to the Court, taking into account, without  
limitation, (i) identity of the Qualified Bidder, (ii) number, type and nature of changes to the APA  
requested by the Qualified Bidder, (iii) extent to which the identity of the Qualified Bidder or such



1 modifications are likely to delay closing of the sale, and the cost or savings to the estates resulting  
2 from such modifications or delay, (iv) form and amount of the total consideration to be received by  
3 the bankruptcy estates, (v) financial strength of the Qualified Bidder, and (vi) whether the IRS  
4 consents to the transaction with the Qualified Bidder and the extent to which the Qualified Bidder's  
5 offer will provide value for assumption and assignment of leases and executory contracts, and to pay  
6 expenses of administration and other claims, in the estates with such consent of the IRS as may be  
7 required to make such value available to the estates.

8  
9 f. Trustee's Consideration of Bids and Report; Potential Backup Offer.

10 The Trustee will file a report with the Court within two business days following the auction,  
11 summarizing the results of the same and the Trustee's recommendation as to the Winning Bid. The  
12 Trustee's determination of the Winning Bid will be made by the Trustee in her discretion and exer-  
13 cise of business judgment in the circumstances of these cases. The Trustee may, with consent of a  
14 Qualified Bidder, in her discretion and exercise of business judgment in the circumstances of these  
15 cases, accept one qualifying bid as a "backup" offer ["Backup Bid"] to be closed in the event the  
16 offer approved by the Court is not timely closed.

17 g. Sale Confirmation Hearing; Closing Deadlines; Related Relief. The

18 Trustee hereby requests that a hearing be set between August 30 and September 1, 2017, as the  
19 Court's calendar may permit, for the Court's consideration of the Winning Bid and any Backup Bid  
20 [the "Sale Confirmation Hearing"]. The Trustee shall request that the Court approve the Winning  
21 Bid for closing [if so approved by the Court, the "Approved Offer"] and any Backup Bid for closing  
22 in the event the Winning Bid is not timely closed [if so approved by the Court, the "Approved  
23 Backup"]. Closing of a particular transaction is conditioned upon the Court's entry of an order  
24 approving sale according to the terms of a Winning Bid and/or Backup Bid. Closing shall be  
25 scheduled for no later than September 8, 2017 ["Closing Deadline"], or in the event the Approved  
26 Offer is not timely closed, no later than September 15, 2017 ["Backup Closing Deadline"] as to any  
27 Approved Backup.

28 h. Disposition of Initial Deposits. As soon as practicable following

29 completion of any auction, the Trustee shall return Initial Deposits delivered by unsuccessful  
30 bidders. The Trustee shall retain Initial Deposits delivered in connection with the Winning Bid and  
31 any Backup Bid pending closing, to be applied to the particular purchaser's obligation at closing. In  
32 the event the Court does not approve a Winning Bid or any Backup Bid at the Sale Confirmation  
33 Hearing, through no fault of the bidder, the Trustee shall return the Initial Deposit delivered by such  
34 bidder as soon as practicable following the Sale Confirmation hearing. If the Approved Offer fails  
35 to close the sale by the Closing Deadline, as a result of breach by the entity making or  
36 consummating that offer, the Initial Deposit provided as part of the Approved Offer will be forfeited  
37 to the debtors' estates, without limiting the Trustee's right to seek additional damages or remedies as  
38 a result of such breach. If the Approved Offer timely closes, the Initial Deposit delivered in  
39 connection with any Approved Backup will be returned as soon as practicable. If the Approved  
40 Backup fails to close by the Backup Closing Deadline, as a result of breach by the entity making or

1 consummating that offer, the Initial Deposit provided as part of the Approved Backup will be  
2 forfeited to the debtors' estates, without limiting the Trustee's right to seek additional damages or  
remedies as a result of such breach.

3 i. Continuing Exclusive Jurisdiction of the Court. The Trustee hereby  
4 requests that in the event of questions or disputes as to the conducting of an auction, consideration or  
5 acceptance of bids, and any related matters, the Court grant the Trustee leave to request the instruc-  
6 tion of the Court, and that the Court retain exclusive jurisdiction over all matters related to the  
instant motions and sale process.

7 By way of related relief, the Trustee anticipates that modifications to the proposed APA,  
8 compromises with creditors or parties in interest, or similar actions may be necessary or appropriate  
9 to facilitate a disposition of assets of the estates for value in these cases. In event of such  
10 modifications, compromises and the like, the Trustee would seek to advise the Court as soon as  
11 practicable. The Trustee hereby moves for entry of an order approving such modifications,  
12 compromises and similar matters as may arise in the sale process, at the initial hearing upon this  
13 Motion, or at the Sale Confirmation Hearing if competing purchase interest is timely asserted and an  
14 auction process results.  
15

16  
17 **C. ASSUMPTION OF UNEXPIRED LEASES**

18 The Trustee moves, pursuant to 11 U.S.C. § 365 and other applicable law, for authority to  
19 assume and assign the unexpired leases and executory contracts, if any, that are subject to the CBC  
20 APA and any alternative APA that may be approved by the Court as the Approved Offer or Backup  
21 Offer, conditioned upon and effective at closing of the sale of assets pursuant to the Approved Offer  
22 or Backup Offer. The Trustee requests that a hearing be set to consider any cure, adequate assurance  
23 of prompt cure, and adequate assurance of future performance issues that are not otherwise settled  
24 among a landlord on one hand, and the Trustee (or CBC or other submitted of the Approved Offer,  
25  
26

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1 with the Trustee's consent) on the other, with associated dates for submissions to the Court.

2 **D. AUTHORITY AND ARGUMENT – ALLOCATION OF PROCEEDS**

3 11 U.S.C. § 363(b) authorizes a trustee to sell assets of the estate outside the ordinary course  
4 of business. A number of cases generally recognize that such a sale may be approved if a sound  
5 business purpose exists for the sale, the sale is in the best interest of the estate (i.e., the sale price is  
6 fair and reasonable), notice to creditors was proper, and the sale is made in good faith. *E.g., In re*  
7 *Slates*, 2012 WL 5359489, at \*11 (9<sup>th</sup> Cir BAP 2012), *citing In re Wilde Horse Enters., Inc.*, 136  
8 B.R. 830, 841 (Bankr. C.D. Cal. 1991) *and In re Lionel Corp.*, 722 F.2d 1063, 1069 (2<sup>nd</sup> Cir. 1983).  
9 Given the massive tax obligations incurred by the Consolidated Debtors prior to the bankruptcy  
10 petition, the lack of evidence that the debtors can propose feasible and confirmable plans of reor-  
11 ganization, and the deadline for assumption or rejection of executory leases looming in these cases,  
12 there is obvious business justification for the proposed sale. The Trustee has explored options for  
13 disposition of the assets in good faith, believes CBC has acted in good faith in making its offer for  
14 the assets, and is aware of no collusion or attempt to take unfair advantages of other potential  
15 bidders.<sup>5</sup> Furthermore, the Trustee is aware of no evidence to support a contention that the assets are  
16 worth more than the secured and priority debt in the consolidated cases. In the circumstances, the  
17 Trustee believes that failure to sell all the assets promptly is likely to result ultimately in shut down  
18 of the businesses with little to no recovery for creditors.

22 11 U.S.C. § 363(f) authorizes sale of property free and clear of any interest in such property  
23

24 \_\_\_\_\_  
25 <sup>5</sup> As noted, the Trustee requests immediate approval of the provision in the APA providing that CBC may seek  
26 reimbursement of its reasonable due diligence and similar costs related to this transaction, as an administrative expense.  
The Trustee negotiated with CBC in good faith, to place a \$30,000 cap on that potential reimbursement.

