UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

	:	**Chapter 11**
In re:	:	
	:	**Case No. 10-11310 (BLS)**
MAGIC BRANDS, LLC, *et al.*,[1]	:	
	:	**(Joint Administration Requested)**
Debtors.	:	**Bid Procedures Objection Deadline: T/B/D**
	:	**Bid Procedures Hearing Date: T/B/D**
	:	**Sale Objection Deadline: T/B/D**
	:	**Sale Hearing: T/B/D**

DEBTORS' MOTION FOR ORDERS (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (II) APPROVING CERTAIN BIDDING PROTECTIONS, (III) APPROVING THE FORM AND MANNER OF NOTICE OF THE SALE AND ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (IV) SCHEDULING AN AUCTION AND SALE HEARING AND (V) APPROVING SUCH SALE

Magic Brands, LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), hereby move, pursuant to sections 105, 363, 365 and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of: (i) an order, substantially in the form attached hereto as Exhibit A (the "Bidding Procedures Order"), (a) approving the proposed bidding procedures (the "Bidding Procedures") in the form attached as Exhibit 1 to the Bidding Procedures Order, as well as certain proposed bid protections, in connection with the sale (the "Sale") of substantially all of the Debtors' assets (the "Assets") as more fully described in the

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Magic Brands, LLC ("Magic") (8989); Fuddruckers, Inc. ("Fuddruckers") (8267), Atlantic Restaurant Ventures, Inc. ("Atlantic") (9769), King Cannon, Inc. ("King Cannon") (8671), and KCI, LLC ("KCI") (9281). The address for all of the Debtors is 5700 Mopac Expressway, Suite C300, Austin, Texas 78749.

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Asset Purchase Agreement (the "Asset Purchase Agreement")[2] by and between the Debtors and Tavistock Ventures, Inc. (the "Stalking Horse Bidder"), (b) scheduling an auction (the "Auction") and a hearing to consider approval of the Sale (the "Sale Hearing"); and (c) approving the form and manner of notice of the Sale, including the form and manner of service of the notice (the "Sale Notice") attached as Exhibit 2 to the Bidding Procedures Order and the notice of the proposed assumption and assignment of executory contracts and unexpired leases in the form attached as Exhibit 3 to the Bidding Procedures Order (the "Assumption and Assignment Notice"); and (ii) an order approving the sale of the Assets free and clear of all liens, claims, interests and encumbrances (the "Sale Order").[3] In support of this Motion, the Debtors rely on and incorporate by reference the *Declaration of Gregor Grant in Support of Chapter 11 Petitions and First Day Pleadings* (the "Grant Declaration"), filed with the Court contemporaneously herewith. In further support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction

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

General Background

2. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. The Debtors continue to operate their businesses and manage their properties

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[2] Capitalized terms used but not otherwise defined herein shall have the definitions ascribed to them in the Asset Purchase Agreement, a copy of which is attached hereto as Exhibit B

[3] A copy of the proposed Sale Order is attached hereto as Exhibit C

pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner or statutory committee has been appointed in the Debtors' cases.

5. The Debtors own, operate and franchise fast casual dining establishments under the concepts of Fuddruckers™ and Koo Koo Roo™. As of the Petition Date, the Debtors operate approximately 98 corporate owned locations and have 135 franchised locations located in 33 states and the District of Columbia, with additional franchised locations in Canada and Puerto Rico. Fuddruckers, a leader in the fast casual restaurant segment, has a long established reputation for high quality, upscale hamburgers that are grilled fresh-to-order. Koo Koo Roo restaurants offer a variety of healthy chicken dishes.

6. Prior to the Petition Date and continuing post-petition, the Debtors have been closing unprofitable corporate-owned locations in an effort to return the company to positive cash flow and stronger earnings. The Debtors commenced these chapter 11 cases to complete their restructuring and position the business for a sale that should maximize value for creditors and other constituents. The contemplated sale of substantially all of the Debtors' assets should allow the Debtors to emerge quickly from bankruptcy as a stronger and healthier enterprise, saving 1500 jobs in the process and generating a meaningful recovery for creditors. Additional information regarding the Debtors' business, capital structure and the circumstances leading up to these chapter 11 filings is contained in the Grant Declaration filed contemporaneously herewith.

The Debtors' Sales and Marketing Efforts

7. After the Debtors learned, in January of this year, that existing equity would not be in a position to fund amounts necessary to accomplish a restructuring of the Debtors'

business, the Debtors' senior management, in consultation with its counsel and financial consultant, explored a range of alternative options, including closure of the business, orderly liquidation, chapter 11 reorganization and a sale in or outside of a chapter 11 process. By the end of January, senior management concluded that it could implement a short-term operational plan and, in chapter 11, accomplish a successful restructuring without the need for cash infusions from existing equity.

8. In February 2010, the Debtors retained FocalPoint Securities, LLC ("FocalPoint"), as their investment bankers to assist the Debtors in their efforts to locate a new investor and/or market and sell substantially all of the Debtors' assets as a going concern. FocalPoint worked closely with the Debtors' senior management and counsel to, among other things, (i) model the Debtors' restaurant rationalization and strategic turnaround plan, (ii) prepare historical and projected financials that would reflect the impact of management's strategic plan, (iii) prepare a confidential information memorandum (the "CIM") that would describe the strategic plan, historical operations and pro forma projections in more detail, and (iv) identify a list of financial investors who FocalPoint, management and counsel reasonably believed would have the interest and ability to acquire the Debtors' business within the necessary time constraints.

9. After discussing options with their secured lender, Wells Fargo Capital Finance, Inc. (the "Prepetition Agent"), the Debtors considered their short-term cash flow constraints, the Prepetition Agent's willingness to enter into a forbearance arrangement and provide debtor in possession financing to facilitate an orderly sale process, input from FocalPoint and counsel based on their experience restructuring and selling restaurants facing financial difficulties, and the anticipated obstacles that would need to be overcome in any chapter 11. The Debtors

concluded that the only cost-effective and viable alternative was to complete the restructuring through a sale in chapter 11.

10. FocalPoint commenced contacting potential investors. Approximately 41 potential investors expressed interest in learning more about the potential opportunity by executing confidentiality agreements, which entitled them to receive a copy of the CIM. In addition, FocalPoint established an electronic data room (the "Data Room") containing due diligence materials for prospective purchasers/investors.

11. By late March, FocalPoint had received nine serious indications of interest to be the stalking horse in a chapter 11 sale process. FocalPoint scheduled management interviews with all nine of these parties and reached out to other prospective purchasers to assess their continued interest. Eight management presentations (in person and on the phone) were ultimately given to potential purchasers between March 24 and April 6, 2010. During this time, FocalPoint circulated a form of asset purchase agreement to parties that had submitted indications of interest to use as a starting point for making definitive stalking horse offers.

12. After continued negotiations with several potential purchasers and consideration of their indications of interest, as well as more definitive offers in the form of marked up asset purchase agreements, the Debtors determined, with the advice of FocalPoint and their counsel, and in consultation with the Prepetition Agent, that the highest and best offer to date was the one submitted by the Stalking Horse Bidder, subject to higher or better offers and this Court's approval. Shortly before the commencement of their cases, the Debtors executed the Asset Purchase Agreement.

13. As more fully described below, in consideration for agreeing to act as the stalking horse bidder, the Stalking Horse Bidder insisted that the Asset Purchase Agreement include

certain bidding protections. In particular, subject to Court approval as part of the Bidding Procedures Order, in the event that the Court approves a Competing Transaction (as defined in the Asset Purchase Agreement), the Stalking Horse Bidder, if it is then not in default under the Asset Purchase Agreement, will be entitled to receive a payment equal to 3.5% of the cash portion of the purchase price set forth in Section 3.1(a) of the Asset Purchase Agreement as a combined break-up fee and expense reimbursement (the "Break-Up Fee and Expense Reimbursement").

14. In order to increase the opportunity for the Debtors to receive competitive bids, and to ensure that the Debtors receive the maximum value for their assets, the Debtors will continue to engage in a full and robust marketing process with their financial advisor, FocalPoint.

Summary of the Asset Purchase Agreement[4]

15. The pertinent terms of the Asset Purchase Agreement are as follows:

- Purchase Price. Cash consideration for the Purchased Assets consists of (a) the Asset Price, plus (b) the amount of the Register Cash, and plus (c) the amount of all security deposits held by the landlords. As defined in the Asset Purchase Agreement, the "Asset Price" means (a) Thirty One Million Dollars ($31,000,000) in the event that the Bankruptcy Court does not approve the assumption and assignment to Purchaser of the seven (7) Locations referenced in the Sixth Amendment to that certain Master Lease with Spirit Master Funding, LLC in accordance with the provisions set forth in such Sixth Amendment (and with no other material conditions or additional material provisions), and such Master Lease as amended by such Sixth Amendment is not assumed and assigned to the Purchaser; and (b) Forty Million Dollars ($40,000,000.00) in all other cases. The Stalking Horse Bidder has already delivered to the Escrow Agent cash equal to $4,000,000 as a real money deposit in connection with the Sale.

- Purchased Assets. All of the Debtors' right, title and interest in all of the Debtors' properties, assets and rights (other than the Excluded Assets) existing

[4] This summary of the Asset Purchase Agreement is for descriptive purposes only. To the extent there are any discrepancies between this summary and the Asset Purchase Agreement, the Asset Purchase Agreement shall control.

as of the Closing, real or personal, tangible or intangible, including, but not limited to:

(a) Assumed Leases;

(b) Owned Real Property;

(c) Inventory;

(d) accounts receivable, notes receivable and other receivables related to the Purchased Assets;

(e) goodwill;

(f) Assumed Contracts;

(g) prepaid charges and expenses paid in connection with or relating to any Purchase Asset;

(h) Furniture and Equipment at any Acquired Location;

(i) Purchased Intellectual Property;

(j) computers, software, websites and related systems, master disks of source codes and other proprietary information owned or licensed;

(k) Documents that are used in, held for use in or intended to be used in, or that arise out of, the Business and operations of the Debtors; **provided, however, that, following the Closing, the Purchaser shall provide the Debtors copies, upon the Debtors' reasonable request and at the Debtors' sole cost and expense, of any Documents that are Purchased Assets** (See Local Rule 6004-1(b)(iv)(J));

(l) Permits;

(m) rights under insurance policies relating to claims arising prior to the Closing for losses related to any Purchase Assets;

(n) rights, claims or causes of action of the Debtors against third parties relating to the Purchased Assets or Assumed Liabilities, arising out of events occurring prior to the Closing (whether prepetition or postpetition), but excluding Estate Claims and any claims raised in *Flannery et al. v. Magic Brands LLC*;

(o) rights under or pursuant to any and all warranties, representations and guarantees; and

(p) the Register Cash.

- Excluded Assets. The Debtors shall retain all right, title and interest to, in and under, and all obligations with respect to all assets other than the Purchased Assets, including, but not limited to:

  (a) accounts receivable, notes receivable and other receivables related primarily to the Excluded Assets;

  (b) Excluded Locations and the Inventory, Furniture and Equipment located as any Excluded Location;

  (c) Excluded Executory Agreements;

  (d) Debtors' prepaid charges and expenses paid in connection with or relating solely to any Excluded Asset;

  (e) deposits and holdbacks related solely to any Excluded Executory Agreement or any other Excluded Asset;

  (f) personnel records of any Retained Employees and all Employee Benefit Plans;

  (g) Permits that are not assignable, and all Permits used solely in respect of the Excluded Locations and not also used or held for use in respect of the Acquired Locations;

  (h) documents relating to proposals to acquire the Business by Persons other than the Purchaser;

  (i) claims, rights, interests and proceeds with respect to Tax refunds, rebates, abatement or other recovery (i) relating to Debtors' assets or the conduct of the Business for the period prior to the Closing or (ii) not relating to the Purchased Assets;

  (j) rights, claims or causes of action of the Debtors (i) against third parties relating to an Excluded Asset or Excluded Liability, (ii) under Chapter 5 of the Bankruptcy Code, or (iii) against any current or former directors or officers and all rights under insurance policies providing insurance to the Debtors' directors and officers, and the proceeds thereof;

  (k) Documents related primarily to any Excluded Asset;

  (l) rights under insurance policies relating to claims for losses related to any Excluded Asset;

  (m) all shares of capital stock or other equity interest of any Debtor, and of ARVI of Pikesville, Inc., A.R.I.V. – Rockville, Inc. and 8725 Metcalf II, Inc., or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of the above entities;

(n) minute books, stock ledgers, corporate seals and stock certificates of the Debtors, and other books and records that the Debtors are required by Law to retain or that the Debtors determine are reasonably necessary to retain, including Tax Returns, financial statements and corporate or other entity filings, but excluding Documents that are Purchased Assets;

(o) credit card accounts receivable, deposits and other holdbacks being held by credit card companies, in each case as of the Closing Date, in connection with credit cards accepted by the Debtors;

(p) cash, cash equivalents, bank deposits or similar cash items of the Debtors other than the Register Cash;

(q) deposits, retainers or on account cash paid to the Debtors' professionals and advisers (whether retained in the Bankruptcy Case or not); and

(r) all rights of the Debtors under this Agreement.

- Assumed Liabilities. The Purchaser shall assume, effective as of the Closing, and shall pay, perform and discharge in accordance with their respect terms:

(a) all Liabilities of the Debtors arising, and to be performed, after the Closing Date under the Assumed Executory Contracts;

(b) all Liabilities arising, and to be performed, after the Closing Date with regard to the Purchased Assets;

(c) all Liabilities arising and to be performed after the Closing Date with regard to the employment by the Purchaser of any of the Transferred Employees;

(d) all Liabilities set forth in Section 2.5(h) of the Asset Purchase Agreement); and

(e) all Liabilities of the Debtors with respect to Customer Programs.

- Excluded Liabilities. The Purchaser shall not assume and shall be deemed not to have assumed any Liabilities of the Debtors or the Business of whatever nature, whether presently in existence or arising hereafter, known or unknown, disputed or undisputed, contingent or non-contingent, liquidated or unliquidated or otherwise, other than the Assumed Liabilities.

- Assumed Contracts and Leases ("Assumed Executory Contracts"). On the Closing Date, the Debtors shall, pursuant to the Sale Order, assume and assign to the Purchaser the Assumed Executory Contracts. From the Effective Date through and including the Closing Date, the Debtors shall not reject any Assumed Contract or Assumed Lease unless otherwise agreed to, in writing, by

the Purchaser. The Debtors shall pay the Cure Costs to the counterparties to each such Assumed Executory Contract.

- Closing. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 of the Asset Purchase Agreement (or the waiver thereof by the party entitled to waive the applicable condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities (the "Closing") shall take place at the offices of Goulston & Storrs, P.C. in Boston, Massachusetts (or at such other place as the parties may designate in writing) at 10:00 a.m. (Boston time) on the date the conditions set forth in Article X of the Asset Purchase Agreement are satisfied or waived (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the parties.

- Termination Rights. The Asset Purchase Agreement may be terminated prior to the Closing:

  (a) by the Purchaser or the Debtors, if the Closing shall not have occurred by the close of business on July 15, 2010 (the "Termination Date"); provided, however, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by the Purchaser or the Debtors, then the breaching party may not terminate this Agreement pursuant to this Section 4.4(a);

  (b) by mutual written consent of the Debtors and the Purchaser;

  (c) by the Purchaser, if any condition to the obligations of the Purchaser set forth in Section 10.1 or 10.3 shall have become incapable of fulfillment other than as a result of a breach by the Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by the Purchaser;

  (d) by the Debtors, if any condition to the obligations of the Debtors set forth in Section 10.2 or 10.3 shall have become incapable of fulfillment other than as a result of a breach by the Debtors of any covenant or agreement contained in this Agreement, and such condition is not waived by the Debtors;

  (e) by the Purchaser, if there shall be a breach by the Debtors of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 10.1 or 10.3 and which breach has not been cured by the earlier of (i) seven (7) days after the giving of written notice by the Purchaser to the Debtors of such breach and (ii) the Termination Date;

  (f) by the Debtors, if there shall be a breach by the Purchaser of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Sections 10.2 or 10.3 and which breach has not been cured by the earlier

of (i) seven (7) days after the giving of written notice by the Debtors to the Purchaser of such breach and (ii) the Termination Date;

(g) by the Debtors or the Purchaser if there shall be in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions, it being agreed that the parties hereto shall promptly appeal any adverse determination which is not non-appealable (and pursue such appeal with reasonable diligence); and

(h) automatically, upon the earlier to occur of (i) the consummation of a Competing Transaction, and (ii) sixty (60) days after the entry of a Sale Order with respect to a Competing Transaction.

- Break-Up Fee and Expense Reimbursement. Provided that the Stalking Horse Bidder is not then in default under the Asset Purchase Agreement, the Stalking Horse Bidder shall be entitled to be paid an amount equal to three and a half percent (3.5%) of the amount set forth in Section 3.1(a) of the Asset Purchase Agreement as a combined break-up fee and expense reimbursement if (a) the Court approves a Competing Transaction and (b) the Debtors consummate such Competing Transaction. Payment of the break-up fee and expense reimbursement shall be paid upon the occurrence of the consummation of the Competing Transaction.

- Conditions to Closing. Among other conditions to Closing set forth in Article X of the Asset Purchase Agreement, one of the condition precedents to the obligation of the Purchaser to consummate the transaction with the Debtors is that the Bidding Procedures Order, which shall, among other things, approve the Break-Up Fee and Expense Reimbursement and the Bidding Procedures, shall have been entered and shall have remained in full force and effect and shall not have been stayed, vacated, modified or supplemented in any material respect without the Purchaser's prior written consent.

16. The Asset Purchase Agreement is explicitly subject to approval by this Court.

Relief Requested

17. By this Motion, the Debtors seek entry of (i) the Bidding Procedures Order, approving the Debtors' proposed Bidding Procedures for marketing the Assets, approving the form and manner of notice of the Sale and assumption and assignment of executory contracts and unexpired leases and approving the Break-Up Fee and Expense Reimbursement; and (ii) the Sale Order, approving, at the Sale Hearing, the sale of the Assets to the Stalking Horse Bidder, or

such other buyer who the Debtors determine has made the highest and best offer for the Assets (either the "Purchaser"), free and clear of all liens, claims, Encumbrances and interests, authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection therewith and the attachment of the liens, claims, Encumbrances and interests of any kind or nature whatsoever to the net proceeds of the sale of the Assets in the order of their priority, with the same validity, force and effect which they now have as against the Assets in accordance with the DIP Order.[5]

I. The Proposed Bidding Procedures

18. The following is a summary, pursuant to Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), of the proposed Bidding Procedures. The Debtors believe that the proposed Bidding Procedures are fair and reasonable, designed to provide an appropriate framework for selling the Assets and enable the Debtors to review, analyze, and compare all bids received to determine which bid is in the best interests of the Debtors' estates and creditors, and are not likely to dissuade any serious potential bidder from bidding for the Assets.

A. Participation Requirements

19. To participate in the bidding process, each person or entity will be required to deliver (unless previously delivered) to the Debtors, on or before the Bid Deadline, a signed confidentiality agreement in form and substance satisfactory to the Debtors (the "Confidentiality Agreement"). Each person or entity that delivers the Confidentiality Agreement to the Debtors

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[5] "DIP Order" shall mean *Interim Order (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, and (V) Scheduling a Final Hearing on the Debtors' Motion to Incur Such Financing on a Permanent Basis*.

on or before the Bid Deadline is hereinafter referred to as a "Prospective Bidder." **After a Prospective Bidder delivers the Confidentiality Agreement, the Debtors will deliver or make available (unless previously delivered or made available) to each Prospective Bidder certain designated information and financial data with respect to the Assets. Neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever relating to the Assets to any person who is not a "Prospective Bidder."** See Local Rule 6004-1(c)(i)(A).

B. Bid Deadline

20. **The Debtors request that the Court establish a date that is no later than twenty-eight (28) days after entry of the Bidding Procedures Order as the deadline for the submission of bids (the "Bid Deadline"). On or before the Bid Deadline, a Prospective Bidder that desires to make a bid (a "Competing Offer") is required to deliver written copies of its Competing Offer by facsimile and email to the representatives of the Debtors, any Official Committee of Unsecured Creditors formed in these cases (the "Committee") and the Prepetition Agent.** See Local Rule 6004-1(c)(i)(B).

C. Bid Requirements

21. **To be considered, all Competing Offers must:**

a) at a minimum, exceed the sum of (i) the cash portion of the Purchase Price set forth in Section 3.1(a) of the Asset Purchase Agreement, plus (ii) the Break-Up Fee and Expense Reimbursement, plus (iii) $250,000, for a total minimum bid of $41,650,000 (with the Spirit Locations) or $32,335,000 (without the Spirit Locations) (the "Minimum Overbid Amount");

b) be accompanied by a signed asset purchase agreement in the form of the Asset Purchase Agreement, together with a marked copy showing all changes to the Asset Purchase Agreement, which changes shall not be less favorable to the Debtors and their estates;

c) not be subject to, or conditioned on, any contingency or condition, including

without limitation, the outcome of unperformed due diligence by the bidder or upon any financing contingency;

d) be irrevocable until the earlier to occur of (i) the Closing Date, or (ii) for sixty (60) days following entry of the Sale Order;

e) be submitted with a cash deposit equal to 10% of the purchase price offered in the Competing Offer (the "Deposit") in the form of a wire transfer or a certified check made payable to the Debtors and sent to the Debtors' counsel, which Deposit shall be non-refundable if the Court approves the sale of the Debtors' assets to such Prospective Bidder;

f) be substantially on the same or better terms and conditions as set forth in the Asset Purchase Agreement; and

g) be submitted with evidence substantially equivalent to that provided by the Purchaser establishing to the satisfaction of the Debtors, in consultation with the Prepetition Agent, that such Prospective Bidder or an entity that has executed a written guarantee of such Prospective Bidder's Bid has readily available funds sufficient to enable it to timely consummate its Competing Offer and provide all non-debtor parties to those executory contracts and unexpired leases to be assumed and assigned with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.

See Local Rule 6004-1(c)(i)(B) and (C).

22. Competing Offers that the Debtors, in consultation with the Prepetition Agent, determine satisfy the provisions set forth in paragraph 21 above shall be deemed "Qualified Bids" and any party submitting such Qualified Bid shall be designated as a "Qualified Bidder." A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors deem pertinent, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating a transaction with the Qualified Bidder, (c) any excluded assets or executory contracts or unexpired leases, and (d) any other factors that the Debtors may deem relevant to the Sale in consultation with the Prepetition Agent.

23. If no Qualified Bids other than the bid by the Stalking Horse Bidder are received, the Debtors will report the same to the Court, and the Debtors shall proceed to seek court

approval of the Asset Purchase Agreement with the Stalking Horse Bidder; **provided, however, the Prepetition Agent shall retain its right to credit bid in accordance with section 363(k) of the Bankruptcy Code.** See Local Rule 6004-1(b)(iv)(N).

D. Auction

24. In the event that one or more Qualified Bid has been received, the Debtors will conduct the Auction for the sale of the Assets. The Debtors propose that the Auction take place no later than five (5) business days after the Bid Deadline at Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801. **Only representatives of the Stalking Horse Bidder, Qualified Bidders, the Debtors, the Committee and the Prepetition Agent will be entitled to attend the Auction. Only the Stalking Horse Bidder, Qualified Bidders and the Prepetition Agent are eligible to participate and make any subsequent bids at the Auction. At the Auction, bidding will commence at the amount of the aggregate consideration for the Assets and on the terms proposed in the Qualified Bid that the Debtors select as the highest and best offer prior to the Auction, and each subsequent bid shall be in increments of no less than $250,000.** See Local Rule 6004-1(c)(i)(C). Bidding will continue until such time as the highest and best offer is determined by the Debtors in consultation with the Prepetition Agent (the "Successful Bid," and the party submitting such Successful Bid being designated the "Successful Bidder").

25. **The Debtors, after consultation with the Prepetition Agent and the Committee, may announce at the Auction additional rules or procedures for conducting the Auction so long as such rules are not inconsistent with the Bidding Procedures. The Debtors reserve the right, after consultation with the Prepetition Agent, to (i) determine, at their discretion, which bid, if any, is the highest and best offer, taking into consideration,**

inter alia, that the Break-Up Fee and Expense Reimbursement would be payable if a party other than the Stalking Horse Bidder is the Purchaser, (ii) reject any bid that the Debtors deem to be inadequate, insufficient or otherwise unsatisfactory, (iii) change the location of the Auction, and/or (iv) adjourn the Auction by announcing such adjournment at the Auction. The Debtors' presentation to this Court for approval of the selected bid as the Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing. See Local Rule 6004-1(c)(i)(D).

26. All bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and waived any right to jury trial in connection with any disputes relating to the Auction, the sale of the Assets and the construction and enforcement of the Asset Purchase Agreement.

E. Closing with Successful Bidder or Alternate Bidder

27. **If, for any reason, the Successful Bidder fails to close on the purchase of the Assets (and assuming the conditions to closing have been satisfied), then: (i) the Successful Bidder shall forfeit the Deposit and be subject to such other rights and remedies as the Debtors may have for such failure; (ii) the Qualified Bidder who, as of the conclusion of the Auction, has made the next highest and best bid (as determined by the Debtors in consultation with the Prepetition Agent) automatically will be deemed to have submitted the Successful Bid without further order of the Court (such bidder, the "Alternate Bidder"); and (iii) the Alternate Bidder will be required to proceed as the purchaser at closing.** See Local Rule 6004-1(c)(i)(E).

II. Proposed Stalking Horse Bidding Protections

28. **As part of the Bidding Procedures Order, the Debtors are requesting**

approval of the provisions of the Asset Purchase Agreement regarding the Break-Up Fee and Expense Reimbursement, on the terms and conditions set forth in the Asset Purchase Agreement. See Local Rule 6004-1(c)(i)(C). The Stalking Horse Bidder insisted on the approval of the Break-Up Fee and Expense Reimbursement (3.5% of the cash portion of the purchase price for the Assets) as a condition to its obligation to close on the transaction with the Debtors. The Debtors submit that the proposed Break-Up Fee and Expense Reimbursement is a necessary inducement for the Stalking Horse Bidder to submit its bid subject to higher and better offers and is a necessary condition to closing the Sale.

29. Approval of the Break-Up Fee and Expense Reimbursement is governed by the standards for determining the appropriateness of bidding incentives in the bankruptcy context established by the Third Circuit in Calpine Corporation v. O'Brien Environmental Energy, Inc., 181 F.3d 527 (3d Cir. 1999). In O'Brien, the Third Circuit concluded that "the determination whether break-up fees or expenses are allowable under § 503(b) must be made in reference to general administrative expense jurisprudence. In other words, [the inquiry] ... depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate." O'Brien, 181 F.3d at 535. That same standard was recently reiterated in the Third Circuit's decision in In re Reliant Energy Channelview LP, 594 F.3d 200 (3d Cir. 2010) ("Under O'Brien, we must decide whether an award of a break-up fee was necessary to preserve the value of the Debtors' estate.").

30. In O'Brien, the Third Circuit referred to nine factors that the bankruptcy court viewed as relevant in deciding whether to award bidding protections: (1) the presence of self-dealing or manipulation in negotiating the break-up fee; (2) whether the fee harms, rather than encourages, bidding; (3) the reasonableness of the fee relative to the purchase price; (4) whether

the "unsuccessful bidder place[d] the estate property in a sales configuration mode to attract other bidders to the auction;" (5) the ability of the request for a break-up fee "to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;" (6) the correlation of the fee to the maximization of value of the debtor's estate; (7) the support of the principal secured creditors and creditors committee of the break-up fee and expense reimbursement; (8) the benefits of the safeguards to the debtor's estate; and (9) the "substantial adverse impact [of the break-up fee and expense reimbursement] on unsecured creditors, where such creditors are in opposition to the break-up fee. The Debtors submit that under O'Brien the Break-Up Fee and Expense Reimbursement should be approved.

31. First, all negotiations between the Debtors and the Stalking Horse Bidder have been conducted in good faith and at arm's length. Second, the Debtors have determined that the Break-Up Fee and Expense Reimbursement is necessary to attract and retain the Stalking Horse Bidder. The Debtors' ability to continue to seek a higher or better offer without the risk of losing the Debtors' current highest and best offer (following a robust marketing effort) will be eliminated if the Debtors cannot secure approval of the Break-Up Fee and Expense Reimbursement. Further, payment of the Break-Up Fee will not diminish the Debtors' estates. The Debtors will incur the Break-Up Fee and Expense Reimbursement only if an alternative transaction is consummated.

32. The Debtors submit that authorization of the Break-Up Fee and Expense Reimbursement will not chill any bidding for the Assets. By ensuring the existence of a "floor" purchase price under the Asset Purchase Agreement, the Break-Up Fee and Expense Reimbursement will induce bids that potentially may have never been made and without which bidding may be limited. The Debtors' ability to provide the Break-Up Fee and Expense

Reimbursement enables them to ensure a sale to a bidder at a price they believe to be fair, while providing the Debtors with the potential of even greater benefit to the estates.

33. Courts in this District have approved a range of break-up fees and expense reimbursements as being appropriate. See, e.g., In re Spheris, Inc., Case No. 10-10352 (Bankr. D. Del. Feb. 23, 2010) (Gross, J.); In re Anchor Blue Retail Group, Inc., Case No. 09-11770 (Bankr. D. Del. June 12, 2009) (Walsh, J.); In re Radnor Holdings, Case No. 06-10894 (Bankr. D. Del. Sep. 22, 2006) (Walsh, J.); In re Riverstone Networks, Case No. 06-10110 (Bankr. D. Del. Feb. 24, 2006) (Sontchi, J.).

III. Proposed Sale Objection Deadline and Sale Hearing

34. The Debtors propose that the Court establish the same date as the Bid Deadline as the deadline to file and serve objections to the Sale (the "Objection Deadline") and two (2) days after the Auction (or as soon thereafter as the Court's schedule permits) for the Sale Hearing, at which the Court will consider whether to approve the Asset Purchase Agreement or such other agreement between the Debtors and the Successful Bidder, authorize the Sale of the Assets free and clear of all liens, claims, interests and encumbrances, and authorize the assumption and assignment of executory contracts and unexpired leases in connection with the Sale.

35. The Debtors propose that any objections to the Sale must be in writing, set forth with particularity the grounds for such objection, be filed with the Court, and be served upon (a) proposed counsel to the Debtors, (i) Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Douglas B. Rosner, Esq. and Christine D. Lynch, Esq.) and (ii) Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Daniel J. DeFranceschi, Esq.; (b) counsel to the Committee; (c) counsel to the Prepetition Agent, Paul Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., Twenty-Fourth Floor,

Atlanta, GA 30308 (Attn: Jesse H. Austin, III, Esq.) and Duane Morris LLP, 1100 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Richard W. Riley, Esq.; (d) counsel to the Stalking Horse Bidder, Michelson Law Group, 150 Spear Street, Suite 1600, San Francisco, CA 941058 (Attn: Randy Michelson, Esq.) and DLA Piper LLC (US), 204 North LaSalle Street, Suite 1900, Chicago, IL 60601 (Attn: Richard J. Morey, Esq.); and (e) the Office of the United States Trustee for the District of Delaware (the "Interested Parties") so as to be actually received on or before the Objection Deadline.

IV. Notice of the Bidding Procedures, the Auction, and the Sale Hearing

36. As part of the Bidding Procedures Order, the Debtors seek approval of the Sale Notice. The Sale Notice, the proposed form of which is attached to the Bidding Procedures Order as Exhibit 2, will include, among other things, the date, time, and place of the Auction and the Sale Hearing, as well as the deadline for filing any objections to the relief requested in the Motion once they are set by the Court. The Debtors propose to serve the Sale Notice on all parties provided with the notice of this Motion, all parties identified by the Debtors and FocalPoint having provided indications of interest for the purchase of the Assets and all parties on the Debtors' consolidated list of creditors. The Sale Notice will also include instructions on how to obtain a copy of the Motion and the Asset Purchase Agreement. The Debtors also propose to publish the Sale Notice in THE WALL STREET JOURNAL, National Edition as soon as practicable following entry of the Bidding Procedures Order.

37. The Debtors submit that the methods of notice described herein comply fully with Bankruptcy Rule 2002 and constitute good and adequate notice of the proposed Bidding Procedures and the sale of the Assets. Therefore, the Debtors respectfully request that this Court approve the notice procedures proposed above.

V. Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases

38. Additionally, the Debtors, seek approval of the Assumption and Assignment Notice, in substantially the form attached to the Bidding Procedures Order as Exhibit 3. In connection with the Sale, the Debtors will be required to assume and assign certain executory contracts and unexpired leases described in the Asset Purchase Agreement (the "Assumed Executory Contracts). To provide counterparties to the potential Assumed Executory Contracts appropriate notice of the requested relief, the Debtors propose to do the following:

39. Upon entry of the Bidding Procedures Order, the Debtors will file a schedule of cure obligations (the "Cure Schedule") for all potential Assumed Executory Contracts to the Purchaser. The Cure Schedule will include a description of each Assumed Executory Contract and the amount, if any, the Debtors believe is necessary to cure any defaults under such agreements pursuant to section 365 of the Bankruptcy Code (the "Cure Costs"). A copy of the Cure Schedule, together with the Assumption and Assignment Notice, will be served on each of the non-debtor parties listed on the Cure Schedule by first class mail on the date that the Cure Schedule is filed with the Court.

40. The Assumption and Assignment Notice will provide, among other things, that information concerning the Purchaser's ability to perform under the Assumed Executory Contracts as contemplated by section 365(f)(2)(B) of the Bankruptcy Code (the "Adequate Assurance Information") will be provided as soon as practicable upon reasonable request in writing to the undersigned proposed counsel to the Debtors and upon the execution of a mutually acceptable confidentiality agreement. In the event that the Debtors propose to sell the Assets to a Purchaser who is not the Stalking Horse Bidder, the Adequate Assurance Information will be made available as soon as practicable after the conclusion of the Auction.

41. The Debtors propose that any objections to the assumption and assignment of any executory contract or unexpired lease identified on the Cure Schedule, including, but not limited to, objections relating to adequate assurance of future performance or to the Cure Costs set forth on the Cure Schedule, must be in writing, filed with the Court, and served upon the Interested Parties so as to be actually received on or before the Objection Deadline; provided, however, in the event the Debtors propose to sell the Assets to a Purchaser other than the Stalking Horse Bidder, objections to the assignment of the Assumed Executory Contracts to such Purchaser on the basis of adequate assurance of future performance only may be raised at the Sale Hearing.

42. Any objections shall set forth with particularity the grounds for such objection or other statements of position, including, if applicable, the specific monetary amount the objector asserts to be due, and the specific types and dates of alleged defaults, pecuniary losses, the specific adequate assurance of future performance that the Purchaser or Debtors have not provided and other conditions to assignment and support therefor.

43. If no objections are timely received, then the Cure Costs set forth in the Cure Schedule will be binding upon the counterparties to the Assumed Executory Contracts for all purposes in these Chapter 11 Cases and will constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the Assumed Executory Contracts. In addition, all counterparties to the Assumed Executory Contracts will (a) be forever barred from asserting any additional cure or other amounts with respect to the Assumed Executory Contracts, and the Debtors and the Purchaser will be entitled to rely solely upon the Cure Costs set forth in the Cure Schedule; (b) be deemed to have consented to the assumption and assignment; and (c) be forever barred and estopped from asserting or claiming against the Debtors or the Purchaser that any additional amounts are due or

other defaults exist, that conditions to assignment must be satisfied under such Assumed Executory Contracts, or that there is any objection or defense to the assumption and assignment of such Assumed Executory Contracts.

44. Where a counterparty to an Assumed Executory Contract files an objection to the proposed assumption and assignment including asserting a cure cost higher than the proposed Cure Costs, then to the extent that the parties are unable to consensually resolve the objection, such objection will be heard at the Sale Hearing. The Debtors intend to cooperate with counterparties to Assumed Executory Contracts to attempt to reconcile any differences in a particular cure cost.

45. The Debtors request that any party failing to object to the proposed assumption and assignment be deemed to consent to the treatment of its executory contract and/or unexpired lease under section 365 of the Bankruptcy Code. See In re Decora Indus., 2002 WL 32332377, at *4 (Bankr. D. Del. May 17, 2002) (parties in interest who did not object to sale were deemed to accept the sale pursuant to sections 362(f) and 365 of the Bankruptcy Code); Hargrave v. Twp. of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); Pelican Homestead v. Wooten (In re Gabeel), 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same). Moreover, the Debtors request that each such party be deemed to consent to the assumption and assignment of its executory contract and/or unexpired lease notwithstanding any anti-alienation provision or other restriction on assignment. See 11 U.S.C. §§ 365(c)(1)(B), (e)(2)(A)(ii), and (f).

VI. The Sale of the Assets Pursuant to the Asset Purchase Agreement Is Authorized by Section 363 as a Sound Exercise of the Debtors' Business Judgment

46. Section 363 of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the

estate." 11 U.S.C. § 363(b). Moreover, section 105(a) of the Bankruptcy Code provides that "[t]he Court may issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a).

47. A sale of the debtor's assets outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code should be authorized if a sound business reason exists for doing so. See, e.g., Meyers v. Martin (In re Martin), 91 F.3d 289, 295 (3d Cir. 1996), citing Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986); In re Delaware & Hudson Railway Co., 124 B.R. 169, 176 (D. Del. 1991); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983). The Delaware and Hudson Railway court rejected the pre-Code "emergency" or "compelling circumstances" standard, finding the "sound business purpose" standard applicable. In that regard, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

48. The business judgment rule shields a debtor's management from judicial second-guessing. Johns-Manville Corp., 60 B.R. at 615-16 ("a presumption of reasonableness attaches to a debtor's management decisions"). Once a debtor articulates a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" The Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992)

(quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1). Indeed, when applying the "business judgment" standard, courts show great deference to a debtor's business decisions. See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.), 1989 WL 106838, at *3 (N.D. Ill. 1989) ("Under this test, the debtor's business judgment . . . must be accorded deference unless shown that the bankrupt's decision was taken in bad faith or in gross abuse of the bankrupt's retained discretion.").

49. The Debtors have concluded that an immediate sale of the Assets is the best way to preserve and maintain the value of the Assets for creditors and avoid a diminution of that value. Moreover, in the Debtors' business judgment, the consideration to be paid by the Purchaser pursuant to the Asset Purchase Agreement is fair and reasonable under the circumstances. The fairness and reasonableness of the consideration to be paid by the Purchaser will be demonstrated by adequate "market exposure" and an open and fair auction process—the best means for establishing whether a fair and reasonable price is being paid. In order to ensure a fair auction process, the Debtors will solicit interest from numerous potential purchasers and engage in the marketing process described above.

VII. The Sale of the Assets Free and Clear of Liens and Other Interests Is Authorized By Section 363(f)

50. The Debtors further submit that it is appropriate to sell the Assets free and clear of liens, claims, interests and encumbrances (collectively, the "Liens") pursuant to section 363(f) of the Bankruptcy Code, with any such Liens attaching to the net sale proceeds of the Assets to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of Liens if:

(1) applicable nonbankruptcy law permits sale of such property free

and clear of such interests;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

51. This provision is supplemented by section 105(a) of the Bankruptcy Code. 11 U.S.C. § 105(a).

52. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets "free and clear" of Liens. In re Dundee Equity Corp., 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. March 6, 1992) ("[S]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); In re Bygaph, Inc., 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive, and holding that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met).

53. The Debtors believe that one or more of the tests of section 363(f) are satisfied with respect to the transfer of the Assets pursuant to the Asset Purchase Agreement. In particular, the Debtors believe that at least section 363(f)(2) will be met in connection with the

transactions proposed under the Asset Purchase Agreement because each of the parties holding Liens on the Assets will consent, or absent any objection to this Motion, will be deemed to have consented to, the Sale. Any lienholder also will be adequately protected by having their Liens, if any, in each instance against the Debtors or their estates, attach to the cash proceeds of the Sale ultimately attributable to the Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto. Accordingly, section 363(f) authorizes the transfer and conveyance of the Assets free and clear of any such Liens.

54. Under the terms of the Asset Purchase Agreement, the Purchaser will assume and agree to pay, to perform, and to discharge as and when they become due and payable, or are required to be performed, all liabilities which are to be performed on and after consummation of the Asset Purchase Agreement. **The Purchaser is not liable for any of the Debtors' liabilities in connection with the sale of the Assets as a successor to the Debtors' business or otherwise**. See Local Rule 6004-1(b)(iv)(L). Extensive case law exists providing that claims against the winning bidder are directed to the proceeds of a free and clear sale of property and may not be asserted against a buyer subsequently.

55. Although section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests," the term "any interest" is not defined in the Bankruptcy Code. Folger Adam Security v. DeMatteis/MacGregor JV, 209 F.3d 252, 257 (3d Cir. 2000). In the case of In re Trans World Airlines, Inc., 322 F.3d 283, 288-89 (3d Cir. 2003), the Third Circuit specifically addressed the scope of the term "any interest." The Third Circuit observed that while some courts have "narrowly interpreted that phrase to mean only *in rem* interests in

property," the trend in modern cases is towards "a more expansive reading of 'interests in property' which 'encompasses other obligations that may flow from ownership of the property.'" Id. at 289 (citing 3 Collier on Bankruptcy 363.06[1]). As determined by the Fourth Circuit in In re Leckie Smokeless Coal Co., 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited extensively and with approval by the Third Circuit in Folger, supra, the scope of section 363(f) is not limited to in rem interests. Thus, the Third Circuit in Folger stated that Leckie held that debtors "could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute." Folger, 209 F.3d at 258.

56. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes free from successor liability resulting from pre-existing claims. See The Ninth Avenue Remedial Group v. Allis-Chalmers Corp., 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); MacArthur Company v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); In re New England Fish Co., 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor's employees); In re Hoffman, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); American Living Systems v. Bonapfel (In re All Am. Of Ashburn, Inc.), 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded on successor doctrine in a sale of assets free and clear); WBO Partnership v. Virginia Dept. of Medical Assistance Services (In re WBQ Partnership), 189 B.R. 97, 104-05 (Bankr. 22

E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)).[6] The purpose of an order purporting to authorize the transfer of assets free and clear of all "interests" would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the Purchaser arising from the Debtors' pre-sale conduct. Under section 363(f) of the Bankruptcy Code, the Purchaser is entitled to know that the Assets are not subject to latent claims that will be asserted against the Purchaser after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the order approving the sale of the Assets should state that the Purchaser is not liable as a successor under any theory of successor liability, for claims that encumber or relate to the Assets.

VIII. The Purchaser is a Good Faith Purchaser and is Entitled to the Full Protection of Section 363(m) of the Bankruptcy Code, and the Transfer of the Assets Does Not Violate Section 363(n)

57. The Debtors request that the Court find that the Purchaser is entitled to the full protections of section 363(m) of the Bankruptcy Code. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from a debtor in the event that the sale conducted under section 363(b) is reversed or modified on appeal. Section 363(m) of the Bankruptcy Code "fosters the 'policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.'" In re Chateaugay Corp., 1993 U.S. Dist. LEXIS 6130, *9 (S.D.N.Y. 1993).

58. The Debtors have presented the proposed Sale in good faith. The Stalking Horse Bidder's identity has been, and the identity of any Successful Bidder will be, fully disclosed to

[6] Some courts, concluding that section 363(f) of the Bankruptcy Code does not empower them to convey assets free and clear of claims, have nevertheless found that section 105(a) of the Bankruptcy Code provides such authority. See Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (stating that the absence of specific authority to sell assets free and clear of claims poses no impediment to such a sale, as such authority is implicit in the court's equitable powers when necessary to carry out the provisions of title 11).

the Court and parties in interest. Furthermore, the Debtors will be prepared to introduce evidence at the Sale Hearing regarding the arm's-length, good faith nature of the marketing and bidding process, the Auction and the negotiation of the asset purchase agreement with the Purchaser.

IX. The Assumption and Assignment of the Assumed Contracts and Leases Should be Authorized

59. In connection with the Sale, the Debtors seek authority to assume and assign the Assumed Executory Contracts. Under section 365(a) of the Bankruptcy Code, a debtor "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The decision whether an executory contract or unexpired lease should be assumed and assigned or rejected is based on the debtor's exercise of its "business judgment." NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (describing business judgment test as "traditional"); In re III Enterprises Inc. V, 163 B.R. 453, 469 (Bankr. E. D. Pa 1994) (citations omitted) ("Generally, a court will give great deference to a debtor's decision to assume or reject the contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment – a standard which we have concluded many times is not difficult to meet."). As discussed above, the Debtors have made the business decision to sell substantially all of the Debtors' assets pursuant to the Asset Purchase Agreement. The Debtors are party to various executory contracts and unexpired leases that are necessary to the operation of their businesses. The assumption and assignment of the Assumed Executory Contracts is, therefore, an integral term of the Asset Purchase Agreement. If the Debtors are not able to assume and assign the Assumed Executory Contracts, the sale of the Assets will likely be impaired- resulting in reduced proceeds for the benefit of the estate.

60. Section 365(f)(2) of the Bankruptcy Code provides in pertinent part:

> The trustee may assign an executory contract or unexpired lease of the debtor only if –
>
> (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
>
> (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

61. Section 365(b)(1) of the Bankruptcy Code then codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee -
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default ... ;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease. 11 U.S.C. § 365(b)(1).

62. The Debtors submit that there are no incurable defaults under any of the Assumed Executory Contracts. The Debtors do believe, however, that there may be certain Cure Costs due under some of the Assumed Executory Contracts, and consistent with the Asset Purchase Agreement, any such Cure Costs will be paid by the Debtors as part of any assumption and assignment. As discussed above, the Debtors intend to provide counterparties to the potential Assumed Executory Contracts with adequate notice of the Cure Costs as well as the proposed assumption and assignment.

63. Moreover, the Debtors propose to provide all parties to the Assumed Executory

Contracts with adequate assurance of future performance. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." EBG Midtown South Corp. v. McLaren/Hart Env. Eng'g Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 593 (S.D.N.Y. 1992); In re Prime Motor Inns Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) ("[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance"); Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988). Among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

64. Upon written request and execution of a mutually acceptable confidentiality agreement, the Debtors will provide counterparties to the Assumed Executory Contracts the Adequate Assurance Information relating to (a) the Stalking Horse Bidder, as soon as practicable after the Court enters the Bidding Procedures Order, and (b) the Successful Bidder and Alternate Bidder, as soon as practicable after the Successful Bid and Alternate Bid is determined and the Auction concludes. The Adequate Assurance Information that the Debtors anticipate providing may include: (a) the name of the Purchaser, (b) information about Purchaser's financial condition, such as federal tax returns, a current financial statement, or bank account statements, (c) a description of the intended use of the premises (if applicable), and (d) such additional information regarding the potential purchaser as the Debtors may elect to include. This will

provide the Court and other interested parties with the opportunity to evaluate and, if necessary, challenge the ability of the Purchaser to provide adequate assurance of future performance under such agreements, as required under section 365(b)(1)(C) of the Bankruptcy Code. The Court should therefore authorize the Debtors to assume and assign the Assumed Executory Contracts as set forth herein.

X. Relief Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate

65. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Additionally, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Debtors request that any order approving the Asset Purchase Agreement be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

66. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the stay period, Collier suggests that the stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." 10 COLLIER ON BANKRUPTCY 15th Ed. Rev., ¶ 6064.09 (L. King, 15th rev. ed. 1988). Furthermore, Collier provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be

reduced to the amount of time actually necessary to file such appeal. Id.

67. The Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

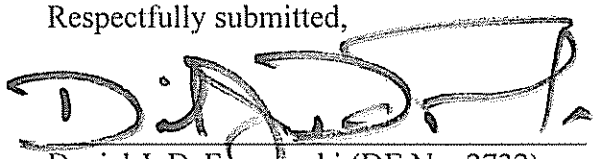
Notice

68. The Debtors have provided notice of this Motion by (i) facsimile and/or overnight mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the thirty (30) largest unsecured claims on a consolidated basis; (c) counsel to the Prepetition Agent; (d) the Internal Revenue Service; and (e) the United States Department of Justice; and (ii) first class mail to (a) counterparties to any potential Assumed Executory Contract and (b) the relevant taxing authorities. The Debtors respectfully submit that no further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Bidding Procedures Order substantially in the form attached hereto as Exhibit A, (ii) enter the Sale Order after the Sale Hearing, and (iii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: April 22, 2010
Wilmington, Delaware

Respectfully submitted,



Daniel J. DeFranceschi (DE No. 2732)
Julie A. Finocchiaro (DE No. 5303)
Drew G. Sloan (DE No. 5069)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
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Telephone: (302) 651-7700
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-and-

Douglas B. Rosner. (MA BBO# 559963)
Christine D. Lynch. (MA BBO#640361)
GOULSTON & STORRS, P.C.
400 Atlantic Avenue
Boston, MA 02110-3333
Tel: (617) 482-1776
Fax: (617) 574-4112

Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A

Form of Bidding Procedures Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	:	Chapter 11
MAGIC BRANDS, LLC, *et al.*,	:	Case No. 10-11310 (BLS)
Debtors.	:	(Joint Administration Requested)
	:	Re: Docket No. ___

ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (II) APPROVING CERTAIN BIDDING PROTECTIONS, (III) APPROVING THE FORM AND MANNER OF NOTICE OF THE SALE AND ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (IV) SCHEDULING AN AUCTION AND SALE HEARING

Upon the motion (the "Motion")[1] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking, pursuant to sections 105, 363, 365 and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 2002, 6004, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), orders (I) approving bidding procedures for the sale of assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code, (II) approving certain bidding protections, (III) approving the form and manner of notice of the sale and assumption and assignment of executory contracts and unexpired leases, (IV) scheduling an auction and sale hearing and (V) approving such sale; and any objections to entry of an order approving the bidding procedures, the bidding protections and form and manner of notice of sale and scheduling an auction and sale hearing having been resolved, withdrawn or overruled; and it

[1] Capitalized terms used but not defined herein shall have the meanings ascribed such terms in the Motion.

appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334; and it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. §157; and adequate notice of the Motion and opportunity for objection having been given; and it appearing that no other or further notice need be given; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest;

NOW THEREFORE IT IS HEREBY FOUND, CONCLUDED AND DETERMINED THAT:

A. Notice of the hearing on the Bidding Procedures, the Motion and the Bidding Procedures was provided to all necessary parties in interest and is otherwise adequate and appropriate in the circumstances.

B. In the exercise of their business judgment, the Debtors have determined that the best method for maximizing the return to their creditors is, among other things, through a sale of substantially all of the Debtors' assets and the assumption and assignment of certain executory contracts and unexpired leases of the Company.

C. In the exercise of their business judgment, the Debtors have agreed to sell certain of their assets as set forth in the Asset Purchase Agreement (the "Assets") to the Stalking Horse Bidder pursuant to the Asset Purchase Agreement, a copy of which is attached to the Motion, subject to higher and better offers.

D. The Asset Purchase Agreement and its terms were negotiated by the Debtors and the Stalking Horse Bidder in good faith and at arm's length.

E. The Debtors will maximize the sale price of the Assets by seeking competitive bidders and holding an auction sale thereof (the "Auction") in accordance with the Bidding Procedures attached hereto as Exhibit 1.

F. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Assets and are in the best interests of the Debtors, their estates, creditors and other parties in interest.

G. The Debtors have demonstrated a compelling and sound business justification for the authorization to pay the Break-Up Fee and Expense Reimbursement under the terms and conditions set forth in the Asset Purchase Agreement.

H. The Debtors' granting of the Break-Up Fee and Expense Reimbursement to the Stalking Horse Bidder is (i) an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code, (ii) of substantial benefit to the Debtors' estates, and (iii) fair, reasonable and appropriate in light of, among other things, (a) the size and nature of the proposed sale of the Assets, (b) the substantial efforts that have been expended by the Stalking Horse Bidder and (c) the benefits the Stalking Horse Bidder has provided to the Debtors' estates and creditors and all parties-in-interest herein.

I. All other findings made by the Court during the Sale Procedures Hearing are incorporated herein by reference.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Bidding Procedures attached hereto as Exhibit 1 are hereby approved, and the terms of the Bidding Procedures are incorporated by reference as if fully set forth herein. The Debtors are hereby authorized to obtain the highest and best bids for the Assets in accordance with the Bidding Procedures. The failure to specifically include or reference any particular provision, section or article of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such Bidding Procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.

2. The Sale Notice substantially in the form attached hereto as Exhibit 2, is hereby approved. The Debtors shall serve, by first-class mail within three (3) business days after the entry of this Order, a copy of this Order, the Motion and the Sale Notice on (a) the United States Trustee; (b) counsel to Wells Fargo Capital Finance, Inc. (the "Prepetition Agent"); (c) counsel to the Official Committee of Unsecured Creditors (the "Committee"); (d) all other parties on the Master Service List established in these cases; (e) those government agencies required to receive notice of proceedings under the Bankruptcy Rules; (f) all counterparties to the executory contracts and unexpired leases; (g) all parties who are known to the Debtors to have liens on the Assets; (h) all federal, state and local tax and environmental authorities applicable to the Debtors and their assets and properties; and (i) all parties who provided written indications of interest or signed confidentiality agreements prior to the commencement of these chapter 11 case. Such service is hereby deemed to be sufficient notice of the sale of the Assets under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. A notice of the Sale shall also be published in THE WALL STREET JOURNAL, National Edition.

3. Any person seeking to submit a Competing Offer (as defined in the Bidding Procedures) for the Assets shall comply with the Bidding Procedures and shall submit such Competing Offer by facsimile and email to (i) Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Douglas B. Rosner, Esq. (drosner@goulstonstorrs.com; fax: (617) 574-7627) and Christine D. Lynch, Esq. (clynch@goulstonstorrs.com); fax: (617) 574-7540)); (ii) Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Daniel J. DeFranceschi, Esq. (defranceschi@rlf.com); fax: (302) 498-7816)), (iii) FocalPoint Securities, LLC, 11150 Santa Monica Blvd., Suite 1550, Los Angeles, California 90025 (Attn: Alexander W. Stevenson (astevenson@focalpointllc.com; fax: (310) 405-7077));

(iv) counsel to the Committee, [ ]; and (v) counsel to the Prepetition Agent, Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., Twenty-Fourth Floor, Atlanta, GA 30308 (Attn: Jesse H. Austin, III, Esq. (jessaustin@paulhastings.com; fax: (404) 685-5208)) and Duane Morris LLP, 1100 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Richard W. Riley, Esq (RWRiley@duanemorris.com; fax: (302) 397-0801)) (collectively, the "Notice Parties") no later than ____ p.m. (Eastern Time), on _____, 2010 (the "Bid Deadline").

4. If a Qualified Bid (as defined in the Bidding Procedures) is received by the Debtors, the Auction will be conducted on _____, 2010, at _____ a.m. (Eastern Time) at Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801. If no Qualified Bids other than the bid by the Stalking Horse Bidder are received prior to the Bid Deadline, then, at the discretion of the Debtors, the Auction will be cancelled. The Stalking Horse Bidder is deemed to be a Qualified Bidder (as defined in the Bidding Procedures).

5. Each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

6. A hearing to consider approval of the results of the Auction, or, if no Auction is held, the sale of the Assets to the Stalking Horse Bidder (the "Sale Hearing") will be held in the United States Bankruptcy Court for the District of Delaware, Courtroom ___, 824 North Market Street, 3rd Floor, Wilmington, Delaware (the "Court") on _____, 2010 at ____ a.m. (Eastern Time). In the event there are no other Qualifying Bids, the Debtors shall accept the Stalking Horse Bidder's bid pursuant to the Asset Purchase Agreement.

7. In accordance with Section 7.4 of the Asset Purchase Agreement, if (a) the Court approves a Competing Transaction (as defined in the Asset Purchase Agreement) and (b) the

Debtors consummate such Competing Transaction, then the Debtors shall pay to the Stalking Horse Bidder 3.5% of the cash portion of the purchase price for the Assets set forth in Section 3.1(a) of the Asset Purchase Agreement as a combined break-up fee and expense reimbursement (the "Break-up Fee and Expense Reimbursement"), provided that the Stalking Horse Bidder is not then in default under the Asset Purchase Agreement. If applicable, the Debtors shall pay the Break-Up Fee and Expense Reimbursement to the Stalking Horse Bidder immediately upon the consummation of the Competing Transaction.

8. Except as otherwise provided herein, any objection to the Motion shall be filed with the Court and served upon the Notice Parties, counsel to the Stalking Horse Bidder, Michelson Law Group, 150 Spear Street, Suite 1600, San Francisco, CA 941058 (Attn: Randy Michelson, Esq.) and DLA Piper LLC (US), 204 North LaSalle Street, Suite 1900, Chicago, IL 60601 (Attn: Richard J. Morey, Esq.), and the Office of the United States Trustee for the District of Delaware so as to be received not later than _____ p.m. (Eastern Time), on _____, 2010 (the "Objection Deadline"). An objection shall set forth with particularity the grounds for such objection or other statements of position.

9. The Assumption and Assignment Notice substantially in the form attached hereto as Exhibit 3, is hereby approved.

10. As soon as practicable after entry of this Order, but no later than _____, 2010, the Debtors shall file a schedule of cure obligations (the "Cure Schedule") for all potential Assumed Executory Contracts (as defined in the Asset Purchase Agreement), which will include a description of the Assumed Executory Contract and set forth the cure cost (the "Cure Cost") the Debtors believe is owed under each such Assumed Executory Contract. The Debtors will serve the Assumption and Assignment Notice, together with the Cure Schedule, on each of the

non-debtor parties listed on the Cure Schedule on the date that the Cure Schedule is filed with the Court.

11. Information concerning the Stalking Horse Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code will be provided to the non-debtor parties to the Assumed Executory Contracts upon written request to the Debtors' counsel and upon execution of a mutually acceptable confidentiality agreement. In the event that Auction results in a Successful Bidder other than the Stalking Horse Bidder, information concerning the Successful Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code no later than one day after conclusion of the Auction.

12. Any objection to the assumption and assignment of an Assumed Executory Contract (including, but not limited to, any objection relating to adequate assurance of future performance or to the Cure Costs set forth on the Cure Schedule) shall be filed with the Court not later than the Objection Deadline and served on the Notice Parties, counsel to the Stalking Horse Bidder, Michelson Law Group, 150 Spear Street, Suite 1600, San Francisco, CA 941058 (Attn: Randy Michelson, Esq.) and DLA Piper LLC (US), 204 North LaSalle Street, Suite 1900, Chicago, IL 60601 (Attn: Richard J. Morey, Esq.), and the Office of the United States Trustee for the District of Delaware so as to be actually received not later than the Objection Deadline; provided, however, that in the event that Auction results in a Successful Bidder other than the Stalking Horse Bidder, objections to the assignment of the Assumed Executory Contracts to such Successful Bidder on the basis of adequate assurance of future performance may be filed and served on or before the date of the Sale Hearing. An objection shall set forth with particularity the grounds for such objection or other statements of position, including, if applicable, the cure

cost the objector asserts to be due, any pecuniary losses and the specific types and dates of alleged defaults.

13. If a non-debtor party to an Assumed Executory Contract fails to object to the Cure Notice in a timely manner and timely serve such objection, such party shall be forever barred from (i) contesting the assumption and assignment of such Assumed Executory Contract, (ii) asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed Executory Contracts, or that there is any objection or defense to the assumption and assignment of such Assumed Executory Contracts, and (iii) disputing or otherwise asserting any cure cost other than as set forth in the Cure Notice, and the payment of the Cure Cost set forth in the Cure Notice shall be deemed to satisfy fully and completely the requirements of cure and compensation requisite to the Company's assumption and assignment of such Assumed Executory Contract.

14. If a non-debtor party to an Assumed Executory Contract files an objection to the proposed assumption and assignment, including an objection disputing the proposed Cure Cost, then to the extent that the parties are unable to consensually resolve the objection prior to the Sale Hearing, such objection will be determined at the Sale Hearing.

15. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

16. This Order shall constitute findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

17. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, this Court, for good cause shown, orders that the terms and conditions

of this Order shall be immediately effective and enforceable upon its entry.

18. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____ _____, 2010
Wilmington, Delaware

_____
THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Bidding Procedures

BIDDING PROCEDURES

On April 21, 2010, Magic Brands, LLC and its debtor affiliates, (collectively, the "Debtors"), filed a motion (the "Motion") for orders (I) approving bidding procedures for the sale of assets free and clear of all liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, (II) approving certain bidding protections, (III) approving the form and manner of notice of the sale and assumption and assignment of executory contracts and unexpired leases, (IV) scheduling an auction and sale hearing and (V) approving such sale. The Debtors have agreed to sell substantially all of their assets to the Stalking Horse Bidder pursuant to the terms of a certain asset purchase and sale agreement dated as of April 21, 2010 (the "Asset Purchase Agreement"),[1] subject to Bankruptcy Court approval and subject to higher and better offers. Copies of the Asset Purchase Agreement are available for free by (i) sending a written request to the Debtors' claims and noticing agent, Kurtzman Carson Consultants ("KCC"), 2335 Alaska Avenue, El Segundo, CA 90245, (ii) calling KCC at (877) 499-4519, or (iii) by accessing KCC's website at www.kccllc.net/Fuddruckers.

The following procedures (the "Bidding Procedures") shall govern the auction process by which the Debtors will accept and consider higher and better offers for the Purchased Assets (as defined in the Asset Purchase Agreement). Nothing in these Bidding Procedures shall constitute the consent of the Prepetition Agent or the Committee (both as defined below) to any bid:

1. Any party desiring to become a prospective bidder for the Purchased Assets ("Prospective Bidder") shall deliver to the Debtors, unless previously delivered, a signed confidentiality agreement in form and substance satisfactory to the Debtors ("Confidentiality Agreement").

2. After a Prospective Bidder delivers the Confidentiality Agreement, the Debtors shall deliver or make available (unless previously delivered or made available) to each such Prospective Bidder certain designated information and financial data with respect to the Purchased Assets.

3. Any party that submits a bid for the Purchased Assets (a "Competing Offer") which the Debtors, in consultation with Wells Fargo Capital Finance, Inc. (the "Prepetition Agent"), determine to be compliance with the relevant provisions of paragraph 4 below shall be designated as a "Qualified Bidder." The Stalking Horse Bidder shall be deemed to be a Qualified Bidder. The Prepetition Agent shall also be deemed to be a Qualified Bidder pursuant to its right to credit bid in accordance with section 363(k) of the Bankruptcy Code.

4. To be considered, each Competing Offer (excluding any credit bid submitted by the Prepetition Agent) shall:

   (a) be in writing and delivered by facsimile and email to (i) Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Douglas B. Rosner, Esq. (drosner@goulstonstorrs.com; fax: (617) 574-7627) and Christine D.

[1] Capitalized terms used but not defined herein shall have the meanings set forth in the Asset Purchase Agreement.

Lynch, Esq. (clynch@goulstonstorrs.com; fax: (617) 574-7540)); (ii) Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Daniel J. DeFranceschi, Esq. (defranceschi@rlf.com; fax: (302) 498-7816)), (iii) FocalPoint Securities, LLC, 11150 Santa Monica Blvd., Suite 1550, Los Angeles, California 90025 (Attn: Alexander W. Stevenson (astevenson@focalpointllc.com; fax: (310) 405-7077)); (iv) counsel to the Official Committee of Unsecured Creditors (the "Committee"), [ ]; and (v) counsel to the Prepetition Agent, Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., Twenty-Fourth Floor, Atlanta, GA 30308 (Attn: Jesse H. Austin, III, Esq. (jessaustin@paulhastings.com; fax: (404) 685-5208)) and Duane Morris LLP, 1100 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Richard W. Riley, Esq (RWRiley@duanemorris.com; fax: (302) 397-0801)) **no later than 5:00 p.m. (Eastern Time) on June ____, 2010** (the "Bid Deadline");

(b) at a minimum, exceed the sum of (i) the cash portion of the Purchase Price set forth in Section 3.1(a) of the Asset Purchase Agreement, plus (ii) the Break-Up Fee and Expense Reimbursement (as defined in the Asset Purchase Agreement), plus (iii) $250,000, for a total of $41,650,000 (if the Debtor is able to assign certain leases subject to a certain Master Lease with Spirit Master Funding, LLC (the "Spirit Locations")) or $32,335,000 (if the Debtor is unable to assign the Spirit Locations) (the "Minimum Overbid Amount");

(c) be accompanied by a signed asset purchase agreement in the form of the Asset Purchase Agreement, together with a marked copy showing all changes to the Asset Purchase Agreement, which changes shall not be less favorable to the Debtors and their estates in any material respect;

(d) not be subject to, or conditioned on, any contingency or condition (other than entry of an order approving the sale), including without limitation, the outcome of unperformed due diligence by the bidder or upon any financing contingency;

(e) be irrevocable until the earlier to occur of (i) the Closing Date, or (ii) for sixty (60) days following entry of the Sale Order;

(f) be submitted with a cash deposit equal to 10% of the purchase price offered in the Competing Offer (the "Deposit") in the form of a wire transfer or a certified check made payable to the Debtors and sent to the Debtors' counsel, which Deposit shall be non-refundable if the Bankruptcy Court approves the sale of the Debtors' assets to such Qualified Bidder;

(g) be substantially on the same or better terms and conditions as set forth in the Asset Purchase Agreement; and

(h) be submitted with evidence substantially equivalent to that provided by the Purchaser establishing to the satisfaction of the Debtors, in consultation with the Prepetition Agent, that such Prospective Bidder or an entity that has executed a

written guarantee of such Prospective Bidder's Bid has readily available funds sufficient to enable it to timely consummate its Competing Offer and provide all non-debtor parties to those executory contracts and unexpired leases to be assumed and assigned with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.

5. Competing Offers that the Debtors, in consultation with the Prepetition Agent, determine satisfy the provisions set forth in paragraph 4 above shall be deemed "Qualified Bids." A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors deem pertinent, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating a transaction with the Qualified Bidder, (c) any excluded assets or executory contracts or leases, and (d) any other factors that the Debtors may deem relevant to the sale in consultation with the Prepetition Agent.

6. If the Debtors do not receive any Qualified Bids (other than the bid of the Stalking Horse Bidder), the Debtors will report the same to the Bankruptcy Court, and the Debtors shall proceed to seek court approval of the Asset Purchase Agreement with the Stalking Horse Bidder.

7. In the event that one or more Qualified Bid (excluding the bid of the Stalking Horse Bidder) is received, an auction (the "Auction") will be conducted at the offices of Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 **on June ___, 2010, beginning at 9:00 a.m. (Eastern Time)** or such later time or other place as the Debtors shall notify all Qualified Bidders. Only representatives of the Stalking Horse Bidder, Qualified Bidders, the Debtors, the Committee, the Prepetition Agent and the United States Trustee for the District of Delaware will be entitled to attend the Auction. Only the Stalking Horse Bidder and Qualified Bidders will be entitled to make bids at the Auction. At the Auction, bidding will commence at the amount of the aggregate consideration for the Purchased Assets and on the terms proposed in the Qualified Bid that the Debtors select as the highest and best offer prior to the Auction, and each subsequent bid shall be in increments of no less than $250,000. Bidding at the Auction will continue until such time as the highest and best offer is determined by the Debtors in consultation with the Prepetition Agent (the "Successful Bid") (the party submitting such Successful Bid being designated the "Successful Bidder"). The Debtors, after consultation with the Prepetition Agent and the Committee, may announce at the Auction additional rules or procedures for conducting the Auction so long as such rules are not inconsistent with these Bidding Procedures.

8. The Debtors reserve the right, after consultation with their professionals and the Prepetition Agent, to (i) determine, at their discretion, which bid, if any, is the highest and best offer, taking into consideration, inter alia, that the Break-Up Fee and Expense Reimbursement would be payable if a party other than the Stalking Horse Bidder is the Successful Bidder, (ii) reject any bid that the Debtors deem to be inadequate, insufficient or otherwise unsatisfactory, (iii) change the location of the Auction, and/or (iv) adjourn the Auction by announcing such adjournment at the Auction. The Debtors' presentation to the Bankruptcy Court for approval of the selected bid as the Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a

Qualified Bid only when such Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.

9. All bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and to have waived any right to a jury trial in connection with any disputes relating to the Auction and the sale of the Purchased Assets.

10. If, for any reason, the Successful Bidder fails to close on the purchase of the Purchased Assets (and assuming that the conditions to closing have been satisfied), then: (i) the Successful Bidder shall forfeit the Deposit and be subject to such other rights and remedies as the Debtors may have for such failure; (ii) the Qualified Bidder who, as of the conclusion of the Auction, has made the second and the next highest and best bid (as determined by the Debtors in consultation with the Prepetition Agent) automatically will be deemed to have submitted the highest and best bid without further order of the Bankruptcy Court (such bidder, the "Alternate Bidder"); and (iii) the Alternate Bidder will be required to proceed as the purchaser at closing and its bid will be treated as the Successful Bid without further order of the Bankruptcy Court.

EXHIBIT 2

Sale Notice

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
MAGIC BRANDS, LLC, *et al.*,	:	**Case No. 10-11310 (BLS)**
	:	**(Joint Administration Requested)**
Debtors.	:	

NOTICE OF SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

TO CREDITORS AND PARTIES IN INTEREST:

PLEASE TAKE NOTICE, that, pursuant to 11 U.S.C. §§ 105, 363, 365 and 503 and Rules 2002, 4001, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, Magic Brands, LLC and its debtor affiliates, as above-captioned debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), intend to sell substantially all of their assets and assume and assign certain executory contracts and leases as further described in this notice.

The Debtors have entered into an Asset Purchase Agreement ("Asset Purchase Agreement") with Tavistock Ventures, Inc. (the "Proposed Buyer"), under which the Proposed Buyer has agreed to purchase substantially all of the Debtors' assets as more particularly described in the Asset Purchase Agreement (the "Assets"). On April ___, 2010, the Debtors filed their Motion (the "Motion")[1] for Orders: (I) Approving Bidding Procedures for the Sale of Assets Free and Clear of all Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code, (II) Approving Certain Bidding Protections, (III) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases, (IV) Scheduling an Auction and Sale Hearing and (V) Approving Such Sale. Pursuant to the Motion, the Debtors are seeking authority to sell the Assets to the Proposed Buyer or a higher and better bidder and authority to assume and assign certain executory contract and unexpired leases in connection therewith.

The Debtors are soliciting higher and better offers by means of an auction (discussed below), which shall be governed by the terms of the Bidding Procedures attached as Exhibit A to this notice (the "Bidding Procedures"). The Bidding Procedures

[1] All capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Motion, the Asset Purchase Agreement, which is attached to the Motion as Exhibit B, or Bidding Procedures, as the case may be.

have been approved by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") by order dated _____, 2010.

Copies of the Motion and the Asset Purchase Agreement are available for free by (i) sending a written request to the Debtors' claims and noticing agent, Kurtzman Carson Consultants, LLC ("KCC") at 2335 Alaska Avenue, El Segundo, California, (ii) calling KCC at (877) 499-4519 or (iii) by accessing KCC's website at www.kccllc.net/magicbrands. The Debtors have filed a schedule of cure amounts (the "Cure Schedule") for executory contracts and unexpired leases that may be assumed and assigned to the Proposed Buyer in connection with the sale. A copy of the Cure Schedule, together with a notice of proposed assumption and assignment of executory contracts and unexpired leases, is being served on each of the non-debtor parties listed on the Cure Schedule.

OBJECTIONS, if any, to final approval of the sale to the Proposed Buyer, including objections to the assumption and assignment of any executory contract or unexpired lease identified in the Cure Schedule (including but not limited to, objections relating to adequate assurance of future performance of the Proposed Buyer or to the cure amounts set forth on the Cure Schedule), must be in writing, state the basis of such objection with specificity and be filed with the Bankruptcy Court and served upon (i) proposed counsel to the Debtors, Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Douglas B. Rosner, Esq. (drosner@goulstonstorrs.com; fax: (617) 574-7627) and Christine D. Lynch, Esq. (clynch@goulstonstorrs.com); fax: (617) 574-7540)), and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Daniel J. DeFranceschi, Esq. (defranceschi@rlf.com); fax: (302) 498-7816)); (ii) counsel to the Proposed Buyer, [insert]; (iii) counsel to the Official Committee of Unsecured Creditors (the "Committee"), [insert]; (iv) counsel to Wells Fargo Capital Finance, Inc. (the "Prepetition Agent"), Paul Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., Twenty-Fourth Floor, Atlanta, GA 30308 (Attn: Jesse H. Austin, III, Esq. (jessaustin@paulhastings.com; fax: (404) 685-5208)) and Duane Morris LLP, 1100 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Richard W. Riley, Esq. (RWRiley@duanemorris.com; fax: (302) 397-0801)); and (v) counsel to the Proposed Buyer, Michelson Law Group, 150 Spear Street, Suite 1600, San Francisco, CA 941058 (Attn: Randy Michelson, Esq. (randy.michelson@michelsonlawgroup.com; fax:)) and DLA Piper LLC (US), 204 North LaSalle Street, Suite 1900, Chicago, IL 60601 (Attn: Richard J. Morey, Esq. (richard.morey@dlapiper.com; fax:); and (vi) the Office of the United States Trustee for the District of Delaware so as to be received not later than __ p.m. (Eastern Time), on [DATE] (the "Objection Deadline").

Through this notice, HIGHER AND BETTER OFFERS TO PURCHASE THE ASSETS ARE HEREBY SOLICITED subject to the terms and conditions of the Bidding Procedures. If a Qualified Bid (as defined in the Bidding Procedures) is timely received, the Debtors will hold an auction ("Auction") at the offices of Richards Layton & Finger, One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 on [DATE], beginning at [insert] (Eastern Time). Only representatives of the Proposed Buyer,

Qualified Bidders, the Debtors, the Committee and the Prepetition Agent will be permitted to attend the Auction and only the Proposed Bidder and Qualified Bidders will be permitted to participate in and make subsequent bids at the Auction. If no Qualified Bids, other than the bid by the Proposed Buyer, are received, the Debtors shall proceed to seek Bankruptcy Court approval of the Asset Purchase Agreement with the Proposed Buyer.

A HEARING on the Motion seeking approval of the sale of the Assets (the "Sale Hearing") is scheduled to take place at ____ a.m. (Eastern Time) on [DATE] at the United States Bankruptcy Court for the District of Delaware, located at 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 before the Honorable Brendan Shannon, United States Bankruptcy Judge.

Dated: April __, 2010
Wilmington, Delaware

Respectfully submitted,

Daniel J. DeFranceschi (DE No. 2732)
Julie A. Finocchiaro (DE No. 5303)
Drew G. Sloan (DE No. 5069)
RICHARDS, LAYTON & FINGER, P.A.
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-and-

Douglas B. Rosner (MA BBO# 559963)
Christine D. Lynch (MA BBO#640361)
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400 Atlantic Avenue
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Tel: (617) 482-1776
Fax: (617) 574-4112

Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT 3

Assumption and Assignment Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 10-11310 (BLS)
MAGIC BRANDS, LLC, *et al.*,	:	(Joint Administration Requested)
Debtors.[1]	:	

NOTICE OF PROPOSED ASSUMPTION AND ASSINMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND SCHEDULE OF PROPOSED CURE COSTS

PLEASE TAKE NOTICE that on April 21, 2010, Magic Brands, LLC and its debtor affiliates as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "Debtors") filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") a motion (the "Sale Motion") to sell substantially all of the Debtors' assets (the "Assets") to Tavistock Ventures, Inc. (the "Proposed Buyer") pursuant to the terms and conditions of that certain Asset Purchase Agreement dated April 21, 2010 between the Debtors and Proposed Buyer (the "Asset Purchase Agreement"), subject to higher and better offers.

PLEASE TAKE FURTHER NOTICE that on April ___, 2010, the Bankruptcy Court entered that certain *Order (I) Approving Bidding Procedures for the Sale of Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code, (II) Approving Certain Bidding Protections, (III) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases and (iv) Scheduling an Auction and Sale Hearing* (the "Bidding Procedures Order"). Pursuant to the Bidding Procedures Order, the Bankruptcy Court has authorized the Debtors to conduct an auction to sell the Assets to the Proposed Buyer or such higher and better bidder pursuant to certain court-approved bidding procedures.

PLEASE TAKE FURTHER NOTICE that in connection with the proposed sale of the Assets, the Debtors may assume and assign to the Proposed Buyer certain executory contracts and unexpired leases (individually, a "Contract" and, collectively, the "Contracts").[2] Attached as

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Magic Brands, LLC ("Magic") (8989); Fuddruckers, Inc. ("Fuddruckers") (8267), Atlantic Restaurant Ventures, Inc. ("Atlantic") (9769), King Cannon, Inc. ("King Cannon") (8671), and KCI, LLC ("KCI") (9281). The address for all of the Debtors is 5700 Mopac Expressway, Suite C300, Austin, Texas 78749.

[2] Use of the terms "executory" or "lease" shall not be binding on the Debtors and shall not be deemed to be a determination that an Executory Contract is either "executory" or a "lease" within the meaning of section 365 of the Bankruptcy Code

Exhibit A hereto (the "Cure Schedule") is a list of Contracts that the Debtors may assume, assign and sell to the Proposed Buyer and the corresponding amount (the "Cure Cost") that the Debtors believe is owing under each Contract. **If you received this notice and you are a party to an executory contract or unexpired lease with the Debtors, you should review the attached Exhibit A which lists alphabetically the names of the Contract counterparty.**

PLEASE TAKE FURTHER NOTICE that information concerning the Proposed Buyer's ability to perform under the Contract as contemplated by section 365(f)(2)(B) of the Bankruptcy Code will be provided upon reasonable request in writing to the undersigned proposed counsel to the Debtors and upon the execution of a mutually acceptable confidentiality agreement. The Debtors believe that the Proposed Buyer will have the financial ability to meet all future obligations under the Contracts.

PLEASE TAKE FURTHER NOTICE that pursuant to the Bidding Procedures Order, objections, if any, to the Cure Cost under a Contract or to the assumption and assignment of an Contract to the Proposed Buyer (including, but not limited to, objections to adequate assurance of future performance) must be in writing and filed with the Bankruptcy Court and served upon (i) proposed counsel to the Debtors, Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Douglas B. Rosner, Esq. (drosner@goulstonstorrs.com; fax: (617) 574-7627) and Christine D. Lynch, Esq. (clynch@goulstonstorrs.com); fax: (617) 574-7540) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Daniel J. DeFranceschi, Esq. (defranceschi@rlf.com); fax: (302) 498-7816)); (ii) counsel to Proposed Buyer, [insert]; (iii) counsel to the Committee, [insert]; (iv) counsel to the Prepetition Agent, Paul Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., Twenty-Fourth Floor, Atlanta, GA 30308 (Attn: Jesse H. Austin, III, Esq. (jessaustin@paulhastings.com; fax: (404) 685-5208)) and Duane Morris LLP, 1100 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Richard W. Riley, Esq. (RWRiley@duanemorris.com; fax: (302) 397-0801)), (v) counsel to the Proposed Buyer, Michelson Law Group, 150 Spear Street, Suite 1600, San Francisco, CA 941058 (Attn: Randy Michelson, Esq. (randy.michelson@michelsonlawgroup.com; fax:)) and DLA Piper LLC (US), 204 North LaSalle Street, Suite 1900, Chicago, IL 60601 (Attn: Richard J. Morey, Esq. (richard.morey@dlapiper.com; fax:); and (vi) the Office of the United States Trustee for the District of Delaware (collectively, the "Interested Parties") so as to be received not later than ____ **(Eastern Time) on [DATE]** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that any objections shall set forth with particularity the grounds for such objection or other statements of position, including, if applicable, the cure amount the objector asserts to be due, any pecuniary losses, and the specific types and dates of alleged defaults and any objections concerning the Proposed Buyer's ability to adequate assurance of future performance. If a counterparty to a Contract fails to timely file and serve a proper objection on the Interested Parties as set forth above, such party shall be forever barred from (i) contesting the assumption and assignment of such Contract to the Proposed Buyer, and (ii) disputing or otherwise asserting any cure amount other than as set forth in the Cure Schedule, and the payment of the Cure Cost set forth in the Cure Schedule shall be deemed to satisfy fully and completely the requirements of cure and compensation requisite to the Debtors' assumption and assignment of such Contract.

PLEASE TAKE FURTHER NOTICE that a hearing (the "Sale Hearing") will be held on _____ **at** _____ **a.m. (Eastern Time)**, before the Honorable Brendan L. Shannon, United States Bankruptcy Judge, in Courtroom 1, Sixth Floor of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 to approve the sale of Assets and consider, among other things, any and all timely objections to the Cure Cost under a Contract or to the assumption and assignment of a Contract.

PLEASE TAKE FURTHER NOTICE that under certain circumstances as set forth in the Asset Purchase Agreement, the Proposed Buyer may elect not to take assignment of certain Contracts and your receipt of this notice shall not be deemed to bind the Proposed Buyer to take assignment of the Contract to which you are a party. In addition, the Debtors reserve the right to reject any Contracts which are not assumed and assigned to the Proposed Buyer.

Dated: April __, 2010
Wilmington, Delaware

Respectfully submitted,

Daniel J. DeFranceschi (DE No. 2732)
Julie A. Finocchiaro (DE No. 5303)
Drew G. Sloan (DE No. 5069)
RICHARDS, LAYTON & FINGER, P.A.
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and-

Douglas B. Rosner (MA BBO# 559963)
Christine D. Lynch (MA BBO#640361)
GOULSTON & STORRS, P.C.
400 Atlantic Avenue
Boston, MA 02110-3333
Tel: (617) 482-1776
Fax: (617) 574-4112

Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A
CURE SCHEDULE

Counterparty to Executory Contract or Unexpired Lease	Type of Agreement	Cure Cost

EXHIBIT B

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

by and among

TAVISTOCK VENTURES, INC.,

FUDDRUCKERS, INC.,

MAGIC BRANDS, LLC,

ATLANTIC RESTAURANT VENTURES, INC.,

R. WES, INC.,

FUDDRUCKERS OF HOWARD COUNTY, LLC

and

FUDDRUCKERS OF WHITE MARSH, LLC

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is entered into and dated as of April 21, 2010 (the "Effective Date"), by and among Tavistock Ventures, Inc., a Bahamian IBC (the "Purchaser"), Fuddruckers, Inc., a Texas corporation ("Fuddruckers"), Magic Brands, LLC, a Delaware limited liability company ("Magic", and together with Fuddruckers, collectively, the "Company"), Atlantic Restaurant Ventures, Inc., a Virginia corporation ("ARVI," and together with each of Magic and Fuddruckers, the "Debtors"), R. Wes, Inc., a Texas corporation ("R. Wes"), Fuddruckers of Howard County, LLC, a Maryland limited liability company ("Howard County"), and Fuddruckers of White Marsh, LLC, a Maryland limited liability company ("White Marsh," and together with R. Wes and Howard County, the "Non-Debtor Sellers," and the Non-Debtor Sellers together with the Debtors, each a "Seller" and, collectively, the "Sellers").