1 of an entity other than the estate, if an entity consents. The Trustee has approached the Internal  
2 Revenue Service, which has filed an amended proof of claim for approximately \$2.2 million (of  
3 which approximately \$770,000 may be senior to the blanket security interest of CBC in the assets of  
4 all debtors), to obtain consent to the proposed CBC sale. The Trustee understands that the IRS  
5 consents to the CBC sale and consents (or will not object) to the following allocation of the \$1  
6 million cash portion of the purchase consideration and related provisions:  
7

8 1. IRS to receive \$420,000 from the cash consideration;  
9 2. Set aside of \$7,497.93 to pay secured claim of American Express Bank, to the  
10 extent allowed;  
11 3. Carveout or agreed 11 U.S.C. § 506(c) assessment for cure payments under  
12 leases and contracts to be assumed and assigned to CBC (estimated at up to approximately  
13 \$300,000). The Trustee estimates that such cure payments should not exceed that amount and  
14 reserves the right to object to claimed defaults and cure amounts. The sum of \$300,000 is to be set  
15 aside at closing, for the purpose of making such cure payments as the same may be settled with the  
16 Trustee or by CBC with the Trustee's consent, or determined at hearing.  
17

18 5. The balance of the purchase price will be treated as a carveout or agreed 11  
19 U.S.C. § 506(c) assessment to pay unpaid United States Trustee fees, unpaid postpetition taxes  
20 payable by Seller under the APA, if any, and allowed compensation to the Trustee and her  
21 professionals, subject to allowance by the Court. It is anticipated that the purchase price balance  
22 will be significantly less than the accrued hourly fees of the Trustee and her professionals (subject to  
23 statutory maximum compensation to the Trustee), and such allowed compensation and unpaid  
24  
25  
26

1 postpetition taxes payable by Seller under the APA, if any, accordingly will be paid pro rata or as  
2 otherwise agreed among the Trustee and her professionals. The estimated amounts accrued by the  
3 Trustee and her professionals through May 2017, subject to application and allowance, are believed  
4 to be in the range of \$300,000, and it is anticipated that additional substantial charges will be  
5 accrued thereafter and through completion of the cases.

6  
7 6. The IRS consents to CBC inclusion of assumption of its debt as part of the  
8 CBC offer, despite insufficiency of the purchase price to pay all of IRS's secured claims.

9 7. If and to the extent amounts set aside above are not necessary for the  
10 identified purposes, the surplus may be applied to items paid pro-rata under paragraph (5) above,  
11 and in the unlikely event of a surplus, toward secured claims junior to the CBC secured claim.

12  
13 In this regard, 11 U.S.C. § 506(c) authorizes a trustee to recover from property securing an  
14 allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of,  
15 such property to the extent of any benefit to the holder of such claim. The Trustee submits that  
16 virtually all of her services, those of her professionals, and the various trade, tax and similar  
17 obligations incurred have been necessary to preserve or dispose of property.

18  
19 11 U.S.C. § 365(b) authorizes assumption of an executory contract or unexpired lease upon  
20 cure or adequate assurance of prompt cure, of defaults, compensation for losses resulting from  
21 default, and adequate assurance of future performance. Subsection (f) authorizes assignment of  
22 executory contracts and unexpired leases if adequate assurance of future performance is provided,  
23 regardless whether there has been a default.

24  
25 WHEREFORE, the Trustee requests entry of order(s) in form accompanying this Motion, as

26  
27 Motion for Order Approving Sale  
28 of Assets Free and Clear of Liens, Etc. - 13

**BUCKNELL STEHLIK SATO & ORTH, LLP**  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 the same may be modified, providing the relief requested.

2 Respectfully submitted this 7th day of July 2017.

3 BUCKNELL STEHLIK SATO & ORTH, LLP  
4 /s/ Edwin K. Sato

5 Thomas N. Bucknell, WSBA # 1587  
6 Edwin K. Sato, WSBA #13633  
7 Andrea D. Orth, WSBA # 24355  
8 Attorneys for Trustee, Sheena R. Aebig

9 VERIFICATION

10 SHEENA R. AEBIG states:

11 1. I am the duly-appointed Chapter 11 Trustee in the above-captioned cases, of legal age  
12 and competent to testify herein, and state the following based upon my personal knowledge and  
13 belief.

14 2. I have reviewed the foregoing motion, and based upon such investigation and  
15 inquiries as I have been able to conduct or make in the period between my appointment and the date  
16 hereof, verify the factual assertions therein to be true to the best of my information and belief.

17 3. In addition, I have discussed the proposed CBC sale transaction with counsel to the  
18 Internal Revenue Service, in light of the insufficiency of the proposed purchase price to pay all  
19 secured claims of the IRS and the anticipated administrative expenses of these cases. It appears that  
20 the IRS may have the first-position lien on assets of the estates by virtue of federal tax lien filings  
21 pre-dating the CBC UCC-1 filings, to the extent of nearly \$770,000. The IRS has consented to a  
22 reduced payment of \$420,000, specifically as to the cash purchase consideration provided in the  
23 CBC offer, as summarized in the Motion.  
24  
25

26  
27 Motion for Order Approving Sale  
28 of Assets Free and Clear of Liens, Etc. - 14

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Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 I declare under penalty of perjury that the foregoing is true this 7th day of July 2017.

2 /s/ Sheena R. Aebig

3 \_\_\_\_\_  
4 Sheena R. Aebig

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Motion for Order Approving Sale  
of Assets Free and Clear of Liens, Etc. - 15

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# EXHIBIT 1



## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this “**Agreement**”) is made and entered into as of July 7, 2017 (the “**Execution Date**”), by and between CBC PARTNERS, LLC, a Washington limited liability company or its assignee(s) (“**Buyer**”), having its principal place of business at 777 108th Ave NE, Suite 1895, Bellevue, WA 98004 and SHEENA AEBIG (“**Trustee**”), in her capacity as Chapter 11 Trustee, by and on behalf of Lodge Holdings Company, Downtown Lodge LLC, Kirkland Lodge, LLC, Greenwood Lodge LLC, Stadium Lodge LLC, Mill Creek Lodge LLC, and Mukilteo Lodge LLC (individually and collectively, the “**Consolidated Seller**” and together with Trustee, “**Seller**”), Consolidated Seller having a principal place of business at 9910 Marine View Dr., Mukilteo, WA 98275. Capitalized terms used in this Agreement are defined or cross-referenced in **Exhibit A**.

### **BACKGROUND**

A. On November 18 and 21, 2016 (the “**Petition Dates**”), Consolidated Seller commenced voluntary cases for reorganization (the “**Bankruptcy Cases**”) under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Western District of Washington (the “**Bankruptcy Court**”) and now docketed, following substantive consolidation of the Bankruptcy Cases, as Case No. 16-15814-TWD.

B. Seller operates, among others, the restaurants set forth on **Exhibit B** (the “**Restaurants**”).

C. On January 11, 2017, Trustee was appointed by order of the Bankruptcy Court in the Bankruptcy Cases. Trustee believes that the transaction contemplated by this Agreement is in the best interest of the creditors of the Bankruptcy Cases and each desires to consummate the transactions contemplated by this Agreement for the benefit of the creditors of Seller.

D. Buyer desires to purchase substantially all of Seller’s assets used in the operation of the Restaurants and assume the Assumed Liabilities from Seller, and Seller desires to sell, convey, assign and transfer to Buyer such assets used in the operation of the Restaurants, together with the Assumed Liabilities on the terms and conditions set forth in this Agreement, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, the Federal Rules of Bankruptcy Procedures and Local Rules of the Bankruptcy Court (the foregoing other than the Bankruptcy Code, the “**Bankruptcy Rules**”).

E. The Restaurants and Assumed Liabilities are assets and liabilities of Seller and are to be purchased and assumed by Buyer pursuant to an order, in a form reasonably acceptable to the parties (the “**Bankruptcy Sale Order**”), approving such sale pursuant to sections 105, 363 and 365 of the Bankruptcy Code, free and clear of liens, claims, encumbrances and interests, except for the Assumed Liabilities, which order will include the authorization for the assumption by Seller and assignment to Buyer of the Acquired Contracts and liabilities thereunder in accordance with

section 365 of the Bankruptcy Code, including cure obligations, which shall be paid by Seller out of the Purchase Price, all in the manner and subject to the terms and conditions set forth in this Agreement and the Bankruptcy Sale Order, and in accordance with other applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

F. All capitalized terms and phrases not defined above and as used below shall have those meanings or definitions ascribed to each as set forth in **Exhibit A** appended hereto and made a part hereof.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

### **ARTICLE 1. PURCHASE AND SALE OF THE ACQUIRED ASSETS**

Section 1.1 Transfer of Acquired Assets. At the Closing, and upon the terms and conditions set forth in this Agreement, Seller shall sell to Buyer, and Buyer shall acquire from Seller, all right, title and interest of Seller in, to and under the Acquired Assets, free and clear of all Liens, Claims and interests including pursuant to section 363(f) of the Bankruptcy Code, except the Liens securing the CBC Loan. “**Acquired Assets**” shall mean the following assets of Seller used in connection with its business at the Restaurants, but excluding the Excluded Assets:

(a) All of the equipment (including all camera and video surveillance systems currently used by the Restaurants, plus all archived video files or tapes, and all related access information and equipment), ovens, refrigeration units, machinery, tools, implements, displays, furniture, fixtures and improvements, trade fixtures, and related intangible property of Seller used by Seller in connection with its business at, and operation of, the Restaurants other than the Greenwood Lodge (the “**Greenwood Lodge**”), located at 8501 Greenwood Ave. N., Seattle, WA 98103 (the “**Owned Machinery and Equipment**”);

(b) All of Seller’s owned inventory of food, beverage, supplies, parts and accessories of every kind, nature, and description owned by Seller on the Closing Date and previously or currently used or held for use in the operation of the Restaurants (the “**Inventory**”), subject to consumption and replenishment by Seller in the ordinary course of business;

(c) Those Contracts listed on Schedule 1.1(c) as an Acquired Contract, including but not limited to all leasehold interests, leasehold improvements, and any prepaid deposits related to such Contracts (collectively, the “**Acquired Contracts**”), which Acquired Contracts shall be cured and in good standing as of Closing after giving effect to the transactions contemplated herein;

(d) The telephone number(s), website(s) and email address(es) used in the operation of the Restaurants;

(e) All books and records relating to the operation of the Restaurants, including non-proprietary marketing materials, customer lists and vendor and supplier lists and personnel records, financial records, marketing plans, technical information, trade secrets, know-how, ideas, recipes, designs, programs and systems;

(f) All of Seller's Intellectual Property, provided that West Seattle Lodge shall, upon written request to Buyer, be granted a license to use the trademark, logo, and name of The Lodge and The Lodge Sports Grille, which shall not be transferable for use at any location other than West Seattle Lodge's current location of 4209 SW Alaska St., Seattle, WA 98116, and shall be limited to the time in which West Seattle Lodge continuously operates a Lodge restaurant at that location;

(g) All Cash and all Accounts Receivable;

(h) All licenses, permits, registrations and other government authorizations related to Seller's operations at each of the Restaurants, to the extent transferable;

(i) All causes of action, other than avoidance actions under Chapter 5 of the Bankruptcy Code, and all rights and claims in favor of Seller related to or arising from the Restaurants and the Assumed Liabilities, but specifically excluding all causes of action and all rights and claims against Seller (other than the Assumed Liabilities) or related to or arising from the Excluded Assets and the Excluded Liabilities; and

(j) All of the goodwill of the Restaurants.

Section 1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the following assets owned or used by Seller shall be excluded from the Acquired Assets (all such properties and assets not being acquired by Buyer being referred to as the "**Excluded Assets**"):

(a) the furniture, fixtures and equipment used by Seller in connection with operation of the Greenwood Lodge.

Section 1.3 Assumption of Liabilities. At the Closing consistent with the Bankruptcy Sale Order, Buyer shall assume, and thereafter pay, perform and discharge, when due, all obligations of Seller with respect to Acquired Contracts other than those accruing or arising on or before the Closing Date, all postpetition payables of the Seller that accrued or were invoiced not more than thirty (30) days before the Closing Date (which include without limitation gross payroll and associated taxes, accrued sales and other taxes and miscellaneous vendor and similar obligations, but exclude those items identified in Section 1.4), the Downtown Obligation, and the CBC Loan (the "**Assumed Liabilities**").

Section 1.4 Retention of Liabilities. Buyer is assuming only the Assumed Liabilities and is not assuming any other liability or obligation of Seller of whatever nature, whether presently in existence or arising hereafter, including without limitation any Claims asserted or unasserted,

known or unknown for injuries to persons or property which are related to circumstances or events that predate the Closing of the transaction contemplated hereunder. All such other liabilities and obligations shall be retained by and remain liabilities and obligations of Seller (all such liabilities are, collectively, the “**Excluded Liabilities**”). Without limiting the foregoing, except as expressly provided by Section 1.3 above, neither Buyer or its Affiliates will be deemed to have assumed or be liable for (i) any capitalized leases not included in the Acquired Contracts, long-term debt, or any other liabilities of Seller whether or not reflected on the balance sheets of Seller or its bankruptcy schedules; (ii) any intercompany liabilities or amounts due to Seller’s Affiliates; (iii) any liabilities of Seller or any of its Affiliates or any employee retirement, deferred compensation, health, welfare or other benefit plan or program to or with respect to any former or current employees; (iv) any liability or obligation of Seller to any broker, finder or similar party; (v) any tax liabilities except as set forth in Section 1.3 above; (vi) all cure amounts with respect to the Acquired Contracts (other than the CBC Loan); (vii) all amounts payable as compensation to the Trustee and her professionals, and (viii) all United States Trustee fees owed by the estates of the Consolidated Seller.

## **ARTICLE 2. CONSIDERATION**

Section 2.1 Purchase Price. The aggregate consideration for the sale, transfer, assignment and conveyance of the Acquired Assets will be (a) \$1,005,000 in cash (the “**Purchase Price**”), and (b) the assumption by Buyer of the Assumed Liabilities (such assumption, together with the Purchase Price, the “**Total Consideration**”). The Purchase Price shall be payable in accordance with Section 3.3(a).

## **ARTICLE 3. CLOSING AND DELIVERIES**

Section 3.1 Closing. The consummation of the transactions contemplated hereby (the “**Closing**”) shall take place on the first Business Day following the satisfaction or waiver by the appropriate party of all the conditions contained in Article 7 or on such other date or at such other place and time as may be mutually agreed to by the parties (the “**Closing Date**”). All proceedings to be taken and all documents to be executed and delivered by the parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

Section 3.2 Seller’s Deliveries. At the Closing, Seller shall deliver the following to Buyer:

(a) The sale, transfer, assignment, conveyance and delivery of the Acquired Assets, including but not limited to the Acquired Contracts, by bills of sale, deeds, endorsements, assignments and other instruments of transfer and conveyance in form and substance reasonably acceptable to Buyer;

(b) A certified copy of the Bankruptcy Sale Order. For purposes of clarity, the Bankruptcy Sale Order shall contain the provisions, findings and orders reasonably acceptable to the parties, including, but not limited to, the following:

(i) that the terms and conditions of the sale of the Acquired Assets to Buyer as set forth herein are approved;

(ii) that Seller holds good and marketable title to the Acquired Assets;

(iii) that the sale of the Acquired Assets to Buyer is free and clear of any and all Liens, Claims, interests, and encumbrances of any type or nature whatsoever, other than the Liens securing the CBC Loan and the Lien securing the Downtown Obligation, pursuant to section 363 of the Bankruptcy Code, and that, to the extent applicable, any such Liens attach to the Purchase Price;

(iv) that the Total Consideration constitutes fair value for the Acquired Assets;

(v) that Buyer is acquiring none of the Excluded Assets;

(vi) that the transactions contemplated by this Agreement were negotiated at arm's length, that Buyer acted in good faith in all respects and that Buyer and its assignees and designees are entitled to the protections of section 363(m) of the Bankruptcy Code;

(vii) that notice of the transactions contemplated hereby was adequate and proper under the circumstances and was provided to all creditors and parties in interest required to receive such notice pursuant to the Bankruptcy Rules or order of the Bankruptcy Court, including any and all creditors holding Liens or encumbrances on the Acquired Assets or any of them;

(viii) that Seller is authorized to assume and assign to Buyer each of the Acquired Contracts set forth on Schedule 1.1(d); provided, that Seller shall have sole responsibility of paying the cure costs required to be paid in accordance with section 365(b)(1)(A) of the Bankruptcy Code and Section 7.2(i) of this Agreement; and any adequate assurance required of Buyer shall be acceptable to Buyer in its sole discretion;

(ix) that Seller is authorized and directed to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;

(x) that Buyer and Seller did not engage in any conduct which would allow the transactions contemplated by this Agreement to be set aside pursuant to section 363(n) of the Bankruptcy Code;

(xi) that Buyer is not a successor to, or otherwise liable for, the debts or obligations of Seller, including without limitation, any Claims for injuries or losses suffered to any persons or property for incidences or circumstances that occurred before the Closing, other than as specifically set forth in this Agreement with respect to the Assumed Liabilities;

(xii) that Buyer shall not be deemed a successor employer to Seller for purposes of any liability arising under the WARN Act, or any collective bargaining agreement or other labor or employment agreement; and

(xiii) that the Order is binding upon any successors to Seller, including any Chapter 7 Trustees;

(c) A certificate, dated as of the Closing Date, duly executed by Trustee, on behalf of each Seller, certifying the accuracy of the matters set forth in Section 7.2(a) and 7.2(b), to the best of the Trustee's belief and knowledge, in form and substance reasonably satisfactory to Buyer;

(d) A settlement statement in form and substance satisfactory to the parties hereto, regarding certain Closing matters, executed by Seller;

(e) A subordination, nondisturbance and attornment agreement, in form and substance reasonably satisfactory to Buyer, with respect to Greenwood Lodge; and

(f) Such other bills of sale, certificates of title, documents and other instruments of transfer and such other instruments of conveyance as Buyer may reasonably request in order to effect the sale, transfer, conveyance and assignment to Buyer of valid ownership of the Acquired Assets and such other documents as Seller may reasonably be requested by Buyer, each in form and substance reasonably satisfactory to Buyer.