W I T N E S S E T H:

WHEREAS, the Sellers are engaged in the business of (i) owning, managing and operating the chain of Seller-owned restaurants operating under the trade name "Fuddruckers" in the United States, (ii) franchising the right to operate Fuddruckers restaurants using the Fuddruckers "System", and (iii) owning, managing and operating the chain of restaurants operating under the trade name "Koo Koo Roo" in the United States (the aforementioned Fuddruckers and Koo Koo Roo businesses are collectively referred to as the "Business");

WHEREAS, promptly following the execution of this Agreement, each of the Debtors intends to file a voluntary petition for relief (the "Bankruptcy Case") under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, upon the terms and subject to the conditions set forth herein, the Purchaser desires to purchase from the Sellers, and the Sellers desire to sell to the Purchaser, substantially all of the Sellers' assets (other than the Excluded Assets (as defined below)) in exchange for the payment to the Sellers of the Purchase Price (as defined below) and the assumption by the Purchaser of certain of the Sellers' liabilities and obligations;

WHEREAS, the Debtors believe, following consultation with their financial advisors and consideration of available alternatives, that, in light of the current circumstances, a sale of their assets is necessary to maximize value and is in the best interest of the Debtors and their creditors; and

WHEREAS, the transactions contemplated by this Agreement (the "Transactions") are subject to the approval of the Bankruptcy Court and would be consummated only pursuant to a Sale Order (as defined below) to be entered by the Bankruptcy Court and applicable provisions of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements hereinafter contained, and intending to be bound hereby, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1 or in other Sections of this Agreement, as identified in the chart in Section 1.2:

"Acquired Location" means each Location that is (i) Owned Real Property, or (ii) subject to an Assumed Lease other than a Location subject to an Assumed Lease and that is subleased to a Franchisee.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Asset Price" means (a) Thirty One Million Dollars ($31,000,000) in the event that the Bankruptcy Court does not approve the assumption and assignment to Purchaser of the seven (7) Locations referenced in the Sixth Amendment to Master Lease attached as Schedule 1.1(a) in accordance with the provisions set forth in such Sixth Amendment (and with no other material conditions or additional material provisions) pursuant to the Sale Order, and such Master Lease as amended by such Sixth Amendment is not assumed and assigned to the Purchaser; and (b) Forty Million Dollars ($40,000,000.00) in all other cases.

"Assumed Executory Contracts" means all Assumed Contracts and Assumed Leases.

"Assumption Order" means an Order of the Bankruptcy Court authorizing the assumption or the assumption and assignment of a Contract or Lease pursuant to Section 365 of the Bankruptcy Code, which Order may be the Sale Order.

"Business Day" means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized by Law to close.

"Code" means the Internal Revenue Code of 1986, as amended.

"Contract(s)" means any contract, indenture, note, bond, lease, license, purchase or sale order, warranties, commitments, franchises, or other written or oral agreement, other than a Lease, in each case to which a Seller is a party and that is related or beneficial to the Business.

"Cure Costs" means monetary amounts that must be paid and nonmonetary obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and/or assignment of the Assumed Executory Contracts, including any amounts payable in connection with the assumption and assignment of that certain Master Lease between Fuddruckers and Spirit Master Funding, LLC.

"Customer Programs" means all outstanding gift certificates and gift cards relating to the Business, and all customer loyalty and rewards programs offered with respect to the Business, including, without limitation, the "Fudds Club".

"Development Agreement" shall mean any master license agreement, master franchise agreement, multi-unit development agreement, or other agreement pursuant to which a Franchisee has the right to develop, and/or grant subfranchises or sublicenses to third parties to develop, multiple Fuddruckers or Fudds Express Restaurants in a specified territory, including, without limitation, the Development Agreements described in the current FDD.

"Documents" means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, regulatory filings, operating data and plans, technical documentation, Intellectual Property records, advertising, marketing and sales documentation (sales brochures, flyers, pamphlets, web pages, catalogues, etc.), franchise documentation, personnel files, training and other manuals, maintenance records and drawings, architectural plans and designs, Tax Returns, financial statements, supplier lists, title policies, surveys and deeds in the possession or control of a Seller and relating to the Purchased Assets whether in written or electronic form.

"Employee Benefit Plans" means each deferred compensation and each bonus or other incentive compensation, stock purchase, stock option and other equity compensation plan, program, agreement or arrangement; each severance or termination pay, medical, surgical, hospitalization, life insurance and other "welfare" plan, fund or program (within the meaning of Section 3(1) of ERISA); each profit-sharing, stock bonus or other "pension" plan, fund or program (within the meaning of Section 3(2) of ERISA); each employment, termination, change in control, retention or severance plan, agreement or arrangement; and each other employee benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to or required to be contributed to by the Company, the Sellers or an ERISA Affiliate, or to which the Company, the Sellers or an ERISA Affiliate is a party for the benefit of any employee or former employee of the Company or any Subsidiary.

"Employees" means all individuals, as of the Effective Date, who are employed by any of the Sellers.

"Encumbrances" means any security interest, lien, collateral assignment, right of setoff, debt, obligation, liability, pledge, levy, charge, escrow, encumbrance, option, right of first refusal, transfer restriction, conditional sale contract, title retention contract, mortgage, lease, deed of trust, hypothecation, indenture, security agreement, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement, or any other agreement, arrangement, contract, commitment, understanding or obligation of any kind whatsoever, whether written or oral.

"Environmental Laws" means all federal, state and local Laws relating to pollution or protection of human health, safety, or the environment from pollution, including, without limitation, laws relating to releases or threatened releases of Hazardous Substances into the environment (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any entity that with the subject Person is:

(a) a member of a controlled group of corporations within the meaning of Section 414(b) of the Code;

(b) a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code;

(c) a member of an affiliated service group within the meaning of Section 414(m) of the Code; or

(d) a member of a group of organizations required to be aggregated under Section 414(o) of the Code.

"Escrow Agent" means Wells Fargo Bank, National Association.

"Excluded Contract" means any Contract that is not an Assumed Contract.

"Excluded Executory Agreement" means any Excluded Contract and/or Excluded Lease.

"Excluded Lease" means any Lease that is not an Assumed Lease.

"Excluded Location" means a Location that is not an Acquired Location.

"Excluded Matter" means: (i) any material change in the financial or stock markets in the United States; (ii) any material change that generally affects the industry in which the Sellers operate; (iii) any material change arising in connection with any natural disaster or calamity, acts of God, any national or international political or social conditions, including the declaration by the United States of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States; (iv) any change in applicable Laws or GAAP or the interpretation thereof; (v) any actions required by Law; (vi) any change resulting from the Transactions or the public announcement thereof; (vii) any change resulting from the commencement or continuation of the Bankruptcy Case; or (viii) any actions taken by the Sellers pursuant to (or as contemplated by) orders entered by the Bankruptcy Court in the Bankruptcy Case or otherwise with the Purchaser's prior written consent.

"FDD" means the franchise disclosure document prepared in accordance with the FTC Rule (or its predecessor) or any applicable Franchise Law.

"Final Order" means an order of the Bankruptcy Court as to which the time to file an appeal, a motion for rehearing or reconsideration or a petition for writ of certiorari has expired and no such appeal, motion or petition is pending.

"Franchise" means any relationship between any Seller and any other Person which constitutes a "franchise," as that term is defined under (a) the FTC Rule, regardless of the jurisdiction in which the franchised business is located or operates; or (b) the Franchise Law applicable in the jurisdiction in which the franchised business is located or operates, if any.

"Franchise Agreement" means (a) any oral or written agreements pursuant to which any Seller grants or has granted any Franchise or the right or option (whether or not subject to certain qualifications or conditions) to acquire any Franchise, together with any guarantee or other material instrument or agreement relating thereto (for example, any lease or sublease); and (b) that certain Fuddruckers Trademark and Technology User Agreement dated as of November 19, 1997 by and between Fuddruckers, Inc. and Fuddruckers-EMA E.C., as amended. As used in this Agreement, Franchise Agreement includes Development Agreements.

"Franchise Law" means the FTC Rule, any other Law regulating the offer and/or sale of Franchises, business opportunities or seller-assisted marketing plans, and any Law that regulates the relationship of the parties to a Franchise Agreement in the area of transfer, termination or non-renewal of a Franchise Agreement.

"Franchisee" means a Person who is a party to a Franchise Agreement with any Seller.

"FTC Rule" means the Federal Trade Commission trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," 16 C.F.R Section 436.1 et seq.

"Furniture and Equipment" means all furniture, fixtures, furnishings, equipment, machinery, computer hardware, tools and tooling, supplies, vehicles, leasehold improvements, and other tangible personal property owned or used by any of the Sellers in the conduct of the Business.

"GAAP" means generally accepted accounting principles in the United States, consistently applied throughout the specified period.

"Governmental Body" means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

"Hazardous Substances" means any chemical, mixture, waste, substance, material, pollutant, or contaminant, including without limitation petroleum, asbestos and asbestos-containing materials, with respect to which liability or standards of conduct are imposed under any Environmental Laws.

"Intellectual Property" means all intellectual property arising from or in respect of the following: (i) all patents and applications therefor, (ii) all trademarks, service marks, trade names, service names, brand names, all trade dress rights, logos, Internet domain names and

general intangibles of a like nature, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof, (iii) copyrights and registrations and applications therefor, (iv) inventions, trade secrets and confidential business information, whether patentable or nonpatentable and whether or not reduced to practice, know-how, manufacturing and product processes and techniques, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, (v) all computer software, data and documentation, (vi) other proprietary rights relating to any of the foregoing subsections (i) through (v), including remedies against infringements thereof and rights of protection of interest therein under the Laws of all jurisdictions, and (vii) all rights to sue for and collect damages for past infringement of any of the foregoing subsections (i) through (vi).

"Inventory" shall mean all inventories, including raw materials, food and beverage (alcoholic and non-alcoholic) inventories, linens, tableware, glasses, smallwares, dishes, ingredients, finished product and administrative, cleaning and other supplies and materials.

"Knowledge of the Sellers" means the actual knowledge, after due inquiry, of those individuals listed on Schedule 1.1(k).

"Law" means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation or common law requirement.

"Lease(s)" means all unexpired and previously unterminated leases, subleases, licenses or other agreements, in each case, pursuant to which the Sellers hold or use any Leased Real Property, including all amendments, extensions, renewals, guaranties or other agreements with respect thereto.

"Legal Proceeding" means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims, or any proceedings by or before a Governmental Body.

"Liability" means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or not accrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

"Locations" means any of the locations listed on Schedule 1.1(l).

"Material Adverse Effect" means a material adverse effect on or change in the Purchased Assets, taken as a whole, other than to the extent such effect or change results from or relates to an Excluded Matter; provided, however, that the act of filing a case under chapter 11 of the Bankruptcy Code by any Seller does not and shall not constitute a Material Adverse Effect.

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

"Permits" means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Body, including, without limitation, liquor licenses.

"Permitted Exceptions" means, with respect to any of the property or assets of the Sellers, whether owned as of the Effective Date or thereafter, (i) all defects, exceptions, restrictions, easements, rights of way and encumbrances of record of such property or asset and which either (x) are listed on Schedule B to the title policies listed on Schedule 1.1(p), (y) would not individually (or in the aggregate with others) be reasonably expected to have a Material Adverse Effect on the use or enjoyment of such asset, or (z) a title insurer has agreed to affirmatively insure against loss caused thereby in the applicable title policy by way of ALTA coverage or other affirmative coverage (except that the Sellers shall be obligated to remove mortgages, deeds of trust and other Encumbrances of a definite and ascertainable amount (other than those assumed by the Purchaser as set forth in this Agreement)); (ii) any statutory liens arising after the Closing for Taxes, assessments or other governmental charges not yet due and payable; (iii) zoning, entitlement and other land use and environmental regulations by any Governmental Body; and (iv) Encumbrances that constitute or arise from Assumed Liabilities.

"Person" means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

"Petition Date" means the date on which each of the Debtors file their respective petitions for relief under Chapter 11 of the Bankruptcy Code.

"Register Cash" means, for each Acquired Location, cash in an amount equal to the amount set forth on Schedule 1.1(r).

"Sale Order" means an Order entered by the Bankruptcy Court in substantially the form annexed hereto as Exhibit A, which attached form is acceptable to the Purchaser.

"Subsidiary" means each of the Company's direct and in direct subsidiaries, as listed on Schedule 5.1.

"Tax Authority" means any government, or agency, instrumentality or employee thereof, charged with the administration of any Law relating to Taxes.

"Taxes" means (i) all federal, state, local or foreign taxes, charges or other assessments, including, without limitation, all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, (ii) any item described in clause (i) for which a taxpayer is liable as a transferee or successor, by reason of the regulations under Section 1502 of the Code, or by contract, indemnity or otherwise, and (iii) all interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority in connection with any item described in clause (i) or (ii).

"Tax Return" means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes (including any attachments thereto or amendments thereof).

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated:

Term	Section
Additional Excluded Lease	2.1(b)(i)
Agreement	Preamble
Allocation Statement	11.2
ARVI	Preamble
Assumed Contracts	2.1(b)(vii)
Assumed Leases	2.1(b)(i)
Assumed Liabilities	2.3
Auction	7.2(a)
Audited Financial Statements	5.13
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bidding Procedures	7.2(a)
Bidding Procedures Order	7.2(a)
Break-Up Fee and Expense Reimbursement	7.4
Business	Recitals
Closing	4.1
Closing Date	4.1
Company	Preamble
Competing Transaction	7.1
Confidentiality Agreement	4.6
Debtors	Preamble
Deposit	3.2
Effective Date	Preamble
Employee List	5.15(a)
Equal Aggregate Compensation Level	9.1(a)
Escrow Agreement	3.3
Estate Claims	2.2(j)
Excluded Assets	2.2
Excluded Entities	2.2(m)
Excluded Liabilities	2.4
Financial Statements	5.13
Franchisee Subtenant	2.5(f)
Fuddruckers	Preamble
Howard County	Preamble
Initial Incremental Bid Amount	7.2(b)(i)
Interim Period	9.1(a)
IP License Agreement	5.6(b)
Leased Real Property	5.12(b)
Liquor License Approvals	8.3
Magic	Preamble
Material Contracts	5.11(a)

Non-Debtor Sellers	Preamble
Owned Real Property	5.12(a)
P&L Statements	5.13
Periodic Taxes	11.1
Purchased Assets	2.1(b)
Purchased Intellectual Property	2.1(b)(x)
Purchase Price	3.1
Purchased Inventory	2.1(b)(iii)
Purchaser	Preamble
Qualified Bid	7.2(b)(iii)
Qualified Bidder	7.2(b)(ii)
R. Wes	Preamble
Registered Intellectual Property	5.6(a)
Rejected Leases	2.5(c)
Retained Employee	9.1(a)
Salaried Non-Store Employees	9.1(a)
Sale Hearing	7.2(a)
Seller or Sellers	Preamble
Specified Benefits	9.1(a)
Subsequent Incremental Bid Amount	7.2(b)(iv)
Subleased Lease	2.5(f)
Subsidiary	Preamble
Termination Date	4.4(a)
Transactions	Recitals
Transferred Employees	9.1(a)
Unaudited Financial Statements	5.13
WARN Act	9.1(c)
White Marsh	Preamble

1.3 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to $ means U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

Herein. The words such as "herein," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE II

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets.

(a) On the terms and subject to the conditions set forth in this Agreement and the Sale Order, at the Closing, the Purchaser shall purchase, acquire and accept from the Sellers, and the Sellers shall sell, transfer, convey, assign and deliver to the Purchaser all of the Sellers' right, title and interest in, to and under the Purchased Assets, free and clear of all Encumbrances, other than the Permitted Exceptions and the Assumed Liabilities, to the maximum extent permitted by Section 363 of the Bankruptcy Code.

(b) For all purposes of and under this Agreement, the term "Purchased Assets" means all of the properties, assets, and rights of the Sellers (other than the Excluded Assets) existing as of the Closing, real or personal, tangible or intangible, including but not limited to:

(i) all Leases of the Sellers set forth in Schedule 2.1(b)(i) (the "Assumed Leases"), as such Schedule may be amended from time to time by the Purchaser, in its sole discretion, to remove up to twenty (20) Leases by delivering written notice at any time prior to the Closing Date (each of such Leases so removed is called an "Additional Excluded Lease") (provided that the Purchaser shall not amend the Schedule to include any Rejected Leases, and provided further that, if the Bankruptcy Court does not approve the transactions contemplated by the Sixth Amendment to Master Lease attached as Schedule 1.1(a), the Master Lease between Fuddruckers and Spirit Master

Funding, LLC shall constitute one Lease for purposes of this Section 2.1(b)(i)), together with the Sellers' interest in all security deposits related thereto and all permanent fixtures, improvements and appurtenances thereto and associated with such Assumed Leases;

(ii) all Owned Real Property, together with the Sellers' interest in all fixtures, improvements and appurtenances thereto and associated with such Owned Real Property;

(iii) all Inventory as of the Closing Date, whether at the Acquired Locations or in transit to an Acquired Location (collectively, the "Purchased Inventory");

(iv) all accounts receivable, notes receivable and other receivables related to the Purchased Assets, except as specifically provided in Section 2.2(o);

(v) intentionally omitted;

(vi) all goodwill incident to the Business and goodwill of the Sellers associated with the Business or the Purchased Assets;

(vii) all Contracts of the Sellers set forth on Schedule 2.1(b)(vii) or to be set forth thereon after the Effective Date at the sole option of the Purchaser (the "Assumed Contracts"), as such Schedule may be amended from time to time by the Purchaser, in its sole discretion, up to the Closing Date, in order to add or remove Contracts listed thereon (unless any such Contract has already expired, terminated or been rejected), together with the right to receive income in respect of such Assumed Contracts on or after the Closing Date, and any causes of action relating to past or present breaches of the Assumed Contracts;

(viii) all of the Sellers' prepaid charges and expenses paid in connection with or relating to any Purchased Asset;

(ix) all Furniture and Equipment at any Acquired Location;

(x) all rights in and to Intellectual Property owned or licensed by the Sellers, including, without limitation, all rights of the Sellers as franchisor under the Franchise Agreements with respect to the Fuddruckers "System", and all rights of the Sellers to franchise operations manuals, franchise training manuals and the Sellers' Uniform Franchise Offering Circular, and all rights of the Sellers in and to the names "Fuddruckers" and "Koo Koo Roo", all, in each case, to the broadest extent the Sellers are permitted by Law to transfer such Intellectual Property (the "Purchased Intellectual Property");

(xi) All computers, software, automation systems, accounting systems, point-of-sale systems (restaurant and corporate level), websites and related systems, master disks of source codes, and other proprietary information owned or licensed, whether for general business usage (e.g., accounting, word processing, graphics, spreadsheet analysis, etc.), or specific, unique-to-the-business usage, and all computer operating, security or programming software, owned or licensed and used in the operation

of the Business, including all developments and work-in-progress with regard to any of the foregoing, all, in each case, to the maximum extent assignable under the Bankruptcy Code and other applicable Law;

(xii) all Documents that are used in, held for use in or intended to be used in, or that arise out of, the Business and operations of the Sellers, but excluding any Documents related to an Excluded Asset; provided, however, that, following the Closing, the Purchaser shall provide the Sellers copies, upon a Seller's reasonable request and at the Sellers' sole cost and expense, of any Documents that are Purchased Assets as described in this subclause;

(xiii) all Permits used by the Sellers that relate to the Purchased Assets, to the maximum extent assignable under the Bankruptcy Code and other applicable Law;

(xiv) all rights under insurance policies relating to claims arising prior to the Closing for losses related to any Purchased Assets, or in lieu of such rights, an amount equal to the proceeds paid pursuant to any such rights between the Effective Date and the Closing;

(xv) any rights, claims or causes of action of the Sellers against third parties relating to the Purchased Assets or Assumed Liabilities (excluding, however, any Estate Claims and any claims raised in the matter captioned *Flannery et al. v. Magic Brands LLC*), arising out of events occurring prior to the Closing Date, including, for the avoidance of doubt, arising out of events occurring prior to the Petition Date;

(xvi) any rights under or pursuant to any and all warranties, representations and guarantees, express, implied or otherwise, made by suppliers and contractors relating to goods sold, or services provided, to the Sellers, but not including the Sellers' causes of action that are identified as Excluded Assets in Section 2.2; and

(xvii) the Register Cash.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, nothing herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to the Purchaser, and the Sellers shall retain all right, title and interest to, in and under, and all obligations with respect to, the Excluded Assets. For all purposes of and under this Agreement, the term "Excluded Assets" means:

(a) all accounts receivable, notes receivable and other receivables related solely to the Excluded Assets;

(b) all Excluded Locations and the Inventory, Furniture and Equipment) located at any Excluded Location;

(c) all Excluded Executory Agreements;

(d) all of the Sellers' prepaid charges and expenses paid in connection with or relating solely to any Excluded Asset;

(e) all deposits (including security deposits for rent, electricity, telephone or otherwise) and holdbacks (including credit card holdback payments), in each case related solely to any Excluded Executory Agreement or any other Excluded Asset;

(f) all personnel records of any Retained Employees and all Employee Benefit Plans;

(g) all Permits that are not assignable, and all Permits used solely in respect of the Excluded Locations and not also used or held for use in respect of the Acquired Locations;

(h) all documents relating to proposals to acquire the Business by Persons other than the Purchaser;

(i) all claims, rights, interests and proceeds with respect to (i) Tax refunds, rebates, abatement or other recovery relating to the Sellers' assets or the conduct of the Business for, or attributable to, the period prior to the Closing and (ii) Tax refunds, rebates, abatement or other recovery not relating to the Purchased Assets;

(j) all rights, claims or causes of action of the Sellers (i) against third parties to the extent any such claim relates to an Excluded Asset or Excluded Liability, (ii) under Chapter 5 of the Bankruptcy Code (collectively, the "Estate Claims"), and (iii) against any current or former directors or officers and all rights under insurance policies providing insurance to the Sellers' respective directors and officers, and the proceeds thereof with respect to such claims or causes of action;

(k) all Documents related primarily to any Excluded Asset; provided, that the Sellers shall provide copies of such Documents to the Purchaser upon request, at the Purchaser's cost and expense;

(l) all rights under insurance policies relating to claims for losses related to any Excluded Asset;

(m) all shares of capital stock or other equity interest of any Seller, and of ARVI of Pikesville, Inc., a Maryland corporation, A.R.I.V. – Rockville, Inc., a Maryland corporation, and 8725 Metcalf II, Inc., a Kansas corporation (collectively, the "Excluded Entities"), or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of any Seller or any Excluded Entity;

(n) all minute books, stock ledgers, corporate seals and stock certificates of the Sellers, and other books and records relating to the organization and existence of the Sellers as legal entities that the Sellers are required by Law to retain or that the Sellers determine are reasonably necessary to retain, including Tax Returns, financial statements and corporate or other entity filings, but excluding Documents that are Purchased Assets; provided, that the Sellers shall provide the Purchaser reasonable access, upon the Purchaser's reasonable request and at the Purchaser's sole cost and expense, to any books and records described in this subclause;

(o) all credit card accounts receivable, deposits and other holdbacks being held by credit card companies, in each case as of the Closing Date, in connection with credit cards accepted by the Sellers;

(p) all cash, cash equivalents, bank deposits or similar cash items of the Sellers other than the Register Cash;

(q) all deposits, retainers or on account cash paid to the Sellers' professionals and advisers (whether retained in the Bankruptcy Case or not); and

(r) all rights of the Sellers under this Agreement.

2.3 Assumption of Liabilities. On the terms and subject to the conditions and limitations set forth in this Agreement, at the Closing, the Purchaser shall assume, effective as of the Closing, and shall pay, perform and discharge in accordance with their respective terms, only the following Liabilities (without duplication) existing as of the Closing Date (collectively, the "Assumed Liabilities"):

(a) all Liabilities of the Sellers arising, and to be performed, after the Closing Date under the Assumed Executory Contracts, but specifically excluding all obligations or liabilities of any kind whatsoever related to any matter, circumstance or default existing at or prior to the Closing;

(b) all Liabilities arising, and to be performed, after the Closing Date with regard to the Purchased Assets, but specifically excluding all obligations or liabilities of any kind whatsoever related to any matter, circumstance or default existing at or prior to the Closing;

(c) all Liabilities arising and to be performed after the Closing Date with regard to the employment by Purchaser of any of the Transferred Employees, but specifically excluding all obligations or liabilities of any kind whatsoever related to any matter, circumstance or default existing at or prior to the Closing;

(d) all Liabilities set forth in Section 2.5(h); and

(e) all Liabilities of the Sellers with respect to Customer Programs.

2.4 Excluded Liabilities. Except for the Assumed Liabilities, the Purchaser shall not assume and shall be deemed not to have assumed any Liabilities of the Sellers or the Business of whatever nature, whether presently in existence or arising hereafter, known or unknown, disputed or undisputed, contingent or non-contingent, liquidated or unliquidated or otherwise, including, without limitation, any of the Liabilities set forth below (collectively, the "Excluded Liabilities").

(a) all Liabilities of the Sellers with respect to the Excluded Assets;

(b) except as set forth in Sections 8.8, 8.10 and 11.1, all Liabilities of the Sellers for Taxes, including (i) any Taxes arising as a result of Seller's operation of the Business

or ownership of the Purchased Assets prior to the Closing Date, (ii) any Taxes that will arise as a result of the consummation of the Transactions, and (iii) any deferred Taxes of any nature;

(c) all Liabilities under any Excluded Executory Agreement or under any Assumed Executory Agreement which arises after the Closing Date but which is based on or relates to a breach of such Assumed Executory Agreement occurring prior to the Closing Date;

(d) all Cure Costs related to the Assumed Executory Contracts (including, without limitation, unpaid Lease obligations for the month in which the Petition Date occurs);

(e) all Liabilities to distribute to any of Sellers' stockholders or otherwise apply all or any part of the Purchase Price, including any Tax withholding obligations of the Sellers in connection therewith;

(f) all Liabilities under any employment, severance, retention, termination or other arrangement or agreement of the Sellers with any Employees;

(g) all Liabilities under that certain Key Employee Incentive Plan effective as of April 15, 2010;

(h) all Liabilities arising on or before the Closing Date with regard to the employment by the Sellers of any Transferred Employees;

(i) all Liabilities related to any Legal Proceeding existing as of or occurring prior to the Closing Date or other events, conduct or conditions existing as of or occurring prior to the Closing Date that constitute a violation or non-compliance with any Law, any judgment, decree or order of any Governmental Body, or any Permit; and

(j) all Liabilities of the Sellers arising under or related to this Agreement.

2.5 Assignment of Contracts and Leases.

(a) On the Closing Date, the Debtors shall, pursuant to the Sale Order, assume and assign to the Purchaser the Assumed Executory Contracts.

(b) From the Effective Date through and including the Closing Date, the Debtors shall (i) not reject any Assumed Executory Contract unless otherwise agreed to, in writing, by the Purchaser, and (ii) with respect to any Assumed Lease whose renewal option notice period expires during such period, renew or otherwise extend such Assumed Lease to the extent permitted pursuant to such Assumed Lease.

(c) On the Petition Date or as soon as practicable thereafter, the Debtors shall file a motion to reject those Leases set forth on Schedule 2.5(c) (the "Rejected Leases").

(d) The Debtors shall serve on all counterparties to Assumed Executory Contracts a notice specifically stating that the Debtors are or may be seeking to assume and assign the Assumed Executory Contracts and shall notify such parties of the deadline for objecting to the proposed Cure Costs set forth in such notice, which deadline shall not be later

than the Election Deadline. In the event of an objection to the proposed Cure Costs by a counterparty, the Debtors shall attempt to resolve such objection (subject to approval by the Purchaser) or, at the Debtors' sole cost and expense, shall litigate such objection under such procedures as the Bankruptcy Court shall approve and proscribe. In the event that a dispute regarding the Cure Costs with respect to an Assumed Executory Contract has not been resolved as of the Closing Date, the parties shall nonetheless remain obligated to consummate the Transactions (subject to satisfaction of the conditions to Closing set forth in Article X).

(e) On the later of (i) the Closing Date, or (ii) as soon as practicable following final determination by the Bankruptcy Court of any disputed Cure Costs in accordance with Section 2.5(d), the Debtors shall pay the Cure Costs to the counterparties to each such Assumed Executory Contract.

(f) The Debtors are the tenant under those Leases identified on Schedule 2.5(f) (each, a "Subleased Lease"). Pursuant to each Subleased Lease, the Debtors have subleased the applicable premises to a Franchisee (the "Franchisee Subtenant"). To the extent requested by the Purchaser and agreed to by the Franchisee Subtenant, the Debtors agree to use their commercially reasonable efforts to obtain an order of the Bankruptcy Court approving the assumption and assignment of any Subleased Lease to the Franchisee Subtenant thereunder, in which event any such Subleased Lease shall not be an Assumed Lease hereunder.

(g) From and after the Effective Date, the Purchaser and the Debtors will confer with one another with respect to the assumption and assignment of certain Leases, together with all associated Inventory, Furniture and Equipment and other Purchased Assets as may be mutually agreed, to a new Franchisee (together with signing a new Franchise Agreement with that Franchisee) prior to the Closing. To the extent mutually agreed upon, the Debtors agree to use their commercially reasonable efforts to obtain an order of the Bankruptcy Court approving the assumption and assignment of any such Lease, Inventory, Furniture, Equipment and other Purchased Assets to such new Franchisee, in which event any such Lease shall not be an Assumed Lease hereunder. Any Lease so assumed and assigned pursuant to this Section 2.5(g) shall reduce the number of Leases which the Purchaser may remove from Schedule 2.1(b)(i) in accordance with Section 2.1(b)(i).

(h) If (i) the Purchaser provides written notice in accordance with Section 2.1(b)(i) of an Additional Excluded Lease, (ii) the Debtors provide notice to the applicable landlord of the rejection of such Additional Excluded Lease within twenty-four (24) hours of its receipt of notice from the Purchaser, and (iii) the timing of the rejection of such Additional Excluded Lease results in the Debtors' incurring rent or other occupancy costs under such Additional Excluded Lease for the month immediately following the month during which the Closing occurs, then the Purchaser shall pay such rent or other amounts to the Debtors.

(i) The Purchaser will support the Debtors in its efforts to obtain the Bankruptcy Court's approval of the Sixth Amendment to Master Lease attached as Schedule 1.1(a).

2.6 Further Conveyances and Assumption. From time to time following the Closing, the Sellers and the Purchaser shall, and shall cause their respective Affiliates to, execute,

acknowledge and deliver all such further conveyances, notices, assumptions, releases and other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure each of the Purchaser and the Sellers their respective rights, liabilities and obligations under this Agreement.

ARTICLE III

CONSIDERATION

3.1 Purchase Price. The aggregate cash consideration for the Purchased Assets (the "Purchase Price") shall be an amount equal to the sum of: (a) the Asset Price, plus (b) the amount of the Register Cash, and plus (c) the amount of all security deposits (as reflected in Schedule 5.12(d)) held by the landlords under and pursuant to the Assumed Leases as of the Closing.

3.2 Purchase Price Deposit. Upon the execution of this Agreement, the Purchaser shall cause the delivery to the Escrow Agent of cash equal to Four Million Dollars ($4,000,000.00) (the "Deposit"), which Deposit shall be held by the Escrow Agent in a separate, interest-bearing, segregated account and applied as follows:

(a) if the Closing shall occur, the Escrow Agent shall pay the Deposit (together with interest thereon) to the Sellers to be applied towards the payment of the Purchase Price;

(b) if this Agreement is terminated by the Sellers pursuant to Section 4.4(f), the Escrow Agent shall pay the Deposit (together with interest thereon) to the Sellers to be retained by the Sellers; and

(c) if this Agreement is terminated other than by the Sellers pursuant to Section 4.4(f), the Escrow Agent shall pay the Deposit (together with interest thereon) to the Purchaser (or its affiliate hat paid such Deposit to the Escrow Agent).

The Purchaser shall cause its affiliate that paid the Deposit to the Escrow Agent to give all notices and written instructions as may be necessary under the Escrow Agreement.

3.3 Escrow Agreement. Simultaneously with the execution of this Agreement, the Sellers, the Purchaser (or its affiliate that paid the Deposit to the Escrow Agent) and the Escrow Agent shall execute an escrow agreement in the form set forth in Schedule 3.3 (the "Escrow Agreement"). All Sellers irrevocably appoint Magic as the Sellers Representative pursuant to and for all purposes, rights and obligations under the Escrow Agreement.

ARTICLE IV

CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 hereof (or the waiver thereof by the party entitled to waive the applicable condition), the closing of the purchase and sale of the Purchased Assets and the

assumption of the Assumed Liabilities provided for in Article II (the "Closing") shall take place at the offices of Goulston & Storrs, P.C. in Boston (or at such other place as the parties may designate in writing) at 10:00 a.m. (Boston time) on the date the conditions set forth in Article X are satisfied or waived (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the parties hereto. The date on which the Closing shall be held is referred to as the "Closing Date."

4.2 Deliveries by the Sellers. At the Closing, the Sellers shall deliver to the Purchaser:

(a) as applicable, one or more duly executed bills of sale, and/or special warranty deeds subject only to the Permitted Exceptions, real estate transfer declarations, and all other documents, instruments or writings of conveyance and transfer, including, but not limited to all necessary transfer tax documents, notice to tenants, and such documents as may be reasonably required by the title company issuing the applicable owner's title policy, in a form to be agreed upon by the parties hereto, as may be necessary to convey the Purchased Assets to the Purchaser, including without limitation one or more duly executed assignment and assumption agreements in a form to be agreed upon by the parties hereto with respect to each of the Assumed Leases and Assumed Contracts;

(b) duly executed assignments of the U.S. trademark registrations and applications included in the Purchased Intellectual Property, in a form suitable for recording in the U.S. trademark office, and general assignments of all other Purchased Intellectual Property;

(c) or otherwise put the Purchaser in possession and control of, all of the Purchased Assets of a tangible nature;

(d) the officer's certificate required to be delivered pursuant to Sections 10.1(a) and 10.1(b);

(e) affidavits executed by each Seller that such Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code; and

(f) a copy of the Sale Order.

4.3 Deliveries by the Purchaser. At the Closing, the Purchaser shall deliver to the Sellers:

(a) cash in the amount of the Purchase Price (including through providing instructions (or causing its affiliate party to the Escrow Agreement to provide written instructions) to the Escrow Agent under the Escrow Agreement to deliver the Deposit, together with any interest thereon, to the Sellers);

(b) one or more duly executed bills of sale, and/or deed of transfer, and all other documents, instruments or writings of conveyance and transfer, in a form to be agreed upon by the parties hereto, as may be necessary to convey the Purchased Assets to the Purchaser, and for the Purchaser to assume the Assumed Liabilities, including without limitation one or more

duly executed assignment and assumption agreements in a form to be agreed upon by the parties hereto with respect to each of the Assumed Leases and Assumed Contracts; and

(c) the officer's certificate required to be delivered pursuant to Sections 10.2(a) and 10.2(b).

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by the Purchaser or the Sellers, if the Closing shall not have occurred by the close of business on July 15, 2010 (the "Termination Date"); provided, however, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by the Purchaser or the Sellers, then the breaching party may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of the Sellers and the Purchaser;

(c) by the Purchaser, if any condition to the obligations of the Purchaser set forth in Section 10.1 or 10.3 shall have become incapable of fulfillment other than as a result of a breach by the Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by the Purchaser;

(d) by the Sellers, if any condition to the obligations of the Sellers set forth in Section 10.2 or 10.3 shall have become incapable of fulfillment other than as a result of a breach by the Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by the Sellers;

(e) by the Purchaser, if there shall be a breach by the Sellers of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 10.1 or 10.3 and which breach has not been cured by the earlier of (i) seven (7) days after the giving of written notice by the Purchaser to the Sellers of such breach and (ii) the Termination Date;

(f) by the Sellers, if there shall be a breach by the Purchaser of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Sections 10.2 or 10.3 and which breach has not been cured by the earlier of (i) seven (7) days after the giving of written notice by the Sellers to the Purchaser of such breach and (ii) the Termination Date;

(g) by the Sellers or the Purchaser if there shall be in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions, it being agreed that the parties hereto shall promptly appeal any adverse determination which is not non-appealable (and pursue such appeal with reasonable diligence); and

(h) automatically, upon the earlier to occur of (i) the consummation of a Competing Transaction, and (ii) sixty (60) days after the entry of a Sale Order with respect to a Competing Transaction.

4.5 Procedure Upon Termination. In the event of termination pursuant to Section 4.4, written notice thereof shall forthwith be given to the other party or parties, and this Agreement shall terminate, and the Transactions shall be abandoned, without further action by the Purchaser or the Sellers.

4.6 Effect of Termination. In the event that this Agreement is validly terminated as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination; provided, however, that the provisions of Articles VII and XII hereof, and that certain Confidentiality Agreement dated March 10, 2010 (the "Confidentiality Agreement"), shall survive any such termination and shall be enforceable hereunder; provided further, however, that nothing in this Section 4.6 or elsewhere in this Agreement shall be deemed to release any party from liability for any breach of its obligations under this Agreement, except that if the Purchaser terminates this Agreement under Section 4.4(e) on the basis that the closing condition in Section 10.1 has failed to have been satisfied, then, subject to payment by the Sellers to the Purchaser of an amount equal to the Purchaser's reasonable and documented out-of-pocket costs and expenses incurred in connection with the Transactions, which amount shall in no event be greater than Four Hundred Thousand Dollars ($400,000), such termination shall be the Purchaser's sole remedy, and neither the Sellers nor the Purchaser shall have any further liability or obligation with respect to the same; and provided further, however, that if the Sellers terminate this Agreement under Section 4.4(a) or if this Agreement terminated under Section 4.4(g), subject to the payment of the Break-Up Fee and Expense Reimbursement in accordance with Section 7.4 upon the consummation of a Competing Transaction at any time within the six (6) month period following such termination, and provided further, however, if this Agreement terminates under Section 4.4(h), subject to the payment of the Break-Up Fee and Expense Reimbursement in accordance with Section 7.4; and provided further, however, that neither the reimbursement of out-of-pocket costs and expenses nor the Break-Up Fee and Expense Reimbursement shall be payable in any circumstance other than as set forth in this Section 4.6.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each Seller hereby jointly and severally represents and warrants to the Purchaser that:

5.1 Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and in each jurisdiction where it is required by applicable Law to be qualified to do business except where the failure to be so qualified would not, individually or in the aggregate, be material to the ownership and operation of the Business, and subject to the limitations imposed on such Seller under the Bankruptcy Code, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Schedule 5.1 sets forth each Seller and the jurisdiction of its organization. Each Seller has all requisite power and authority to conduct

the Business as currently conducted and to own and use the assets and properties owned and used by it. Except as set forth in Schedule 5.1, none of the Sellers directly or indirectly control or have any direct or indirect equity participation or similar interest in any corporation, partnership, limited liability company, joint venture or other business association or entity. None of the Non-Debtor Sellers has any assets other than liquor licenses and none has any Liabilities except as set forth on Schedule 5.3(b).

5.2 Authorization of Agreement. Subject to such authorization as is required by the Bankruptcy Court, each Seller has the requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and to perform its respective obligations hereunder and thereunder. The execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or limited liability company action on the part of each Seller. This Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party has been duly and validly executed and delivered by each Seller and (assuming the due authorization, execution and delivery by the other parties hereto and receipt of such authorizations as is required by the Bankruptcy Court with respect to any Seller) this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party constitutes legal, valid and binding obligations of each Seller enforceable against such Seller in accordance with its respective terms, subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.3 Conflicts; Consents of Third Parties.

(a) The execution and delivery by each Seller of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party, the consummation of the transactions contemplated hereby and thereby, or compliance by such Seller with any of the provisions hereof and thereof do not conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the certificate of incorporation and by-laws or comparable limited liability company organizational documents of such Seller; (ii) except to the extent not required if the Sale Order is entered and except as set forth on Schedule 5.3(a), any Contract, Lease or Permit to which such Seller is a party or by which any of the properties or assets of such Seller are bound, other than such conflicts, violations, defaults, terminations or cancellations that would not reasonably be expected to be material, individually or in the aggregate, to the ownership and operation of the Business or to the Acquired Location(s) impacted by the conflict, violation, default, termination or cancellation; (iii) except to the extent not required if the Sale Order is entered, any Order of any Governmental Body applicable to such Seller or any of the properties or assets of such Seller as of the Effective Date; or (iv) except to the extent not required if the Sale Order is entered, any applicable Law.

(b) Except as set forth on Schedule 5.3(b) and except to the extent not required if the Sale Order is entered, no consent, waiver, approval, Order, or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the

part of the Sellers in connection with the execution and delivery of this Agreement or any other agreement, document or instrument contemplated hereby or thereby to which it is a party, the compliance by the Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assignment or conveyance of the Purchased Assets, or the taking by the Sellers of any other action contemplated hereby or thereby, except for (i) the entry of the Sale Order and receipt of such other authorizations as is required by the Bankruptcy Court, and (ii) such consents, waivers, approvals, Orders, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not reasonably be expected to be material, individually or in the aggregate, to the ownership and operation of the Business or to the Acquired Location(s) impacted by such failure.

5.4 Title to Purchased Assets. The Sellers own and have good and marketable title to, and, subject to entry of the Sale Order, have the right to transfer to the Purchaser, the Purchased Assets, free and clear of all Encumbrances, other than the Permitted Exceptions, those created by the Purchaser and those set forth on Schedule 5.4. None of the Excluded Entities owns or has any rights to any assets used in the operation of the Business.

5.5 Taxes. No power of attorney currently in force has been granted by the Sellers with respect to the Business that would be binding on the Purchaser with respect to taxable periods commencing on or after the Closing Date. Other than those set forth on Schedule 5.5, there are no liens for Taxes on any of the Purchased Assets other than Permitted Exceptions. None of the Sellers is a foreign person within the meaning of Section 1445(f)(3) of the Code.

5.6 Purchased Intellectual Property.

(a) Schedule 5.6(a) lists each item of Intellectual Property owned by any Seller and used in connection with the Business as of the Effective Date and for which any Seller has received or applied for a registration, including, without limitation, any patent, patent application, copyright registration or application therefor, and trademark, trade name, service mark, domain name registration or application therefor ("Registered Intellectual Property"). To the Knowledge of the Sellers, all of the Registered Intellectual Property is valid and enforceable.

(b) The Sellers own all right, title and interest in and to, or have a valid and enforceable right or license to use pursuant to a written agreement set forth on Schedule 5.6(b) (collectively, the "IP License Agreements"), all material Intellectual Property used in or necessary for, and material to, the operation of the Business as currently conducted.

(c) To the Knowledge of the Sellers, no Seller is currently infringing, misappropriating or otherwise violating, and the operation of the Business as currently conducted does not infringe, misappropriate or violate, any Intellectual Property of any Person, except for any infringement, misappropriation or violation not material to the Business. To the Knowledge of the Sellers, no Person is currently infringing, misappropriating or violating any of the material Intellectual Property owned by any Seller.

(d) Schedule 5.6(d) sets forth a complete and accurate list of all material licenses, sublicenses and other agreements, other than the Franchise Agreements, relating to the licensing of Intellectual Property by any Seller.

5.7 Permits. Schedule 5.7 sets forth a list of all material Permits held by the Sellers as of the Effective Date. Except as set forth on Schedule 5.7 and as may have resulted from the commencement of the Bankruptcy Case, all Permits are valid and in full force and effect and, to the Knowledge of the Sellers, none of the Sellers are in default under or in violation of any such Permit, except for such defaults or violations which would not reasonably be expected, individually or in the aggregate, to be material to the operation of the Business, as a whole, as currently conducted or material to the Acquired Location(s) impacted by the default or violation.

5.8 Environmental Matters. Except as set forth on Schedule 5.8 and except as would be material to the ownership and operation of the Business, no Seller has received written, or to the Knowledge of the Sellers, oral, notice of any pending or, to the Knowledge of the Sellers, threatened claim or investigation by any Governmental Authority or any other Person concerning material potential liability of any Seller under Environmental Laws in connection with the ownership or operation of the Business, the Owned Real Property or the Leased Real Property. To the Knowledge of the Sellers, there has not been a release of any Hazardous Substance at, upon, in, from or under (i) any of the Owned Real Property or Leased Real Property or (ii) at any location to or from which a Seller has transported or arranged for the transportation or disposal of Hazardous Substances, in each case, in quantities or under circumstances that would give rise to any material liability or require remediation, investigation or clean up pursuant to any Environmental Law.

5.9 Employee Benefits.

(a) Schedule 5.9 sets forth a complete and correct list of all Employee Benefit Plans of the Sellers as of the Effective Date. Except as set forth on Schedule 5.9, each Employee Benefit Plan has been operated and administered in all material respects in accordance with its terms and applicable Law, except where any failure to be so operated and administered would not, individually or in the aggregate, be expected to be material to the operation of the Business as currently conducted and except as may have resulted from the filing of the Bankruptcy Case. The Sellers have made available to Buyer true and complete copies of all material Employee Benefit Plans or a description of the benefits thereunder. Except as set forth on Schedule 5.9, each Employee Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code is so qualified and is the subject of a favorable Internal Revenue Service determination or opinion letter regarding such qualified status and the trusts maintained thereunder are exempt from taxation under Section 501(a) of the Code. Except as set forth on Schedule 5.9, there are no pending, or to the Knowledge of the Sellers, threatened claims by or on behalf of any Employee Benefit Plan, or by any employee or beneficiary covered under any such Plan with respect to any such Employee Benefit Plan (other than routine claims for benefits). There are no material outstanding Liabilities of, or related to, any Employee Benefit Plan, other than Liabilities for benefits to be paid in the ordinary course to participants in such Employee Benefit Plan and their beneficiaries in accordance with the terms of such Employee Benefit Plan or as otherwise resulting from the Bankruptcy Case.

(b) No Seller or ERISA Affiliate sponsors, maintains or otherwise contributes to or has any liability with respect to any "employee pension benefit plan" (as defined in Section 3(2) of ERISA) which is or was subject to Title IV of ERISA, including any "multi-employer plan" (as defined in Section 4001(a)(3) of ERISA), or subject to Section 412 of the Code.

(c) All contributions and payments (including salary deferral contributions elected by employees) with respect to Employee Benefit Plans that are due and owing or required to be made by a Seller or an ERISA Affiliate with respect to periods ending on or before the Closing Date (including periods from the first day of the current plan year or policy year to the Closing Date) have been, or will be, made before the Closing Date in accordance with applicable law and the appropriate plan document, actuarial report, collective bargaining agreements or insurance contracts or arrangements or as otherwise required by ERISA or the Code. With respect to each Employee Benefit Plan, there has not occurred, and no person or entity is contractually bound to enter into, any "prohibited transaction" within the meaning of Section 4975(c) of the Code or Section 406 of ERISA, which transaction is not exempt under Section 4975(d) of the Code or Section 408 of ERISA.

5.10 Litigation. Except as set forth on Schedule 5.10, there are no Legal Proceedings pending or, to the Knowledge of the Sellers, threatened against any Seller before any Governmental Body, which, if adversely determined, would reasonably be expected to be, individually or in the aggregate, material to the operation of the Business as currently conducted. Except as set forth on Schedule 5.10, there are no Orders outstanding against any Seller which would reasonably be expected to be, individually or in the aggregate, material to the operation of the Business as currently conducted.

5.11 Material Contracts.

(a) Schedule 5.11(a) contains a list, as of the Effective Date, of all Contracts (the "Material Contracts") pursuant to which any Seller has any rights or benefits or undertakes any obligations or liabilities with respect to the Business, that:

(i) has a duration of one year or more and is not terminable without cause or penalty upon 90 days or less prior written notice by any party;

(ii) requires or could reasonably be expected to require any party thereto to pay $100,000 or more in any 12 month period;

(iii) contains any non-competition covenant or exclusivity arrangement binding against any Seller;

(iv) involves any Contract (A) granting or obtaining any right to use any material Purchased Intellectual Property (including, without limitation, any Franchise Agreements) or (B) restricting the Sellers' rights to the use of any Purchased Intellectual Property;

(v) regards the employment, services, consulting, termination or severance from employment relating to or for the material benefit of any director, officer, employee, independent contractor or consultant of any Seller;

(vi) constitutes joint venture, partnership and similar Contracts involving a sharing of profits or expenses;

(vii) provides for the supply or distribution of products and that is material to the operation of the Business as currently conducted;

(viii) is an IP License Agreement;

(ix) any agreement for the disposition of any significant portion of the assets, properties or rights of any Seller or any agreement for the acquisition by any Seller of the assets, properties or rights of any other Person (other than purchases of items normally held out for sale by such Person in the ordinary course of business); or

(x) any agreement (or group of related agreements) under which any Seller has assumed or guaranteed (or may assume or guarantee) any Liability of a third party, other than pursuant to a sublease with a Franchisee.

(b) The Sellers have delivered to or made available to the Purchaser a complete and accurate copy of each Material Contract. With respect to each Material Contract, except as set forth in Schedule 5.11(b): (i) such Material Contract is legal, valid, binding and enforceable against the Seller and, to the Knowledge of the Sellers, each other party thereto, and is in full force and effect except as such enforceability may be subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); and (ii) except for breaches and defaults of the type referred to in Section 365(b)(2) of the Bankruptcy Code, none of the Sellers or, to the Knowledge of the Sellers, any of the counterparties to such Material Contract, are in material default under any of the terms of such Material Contract.

5.12 Property.

(a) Schedule 5.12(a) lists all of the locations and parcels of real estate which are owned by any Seller (the "Owned Real Property"). Each Seller listed on Schedule 5.12(a) as the owner of any Owned Real Property has good and marketable title to such Owned Real Property.

(b) Schedule 5.12(b) lists all of the leasehold interests of any Seller under leases of real property (the "Leased Real Property"). The Sellers have delivered or made available to the Purchaser a true and complete copy of each of the aforementioned Leases, as it has been amended, modified, restated or otherwise supplemented.

(c) The base rents set forth on Schedule 5.12(c) accurately reflect in all material respects the base monthly rents being paid by the applicable Seller as tenant, and/or being collected by Seller as landlord, under the Assumed Leases as of the Effective Date.

(d) Schedule 5.12(d) lists, as of the Effective Date, the amount of all security deposits held by the landlords under all Assumed Leases.

5.13 Financial Statements. The Sellers have provided to the Purchaser a true and complete copy of: (i) the unaudited balance sheet, statement of income from operations and profit and loss statement as of and for the eight months ended February 21, 2010 (the "Unaudited Financial Statements"); (ii) the unaudited profit and loss statements at Location levels for the

eight months ended February 21, 2010 ("P&L Statements"); and (iii) the audited consolidated financial statements as of and for the year ended June 28, 2009 (the "Audited Financial Statements" and together with the Unaudited Financial Statements and the P&L Statements, the "Financial Statements"). The Financial Statements together with the footnotes thereto fairly present in all material respects the consolidated financial position, results of operations and cash flows of the Sellers (as applicable) for the respective fiscal periods or as of the respective dates set forth therein in accordance with GAAP, except with respect to the Unaudited Financial Statements and the P&L Statements for the absence of footnotes and normal year end adjustments.

5.14 Brokers. Except for the fees and expenses of FocalPoint Securities, LLC (for which the Sellers shall be solely responsible), and subject to approval of the Bankruptcy Court, the Sellers do not have any obligation to pay any fees, commissions or other similar compensation to any broker, finder, investment banker, financial advisor or other similar Person in connection with the Transactions.

5.15 Employees.

(a) Schedule 5.15 is a true and complete list, as of the Effective Date, of all Employees and independent contractors of any Seller whose total annual compensation for the current fiscal year is expected to exceed $40,000 (the "Employee List"), setting forth for each such individual (i) his or her position (including whether an employee or independent contractor), (ii) his or her current salary or hourly wage, (iii) any raises or reductions to his or her salary or hourly wage received by him or her since January 1, 2009, (iv) a statement as to whether such person is compensated in whole or in part on a commission basis, and if so, a description of such commission arrangement, and (v) the amount of any bonuses, commissions or other compensation paid to him or her in respect of calendar year 2009 (whether paid in cash, securities or other property). Except as indicated on the Employee List, no Employee or consultant on the Employee List has given or received notice terminating his or her employment with the Seller.

(b) No Seller is a party to or otherwise bound by any collective bargaining agreement or relationship with a labor union or other labor organization. No Seller is subject to any charge, demand, petition or representation proceeding seeking to compel, require or demand that it bargain with any labor union or labor organization.

5.16 Related Party Transactions. Except as set forth on Schedule 5.16, no officer, director, direct or indirect owner, or Affiliate of any Seller (except for another Seller) owns any property or right, tangible or intangible, that is used in the Business.

5.17 Franchise Matters.

(a) Schedule 5.17(a) sets forth the Franchisee of record for each Person who has a currently-effective Franchise Agreement. Except as set forth on Schedule 5.17(a), each of the currently-effective Franchise Agreements is substantially similar to the form of Franchise Agreement incorporated into the current FDD, a copy of which form was made available to Purchaser. Except as described in Schedule 5.17(a), no Seller has waived any material right or

benefit of any Seller, or any material obligation of any Franchisee, under any Franchise Agreement. Except as set forth on Schedule 5.17(a), there are no other material Contracts in effect between any Seller and any Franchisee (in its capacity as such) other than the Franchise Agreements. No Seller nor any of its Affiliates has, since January 1, 2006 and until the Effective Date, (i) sold Franchises anywhere in the world except for the United States, Canada, and the Middle East, and (ii) offered Franchises anywhere in the world except for the United States, Canada, Mexico, the Middle East, Greece and the Dominican Republic.

(b) Either the current FDD or Schedule 5.17(b) contains a summary of each Franchise-related Legal Proceeding or formal mediation proceeding which is pending or, to the Knowledge of the Sellers, threatened in writing, except where such Legal Proceeding, either individually or in the aggregate, is not, and would not reasonably be expected to be, material to the operation of the Business as currently conducted.

(c) Except as set forth on Schedule 5.17(c), no Franchisee or other Person has any enforceable right of first refusal, option or other right or arrangement to sign any Franchise Agreement or acquire any Franchise other than Franchisees under currently-effective Development Agreements. Except as set forth on Schedule 5.17(c), neither the Company nor any of its Subsidiaries has granted any protected territory or exclusive territory or is otherwise limited in its right to grant Franchises other than currently-effective Development Agreements and Franchise Agreements.

(d) The Sellers have made available to the Purchaser an accurate and complete copy of each FDD that any Seller has used to offer or sell Franchises at any time since October 26, 2009.

5.18 Customer Programs. Schedule 5.18 contains a summary of the Customer Programs under which any Seller has any Liability, together with the amount of such Liability as of March 31, 2010.

5.19 No Other Representations or Warranties; Schedules. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto): (a) none of the Sellers nor any other Person makes any other express or implied representation or warranty with respect to the Sellers, the Business, the Purchased Assets, the Assumed Liabilities or the Transactions, and (b) each Seller disclaims (i) any other representations or warranties, whether made by the Sellers, any Affiliate of the Sellers, or any of the Sellers' or their Affiliates' respective officers, directors, managers, employees, agents or representatives, and whether expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose) and (ii) all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to the Purchaser or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to the Purchaser by any director, manager, officer, employee, agent, consultant, or representative of the Sellers or any of its Affiliates). Without limiting the foregoing, the Sellers expressly disclaim and make no representations or warranties to the Purchaser regarding the probable success or profitability of the Business. The disclosure of any matter or item in any Schedule hereto shall not be deemed to

constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would result in a Material Adverse Effect.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Sellers that:

6.1 Organization and Good Standing. The Purchaser is an entity duly organized, validly existing and in good standing under the Laws of the Bahamas and has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

6.2 Authorization of Agreement. The Purchaser has the requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which the Purchaser is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of the Purchaser. This Agreement and each other agreement, document or instrument contemplated hereby or thereby to which the Purchaser is a party has been duly and validly executed and delivered by it and (assuming the due authorization, execution and delivery by the other parties hereto) this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party constitutes legal, valid and binding obligations of it enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 Conflicts; Consents of Third Parties.

(a) The execution and delivery by the Purchaser of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party, the consummation of the transactions contemplated hereby and thereby, or compliance by it with any of the provisions hereof or thereof do not conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) its certificate of incorporation or bylaws, (ii) any agreement, contract, indenture, note, bond, lease, license, approval, authorization, consent, or permit to which it is a party or by which any of its properties or assets are bound, other than such conflicts, violations, defaults, terminations or cancellations that would not reasonably be expected to cause, individually or in the aggregate, a material adverse effect on the Purchaser or its ability to consummate the Transactions or perform its obligations under this Agreement; (iii) any Order of any Governmental Body applicable to it or any of its properties or assets as of the Effective Date; or (iv) any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required in connection with the execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which the Purchaser is a party, the compliance by it with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, or its taking of any other action contemplated hereby or thereby, except for such consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make, would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Purchaser or its ability to consummate the Transactions or perform its obligations under this Agreement.

6.4 Brokers. The Purchaser does not have any obligation to pay any fees, commissions or other similar compensation to any broker, finder, investment banker, financial advisor or other similar Person in connection with the Transactions.

6.5 Condition of the Purchased Assets. Notwithstanding anything contained in this Agreement to the contrary, the Purchaser acknowledges and agrees that the Sellers are not making any representations or warranties whatsoever, express or implied, beyond those expressly given by the Sellers in Article V (as modified by the Schedules hereto), and the Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets are being transferred on a "where is" and, as to condition, "as is" basis. The Purchaser acknowledges that it has conducted and will conduct its own due diligence and in making the determination to proceed with the Transaction, the Purchaser has relied and will be relying on the results of its own independent investigation.

6.6 Communications. Prior to the filing of the Bidding Procedures Order, the Purchaser shall not, and shall cause its Affiliates and representatives not to, contact, or engage in any discussions or otherwise communicate with, any of the Business's suppliers, franchisees and others with whom Sellers have material commercial dealings without obtaining the prior consent of the Sellers (which will not be unreasonably withheld but, if given, may be conditioned on the Sellers having the right to designate an officer of a Seller reasonably acceptable to the Purchaser, to participate in any meetings or discussions with any such suppliers, franchisees or others). After the filing of the Bidding Procedures Order, the Purchaser shall notify the Sellers in advance of any of the above-described discussions or communications. Notwithstanding anything to the contrary in the Confidentiality Agreement, nothing in the Confidentiality Agreement shall prohibit any of the activities contemplated by and conducted in accordance with this Section 6.6.

ARTICLE VII

BANKRUPTCY COURT MATTERS

7.1 Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Debtors and the Bankruptcy Court of higher or better competing bids with respect to any transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of the Purchased Assets or the equity of the Company to a purchaser or purchasers other than the Purchaser or effecting a plan of reorganization (a

"Competing Transaction"). Nothing contained herein shall be construed to prohibit the Sellers and their representatives from soliciting, considering, negotiating, agreeing to, or otherwise taking action in furtherance of, any Competing Transaction. Notwithstanding anything to the contrary contained herein, Purchaser agrees that if the Court approves a Competing Transaction with a Qualified Bidder other than the Purchaser and such Competing Transaction is not consummated within 15 days after entry of a Sale Order, then Sellers have the option to elect to proceed with the Closing under this Agreement by delivering written notice of such election to Purchaser no later than five (5) Business Days after the expiration of such 15 day period.

7.2 Bidding Procedures Order.

(a) The Debtors shall use commercially reasonable efforts to obtain on or before the date which is twenty (20) days after the Petition Date an order of the Bankruptcy Court for authority to observe and perform their obligations under this Section 7.2 (the "Bidding Procedures Order"). The Bidding Procedures Order shall, among other things, (1) approve the Break-Up Fee and Expense Reimbursement, and provide that the Break-Up Fee and Expense Reimbursement must be paid to the Purchaser in full upon consummation of a Competing Transaction, (2) approve the procedures to govern the solicitation of higher or better bids in substantially the form attached hereto as Exhibit B (the "Bidding Procedures"), (3) set the Initial Incremental Bid Amount for any Qualified Bid and Subsequent Incremental Bid Amount for any subsequent bid, and (4) establish the dates for the auction at which only Qualified Bidders who have previously submitted a Qualified Bid may participate (the "Auction") and the hearing on the proposed sale of the Purchased Assets to the Purchaser or to such other Qualified Bidder submitting the highest or otherwise best bid at the Auction (the "Sale Hearing"). The Debtors shall use their commercially reasonable efforts to have the Bidding Procedures Order establish the deadline for submission of Qualified Bids as the date that is no later than 28 days after the date that the Bidding Procedures Order is entered and that the Auction is scheduled for no later than five (5) Business Days after such deadline. The Bidding Procedures Order shall be in form and substance reasonably acceptable to the Purchaser.

(b) For the purposes of this Section:

(i) The "Initial Incremental Bid Amount" shall mean the sum of the Break-Up Fee and Expense Reimbursement and Two Hundred Fifty Thousand Dollars ($250,000).

(ii) A "Qualified Bidder" is a person (a) who has delivered to the Company an executed confidentiality agreement in form and substance acceptable to the Sellers, (b) who has delivered to the Company a Qualified Bid, and (c) who provides to the Company assurances substantially equivalent to those provided by the Purchaser of such person's having readily available funds to be able to consummate its Qualified Bid, if selected as the successful bidder. The Purchaser shall be deemed a Qualified Bidder.

(iii) A "Qualified Bid" is a Competing Transaction (a) the value of which (whether viewed separately or together with other competing proposals evidenced by Qualified Bids and/or the Company's restructuring alternatives) is greater or otherwise better than the sum of (i) the Purchase Price and (ii) the Initial Incremental Bid Amount,

(b) that is accompanied by an executed copy of an alternative purchase agreement that reflects any substantive changes to this Agreement, (c) that is not subject to or conditioned on any contingency or condition including, without limitation, the outcome of unperformed due diligence by bidder or any financing contingency; (d) that is submitted with evidence establishing to the satisfaction of the Sellers, in consultation with their professionals, that such Qualified Bidder has the financial capability to timely consummate its Competing Transaction and can provide all counterparties to Assumed Executory Contracts with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code, (e) that is irrevocable until the earlier to occur of (x) the Closing, and (y) sixty (60) days after the entry of a Sale Order, and (f) that is accompanied by a cash deposit in the amount of ten percent (10%) of the purchase price offered in the proposal for a Competing Transaction.

(iv) The "Subsequent Incremental Bid Amount" shall be an amount equal to Two Hundred Fifty Thousand Dollars ($250,000).

7.3 Submission to Bankruptcy Court. As soon as reasonably practicable after the Effective Date, the Debtors shall file with the Bankruptcy Court a motion for entry of the Bidding Procedures Order and the Sale Order and such notices as may be appropriate in connection therewith. The Purchaser shall cooperate with the Debtors in obtaining Bankruptcy Court approval of the Bidding Procedures Order and the Sale Order.

7.4 Break-Up Fee and Expense Reimbursement. The Bidding Procedures Order shall provide that, provided that the Purchaser is not then in default under this Agreement, the Purchaser shall be entitled to be paid an amount equal to three-and-half percent (3.5%) of the amount set forth in Section 3.1(a) as a combined break-up fee and expense reimbursement (the "Break-Up Fee and Expense Reimbursement") if (a) the Bankruptcy Court approves a Competing Transaction and (b) the Debtors consummate such a Competing Transaction. The Break-Up Fee and Expense Reimbursement described in this Section 7.4 shall be paid upon the occurrence of the consummation of the Competing Transaction.

7.5 Sale Order. Subject to Section 7.1, the Purchaser agrees that it will promptly take such actions as are reasonably requested by the Debtors to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by the Purchaser, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by the Purchaser under this Agreement and demonstrating that the Purchaser is a "good faith" purchaser under section 363(m) of the Bankruptcy Code and that the Purchase Price was not controlled by an agreement in violation of Section 363(n) of the Bankruptcy Code. In the event the entry of the Sale Order shall be appealed, the Debtors and the Purchaser shall use their respective reasonable efforts to defend such appeal.

ARTICLE VIII

COVENANTS

8.1 Access to Information. The Sellers agree that, prior to the Closing Date, the Purchaser shall be entitled, through its officers, employees, consultants and representatives (including, without limitation, its legal advisors and accountants), to make such investigation of the properties, business and operations of the Sellers and such examination of the books and records and financial and operating data of the Sellers, the Business, the Purchased Assets and the Assumed Liabilities, and access to the officers, key employees, accountants and other representatives of the Sellers, as it reasonably requests and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. The Purchaser and its representatives shall cooperate with the Sellers and their representatives and shall use their reasonable efforts to minimize any disruption to the Business. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require the Sellers to disclose information subject to attorney-client privilege.

8.2 Conduct Pending the Closing. Except (i) as required by applicable Law, (ii) as otherwise expressly contemplated by this Agreement, or (iii) with the prior written consent of the Purchaser, during the period from the date of this Agreement to and through the Closing Date, the Sellers shall, to the extent commercially reasonable, taking into account the filing of the Bankruptcy Case:

(A) conduct their business only in the ordinary course;

(B) after the filing of the Bankruptcy Case, the Sellers shall not sell gift certificates and gift cards at any Seller-owned or -operated Acquired Location, provided that the Sellers may continue to operate the "Fudds Club" program consistent with past practice; and

(C) use their commercially reasonable efforts to (y) preserve their present business operations, organization and goodwill, and (z) preserve their present relationships with suppliers and franchisees.

8.3 Consents; Liquor Licenses. The Sellers shall use their commercially reasonable efforts, and the Purchaser shall cooperate with the Sellers, to obtain at the earliest practicable date those consents and approvals required to consummate the Transactions that are listed in Schedule 8.3; provided, however, that neither the Sellers nor the Purchaser shall be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any Legal Proceedings to obtain any such consent or approval; provided, further, that if requested by the Purchaser, the Sellers shall initiate such Legal Proceedings requested by the Purchaser to obtain such consents or approvals or an Order but only if the Purchaser pays to the Sellers, the Sellers' good faith and reasonable estimate of any and all out of pocket expenses and costs (including reasonable attorneys fees) related thereto. Without limiting the foregoing, and

for clarity only, the Sellers shall have no responsibility to procure, and the Purchaser shall, at its own expense and risk, be responsible for procuring, any and all consents, authorizations, or approvals from, or make any and all registrations or filings with, any Governmental Body or other third party to the extent that any of the same are required with respect to any of the Sellers' liquor licenses as a result of or on account of the Transactions (collectively, "Liquor License Approvals") and the Purchaser having obtained any or all Liquor License Approvals is not a condition to the Purchaser's obligations hereunder and any failure of the Purchaser to have obtained the same shall not excuse the Purchaser from full performance of its obligations under this Agreement. The Sellers shall reasonably cooperate with the Purchaser in connection with the Purchaser's efforts to obtain any Liquor License Approvals, including by entering into temporary management arrangements acceptable to the Sellers, all at the Purchaser's sole expense.

8.4 Further Assurances. Subject to the other provisions of this Agreement, each of the Purchaser and the Sellers shall use their commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the Transactions and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions.

8.5 Preservation of Records. The Sellers or their successors and the Purchaser agree that each of them shall preserve and keep the records held by them or their Affiliates relating to the Purchased Assets for two years after the Closing Date (except as provided below) and shall make such records (as well as former employees of any Seller that are then employed by the Purchaser) available to the other as may be reasonably required by such party in connection with, among other things, the Sellers' (or any subsequently appointed fiduciary of any Seller's estate) administration of the Bankruptcy Case, the investigation and pursuit of Estate Claims, any insurance claims by, Legal Proceedings or Tax audits against or governmental investigations of the Sellers or the Purchaser or any of their Affiliates or in order to enable the Sellers or the Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby. In the event the Sellers or the Purchaser wish to destroy such records before or within two years, such party shall first give ninety (90) days prior written notice to the other and such other party shall have the right at its option and expense, upon prior written notice given to such party within such ninety (90) day period, to take possession of the records within one-hundred and eighty (180) days after the date of such notice.

8.6 Publicity. Before the Closing Date, none of the parties hereto shall issue any press release concerning this Agreement or the Transactions without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of the Purchaser or the Sellers, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement, provided that the party intending to make such release shall use its commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

8.7 Schedules and Exhibits. The Sellers may, at their option, include in the Schedules items that are not material in order to avoid any misunderstanding, and such inclusion, or any

references to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement.

8.8 Payment of Taxes. The Sellers shall be responsible for paying or otherwise discharging all of their Taxes for all periods (or portions thereof) ending on or prior to the Closing Date; provided that the Purchaser shall be responsible for paying, and shall indemnify the Sellers for, all conveyance, sales, use, excise, value, value added, registration, stamp, property, transfer, real property transfer, gains, recording registration and similar Taxes, together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto which become payable in connection with the Transactions (taking into account the provisions of Section 1146 of the Bankruptcy Code).

8.9 Motions, Orders, etc. The Debtors shall promptly provide the Purchaser with the proposed final drafts of all documents, motions, orders, or pleadings that the Debtors propose to file with the Bankruptcy Court which relate to the approval of this Agreement, the Purchased Assets, the Assumed Contracts or Assumed Leases or the consummation of the Transactions, or any provision therein or herein, so as to provide the Purchaser and its counsel with a reasonable opportunity to review and comment on such documents, motions, orders, or pleadings prior to filing with the Bankruptcy Court, and insomuch as is consistent with the Debtors' fiduciary duties, consider such comments in good faith.

8.10 Recurring Charges. With respect to any regularly recurring rents, water, telephone, electricity or other utility charge which relates to the Purchased Assets and is imposed on a periodic basis and is payable for a period that includes (but does not end on) the Closing Date, the portion of such charge which relates to the portion of such period ending prior to the Closing Date shall be deemed to be the amount of such charge for such entire period multiplied by a fraction the numerator of which is the number of days in such period ending prior to the Closing Date and the denominator of which is the number of days in the entire such period. The Sellers shall be responsible for the payment of the amount so deemed to relate to the portion of such period prior to Closing, and the Purchaser shall pay the amount so deemed to relate to the portion of such period as of and following Closing. To the extent all or part of such amounts are known as of the Closing Date, such amounts shall be paid at the Closing.

8.11 Adequate Assurance. The Purchaser will timely provide such information to the Debtors, as the Debtors believe is reasonably necessary to provide "adequate assurance," as that term is used in Section 365 of the Bankruptcy Code, with respect to the Assumed Leases and the Assumed Contracts.

8.12 Bulk Sales. To the greatest extent permitted by applicable law, the Purchaser and the Sellers hereby waive compliance by the Purchaser and the Sellers with the terms of any bulk sales or similar laws in any applicable jurisdiction in respect of the Transactions.

ARTICLE IX

EMPLOYEES AND EMPLOYEE BENEFITS

9.1 Transferred and Retained Employees.

(a) The parties recognize that the continued employment of the personnel of the Sellers is significant to the business interests of both the Purchaser and the Sellers. As a result, the orderly transfer of employment relationships is important to both parties and the parties shall use their commercially reasonable efforts to accomplish the transition with as little disruption to the Business as possible. The Purchaser shall offer employment to substantially all of the Sellers' operating Employees associated with the Acquired Locations, and the Purchaser may offer employment to any other Employee of the Sellers, in each case initially at the Equal Aggregate Compensation Level (each of the Employees that accepts such an offer and actually commences employment as of or after the Closing Date, the "Transferred Employees", and all other Employees that have not been terminated by the Sellers prior to the Closing Date, the "Retained Employees"). The "Equal Aggregate Compensation Level" means that the applicable Transferred Employee's level of base compensation and benefits, taken as a whole, will be substantially similar to the Employee as his/her current level of aggregate base compensation and Specified Benefits (defined below), taken as a whole, but excluding and without considering any Employee Benefit Plans that are not the Specified Benefits. "Specified Benefits" means, to the extent the Transferred Employee was a participant therein, (x) the 13 Employee Benefit Plans listed on Schedule 5.9 under the heading "Medical, surgical, hospitalization, life insurance and other "welfare" plans, funds or programs (within the meaning of Section 3(1) of ERISA)" and the 4 Employee Benefit Plans listed on Schedule 5.9 under the heading "Other employee benefit plans, funds, programs agreements or arrangements," and (y) the Magic Brands, LLC 401(k) Plan. Nothing in this Agreement shall require the Purchaser to assume any Employee Benefit Plan or prevent the Purchaser from enacting other plans or benefits.

In this Agreement, the "Salaried Non-Store Employees" means those Transferred Employees who are primarily compensated on a salary, rather than an hourly or wage, basis and who do not spend at least eighty percent (80%) of their working time working at one restaurant. The Purchaser shall either (a) employ each Salaried Non-Store Employee at the Equal Aggregate Compensation Level for a period of at least six (6) months after the Closing (the "Interim Period"), unless such Salaried Non-Store Employee quits employment or is terminated for cause; or (b) if the Purchaser terminates a Salaried Non-Store Employee's employment during the Interim Period without cause, the Purchaser shall pay to that Salaried Non-Store Employee a severance payment in an amount equal to the unpaid salary that would have been payable to that Salaried Non-Store Employee during the remainder of the Interim Period.

The Purchaser intends to develop and implement one or more appropriate incentive compensation plans to align compensation with the Purchaser's business objectives.

Notwithstanding the foregoing provisions, the Purchaser shall have no obligation to permit any Transferred Employee or Retained Employee to rollover or otherwise transfer such Employee's account under any Employee Benefit Plan maintained by the Seller to any "employee benefit plan" (as defined in Section 3(3) of ERISA) that the Purchaser offers to the

Transferred Employees or the Retained Employees. To the extent that any of the Employees who are associated with the Acquired Locations has or would have "COBRA" rights pursuant to Section 4980B of the Code or Part 6 of Title I of ERISA and any regulations issued thereunder as an "M&A qualified beneficiary" (as defined in such regulations), the Purchaser shall be solely responsible for providing such required COBRA coverage to such Employees (and to the spouse or any qualifying child of any such Employee).

Notwithstanding anything herein to the contrary, the Purchaser shall have no obligation to provide compensation or benefits with respect to Retained Employees. Except as otherwise required by law, all employees will be employees-at-will.

(b) For purposes of determining eligibility, vesting and the calculation of the amount of vacation, severance or other benefits under any "employee benefit plan" (as defined in Section 3(3) of ERISA) that the Purchaser offers to Transferred Employees, the Purchaser will credit each Transferred Employee with his or her months and years of service with the Sellers to the same extent as such Transferred Employee was entitled immediately prior to the Closing to credit for such service under any similar Employee Benefit Plan.

(c) The Sellers and the Purchaser shall cooperate to comply with and take all actions necessary to minimize the obligations arising under the Worker Adjustment and Retraining Notification Act of 1988 or any similar applicable state or local Law requiring notice to employees in the event of a closing or layoff (the "WARN Act") in connection with any (i) plant closing as defined in the WARN Act affecting any site of employment or one or more facilities or operating units within any site of employment of the Sellers; (ii) mass layoff as defined in the WARN Act affecting any site of employment of the Sellers; or (iii) similar action under the WARN Act requiring notice to employees in the event of an employment loss or layoff. The Sellers shall send such notices under the WARN Act as the Purchaser may reasonably request or as may be reasonably required.

9.2 Employment Tax Reporting. With respect to Transferred Employees, the Purchaser and the Sellers shall use the standard procedure set forth in Revenue Procedure 2004-53, 2004-34 I.R.B. 320, for purposes of employment tax reporting.

ARTICLE X

CONDITIONS TO CLOSING

10.1 Conditions Precedent to Obligations of the Purchaser. The obligation of the Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Purchaser in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of the Sellers contained in this Agreement (i) that are not qualified by materiality or a Material Adverse Effect shall be true and correct in all respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and except to the extent that the failure of such representations and warranties to be true and correct would not reasonably be expected to have,

individually or in the aggregate, a Material Adverse Effect and (ii) that are qualified by materiality or Material Adverse Effect shall be true and correct in all respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date; and the Purchaser shall have received a certificate signed by authorized officers of the Sellers, dated the Closing Date, to the foregoing effect;

(b) the Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to the Closing Date, and the Purchaser shall have received a certificate signed by authorized officers of the Sellers, dated the Closing Date, to the forgoing effect; and

(c) the Sellers shall have delivered, or caused to be delivered, to the Purchaser all of the items set forth in Section 4.2.

10.2 Conditions Precedent to Obligations of the Sellers. The obligations of the Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by the Sellers in whole or in part to the extent permitted by applicable Law):

(a) The representations and warranties of the Purchaser contained in this Agreement (i) that are not qualified by materiality shall be true and correct in all respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and except to the extent that the failure of such representations and warranties to be true and correct would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Purchaser or its ability to consummate the Transactions and perform its obligations under this Agreement, and (ii) that are qualified by materiality shall be true and correct in all respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and the Sellers shall have received a certificate signed by an authorized officer of the Purchaser, dated the Closing Date, to the foregoing effect;

(b) the Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by the Purchaser on or prior to the Closing Date, and the Sellers shall have received a certificate signed by an authorized officer of the Purchaser, dated the Closing Date, to the foregoing effect; and

(c) the Purchaser shall have delivered to the Sellers all of the items set forth in Section 4.3.

10.3 Conditions Precedent to Obligations of the Purchaser and the Sellers. The respective obligations of the Purchaser and the Sellers to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Purchaser and the Sellers in whole or in part to the extent permitted by applicable Law):

(a) the Bankruptcy Cases shall have been commenced;

(b) there shall not be in effect any Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions;

(c) the Bidding Procedures Order shall have been entered and shall have remained in full force and effect and shall not have been stayed, vacated, modified or supplemented in any material respect without the Purchaser's prior written consent;

(d) the Bankruptcy Court shall have entered the Sale Order in form and substance reasonably acceptable to the Debtors and the Purchaser; and

(e) the Sale Order shall have become a Final Order, unless the Purchaser, in its sole discretion, waives that requirement.

10.4 Frustration of Closing Conditions. No party may rely on the failure of any condition set forth in Sections 10.1, 10.2 or 10.3, as the case may be, if such failure was caused by such party's failure to comply with any provision of this Agreement.

ARTICLE XI

TAXES

11.1 Allocation of Taxes. Without limiting the generality of Section 8.10, all Taxes imposed on or with respect to the Purchased Assets on a periodic basis (including but not limited to real estate Taxes and assessments) ("Periodic Taxes") relating to periods beginning on or before and ending after the Closing Date shall be allocated on a per diem basis to the Sellers and the Purchaser, respectively, in accordance with Section 164(d) of the Code. All Periodic Taxes relating to periods ending on or before the Closing Date shall be allocated solely to the Sellers. All Periodic Taxes relating to the periods beginning after the Closing Date shall be allocated solely to the Purchaser. If the actual amounts to be prorated are not known as of the Closing Date, the prorations shall be made on the basis of Periodic Taxes assessed for the prior year. Notwithstanding anything to the contrary set forth in this Section 11.1 but subject to the provisions of Section 8.8, Liabilities for any Taxes determined by reference to income, capital gains, gross income, gross receipts, sales, net profits, windfall profits or similar items or resulting from a transfer of assets incurred during a period beginning before and ending after the Closing Date shall be allocated solely to the Sellers if such item accrued during the period ending on and including the Closing Date.

11.2 Purchase Price Allocation. The Sellers and the Purchaser shall allocate the Purchase Price among the Sellers and among the Purchased Assets of each Seller in accordance with a statement (the "Allocation Statement") provided by the Purchaser to the Sellers as soon as practicable after the Closing. Subject to the Purchaser's approval, the Purchase Price allocated to each Seller shall be comprised first of the Assumed Liabilities of each Seller and then a pro rata portion of each item comprising the Purchase Price. The Allocation Statement shall be prepared in accordance with Section 1060 of the Code and in no event shall more than $15,000,000 of the Purchase Price be allocated to the assets of Magic. Subject to the immediately preceding

sentence, the Purchaser and the Sellers shall file all Tax Returns (including Form 8594) consistent with, and shall take no tax position inconsistent with the Allocation Statement.

11.3 Tax Reporting. The Purchaser and the Sellers shall each be responsible for the preparation and filing of their own Tax Returns.

11.4 Cooperation and Audits. Without expanding the obligations of the parties pursuant to Section 8.5, the Purchaser and the Sellers shall cooperate fully with each other regarding tax matters, and shall make available to the other as reasonably requested all information, records and documents relating to Taxes governed by this Agreement until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes.

ARTICLE XII

MISCELLANEOUS

12.1 No Survival of Representations and Warranties. The parties hereto agree that the representations and warranties contained in this Agreement shall not survive the Closing hereunder and no Person shall have any liability for any breach thereof. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing hereunder, and each party hereto shall be liable to the other after the Closing for any breach thereof.

12.2 Expenses. Except as otherwise provided in this Agreement, each of the Sellers, on the one hand, and the Purchaser, on the other hand, shall bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Transactions.

12.3 Injunctive Relief. Damages at law may be an inadequate remedy for the breach of any of the covenants, promises or agreements contained in this Agreement, and, accordingly, any party hereto shall be entitled to injunctive relief with respect to any such breach, including without limitation specific performance of such covenants, promises or agreements or an order enjoining a party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 12.3 shall be in addition to any other rights which a party hereto may have at law or in equity pursuant to this Agreement.

12.4 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.8 hereof; provided,

however, that if the Bankruptcy Case has closed, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware and any appellate court thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 12.8.

12.5 Waiver of Right to Trial by Jury. Each party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

12.6 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits hereto) collectively represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

12.7 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware applicable to contracts made and performed in such State.

12.8 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand, (ii) when sent by facsimile (with written confirmation of transmission) or (iii) one (1) Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

If to the Sellers, to:

c/o Magic Brands, LLC
5700 South MoPac Expressway
Building C, Suite 300
Austin, TX 78749
Attn: Peter Large
Fax: (800) 478-9236

with copies to:

Goulston & Storrs
400 Atlantic Avenue
Boston, MA 02110-3333
Attn: Kitt Sawitsky, Esq.
Fax: (617) 574-4112

If to the Purchaser, to:

Tavistock Fuddruckers, LLC
c/o Tavistock Capital Group, Inc.
9350 Conroy Windermere Road
Windermere, FL 34786
Attn: _____
Fax: _____

With copies to:

DLA Piper LLP (US)
203 North LaSalle Street, Suite 1900
Chicago, IL 60601
Attn: Sachin Lele and Richard Morey
Fax: (312) 630-5327

12.9 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

12.10 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party

to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by any Seller or the Purchaser (by operation of law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consents shall be void; provided that the Purchaser may assign some or all of its rights and obligations hereunder to one or more Affiliates formed by it prior to the Closing without the consent of any Seller. No assignment of any obligations hereunder shall relieve the parties hereto of any such obligations. Upon any such permitted assignment, the references in this Agreement to the Sellers or the Purchaser shall also apply to any such assignee unless the context otherwise requires.

12.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

THE PURCHASER:

TAVISTOCK VENTURES, INC.

By: _____
Name: Michael I. Wood
Title: Vice President

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

THE SELLERS:

FUDDRUCKERS, INC.

By: _____
Name: Peter Large
Title: President

R. WES, INC.

By: _____
Name: Michael Mason
Title: President

MAGIC BRANDS, LLC

By: KCI, LLC, its sole Manager

By: _____
Name: Peter Large
Title: Manager

FUDDRUCKERS OF HOWARD COUNTY, LLC

By: Fuddruckers, Inc., its Managing Member

By: _____
Name: Peter Large
Title: President

ATLANTIC RESTAURANT VENTURES, INC.

By: _____
Name: Peter Large
Title: Director

FUDDRUCKERS OF WHITE MARSH, LLC

By: Fuddruckers, Inc., its Managing Member

By: _____
Name: Peter Large
Title: President

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
MAGIC BRANDS, LLC, et al.,[1]	:	**Case No. 10-11310 (BLS)**
	:	**[Joint Administration Requested]**
Debtors.	:	**Re: Docket No. ____**

ORDER (A) APPROVING ASSET PURCHASE AGREEMENT BETWEEN THE DEBTORS AND THE SUCCESSFUL BIDDER; (B) AUTHORIZING THE SALE OF THE PURCHASED ASSETS OF THE DEBTORS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH

Upon the motion (the "Motion")[2] of Magic Brands, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the "Debtors"), for the entry of an order (the "Order") pursuant to Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 (a) approving an asset purchase agreement (the "Purchase Agreement") between the Debtors and _____ (the "Successful Bidder") to acquire Debtors' assets and operations used in the conduct of, or related to, owning, managing, operating, and franchising restaurants operated by Debtors (as defined in the Purchase Agreement, the "Purchased Assets"), attached as Exhibit A (excluding exhibits, schedules and attachments); (b) authorizing the sale of the Purchased Assets free and clear of all liens, claims,

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Magic Brands, LLC ("Magic") (8989); Fuddruckers, Inc. ("Fuddruckers") (8267), Atlantic Restaurant Ventures, Inc. ("Atlantic") (9769), King Cannon, Inc. ("King Cannon") (8671), and KCI, LLC ("KCI") (9281). The address for all of the Debtors is 5700 Mopac Expressway, Suite C300, Austin, Texas 78749.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the DIP Order or the Purchase Agreement, as applicable. "DIP Order" shall mean *Interim Order (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, and (V) Scheduling a Final Hearing on the Debtors' Motion to Incur Such Financing on a Permanent Basis* [Docket No. ___]

Encumbrances (as defined in the Purchase Agreement), and interests; and (c) authorizing the assumption and assignment of executory contracts and unexpired leases (the "Assumed Executory Contracts", as defined in the Purchase Agreement) to the Successful Bidder; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS THAT:

Jurisdiction, Final Order, and Statutory Bases

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. The statutory predicates for the relief requested in the Motion are Bankruptcy Code sections 105(a), 363(b), (f), and (m), and 365 and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f), and (h), 6006(a), (c), and (d), 9007, and 9014.