Section 3.3 Buyer's Deliveries. At the Closing, Buyer shall deliver the following to Seller:

(a) Payment of the Purchase Price to Trustee;

(b) An instrument of assignment and assumption of liabilities with respect to the Assumed Liabilities, reasonably satisfactory in form and substance to counsel for Seller;

(c) A certificate, dated the Closing Date, duly executed by its Managing Member, certifying the accuracy of the matters set forth in Section 7.1(a) and Section 7.1(b); and

(d) A settlement statement in form and substance satisfactory to the parties hereto, regarding certain Closing matters, including any adjustments to the Purchase Price, executed by Buyer.

#### **ARTICLE 4. REPRESENTATIONS AND WARRANTIES**

Section 4.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer, as of the date hereof and as of the Closing Date, in each instance, solely to the best of Seller's belief and knowledge, as follows:

(a) Authorization and Validity. Trustee has all requisite power and authority to enter into this Agreement on behalf of each Seller and to perform Seller's obligations hereunder, subject to the (i) Bankruptcy Court's entry of the Orders, (ii) receipt of all Consents, and (iii) overbidding procedures provided in Section 10.2 and approved by the Bankruptcy Court. This Agreement has been duly executed by Seller, and, subject to the Bankruptcy Court's entry of the Orders, constitutes valid and binding obligations, enforceable against Seller in accordance with its terms.

(b) No Conflict or Violation. Subject to the (i) receipt of all Consents and (ii) the Bankruptcy Court's entry of the Orders, the execution, delivery and performance by Trustee on behalf of Seller of this Agreement does not and will not (a) violate any provision of law, or any order, judgment or decree of any Government applicable to Seller, (b) result in or require the creation or imposition of any Liens on any of the Acquired Assets; or (c) violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contract entered into by Seller after the Petition Dates, by which Seller is bound or to which the assets of Seller are subject.

(c) Consents and Approvals. Schedule 4.1(c) sets forth a true and complete list of each consent, waiver, authorization or approval of any Person and each material declaration to or filing or registration with any Government that is required to be obtained by any Seller in connection with the execution and delivery by it of this Agreement or the performance by it of its obligations hereunder or thereunder, including, without limitation, any and all material consents and approvals that are required to be obtained, or rights of first refusal, first offer or other similar preferential rights to purchase that are required to be complied with, in connection with the assignment or transfer of any Acquired Assets to Buyer in accordance with the terms of this Agreement (collectively, the "**Consents**").

(d) Compliance with Laws. With respect to the Restaurants, Seller is in compliance with all applicable laws, regulations, orders or other legal requirements to which Seller is subject except as referenced in Section 4.1(f). Seller has not received written notice of any violation of any law, regulation, order or other legal requirement and Seller is not in default with respect to any order, writ, judgment, award, injunction or decree of any Government except as referenced in Section 4.1(f).

(e) Title to Acquired Assets. Subject to the entry of the Bankruptcy Sale Order, at the Closing, Seller has or will obtain good and marketable title to or a valid and enforceable right by Contract to use the Acquired Assets which shall be transferred to Buyer free and clear of all Liens, except the Liens securing the CBC Loan and the Lien securing the Downtown Obligation. Except for the Excluded Assets, the Acquired Assets constitute all of the assets presently used in, and necessary for the conduct of, the operations of the Restaurants as currently conducted.

(f) Legal Proceedings. Other than the Bankruptcy Cases and certain orders issued by the Department of Homeland Security, U.S. Immigration and Customs Enforcement, to cease and desist from violations (copies of which have been provided to Buyer), there is no action, litigation, suit, proceeding, inquiry or investigation, or threat of the same, at law or in equity, before

or by any court, public board or body, pending or, to the best of Seller's knowledge, (i) affecting Seller or the Acquired Assets, (ii) challenging or seeking to restrain, prohibit, alter or materially delay the consummation of any of the transactions contemplated by this Agreement or (iii) seeking to obtain from any Seller any damages in connection with the transactions contemplated hereby, nor is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby.

(g) Restaurants. Relating solely to the operation of the Restaurants, Seller is not a party to any written or oral:

(i) contract for the future purchase of fixed assets (other than this Agreement and the Downtown Obligation;

(ii) contracts for the future purchase of materials, supplies or equipment other than in the ordinary course of business;

(iii) agreement or other commitment for capital expenditures in excess of normal operating requirements;

(iv) contract, agreement, or commitment under which Seller is required to supply goods or products to any customer or other person other than in the ordinary course of business; or

(v) any other contract, agreement, arrangement or understanding which is material to the business and operation of the Restaurants.

(h) To the knowledge of Seller, no action, hearing, investigation, complaint, or notice has been filed against Seller with respect to the Restaurants alleging any failure to comply with any applicable environmental, health, or safety law, including but not limited to any applicable regulation promulgated by the Environmental Protection Agency of the United States of America and any applicable comparable Washington statute or regulation other than as disclosed in subsection (f) above.

(i) All option periods for all leases of real property are in full force and effect.

Section 4.2 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Corporate Organization. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Washington and has all requisite corporate power and authority to own its properties and assets and to conduct its businesses as now conducted.

(b) Authorization and Validity. Buyer has all requisite corporate power and authority to enter into this Agreement and has or will have all requisite corporate power and



authority to perform its obligations hereunder. The execution and delivery of this Agreement and the performance of Buyer's obligations hereunder have been, or on the Closing Date will be, duly authorized by all necessary corporate action by the Managing Member of Buyer, and no other corporate proceedings on the part of Buyer are necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Buyer and constitutes valid and binding obligations, enforceable against Buyer in accordance with its terms.

(c) No Conflict or Violation. The execution, delivery and performance by Buyer of this Agreement to which Buyer is or will become a party do not and will not (i) violate or conflict with any provision of the operating agreement of Buyer, (ii) violate any provision of law, or any order, judgment or decree of any court or Government applicable to Buyer; or (iii) violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contract to which Buyer is party or by which Buyer is bound or to which any of Buyer's properties or assets is subject.

(d) Litigation. There are no claims, actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened, before any federal or state court, Government or Person brought by or against Buyer, or any Related Person of Buyer that could reasonably be expected to affect the ability of Buyer to consummate the transactions contemplated by this Agreement.

Section 4.3 Warranties Are Exclusive. The parties acknowledge that the representations and warranties contained in this Article 4 are the only representations or warranties given by the parties and that all other express or implied warranties are disclaimed. Without limiting the foregoing, Buyer acknowledges that the Acquired Assets are conveyed "AS IS", "WHERE IS" and "WITH ALL FAULTS" and that all warranties of merchantability or fitness for a particular purpose are disclaimed. WITHOUT LIMITING THE FOREGOING, AND AS EXPRESSLY SET FORTH IN ARTICLE 4, BUYER ACKNOWLEDGES THAT SELLER AND THEIR RELATED PERSONS AND AFFILIATES HAVE MADE NO REPRESENTATION OR WARRANTY CONCERNING ANY (A) USE TO WHICH THE ACQUIRED ASSETS MAY BE PUT; (B) FUTURE REVENUES, COSTS, EXPENDITURES, CASH FLOW, RESULTS OF OPERATIONS, FINANCIAL CONDITION OR PROSPECTS THAT MAY RESULT FROM THE OWNERSHIP, USE OR SALE OF THE ACQUIRED ASSETS OR THE ASSUMPTION OF THE ASSUMED LIABILITIES; OR (C) OTHER INFORMATION OR DOCUMENTS MADE AVAILABLE TO BUYER OR ITS AFFILIATES OR RELATED PERSONS.