D. This Court entered the *Order (I) Approving Bidding Procedures For The Sale Of Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances Pursuant To Section 363 Of The Bankruptcy Code, (II) Approving Certain Bidding Protections, (III)*

Approving The Form And Manner Of Notice Of The Sale And Assumption And Assignment Of Executory Contracts And Unexpired Leases And (IV) Scheduling An Auction And Sale Hearing on _____ __, 2010 [Docket No. ___] (the "Bidding Procedures Order").

Notice

E. Actual written notice of the Sale Hearing, the Auction, the Motion, the sale of the Purchased Assets, and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known interested entities, including, but not limited to the following parties:

(i) the Office of the United States Trustee for the District of Delaware;

(ii) the Debtors' thirty largest unsecured creditors, on a consolidated basis;

(iii) counsel to Wells Fargo Capital Finance, Inc. ("Senior Lender");

(iv) the Internal Revenue Service; and

(v) all entities who have filed with the Court a request for notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

F. On _____ __, 2010, the Debtors published notice of the time and place of the proposed Auction, the time and place of the Sale Hearing, and the time for filing an objection to the relief requested in the Motion relating to the Transactions in the national edition of The Wall Street Journal.

G. In accordance with the provisions of the Bidding Procedures, the Debtors have served notice upon the counterparties to Assumed Executory Contracts: (i) that the Debtors seek to assume and assign certain Assumed Executory Contracts on the closing date of the Transactions (the "Closing Date"); and (ii) of the relevant Cure Costs (as defined in the Purchase Agreement). The service of such notice was good, sufficient, and appropriate under the circumstances and no further notice need be given in respect of establishing the Cure Cost for the

Assumed Executory Contracts. Each of the counterparties to the Assumed Executory Contracts (collectively, the "Contract Counterparties") have had an opportunity to object to the Cure Cost set forth in the notice.

H. As evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the Motion, the Auction, the Sale Hearing, and the Transactions has been provided in accordance with Bankruptcy Code sections 102(1), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, and 9014. The Debtors also have complied with all obligations to provide notice of the Motion, the Auction, the Sale Hearing, and the Transactions required by the Bidding Procedures Order. The notices described above were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, or the Transactions is required.

I. The disclosures made by the Debtors concerning the Purchase Agreement, the Auction, the Transactions, and the Sale Hearing were good, complete, and adequate.

Good Faith of Successful Bidder

J. The Successful Bidder is not an "insider" of any of the Debtors, as defined in Bankruptcy Code section 101(31).

K. The Successful Bidder is purchasing the Purchased Assets in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m). The Successful Bidder is, therefore, entitled to the full protections of section 363(m) and has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (i) the Successful Bidder complied with the provisions in the Bidding Procedures Order; (ii) all payments to be made by the Successful Bidder and other agreements or arrangements entered into by the Successful Bidder in connection with the Transactions have been disclosed; (iii) the Successful Bidder has not violated Bankruptcy Code section 363(n) by any action or

inaction; (iv) no common identity of directors or controlling stockholders exists between the Successful Bidder and any of the Debtors; and (v) the Purchase Agreement was negotiated at arm's-length and in good faith.

Highest and Best Offer

L. The Debtors conducted an auction process in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order. The auction process set forth in the Bidding Procedures Order and the Bidding Procedures afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase the Purchased Assets. The auction process was duly noticed and conducted in a noncollusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Purchased Assets.

M. The Purchase Agreement constitutes the highest and best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a reasonable exercise of the Debtors' business judgment.

N. The Purchase Agreement represents a fair and reasonable offer to purchase the Purchased Assets under the circumstances of these Chapter 11 Cases. No other entity or group of entities has offered to purchase the Purchased Assets for greater economic value to the Debtors' estates than the Successful Bidder.

O. Approval of the Motion and the Purchase Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their creditors, their estates, and all other parties-in-interest.

P. The Debtors have demonstrated compelling circumstances and a good and sufficient business purpose and justification for the Transactions.

No Fraudulent Transfer

Q. The consideration provided by the Successful Bidder pursuant to the Purchase Agreement is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia.

R. The Successful Bidder is not a mere continuation of the Debtors or their estates, and there is no continuity between the Successful Bidder and the Debtors. The Successful Bidder is not holding itself out to the public as a continuation of the Debtors. The Successful Bidder is not a successor to the Debtors or their estates, and the Transactions do not amount to a consolidation, merger, or de facto merger of the Successful Bidder and the Debtors. Except to the extent set forth in the Purchase Agreement, the Successful Bidder is not liable as a successor under any theory of successor liability for liens, claims, Encumbrances, and interests that encumber or relate to the Purchased Assets.

Validity of Transfer

S. The Debtors have full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby, and no further consents or approvals are required for the Debtors to consummate the transactions contemplated by the Purchase Agreement, except as otherwise set forth in the Purchase Agreement.

T. The transfer of each of the Purchased Assets to the Successful Bidder will be, as of the Closing Date, a legal, valid, and effective transfer of such assets, and each such transfer vests or will vest the Successful Bidder with all right, title, and interest of the Debtors to the Purchased Assets free and clear of all liens, claims, Encumbrances, and interests accruing,

arising, or relating thereto any time prior to the Closing Date, except for any Assumed Liabilities (as defined in Purchase Agreement) under the Purchase Agreement.

Satisfaction of Section 363(f)

U. The Successful Bidder would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Purchased Assets to the Successful Bidder, and the assumption, assignment, and sale of the Assumed Executory Contracts to the Successful Bidder, were not free and clear of all liens, claims, Encumbrances, and interests of any kind or nature whatsoever (except Assumed Liabilities), or if the Successful Bidder would, or in the future could, be liable for any of such liens, claims, Encumbrances, and interests.

V. The Debtors may sell the Purchased Assets free and clear of all liens, claims, Encumbrances, and interests against the Debtors, their estates, or any of the Purchased Assets (except for Assumed Liabilities) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Senior Lender has expressly consented to the sale of the Purchased Assets as and to the extent provided in this Order, free and clear of all liens, claims, Encumbrances, and interests against the Debtors, their estates, or any of the Purchased Assets held by, maintained by or otherwise in favor of the Senior Lender, and the Senior Lender waives all claims and objections that could be raised now or in the future with respect to the Transactions. Those holders of liens, claims, Encumbrances, and interests against the Debtors, their estates, or any of the Purchased Assets who did not object, or who withdrew their objections, to the Transactions or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such liens, claims, Encumbrances, and interests who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their liens, claims,

Encumbrances, and interests, if any, in each instance against the Debtors, their estates, or any of the Purchased Assets, attach to the cash proceeds of the Transactions ultimately attributable to the Purchased Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Transactions, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

W. The transfer of the Purchased Assets to the Successful Bidder free and clear of all liens, claims, Encumbrances and interests, if any, will not result in any undue burden or prejudice to any holders of any liens, claims, Encumbrances and interests, if any, as all such liens, claims, Encumbrances and interests of any kind or nature whatsoever shall attach, except as otherwise provided in this Order, to the net proceeds of the sale of the Purchased Assets received by the Debtors in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets in accordance with the DIP Order and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having liens, claims, Encumbrances and interests of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such liens, claims, Encumbrances and interests, if any, against the Successful Bidder, any of their assets, property, successors or assigns, or the Purchased Assets.

Assumption and Assignment of Assumed Executory Contracts

X. The assumption and assignment of the Assumed Executory Contracts pursuant to the terms of this Order is integral to the Purchase Agreement, is in the best interests of the Debtors and their estates, creditors, and other parties in interest, and represents a reasonable exercise of the Debtors' business judgment.

Y. The Cure Costs set forth on Exhibit B annexed hereto (the "Cure Schedule") with respect to each Assumed Executory Contract are the sole amounts necessary under Bankruptcy Code sections 365(b)(1)(A) and (B) and 365(f)(2)(A) to cure all monetary defaults and pay all actual pecuniary losses under the Assumed Executory Contracts, subject to the Successful Bidder's right to remove any Assumed Executory Contract from the Cure Schedule as provided in the Purchase Agreement.

Z. On or before the Closing Date, for all Assumed Executory Contracts assumed and assigned to the Successful Bidder, the Debtors shall have paid the Cure Costs set forth on Exhibit B. The Successful Bidder has provided adequate assurance of its future performance under such Assumed Executory Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

Compelling Circumstances for Immediate Sale

AA. To maximize the value of the Purchased Assets and preserve the viability of the business to which the Purchased Assets relate, it is essential that the closing of the Transactions occur within the time constraints set forth in the Purchase Agreement. Time is of the essence in consummating the Transactions.

BB. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the purchase price under the Purchase Agreement, the Transactions constitute a reasonable exercise of the Debtors' business judgment and should be approved.

CC. The consummation of the Transactions is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the transaction.

AND THE COURT HEREBY ORDERS THAT:

General Provisions

1. The relief requested in the Motion is GRANTED. The Transactions contemplated by the Motion and the Purchase Agreement are approved as set forth in this Order.

2. Bidding Procedures Order Incorporated. This Court's findings of fact and conclusions of law in the Bidding Procedures Order are incorporated herein by reference.

3. Objections Overruled. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to this Court at the Sale Hearing or by stipulation filed with this Court or as otherwise provided in this Order, and all reservations of rights included therein, are hereby overruled on the merits.

Approval of Purchase Agreement

4. Agreement Approved. The Purchase Agreement and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved.

5. Authorization to Consummate Transactions. Pursuant to section 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate the Transactions pursuant to and in accordance with the terms and conditions of the Purchase Agreement, (b) close the Transactions as contemplated in the Purchase Agreement and this Order, and (c) execute and deliver, perform under, consummate, implement, and close the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Transactions, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and such other ancillary documents.

6. Order Binding on All Parties. This Order shall be binding in all respects upon the Debtors and their estates and creditors, all holders of equity interests in any Debtor, all

holders of any Claim(s) (as defined in the Purchase Agreement), whether known or unknown, against any Debtor, any holders of liens, claims, Encumbrances, and interests against or on all or any portion of the Purchased Assets, including, but not limited to the Senior Lender, all Contract Counterparties, the Successful Bidder and all successors and assigns of the Successful Bidder, and any trustees, examiners, responsible officers, estate representatives, or similar entities for any of the Debtors, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Order and the Purchase Agreement shall inure to the benefit of the Debtors, their estates and creditors, the Successful Bidder, and their respective successors and assigns.

Transfer of Purchased Assets

7. Transfer of Purchased Assets Authorized. Pursuant to Bankruptcy Code sections 105(a), 363(b), 363(f), 365(b), and 365(f), the Debtors are authorized to transfer the Purchased Assets on the Closing Date, and the Successful Bidder is directed to pay the Purchase Price to the Debtors as provided in the Purchase Agreement. Except as otherwise provided in the Purchase Agreement, the Purchased Assets shall be transferred to the Successful Bidder "as is, where is" with all faults in accordance with the Purchase Agreement upon and as of the Closing Date and such transfer shall constitute a legal, valid, binding, and effective transfer of such Purchased Assets and, upon the Debtors' receipt of the purchase price, shall be free and clear of all liens, claims, Encumbrances, and interests, except any Assumed Liabilities. Upon the closing of the Transactions, the Successful Bidder shall take title to and possession of the Purchased Assets, subject only to any Assumed Liabilities.

8. Surrender of Purchased Assets by Third Parties. All entities that are in possession of some or all of the Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to the Successful Bidder at the closing of the Transactions.

All entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Purchased Assets to the Successful Bidder in accordance with the terms of the Purchase Agreement and this Order.

9. Transfer Free and Clear of Encumbrances. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the Purchased Assets shall be free and clear of any and all liens, claims, Encumbrances, and interests, except for Assumed Liabilities, including, but not limited to liens, claims, Encumbrances, and interests held by, maintained by, or otherwise in favor of the Senior Lender. Except to the extent set forth in the Purchase Agreement, the Successful Bidder is not and shall not be liable as a successor under any theory of successor liability for liens, claims, Encumbrances, and interests that encumber or relate to the Purchased Assets. All liens, claims, Encumbrances, and interests shall attach solely to the proceeds of the Transactions with the same validity, priority, force, and effect that they now have as against the Purchased Assets, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

10. Creditors Directed to Release Encumbrances. On the Closing Date, each creditor is authorized and directed to execute such documents and take all other actions as may be necessary to release liens, claims, Encumbrances, and interests (except for Assumed Liabilities) on the Purchased Assets, if any, as provided for herein, as such liens, claims, Encumbrances, and interests may have been recorded or may otherwise exist.

11. Attachment of Security Interests to Sale Proceeds. This Order shall be effective as a determination that, as of the Closing Date, all liens, claims, Encumbrances and interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the

Closing have been unconditionally released, discharged and terminated and that the conveyances described herein have been effected with such liens, claims, Encumbrances and interests to attach to the Purchase Price received by the Debtors at the Closing in the same priority that existed as of the Petition Date.

12. Authorization to Record Releases. If any entity (a "Claim Holder") which has filed statements or other documents or agreements evidencing liens, claims, Encumbrances, and interests on, or interests in, all or any portion of the Purchased Assets shall not have delivered to the Debtors prior to the closing of the Transactions, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary or desirable to the Successful Bidder for the purpose of documenting the release of all liens, claims, Encumbrances, and interests that such Claim Holder has or may assert with respect to all or any portion of the Purchased Assets, then (i) the Debtors are authorized to execute and file such statements, instruments, releases, and other documents on behalf of such Claim Holder with respect to the Purchased Assets and (ii) the Successful Bidder is authorized to file, register, or otherwise record a certified copy of this Order with the appropriate clerk(s) and/or recorder(s), which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, Encumbrances, and interests in the Purchased Assets as of the Closing Date of any kind or nature whatsoever, other than the Assumed Liabilities; provided, however, that any liens held by the Senior Lender shall be released and the authorization set forth in this Paragraph 11 shall apply to the release of such liens only upon the receipt by Debtors of the Purchase Price.

13. Permanent Injunction. Except as expressly permitted or otherwise specifically provided by the Purchase Agreement or this Order, all entities holding liens, claims,

Encumbrances, and interests in all or any portion of the Purchased Assets (other than Assumed Liabilities) arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors' business prior to the Closing Date, or the transfer of the Purchased Assets to the Successful Bidder, are hereby forever prohibited and permanently enjoined from asserting such liens, claims, Encumbrances, and interests against the Successful Bidder, its successors or assigns, their property, or the Purchased Assets.

14. Recording Offices. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

Assumed Executory Contracts

15. Authorization to Assume and Assign. Upon the closing of the Transactions, the Debtors are authorized to assume and assign each of the Assumed Executory Contracts to the Successful Bidder free and clear of all liens, claims, Encumbrances, and interests, as described herein. The payment of the applicable Cure Cost (if any) with regard to the Assumed Executory Contracts shall (a) effect a cure of all defaults existing thereunder as of the Closing Date and (b) compensate for any actual pecuniary loss resulting from such default. The Debtors shall then have assumed the Assumed Executory Contracts and assigned them to the

Successful Bidder and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of the Assumed Executory Contracts shall not be a default thereunder. After the payment of the relevant Cure Costs, neither the Debtors nor the Successful Bidder shall have any further liabilities to the Contract Counterparties other than the Successful Bidder's obligations under the Assumed Executory Contracts that accrue and become due and payable on or after the Closing Date. Nothing in this Order shall affect the rights of the Successful Bidder, until the Closing (as defined in the Purchase Agreement), in its sole discretion, to remove any executory contract or unexpired lease of the Debtors to or from the list of Assumed Executory Contracts.

16. License Approvals. The Debtors shall cooperate fully with and support Successful Bidder in executing such applications and furnishing such documents as are necessary for Successful Bidder to obtain all Liquor License Approvals (as defined in the Asset Purchase Agreement). All applicable state alcoholic beverage control, law enforcement, and regulatory agencies shall not interrupt any of the Business (as defined in the Asset Purchase Agreement) without first bringing the matter before this Court. Furthermore, the Business shall continue operating under all existing alcoholic beverage and other licenses of the Debtors until such licenses have been changed to Successful Bidder's name, including, but not limited to state alcoholic beverage licenses, state food service licenses, local occupational licenses, and any other licenses needed to operate the Business with no interruption of the Business.

17. Assignment Requirements Satisfied. Any provisions in any Assumed Executory Contracts that prohibit or condition the assignment of such Assumed Executory Contracts or allow the party to such Assumed Executory Contracts to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Assumed Executory Contract constitute unenforceable anti-assignment

provisions that are of no force and effect in connection with the Debtors' assumption and assignment of the Assumed Executory Contracts to the Successful Bidder. Each Contract Counterparty who failed to file an objection to the proposed assignment of its contract with the Debtors (a "Contract Assignment Objection"), or by virtue of electing to withdraw such objection, is deemed to consent to the assumption by the Debtors and assignment to the Successful Bidder of their Assumed Executory Contract. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts have been satisfied. Upon the closing of the Transactions, in accordance with sections 363 and 365 of the Bankruptcy Code, the Successful Bidder shall be fully and irrevocably vested with all right, title, and interest of the Debtors under the Assumed Executory Contracts, which will remain in full force and effect. In addition, all counterparties to the Assumed Executory Contracts are (a) forever barred from asserting any additional cure or other amounts with respect to the Assumed Executory Contracts, and the Debtors and the Successful Bidder are entitled to rely solely upon the Cure Costs set forth on Exhibit B attached hereto; (b) deemed to have consented to the assumption and assignment; and (c) forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed Executory Contracts, or that there is any objection or defense to the assumption and assignment of such Assumed Executory Contracts.

18. 365(k). Upon the closing of the Transactions and payment of the relevant Cure Costs related to the Assumed Executory Contracts, if any, the Successful Bidder shall be deemed to be substituted for the Debtors as a party to the applicable Assumed Executory

Contracts, and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Executory Contracts.

19. No Default. Upon the payment of the applicable Cure Costs, if any, the Assumed Executory Contracts will remain in full force and effect, and no default shall exist under the Assumed Executory Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

20. Adequate Assurance Provided. The Successful Bidder has provided adequate assurance of future performance under the relevant Assumed Executory Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

21. No Fees. There shall be no rent accelerations, assignment fees, increases, or any other fees charged to the Successful Bidder or the Debtors as a result of the assumption and assignment of the Assumed Executory Contracts.

22. Injunction. Pursuant to Bankruptcy Code sections 105(a), 363, and 365, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors or the Successful Bidder any assignment fee, default, breach, claim for pecuniary loss, or condition to assignment arising under or related to the Assumed Executory Contracts existing as of the Closing Date or arising by reason of the Closing.

Other Provisions

23. No Liability for Claims Against Debtors. Except for Assumed Liabilities or as otherwise expressly set forth in this Order or the Purchase Agreement, the Successful Bidder shall not have any liability or other obligation of the Debtors arising under or related to any of the Purchased Assets, including, but not limited to the Excluded Liabilities (as defined in the Purchase Agreement). Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Purchase Agreement, the Successful Bidder shall

not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Successful Bidder shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, substantial continuity, the WARN Act (as defined in the Purchase Agreement) and employee benefit and/or welfare plan(s), (including, without limitation, agreements, contracts, plans, policies or obligations related to or concerning medical, vision, disability, or any health related matters), whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, or liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any Tax (as defined in the Purchase Agreement) arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Purchased Assets prior to the closing of the Transactions, and the Successful Bidder shall be exonerated of any successor liability to any state taxing authority with regard to any Tax, including sales tax. The Successful Bidder has given substantial consideration under the Purchase Agreement for the benefit of the holders of any liens, claims, Encumbrances, and interests relating to the Purchased Assets.

24. Good Faith. The transactions contemplated by the Purchase Agreement are undertaken by the Successful Bidder without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transactions shall not affect the validity of the Transactions (including the assumption and assignment of the Assumed Executory Contracts), unless such authorization and consummation of such Transactions are duly stayed pending such appeal. The Successful Bidder is a good faith buyer within the meaning of

section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

25. Plan Not to Conflict. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these chapter 11 cases, (b) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order.

26. Effective Immediately. Pursuant to Bankruptcy Rules 7062, 9014, 6004(h), and 6006(d), this Order shall be effective immediately upon entry and the Debtors and the Successful Bidder are authorized, but are not required, to close the Transactions immediately upon entry of this Order, notwithstanding the ten-day stay periods in Bankruptcy Rules 6004(h) and 6006(d), which are expressly waived.

27. Brokers. Except for the fees and expenses of FocalPoint Securities, LLC (for which the Debtors are solely responsible), the Debtors do not have any obligation to pay any fees, commissions or other similar compensation to any broker, finder, investment banker, financial advisor or other similar Person in connection with the Transactions.

28. Agreement Approved in Entirety. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.

29. Modifications to Purchase Agreement. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further

order of this Court; provided, that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

30. Bulk Sales Law. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to any of the transactions under the Purchase Agreement.

31. Standing. The transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

32. Timing. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

33. Order to Govern. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Order shall govern.

34. Order Governs Over Purchase Agreement. To the extent there are any inconsistencies between the terms of this Order and the Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of this Order shall govern.

35. Authorization to Effect Order. The Debtors are authorized to take all actions necessary to effect the relief granted pursuant to this Order in accordance with the Motion.

36. Automatic Stay. The automatic stay pursuant to Section 362 is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Court, to (i) allow the Successful Bidder to deliver any notice provided for in the Purchase Agreement, and (ii) allow the Successful Bidder to take any and all actions permitted under the Purchase Agreement in accordance with the terms and conditions thereof.

37. Findings of Fact/Conclusions of Law. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the findings of fact set forth herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law set forth herein constitute findings of fact, they are adopted as such.

38. Retention of Jurisdiction. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Successful Bidder, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transactions.

Dated: _____ __, 2010
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

ASSET PURCHASE AGREEMENT

EXHIBIT B

CURE COSTS SCHEDULE

Exhibit B

BIDDING PROCEDURES

On April 21, 2010, Magic Brands, LLC and its debtor affiliates, (collectively, the "Debtors"), filed a motion (the "Motion") for orders (I) approving bidding procedures for the sale of assets free and clear of all liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, (II) approving certain bidding protections, (III) approving the form and manner of notice of the sale and assumption and assignment of executory contracts and unexpired leases, (IV) scheduling an auction and sale hearing and (V) approving such sale. The Debtors have agreed to sell substantially all of their assets to the Stalking Horse Bidder pursuant to the terms of a certain asset purchase and sale agreement dated as of April 21, 2010 (the "Asset Purchase Agreement"),[1] subject to Bankruptcy Court approval and subject to higher and better offers. Copies of the Asset Purchase Agreement are available for free by (i) sending a written request to the Debtors' claims and noticing agent, Kurtzman Carson Consultants ("KCC"), 2335 Alaska Avenue, El Segundo, CA 90245, (ii) calling KCC at (877) 499-4519, or (iii) by accessing KCC's website at www.kccllc.net/Fuddruckers.

The following procedures (the "Bidding Procedures") shall govern the auction process by which the Debtors will accept and consider higher and better offers for the Purchased Assets (as defined in the Asset Purchase Agreement). Nothing in these Bidding Procedures shall constitute the consent of the Prepetition Agent or the Committee (both as defined below) to any bid:

1. Any party desiring to become a prospective bidder for the Purchased Assets ("Prospective Bidder") shall deliver to the Debtors, unless previously delivered, a signed confidentiality agreement in form and substance satisfactory to the Debtors ("Confidentiality Agreement").

2. After a Prospective Bidder delivers the Confidentiality Agreement, the Debtors shall deliver or make available (unless previously delivered or made available) to each such Prospective Bidder certain designated information and financial data with respect to the Purchased Assets.

3. Any party that submits a bid for the Purchased Assets (a "Competing Offer") which the Debtors, in consultation with Wells Fargo Capital Finance, Inc. (the "Prepetition Agent"), determine to be compliance with the relevant provisions of paragraph 4 below shall be designated as a "Qualified Bidder." The Stalking Horse Bidder shall be deemed to be a Qualified Bidder. The Prepetition Agent shall also be deemed to be a Qualified Bidder pursuant to its right to credit bid in accordance with section 363(k) of the Bankruptcy Code.

4. To be considered, each Competing Offer (excluding any credit bid submitted by the Prepetition Agent) shall:

   (a) be in writing and delivered by facsimile and email to (i) Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Douglas B. Rosner, Esq. (drosner@goulstonstorrs.com; fax: (617) 574-7627) and Christine D.

[1] Capitalized terms used but not defined herein shall have the meanings set forth in the Asset Purchase Agreement.

Lynch, Esq. (clynch@goulstonstorrs.com; fax: (617) 574-7540)); (ii) Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Daniel J. DeFranceschi, Esq. (defranceschi@rlf.com; fax: (302) 498-7816)), (iii) FocalPoint Securities, LLC, 11150 Santa Monica Blvd., Suite 1550, Los Angeles, California 90025 (Attn: Alexander W. Stevenson (astevenson@focalpointllc.com; fax: (310) 405-7077)); (iv) counsel to the Official Committee of Unsecured Creditors (the "Committee"), [ ]; and (v) counsel to the Prepetition Agent, Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., Twenty-Fourth Floor, Atlanta, GA 30308 (Attn: Jesse H. Austin, III, Esq. (jessaustin@paulhastings.com; fax: (404) 685-5208)) and Duane Morris LLP, 1100 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Richard W. Riley, Esq (RWRiley@duanemorris.com; fax: (302) 397-0801)) **no later than 5:00 p.m. (Eastern Time) on June ____, 2010** (the "Bid Deadline");

(b) at a minimum, exceed the sum of (i) the cash portion of the Purchase Price set forth in Section 3.1(a) of the Asset Purchase Agreement, plus (ii) the Break-Up Fee and Expense Reimbursement (as defined in the Asset Purchase Agreement), plus (iii) $250,000, for a total of $41,650,000 (if the Debtor is able to assign certain leases subject to a certain Master Lease with Spirit Master Funding, LLC (the "Spirit Locations")) or $32,335,000 (if the Debtor is unable to assign the Spirit Locations) (the "Minimum Overbid Amount");

(c) be accompanied by a signed asset purchase agreement in the form of the Asset Purchase Agreement, together with a marked copy showing all changes to the Asset Purchase Agreement, which changes shall not be less favorable to the Debtors and their estates in any material respect;

(d) not be subject to, or conditioned on, any contingency or condition (other than entry of an order approving the sale), including without limitation, the outcome of unperformed due diligence by the bidder or upon any financing contingency;

(e) be irrevocable until the earlier to occur of (i) the Closing Date, or (ii) for sixty (60) days following entry of the Sale Order;

(f) be submitted with a cash deposit equal to 10% of the purchase price offered in the Competing Offer (the "Deposit") in the form of a wire transfer or a certified check made payable to the Debtors and sent to the Debtors' counsel, which Deposit shall be non-refundable if the Bankruptcy Court approves the sale of the Debtors' assets to such Qualified Bidder;

(g) be substantially on the same or better terms and conditions as set forth in the Asset Purchase Agreement; and

(h) be submitted with evidence substantially equivalent to that provided by the Purchaser establishing to the satisfaction of the Debtors, in consultation with the Prepetition Agent, that such Prospective Bidder or an entity that has executed a

written guarantee of such Prospective Bidder's Bid has readily available funds sufficient to enable it to timely consummate its Competing Offer and provide all non-debtor parties to those executory contracts and unexpired leases to be assumed and assigned with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.

5. Competing Offers that the Debtors, in consultation with the Prepetition Agent, determine satisfy the provisions set forth in paragraph 4 above shall be deemed "Qualified Bids." A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors deem pertinent, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating a transaction with the Qualified Bidder, (c) any excluded assets or executory contracts or leases, and (d) any other factors that the Debtors may deem relevant to the sale in consultation with the Prepetition Agent.

6. If the Debtors do not receive any Qualified Bids (other than the bid of the Stalking Horse Bidder), the Debtors will report the same to the Bankruptcy Court, and the Debtors shall proceed to seek court approval of the Asset Purchase Agreement with the Stalking Horse Bidder.

7. In the event that one or more Qualified Bid (excluding the bid of the Stalking Horse Bidder) is received, an auction (the "Auction") will be conducted at the offices of Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 **on June ___, 2010, beginning at 9:00 a.m. (Eastern Time)** or such later time or other place as the Debtors shall notify all Qualified Bidders. Only representatives of the Stalking Horse Bidder, Qualified Bidders, the Debtors, the Committee, the Prepetition Agent and the United States Trustee for the District of Delaware will be entitled to attend the Auction. Only the Stalking Horse Bidder and Qualified Bidders will be entitled to make bids at the Auction. At the Auction, bidding will commence at the amount of the aggregate consideration for the Purchased Assets and on the terms proposed in the Qualified Bid that the Debtors select as the highest and best offer prior to the Auction, and each subsequent bid shall be in increments of no less than $250,000. Bidding at the Auction will continue until such time as the highest and best offer is determined by the Debtors in consultation with the Prepetition Agent (the "Successful Bid") (the party submitting such Successful Bid being designated the "Successful Bidder"). The Debtors, after consultation with the Prepetition Agent and the Committee, may announce at the Auction additional rules or procedures for conducting the Auction so long as such rules are not inconsistent with these Bidding Procedures.

8. The Debtors reserve the right, after consultation with their professionals and the Prepetition Agent, to (i) determine, at their discretion, which bid, if any, is the highest and best offer, taking into consideration, inter alia, that the Break-Up Fee and Expense Reimbursement would be payable if a party other than the Stalking Horse Bidder is the Successful Bidder, (ii) reject any bid that the Debtors deem to be inadequate, insufficient or otherwise unsatisfactory, (iii) change the location of the Auction, and/or (iv) adjourn the Auction by announcing such adjournment at the Auction. The Debtors' presentation to the Bankruptcy Court for approval of the selected bid as the Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a

Qualified Bid only when such Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.

9. All bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and to have waived any right to a jury trial in connection with any disputes relating to the Auction and the sale of the Purchased Assets.

10. If, for any reason, the Successful Bidder fails to close on the purchase of the Purchased Assets (and assuming that the conditions to closing have been satisfied), then: (i) the Successful Bidder shall forfeit the Deposit and be subject to such other rights and remedies as the Debtors may have for such failure; (ii) the Qualified Bidder who, as of the conclusion of the Auction, has made the second and the next highest and best bid (as determined by the Debtors in consultation with the Prepetition Agent) automatically will be deemed to have submitted the highest and best bid without further order of the Bankruptcy Court (such bidder, the "Alternate Bidder"); and (iii) the Alternate Bidder will be required to proceed as the purchaser at closing and its bid will be treated as the Successful Bid without further order of the Bankruptcy Court.

Schedules

Schedule 1.1(a)

Sixth Amendment to Master Lease

See attached Sixth Amendment to Master Lease, such amendment is incorporated herein by reference.

SIXTH AMENDMENT TO MASTER LEASE

THIS SIXTH AMENDMENT TO MASTER LEASE (the "Amendment") is made and entered into effective as of April 21, 2010 (the "Effective Date"), by and between **SPIRIT MASTER FUNDING, LLC**, f/k/a Spirit SPE Portfolio 2004-6, LLC, a Delaware limited liability company, whose address is 14631 N. Scottsdale Road, Suite 200, Scottsdale, Arizona 85254-2711, as successor-in-interest to GE Capital Franchise Finance Corporation, a Delaware corporation, as successor-in-interest to FFCA Acquisition Corporation, a Delaware corporation ("Lessor"), and **FUDDRUCKERS, INC.**, a Texas corporation ("Lessee"), whose address is 800 Turnpike Street, Suite 300, North Andover, MA 01845, Attn: Legal Department. **FUDDRUCKERS INTERNATIONAL, LLC**, a Delaware limited liability company, whose address is 5700 Mopac Expy South, Suite C300, Austin, Texas 78749, Attn: Mr. Christopher Mitchell ("Guarantor") is executing this Amendment to evidence its intent to be bound by the terms hereof.

Recitals

Lessor and Lessee are parties to that certain Master Lease dated as of November 24, 1998, as amended by that certain First Amendment to Master Lease dated as of May 7, 2001, as further amended by that certain Second Amendment to Master Lease dated as of April 26, 2002, as further amended by that certain Third Amendment dated as of February 26, 2007, as further amended by that certain Third [sic Fourth] Amendment to Lease Agreement dated effective as of June 15, 2007, and as further amended by that certain Fifth Amendment to Lease Agreement effective as of September 10, 2008 (together with all further amendments thereto, the "Lease") with respect to real property and improvements as described in the Lease. Terms not defined in this Amendment have the meanings given to them in the Lease. Lessor and Lessee wish to modify certain provisions of the Lease as described in this Amendment.

Lessee and certain of its affiliates intend to file for relief (the "Bankruptcy Case") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in order to consummate a sale of substantially all of its assets under sections 363 and/or 1123 of the Bankruptcy Code (a "Sale Transaction"). In order to maximize the value to the Lessee's estate, Lessee has requested, and the Lessor has agreed, to amend the Lease in accordance with the terms hereof and subject to the Conditions Subsequent, which amendment terms and consideration provide equal or greater value to Lessee than the consideration received by Lessor.

In consideration of the foregoing recitals and other good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. **Base Annual Rental and Exhibit A.**

   a. Section 1 of the Lease shall be amended by deleting the definition of "Base Annual Rental" and substituting in lieu thereof the following:

"*Base Annual Rental*" means $1,029,647 subject to the increases provided for in Section 5.B.

b. Exhibit A to the Lease shall be deleted and replaced with a new Exhibit A attached to this Amendment.

c. Exhibit A-1 to the Lease shall be amended to remove the property descriptions of the Removed Properties.

2. **Lease Term**. Section 4 of the Lease is hereby amended to delete the date May 31, 2017 and substitute in its place "May 31, 2020." Lessee retains the right to extend the term of the Lease for two (2) periods of five (5) years each as set forth in Section 28 of the Lease.

3. **Net Worth**. Section 23 of the Lease is hereby deleted in its entirety.

4. **Guaranty**. The Guaranty shall be terminated, discharged and released effective on the payment of the Lease Modification Fee.

5. **Conditions Subsequent**. This Amendment shall be effective on the Effective Date, subject to the following Conditions Subsequent having occurred and being true on or before the Outside Date:

a. Lessee shall, upon execution of this Amendment, (i) pay to Lessor $271,221.33 in full cure and satisfaction of the Base Annual Rental under the Lease as in effect immediately before the Effective Date for the calendar month of April 2010, and (ii) pay directly to applicable taxing authorities (with copies of supporting documentation to Lessor) $130,000 of the delinquent real estate taxes that were due in January 2010 (first to curing the delinquent real estate taxes on the properties located at 6607 N. IH 35, Austin, Texas 78752 and 14035 E. Evans Ave., Aurora, Colorado 80014, and then to curing the delinquent real estate taxes on the remaining Texas properties), with the balance of the delinquent real estate taxes on the Remaining Properties (approximately $170,000 as of the date herein, plus any interest and penalties as charged by the respective taxing authority) to be paid within 5 business days after entry of the Conditional Assumption Order in full cure and satisfaction of such Additional Rental obligations;

b. Conditional assumption of the Lease, as amended by this Amendment must be approved by order of the Bankruptcy Court (the "Conditional Assumption Order") in Lessee's Bankruptcy Case within 30 days after Lessee files its bankruptcy petition ("Approval Date"), with an order reasonably acceptable to Lessor providing that (a) such assumption is conditioned on satisfaction by Lessee or waiver by Lessor of the Conditions Subsequent, (b) the Lease and terms of the Conditional Assumption Order shall not be further modified or the Lease rejected in part without Lessor's consent, to be exercised in its sole discretion; (c) Lessee shall not file or support any plan or take any action inconsistent with the Conditional Assumption Order (although Lessee would

continue to have the right to reject the Lease under the Bankruptcy Code if the Sale Transaction does not close by the Outside Date), (d) the payments in Section 5(a) are approved and ratified, and (e) the Conditional Assumption Order shall bind any trustee appointed in Lessee's Bankruptcy Case. The conditional assumption of the Lease, as amended, shall be conditioned on satisfaction of the remaining Conditions Subsequent;

c. The Sale Transaction closes, and as part of the Sale Transaction, the Lease, as amended by this Amendment, is assigned to the Purchaser;

d. Prior to the Closing of the Sale Transaction, Lessee shall assign all of its right, title and interest in and to the Sandy Sublease to Lessor under section 365 of the Bankruptcy Code. Lessee agrees not to amend or terminate the Sandy Sublease prior to its assignment to Lessor.

e. As of the closing of the Sale Transaction, Lessee shall have paid Base Monthly Rental and Additional Rental for the Remaining Properties and the Sandy Base Rental and Additional Rental for the Sandy Location (with respect to the Sandy Location, including for the calendar month that the Sandy Sublease is assigned), and otherwise materially complied with Lessee's obligations under the Lease, as amended by this Amendment, arising from and after the commencement of Lessee's Bankruptcy Case (subject to §365(b)(2) of the Bankruptcy Code);

f. Lessee shall have vacated and delivered possession of the Removed Properties (other than the Sandy Location) on or before April 30, 2010, in broom clean condition, with all furniture, fixtures and equipment owned by Lessee remaining at the Removed Properties (the "FF&E"); provided, however, Lessee shall be permitted to access the Removed Properties in order to remove, at Lessee's cost, exterior and interior signage. Title to the FF&E shall pass to Lessor, free and clear of all liens, claims and interests. Lessor shall have the right, in its sole discretion, to relet or otherwise dispose of the Removed Properties and the FF&E remaining therein without reduction to the Base Monthly Rental, Additional Rental, or principal amount of the Lease Modification Fee. Notwithstanding the foregoing, Lessee shall continue to use commercially reasonable efforts to obtain and turnover to Lessor control and possession of the Property located in Maple Grove, Minnesota by April 30, 2010 or as soon thereafter as possible; and

g. Lessor shall have received the Lease Modification Fee in immediately available funds from the Sale Transaction proceeds on or before the Outside Date.

6. **Failure of Conditions Subsequent**. In the event the Conditions Subsequent are not satisfied by Lessee or waived by Lessor on or before the Outside Date:

a. This Amendment and the conditional assumption of the Lease shall automatically be null and void as of the calendar day immediately following the Outside Date, and the terms and conditions of the Lease in effect on March 31, 2010 shall thereafter remain in full force and effect, and shall govern the amount of Lessor's lease rejection damages claim under §502(b)(6) of the Bankruptcy Code as if the parties had never entered into this Amendment, notwithstanding the turnover of Removed Properties. If this Amendment and conditional assumption of the Lease are null and void, Lessee shall not be entitled to recover payments received by Lessor pursuant to this Amendment on any grounds, and such payments shall be applied to Lessee's obligations under the Lease. Likewise, Lessor's claims and rights with respect to the Guaranty shall, similarly, revert to what they were as of March 31, 2010 as if the parties had never entered into this Amendment;

b. Any and all rights and remedies of Lessor and Lessee under the Lease, the Bankruptcy Code and applicable non-bankruptcy law shall be preserved and may, after the Outside Date or earlier Termination Date, as applicable, be exercised by either party, including to seek immediate rejection of the Lease, provided, however, (A) Lessor shall not be entitled to an administrative expense claim for damages arising out of a rejection of the Lease and such claim shall be governed by § 502(b)(6) of the Bankruptcy Code, (B) Lessor shall not be entitled to a claim under § 365(d)(3) or § 503(b) of the Bankruptcy Code for the Base Annual Rental and Additional Rental on the Removed Properties for the period from the commencement of the Bankruptcy Case to the Outside Date, and (C) Base Annual Rental and Additional Rental shall be payable under § 365(d)(3) or otherwise only as to the Remaining Properties until rejection of the Lease;

7. **Lessor Consent.**

a. Lessor agrees not to oppose the Sale Transaction and the assumption and assignment of the Lease, as amended, to a Purchaser, provided such Purchaser meets the requirements of Bankruptcy Code § 365(b), and there are no further amendments or modifications of any kind to the Lease. Lessee will use commercially reasonable efforts to obtain adequate assurance of future performance of the Purchaser reasonably satisfactory to Lessor.

b. Provided that Lessee is meeting its obligations hereunder and under the Lease as amended by this Amendment, Lessor shall not exercise remedies, charge penalties or default interest, or seek modification of the automatic stay, rejection of the Lease, or dismissal or conversion of Lessee's Bankruptcy Case.

c. Provided that all Conditions Subsequent are satisfied or waived by Spirit, Spirit waives its Bankruptcy Code § 502(b)(6) claim for the Removed Properties.

8. **Additional Definitions.**

(a) The following definitions shall be inserted in alphabetical order in Section 1 of the Lease:

"*Conditional Assumption Order*" has the meaning in Section 5.b. of this Amendment.

"*Conditions Subsequent*" has the meaning set forth in Section 5 of this Amendment.

"*Lease Modification Fee*" means $750,000, plus an amount equal to the sum of 50% of the Transaction Value in excess of $31,000,000. Payment of the Lease Modification Fee shall be an obligation of Lessee under the Lease payable at the closing of a Sale Transaction provided that the Conditions Subsequent are satisfied.

"*Modified Exhibit A*" means the new Exhibit A attached to this Amendment.