## **ARTICLE 5. COVENANTS AND OTHER AGREEMENTS**

Section 5.1 Pre-Closing Covenants of Seller. Seller covenants to Buyer that during the period from the Execution Date through and including the Closing Date:

(a) Unless otherwise agreed in writing by Seller and Buyer, Seller shall operate the Restaurants in all material respects in the Ordinary Course of Business. Without limiting the foregoing and without obtaining the prior consent of Buyer to take any actions not permitted or required by the following clauses, Seller:

(i) shall not take or agree to commit to take any action that would make any representation or warranty of Seller inaccurate in any material respect at, or as of any time prior to, the Closing Date;

(ii) shall keep in full force and effect and pay all premiums and other amounts due under the insurance policies;

(iii) shall not sell or dispose of any Acquired Assets other than in the Ordinary Course of Business;

(iv) shall not make any material modification to any Acquired Contract;  
and

(v) shall provide notification to the Washington State Department of Revenue, the Internal Revenue Service, or any other regulatory agencies or departments that may be required to have notification of the transaction contemplated in this Agreement.

(b) Cooperation. Seller shall use commercially reasonable efforts to (i) obtain the Consents and (ii) take, or cause to be taken, all action and to do, or cause to be done, all things necessary or proper, consistent with applicable law, to consummate and make effective as soon as possible the transactions contemplated hereby.

(c) Access to Records and Properties. Buyer shall be entitled to, at its expense, conduct such investigation of the condition of the Acquired Assets as Buyer shall reasonably deem appropriate.

(d) Notice of Certain Events. Seller shall promptly notify Buyer of, and furnish to Buyer, any information it may reasonably request with respect to the occurrence of any event or condition or the existence of any fact that would reasonably be expected to cause any of the conditions to Buyer's obligations to consummate the transactions contemplated by this Agreement not to be fulfilled.

(e) Material Invoice. Seller shall promptly notify Buyer of, and furnish to Buyer, any information it may reasonably request with respect to any postpetition invoice or other Claim received by Seller prior to Closing in an aggregate amount of \$50,000 or more.

Section 5.2 Pre-Closing Covenants of Buyer. Buyer covenants to Seller that, during the period from the Execution Date through and including the Closing Date or the earlier termination of this Agreement:

(a) Cooperation. Buyer shall use commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary or proper, consistent with applicable law, to consummate and make effective as soon as possible the transactions contemplated hereby.

(b) Notice of Certain Events. Buyer shall promptly notify Seller of, and furnish to Seller, any information it may reasonably request with respect to the occurrence of any event or condition or the existence of any fact that would reasonably be expected to cause any of the conditions to Seller's obligations to consummate the transactions contemplated by this Agreement not to be fulfilled.

Section 5.3 Employment Matters. Buyer shall have the right, but shall have no obligation, to offer employment post-Closing to employees of Seller. Buyer generally intends, but is not bound, to offer employment to employees of Seller on terms and conditions similar to their existing employment arrangements. Any meeting between any such Person and Buyer pursuant to this subsection shall occur at a time and place that does not conflict with such Person's employment obligations to Seller. Any employment offered by Buyer to such Person shall be on such terms and conditions as Buyer, in its sole discretion, may determine. With respect to insiders of the Debtors in the Bankruptcy Cases, if and to the extent Buyer elects to retain, employ, or otherwise enter into agreements with Shawn Roten and/or Elizabeth Stewart for compensation or value of any nature, Buyer will disclose the terms of such retention, employment or agreements to the Bankruptcy Court as soon as practicable.

## **ARTICLE 6. TAXES**

Section 6.1 Taxes Related to Purchase of Acquired Assets. All Taxes, including, without limitation, all state and local Taxes in connection with the transfer of the Acquired Assets, and all recording and filing fees (collectively, "**Transaction Taxes**") that may be imposed by reason of the sale, transfer, assignment and delivery of the Acquired Assets shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Seller. Buyer and Seller shall cooperate to (a) determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement, (b) provide all requisite exemption certificates and (c) prepare and file any and all required Tax Returns for or with respect to such Transaction Taxes with any and all appropriate Government taxing authorities.

Section 6.2 Cooperation on Tax Matters. After the Closing, Buyer shall retain possession of all accounting, business, financial and Tax records and information (i) relating to the Acquired Assets or the Assumed Liabilities that are in existence on the Closing Date and transferred to Buyer hereunder; and (ii) coming into existence after the Closing Date that relate to the Acquired Assets or the Assumed Liabilities before the Closing Date, for the minimal period from the Closing Date as required by the Code. Buyer shall give Seller notice and an opportunity to retain any such records in the event that Buyer determines to destroy or dispose of them after such period. In addition, from and after the Closing Date, Buyer shall provide access to Seller and its Related Persons (after reasonable notice and during normal business hours and without charge), to the books, records, documents and other information relating to the Acquired Assets or the Assumed Liabilities as Seller may reasonably deem necessary to (i) properly prepare for, file, prove, answer, prosecute and defend any such Tax Return, claim, filing, tax audit, tax protest, suit, proceeding or answer; or (ii) administer or complete any case of Seller under chapter 11 of the Bankruptcy Code. Such access shall include, without limitation, access to any computerized information retrieval systems relating to the Acquired Assets or the Assumed Liabilities.

## **ARTICLE 7. CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES**

Section 7.1 Conditions Precedent to Performance by Seller. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Seller, in its sole discretion:

(a) Representations and Warranties of Buyer. The representations and warranties of Buyer made in Section 4.2 of this Agreement, in each case, shall be true and correct in all material respects as of the Execution Date and as of the Closing Date as though made by Buyer again as of the Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct on and as of such earlier date.

(b) Performance of the Obligations of Buyer. Buyer shall have performed in all material respects all obligations required under this Agreement which are to be performed by it on or before the Closing Date (except with respect to the obligation to pay the Total Consideration in accordance with the terms of this Agreement and any obligations qualified by materiality, which obligations shall be performed in all respects as required under this Agreement).

(c) Governmental Consents and Approvals. The Orders shall have been entered and shall not be subject to a stay, injunction or any governmental investigation or proceedings which may contest the transaction contemplated by this Agreement.

(d) No Violation of Orders. No preliminary or permanent injunction or other order of any court or Government that declares this Agreement invalid or unenforceable in any material respect or which prevents the consummation of the transactions contemplated hereby shall be in effect.

(e) No Litigation. There shall not be pending or threatened in writing by any Government any suit, action or proceeding (i) challenging or seeking to restrain, prohibit, alter or materially delay the consummation of any of the transactions contemplated by this Agreement or (ii) seeking to obtain from any Seller any damages in connection with the transactions contemplated hereby.

(f) Closing Deliveries. Buyer shall have made the deliveries contemplated under Section 3.3.

Section 7.2 Conditions Precedent to the Performance by Buyer. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Buyer, in its sole discretion:

(a) Representations and Warranties of Seller. The representations and warranties of Seller made in Section 4.1 of this Agreement shall be true and correct in all material respects as of the Execution Date and as of the Closing Date as though made by Seller again as of

the Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct on and as of such earlier date.

(b) Performance of the Obligations of Seller. Seller shall have performed in all material respects all obligations required under this Agreement to which Seller is party to be performed by Seller on or before the Closing Date (except with respect to any obligations qualified by materiality, which obligations shall be performed in all respects as required under this Agreement).

(c) Governmental Consents and Approvals. The Orders shall have been entered and shall not be subject to a stay or injunction or other governmental investigation or proceeding that may contest the transaction contemplated by this Agreement.

(d) No Violation of Orders. No preliminary or permanent injunction or other order of any court or Government that declares this Agreement invalid in any material respect or prevents the consummation of the transactions contemplated hereby shall be in effect.

(e) No Litigation. There shall not be pending by any Person any suit, action or proceeding, (i) challenging or seeking to restrain, prohibit, alter or materially delay the consummation of any of the transactions contemplated by this Agreement, (ii) seeking to obtain from Buyer or any of its Affiliates any damages in connection with the transactions contemplated hereby or (iii) seeking to prohibit Buyer or any of its Affiliates from effectively controlling or operating any portion of the Acquired Assets.

(f) Closing Deliveries. Seller shall have made the deliveries contemplated under Section 3.2.

(g) Condition of Acquired Assets. Other than reasonable wear and tear with respect to Owned Machinery and Equipment, the Acquired Assets have not, subsequent to the Petition Dates, become subject to damage or other casualty causing a damage to Acquired Assets of a value exceeding \$10,000.

(h) Leases and Executory Contracts. Buyer shall have received evidence from Trustee, or independently obtained, in a form satisfactory to Buyer in its discretion (i) consents to the assignment of the Acquired Contracts to Buyer, (ii) waivers of any restrictions or events of default that may arise under the terms of any of the Acquired Contracts, (iii) amendments to the Acquired Contracts for the leasing of real property (other than the real property lease agreements that are Acquired Contracts in the name of Stadium Lodge LLC and Downtown Lodge LLC) to extend the term thereof such that no lease shall expire earlier than January 1, 2021, and (iv) any other regulatory approvals or third party consents necessary to consummate the transactions contemplated under this Agreement, provided that no consents or waivers shall be required as to restrictions on assignments invalidated under section 365 of the Bankruptcy Code and/or the Bankruptcy Sale Order, and further provided that this condition may be met by provisions in a Bankruptcy Court order authorizing assumption and assignment of an Acquired Contract notwithstanding an event of default.

(i) Acquired Contracts. Except as otherwise agreed by the parties with respect to obligations assumed by Buyer, Seller shall, consistent with section 365(b)(1)(A) of the Bankruptcy Code, either pay undisputed cure claims relating to Acquired Contracts on the Closing Date or provide for a reservation of funds sufficient to pay the alleged amount of any disputed cure claim relating to an Acquired Contract on the Closing Date.

(j) Consent of Secured Creditors. Buyer shall have received evidence from Seller, satisfactory to Buyer in its discretion, of the consent of all secured creditors of Seller to the transactions contemplated under this Agreement, provided that an order authorizing assumption and assignment of the real property lease agreement that is an Acquired Contract in the name of Downtown Lodge LLC, with Buyer to assume the Downtown Obligation, shall be sufficient in lieu of consent by Executive Hotel Seattle, LLC.

(k) Employees. Buyer shall have received executed employment agreements with key employees of Seller on terms satisfactory to Buyer.

(l) Licenses and Permits. Buyer shall have received all required licenses and permits from all government agencies necessary to operate the Restaurants, including but not limited to retail liquor licenses from the Washington State Liquor and Cannabis Board. Buyer has applied for or will apply for such permits as of or by July 21, 2017.

(m) Material Adverse Changes. That no material event or threatened event shall have occurred prior to the Closing Date which was not contemplated by either Buyer or Seller which would adversely impair or affect the normal business operations of the Debtor at the Restaurants. The parties acknowledge that sales declines may occur subsequent to execution of this Agreement and non-material declines shall not, alone, constitute a failure of a condition precedent to Buyer's obligations under this Agreement.

## **ARTICLE 8. TERMINATION**

Section 8.1 Conditions of Termination. This Agreement may be terminated only in accordance with this Section 8.1. This Agreement may be terminated at any time before the Closing as follows:

(a) By mutual written consent of Seller and Buyer;

(b) By Seller, by written notice to Buyer, or by Buyer, by written notice to Seller, on or after the date that is sixty (60) days after the entry of the Bankruptcy Sale Order and (i) from which no appeal has been filed, or (ii) if appealed, no stay has been issued and Buyer is decreed to be a good faith purchaser pursuant to Bankruptcy Code section 365(m) (the "**Termination Date**"), subject, however, to extension by the mutual written consent of Seller and Buyer, if the Closing shall not have occurred on or prior to the Termination Date; provided, however that a party shall not have the right to terminate this Agreement under this Section 8.1(b) if Seller (in case of termination by Seller) or Buyer (in case of termination by Buyer) is then in material breach of this Agreement or has been responsible for materially delaying the Closing;

(c) By Seller, by written notice to Buyer, or by Buyer, by written notice to Seller, if any injunction (including an injunction issued by the Bankruptcy Court or District Court based upon an appeal from the Bankruptcy Sale Order), other order, or proceedings/investigations instituted by any governmental agencies or departments that would delay, impair or otherwise hinder the Closing of the transactions contemplated by this agreement, restricting the transactions contemplated by this Agreement shall have become effective; provided, however that the party seeking to terminate this Agreement pursuant to this Section 8.1(c) has used its commercially reasonable efforts to remove such injunction or other order;

(d) By Seller, by written notice to Buyer, if Seller has previously provided Buyer with written notice of any inaccuracy of any representation or warranty contained in Section 4.2 which inaccuracy could reasonably be expected to result in a material failure to perform any covenant of Buyer contained in this Agreement, and Buyer has failed, within five Business Days after receipt of such notice, to remedy such inaccuracy or perform such covenant or provide reasonably adequate assurance to Seller of Buyer's ability to remedy such inaccuracy or perform such covenant; provided, that Seller shall not have the right to terminate this Agreement under this Section 8.1(d) if Seller is in material breach of this Agreement at the time Seller gives such notice;

(e) By Buyer, by written notice to Seller, if Buyer has previously provided Seller with written notice of any inaccuracy of any representation or warranty of Seller contained in Section 4.1 which inaccuracy could reasonably be expected to result in, individually or in the aggregate with the results of other inaccuracies, a material failure to perform any covenant of Seller contained in this Agreement, and Seller has failed, within five Business Days after receipt of such notice, to remedy such inaccuracy or perform such covenant or provide reasonably adequate assurance to Buyer of Seller's ability to remedy such inaccuracy or perform such covenant; provided, that Buyer shall not have the right to terminate this Agreement under this Section 8.1(e) if Buyer is in material breach of this Agreement at the time it gives such notice;

(f) By Buyer, by written notice to Seller, if (i) the Sale Motion is not filed with the Bankruptcy Court within one week after the Execution Date, or (ii) the Bankruptcy Sale Order in form and substance acceptable to Buyer is not entered by the Bankruptcy Court within sixty (60) days of the Execution Date, or (iii) Seller's use of cash collateral or other debtor-in-possession financing is terminated or adversely modified;

(g) If Seller enters into a definitive written agreement providing for an alternative transaction; or

(h) By Buyer, by written notice to Seller delivered within Five Business Days after Seller has provided written notice to Buyer of the suffering of damage to the Acquired Assets which is in excess of \$10,000 occurs subsequent to the Petition Dates and prior to the Closing Date; provided, that if damage or casualty to Acquired Assets exceeding \$10,000 occurs, Buyer shall have the option in lieu of terminating this Agreement, which option shall be exercisable by Buyer in its sole discretion in writing delivered to Seller not less than one Business Day prior to the Closing, to reduce Total Consideration otherwise payable by Buyer by the amount that such

damage or casualty exceeds \$10,000, such amount to be agreed by the parties or determined by order of the Bankruptcy Court.

Section 8.2 Expense Reimbursement. If this Agreement is terminated pursuant to Section 8.1(e), (f), or (g) or if another purchaser purchases the Acquired Assets, then Buyer shall be deemed to have an allowed administrative expense claim for reasonable out of pocket expenses in an amount not to exceed \$50,000 (the “**Expense Reimbursement**”) pursuant to sections 503(a) and (b) and 507(a)(2) of the Bankruptcy Code. Trustee shall not oppose Buyer’s application for the Expense Reimbursement and Trustee shall move the Bankruptcy Court to include Buyer’s right to the Expense Reimbursement in the Bankruptcy Sale Order.

Section 8.3 Remedies. Each party acknowledges that in case of any material breach of their covenants or other obligations, the other may suffer immediate and irreparable harm. Accordingly, in case of any such breach, the non-breaching party shall be entitled to obtain damages or other remedies provided in this Agreement and/or such other relief in law or equity as may be granted by the Bankruptcy Court or other court of competent jurisdiction.

## **ARTICLE 9. SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

Section 9.1 Survival. The representations and warranties of the parties contained in this Agreement shall survive the Closing until the date that is six (6) months after the Closing Date.

## **ARTICLE 10. COURT MATTERS**

Section 10.1 Bankruptcy Sale Order. Within one week following the execution of this Agreement, Seller shall file with the Bankruptcy Court a motion seeking (i) the approval of closing procedures, including without limitation, the deadlines for cure notices and lease assumption procedures and the Expense Reimbursement, (ii) the approval of this Agreement, (iii) the authorization of Trustee to close the sale and transactions contemplated by this Agreement, and (iv) the approval of the provisions, findings and orders set forth in Section 3.2(b) (the “**Sale Motion**”). The Sale Motion shall be noted for initial hearing by no later than August 11, 2017 and shall seek entry by the Bankruptcy Court of the Bankruptcy Sale Order on or before August 11, 2017 or such continued date(s) as the Bankruptcy Court may set.