"*Outside Date*" means the earlier of (i) August 31, 2010 and (ii) the earlier occurrence of a Termination Date.

"*Purchaser*" means the purchaser in a Sale Transaction and the assignee of the Lease, as amended by this Amendment.

"*Remaining Properties*" means the Properties listed on the Modified Exhibit A, and, from and after the Effective Date, shall be the Properties as defined in the Lease.

"*Removed Properties*" means the Properties removed from Exhibit A as a result of this Amendment.

"*Sandy Base Rental*" means $11,609.89 per calendar month plus Additional Rental for the Sandy Location.

"*Sandy Location*" means the Property located at 10050 State Street, Sandy, Utah 84070.

"*Sandy Sublease*" means that certain Sublease by and between Lessee and Casual Beef Concepts, Inc. dated July 1, 2005.

"*Termination Date*" shall mean the date Lessor elects to terminate on 5 days notice (with opportunity for Lessee to cure within that 5 day period) due to a failure of Lessee to satisfy a Condition Subsequent in accordance with these terms, or the date the Bankruptcy Court grants Lessee's election to reject the Lease.

"*Transaction Value*" shall mean, in a Sale Transaction, the aggregate amount of all cash, all secured and unsecured debt assumed or otherwise satisfied by the Purchaser

(other than assumed lease and contract liabilities), and the then current fair market value of all equity securities of any kind including preferred and common stock paid, payable or committed by the Purchaser in connection with the Sale Transaction, as determined by agreement of the parties or order of the Bankruptcy Court, less any break-up fee or expense reimbursement paid to an unsuccessful bidder. Transaction Value shall not include assets excluded from the Sale Transaction, landlord security deposits, utility deposits, Purchaser's assumption of existing customer programs or register cash.

8. **Ratification.** Except as expressly stated herein, the Lease shall remain in full force and effect. If there is any conflict between the Lease and the terms of this Amendment, the terms of this Amendment shall control. All terms, conditions, obligations and amendments, as set forth in the Lease (including this Amendment), are hereby acknowledged, ratified and affirmed by Guarantor.

[Remainder of page intentionally left blank; signature page(s) to follow]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date set forth above.

LESSOR:
SPIRIT MASTER FUNDING, LLC

By: Spirit Finance Corporation, as Property Manager

By: Spirit Finance Capital Management, LLC, as Manager

By: Sean Hufford

Printed Name: SEAN HUFFORD

Title: VP

[Signature Page to Sixth Amendment to Master Lease]

LESSEE:

FUDDRUCKERS, INC.

By: Gregor Grant

Printed Name: GREGOR GRANT

Title: CFO

GUARANTOR:

FUDDRUCKERS INTERNATIONAL, LLC

By: C. J. Mitchell

Printed Name: CHRIS MITCHELL

Title: DIRECTOR

Exhibit A

List of Seven Remaining Properties

FFCA NO.	UNIT NO. AND ADDRESS
8000-3205	000231 – 10500 Town and Country Way, Houston, TX 77024
8000-3206	000232 – 4360 Kingwood Drive, Kingwood, TX 77339
8000-3713	000246 – 13010 Northwest Freeway, Cypress, TX 77429
8000-3714	000256 – 7800 West Bell Road, Glendale, AZ 85308
8000-3944	000269 – 7250 Highway 6 North, Houston, TX 77095
8000-3966	000278 – 6455 East Southern Avenue, Mesa, AZ 85206
8000-4073	000286 – 3929 Southwest Freeway, Houston, TX 77027

Schedule 1.1(k)

Knowledge of Sellers

1. Peter Large
2. Gregor Grant
3. Jane Blanchette
4. Dwayne Chambers
5. Mary Hamill (solely for purposes of Sections 5.9 and 5.15)

Schedule 1.1(l)

Locations

Owned Real Property

Owner	*Restaurant*	*Name*	*Address*				*Sq. Footage*
Fuddruckers, Inc.	Fuddruckers #1	Botts Lane	8602 Botts Lane	San Antonio	TX	78217	6,104
Fuddruckers, Inc.	Fuddruckers #5	Willowbrook	7511 FM 1960 West	Houston	TX	77070	7,738
Fuddruckers, Inc.	Fuddruckers #8	Clear Lake	2040 Nasa Road One	Nassau Bay	TX	77058	7,738
Fuddruckers, Inc.	Fuddruckers #9	Normandy	855 Normandy	Houston	TX	77015	7,738
Fuddruckers, Inc.	Fuddruckers #13	Kirkwood	2475 S. Kirkwood	Houston	TX	77077	7,963
Fuddruckers, Inc.	Fuddruckers #24	Woodlands	2290 Buckthorne Place	Woodlands	TX	77380	8,000
Fuddruckers, Inc.	Fuddruckers #26	Kurland	11950 Kurland	Houston	TX	77034	7,738
Fuddruckers, Inc.	Fuddruckers #355	Katy	25407 Bell Patna Drive	Katy	TX	77492	6,200
Fuddruckers, Inc.	Fuddruckers #359	Lakeline Mall	11023 Pecan Park Blvd.	Cedar Park	TX	78613	7,000
Fuddruckers, Inc.	Fuddruckers #57	Highland Park	1538 Clavey Road	Highland Park	IL	60035	8,650
Fuddruckers, Inc.	Fuddruckers #67	Downers North	1500 Branding Lane	Downers Grove	IL	60515	7,650
Fuddruckers, Inc.	Fuddruckers #90	Matteson	300 Town Center	Matteson	IL	60443	7,650
Fuddruckers, Inc.	Fuddruckers #105	Calumet City	1990 River Oaks Drive	Calumet City	IL	60409	7,650
Fuddruckers, Inc.	Fuddruckers #126	Schaumburg	436 East Golf Road	Schaumburg	IL	60173	7,600
Fuddruckers, Inc.	Fuddruckers #114	Virginia Beach	4625 Virginia Beach	Virginia Beach	VA	23462	7,612

Leased Real Property

Lease #	*Rest. #*	*Restaurant Name*	*Lessee*	*Address*			
1	N/A	Corporate Office - Austin	Fuddruckers, Inc.	5700 South MoPac Expressway, #C-300	Austin	TX	78749
2	N/A	Corporate Office – North Andover	Fuddruckers, Inc.	800 Turnpike Street	North Andover	MA	01845
3	3	Wurzbach	Fuddruckers, Inc.	9845 W IH10	San Antonio	TX	78230
4	4	Anderson Lane	Fuddruckers, Inc.	2700 W. Anderson Lane	Austin	TX	78757
5	7	Greens Road	Fuddruckers, Inc.	403 Greens Rd.	Houston	TX	77060
6	11	Brodie Oaks	Fuddruckers, Inc.	4024 S. Lamar Blvd.	Austin	TX	78704
7	15	Perimeter	Fuddruckers, Inc.	240 Perimeter Ctr Pkwy NE	Atlanta	GA	30346
8	23	Phoenix	Fuddruckers, Inc.	8941 North Black Canyon Hwy	Phoenix	AZ	85021
9	32	Lake Forest	Fuddruckers, Inc.	23621 El Toro Rd.	Lake Forest	CA	92630
10	43	Bloomington	Fuddruckers, Inc.	3801 Minnesota Drive	Bloomington	MN	55435
11	47	Windy Hill	Fuddruckers, Inc.	3000 Windy Hill Rd. SE	Marietta	GA	30067
12	53	Brookfield	Fuddruckers, Inc.	16065 W Bluemound Rd.	Brookfield	WI	53005
13	55	Chula Vista	Fuddruckers, Inc.	340 3rd Ave.	Chula Vista	CA	91910
14	60	Roseville	Fuddruckers, Inc.	2740 No. Snelling Ave.	Roseville	MN	55113
15	62	La Mesa	Fuddruckers, Inc.	5500 Grossmont Center Dr.	La Mesa	CA	91941
16	68	Annapolis	Fuddruckers, Inc.	175 Jennifer Rd.	Annapolis	MD	21401
17	73	St. Louis Park	Fuddruckers, Inc.	6445 Wayzata Blvd.	St. Louis Park	MN	55426
18	78	Lakewood	Fuddruckers, Inc.	5229 N. Clark St.	Lakewood	CA	90712
19	81	Mira Mesa	Fuddruckers, Inc.	8285 Mira Mesa	San Diego	CA	92126
20	83	Annandale	Atlantic Restaurant Ventures, Inc.	4300 Backlick Rd.	Annandale	VA	22003
21	84	Alamo Plaza	Fuddruckers, Inc.	115 Alamo Plaza	San Antonio	TX	78205
22	88	Independence	Fuddruckers, Inc.	4400 S. Noland Rd.	Independence	MO	64055
23	91	Northlake	Fuddruckers, Inc.	3953 LaVista Rd.	Tucker	GA	30084
24	98	Scottsdale	Fuddruckers, Inc.	7145 E. Indian School Rd.	Scottsdale	AZ	85251
25	102	Overland Park	Fuddruckers, Inc.	8725 Metcalf Ave.	Overland Park	KS	66212
26	103	Tucson	Fuddruckers, Inc.	6118 E. Speedway Blvd.	Tucson	AZ	85712
27	106	West Park	Fuddruckers, Inc.	6759 NW Loop 410	San Antonio	TX	78238
28	109	Marston Park	Fuddruckers, Inc.	5076 So. Wadworth Blvd.	Littleton	CO	80123
29	129	Downers South	Fuddruckers, Inc.	7231 Lemont Rd.	Downers Grove	IL	60516
30	132	Sunset Plaza	Fuddruckers, Inc.	10752 Sunset Hills Plaza	Saint Louis	MO	63127
31	136	Burbank	Fuddruckers, Inc.	221 N. San Fernando Blvd.	Burbank	CA	91502
32	143	Buena Park	Fuddruckers, Inc.	7802 Orangethorpe Ave.	Buena Park	CA	90621
33	174	Rockville	Fuddruckers, Inc.	1592 A Rockville Pike	Rockville	MD	20852
34	177	Herndon	Atlantic Restaurant Ventures, Inc.	1030 Elden St.	Herndon	VA	22170
35	188	Addison	Fuddruckers, Inc.	1000 N. Rohlwing Rd.	Addison	IL	60101

Lease #	Rest. #	Restaurant Name	Lessee	Address			
36	199	Fairfax	Atlantic Restaurant Ventures, Inc.	3575 Chain Bridge Rd.	Fairfax	VA	22030
37	209	Alexandria	Atlantic Restaurant Ventures, Inc.	4141c Duke St.	Alexandria	VA	22304
38	220	Gwinnett Mall	Fuddruckers, Inc.	2180 Merchants Way	Duluth	GA	30096
39	223	Town Center	Fuddruckers, Inc.	2708 Town Center Dr. NW	Kennesaw	GA	30144
40	225	Tysons Corner	Atlantic Restaurant Ventures, Inc.	1587 Spring Hill Rd.	Vienna	VA	22182
41	230	Winton Road	Fuddruckers, Inc.	11992 Chase Plaza Drive	Forest Park	OH	45240
42	231	Town & Country	Fuddruckers, Inc.	10500 Town & Country Way	Houston	TX	77024
43	232	Kingwood	Fuddruckers, Inc.	4360 Kingwood Drive	Kingwood	TX	77339
44	233	Northpoint	Fuddruckers, Inc.	6360 N Point Pkwy	Alpharetta	GA	30022
45	235	Tempe	Fuddruckers, Inc.	7470 S. Priest Dr.	Tempe	AZ	85283
46	237	Fields Ertel	Fuddruckers, Inc.	9996 Escort Drive	Warren	OH	45040
47	239	Turfway	Fuddruckers, Inc.	1335 Hansel Dr.	Florence	KY	41042
48	242	Coon Rapids	Fuddruckers, Inc.	8955 Spring Brook Road	Coon Rapids	MN	55433
49	243	Chesapeake	Fuddruckers, Inc.	1105 Merchants Way	Chesapeake	VA	23328
50	246	Tidwell	Fuddruckers, Inc.	13010 Northwest Freeway	Houston	TX	77040
51	250	Newport News	Fuddruckers, Inc.	101 Regal Ave.	Newport News	VA	23602
52	252	Fredericksburg	Atlantic Restaurant Ventures, Inc.	2871 Plank Rd.	Fredericksburg	VA	22407
53	256	Arrowhead	Fuddruckers, Inc.	7704 West Bell Rd.	Glendale	AZ	85308
54	264	Potomac Mills	Atlantic Restaurant Ventures, Inc.	14075 Shoppers Best Way	Woodbridge	VA	22192
55	266	Crossroads	Fuddruckers, Inc.	121 E. Campus View Blvd.	Franklin	OH	43234
56	269	Copperfield	Fuddruckers, Inc.	7250 Highway 6 North	Houston	TX	77095
57	271	Mill Run	Fuddruckers, Inc.	3560 Fishinger Blvd.	Franklin	OH	43026
58	275	Cleveland Ave.	Fuddruckers, Inc.	6144 Cleveland Ave.	Columbus	OH	43231
59	276	Eden Prairie	Fuddruckers, Inc.	11825 Technology Drive	Eden Prairie	MN	55344
60	277	Layton	Fuddruckers, Inc.	842 No. Main Street	Layton	UT	84041
61	278	Superstition Springs	Fuddruckers, Inc.	6455 E. Southern Ave.	Mesa	AZ	85206
62	279	Maple Grove	Fuddruckers, Inc.	14500 Weaver Lake Road	Maple Grove	MN	55311
63	280	Flagstaff	Fuddruckers, Inc.	2710 S Woodland Village Blvd.	Flagstaff	AZ	86001
64	282	Sun Center	Fuddruckers, Inc.	3586 W. Dublin Granville Rd.	Columbus	OH	43235
65	283	Abilene	Fuddruckers, Inc.	14035 East Evans Ave.	Aurora	CO	80014
66	286	Greenway Plaza	Fuddruckers, Inc.	3929 Southwest Freeway	Houston	TX	77027
67	288	Snellville	Fuddruckers, Inc.	1915 Scenic Highway	Snellville	GA	30278
68	292	East Main	Fuddruckers, Inc.	5771 East Main Street	Columbus	OH	43213
69	293	Austin	Fuddruckers, Inc.	6607 I-35 Frontage Rd., NB	Austin	TX	78752
70	294	Colonnade	Fuddruckers, Inc.	1928 E. Highland Ave.	Phoenix	AZ	85016
71	298	Thornton	Fuddruckers, Inc.	12020 Pennsylvania St.	Thornton	CO	80229
72	299	Greensboro	Fuddruckers, Inc.	4411 W. Wendover Ave.	Greensboro	NC	27407

Lease #	Rest. #	Restaurant Name	Lessee	Address			
73	301	Durham	Fuddruckers, Inc.	1809 Martin Luther King Pkwy	Durham	NC	27707
74	302	Stafford	Fuddruckers, Inc.	11445 Fountain Lake Dr	Stafford	TX	77477
75	306	Hickory	Fuddruckers, Inc.	1510 8th St. Dr. SE	Hickory	NC	28602
76	310	Jacksonville	Fuddruckers, Inc.	253 Western Ave.	Jacksonville	NC	28546
77	323	Raleigh	Fuddruckers, Inc.	4800 Signet Dr.	Raleigh	NC	27616
78	338	Winston Salem	Fuddruckers, Inc.	100 Hanes Square Circle	Winston Salem	NC	27104
79	350	Chinatown	Fuddruckers, Inc.	734 7th St. NW	Washington	DC	20001
80	352	Dupont Circle	Fuddruckers, Inc.	1216 18th St NW	Washington	DC	20036
81	353	Columbia	Fuddruckers, Inc.	6486 Dobbin Center Way	Columbia	MD	21045
82	357	RoundRock	Fuddruckers, Inc.	1991 IH 35 North	Round Rock	TX	78664
83	390	Whitemarsh	Fuddruckers, Inc.	8200 Perry Hall Blvd	Baltimore	MD	21236
84	430	Tucson	Fuddruckers, Inc.	2225 W Ina Road	Tucson	AZ	85741
85	431	Garland	Fuddruckers, Inc.	3315 N. George Bush Expy #100	Garland	TX	77584
86	432	Pearland	Fuddruckers, Inc.	3149 Silverlake Villlage Dr. #104	Pearland	TX	77584
87	433	Mission Valley	Fuddruckers, Inc.	891 Camino de la Reina	San Diego	CA	92108
88	434	Oceanside	Fuddruckers, Inc., King Cannon, Inc., KCI, LLC, Magic Brands, LLC	2320 S. El Camino Real	Oceanside	CA	92054
89	439	Batavia	Fuddruckers, Inc.	155 N. Randall Road	Batavia	IL	60510
90	700	Foothill Ranch	Fuddruckers, Inc.	26771 Ranco Pkwy	Lake Forest	CA	92630
91	701	Ontario	Fuddruckers, Inc.	4423 Mills Circle	Ontario	CA	91764
92	703	Thousand Oaks	Fuddruckers, Inc.	401 N. Moorpark Rd.	Thousand Oaks	CA	91360
93	2391	KKR - Marina Del Rey	Fuddruckers, Inc.	4325 Glencoe Ave.	Marina del Rey	CA	90292
94	2392	KKR - West Los Angeles	Fuddruckers, Inc.	11066 Santa Monica Blvd.	Los Angeles	CA	90025
95	2393A	KKR - South Beverly	Fuddruckers, Inc.	262 S. Beverly Dr.	Beverly Hills	CA	90212
96	2393B	KKR - South Beverly	Fuddruckers, Inc.	264 S. Beverly Dr.	Beverly Hills	CA	90212
97	2394	KKR - Santa Monica	Fuddruckers, Inc.	2002 Wilshire Blvd.	Santa Monica	CA	90403
98	2395	KKR - Manhattan Beach	Fuddruckers, Inc.	3294 N. Sepulveda Blvd.	Manhattan Beach	CA	90266
99	2396	KKR - Grande Promenade	Fuddruckers, Inc.	255 S. Grand Ave.	Los Angeles	CA	90012
100	2397	KKR - Larchmont	Fuddruckers, Inc.	301 N. Larchmont Blvd.	Los Angeles	CA	90004
101	2398	KKR - Pasadena II	Fuddruckers, Inc.	238 S. Lake Ave.	Pasadena	CA	91101
102	2412	KKR - West Hollywood	Fuddruckers, Inc.	8520 Santa Monica Blvd.	West Hollywood	CA	90069
103	2413	KKR - Torrance	Fuddruckers, Inc.	21424 Hawthorn Blvd.	Torrance	CA	90503
104	2414	KKR - Miracle Mile	Fuddruckers, Inc.	5757 Wilshire Blvd.	Los Angeles	CA	90036
105	2416	KKR - Toluca Lake	Fuddruckers, Inc.	10123 Riverside Dr.	Toluca Lake	CA	91602
106	2417	KKR - Warner Center	Fuddruckers, Inc.	6020 Canoga Ave.	Woodland Hills	CA	91367
107	201	Aurora	Fuddruckers, Inc.	4250 Fox Valley Center Dr.	Aurora	IL	60505
108	238	Cincinnati	Fuddruckers, Inc.	6421 Glenway Avenue	Cincinnati	OH	45211

Lease #	*Rest. #*	*Restaurant Name*	*Lessee*	*Address*			
109	284	North Andover	Fuddruckers, Inc.	550 Turnpike Street	No. Andover	MA	01845
110	261	Orem	Fuddruckers, Inc.	210 West 1300 South	Orem	UT	84058
111	303	Sandy	Fuddruckers, Inc.	10050 South State Street	Sandy	UT	84060
112	704	Silver Spring	Fuddruckers, Inc.	819 Ellsworth Dr.	Silver Spring	MD	20910
113	399	Studio City	Fuddruckers, Inc.	12175 Ventura Blvd.	Studio City	CA	91604

Schedule 1.1(p)

Title Insurance Policies

1. Chicago Title Insurance Company Loan Policy No. 1401-008352691, dated December 8, 2006 (Calumet City, Cook County, Illinois);

2. Chicago Title Insurance Company Loan Policy No. 1401-008352693, dated December 8, 2006 (Matteson, Cook County, Illinois);

3. Chicago Title Insurance Company Loan Policy No. 1401-008352694, dated December 8, 2006 (Schaumburg, Cook County, Illinois);

4. Chicago Title Insurance Company Loan Policy No. 1401-008352696, dated December 11, 2006 (Highland, Lake County, Illinois);

5. Chicago Title Insurance Company Loan Policy No. 1401-008352697, dated December 12, 2006 (Downers Grove, DuPage County, Illinois);

6. Chicago Title Insurance Company Loan Policy No. 44-908-101-2603689, dated December 8, 2006 (Travis County, Texas); and

7. Chicago Title Insurance Company Loan Policy No. 72107-2969017, dated December 11, 2006 (Virginia Beach, Virginia).

Schedule 1.1(r)

Register Cash

Fuddruckers
Petty Cash Review

	#	Location	Petty Cash $
1	1	Botts Lane, TX	1,800.00
2	3	Wurzbach, TX	2,000.00
3	5	Willowbrook, TX	2,000.00
4	7	Greens Road, TX	2,000.00
5	8	Clearlake, TX	2,000.00
6	9	Normandy, TX	2,000.00
7	11	Brodie Oaks, TX	2,000.00
8	13	Kirkwood, TX	2,000.00
9	23	Phoenix, AZ	2,000.00
10	24	Woodlands, TX	2,000.00
11	26	Kurland, TX	2,000.00
12	32	Lake Forest, CA	2,500.00
13	47	Windy Hill, GA	2,000.00
14	53	Brookfield, WI	3,000.00
15	55	Chula Vista, CA	2,500.00
16	57	Highland Park, IL	2,000.00
17	62	La Mesa, CA	3,000.00
18	67	DGN, IL	2,000.00
19	68	Annapolis, MD	3,500.00
20	78	Lakewood, CA	3,000.00
21	81	Mira Mesa, CA	2,500.00
22	83	Annandale, VA	2,300.00
23	84	Alamo Plaza, TX	2,500.00
24	90	Matteson, IL	2,000.00
25	98	Scottsdale, AZ	1,800.00
26	103	Tucson, AZ	2,500.00
27	105	Calumet City, IL	2,000.00
28	106	West Park, TX	2,000.00
29	114	Virginia Beach, VA	1,800.00
30	126	Schaumburg, IL	2,000.00
31	132	St Louis, MO	2,000.00
32	136	Burbank, CA	3,000.00
33	143	Buena Park, CA	2,500.00
34	174	Rockville, MD	3,000.00
35	199	Fairfax, VA	2,000.00
36	220	Gwinnett, GA	2,000.00
37	223	Town Center, GA	2,000.00
38	225	Tyson's Corner, VA	2,000.00
39	231	Town & Country, TX	2,000.00
40	232	Kingwood, TX	2,000.00

41	233	Northpoint, GA	2,000.00
42	235	Tempe, AZ	2,700.00
43	246	Tidwell, TX	2,000.00
44	256	Glendale, AZ	2,000.00
45	269	Copperfield, TX	2,000.00
46	278	Superstition Springs, AZ	2,000.00
47	286	Greenway, TX	2,700.00
49	299	Greensboro, NC	2,000.00
50	302	Stafford, TX	2,700.00
51	306	Hickory, NC	1,800.00
52	310	Jacksonville, NC	2,000.00
53	350	China Town	2,800.00
54	353	Columbia, MD	2,000.00
55	355	Katy, TX	2,000.00
56	357	Round Rock, TX	2,000.00
57	359	Lakeline Mall, TX	2,000.00
58	432	Pearland, TX	2,000.00
59	433	Mission Valley, CA	2,000.00
60	434	Ocean Side, CA	2,000.00
61	701	Ontario, CA	3,000.00
62	2394	Santa Monica, CA	2,000.00
63	2397	Larchmont, CA	2,500.00
64	2412	West Hollywood, CA	2,000.00
			139,400.00

Schedule 2.1(b)(i)

Assumed Leases

1. **Corporate Office – Austin**: Office Lease, dated as of February 15, 2005, by and between Sage Monterey Oaks, Ltd., a Texas limited liability partnership, as Landlord, and Magic Restaurants, LLC, as Tenant.
   - First Amendment to Lease Agreement, dated as of August 31, 2005, by and between Sage-Monterey Oaks, Ltd., as Landlord, and Fuddruckers, Inc., as Tenant.
   - Second Amendment to Lease Agreement, dated as of November 1, 2005, by and between Sage-Monterey Oaks, Ltd., as Landlord, and Fuddruckers, Inc., as Tenant.

2. **Corporate Office – North Andover**: Lease Agreement for Office Suites at Jefferson Park, dated as of December 6, 2005, by and between Kenrick Investment Group, as Lessor, and Fuddruckers, Inc., as Lessee, as amended by that certain letter agreement, dated as of November 8, 2007.

3. **Rest. # 3**: Shopping Center Lease, dated as of October 5, 1992, by and between Crow-Birnbaum #2, as Landlord, and Freddie Fuddruckers of San Antonio Number Two, Inc., as Tenant.
   - Lease Addendum, dated as of October 5, 1982, by and between Crow-Birnbaum # 2, as Landlord, and Freddie Fuddruckers of San Antonio Number Two, Inc., as Tenant.
   - Amendment # 3 to Shopping Center Lease, dated as of June 10, 1992, by and between Coliseum # 1 Limited Partnership (formerly Crow-Birnbaum # 2), as Landlord, and Fuddruckers, Inc., as Tenant.
   - Fourth Amendment to Standard Commercial Shopping Center Lease, dated as of December 28, 2002, by and between Colonnade Retail, Ltd., a Texas limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.

4. **Rest. # 7**: Shopping Center Lease, dated as of August 24, 1982, by and between Northwood Village Associates, Ltd., as Landlord, and Freddie Fuddruckers No. 2 of Houston, Inc., as Tenant.
   - Amendment to Lease, dated as of March 31, 1987, by and between Northwood Village Associates, Ltd., as Landlord, and Freddie Fuddruckers No. 2 of Houston, Inc., as Tenant.
   - Second Amendment to Lease, dated as of February 1, 1990, by and between Northwood Village Associates, Ltd., as Landlord, and Viand Restaurants, Inc., as Tenant.
   - Third Amendment to Lease, dated as of February 1, 1993, by and between Northwood Village Associates, Ltd., as Landlord, and Viand Restaurants, Inc., as Tenant.

- Fourth Amendment to Lease Agreement, dated as of July 19, 1999, by and between TCP Northwood Village Partners, Ltd., as Landlord, and Fuddruckers, Inc., as Tenant.

5. **Rest. # 11**: Lease Agreement, dated as of February 21, 1983, by and between Crow-Shafer-Gottesman, a Texas limited partnership, as Landlord and Freddie Fuddruckers of Austin Number Two, Inc., as Tenant.

6. **Rest. # 23**: Lease Agreement, dated as of June 1, 1999, by and between Sun Income Limited Partnership, a California limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.

7. **Rest. # 32**: Retail Lease, dated as of December 8, 1983, by and between Zellner Investment Properties, as Landlord, and Fuddruckers, Inc., as Tenant.
   - Addendum to Lease, dated as of December 8, 1983, by and between Zellner Investment Properties, as Landlord, and Fuddruckers, Inc., as Tenant.
   - Second Addendum to Lease, dated as of January 8, 1984, by and between Zellner Investment Properties, as Landlord, and Fuddruckers, Inc., as Tenant.
   - Letter Agreement, dated as of January 16, 2004, by and between Zellner Investment Properties, as Landlord, and Fuddruckers, Inc., as Tenant.

8. **Rest. # 43**: Lease Agreement, dated as of June 8, 1984, by and between Frantz Klodt & Son, Inc., a Minnesota corporation, as Landlord, and Discus Corporation, as Tenant.
   - Amendment to Lease, dated as of August 31, 2004, by and between Klodt Incorporated, successor in interest to Frantz Klodt & Son, Inc., as Landlord, and Fuddruckers, Inc., successor in interest to Discus Corporation, as Tenant.

9. **Rest. # 47**: Lease, dated as of May 1, 1985, by and between The Terrace Shopping Center Joint venture, a Georgia joint venture, as Landlord, and Concord Food Restaurant Joint Venture, as Tenant.
   - Amendment to Lease, dated as of September 26, 1994, by and between Confederation Life Insurance Company, as Landlord, and Fuddruckers, Inc., as Tenant.
   - Second Amendment to Lease, dated as of November 7, 2003, by and between W.H. Terrace Associates, L.P. and the Wilmer Family et al, as Landlord, and Fuddruckers, Inc., as Tenant.

10. **Rest. # 53**: Lease, dated as of June 11, 1984, by and between S&B Partnership, a Wisconsin general partnership, as Lessor, and Discus of Brookfield, a Wisconsin corporation, as Lessee.
    - Agreement, dated as of May 7, 1986 by and between S&B Partnership, as Lessor, and Discus of Brookfield, Inc., as Lessee.
    - Second Amendment to Lease, dated as of May 5, 2004, by and between S&B Partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
    - Letter Agreement, dated as of September 16, 2008, by and between S&B Partnership, as Landlord, and Fuddruckers, Inc., as Tenant

11. **Rest. # 55**: Lease, dated as of February 13, 1984, by and between Centre City Associates Limited - Commercial, a California limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
    - First Amendment to Lease, dated as of May 1, 1984, by and between Centre City Associates Limited - Commercial, as Landlord, and Fuddruckers, Inc., as Tenant.
    - Amendment No. 2, dated as of February 1, 1994, by and between Park Plaza, as Landlord, and FDR 100, Inc. and Fuddruckers, Inc., as Tenant.

12. **Rest. # 62**: Grossmont Shopping Center Lease, dated as of June 19, 1984, by and between Grossmont Shopping Center Co., a limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
    - First Amendment of Lease, dated as of May 20, 1997, by and between Grossmont Shopping Center Co., as Landlord, and Fuddruckers, Inc., as Tenant.
    - Letter Agreement, dated as of March 17, 2004, by and between CB Richard Ellis, Inc., as agent for Grossmont Shopping Center Co., as Landlord, and Fuddruckers, Inc., as Tenant.

13. **Rest. # 68**: Ground Lease, dated as of August 29, 1984, by and between Annapolis Mall Shopping Center Co., a Maryland general partnership, as Landlord, and Atlantic Restaurant Ventures, Inc., as Tenant.
    - First Amendment to Ground Lease, dated as of January 12, 1999, by and between Annapolis Mall Shopping Center, LLP, as Landlord, and Atlantic Restaurant Ventures, Inc., as Tenant.

14. **Rest. # 78:** Ground Lease, dated as of August 2, 1984, by and between Lakewood Shopping Center Company, as Lessor, and Fuddruckers, Inc., as Lessee.
    - First Amendment of Ground Lease and Extension of Term, dated as of February 24, 2005, by and between Macerich Lakewood, LLC (successor in interest to Lakewood Shopping Center Company), as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment of Ground Lease, dated as of June 15, 2006, by and between Macerich Lakewood, LLC (successor in interest to Lakewood Shopping Center Company), as Lessor, and Fuddruckers, Inc., as Lessee.

15. **Rest. # 81:** Lease Agreement, dated as of November 15, 1984, by and between Mira Mesa Shopping Center - West, a general partnership, as Landlord, and Fuddruckers, Inc., as Tenant.

16. **Rest. # 83:** Restaurant Lease, dated as of September 28, 1984, by and between WCW Corporation, a Virginia corporation, as Lessor, and Atlantic Restaurant Ventures, Inc., as Lessee.
    - First Amendment to Lease, dated as of November 18, 1985, by and between Three Chefs Corporation, as Lessor, and Atlantic Restaurant Ventures, Inc., as Lessee.

17. **Rest. # 84:** Alamo Plaza South, Ltd. Lease Agreement, dated as of February 28, 1985, by and between Alamo Plaza South, Ltd., a Texas limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
    - First Amendment to Lease Agreement, dated as of March 7, 2000, by and between Alamo Quarters, Ltd., as Landlord, and Fuddruckers, Inc., as Tenant.

18. **Rest. # 98:** Lease, dated as of February 19, 1968, by and between Don C. Chandler, as Lessor, and Garland Enterprises, Inc., Robert C. Garland and Jeanne L. Garland, Richard H. Garland and Barbara O. Garland, as Lessee.
    - Amendment to Lease Agreement, dated as of October 10, 1984, by and between Don C. Chandler, as Lessor, and Garland Enterprises, Inc., Robert C. Garland and Jeanne L. Garland, Richard H. Garland and Barbara O. Garland, as Assignor, and Mountain States Limited, as Assignee.
    - Assignment of Lease, dated as of June 1, 1987, by and between Fuddruckers, Inc., as Assignor, and FDR 100, Inc., as Assignee.
    - Written Notice to Exercise Renew Option, dated as of May 15, 2003, between PCL, L.L.C. and Wiler and Associates, as broker for Fuddruckers, Inc.
    - Letter Agreement, dated as of July 14, 2003, between PCL, L.L.C. and Fuddruckers, Inc.

19. **Rest. # 103**: Lease, dated as of March 7, 1985, by and between Mountain States, Ltd., a Texas limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
    - Addendum to Lease, dated as of April 1, 1991, by and between Excel Properties, Ltd., as Landlord, and FDR 100, Inc., as Tenant.
    - Second Amendment to Lease, dated as of January 24, 2005, by and between Vestergom Speedway, LLC (successor in interest to Mountain States, Ltd.), as Landlord, and Fuddruckers, Inc., as Tenant.

20. **Rest. # 106**: Lease, dated as of January February 28, 1985, by and between Westpark Plaza, Ltd., a Texas limited partnership, as Landlord and Fuddruckers, Inc., as Tenant.
    - Amendment to Lease, dated August 28, 1985, by and between Westpark Plaza, Ltd., as Landlord, and Fuddruckers, Inc., as Tenant.
    - Letter Agreement, dated as of October 3, 2000, by and between Westlev Associates Ltd. (successor in interest to Westpark Plaza, Ltd.), as Landlord, and Fuddruckers, Inc., as Tenant.

21. **Rest. # 132**: Lease, dated as of June 30, 1986, by and between South Plaza Ventures, a Missouri general partnership, as Landlord and Discus of St. Louis, Inc., a Missouri corporation, as Tenant.
    - Assignment and Assumption Agreement, dated as of June 7, 1994, by and between Discus of St. Louis, Inc., as Assignor, and Fuddruckers, Inc., as Assignee.

22. **Rest. # 136**: Lease, dated as of February 28, 1986, by and between Samuel L. Leifer, an individual, as Landlord and Fuddruckers, Inc., as Tenant.

- Addendum to Lease, dated February 28, 1986, by and between Samuel L. Leifer, as Landlord and Fuddruckers, Inc., as Tenant
- Amendment to Lease, dated February 16, 1988, by and between The Leifer Family Trust as successor to the interest of Samuel Leifer, as Landlord, Fuddruckers, Inc., as Tenant.

23. **Rest. # 143**: Lease, dated as of July 24, 1986, by and between Colco, Ltd. #1, a California limited partnership, as Landlord and Fuddruckers, Inc., as Tenant.
    - First Amendment, dated as of November 24, 1986, by and between Colco, Ltd. #1, a California limited partnership, as Landlord and Fuddruckers, Inc., as Tenant
    - Second Amendment, dated as of November 24, 1986, by and between Colco, Ltd. #1, a California limited partnership, as Landlord and Fuddruckers, Inc., as Tenant
    - Third Amendment, dated as of March 31, 2000, by and between Brook Investment of Buena Park, L.P., a California limited partnership, as Landlord and Fuddruckers, Inc., as Tenant.

24. **Rest. # 174**: Lease Agreement, dated as of May 8, 1998, by and between Rockville Pike Properties Limited Partnership LLP, as Lessor and S.T. Restaurant, Inc., a Maryland corporation, as Lessee.
    - Assignment of Lease, Consent to Assignment, Estoppel Certificate and Amendment of Lease, dated October 6, 2000, by and among Leonora W. Rocca a/k/a Leonora Rocca- Rutman, Leo J. Rocca, Jr., and Leonora Rocca Bernheisel, as joint tenants on behalf of Rockville Pike Properties Limited Partnership, LLP, as Lessor; S.T. Restaurant, Inc. and Naval Mehra individually, as Lessee; and Fuddruckers, Inc., as Assignee.

25. **Rest. # 199**: Deed of Lease, dated as of December 1, 1992, by and between James R. McKay and Ruth A. McKay, as Landlord, and Fuddruckers-ARVI Fairfax, Inc., as Tenant.
    - Amendment to Deed of Lease, dated as of May 30, 1997, by and between James R. McKay and Ruth A. McKay, as Landlord, and Atlantic Restaurant Ventures, Inc. (successor to Fuddruckers-ARVI Fairfax, Inc.), as Tenant.

26. **Rest. # 220**: Agreement of Lease, dated as of December 30, 1993, by and between Gwinnett Prado, L.P., a, as Landlord, and Fuddruckers, Inc., as Tenant.
    - First Amendment to Lease, dated as of November 26, 2003, by and between Gwinnett Prado, L.P., a, as Landlord, and Fuddruckers, Inc., as Tenant

27. **Rest. # 223**: Agreement to Lease, dated as of December 3, 1993, by and between Gwinnett Prado, L.P., as Landlord, and Fuddruckers, Inc., as Tenant.
    - First Amendment to Lease Agreement, dated as of December 1, 2003, by and between Gwinnett Prado, L.P., as Landlord, and Fuddruckers, Inc., as Tenant.

28. **Rest. # 225**: Lease, dated as of December 21, 1993, by and between Boulevard Motel Corp., a Maryland corporation, as Landlord, and Atlantic Restaurant Ventures, Inc., a Virginia corporation, as Tenant.

- First Amendment to Lease, dated February 26, 1999, by and between Boulevard Motel Corp., as Landlord, and Atlantic Restaurant Ventures, Inc., as Tenant.

29. **Rest. # 231**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
    - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

30. **Rest. # 232**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
    - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

31. **Rest. # 233**: Lease Abstract, dated as of March 14, 1994, by and between CP Venture Two, LLC, as Landlord, and Fuddruckers, Inc., as Tenant.

32. **Rest. # 235**: Lease Abstract, dated as of May 11, 1994, by and between Grove Parkway Plaza LLC, an Arizona limited liability company, as Landlord, and Fuddruckers, Inc., as Tenant.

33. **Rest. # 246**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
    - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

34. **Rest. # 256**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

35. **Rest. # 269**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee..

36. **Rest. # 278**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

37. **Rest. # 286**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.

- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

38. **Rest. # 299**: Lease, dated as of May 20, 1996, by and between Primax Properties, LLC, as Landlord, and Carolina Restaurant Concepts, L.L.C., as Tenant.
    - Notice of Assignment and Assumption of Lease, dated as of January 4, 2002, by and among CRC Management Company, LLC, Fuddruckers, Inc. and Primax Properties, LLC.

39. **Rest. # 302**: Gemstone Management Company Lease Agreement, dated as of July 12, 1996, by and between F.P. Centre, Ltd., a Texas limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
    - First Addendum to Lease, dated as of November 24, 1998, by and between F.P. Centre, Ltd., as Landlord, and Fuddruckers, Inc., as Tenant.

40. **Rest. # 306**: Lease Agreement, dated as of August 1, 1996, by and between Primax Properties, LLC, a North Carolina limited liability company, as Landlord, and Carolina Restaurant Concepts, L.L.C., as Tenant.
    - Notice of Assignment and Assumption of Lease, dated as of January 2, 2002, by and among CRC Management Company, LLC, Fuddruckers, Inc. and MDL Realty Co.

41. **Rest. # 310**: Lease Agreement, dated as of August 29, 1996, by and between Primax Properties, LLC, a North Carolina limited liability company, as Landlord, and Carolina Restaurant Concepts, L.L.C., as Tenant.
    - Notice of Assignment and Assumption of Lease, dated as of January 4, 2002, by and among CRC Management Company, LLC, Fuddruckers, Inc. and Snyder-Hunt Company, LLP.

42. **Rest. # 350**: Contract of Lease, dated as of August 22, 2000, by and between Jemal's Chinatown L.L.C., as Landlord, and Fuddruckers, Inc., as Tenant.

43. **Rest. # 353**: Lease, dated as of December 29, 2000, by and between Glenbrook Properties I, L.L.C., a Delaware limited liability company, as Landlord, and Fuddruckers, Inc., as Tenant.

44. **Rest. # 357**: Retail Lease Agreement, dated as of September 27, 2002, by and between R.C. Center Limited Partnership, as Landlord, and Fuddruckers, Inc., as Tenant.

45. **Store # 432**: Lease, dated as of May 18, 2005, by and between Rathmell Silverlake Retail Partners, Ltd., a Texas limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.

46. **Rest. # 433**: Lease, dated as of June 19, 1997, by and between Mission Valley Partnership, a California limited partnership, as Landlord, and Koo Koo Roo, Inc., as Tenant.

- First Amendment to Lease, dated as of November 12, 1997, by and between Mission Valley Partnership, as Landlord, and Koo Koo Roo, Inc., as Tenant.
- Second Amendment to Lease, dated as of May 27, 2005, by and between Mission Valley ShoppingTown, LLC, as Landlord, and Fuddruckers, Inc., as Tenant.

47. **Rest.# 434**: Standard industrial/Commercial Single-Tenant Lease - Net, dated as of June 1, 2004, by and between Bernard H. Breier, Trustee of Dan A. Belcher Trust dated June 13, 2002 and Simone Belcher Trust dated June 13, 2002, as Lessor, and Mission Federal Credit Union, as Lessee.
    - First Amendment to Standard industrial/Commercial Single-Tenant Lease - Net, dated as of November 29, 2004, by and between Bernard H. Breier, Trustee of Dan A. Belcher Trust dated June 13, 2002 and Simone Belcher Trust dated June 13, 2002, as Lessor, and Mission Federal Credit Union, as Lessee.
    - Assignment and Second Amendment of Lease, dated as of May 1, 2005, by and between Mission Federal Credit Union, as Assignor, and King Cannon, Inc., Fuddruckers, Inc., KCI, LLC and Magic Restaurants, LLC, as Assignee, and Bernard H. Breier, Trustee of Dan A. Belcher Trust dated June 13, 2002 and Simone Belcher Trust dated June 13, 2002, as Lessor.

48. **Rest. # 701**: Lease, dated as of October 19, 2001, by and between Pacific Oscar's Ontario, L.P., a California limited partnership, as Landlord, and FFPE, LLC, as Tenant.
    - Assignment, Amendment to Lease and Consent, dated as of January 20, 2006, by and between FFPE, LLC, as Assignor, and Fuddruckers, Inc., as Assignee, Worldwide Restaurant Concepts, Inc. and Terrence T. Shippen and Armida M. Shippen, as Landlord.

49. **Rest. # 2394**: Standard Industrial/Commercial Multi-Tenant Lease, dated as of February 10, 1994, by and between Barnard Family Trust, dated January 21, 1981, as Lessor, and Koo Koo Roo, Inc., as Lessee.
    - Second Amendment to Lease, dated as of February 28, 2003, by and between Barnard Family Trust, dated January 21, 1981, as Landlord, and Koo Koo Roo, Inc., as Tenant.
    - Letter Agreement, dated as of September 16, 2008, by and between Barnard Family Trust, dated January 21, 1981, as Landlord, and Koo Koo Roo, Inc., as Tenant.

50. **Rest. # 2397**: Lease Agreement, dated as of December 21, 1994, by and between Butterfield & Butterfield, a California corporate, as Landlord, and Koo Koo Roo, Inc., as Tenant.
    - Addendum to Lease Agreement, dated as of August 13, 2002, by and between Jakob Lowinger, Trustee of the Lowinger Family Trust as assignee of Butterfield & Butterfield, as Landlord, and Koo Koo Roo, Inc., as Tenant.

51. **Rest. # 2412**: Ground Lease, dated as of January 17, 1996, by and between Kenneth E. Grier, as Trustee of the Kenneth E. Grier Family Trust established o December 7, 1987, as Landlord, ad Koo Koo Roo, Inc., as Tenant.
    - First Amendment, dated as of May ___, 1996, by and between Kenneth E. Grier, as Trustee of the Kenneth E. Grier Family Trust established o December 7, 1987, as Landlord, ad Koo Koo Roo, Inc., as Tenant.

52. **Rest. # 73:** Lease Agreement, dated as of December 20, 1984, by and between Frantz Klodt & Son, Inc., a Minnesota corporation, as Landlord, and Discus Corporation, as Tenant.
    - First Amendment to Lease, dated as of January 1, 1994, by and between Klodt Incorporated, as Landlord, and Discus Corporation, as Tenant.
    - Second Amendment to Lease, dated as of November ___, 1995, by and between Klodt Incorporated, as Landlord, and Fuddruckers, Inc., as Tenant.
    - Third Amendment to Lease, dated as of August 31, 2004, by and between Klodt Incorporated, as Landlord, and Discus Corporation, as Tenant.

53. **Store # 261**: Lease, dated as of April 24, 1995, by and between Lake Pointe Associates, Ltd., a Utah limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
    - Sublease, dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

54. **Store # 284**: Lease, dated as of October 16, 1995, by and between North Andover Crossroad Limited Partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
    - Sublease, dated as of June 28, 1998, by and between Fuddruckers, Inc., as Sublandlord, and The Boland Group II LLC, as Subtenant.

55. **Rest. # 704**: Lease Agreement, dated as of February 10, 2006, by and between PFA-D Silver Spring, LC, a Maryland limited liability company, as Landlord, and Fuddruckers, Inc., as Tenant.
    - Sublease, dated as of October 6, 2006, by and between Fuddruckers, Inc., as Sublessor, and Eat More Burgers, Inc., as Sublessee.

Schedule 2.1(b)(vii)

Assumed Contracts

1. Master Distributor Agreement, dated as of November 5, 2007, by and between U.S. Foodservice, Inc. – Austin, Texas Division and Fuddruckers, Inc.

2. Master Distributor Agreement, dated as of November 5, 2007, by and between U.S. Foodservice, Inc. – Western PA Division and Norwich, CT Division and Fuddruckers, Inc.

3. Master Distributor Agreement, dated as of June 3, 2008, by and between U.S. Foodservice, Inc. and Fuddruckers, Inc., as amended by the First Amendment to Master Distributor Agreement, effective as of March 1, 2010.

4. Master Distribution Agreement, dated as of September 1, 2002, by and between SYSCO Corporation and Koo Koo Roo, Inc. (predecessor in interest to Fuddruckers, Inc.), as amended by the letter agreements, dated as of December 4, 2003 and May 9, 2006, respectively.

5. Stock Purchase Agreement, dated as of December 16, 2000, by and among Fuddruckers, Inc., Brand Franchise Holdings E.C., Butcher Baker Goodtimes Maker (Management Consultants) Ltd. and Buddy Morin.

6. Trademark and Technology User Agreement, dated as of November 19, 1997, by and between Fuddruckers, Inc. and Fuddruckers-EMA E.C., as amended by the Amendment No. 1 to Trademark and Technology User Agreement, dated as of December 16, 2000, as further amended by the Amendment No. 2 to Trademark and Technology User Agreement, dated as of _____, 2002.

7. Kitchen Exhaust Cleaning Agreement, dated as of September 1, 2008, by and between Fuddruckers, Inc. and Commercial Kitchen Exhaust Cleaning, Inc.

8. Waste & Recycling Service Agreement, dated as of November 12, 2009, by and between SLM Waste & Recycling Services Inc. and Fuddruckers, Inc.

9. Restaurant Technologies, Inc. Supply Agreement, dated as of October 22, 2004, by and between Restaurant Technologies, Inc. and Fuddruckers, Inc., as amended by the Restaurant Technologies, Inc. Supply Agreement Supplement, dated as of October 22, 2004, as further amended by the Restaurant Technologies, Inc. Supply Agreement Pricing Addendum, dated as of April 14, 2009, as further amended by the Restaurant Technologies, Inc. Supply Location Supplement, dated as of April 14, 2009.

10. Product and Services Supply Agreement, dated as of September 1, 2006, by and between Ecolab Inc. and Fuddruckers, Inc.

11. Agreement, dated as of August 12, 2008, by and between The Hartnett Co., Inc. and Fuddruckers, Inc.

12. Fountain Beverage Sales Agreement, dated as of February 22, 2005, by and between Pepsi-Cola Fountain Company, Inc. and Fuddruckers International, LLC, on behalf of itself and it various direct and indirect subsidiaries, including, without limitation, Fuddruckers, Inc.

13. Letter Agreement, dated as of September 16, 2004, by and between Dr Pepper/Seven Up, Inc. and Fuddruckers, Inc., as amended by the Amendment, dated as of September 8, 2005.

14. Restaurant Management Agreement, dated as of December 30, 1998, by and between Fuddruckers, Inc. and Magic Restaurants, LLC, as amended by the Amendment No. 1 to Restaurant Management Agreement, dated as of September 1, 2000, as further amended by the Amendment No. 2 to Restaurant Management Agreement, dated as of October 19, 2000.

15. Intellectual Property Licensing Agreement, dated as of December 30, 1998, by and between Fuddruckers, Inc. and Magic Restaurants, LLC, as amended by the Amendment No. 1 to Intellectual Property Licensing Agreement, dated as of November ___, 2000, as further amended by the Amendment No. 2 to Intellectual Property Licensing Agreement, dated as of December 8, 2003.

16. Assignment of Intellectual Property Rights, dated as of December 30, 1998, by and between Fuddruckers, Inc. and Magic Restaurants, LLC.

17. Bill of Sale and Assignment Agreement, dated as of December 30, 1998, by and between Fuddruckers, Inc. and Magic Restaurants, LLC.

18. See all items of Schedule 5.9 of the Disclosure Schedule, such items are incorporated herein by reference.

19. Magic Restaurants, LLC and Fuddruckers, Inc. 2003 Unit Appreciation Plan and related grant letters.

20. 2010 Key Employee Incentive Plan.

21. Employment Agreement, dated as of January 6, 2010, by and between Magic Brands, LLC and Christine Dekkers.

22. Offer Letter, dated as of March 4, 2010, by and between Magic Brands, LLC and Kelley Pascal-Gould.

23. Offer Letter, dated as of May 26, 2009, by and between Fuddruckers, Inc. and Dwayne Chambers.

24. Offer Letter, dated as of December 7, 2004, by and between Fuddruckers, Inc. and Larry Fletcher.

25. Offer Letter, dated as of February 25, 2009, by and between Fuddruckers, Inc. and Paul J. Evans.

26. Offer Letter, dated as of April 8, 2009, by and between Fuddruckers, Inc. and Mary E. Hamill.

27. Offer Letter, dated as of May 26, 2009, by and between Fuddruckers, Inc. and Dwayne Chambers.

28. Offer Letter, dated as of November 16, 2007, by and between Magic Brands, LLC and Michael Mason.

29. Offer Letter, dated as of November 14, 2007, by and between Magic Brands, LLC and Jennifer Barefoot.

30. Offer Letter, dated as of April 26, 2007, by and between Magic Brands, LLC and Robert Fonville.

31. Offer Letter, dated as of March 30, 2006, by and between Magic Brands, LLC and Robert Fonville.

32. Offer Letter, dated as of September 2, 2009, by and between Magic Brands, LLC and Megan Brock.

33. Offer Letter, dated as of September 8, 2009, by and between Magic Brands, LLC and Jeff Dover.

34. Offer Letter, dated as of February 22, 2006, by and between Magic Brands, LLC and Todd Culbert.

35. Offer Letter, dated as of January 30, 2007, by and between Magic Brands, LLC and Albert Garza.

36. Relocation Agreement, dated as of February 5, 2007, by and between Magic Brands, LLC and Albert Garza.

37. Offer Letter, dated as of January 15, 2007, by and between Magic Brands, LLC and Kimberly Harding.

38. Relocation Agreement, dated as of January 15, 2007, by and between Magic Brands, LLC and Kimberly Harding.

39. Director Incentive Bonus Plan, dated as of January 15, 2007, by and between Magic Brands, LLC and Kimberly Harding.

40. Offer Letter, dated as of November 15, 2005, by and between Magic Brands, LLC and Kim Myers.

41. Offer Letter, dated as of May 10, 2007, by and between Magic Brands, LLC and Michael Peay.

42. Manager Incentive Bonus Plan, dated as of May 20, 2007, by and between Magic Brands, LLC and Michael Peay.

43. Relocation Agreement, dated as of May 20, 2007, by and between Magic Brands, LLC and Michael Peay.

44. Offer Letter, dated as of January 19, 2009, by and between Magic Brands, LLC and Julie Price.

45. Offer Letter, dated as of March 28, 2007, by and between Magic Brands, LLC and Cameron Pumphrey.

46. Offer Letter, dated as of September 14, 2007, by and between Magic Brands, LLC and Danielle Silveira.

47. Fuddruckers Incentive Program: Franchise Business Consultants FY2010

48. Fuddruckers Restaurant Managers Incentive Program

49. Fuddruckers District Operators Incentive Program

50. Fuddruckers Regional Vice Presidents Incentive Program

51. Magic Brands Training GM Bonus and Restaurant Credit Plan

52. FY '09 Fuddruckers Bonus Program – Director of Franchise Development

53. FY '09 Fuddruckers Bonus Program – Vice President of Franchise Development

54. FY '09 Fuddruckers Bonus Program – Design and Construction Manager

55. 2009 Fuddruckers Recruiter Incentive Program

56. FY2010 Fuddruckers Training Department Incentive Program – Regional Training Managers

57. FY2010 Fuddruckers Training Department Incentive Program – Director of Training

58. Operating Agreement of Fuddruckers of Howard County, LLC, dated as of September 7, 2001, by and between Fuddruckers, Inc. and Robert L. Dodson (predecessor in interest to

Robert Anthony Mead); Withdrawal as Member, dated as of March 16, 2006, by and between Fuddruckers, Inc. and Robert L. Dodson; Assignment of LLC Membership Interest in Fuddruckers of Howard County, LLC, dated as of April 28, 2006, by and between Fuddruckers, Inc. and Robert Anthony Mead

59. Operating Agreement of Fuddruckers of Howard County, LLC, dated as of April 16, 2003, by and between Fuddruckers, Inc. and Jeffrey D. Tingle (predecessor in interest to James Taylor); Withdrawal as Member and Resident Agent, dated as of October __, 2006, by and between Fuddruckers, Inc. and Jeffrey D. Tingle; Assignment of LLC Membership Interest in Fuddruckers of White Marsh, LLC, dated as of November 8, 2006, by and between Fuddruckers, Inc. and James Taylor; Assignment of Members' Interest, dated as of March 19, 2007, by and between Fuddruckers, Inc. and James Taylor;

60. Franchise Agreements by and between the Company and the Franchisees listed on Schedule 5.17(a) of the Disclosure Schedule.

61. Leases for the leased properties listed on Schedule 5.12(b) of the Disclosure Schedule. The Leases may contain restrictive covenants/use restrictions. The Sellers have entered into Lease Termination Agreements for locations that being closed and are doing whatever is necessary to close those locations.

62. See items 3-6 of Schedule 5.3(b) of the Disclosure Schedule, such items are incorporated herein by reference.

63. See all items of Schedule 5.6(b) of the Disclosure Schedule, such items are incorporated herein by reference.

64. Asset Purchase Agreement, dated as of July 31, 2009, by and among Daltex Restaurant Management, Inc., Magic Brands, LLC and Fuddruckers, Inc.

65. Oral Agreement by and between the Company and Rastelli for the supply of a precise blend of beef with no specific term and pricing based on a formula.

66. Select Merchant Payment Card Processing Agreement, dated as of September 18, 2005, by and between Paymentech L.P. and Fuddruckers, Inc., as amended by the Amendment No. 1 to Select Merchant Payment Card Processing Agreement, dated as of August 3, 2009, by and between First Data Services, LLC (as ultimate assignee of Paymentech L.P.) and Magic Brands, LLC (as assignee of Fuddruckers, Inc.).

67. Master Restaurant Industry Supply Agreement, dated as of April 22, 2010, by and between eTools Solutions, LLC and Magic Brands, LLC.

68. Supply Chain and Fulfillment Scope of Work, dated as of April 22, 2010, by and between eTools Solutions, LLC and Magic Brands, LLC.

69. Inventory Purchase Agreement, dated as of April 22, 2010, by and between eTools Solutions, LLC and Magic Brands, LLC.

70. Bill of Sale and Assignment, dated as of April 22, 2010, by and between eTools Solutions, LLC, as Maker, and Magic Brands, LLC, as Payee.

71. Promissory Note, dated as of April 22, 2010, by and between eTools Solutions, LLC and Magic Brands, LLC.

72. Management Agreement, dated as of April ___, 2010, by and between Magic Brands, LLC and Fuddruckers Riverstone, Ltd.

73. Lease, dated as of April ___, 2010, by and between Riverstone Copperfield Retail Partners Ltd. and Fuddruckers Riverstone, Ltd.

74. Agreement of Limited Partnership of Fuddruckers Riverstone, Ltd., dated as of February ___, 2010, by and between Fuddruckers Riverstone GP, Inc. and Tall Pines Revocable Trust Fuddruckers, Inc. and Fuddruckers, Inc.

75. Fuddruckers Restaurant Development Agreement, dated as of January 21, 2001, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and The Butcher The Baker of Knoxville, Inc., as amended by the Amendment No. 1 to Development Agreement, dated as of April 3, 2007.

76. Fuddruckers Restaurant Development Agreement, dated as of September 13, 2002, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and Marcelo Montalvan and Berna Montalvan, as amended by the Amendment No. 1 to Development Agreement, dated as of August 15, 2005, as further amended by the Amendment No. 2 to Development Agreement, dated as of March 27, 2006, as further amended by the Amendment No. 3 to Development Agreement, dated as of July 17, 2007, as further amended by the Amendment No. 4 to Development Agreement, dated as of January 20, 2009.

77. Fuddruckers Restaurant Development Agreement, dated as of April 14, 2003, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and Caribbean Investment Group, Corp., as amended by the Amendment No. 1 to Development Agreement, dated as of April 14, 2003.

78. Fuddruckers Restaurant Development Agreement, dated as of July 24, 2003, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and El Paso DHC Enterprises, L.P., as amended by the Amendment No. 1 to Development Agreement, dated as of July 15, 2005, as further amended by the Amendment No. 2 to Development Agreement, dated as of August 30, 2007, as further amended by the Amendment No. 3 to Development Agreement, dated as of August 30, 2007.

79. Fuddruckers Restaurant International Development Agreement, dated as of November 26, 2004, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and

L'Entrecote Ltd., as amended by the Addendum No. 1 to International Development Agreement, dated as of November 26, 2004, as further amended by the Addendum No. 2 to International Development Agreement, dated as of November 1, 2006.

80. Fuddruckers Restaurant Development Agreement, dated as of November 8, 2004, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and Ralph Flannery, as amended by the Amendment No. 1 to Development Agreement, dated as of November 8, 2004.

81. Fuddruckers Restaurant Development Agreement, dated as of July 21, 2005, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and MCM Restaurants, LLC.

82. Fuddruckers Restaurant Development Agreement, dated as of October 11, 2005, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and R Squared Restaurants, Inc.

83. Fuddruckers Restaurant Development Agreement, dated as of October 5, 2005, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and Ben Mansueto, as amended by the Amendment No. 1 to Development Agreement, dated as of October 5, 2005, as further amended by the Amendment No. 2 to Development Agreement, dated as of October 5, 2005.

84. Fuddruckers Restaurant Development Agreement, dated as of September 15, 2005, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and RJ International, Inc., as amended by the Amendment No. 1 to Development Agreement, dated as of May 3, 2006.

85. Fuddruckers Restaurant Development Agreement, dated as of September 23, 2005, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and Joey Yoon.

86. Fuddruckers Restaurant Development Agreement, dated as of December 15, 2005, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and The Lark Group, as amended by the Amendment No. 1 to Development Agreement, dated as of November 1, 2005, as further amended by the Amendment No. 2 to Development Agreement, dated as of June 20, 2006, as further amended by the Amendment No. 3 to Development Agreement, dated as of April 26, 2007.

87. Fuddruckers Restaurant Development Agreement, dated as of November 17, 2005, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and Synergy Restaurant Group, as amended by the Amendment No. 1 to Development Agreement, dated as of November 17, 2005, as further amended by the Amendment No. 2 to Development Agreement, dated as of May 7, 2007.

88. Fuddruckers Restaurant Development Agreement, dated as of November 30, 2005, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and Gladiator

Enterprises, Inc., as amended by the Amendment No. 1 to Development Agreement, dated as of November 30, 2005.

89. Fuddruckers Restaurant Development Agreement, dated as of December 14, 2005, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and Kirk Brannan and Brandy Pate, as amended by the Amendment No. 1 to Development Agreement, dated as of December 14, 2005, as further amended by the Amendment No. 2 to Development Agreement, dated as of April 11, 2006.

90. Fuddruckers Restaurant Development Agreement, dated as of March 14, 2006, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and F&S Holding Co., Inc., as amended by the Amendment No. 1 to Development Agreement, dated as of March 14, 2006.

91. Fuddruckers Restaurant Development Agreement, dated as of February 13, 2006, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and JSDS Investment Group, LLC, as amended by the Amendment No. 1 to Development Agreement, dated as of February 13, 2006.

92. Fuddruckers Restaurant Development Agreement, dated as of March 27, 2006, by and between Magic Restaurants, LLC (predecessor to Magic Brands, LLC) and The Britt and Brown Company, Inc.

93. Fuddruckers Restaurant Development Agreement, dated as of September 18, 2006, by and between Magic Brands, LLC and Shake It Up, LLC, as amended by the Amendment No. 1 to Development Agreement, dated as of October 1, 2006.

94. Fuddruckers Restaurant Development Agreement, dated as of September 26, 2006, by and between Magic Brands, LLC and Rick Windrum, Michael Kucera, Steve Schell, Travis Freeman and Michael Malloy, as amended by the Amendment No. 1 to Development Agreement, dated as of September 28, 2006, as further amended by the Amendment No. 2 to Development Agreement, dated as of September 28, 2006, as further amended by the Amendment No. 3 to Development Agreement, dated as of February 1, 2008, as further amended by the Amendment No. 4 to Development Agreement, dated as of February 7, 2008.

95. Fuddruckers Restaurant Development Agreement, dated as of January 20, 2007, by and between Magic Brands, LLC and Vachik Abadisians, as amended by the Amendment No. 1 to Development Agreement, dated as of January 20, 2007.

96. Fuddruckers Restaurant Development Agreement, dated as of September 21, 2007, by and between Magic Brands, LLC and John Reader, as amended by the Amendment No. 1 to Development Agreement, dated as of September 21, 2007.

97. Fuddruckers Restaurant Development Agreement, dated as of September 11, 2008, by and between Magic Brands, LLC and Mister Donut Dominicano, S.A.

98. Fuddruckers Restaurant Development Agreement, dated as of January 14, 2009, by and between Magic Brands, LLC and L W, LLC.

99. Fuddruckers Restaurant Development Agreement, dated as of July 31, 2009, by and between Magic Brands, LLC and Daltex Restaurant Management, Inc.

100. Restaurant Management Agreement, dated as of April 30, 2007, by and between Magic Brands, LLC and R.J. Management, LLC.

101. Workout Agreement, by and among Magic Brands, LLC and Tom Kyriakoza, Saber Ammori, Omar Ammori, Bogarts, Inc., Amore Company 3, Inc., Royal Restaurant Management, Inc. and Jake's Foods, Inc. (this agreement has not been executed and currently being negotiated by the parties)

Schedule 2.5(c)

Rejected Leases

List of Leases

1. **Rest. # 4**: Shopping Center Lease, dated as of September 27, 1982, by and between Brentwood Properties, Agent for Village Associates, Ltd., as Landlord, and Freddie Fuddrucker's of Austin, Inc., as Tenant.
   - Extension of Lease Agreement, dated as of June 24, 1996, by and between Village Associates, Ltd., as Landlord, and Fuddruckers, Inc., as Tenant.
   - Second Extension of Lease Agreement, dated as of November 1, 2002, by and between Village Shopping Center Associates, LP, successor-in-interest to Village Associates, Ltd., as Landlord, and Fuddruckers, Inc., as Tenant.

2. **Rest. # 15**: Lease Agreement, dated as of June 20, 1983, by at between Perimeter Center Investments, as Landlord, and Concord Food – Restaurant Joint Venture, as Tenant.
   - Assignment of Lease Agreement, dated December 31, 1991, by and between Concord Food – Restaurant Joint Venture, as Assignee, and RFY, Inc., as Assignor.
   - Assignment and Consent to Assignment of Lease Agreement dated April 19, 1993, by and between Perimeter Centre Investments, as Lessor, RFY, Inc., as Assignor, and Fuddruckers, Inc., as Assignee.

3. **Rest. # 60**: Building Lease, dated as of March 4, 1985, by and between MRT Properties, Inc., a Minnesota corporation, as Landlord, and Discus of Roseville, Inc, as Tenant.
   - Lease Assignment, Lease Amendment, Assumption, Consent and Affirmation Agreement, dated as of June 7, 1994, by and between MRT Properties, Inc., as Landlord, and Fuddruckers, Inc., as Tenant.

4. **Rest. # 88:** Lease, dated as of October 7, 1975, by and between Noland South Development Company, as Lessor, and Jacks of Better Independence, Inc., as Lessee.
   - Sublease Agreement, dated as of April 26, 1985, by and between Howard Johnson Company, as Sublessor, and L&B Restaurants, Inc., as Sublessee.
   - Assignment of Lease, dated as of July 18, 1986, by and between L&B Restaurants, as Assignor, and Fuddruckers, Inc., as Assignee.

5. **Rest. # 91:** Lease Agreement, dated as of January 14, 1985, by and between Crow-Atlanta Retail, Ltd., a Texas limited partnership, as Lessor, and Concord Food – Restaurant Joint Venture, as Tenant.
   - Assignment and Consent to Assignment Agreement, dated as of April 19, 1993, by and between Confederation Life Insurance Company, as Lessor, and RFY, Inc., as Lessee, and Fuddruckers, Inc., as Assignee.

6. **Rest. # 102**: Lease, dated as of January 12, 1985, by and between Golden Partnership, a Kansas general partnership, as Landlord and L&B Restaurants, Inc., an Oklahoma corporation, as Tenant.
   - Sub-Lease, dated as of December 12, 1985, by and between Marno M. McDermott, Jr. as Landlord, and L&B Restaurants, Inc., an Oklahoma corporation, as Tenant
   - Certificate and Agreement of Estoppel, Recognition and Attornment, dated as of July 16, 1986, by and between Golden Partnership, a Kansas general partnership, as Landlord and Marno M. McDermott, Jr. as Assignor.
   - Assignment of Lease, dated as of July 18, 1986, by and among L&B Restaurants, Inc., Marno M. McDermott, Jr. and Fuddruckers, Inc.
   - Second Lease Modification Agreement, dated as of July 18, 1986, by and between Fuddruckers, Inc. and Golden Partnership, a Kansas general partnership.
   - Assignment and Modification of Lease, dated as of May 8, 1992, by and among Fuddruckers, Inc., 8725 Metcalf, Inc. and Golden Partnership, a Kansas general partnership.
   - Third Modification to Lease and Consent to Sublease, dated as of October 8, 1996, by and between Fuddruckers, Inc. and Metcalf 87 Associates, L.L.C.
   - Letter Agreement, dated as of November 29, 2004, by and between Fuddruckers, Inc. and Golden & Company, L.L.C.

7. **Rest. # 109**: Lease, dated as of October 29, 1985, by and between Trinity Development Company, a Colorado general partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
   - First Amendment to Lease, dated as of January 12, 2004, by and between Diamante-Marston Park Plaza, LLC (successor in interest to Trinity Development Company), as Landlord, and Fuddruckers, Inc., as Tenant.
   - Second Amendment to Lease, dated as of October 14, 2005, by and between Marston Park Plaza, LLC (, as Landlord, and Fuddruckers, Inc., as Tenant.

8. **Rest. # 129:** Lease, dated as of November 26, 1984, by and between DGS Associates, an Illinois limited partnership, as Landlord and Fuddruckers, Inc., as Tenant.
   - Letter Agreement, dated as of October 4, 2004, by and between Kimco North Trust II as agent for DGS Associates, an Illinois limited partnership, as Landlord and Fuddruckers, Inc., as Tenant

9. **Rest. # 177**: Lease Agreement, dated as of November 10, 1989, by and between Crossroads of Dulles, a Virginia general partnership, as Landlord, and Atlantic Restaurant Ventures, Inc., a Virginia corporation, as Tenant.
   - Lease Amendment No. 1, dated June 1, 1991, by and between Crossroads of Dulles, as Landlord, and Atlantic Restaurant Ventures, Inc., as Tenant.

10. **Rest. # 188**: Lease, dated as of July 31, 1991, by and between Northwest Commerce Bank, as Landlord, and Fuddruckers, Inc., as Tenant.

11. **Rest. # 209**: Sublease, dated as of May 1, 1993, by and between Property Development Associates, a California general partnership, as Landlord, and Atlantic Restaurant Ventures, Inc., as Tenant.
    - First Sublease Modification Agreement, dated as of November 12, 2002, by and between Pacific Realty Associates, L.P., as Landlord, and Atlantic Restaurant Ventures, Inc., as Tenant.

12. **Rest. # 230**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
    - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

13. **Rest. # 237**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
    - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

14. **Rest. # 239**: Lease Agreement, dated as of August 17, 1994, by and between Mary Ellen Foltz, as Landlord, and Fuddruckers, Inc., as Tenant.

15. **Rest. # 242**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
    - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

16. **Rest. # 243**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

17. **Rest. # 250**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

18. **Rest. # 252**: Lease Agreement, dated as of November 18, 1994, by and between Carl D. Silver, as Landlord, and Atlantic Restaurant Ventures, Inc., as Tenant.

- First Amendment to Lease, dated as of December 14, 1994 by and between Carl D. Silver, as Landlord, and Atlantic Restaurant Ventures, Inc., as Tenant.

19. **Rest. # 264**: Deed of Lease, dated as of November 4, 1994, by and between Smoketown Road Associates Limited Partnership, a Virginia limited partnership, as Landlord, and Atlantic Restaurant Ventures, Inc., as Tenant.

20. **Rest. # 266**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

21. **Rest. # 271**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

22. **Rest. # 275**: Lease, dated as of June 27, 1995, by and between World Business Services, Inc., an Ohio Corporation, as Landlord, and Fuddruckers, Inc., as Tenant.

23. **Rest. # 276**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

24. **Rest. # 277**: Non-Subordinated Ground Lease, dated as of March 11, 1994, by and between Val A. Green and Edith D. Green Family Protection Trust and Johansen-Thackeray & Co. Inc.

- Amendment to Non-Subordinated Ground Lease, dated as of March 11, 1994, by and between Val A. Green and Edith D. Green Family Protection Trust and JTR Layton Crossing, L.C.
- Sublease, dated as of November 6, 1995, by and between JTR Layton Crossing, L.C. and Fuddruckers, Inc.
- Amendment to Sublease, dated as of December 9, 1998, by and between JTR Layton Crossing, L.C. and Fuddruckers, Inc.
- Sub-Sublease, dated as of December 1, 2003, by and between Smokehouse Utah, LLC and Fuddruckers, Inc.

25. **Rest. # 279**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.

- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

26. **Rest. # 280**: Lease Agreement, dated as of December 22, 1995, by and between Price Development Company, as Landlord, and Fuddruckers, Inc., as Tenant.
    - Sublease, dated as of June 29, 2001, by and between Fuddruckers, Inc., as Sublessor, and Mohawk Entertainment, LLC, as Sublessee.

27. **Rest. # 282**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
    - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

28. **Rest. # 283**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
    - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

29. **Rest. # 288**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
    - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
    - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

30. **Rest. # 292**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

31. **Rest. # 293**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**

- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

32. **Rest. # 294**: Lease, dated as of May 7, 1996, by and between Camelback Colonnade Associates Limited Partnership, an Arizona limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.

33. **Rest. # 298**: Net Lease Agreement, dated as of July 30, 1997, by and between AEI Real Estate Fund XVIII Limited Partnership, a Minnesota limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.

34. **Rest. # 301:** Lease Agreement, dated as of May 2, 1996, by and between Primax Properties, LLC, a North Carolina limited liability company, as Landlord, and Carolina Restaurant Concepts, L.L.C., as Tenant.

- Notice of Assignment and Assumption of Lease, dated as of January 4, 2002, by and among CRC Management Company, LLC, Fuddruckers, Inc. and Tok Son Kim.

35. **Rest. # 323**: Lease Agreement, dated as of December 11, 1997, by and between Primax Properties, LLC, a North Carolina limited liability company, as Landlord, and CRC Management Company, L.L.C., as Tenant.

36. **Rest. # 338**: Lease Agreement, dated as of November 30, 1998, by and between Primax Properties, LLC, a North Carolina limited liability company, as Landlord, and CRC Management Company, L.L.C., as Tenant.
    - Notice of Assignment and Assumption of Lease, dated as of January 4, 2002, by and among CRC Management Company, LLC, Fuddruckers, Inc. and PMC, Inc.

37. **Rest. # 352**: Contract of Lease, dated as of October 10, 2002, by and between Jemal Vent Limited Partnership, as Landlord, and Fuddruckers, Inc., as Tenant.

38. **Rest. # 390**: Lease Agreement, dated as of December 31, 2002, by and between White Marsh Mall, LLC, a Maryland limited liability company, as Landlord, and Fuddruckers, Inc., as Tenant.

39. **Rest. # 430**: Ground Lease Agreement, dated as of March 23, 2005, by and between Casas Adobes Baptist Church, a non-profit corporation, as Landlord, and Fuddruckers, Inc., as Tenant.

40. **Store # 431**: Lease, dated as of April 15, 2005, by and between Surecap-VillageTX Partners I, L.P., as Landlord, and Fuddruckers, Inc., as Tenant.

41. **Store # 439**: Retail Project Lease, dated as of June ___, 2005, by and between Batavia 2005, LLC, an Illinois limited liability company, as Landlord, and Fuddruckers, Inc., as Tenant.

42. **Rest. # 700**: Shopping Center Retail Lease, dated as of August ___, 2000, by and between Lake Forest/Foothill Commercial, LLC, a Delaware limited liability company, as Landlord, and S&C Company, Inc., as Tenant.
    - Assignment, Amendment to Lease and Consent, dated as of January 16, 2006, by and between FFPE, LLC, as Assignor, and Fuddruckers, Inc., as Assignee, and Turtle Investments II, LLC, as Landlord.

43. **Rest. # 703**: Lease, dated as of November 6, 1979, by and between Village Company, a limited partnership, as Landlord, and Michael J. Lonegan, Inc., as Tenant.
    - Amendment and Assignment of Lease, dated August 30, 1983, by and between Merged Centers, as Landlord, and 69'er Corp., as Tenant.
    - Second Amendment to Lease, by and between Merged Centers d/b/a Janss Mall, as Landlord, and McAnthco Enterprises, Inc. d/b/a Sizzler, as Tenant.
    - Assignment and Assumption of Lease – Third Lease Amendment, dated as of November 23, 1995, by and between McAnthco Enterprises, as Assignor, and Sizzler Restaurants International, Inc., as Assignee, and Merged Centers, as Landlord.
    - Sublease, dated as of _____, by and between Sizzler USA Real Property, Inc., a Delaware corporation, as Landlord, and Sizzler Restaurants International, Inc., as Tenant.

- Lease Assignment, dated as of January 31, 2006, by and between Thousand Oaks Marketplace, L.P., as Lessor, and FFPE, LLC, as Assignor, and Fuddruckers, Inc., as Assignee.

44. **Rest. # 2391**: Lease Agreement, dated as of January 18, 1990, by and between Villa/Maxella Partners, a California general partnership, as Landlord, and Lean Chick, Inc., a California corporation, as Tenant.
    - Lease Amendment No. One, dated as of October 21, 1991, by and between Villa/Maxella Partners, as Landlord, and Koo Koo Roo, Inc., a Delaware corporation, successor-in-interest to Lean Chick, Inc.
    - Lease Extension and Lease Amendment No. 2, dated as of November 7, 1995, by and between Copley Investors Limited Partnership, as Landlord, and Koo Koo Roo, Inc., as Tenant.
    - Letter Agreement, dated as of March 23, 2005, by and between Villa Marina MHRP V, LLC, a Delaware limited partnership, as Landlord, and Fuddruckers, Inc. d/b/a Koo Koo Roo, as Tenant.

45. **Rest. # 2392**: Shopping Center Lease, dated as of November 1, 1995, by and between ACP Santa Monica, LLC, as Delaware limited liability company, as Landlord, and Koo Koo Roo, Inc., a Delaware corporation, as Tenant.
    - Renewal of Lease, dated as of August 5, 2005, by and between ACP Santa Monica, LLC, as Landlord, and Koo Koo Roo, Inc., as Tenant.

46. **Rest. # 2393A**: Standard Industrial Lease – Net, dated as of November 24, 1992, by and between Lico Realty & Management Company, as Lessor, and Angelo Molli or Assignee, as Lessee.
    - Amendment to Standard Industrial Lease – Net, dated as of December 17, 1993, by and between Lico Realty & Management Company, as Lessor, and Mafica Roma, Inc., as Lessee.
    - Amendment #2 to Standard Industrial Lease – Net, dated as of July 20, 1995, by and between Lico Realty & Management Company, Lessor, and Koo Koo Roo, Inc., as Lessee.

47. **Rest. # 2393B**: Standard Industrial Lease – Net, dated as of November 24, 1992, by and between Lico Realty & Management Company, as Lessor, and Angelo Molli or Assignee, as Lessee.
    - Amendment to Standard Industrial Lease – Net, dated as of December 17, 1993, by and between Lico Realty & Management Company, as Lessor, and Mafica Roma, Inc., as Lessee.
    - Amendment #2 to Standard Industrial Lease – Net, dated as of July 20, 1995, by and between Lico Realty & Management Company, Lessor, and Koo Koo Roo, Inc., as Lessee.

48. **Rest. # 2395**: Shopping Center Lease, dated as of August 19, 1994, by and between Northern Trust of California N.A., as Lessor, and Koo Koo Roo, Inc., as Lessee.

- First Amendment and Expansion to Lease, dated as of October 28, 1995, by and between Northern Trust of California N.A., as Landlord, ad Koo Koo Roo, Inc., as Tenant.

49. **Rest. # 2396**: Lease Agreement, dated as of September ___, 1994, by and between Grand Promenade, a California limited partnership, as Landlord, and Koo Koo Roo, Inc., as Tenant.
    - Letter Agreement, dated as of April 15, 2005, by and between Grand Promenade, as Landlord, and Koo Koo Roo, Inc., as Tenant.

50. **Rest. # 2398**: Retail Lease, dated as of January 1, 1995, by and between Ruth Beasley Hooker, as Landlord, and Koo Koo Roo, Inc., as Tenant.

51. **Rest. # 2413**: Lease, dated as of October 14, 1996, by and between The Torrance Company, a California limited partnership, as Landlord, ad Koo Koo Roo, Inc., as Tenant.
    - Amendment to Lease, dated as of January 20, 1997, by and between The Torrance Company, as Landlord, ad Koo Koo Roo, Inc., as Tenant.
    - Second Amendment to Lease, dated as of July 10, 1997, by and between The Torrance Company, as Landlord, ad Koo Koo Roo, Inc., as Tenant.

52. **Rest. # 2414**: Lease, dated of July 10, 1997, by and between Oschin and Snyder II, a California general partnership, as Landlord, and Koo Koo Roo, Inc., as Tenant.
    - First Amendment to Lease, dated of April 14, 1998, by and between Oschin and Snyder II, a California general partnership, as Landlord, and Koo Koo Roo, Inc., as Tenant.

53. **Rest. # 2416**: Lease, dated as of September 2, 1998, by and between Lakeside Properties, Inc., a California corporation, as Landlord, and Koo Koo Roo, Inc., as Tenant.
    - First Amendment to Lease, dated as of March 25, 1999, by and between Lakeside Properties, Inc., as Landlord, and Koo Koo Roo, Inc., as Tenant.
    - Second Amendment to Lease, dated as of September 1, 1999, by and between Lakeside Properties, Inc., as Landlord, and Koo Koo Roo, Inc., as Tenant.
    - Third Amendment to Lease, dated as of March 15, 2000, by and between Lakeside Properties, Inc., as Landlord, and Koo Koo Roo, Inc., as Tenant.
    - Fourth Amendment to Lease, dated as of November 8, 2001, by and between Lakeside Properties, Inc., as Landlord, and Koo Koo Roo, Inc., as Tenant.

54. **Rest. # 2417**: Lease, dated as of March 8, 2000, by and between Gefico Warner Properties, LLC, a Delaware limited liability company, as Landlord, and Koo Koo Roo, Inc., as Tenant.

55. **Rest. # 201**: Store Lease and Rider, dated as of June 1, 1989, by and between Nick Poulos, as Landlord, and New Yorker Restaurant, Inc., as Tenant.

- Lease Option Addendum and Estoppel Memorandum, dated as of September 29, 1999, by and between Nick Poulos, as Landlord, and Fuddruckers, Inc. (as successor in interest to New Yorker Restaurant, Inc.), as Tenant

56. **Rest. # 238**: Lease, dated as of June 5, 1984, by and between Monfort Investments, as Landlord, and Fuddruckers, Inc., as Tenant.

57. **Rest. # 303**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
- First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
- **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

58. **Store # 2399**: Standard Industrial/Commercial Single-Tenant Lease, dated as of May 15, 1995, by and between Six Point Co., as Lessor, and Koo Koo Roo, Inc., as Lessee.
- Addendum to Standard Industrial/Commercial Single-Tenant Lease, dated as of May 15, 1995, by and between Six Point Co., as Lessor, and Koo Koo Roo, Inc., as Lessee.
- Second Amendment to Standard Industrial/Commercial Single-Tenant Lease, dated as of May 17, 1996, by and between Six Point Co., as Lessor, and Koo Koo Roo, Inc., as Lessee.
- Option to Renew Lease, dated as of July 1, 2005, by and between Six Point Co., as Landlord, and Fuddruckers, Inc., as Tenant.

Schedule 2.5(f)

Subleased Leases

1. **Store # 284**: Lease, dated as of October 16, 1995, by and between North Andover Crossroad Limited Partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
   - Sublease, dated as of June 28, 1998, by and between Fuddruckers, Inc., as Sublandlord, and The Boland Group II LLC, as Subtenant.

2. **Store # 261**: Lease, dated as of April 24, 1995, by and between Lake Pointe Associates, Ltd., a Utah limited partnership, as Landlord, and Fuddruckers, Inc., as Tenant.
   - Sublease, dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

3. **Rest. # 303 (Being assigned to Spirit)**: Master Lease, dated as of November 24, 1998, by and between FFCA Acquisition Corporation, a Delaware corporation, as Lessor, and Fuddruckers, Inc., as Lessee. **(applicable to Rest. # 230, 231, 232, 237, 242, 243, 246, 250, 256, 266, 269, 271, 276, 278, 279, 282, 283, 286, 288, 292, 293, and 303)**
   - First Amendment to Master Lease, dated as of May 7, 2001, by and between FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
   - Second Amendment to Master Lease, dated as of April 26, 2002, by and between GE Capital Franchise Finance Corporation, successor by merger to FFCA Acquisition Corporation, as Lessor, and Fuddruckers, Inc., as Lessee.
   - **Rest. # 303**: Sublease dated July 1, 2005, by and between Fuddruckers, Inc., as Sublessor, and Casual Beef Concepts, Inc., a Utah corporation, as Sublessee.

4. **Rest. # 704**: Lease Agreement, dated as of February 10, 2006, by and between PFA-D Silver Spring, LC, a Maryland limited liability company, as Landlord, and Fuddruckers, Inc., as Tenant.
   - Sublease, dated as of October 6, 2006, by and between Fuddruckers, Inc., as Sublessor, and Eat More Burgers, Inc., as Sublessee.

Schedule 3.3

Form of Escrow Agreement

See attached Escrow Agreement, such agreement is incorporated herein by reference.