### Section 10.2 Other Bids.

(a) Buyer acknowledges that Seller may receive bids (“**Bids**”) from prospective purchasers for the sale of all of the Acquired Assets. All Bids shall be subject to bid incentives and protections set forth in this Section 10.2 and the Expense Reimbursement set forth in Section 8.2 of this Agreement. All Bids (other than Bids submitted by Buyer) will be submitted with two copies of this Agreement marked to show changes requested by the Bidder.

(b) If Seller receives any higher Bids, Seller shall have the right to select, and seek final approval of the Bankruptcy Court for, the highest better Bid or Bids from the Bidders (the “**Superior Bid**”), which will be determined by considering, among other things, (i) the identity of the Bidder; (ii) the number, type and nature of any changes to this Agreement requested by the



Bidder; (iii) the extent to which the identity of the Bidder or such modifications are likely to delay closing of the sale of the Acquired Assets and Assumed Liabilities to the Bidder and the cost or savings to Seller of such modifications or delay; (iv) the form and amount of the Total Consideration to be received by Seller and its bankruptcy estate; (v) the financial strength of the Bidder; and (vi) whether the IRS consents to the transaction with the Bidder and the extent to which the Bidder's offer will provide value for assumption and assignment of leases and executory contracts, and to pay expenses of administration and other claims, in the estates with such consent of the IRS as may be required to make such value available to the estates. Seller shall provide copies of all Bids to Buyer.

(c) Seller shall seek Bankruptcy Court approval of the following overbid protections: (i) no Bid will be considered by Seller unless it is for a minimum of \$2,220,418; (ii) any Bid must be a Bid for a material portion of the Acquired Assets; (iii) any Bid must pay the CBC Loan in full in readily available funds at closing; and (iv) a provision that Buyer will be credited with, and have added to the aggregate amount of its bid when comparing it to other bids, without duplication, the amount of the Expense Reimbursement that will be earned by Buyer under Section 8.2 if it is not the successful bidder for the Acquired Assets.

## **ARTICLE 11. MISCELLANEOUS**

Section 11.1 Further Assurances. At the request and the sole expense of the requesting party, Buyer or Seller, as applicable, shall execute and deliver, or cause to be executed and delivered, such documents as Buyer or Seller, as applicable, or their respective counsel may reasonably request to effectuate the purposes of this Agreement.

Section 11.2 Successors and Assigns. Buyer shall have the right to assign to any Affiliate or Affiliates (each, an “**Assignee**”) any of its rights or obligations (including the right to acquire any of the Acquired Assets) and may require any such Assignee to pay all or a portion of the Purchase Price and/or to assume all or a portion of those Assumed Liabilities that are both described in Section 1.3 and relate to the Acquired Assets acquired by the Assignee (“**Assignable Liabilities**”). In the event of any assignment pursuant to this Section 11.3, Buyer shall not be relieved of any liability or obligation hereunder.

Section 11.3 Governing Law: Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the laws of the State of Washington (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. The parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court, which jurisdiction shall survive the Closing, the confirmation of a plan of reorganization in, and the entry of a final decree or other order terminating, any of the Bankruptcy Cases. In particular, the Bankruptcy Court shall retain original and exclusive jurisdiction over, among other matters, any and all disputes relating to Buyer's claims for indemnification under Section 9.1.

Section 11.4 Expenses. Except as otherwise provided in this Agreement, each of the parties shall pay its own expenses in connection with this Agreement and the transactions

contemplated hereby, including, without limitation, any legal and accounting fees, whether or not the transactions contemplated hereby are consummated.

Section 11.5 Broker's and Finder's Fees. Each of the parties represents and warrants that it has not engaged any broker or finder in connection with any of the transactions contemplated by this Agreement.

Section 11.6 Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of (a) the Execution Date and (b) the date this Agreement was last amended.

Section 11.7 Notices. All notices, requests, demands, consents and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of service, if served personally on the party to whom notice is to be given; (ii) on the day of transmission, if sent via facsimile transmission to the facsimile number given below; (iii) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service addressed to the party to whom notice is to be given; or (iv) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to Buyer: CBC Partners, LLC  
777 108th Ave NE, Suite 1895  
Bellevue, WA 98004  
Attn: Alan Hallberg, Chief Credit Officer  
Telecopy No.: (425) 688-7003

With a copy to: Lane Powell PC  
1420 Fifth Avenue, Suite 4200  
Seattle, WA 98101  
Attn: Gregory Fox  
Telecopy No.: (206) 223-7107

If to Seller: Sheena Aebig  
Trustee  
2003 Western Ave Ste 400  
Seattle, WA 98121  
Telecopy No.: (206) 341-9810

With a copy to: Bucknell Stehlik Sato & Orth LLP  
2003 Western Avenue, Suite 400  
Seattle, WA 98101  
Attention: Edwin K. Sato  
Telecopy No.: (206) 587-0277

Any party may change its address or facsimile number for the purpose of this Section 11.8 by giving the other parties written notice of its new address in the manner set forth above.

Section 11.8 Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. Delivery by facsimile or in a PDF transmission of a counterpart of this Agreement as executed by the party making the delivery shall constitute good and valid execution and delivery of this Agreement for all purposes.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized persons as of the Execution Date.

**BUYER:**

CBC PARTNERS, LLC

By:   
Name: John Otter  
Title: Managing Member

**SELLER:**

LODGE HOLDINGS COMPANY

\_\_\_\_\_  
SHEENA AEBIG, as trustee of the consolidated  
chapter 11 bankruptcy estates of Lodge Holdings  
Company, Downtown Lodge LLC, Kirkland  
Lodge, LLC, Greenwood Lodge LLC, Stadium  
Lodge LLC, Mill Creek Lodge LLC and Mukilteo  
Lodge LLC

By: \_\_\_\_\_  
Sheena Aebig, as trustee of the  
Chapter 11 bankruptcy estate

DOWNTOWN LODGE LLC

KIRKLAND LODGE, LLC

By: \_\_\_\_\_  
Sheena Aebig, as trustee of the chapter 11  
bankruptcy estate

By: \_\_\_\_\_  
Sheena Aebig, as trustee of the  
chapter 11 bankruptcy estate

GREENWOOD LODGE LLC

STADIUM LODGE LLC

By: \_\_\_\_\_  
Sheena Aebig, as trustee of the chapter 11  
bankruptcy estate

By: \_\_\_\_\_  
Sheena Aebig, as trustee of the chapter  
11 bankruptcy estate

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized persons as of the Execution Date.

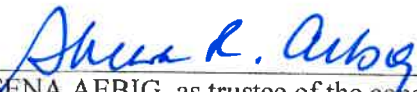
**BUYER:**


CBC PARTNERS, LLC

By:   
Name: John Otter  
Title: Managing Member

**SELLER:**

LODGE HOLDINGS COMPANY

  
SHEENA AEBIG, as trustee of the consolidated chapter 11 bankruptcy estates of Lodge Holdings Company, Downtown Lodge LLC, Kirkland Lodge, LLC, Greenwood Lodge LLC, Stadium Lodge LLC, Mill Creek Lodge LLC and Mukilteo Lodge LLC

By:   
Sheena Aebig, as trustee of the Chapter 11 bankruptcy estate

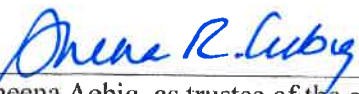
DOWNTOWN LODGE LLC

By:   
Sheena Aebig, as trustee of the chapter 11 bankruptcy estate


KIRKLAND LODGE, LLC

By:   
Sheena Aebig, as trustee of the chapter 11 bankruptcy estate

GREENWOOD LODGE LLC

By:   
Sheena Aebig, as trustee of the chapter 11 bankruptcy estate

STADIUM LODGE LLC

By:   
Sheena Aebig, as trustee of the chapter 11 bankruptcy estate

LODGE APA – Signature Page

MILL CREEK LODGE LLC

By: Sheena R. Aebig  
Sheena Aebig, as trustee of the chapter 11  
bankruptcy estate

MUKILTEO LODGE LLC

By: Sheena R. Aebig  
Sheena Aebig, as trustee of the chapter  
11 bankruptcy estate

LODGE APA – Signature Page

## **EXHIBIT A**

The word “including” shall mean including without limitation. Any reference to the singular in this Agreement shall also include the plural and vice versa.

Certain Terms Defined. As used in this Agreement, the following terms have the following meanings:

“**Accounts Receivable**” means all accounts receivable and notes receivable owed to Seller as of the Closing, including unpaid interest on any such accounts receivable and any security or collateral relating thereto.

“**Acquired Assets**” has the meaning set forth in Section 1.1.

“**Acquired Contracts**” has the meaning set forth in Section 1.1(c).

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such Person.

“**Agreement**” has the meaning set forth in the Preamble.

“**Allocation**” has the meaning set forth in Section 6.3.

“**Assignee**” has the meaning set forth in Section 11.3.

“**Assignable Liabilities**” has the meaning set forth in Section 11.3.

“**Assumed Liabilities**” has the meaning set forth in Section 1.3.

“**Bankruptcy Cases**” has the meaning set forth in Recital A.

“**Bankruptcy Code**” has the meaning set forth in Recital A.

“**Bankruptcy Court**” has the meaning set forth in Recital A.

“**Bankruptcy Rules**” has the meaning set forth in Recital D.

“**Bankruptcy Sale Order**” has the meaning set forth in Recital E.

“**Breach**” means any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other contract, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

**“Business Day”** means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in Seattle, Washington are authorized by law or other governmental action to close.

**“Buyer”** has the meaning set forth in the Preamble.

**“Cash”** means all cash and cash equivalents.

**“CBC Loan”** means that certain loan in the original principal amount of \$825,000, pursuant to that certain Secured Promissory Note dated as of June 10, 2016, executed by Consolidated Seller and West Seattle Lodge, in favor of CBC Partners I, LLC and all liabilities and obligations incurred thereunder or in connection therewith.

**“Claim”** means all rights, claims, causes of action, defenses, debts, demands, damages, obligations, and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto, including, without limitation, causes of action arising under chapter 5 of the Bankruptcy Code or similar state statutes.

**“Closing”** has the meaning set forth in Section 3.1.

**“Closing Date”** has the meaning set forth in Section 3.1.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Consents”** has the meaning set forth in Section 4.1(c).

**“Contract”** means any written contract, agreement, lease or sublease, license or sublicense, instrument, indenture, commitment or undertaking.

**“Downtown Obligation”** means the repayment obligation by Downtown Lodge LLC of the Loan Allowance of \$200,000 as defined in Section 2.3 of that certain Restaurant Lease Agreement dated as of April 28, 2014, by and between Executive Hotel Seattle, LLC, a Washington limited liability company, and Downtown Lodge LLC.

**“Excluded Assets”** has the meaning set forth in Section 1.2.

**“Excluded Liabilities”** has the meaning set forth in Section 1.4.

**“Execution Date”** has the meaning set forth in the Preamble.

**“Government”** means any agency, division, subdivision or governmental or regulatory authority or any adjudicatory body thereof, of the United States, or any state thereof.

**“Intellectual Property”** means any and all registered and unregistered patents, patent applications, trademarks, service marks, trade names, trade dress rights, internet domain names,



trade secrets and copyrights; foreign equivalent or counterpart rights having similar effect in any jurisdiction throughout the world; registrations and applications for registration of any of the foregoing; and other agreements related thereto, including, without limitation, those set forth on Schedule 1.1(f).

**“Inventory”** has the meaning set forth in Section 1.1(b).

**“Lien”** means any mortgage, pledge, security interest, encumbrance, lien (judicial, statutory or other), conditional sale agreement, claim or liability.

**“Motion Date”** means the date on which the Sale Motion is filed with the Bankruptcy Court.

**“Ordinary Course of Business”** means that an action taken by a Person will be deemed to have been taken in the “Ordinary Course of Business” only if that action:

(i) is consistent in nature, scope and magnitude with the past practices of such Person, recognizing that Seller has filed the Bankruptcy Cases, and is taken in the ordinary course of the normal day-to-day operations of such Person;

(ii) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature, including prior approval of the Bankruptcy Court; and

(iii) is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal day-to-day operations of other Persons that are in the same line of business as such Person, recognizing that Seller has filed the Bankruptcy Cases and may be conducting going out of business sales or otherwise liquidating its inventory (other than the Pharmacy Inventory) at the Restaurants.

**“Orders”** means the Bankruptcy Sale Order.

**“Owned Machinery and Equipment”** has the meaning set forth in Section 1.1(a).

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or Government.

**“Petition Dates”** has the meaning set forth in Recital A.

**“Purchase Price”** has the meaning set forth in Section 2.1.

**“Related Person”** means, with respect to any Person, all past, present and future directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, lenders, investment bankers or representatives of any such Person.

**“Restaurants”** has the meaning set forth in Recital B.

**“Sale Motion”** has the meaning set forth in Section 10.1.

**“Seller”** has the meaning set forth in the Preamble.

**“Seller Parties”** has the meaning set forth in Section 9.2(b).

**“Survival Period”** has the meaning set forth in Section 9.2(a).

**“Tax Return”** means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

**“Taxes”** means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Government, whether payable by reason of contract, assumption, transferee liability, operation of law or Treasury Regulation section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under state, local or foreign law), which taxes shall include all income taxes, payroll and employee withholding unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workmen’s compensation, customs duties, registration, documentary, value added, alternative or add-on minimum, estimated, environmental (including taxes under section 59A of the Code) and other assessments or obligations of the same or a similar nature, whether arising before, on or after the Closing Date.

**“Termination Date”** has the meaning set forth in Section 8.1(b).

**“Total Consideration”** has the meaning set forth in Section 2.1.

**“Transaction Taxes”** has the meaning set forth in Section 6.1.

**“WARN Act”** means the Worker Adjustment and Retraining Notification Act.

**“West Seattle Lodge”** means West Seattle Lodge LLC, a Washington limited liability company.

## **EXHIBIT B**

The Greenwood Lodge, located at 8501 Greenwood Ave. N., Seattle, WA 98103  
The Mill Creek Lodge, located at 15117 Main St., Suite B101, Mill Creek, WA 98082  
The Downtown Lodge, located at 1102 4th Ave., Seattle, WA 98101  
The Stadium Lodge, located at 166 South King St., Seattle, WA 98104  
The Kirkland Lodge, located at 107 Lake St., Kirkland, WA 98033  
The Mukilteo Lodge, located at 7928 Mukilteo Speedway, Suite 101, Mukilteo, WA 98275

LODGE APA

**Schedule 1.1(c)**

1. Promissory Note dated as of June 10, 2016 in the original principal amount of \$825,000 to CBC Partners I, LLC, with an outstanding payoff balance of \$938,655.72 as of June 16, 2017
2. Restaurant Lease Agreement dated as of April 28, 2014, by and between Executive Hotel Seattle, LLC, a Washington limited liability company, and Downtown Lodge LLC, a Washington limited liability company, as amended
3. Lease Agreement with a commencement date as of December 1, 2012, by and between IC USA #8 Property Limited Partnership, a Washington limited partnership, and Stadium Lodge LLC, a Washington limited liability company, as amended
4. Commercial Real Estate Lease dated as of April 24, 2014, by and between Octagon Capital Group, LLC, a Washington limited liability company, and Mill Creek Lodge LLC, a Washington limited liability company, as amended
5. Retail Lease Agreement dated as of December 14, 2011, by and between RH Lake Street Associates, LLC, a Washington limited liability company, and Kirkland Lodge LLC, a Washington limited liability company, as amended
6. Lease Agreement dated as of August 28, 2009, by and between Mukilteo Ridgewood, LLC, a Washington limited liability company, and Mukilteo Lodge LLC, a Washington limited liability company, as amended
7. Commercial Lease dated as of November 21, 2014, by and between Limantzakis Properties No. 1, LLC, a Washington limited liability company, and Greenwood Lodge LLC, a Washington limited liability company, as amended
8. Contract for Auto Chlor dishwashers
9. Contract for Pure Force Dishwasher GW
10. Contact for Cintas first aid and paper
11. Contract for Aramark paper

LODGE APA

**Schedule 1.1(f)**

The Lodge

The Lodge Sports Grille

<https://www.thelodgesportsgrille.com/>

All social media accounts and passwords (e.g., Twitter, Facebook, Instagram, Yelp, and Citysearch)



LODGE APA

**Schedule 4.1(c)**

1. Bankruptcy Court
2. Executive Hotel Seattle, LLC, a Washington limited liability company
3. IC USA #8 Property Limited Partnership, a Washington limited partnership
4. Octagon Capital Group, LLC, a Washington limited liability company
5. RH Lake Street Associates, LLC, a Washington limited liability company
6. Mukilteo Ridgewood, LLC, a Washington limited liability company
7. Limantzakis Properties No. 1, LLC