ESCROW AGREEMENT

This Escrow Agreement dated April 21, 2010 (this "Escrow Agreement"), is entered into by and among RoundPoint Capital Group, Inc., a Florida corporation ("Purchaser Affiliate"), Magic Brands, LLC, a Delaware limited liability company ("Sellers Representative", and together with Purchaser Affiliate, the "Parties" and each individually, a "Party"), and Wells Fargo Bank, National Association, as escrow agent ("Escrow Agent"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Agreement (as defined below).

RECITALS

A. Tavistock Ventures, Inc., a Bahamian IBC (the "Purchaser"), and Magic Brands, LLC, a Delaware limited liability company, Fuddruckers, Inc., a Texas corporation, Atlantic Restaurant Ventures, Inc., a Virginia corporation, R. Wes, Inc., a Texas corporation, Fuddruckers of Howard County, LLC, a Maryland limited liability company, and Fuddruckers of White Marsh, LLC, a Maryland limited liability company (collectively, the "Sellers") have entered into that certain Purchase Agreement dated as of even date herewith (the "Purchase Agreement");

B. RoundPoint Capital Group, Inc., a Florida corporation, is an affiliate of Purchaser.

C. This Escrow Agreement is being executed and delivered pursuant to Purchase Agreement Sections 3.2 and 3.3;

D. Pursuant to Section 3.3 of the Purchase Agreement, the Sellers have collectively appointed Sellers Representative as their representative and attorney in fact, to act on their behalf in connection with any claims relating to the Escrow Fund (as defined below); and

E. Purchaser Affiliate agrees to place in escrow certain funds and the Escrow Agent agrees to hold and distribute such funds in accordance with the terms of this Escrow Agreement.

In consideration of the promises and agreements of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties and the Escrow Agent agree as follows:

ARTICLE 1
ESCROW DEPOSIT

Section 1.1 Receipt of Escrow Amount.

(a) Section 3.2 of the Purchase Agreement provides that on the execution of the Purchase Agreement, Purchaser Affiliate shall cause to be deposited Four Million U.S. Dollars ($4,000,000) (the "Escrow Amount") with the Escrow Agent, such funds to be held and disbursed by the Escrow Agent in accordance with the terms and conditions of this Escrow Agreement. The Escrow Amount plus any investment earnings and income thereon from the investment thereof in accordance with the terms of this Escrow Agreement shall be referred to as the "Escrow Fund".

(b) In the event that the Sellers file or are the subject of any petition filed under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Sellers acknowledges and agrees that the Escrow Fund and the account holding the Escrow Fund are the property of the Purchaser Affiliate and shall not constitute property of the bankruptcy estate within the meaning of §541 of the Bankruptcy Code, and under no circumstances shall the Sellers or any of their

advisors, agents, representatives, attorneys, custodians or other third parties acting for or on behalf of the Sellers assert or claim that the Escrow Fund and the account holding the Escrow Fund are the property of the bankruptcy estate within the meaning of §541 of the Bankruptcy Code.

Section 1.2 Designation of Escrow Agent. The Purchaser Affiliate and the Sellers Representative hereby appoint and designate the Escrow Agent as escrow agent for the purposes set forth herein and the Escrow Agent hereby accepts such appointment and agrees to accept, hold and disburse the Escrow Fund solely in accordance with the terms hereof. All references to the "Escrow Agent," as that term is used herein, shall refer to the Escrow Agent solely in its capacity as such, and not in any other capacity whatsoever, whether as individual, agent, fiduciary, trustee or otherwise. The Escrow Agent shall have no obligations under the Purchase Agreement.

Section 1.3 Investment of Escrow Fund.

(a) Unless otherwise directed in writing by the Purchaser Affiliate and the Sellers Representative as provided in Section 1.3(b), the Escrow Agent shall invest and reinvest the Escrow Fund from time to time in the Wells Fargo Bank Money Market Deposit Account (the "MMDA"). The Escrow Agent shall have the right to liquidate any investments of the Escrow Fund held by the Escrow Agent hereunder in order to provide funds necessary to make required payments hereunder. The Escrow Agent shall have no authority to invest the Escrow Fund in any other obligations or investments except as provided in this Section 1.3.

(b) The Escrow Agent may invest the Escrow Fund in any other Permitted Investment (as defined below), which the Escrow Agent shall make as and when jointly directed in writing to do so by the Purchaser Affiliate and the Sellers Representative. For purposes of this Escrow Agreement, the term "Permitted Investment" means (i) money market funds registered under the Investment Company Act of 1940, as amended, the portfolio of which is limited to the investments described in clauses (ii) and (iii) of this Section, (ii) obligations of or guaranteed by the United States of America or any agency thereof, or repurchase agreements covering such obligations, and (iii) any other investment agreed to in advance in writing by the Purchaser Affiliate and the Sellers Representative.

(c) The Parties hereto recognize and agree that the Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of monies held in the Escrow Account or the purchase, sale, retention or other disposition of any Permitted Investment.

(d) Interest and other earnings on investments earned on the Escrow Fund shall be added to the Escrow Amount and will be part of the Escrow Fund. Any loss or expense incurred as a result of an investment permitted in accordance with this Section 1.3 will be borne by the Escrow Fund. Amounts on deposit in the MMDA are insured up to a total of $250,000 per depositor, per insured bank (including principal and accrued interest) by the Federal Deposit Insurance Corporation (FDIC), subject to the applicable rules and regulations of the FDIC. The Parties hereto understand that the FDIC coverage of $250,000 is a temporary increase from $100,000 and is effective only until December 31, 2013. The Purchaser Affiliate and the Sellers Representative understand that they have full power to jointly direct investments of the Escrow Fund and that the investment instruction contained in Section 1.3(a) shall continue in effect until revoked or modified by the Purchaser Affiliate and the Sellers Representative by joint written notice to the Escrow Agent.

(e) The Escrow Agent is hereby authorized to execute purchases and sales of Permitted Investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Escrow Agent shall send statements to each of the Parties hereto on a monthly basis reflecting activity in the Escrow Fund account for the preceding month. Although each of the Parties

hereto recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Parties hereto hereby agree that confirmations of Permitted Investments are not required to be issued by the Escrow Agent for each month in which a monthly statement is rendered.

(f) The Parties hereto acknowledge and agree that the delivery of the Escrow Fund is subject to the sale and final settlement of Permitted Investments. Proceeds of a sale of Permitted Investments will be delivered on the business day on which the appropriate instructions are delivered to the Escrow Agent if received prior to the deadline for same day sale of such Permitted Investments. If such instructions are received after the applicable deadline, proceeds will be delivered on the next succeeding business day..

(g) So long as the Escrow Funds are held in the MMDA, the Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Escrow Agreement. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account.

Section 1.4 Disbursements. The Escrow Agent shall disburse the Escrow Fund as follows:

(a) in accordance with the joint written instructions of the Purchaser Affiliate and Sellers Representative;

(b) if the Closing shall occur, in accordance with the joint written instructions of the Purchaser Affiliate and Sellers Representative, the Escrow Agent shall pay the Escrow Fund to the Sellers Representative to be applied towards the payment of the Purchase Price;

(c) if the Purchase Agreement is terminated by the Sellers pursuant to Section 4.4(f) of the Purchase Agreement, in accordance with the joint written instructions of the Purchaser Affiliate and Sellers Representative, the Escrow Agent shall pay the Escrow Fund to the Sellers Representative; and

(d) if the Purchase Agreement is terminated by the Purchaser for any reason under Section 4 of the Purchase Agreement or the Purchase Agreement is otherwise terminated for any reason other than by the Sellers pursuant to Section 4.4(f), in accordance with the joint written instructions of the Purchaser Affiliate and Sellers Representative, the Escrow Agent shall pay the Escrow Fund to the Purchaser Affiliate.

Section 1.5 Income Tax Allocation and Reporting.

(a) The Parties agree that, for tax reporting purposes, all interest and other income from investment of the Escrow Fund shall, as of the end of each calendar year and to the extent required by the Internal Revenue Service (i) if the Escrow Fund is disbursed to the Purchaser Affiliate, all interest and other income from investment of the Escrow Fund shall be reported as having been earned by the Purchaser Affiliate, whether or not such income was disbursed during such calendar year, or (ii) if the Escrow Fund is disbursed to Sellers, all interest and other income from investment of the Escrow Fund shall be reported as having been earned by the Sellers, whether or not such income was disbursed during such calendar year.

(b) Prior to closing, the Parties shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and such other forms and documents that the Escrow Agent may request. The Parties understand that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of the Escrow Fund.

(c) To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Fund, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Fund. The Purchaser and Sellers, jointly and severally, shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Fund and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 1.5(c) is in addition to the indemnification provided in Section 3.1 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 1.6 Termination. This Escrow Agreement shall terminate upon the disbursement of all of the Escrow Fund in accordance with Section 1.4 hereof, including any interest and investment earnings thereon, except that the provisions of Sections 1.5(c), 3.1 and 3.2 hereof shall survive termination.

ARTICLE 2
DUTIES OF THE ESCROW AGENT

Section 2.1 Scope of Responsibility. The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the Parties to this Escrow Agreement. In performing any of its duties under this Escrow Agreement, or upon the claimed failure to perform its duties hereunder, the Escrow Agent shall not be liable to anyone for any damages, losses, or expenses that such party may incur as a result of the Escrow Agent so acting or failing to act; provided, however, that the Escrow Agent shall be liable for damages, losses, or expenses arising out of its fraud, gross negligence, violation of law or willful misconduct under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

Section 2.2 Attorneys and Agents. The Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. The Escrow Agent shall be reimbursed as set forth in Section 3.1 for any and all compensation (fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees.

Section 2.3 Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of the Parties or their respective agents, representatives, successors, or assigns. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority. Within five (5) business days following the execution of this Escrow Agreement, the Parties shall deliver to the Escrow Agent authorized signers' forms in the form of Exhibits A-1 (for the Purchaser Affiliate), A-2 (for the Sellers Representative) to this Escrow Agreement.

Section 2.4 Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

Section 2.5 No Financial Obligation. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

ARTICLE 3
PROVISIONS CONCERNING THE ESCROW AGENT

Section 3.1 Indemnification. The Sellers, on the one hand, and the Purchaser, on the other hand, each hereby agree to indemnify, defend and hold the Escrow Agent and its parent, affiliates, directors, officers, agents and employees (collectively, the "Escrow Agent Indemnitees") harmless from and against one-half (½) of any and all claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket, incidental expenses and reasonable legal fees and expenses ("Losses"), actually incurred by the Escrow Agent Indemnitees or any of them for following any written instruction or other direction upon which the Escrow Agent is authorized to rely pursuant to the terms of this Escrow Agreement; provided that the Escrow Agent has not acted with gross negligence, or engaged in fraud or willful misconduct, or committed a violation of law. In addition to and not in limitation of the immediately preceding sentence, the Sellers, on the one hand, and the Purchaser, on the other hand, each hereby also covenant and agree to indemnify, defend and hold the Escrow Agent Indemnitees and each of them harmless from and against one-half (½) of all Losses that are actually incurred by the Escrow Agent Indemnitees or any of them in connection with or arising out of the Escrow Agent's performance under this Escrow Agreement; provided, however, that such indemnity shall not apply to any Losses finally determined to have been primarily caused by the Escrow Agent's fraud, gross negligence, violation of law or willful misconduct. The provisions of this Section 3.1 shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent for any reason.

Section 3.2 Limitation of Liability. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (i) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S FRAUD, GROSS NEGLIGENCE, VIOLATION OF LAW OR WILLFUL MISCONDUCT, OR (ii) SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

Section 3.3 Resignation or Removal. The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow

Agent a joint written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Fund and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

Section 3.4 Compensation. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit B, which compensation shall be paid 50/50 by the Purchaser Affiliate and the Sellers Representative, and payable in full by April 30, 2010. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement.

Section 3.5 Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the Parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent is authorized to retain the Escrow Fund until the Escrow Agent (i) receives a final non-appealable order of a court of competent jurisdiction directing delivery of the Escrow Fund, (ii) receives a joint written agreement executed by each of the Parties involved in such disagreement or dispute directing delivery of the Escrow Fund, in which event the Escrow Agent shall be authorized to disburse the Escrow Fund in accordance with such final court order or agreement, or (iii) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Fund and shall be entitled to recover attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. The Escrow Agent shall be entitled to act on any such agreement, court order, or arbitration decision without further question, inquiry, or consent.

Section 3.6 Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 3.7 Attachment of Escrow Fund; Compliance with Legal Orders. In the event that any Escrow Fund shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Fund, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

ARTICLE 4
MISCELLANEOUS

Section 4.1 Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld).

Section 4.2 Escheat. The Parties are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Fund escheat by operation of law.

Section 4.3 Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) by overnight delivery with a reputable national overnight delivery service, or (iv) by mail or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five business days after the date such notice is deposited in the United States mail. Any notice given shall be deemed given upon the actual date of such delivery. If notice is given to a Party, it shall be given at the address for such Party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

If to the Sellers Representative, to:

c/o Magic Brands, LLC
5700 South MoPac Expressway
Building C, Suite 300
Austin, TX 78749
Attn: Peter Large
Fax: (800) 478-9236

with copies to:

Goulston & Storrs
400 Atlantic Avenue
Boston, MA 02110-3333
Attn: Kitt Sawitsky, Esq.
Fax: (617) 574-4112

If to the Purchaser Affiliate, to:

RoundPoint Capital Group, Inc.
5032 Parkway Plaza Blvd
Charlotte, NC 28217
Attn: Tyler Piercy
Fax: (704) 426-8808

with copies to:

DLA Piper LLP (US)
203 North LaSalle Street, Suite 1900
Chicago, IL 60601
Attn: Sachin Lele and Richard Morey
Fax: (312) 630-5327

If to the Escrow Agent:

Wells Fargo Bank, NA
Corporate Trust Services
Attn: Patty Adams
625 Marquette Ave., 11th Fl, N9311-110
Minneapolis, MN 55479
Phone: 612-667-1102
Fax: 612-667-9825

Section 4.4 Governing Law and Venue. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflict of laws principles. The Parties and Escrow Agent agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States Bankruptcy Court for the District of Delaware and any appellate court thereof, for the resolution of any such claim or dispute.

Section 4.5 Force Majeure. Notwithstanding anything contained in the Agreement to the contrary, Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, without limitation, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

Section 4.6 Affiliate Relationship. The Parties acknowledge that an affiliate of the Escrow Agent is a lender to the Sellers and waive any conflict with respect thereto.

Section 4.7 Entire Agreement. This Escrow Agreement sets forth the entire agreement and understanding of the parties related to the Escrow Fund.

Section 4.8 Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Parties and the Escrow Agent.

Section 4.9 Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

Section 4.10 Headings. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

Section 4.11 Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

RoundPoint Capital Group, Inc.

By: _____
Name: Tyler Piercy
Title: Director

Magic Brands, LLC

By: _____
Name: Peter Large
Title: President

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Escrow Agent

By: Patricia Adams
Name: Patricia Adams
Title: Vice President

EXHIBIT A-1
CERTIFICATE AS TO AUTHORIZED SIGNATURES

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Purchaser Affiliate and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit A-1 is attached, on behalf of Purchaser Affiliate.

Name / Title	Specimen Signature
Tyler Piercy Name	 Signature
Director Title	
Name	Signature
Title	
Name	Signature
Title	
Name	Signature
Title	

EXHIBIT A-2
CERTIFICATE AS TO AUTHORIZED SIGNATURES

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Sellers Representative and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit A-2 is attached, on behalf of Sellers Representative.

Name / Title	Specimen Signature
Peter Cakoe Name	 Signature
President Title	
Name	Signature
Title	
Name	Signature
Title	
Name	Signature
Title	

EXHIBIT B
SCHEDULE OF ESCROW AGENT FEES

Wells Fargo Corporate Trust Services
Fee Schedule for Escrow Agent for
RoundPoint Capital Group, Inc./Magic Brands, LLC

Acceptance Fee:	Waived

Initial Fees as they relate to Wells Fargo Bank acting in the capacity of Escrow Agent – includes final review of the Escrow Agreement; acceptance of the Escrow appointment; setting up of Escrow Account(s) and accounting records; and coordination of receipt of funds for deposit to the Escrow Account(s).

Escrow Agent Administration Fee:	$3,500.00

For ordinary administrative services by Escrow Agent – includes daily routine account management; investment transactions; cash transaction processing (including wire and check processing) and disbursement of funds in accordance with the agreement. Generation of 1099's (if applicable) for up to 15 parties is included in the Escrow Administration fee.

Wells Fargo's fee quote is based on the following assumptions:

- APPROXIMATE AMOUNT TO BE ESCROWED: $4,000,000.00
- DURATION OF THE ESCROW: LESS THAN ONE YEAR
- APPOINTMENT SUBJECT TO RECEIPT OF REQUESTED DUE DILIGENCE INFORMATION AS PER THE USA PATRIOT ACT
- THIS PROPOSAL ASSUMES THAT BALANCES IN ESCROW ACCOUNT WILL BE PLACED IN THE WELLS FARGO MONEY MARKET DEPOSIT ACCOUNT ("MMDA")
- ALL FUNDS WILL BE RECEIVED FROM OR DISTRIBUTED TO A DOMESTIC OR AN APPROVED FOREIGN ENTITY
- IF THE ACCOUNT(S) DOES NOT OPEN WITHIN THREE (3) MONTHS OF THE DATE SHOWN BELOW, THIS PROPOSAL WILL BE DEEMED TO BE NULL AND VOID

Out-of-Pocket Expenses:	At Cost

We will charge for out-of-pocket expenses in response to specific tasks assigned by the client or provided for in the Escrow Agreement. Possible fees and expenses would be, but are not limited to, outside counsel review of escrow documents, express mail and messenger charges, travel expenses to attend closing or other meetings.

This fee schedule is based upon the assumptions listed above which pertain to the responsibilities and risks involved in Wells Fargo undertaking the role of Escrow Agent. These assumptions are based on information provided to us as of the date of this fee schedule. Our fee schedule is subject to review and acceptance of the final documents. Should any of the assumptions, duties or responsibilities change, we reserve the right to affirm, modify or rescind our fee schedule. Extraordinary services (services other than the ordinary administration services of Escrow Agent described above) are not included in the administration fee and will be billed as incurred at the rates in effect from time to time.

Submitted on: April 21, 2010

Schedule 8.3

Consents

None.

EXHIBIT C

Proposed Sale Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
MAGIC BRANDS, LLC, et al.,[1]	:	**Case No. 10-11310 (BLS)**
	:	**[Joint Administration Requested]**
Debtors.	:	**Re: Docket No. ____**

ORDER (A) APPROVING ASSET PURCHASE AGREEMENT BETWEEN THE DEBTORS AND THE SUCCESSFUL BIDDER; (B) AUTHORIZING THE SALE OF THE PURCHASED ASSETS OF THE DEBTORS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH

Upon the motion (the "Motion")[2] of Magic Brands, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the "Debtors"), for the entry of an order (the "Order") pursuant to Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 (a) approving an asset purchase agreement (the "Purchase Agreement") between the Debtors and _____ (the "Successful Bidder") to acquire Debtors' assets and operations used in the conduct of, or related to, owning, managing, operating, and franchising restaurants operated by Debtors (as defined in the Purchase Agreement, the "Purchased Assets"), attached as Exhibit A (excluding exhibits, schedules and attachments); (b) authorizing the sale of the Purchased Assets free and clear of all liens, claims,

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Magic Brands, LLC ("Magic") (8989); Fuddruckers, Inc. ("Fuddruckers") (8267), Atlantic Restaurant Ventures, Inc. ("Atlantic") (9769), King Cannon, Inc. ("King Cannon") (8671), and KCI, LLC ("KCI") (9281). The address for all of the Debtors is 5700 Mopac Expressway, Suite C300, Austin, Texas 78749

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the DIP Order or the Purchase Agreement, as applicable. "DIP Order" shall mean *Interim Order (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, and (V) Scheduling a Final Hearing on the Debtors' Motion to Incur Such Financing on a Permanent Basis* [Docket No ___]

Encumbrances (as defined in the Purchase Agreement), and interests; and (c) authorizing the assumption and assignment of executory contracts and unexpired leases (the "Assumed Executory Contracts", as defined in the Purchase Agreement) to the Successful Bidder; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS THAT:

Jurisdiction, Final Order, and Statutory Bases

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. The statutory predicates for the relief requested in the Motion are Bankruptcy Code sections 105(a), 363(b), (f), and (m), and 365 and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f), and (h), 6006(a), (c), and (d), 9007, and 9014.

D. This Court entered the *Order (I) Approving Bidding Procedures For The Sale Of Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances Pursuant To Section 363 Of The Bankruptcy Code, (II) Approving Certain Bidding Protections, (III)*

Approving The Form And Manner Of Notice Of The Sale And Assumption And Assignment Of Executory Contracts And Unexpired Leases And (IV) Scheduling An Auction And Sale Hearing on _____ __, 2010 [Docket No. ___] (the "Bidding Procedures Order").

Notice

E. Actual written notice of the Sale Hearing, the Auction, the Motion, the sale of the Purchased Assets, and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known interested entities, including, but not limited to the following parties:

(i) the Office of the United States Trustee for the District of Delaware;

(ii) the Debtors' thirty largest unsecured creditors, on a consolidated basis;

(iii) counsel to Wells Fargo Capital Finance, Inc. ("Senior Lender");

(iv) the Internal Revenue Service; and

(v) all entities who have filed with the Court a request for notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

F. On _____ __, 2010, the Debtors published notice of the time and place of the proposed Auction, the time and place of the Sale Hearing, and the time for filing an objection to the relief requested in the Motion relating to the Transactions in the national edition of The Wall Street Journal.

G. In accordance with the provisions of the Bidding Procedures, the Debtors have served notice upon the counterparties to Assumed Executory Contracts: (i) that the Debtors seek to assume and assign certain Assumed Executory Contracts on the closing date of the Transactions (the "Closing Date"); and (ii) of the relevant Cure Costs (as defined in the Purchase Agreement). The service of such notice was good, sufficient, and appropriate under the circumstances and no further notice need be given in respect of establishing the Cure Cost for the

Assumed Executory Contracts. Each of the counterparties to the Assumed Executory Contracts (collectively, the "Contract Counterparties") have had an opportunity to object to the Cure Cost set forth in the notice.

H. As evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the Motion, the Auction, the Sale Hearing, and the Transactions has been provided in accordance with Bankruptcy Code sections 102(1), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, and 9014. The Debtors also have complied with all obligations to provide notice of the Motion, the Auction, the Sale Hearing, and the Transactions required by the Bidding Procedures Order. The notices described above were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, or the Transactions is required.

I. The disclosures made by the Debtors concerning the Purchase Agreement, the Auction, the Transactions, and the Sale Hearing were good, complete, and adequate.

Good Faith of Successful Bidder

J. The Successful Bidder is not an "insider" of any of the Debtors, as defined in Bankruptcy Code section 101(31).

K. The Successful Bidder is purchasing the Purchased Assets in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m). The Successful Bidder is, therefore, entitled to the full protections of section 363(m) and has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (i) the Successful Bidder complied with the provisions in the Bidding Procedures Order; (ii) all payments to be made by the Successful Bidder and other agreements or arrangements entered into by the Successful Bidder in connection with the Transactions have been disclosed; (iii) the Successful Bidder has not violated Bankruptcy Code section 363(n) by any action or

inaction; (iv) no common identity of directors or controlling stockholders exists between the Successful Bidder and any of the Debtors; and (v) the Purchase Agreement was negotiated at arm's-length and in good faith.

Highest and Best Offer

L. The Debtors conducted an auction process in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order. The auction process set forth in the Bidding Procedures Order and the Bidding Procedures afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase the Purchased Assets. The auction process was duly noticed and conducted in a noncollusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Purchased Assets.

M. The Purchase Agreement constitutes the highest and best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a reasonable exercise of the Debtors' business judgment.

N. The Purchase Agreement represents a fair and reasonable offer to purchase the Purchased Assets under the circumstances of these Chapter 11 Cases. No other entity or group of entities has offered to purchase the Purchased Assets for greater economic value to the Debtors' estates than the Successful Bidder.

O. Approval of the Motion and the Purchase Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their creditors, their estates, and all other parties-in-interest.

P. The Debtors have demonstrated compelling circumstances and a good and sufficient business purpose and justification for the Transactions.

No Fraudulent Transfer

Q. The consideration provided by the Successful Bidder pursuant to the Purchase Agreement is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia.

R. The Successful Bidder is not a mere continuation of the Debtors or their estates, and there is no continuity between the Successful Bidder and the Debtors. The Successful Bidder is not holding itself out to the public as a continuation of the Debtors. The Successful Bidder is not a successor to the Debtors or their estates, and the Transactions do not amount to a consolidation, merger, or de facto merger of the Successful Bidder and the Debtors. Except to the extent set forth in the Purchase Agreement, the Successful Bidder is not liable as a successor under any theory of successor liability for liens, claims, Encumbrances, and interests that encumber or relate to the Purchased Assets.

Validity of Transfer

S. The Debtors have full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby, and no further consents or approvals are required for the Debtors to consummate the transactions contemplated by the Purchase Agreement, except as otherwise set forth in the Purchase Agreement.

T. The transfer of each of the Purchased Assets to the Successful Bidder will be, as of the Closing Date, a legal, valid, and effective transfer of such assets, and each such transfer vests or will vest the Successful Bidder with all right, title, and interest of the Debtors to the Purchased Assets free and clear of all liens, claims, Encumbrances, and interests accruing,

arising, or relating thereto any time prior to the Closing Date, except for any Assumed Liabilities (as defined in Purchase Agreement) under the Purchase Agreement.

Satisfaction of Section 363(f)

U. The Successful Bidder would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Purchased Assets to the Successful Bidder, and the assumption, assignment, and sale of the Assumed Executory Contracts to the Successful Bidder, were not free and clear of all liens, claims, Encumbrances, and interests of any kind or nature whatsoever (except Assumed Liabilities), or if the Successful Bidder would, or in the future could, be liable for any of such liens, claims, Encumbrances, and interests.

V. The Debtors may sell the Purchased Assets free and clear of all liens, claims, Encumbrances, and interests against the Debtors, their estates, or any of the Purchased Assets (except for Assumed Liabilities) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Senior Lender has expressly consented to the sale of the Purchased Assets as and to the extent provided in this Order, free and clear of all liens, claims, Encumbrances, and interests against the Debtors, their estates, or any of the Purchased Assets held by, maintained by or otherwise in favor of the Senior Lender, and the Senior Lender waives all claims and objections that could be raised now or in the future with respect to the Transactions. Those holders of liens, claims, Encumbrances, and interests against the Debtors, their estates, or any of the Purchased Assets who did not object, or who withdrew their objections, to the Transactions or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such liens, claims, Encumbrances, and interests who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their liens, claims,

Encumbrances, and interests, if any, in each instance against the Debtors, their estates, or any of the Purchased Assets, attach to the cash proceeds of the Transactions ultimately attributable to the Purchased Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Transactions, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

W. The transfer of the Purchased Assets to the Successful Bidder free and clear of all liens, claims, Encumbrances and interests, if any, will not result in any undue burden or prejudice to any holders of any liens, claims, Encumbrances and interests, if any, as all such liens, claims, Encumbrances and interests of any kind or nature whatsoever shall attach, except as otherwise provided in this Order, to the net proceeds of the sale of the Purchased Assets received by the Debtors in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets in accordance with the DIP Order and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having liens, claims, Encumbrances and interests of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such liens, claims, Encumbrances and interests, if any, against the Successful Bidder, any of their assets, property, successors or assigns, or the Purchased Assets.

Assumption and Assignment of Assumed Executory Contracts

X. The assumption and assignment of the Assumed Executory Contracts pursuant to the terms of this Order is integral to the Purchase Agreement, is in the best interests of the Debtors and their estates, creditors, and other parties in interest, and represents a reasonable exercise of the Debtors' business judgment.

Y. The Cure Costs set forth on Exhibit B annexed hereto (the "Cure Schedule") with respect to each Assumed Executory Contract are the sole amounts necessary under Bankruptcy Code sections 365(b)(1)(A) and (B) and 365(f)(2)(A) to cure all monetary defaults and pay all actual pecuniary losses under the Assumed Executory Contracts, subject to the Successful Bidder's right to remove any Assumed Executory Contract from the Cure Schedule as provided in the Purchase Agreement.

Z. On or before the Closing Date, for all Assumed Executory Contracts assumed and assigned to the Successful Bidder, the Debtors shall have paid the Cure Costs set forth on Exhibit B. The Successful Bidder has provided adequate assurance of its future performance under such Assumed Executory Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

Compelling Circumstances for Immediate Sale

AA. To maximize the value of the Purchased Assets and preserve the viability of the business to which the Purchased Assets relate, it is essential that the closing of the Transactions occur within the time constraints set forth in the Purchase Agreement. Time is of the essence in consummating the Transactions.

BB. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the purchase price under the Purchase Agreement, the Transactions constitute a reasonable exercise of the Debtors' business judgment and should be approved.

CC. The consummation of the Transactions is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the transaction.

AND THE COURT HEREBY ORDERS THAT:

General Provisions

1. The relief requested in the Motion is GRANTED. The Transactions contemplated by the Motion and the Purchase Agreement are approved as set forth in this Order.

2. Bidding Procedures Order Incorporated. This Court's findings of fact and conclusions of law in the Bidding Procedures Order are incorporated herein by reference.

3. Objections Overruled. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to this Court at the Sale Hearing or by stipulation filed with this Court or as otherwise provided in this Order, and all reservations of rights included therein, are hereby overruled on the merits.

Approval of Purchase Agreement

4. Agreement Approved. The Purchase Agreement and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved.

5. Authorization to Consummate Transactions. Pursuant to section 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate the Transactions pursuant to and in accordance with the terms and conditions of the Purchase Agreement, (b) close the Transactions as contemplated in the Purchase Agreement and this Order, and (c) execute and deliver, perform under, consummate, implement, and close the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Transactions, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and such other ancillary documents.

6. Order Binding on All Parties. This Order shall be binding in all respects upon the Debtors and their estates and creditors, all holders of equity interests in any Debtor, all

holders of any Claim(s) (as defined in the Purchase Agreement), whether known or unknown, against any Debtor, any holders of liens, claims, Encumbrances, and interests against or on all or any portion of the Purchased Assets, including, but not limited to the Senior Lender, all Contract Counterparties, the Successful Bidder and all successors and assigns of the Successful Bidder, and any trustees, examiners, responsible officers, estate representatives, or similar entities for any of the Debtors, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Order and the Purchase Agreement shall inure to the benefit of the Debtors, their estates and creditors, the Successful Bidder, and their respective successors and assigns.

Transfer of Purchased Assets

7. Transfer of Purchased Assets Authorized. Pursuant to Bankruptcy Code sections 105(a), 363(b), 363(f), 365(b), and 365(f), the Debtors are authorized to transfer the Purchased Assets on the Closing Date, and the Successful Bidder is directed to pay the Purchase Price to the Debtors as provided in the Purchase Agreement. Except as otherwise provided in the Purchase Agreement, the Purchased Assets shall be transferred to the Successful Bidder "as is, where is" with all faults in accordance with the Purchase Agreement upon and as of the Closing Date and such transfer shall constitute a legal, valid, binding, and effective transfer of such Purchased Assets and, upon the Debtors' receipt of the purchase price, shall be free and clear of all liens, claims, Encumbrances, and interests, except any Assumed Liabilities. Upon the closing of the Transactions, the Successful Bidder shall take title to and possession of the Purchased Assets, subject only to any Assumed Liabilities.

8. Surrender of Purchased Assets by Third Parties. All entities that are in possession of some or all of the Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to the Successful Bidder at the closing of the Transactions.

All entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Purchased Assets to the Successful Bidder in accordance with the terms of the Purchase Agreement and this Order.

9. Transfer Free and Clear of Encumbrances. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the Purchased Assets shall be free and clear of any and all liens, claims, Encumbrances, and interests, except for Assumed Liabilities, including, but not limited to liens, claims, Encumbrances, and interests held by, maintained by, or otherwise in favor of the Senior Lender. Except to the extent set forth in the Purchase Agreement, the Successful Bidder is not and shall not be liable as a successor under any theory of successor liability for liens, claims, Encumbrances, and interests that encumber or relate to the Purchased Assets. All liens, claims, Encumbrances, and interests shall attach solely to the proceeds of the Transactions with the same validity, priority, force, and effect that they now have as against the Purchased Assets, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

10. Creditors Directed to Release Encumbrances. On the Closing Date, each creditor is authorized and directed to execute such documents and take all other actions as may be necessary to release liens, claims, Encumbrances, and interests (except for Assumed Liabilities) on the Purchased Assets, if any, as provided for herein, as such liens, claims, Encumbrances, and interests may have been recorded or may otherwise exist.

11. Attachment of Security Interests to Sale Proceeds. This Order shall be effective as a determination that, as of the Closing Date, all liens, claims, Encumbrances and interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the

Closing have been unconditionally released, discharged and terminated and that the conveyances described herein have been effected with such liens, claims, Encumbrances and interests to attach to the Purchase Price received by the Debtors at the Closing in the same priority that existed as of the Petition Date.

12. Authorization to Record Releases. If any entity (a "Claim Holder") which has filed statements or other documents or agreements evidencing liens, claims, Encumbrances, and interests on, or interests in, all or any portion of the Purchased Assets shall not have delivered to the Debtors prior to the closing of the Transactions, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary or desirable to the Successful Bidder for the purpose of documenting the release of all liens, claims, Encumbrances, and interests that such Claim Holder has or may assert with respect to all or any portion of the Purchased Assets, then (i) the Debtors are authorized to execute and file such statements, instruments, releases, and other documents on behalf of such Claim Holder with respect to the Purchased Assets and (ii) the Successful Bidder is authorized to file, register, or otherwise record a certified copy of this Order with the appropriate clerk(s) and/or recorder(s), which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, Encumbrances, and interests in the Purchased Assets as of the Closing Date of any kind or nature whatsoever, other than the Assumed Liabilities; provided, however, that any liens held by the Senior Lender shall be released and the authorization set forth in this Paragraph 11 shall apply to the release of such liens only upon the receipt by Debtors of the Purchase Price.

13. Permanent Injunction. Except as expressly permitted or otherwise specifically provided by the Purchase Agreement or this Order, all entities holding liens, claims,

Encumbrances, and interests in all or any portion of the Purchased Assets (other than Assumed Liabilities) arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors' business prior to the Closing Date, or the transfer of the Purchased Assets to the Successful Bidder, are hereby forever prohibited and permanently enjoined from asserting such liens, claims, Encumbrances, and interests against the Successful Bidder, its successors or assigns, their property, or the Purchased Assets.

14. Recording Offices. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

Assumed Executory Contracts

15. Authorization to Assume and Assign. Upon the closing of the Transactions, the Debtors are authorized to assume and assign each of the Assumed Executory Contracts to the Successful Bidder free and clear of all liens, claims, Encumbrances, and interests, as described herein. The payment of the applicable Cure Cost (if any) with regard to the Assumed Executory Contracts shall (a) effect a cure of all defaults existing thereunder as of the Closing Date and (b) compensate for any actual pecuniary loss resulting from such default. The Debtors shall then have assumed the Assumed Executory Contracts and assigned them to the

Successful Bidder and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of the Assumed Executory Contracts shall not be a default thereunder. After the payment of the relevant Cure Costs, neither the Debtors nor the Successful Bidder shall have any further liabilities to the Contract Counterparties other than the Successful Bidder's obligations under the Assumed Executory Contracts that accrue and become due and payable on or after the Closing Date. Nothing in this Order shall affect the rights of the Successful Bidder, until the Closing (as defined in the Purchase Agreement), in its sole discretion, to remove any executory contract or unexpired lease of the Debtors to or from the list of Assumed Executory Contracts.

16. License Approvals. The Debtors shall cooperate fully with and support Successful Bidder in executing such applications and furnishing such documents as are necessary for Successful Bidder to obtain all Liquor License Approvals (as defined in the Asset Purchase Agreement). All applicable state alcoholic beverage control, law enforcement, and regulatory agencies shall not interrupt any of the Business (as defined in the Asset Purchase Agreement) without first bringing the matter before this Court. Furthermore, the Business shall continue operating under all existing alcoholic beverage and other licenses of the Debtors until such licenses have been changed to Successful Bidder's name, including, but not limited to state alcoholic beverage licenses, state food service licenses, local occupational licenses, and any other licenses needed to operate the Business with no interruption of the Business.

17. Assignment Requirements Satisfied. Any provisions in any Assumed Executory Contracts that prohibit or condition the assignment of such Assumed Executory Contracts or allow the party to such Assumed Executory Contracts to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Assumed Executory Contract constitute unenforceable anti-assignment

provisions that are of no force and effect in connection with the Debtors' assumption and assignment of the Assumed Executory Contracts to the Successful Bidder. Each Contract Counterparty who failed to file an objection to the proposed assignment of its contract with the Debtors (a "Contract Assignment Objection"), or by virtue of electing to withdraw such objection, is deemed to consent to the assumption by the Debtors and assignment to the Successful Bidder of their Assumed Executory Contract. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts have been satisfied. Upon the closing of the Transactions, in accordance with sections 363 and 365 of the Bankruptcy Code, the Successful Bidder shall be fully and irrevocably vested with all right, title, and interest of the Debtors under the Assumed Executory Contracts, which will remain in full force and effect. In addition, all counterparties to the Assumed Executory Contracts are (a) forever barred from asserting any additional cure or other amounts with respect to the Assumed Executory Contracts, and the Debtors and the Successful Bidder are entitled to rely solely upon the Cure Costs set forth on Exhibit B attached hereto; (b) deemed to have consented to the assumption and assignment; and (c) forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed Executory Contracts, or that there is any objection or defense to the assumption and assignment of such Assumed Executory Contracts.

18. 365(k). Upon the closing of the Transactions and payment of the relevant Cure Costs related to the Assumed Executory Contracts, if any, the Successful Bidder shall be deemed to be substituted for the Debtors as a party to the applicable Assumed Executory

Contracts, and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Executory Contracts.

19. No Default. Upon the payment of the applicable Cure Costs, if any, the Assumed Executory Contracts will remain in full force and effect, and no default shall exist under the Assumed Executory Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

20. Adequate Assurance Provided. The Successful Bidder has provided adequate assurance of future performance under the relevant Assumed Executory Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

21. No Fees. There shall be no rent accelerations, assignment fees, increases, or any other fees charged to the Successful Bidder or the Debtors as a result of the assumption and assignment of the Assumed Executory Contracts.

22. Injunction. Pursuant to Bankruptcy Code sections 105(a), 363, and 365, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors or the Successful Bidder any assignment fee, default, breach, claim for pecuniary loss, or condition to assignment arising under or related to the Assumed Executory Contracts existing as of the Closing Date or arising by reason of the Closing.

Other Provisions

23. No Liability for Claims Against Debtors. Except for Assumed Liabilities or as otherwise expressly set forth in this Order or the Purchase Agreement, the Successful Bidder shall not have any liability or other obligation of the Debtors arising under or related to any of the Purchased Assets, including, but not limited to the Excluded Liabilities (as defined in the Purchase Agreement). Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Purchase Agreement, the Successful Bidder shall

not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Successful Bidder shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, substantial continuity, the WARN Act (as defined in the Purchase Agreement) and employee benefit and/or welfare plan(s), (including, without limitation, agreements, contracts, plans, policies or obligations related to or concerning medical, vision, disability, or any health related matters), whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, or liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any Tax (as defined in the Purchase Agreement) arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Purchased Assets prior to the closing of the Transactions, and the Successful Bidder shall be exonerated of any successor liability to any state taxing authority with regard to any Tax, including sales tax. The Successful Bidder has given substantial consideration under the Purchase Agreement for the benefit of the holders of any liens, claims, Encumbrances, and interests relating to the Purchased Assets.

24. Good Faith. The transactions contemplated by the Purchase Agreement are undertaken by the Successful Bidder without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transactions shall not affect the validity of the Transactions (including the assumption and assignment of the Assumed Executory Contracts), unless such authorization and consummation of such Transactions are duly stayed pending such appeal. The Successful Bidder is a good faith buyer within the meaning of

section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

25. Plan Not to Conflict. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these chapter 11 cases, (b) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order.

26. Effective Immediately. Pursuant to Bankruptcy Rules 7062, 9014, 6004(h), and 6006(d), this Order shall be effective immediately upon entry and the Debtors and the Successful Bidder are authorized, but are not required, to close the Transactions immediately upon entry of this Order, notwithstanding the ten-day stay periods in Bankruptcy Rules 6004(h) and 6006(d), which are expressly waived.

27. Brokers. Except for the fees and expenses of FocalPoint Securities, LLC (for which the Debtors are solely responsible), the Debtors do not have any obligation to pay any fees, commissions or other similar compensation to any broker, finder, investment banker, financial advisor or other similar Person in connection with the Transactions.

28. Agreement Approved in Entirety. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.

29. Modifications to Purchase Agreement. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further

order of this Court; provided, that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

30. Bulk Sales Law. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to any of the transactions under the Purchase Agreement.

31. Standing. The transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

32. Timing. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

33. Order to Govern. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Order shall govern.

34. Order Governs Over Purchase Agreement. To the extent there are any inconsistencies between the terms of this Order and the Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of this Order shall govern.

35. Authorization to Effect Order. The Debtors are authorized to take all actions necessary to effect the relief granted pursuant to this Order in accordance with the Motion.

36. Automatic Stay. The automatic stay pursuant to Section 362 is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Court, to (i) allow the Successful Bidder to deliver any notice provided for in the Purchase Agreement, and (ii) allow the Successful Bidder to take any and all actions permitted under the Purchase Agreement in accordance with the terms and conditions thereof.

37. Findings of Fact/Conclusions of Law. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the findings of fact set forth herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law set forth herein constitute findings of fact, they are adopted as such.

38. Retention of Jurisdiction. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Successful Bidder, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transactions.

Dated: _____ ___, 2010
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

ASSET PURCHASE AGREEMENT

EXHIBIT B

CURE COSTS SCHEDULE